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Preface

Welcome to the twenty-fourth volume of Trinity College Dublin's Social and Political Review. The essays which grace the following pages of this journal range from those examining the Maoist insurgency in Nepal and its lessons for the future of that country, to an analysis of the psychological barriers to peacebuilding in Northern Ireland; from the role of France's grand écoles in training the political elites of tomorrow to an assessment of Turkey's potential membership of the European Union in the light of European perceptions of a Muslim 'other' – each of these essays demonstrates the talent, enthusiasm and commitment of Trinity's undergraduate students, from a wide range of disciplines, without whom this publication would not have been possible. I would like to thank them, on behalf of the board of the journal, for their hard work and patience.

Publishing the SPR requires the commitment of a team of editors and administrative officers who comprise the board of the journal; they have given too much of their time, energy and thought for me to properly pay tribute to their efforts; all I can do is to thank them once again for their tireless dedication throughout the long hours of selecting and editing essays. The Department of Political Science and the Department of Sociology have continued to give us their full support without which this publication simply would not be possible. I would like to thank in particular Dr. Jacqueline Hayden and Dr. Elaine Moriarty who have advised the board throughout the editing process, promoted the journal to undergraduates and staff in their respective departments and been a constant source of support and encouragement. Thanks are also are due to Trinity Publications for their generosity and kind assistance.

Next year is the 25th anniversary of the first edition of the Social and Political Review; a date which offers us the opportunity to reflect on the long road travelled and also that which is still to come. It will be an exciting year to be involved and I'd like to take this opportunity to wish next year's board all the very best of luck with the publication. I would encourage those reading this to give strong consideration to getting involved next year; either as a board member or by submitting your work for publication.

With our world changing like never before, the articles in this volume seek to give a much needed examination of the pressing social and political issues of our time. Enjoy.

Niall Murphy
Editor-in-chief

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Privatising the Public Sector: The Case of Private Military Companies

PETER MARSHALL

Private Military Companies (hereinafter 'PMC') are private entities that provide armed security services as commercial business activity for profit. They are the newest form of armed non-state parties operating in unstable states and conflict situations coming from an unusual source of private sectors as opposed to the traditional source of military personnel from public sectors like government or state owned armed forces (Cameron, 2006, p. 573). PMCs have a clearly defined business structure, and they openly compete on the global market to provide services to states, other multinational corporations, international institutions, and even non-governmental organisations (Oldrich, 2005, pp. 533 – 546). However their duties and responsibilities remain unknown in international law. In order to hold these entities accountable for any violation of legal rules and/or human rights violations during armed conflicts, it is imperative to determine

their legal status under international law. The accountability of these companies and their personnel – not to mention states' responsibility – have not kept pace with international law. This clearly illustrates that this emerging area of law is problematical in various relations and necessitates an expedient analysis and solution.

Moreover the claim to legitimate violence has long been understood to be an exclusive state power. The state has been defined as an entity that successfully claims the "monopoly of the legitimate use of physical force within a given territory" (Bruce and Biersteker, 2002, pp. 3-22). Mercenaries and PMCs challenge this neat schema. In the absence of their recognition as a distinctive category of persons under international humanitarian law, inferences may be drawn by reference to other defined categories of actors, namely; combatants, mercenaries and civilians. The present article seeks to examine the factors that have given rise to this new breed of civilian contractor on the world stage. It will then examine the global shift towards privatisation of the military industry, followed by an examination of the problematic, mercurial nature of existing legislation that fails to define PMCs. It will conclude with an in-depth analysis of the existing self-regulatory framework and propose a new model.

HISTORY

The international community accepted the widespread use of mercenaries as auxiliary forces in the past, but there has been a shift in opinion against mercenaries in recent decades (Gaultier, 2001, p. 16). In response to the devastating effects of mercenaries in Africa, some members of the international community condemned mercenaries for hindering the self-determination efforts of emerging African states (ibid pp. 16-17). However, while the international community struggled with the problems of mercenaries, unregulated PMCs began to emerge, effectively replacing the traditional notion of the 'mercenary'. This section shall examine the conditions that created a market for a corporatized private army, namely; the end of the Cold War, funding cutbacks for state militaries and an increasingly popular policy towards the privatisation of

many government services and institutions.

The use of mercenaries had been a historically constant phenomenon until almost the end of the 20th century. Parallel to that phenomenon, European States, during their colonial expansion over all continents, authorised two other forms of similar violence by non-state actors: the corsairs and the colonial merchant companies, such as the East India Company or the Hudson Bay Company (Williston, 1888, pp. 105-124). At the threshold of the 21st century one may observe a similar phenomenon. Although mercenaries still exist, PMCs have increasingly taken over the traditional activities carried out by mercenaries over the past twenty years. Contrary to mercenaries, PMCs are transnational corporations legally registered which obtain contracts from governments, private firms, intergovernmental and non-governmental organisations (Bailes, Krause and Winkler, 2007, p. 31). In low intensity armed conflicts or post conflict situations such as Afghanistan and Iraq their employees; contracted as civilians but armed as military personnel, operate in "grey zones" as combatants without oversight or accountability, under murky legal restraints and often with immunity (Pelton, 2006, p. 342).

The presence of PMCs became increasingly acute as the Cold War wound down (Howe, 2001, pp. 79-80). The structural change of domestic and international policies at the end of the Cold War promulgated four central trends, which can explain the worldwide spread in the use of PMCs.

First, most Western countries significantly reduced their defence budgets following the end of the Cold War. Western countries began to outsource military functions as PMCs were able to provide states with new capabilities and efficiencies, thus they can be useful for implementation of foreign policy, reducing expenditures, minimising operational costs, providing experienced personnel from former military experts and professionals, improving flexibility, or implementing courses of action the contracting state cannot undertake itself due to political or legal constraints.

The underlying theme here illustrates that procuring new weapons and recruiting and training new soldiers are time consuming, expensive

aims. The obvious question therefore becomes; if standing armies are expensive, why not make use of flexible PMCs when they can help to downsize military, supply skilled expertise or provide equipment without tedious political and bureaucratic procedures? As they downsized their armies and demobilised entire contingents, global supply and demand for PMCs changed: the excess supply of veterans with extensive military expertise was eventually directed towards the private security industry (Singer, 2003, p. 49).

Second, the technological revolution in communication changed the nature of interdependence since the 1970s, resulting in decreased interaction costs. This decrease, coupled with the increased quantity of contact channels among societies, created opportunities for actors other than states to engage in processes of international politics. The advent of the information age decentralised power widely toward individuals and private organisations (Keohane and Nye, 2000, p. 116).

Third, the concern about security has changed - it is now perceived as only one among other public goods provided by the state. The influence of a neoliberal economic outlook on the overall reduction of public expenditures resulted in the commodification of security. The pervading theories of efficiency and market logic transformed the governments' view as to how security is provided by the state. Governments have increasingly used the outsourcing of military and security services in a similar way as in the sphere of health care or electricity supply. Essentially, the privatisation of security has produced both inward (domestic, e.g. contracting guards in prisons, immigration control and airport security) and outward (international, e.g. civilian troop deployment) effects (The Limits of Military Outsourcing, 2010).

Fourth, Western states have altered their foreign policy responses to the widened and broadened spectrum of security threats, for example failing states and transnational terrorism. While Western powers have been reluctant to get involved in conflicts where no major national interests are at stake, they prefer to make use of different means available for the conduct of their foreign policy, a primary tool being PMCs.

The modern industry's strong position on privatisation vis-à-vis

contracting states indicates that the private military and security industry is here to stay for the foreseeable future. "Necessary budget cuts" will only serve to strengthen an existing phenomenon (M. Dunigan, 2011, p. 152). The growing concerns among industry observers calling for increased regulation of and transparency must be addressed if the industry is to progress in any meaningful way.

PRIVATISING INTERNATIONAL LAW

The outsourcing of military functions is leading to the privatisation of war and weakening the monopoly of the use of force, which has been one of the fundamental principles on which the sovereignty of modern States is based, and the system of collective security enshrined in the United Nations (UN) Charter. This situation raises important issues and poses political, legal and human rights questions to the international community related with the use and control of violence by non-state actors as well as the lack of transparency and accountability with which they operate. The reduction of the regular armed forces of States, in developed and developing countries, (G. Carbonnier, 2004, p. 27) are some of the causes behind the rapid development of the privatisation of violence. In addition, the globalisation of the economy has encouraged the logic that everything can be privatised and that the "invisible hand" of the market helps it regulate itself and thereby remedy all problems (McGuire and Olson, 1996, pp. 72-96). Such a way of thinking has influenced a number of governments to outsource military and security functions, which were historically public sector functions.

PMCs often operate outside government control and with limited effective oversight from State organs. PMC employees can use excessive force and shoot indiscriminately at civilians. The incidents at Abu Ghraib prison in Iraq in 2004 provide a stark example supporting the assumption that the use of PMC personnel can result in an accountability gap. In this instance, the military personnel were subjected to court martial and were found guilty for abuse of detainees and were sentenced to prison. In contrast, none of the personnel of the two PMCs implicated in the

abuse were charged with any crime (Lehnardt, 2008, p. 1016). There is, however, no international instrument, which regulates and monitors the military and security activities of these transnational companies. The only direct international form of regulation is the one which relates to the contract, which PMCs sign either with the government department outsourcing some of its functions, the international governmental organisation, NGO, firm or individual which contracts them. They define the scope and scale of their activities as well as the rules of engagement. The fact that an international body does not monitor the activities of these individuals consistently supports the proposition that they operate in a legal vacuum.

States contracting externally some of their military and security functions could use the contract as a tool for regulating and controlling the activities of these transnational companies. One condition should be to abide by relevant human rights standards and in case of human rights abuses to terminate the contract and exclude the company from future bids for other government contracts. The clauses of the contract could include a number of provisions such as; vetting procedures, training requirements, labour rights, conditions for subcontracting other companies and reporting mechanisms to name a few. In order to resolve grievances, a special clause could be integrated in the contracts allowing the right for affected third parties to enforce contractual obligations pertaining to human rights (Chesterman and Lehnardt, 2007, pp. 242-244).

As pointed out by the UN Human Rights Committee, States have the responsibility to take appropriate measures or exercise due diligence to prevent, punish, investigate and redress the harm caused by acts of PMC personnel that infringe upon human rights. (UN Document CCPR/C/21/Rev.1/Add.13, 2004, General Comment No.31 'Nature of the General Legal Obligation Imposed on States parties to the Covenant'). The International Law Commission (hereinafter 'ILC') Draft Articles on State Responsibility indicate that respect for human rights implies to refrain from activities that could violate human rights not only committed by State organs but also by private entities attributable to them. This would be the case when PMCs "exercise elements of governmental authority"

(Draft Art. 5 ILC). States which contract PMCs to export their activities abroad have to respect their international legal obligations which cannot be eluded by outsourcing some of its functions. Hence, a transition from intra to interstate regulation has become a pressing issue.

Indeed, in December 2005, the Federal Council of Switzerland adopted a report on PMCs and instructed the Federal Department of Foreign Affairs (FDFA) to launch an international initiative promoting compliance with international humanitarian law (IHL) and human rights by PMCs operating in conflict zones. First, the creation of the 'Montreux Document' was achieved in November 2008. And second, in 2010, after the FDFA encouraged PMCs to follow up on the Montreux Document, PMCs signed the International Code of Conduct for Private Security Service Providers (hereinafter ICoC), which consequently gave rise to the International Code of Conduct Association (hereinafter ICoCA) in September 2013 which will be discussed in further detail later. The corporate international structure of PMCs presents significant difficulties in holding these entities to account. It is wholly unacceptable that private entities can easily evade responsibility on universally condemned acts such as murdering civilians due to the disjointed nature of international law.

Guaranteeing security, public order and respect for law and order and human rights remain State obligations. Foreign policy is subject to international law, whether it is carried out by state organs or by private agents; states cannot minimise their international duties and obligations merely because an activity is conducted by a private actor. States may contract these companies in attempts to avoid direct legal responsibilities. The fact that these entities operate within the private sphere does not negate the State's responsibilities. International and constitutional law assign the task of security, public order and defence to the military and police forces under the concept of sovereignty and the monopoly of the use of force. If the state fails to show due diligence in preventing and responding to human rights violations committed by private actors, such abuses can give rise to state responsibility under international human rights law.

International humanitarian law on the other hand, comprising of the 1949 Geneva Convention, the 1977 Additional Protocols and the Hague Conventions of 1899 and 1907, are still the most effective legal instruments, providing assistance and protection for the victims of armed conflict. However, for International Law to be effective and applicable to current situations, it must adopt an inherently flexible approach. International law must adapt and evolve in the same way that the nature of armed conflicts changes, rather than adhering rigidly to legal instruments over 100 years old. It is wholly unreasonable to believe the framers of these legislative instruments foresaw the rise of a private corporate army in an era dominated largely by communism. These actors' functions have made international humanitarian law partly obsolete. Their transnational activity is dictated by commercial criteria, not by international law. The lack of specific regulation on the privatisation of security impacts on international security and therefore warrants attention.

The prevailing thesis, especially among human rights groups, is that PMCs are the mercenaries of the 21st century, providing expedient solutions to social and political problems in contemporary armed conflicts (Musah and Fayemi, 2000, p. 14). Their services are in demand. Illegalising them will not be effective because they will continue to exist, and their activity will continue to potentially infringe international human rights laws. "Prohibition or regulation?" was the question posed in a United Nations information bulletin (Office of the United Nations High Commissioner for Human Rights, Information bulletin n.28, 2002, p.12). The President of the 'United Nations Working Group on the Use of Mercenaries as a Means of Violating Human Rights and of Impeding the Exercise of the Right of Peoples to Self-Determination' declared that PMCs "enjoy an immunity that can easily become impunity, which could lead to some States recruiting these contractors to avoid direct legal responsibility" (Fourth period of the United Nations Human Rights Council sessions, 2007, p.3). Under international humanitarian law and human rights law there are norms, which States must respect, protect and fulfil. In accordance with international human rights instruments, all members of society including groups, organs and individuals

bear responsibility in the protection and promotion of human rights. However, the responsibilities of the individuals, the companies and the states are diffused and lack transparency due to the labyrinth of contracts and subcontracts, and very often-transnational companies are registered in different countries.

Indeed, since WWII it has been accepted that individuals may be held liable for acts committed by corporate entities (Lehnardt, 2008, p. 1033). Transnational litigation against PMCs in domestic courts faces challenges due to the corporate structure of PMCs. For instance, corporations may set up foreign subsidiaries, as separate legal entities overseas, and thereby evade its legal personality and consequent responsibilities for the abuses committed by its subsidiaries or their employees from being attributed to the parent corporation. Nevertheless, in a corporate configuration the parent company should incur direct legal responsibility for the overseas abuse by its foreign subsidiary, if violations of its duty of care (i.e. negligence) could be established or if its subsidiary acted merely as its agent. Accountability of the parent corporation is more important because it is the parent corporation that will often be the targets of victims considering the financial viability of the parent corporations for damages.

DEFINITIONAL/ACCOUNTABILITY ISSUES

PMCs can escape the international agreements on mercenaries because the requirements in the definitions are cumulative, so a PMC may escape the whole definition by virtue of avoiding just one clause. Four Geneva Conventions, their Additional Protocols as well as the Hague Conventions recognise only three defined categories of persons – combatants, mercenaries and civilians — as subjects of international humanitarian law to confer rights or to impose responsibilities in relation to armed conflicts. The existing rules and principles do not recognise PMCs or its personnel as a distinctive category. However, inferences should be drawn from the definitional aspects of combatants, mercenaries and civilians, in order to determine the legal status of civilian-contractors

in international law.

The application of the legal definition of mercenary to PMCs today is uncertain. The definition requires that all the criteria in Article 47 (2) of Protocol 1 be fulfilled. However, there is an overlap between 'traditional' mercenaries and PMCs. Mercenaries are hired soldiers or security personnel, who take part in hostilities merely for personal monetary or other material gain with no other substantive link to the conflict situation. They are neither combatants nor civilians but recognised as a distinctive category under international humanitarian law. Article 47 (2) of the Additional Protocol I to the Geneva Conventions 1977 defines mercenaries as follows:

> *'2. A mercenary is any person who:*
>
> *(a) Is specially recruited locally or abroad in order to fight in an armed conflict;*
>
> *(b) Does, in fact, take a direct part in the hostilities;*
>
> *(c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;*
>
> *(d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;*
>
> *(e) Is not a member of the armed forces of a Party to the conflict;*
> *(f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.'*

Though the provision seems to capture the essence of PMCs and their activities within the ambit of mercenaries, it only partially does so. For instance, in accordance with sub-paragraph (a) and (b) mercenaries are only those who are "recruited... to fight in an armed conflict" and "does, in fact, take a direct part in the hostilities." However, those who do

not directly participate in hostilities will not be considered as mercenaries. In practice PMC personnel predominantly engage in logistical support services and for purposes other than direct participation in hostilities, such as guarding prisoners, training military personnel, food supply and weapons management. If anything goes wrong in any of these non-hostile activities, PMCs cannot be held accountable as mercenaries under Article 47(2).

It therefore appears very difficult in practice to find an individual who falls within the parameters of Article 47 (2). One of the most contentious requirements of Article 47(2) is contained in subparagraph (c) and relates to motivation. For some, it is essential that the definition distinguish mercenaries from other actors on the basis of their motivation. As Martin has suggested, "it is impossible satisfactorily to define a mercenary without reference to his motivation" (1977, pp. 51-53). The second limb of subparagraph (c), that the mercenary must "in fact, [be] promised by or on behalf of a Party to the conflict material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that Party," is an attempt at mitigating the subjectivity of the motive requirement, balancing it with an objective test that can be more easily adjudicated by an external party.

Nevertheless, the wording of subparagraph (c) is such that the excessive material compensation requirement is in addition to the motive requirement, as is apparent from the use of the word "and" to join the two limbs. This leaves unresolved the difficulties with interpreting an individual's motivation for participation in hostilities. This concern stands in addition to more general concerns as to the desirability of attaching motive to legal status in armed conflict. The shortcomings of Article 47 are most evident when read in light of the rest of the Protocol. The only consequence flowing from Article 47 is that mercenaries are not entitled to combatant or prisoner-of-war status. In other words, Article 47 is presented as an exception to the rules regarding who can be a combatant. It seems the provision is included to isolate a category within a wider group who, as a matter of law, are not combatants (Keith, 1985, pp.13-35 at p. 23). Being a mercenary itself is an offence but being a PMC employee is not an offence under humanitarian law. This is most

likely due to the organised structure of PMCs in contrast to the poorly organised "every man for himself" nature inherent in mercenaries.

There is no reason in international law for any corporation, including PMCs, to avoid accountability for violating international law and human rights abuses on account of an easily circumvented definition. But international law is not yet developed to the level of recognising the responsibility of PMCs for internationally wrongful acts. Though corporations and entities are not recognised as subjects of international law they have been exercising rights and responsibilities under international law in a derivative manner. As long as it is recognised that this is the case, it must be admitted that legal persons also have the necessary international legal personality to enjoy some of these rights and conversely be prosecuted or held accountable for violations of their international duties (Clapham, 2000, p. 190). It therefore appears that when a category of actor provides more benefits than drawbacks to the government (reducing operational costs, military expenditure, increasing efficiency etc.), it is inevitable that the government will find a way to justify these actors' legitimacy. Whether that be deliberately poorly drafted legislation, a lack of political impetus for reform, intentional neglect of the issue or a combination of the three remains unknown but begs for more questions to be asked of domestic and international legislators. In its clearest form, it seems PMCs have gained a degree of legitimacy primarily as a result of working closely with other relevant stakeholders towards the establishment of a regulatory framework – 'self-regulation'.

PRESENT FRAMEWORK AND ITS INADEQUECIES

Self-regulation in the private military industry has developed at a rapid pace, often beyond the expectations of the industry's main actors and observers. It has also advanced faster than other efforts to regulate the industry (mainly national and international legislation). The key achievement of self-regulatory schemes lies in the crystallisation of industry-wide standards and enhanced mechanisms designed to monitor compliance with these standards. Even if much progress remains to be

made to ensure that non-compliant actors are held accountable, the industry provides an interesting case study in self-regulation.

In the private military industry, self-regulation (Héritier and Lehmkuhl, 2008, p. 112) has reached beyond what is traditionally regarded as industry regulation. Traditional 'self-regulation' – typified by European 'guilds' – is characterised by industry participants reaching common understandings on goals, acceptable norms of conduct and organisational structure. PMC self-regulation today encompasses both private regulation and hybrid public-private regulation. Examples of private regulation include regulation by industry associations and the adoption of codes of conduct by individual companies (De Nevers, 2010, p.32). But the public-private initiatives have been most visible – including an array of notable achievements such as the Voluntary Principles on Security and Human Rights (hereinafter 'Voluntary Principles') in 2000; the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict (hereinafter 'Montreux Document') in 2008 (Richemond-Barak, 2011, p. 83); The International Code of Conduct for Private Security Service Providers (hereinafter 'ICoC') in 2010; and the Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Providers (hereinafter 'Charter') in 2013.

Hard Law

PMCs evidently function within a grey area of public international law. In other words, PMCs' operation is partly regulated and partly unregulated. This conclusion was indeed true no more than two years ago, but is now somewhat out-dated if we systematically analyse the regulations of public international law coupled with the ever-increasing legal weight of 'soft law' documents such as the 'Montreux document' and 'ICoC'. The regulation of PMCs rests on two pillars previously mentioned, namely international human rights law, and international humanitarian law. International human rights law and international humanitarian law

(IHL) are two distinct but complementary bodies of international law. IHL is applied in armed conflicts, while human rights law is applied at all times, in times of peace and war. When considering existing regulations of public international law, the following distinction should be drawn; On the one hand, it has to be taken into account to what extent the current international legal regime contains principles and rules that may directly or indirectly affect the use of PMCs in certain cases. Only then, after having ascertained existing standards, can the development and enhancement of these legal regimes be tackled successfully, not only on an international level but also by incorporating general international legal standards into more detailed national legislation.

The Universal Declaration of Human Rights (hereinafter UDHR), adopted by the UN General Assembly on 10 December 1948, is widely considered to be the foundation of international human rights law. Though it initially appears non-binding because it was adopted by a General Assembly resolution, the vast majority of the UDHR's articles have customary law effect, and that is the reason it is often referenced as the authoritative legal source and a constraint on private behaviour. This argumentation closely interlinks a number of articles relevant to PMCs, including the right to life, prohibition of torture, equal protection under the law, prohibition on arbitrary arrest and detention, fair and public hearing and presumption of innocence. The International Covenant on Civil and Political Rights commits signatory states to respect the classical civil and political rights of individuals. These classical rights include the right to life, prohibition of torture or cruelty, inhumane or degrading treatment or punishment, right to liberty and security, and equality before courts and tribunals. These rights could be violated by any agents or company employees providing military or security services – the obvious example being PMCs.

International humanitarian law – as the other pillar of international regulation of PMCs – is a set of rules, which seek, for humanitarian reasons, to limit the effects of armed conflicts. The Hague Conventions of 1907 were among the first formal statements of laws of war and war crimes. The Hague Convention on Neutral Powers restricts neutral states from providing either direct or indirect assistance to warring states. In

particular, belligerents cannot move troops or convoys or either munitions of war or supplies across the territory of a neutral state, neither corps of combatants can be formed nor recruiting agencies can be opened in the territory of a neutral state. In this context, the term 'combatants' does not have the same meaning as in the Geneva Conventions of 1949. It is a much broader term: therefore, this provision can also apply for the case of PMCs. In accordance with Article 5, neutral states are obliged to prevent and punish "acts in violation of its neutrality unless the said acts have been committed on its own territory." According to Article 6, neutral states can only escape from the responsibility if people from their territory are "crossing the frontier separately to offer their services to one of the belligerents." It has been suggested that the Hague Convention appears to prevent states from allowing PMCs to incorporate or operate from their territory. The core regulation of PMCs in the field of IHL is based on the Geneva Conventions of 1949 and the two Additional Protocols of 1977 previously alluded to. The on-going debate is whether PMCs are lawful or unlawful combatants (mercenaries) or whether they are civilians under the Geneva Conventions. The question cannot be satisfactorily answered and this ambiguous situation should not be allowable in armed conflicts.

To analyse the aforementioned treaties and draft articles, we should not accept the notion that PMCs operate within a legal vacuum but it is indeed true that PMCs' operation zone is not clearly defined by international legal norms. The regulations of international human rights law and international humanitarian law exist, but fail to adequately reference PMCs. The main problem is that in default of a specific legal regime, limits and guidelines for the use of PMCs or contractors have to be deduced from the abovementioned general international treaties. Such rules are not only those that reserve certain functions explicitly for state organs but in other cases, states may have to exercise due diligence in the supervision of PMCs by state organs. The problem responsibility lies with states and their national administration to implement these general rules by adopting effective legislative and administrative measures that govern the use of PMCs in detail. In spite of the necessity of national regulation, we can say that it barely exists. The burden rests on states and the international community to deal with the major risks of inadequacy,

inapplicability and ineffectiveness of the domestic regulation of the private security industry.

Since PMCs are much more complicated than a simple armament sale, they should have a more detailed process for the approval of their contracts. PMC activities extend far beyond the confines of a contract. A contractual clause on its own is insufficient in addressing the regulatory requirements of PMCs. The Human Rights Council, which is the successor of the UN Commission on Human Rights, established in 2006, realised this problem and in 2010 it adopted resolution 15/2627 in which it decided:

> *'to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of PMCs, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.'*

Soft Law

Though industry critics tend to deplore the normative 'softness' of self-regulation and its voluntary nature, (De Nevers, 2009, pp. 479-516) it appears to have shifted behavioural norms and triggered a compliance pull. Sceptics are correct to say that more needs to be done though. The main notable achievements in this arena previously mentioned include; the Montreux document, the International Code of Conduct for PMCs and the International Code of Conduct for Private Security Service Providers' Association. Even if the legal nature of ICoC is only considered to be an international soft law, major clients of PMCs have already begun to reference the Code in their contracts. The UN Security Management

System's 'Guidelines on the Use of Armed Security Services from PMCs' makes mandatory for possible selection the requirement that PMCs must be member companies in ICoC. States are also beginning to incorporate ICoC into national legislation. The Swiss Parliament considered a draft Federal Act on PMCs Provided Abroad (hereinafter: Draft Act) in 2013. Article 7 of the Draft Act regulates the adherence to the ICoC for PMCs. This Article says imposes and obligation on companies to become signatories to ICoC.

Furthermore, according to Article 14, the competent authority shall prohibit in full or in part the exercise of an activity by a company that does not comply with the provisions of ICoC. Recently, also the US Department of State indicated that as long as the ICoC process moves forward as expected and the association attracts significant industry participation, "the Bureau of Diplomatic Security (DS) anticipates incorporating membership in the ICoC Association as a requirement in the bidding process for the successor contract to the Worldwide Protective Services (WPS) program" (State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts, 2013). In light of these changes, it is evident that the legally non-binding nature of ICoC is starting to change and, as its rules become a reference point to the states, it will evolve into harder international law. While the Montreux Document, the ICoC and the ICoCA are important initiatives, these do not address the key issue of accountability and responsibility. As a non-governmental instrument, which is not legally binding and is not backed by State criminal and administrative sanctions, it cannot address the essential human rights issues of accountability for PMCs and their employees who commit human rights and IHL abuses.

The next step in the evolution of regulation of the industry, however, is to introduce systematic monitoring and sanctions – 'hard' accountability. Current self-regulatory schemes in the industry focus on monitoring (as opposed to sanctioning) and on corporate accountability (as opposed to individual accountability). The international community must regulate this area of warfare not only at the field of soft law, but also at the field of public international law, as well as at the field of domestic law. This can be accomplished while preserving key elements of the

present self-regulatory scheme. But it will require the introduction of more formal processes and authorities, much as the Organisation for Economic Co-Operation and Development (hereinafter OECD) provides a formal governance structure (albeit weak) to support self-regulation and national law-making in select areas of economic activity. As has been previously illustrated, the legally non-binding nature of ICoC is starting to change and evolve into harder international law. It is this article's interpretation and hope that the regulations of ICoC – in the long term – could transfer into new international regulations, most likely in the form of a new global framework which this article will now turn attention to.

FUTURE/REGULATORY FRAMEWORK

To overcome these limitations, this article suggests the adoption of an OECD-type model of governance for the private security and military industry, taking into account its unique characteristics, transnational nature, industry self-regulatory initiatives to date, and the emerging consensus around applicable standards. It consists of a multi-level regulatory regime – combining the use of national bodies at the monitoring level, with the use of an international body at the sanctioning level. Importantly, it enables monitoring and sanctioning of companies and contractors alike. Such a structure could address the main weaknesses of the existing self-regulatory schemes: first, the absence of real sanctions against non-compliant behaviour by industry participants and, second, the failure to establish a framework capable of monitoring corporations as well as individuals. As a starting point, it is important and encouraging to note that the present framework bears some resemblance to other hybrid regulatory initiatives, which began as voluntary undertakings and multi-lateral initiatives, won widespread endorsement, and later succeeded in impacting compliance. The financial sector OECD's Guidelines are one of the only examples of self-regulatory mechanisms overseen or influenced by international standard-setting bodies, with regional monitoring bodies that include government bureaucracies.

The UN Working Group on Mercenaries, possibly reconstituted

under a new title (referring expressly to PMCs), would be a natural candidate to oversee the establishment of the new regulatory regime at sanctioning level. Though for many years the UN Working Group demonstrated a poor understanding of security outsourcing – it has since shown innovation and an appreciation for the unique status of PMCs. The UN Working Group's current complaint mechanism, which can be triggered by filling in a questionnaire available on its website, demonstrates an appreciation for the centrality of complaint procedures to the enforcement of industry standards. A vastly enhanced complaint mechanism, together with well-defined supervisory and policy-making functions, would allow the UN Working Group to develop into an international supervisory body I shall now turn my attention to.

The model this article proposes builds on the success of governments, non-governmental organisations and contracting firms themselves in establishing and legitimising baseline behavioural norms and codes of conduct. The OECD's Guidelines, which, while weak on enforcement, are still one of the only examples of a multilateral code of business conduct that contemplates multi-level monitoring and has been committed to by a large number of state signatories. The proposed model breaks from other initiatives in several meaningful ways, however. First and foremost, the proposed model contemplates the imposition of sanctions beyond the mere exclusion or suspension of non-compliant actors. Existing self-regulatory schemes in the private security and military industry contemplate dismissal as the main, if not only, sanction for non-compliance, (For example the 'IGOM', 2012) leaving a true accountability deficit. The threat of suspension/exclusion from an industry association – even if it means a company cannot bid on contracts, as some have proposed – is an insufficient sanction where significant wrongdoing has taken place.

Second, the model provides for a double-layer of accountability. Current practices and proposals are exclusively limited to corporate accountability, which is insufficient to ensure respect for industry standards. Individual accountability is needed to provide incentives for the employees of PMCs to conform to the applicable standards. By contemplating the imposition of sanctions against companies and

contractors alike, the proposed model significantly broadens the reach (and thus the potential) of self-regulation in the industry. Third, the proposed model mandates transparency and participation, by requiring all PMCs with international activities to 'join' the regulatory scheme via the relevant local jurisdiction and insisting on their good standing as a precondition to contracting their services.

Finally, the model envisages the roles of monitoring and sanctioning independently of each other. This point may seem obvious – but the tendency with the 'voluntary principles' has been to refer to monitoring and sanctioning under the general heading 'enforcement mechanisms', with the unfortunate consequence that sanctioning is often overlooked (Voluntary Principles, 2000). Monitoring and sanctioning need not necessarily be performed by separate bodies; but they are conceptually distinct and require different capabilities. Consider, for example, the monitoring functions currently performed by industry associations. Industry associations are well-placed to monitor their members given their intimate understanding of the industry, close contacts with contracting firms, and sensitivity to contractor behaviour that might attract adverse public attention. But they are ill equipped to sanction PMCs, let alone to address criminal abuses committed by individual contractors. In contrast, government organs and judicial authorities are certainly the correct address for sanctioning, but are not the best fit for basic monitoring of individual companies.

By strengthening existing elements of soft accountability and introducing limited elements of hard accountability, the monitoring and sanctioning model presented here enhances the self-regulatory regime represented by the Montreux Process and the ICoC. While the proposed model clearly foresees a much-expanded role for the proposed regulatory body and agencies above and beyond that which is performed by industry groups today, the competence of the regulatory body would remain primarily in the realm of soft accountability – namely, making public announcements, publishing findings, performing special reviews and certifying compliance with best practices or codes of conduct. Cases deserving of sanction would be referred by the body to the international supervisory body, which could issue sanctions in its own right or involve

domestic (or international) law enforcement bodies as appropriate. Such behaviour might be punished by expulsion or suspension from industry groups or a prohibition on further contracting until improvements are shown. More severe cases, including criminal wrongdoing, would be referred directly to law enforcement authorities. Importantly, sanctioning would extend beyond PMCs to individual contractors as well. Legal action by judicial authorities undoubtedly constitutes a more effective sanction (and deterrent). Here again, the UN Working Group could provide the robust institutional backdrop needed to implement an efficient referral system. Examples of behaviour warranting sanction by the supervisory body would include substandard compliance practices, a track-record of wrongdoing short of criminal activity, failure to remediate low standards of conduct, or unethical practices.

Overall, the proposed two-tiered model would significantly broaden the arsenal of sanctions – both soft and hard – against non-compliant actors. These sanctions, as has been repeatedly emphasised, must be contemplated at all levels of the contractual chain. Though the threat of more serious sanctions may raise some objections, the impetus created in recent years around self-regulatory schemes may succeed in fostering approval for a mechanism with more teeth. Even if it does not, merely broadening the range of soft sanctions would carry significant weight in helping the industry complete its path towards effective governance. Progress made in standard-setting should translate into efficient monitoring and sanctioning mechanisms which will ensure self-regulation achieves the desired normative outcome. In the foreseeable future the establishment of an international binding instrument that regulates the abovementioned themes in detail is unlikely. That is why the implementation and further specification of requirements imposed by international law should be achieved in domestic law, mainly regarding administrative, civil and, criminal law. In this context, the role of the European Union should be a subject of further analyses.

CONCLUSION

The issue today is not so much whether international law applies to PMCs, as how to align self-regulatory initiatives with international law and ensure compliance with the applicable rules by PMCs and their personnel. As shown above, to call PMCs modern-day mercenaries is misguided. PMCs have become a firmly embedded facet of State foreign policy. Although not being part of international law yet, an increasing number of states accept and legally use PMCs. The international documents presented in this article increase the legitimacy of these non-state actors by providing them with international recognition. In this context, the international norm central to a modern state, the state monopoly on legitimate use of violence, has indeed been redressed and transformed. With the global rise of PMCs the old notion that only the State has enough capacities to build and sustain armed forces is becoming obsolete. Overall, PMCs are global businesses that demand a uniform, global standard. In light of the on-going operations in the Middle East, and the shooting of Iraqi civilians by PMCs that have revealed deficiencies in PMC accountability, the international community must finally create a standard language for dealing with these companies. The international community should establish an international body with licensing and oversight powers. As the United States is embroiled with PMCs in the Middle East, the United States should lead this international initiative to give the global effort legitimacy.

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Genocide, Human Groups and Poverty

CARLOS E. GALLEGOS-ANDA

'[I]f the international community allowed … violations of obligations erga omnes … in attempts to do away with these fundamental duties … and in their place open black holes in the law in which human beings may be disappeared and deprived of any legal protection whatsoever for indefinite periods of time, then international law, for me, would become much less worthwhile.'

(Separate Opinion of Judge Simma, *Congo v Uganda*, 2005 paras. 39 – 41).

Human history is plagued with acts of genocide. Whilst the brutality of the act remains the same throughout time the contexts and circumstances of its occurrence are ever changing. From the Genocide Convention onwards (as well as the current legal praxis and its incumbent jurisprudence) attacks on national, religious or ethnic groups have framed the surrounding debate. In the judicial processes for Rwanda and the Balkans the zealous protection of these groups has constantly rejected economic groups as part of the "protected groups" sanctioned in 1948. This article will argue that economic conditions in a country may lead to a bureaucratic and administrative genocide in which situations of extreme poverty are systematic attacks against the poor and vulnerable. Consequently a broader definition of "group" is needed in order to encompass the socio–economic realities and inequalities of today in order to prevent the genocides of tomorrow.

THE GROUPS OF GENOCIDE

International Criminal Law has held a steady pace since the Rome Statute entered into force in 2002 (Rome Statute, 2002). This milestone was largely achieved due to the momentum created by the prior International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). Amongst the various punishable offences that have been discussed in these judicial venues, genocide is one that has invaded the postmodern social consciousness due to its direct connection with World War II, not to mention the more recent tragedies that curtailed Srebnica or Kigali, and which of course are immediately associated with it. However the social consciousness that permeates this crime of crimes seems to neglect the underlying social, economic and political inequities required for its contextual setting.

Long-lasting ethnic conflicts amongst genocidal populations has been the accepted rational explanation for understanding these events. (Kamola, 2007, p. 572) However the primary focus on ethnicity in Rwanda or Guatemala has overshadowed the underlying structural circumstances

that fostered and incited the explosion of large-scale violent social conflict. Strict focus on ethnicity, national, racial or religious groups as victims of genocide is a consequence of the unfortunate limited scope drafted into Article 2 of the Genocide Convention.

Genocide through this limited scope seems to suggest that this type of violence has no further explanation or reasoning then genocide itself (Kamola, 2007, p. 587). It is not the author's intention to submerge into the various historical, sociological or power derived circumstances, which cumulatively may be signalled as causes of mass social violence. Rather the aim of the this article is to analyse the legal definition of "group" within the Genocide Convention, the necessary contextualisation of the definition (and its euro-centred reality) in an effort to stress the emergence of a necessary neo vulnerable group of human population that should be included in the Genocide Convention and existing jurisprudence. The main objective of this article is thus to analyse how extreme poverty and genocidal acts are complementary to one another. Furthermore it will be argued that poverty and the social ailments it engenders (inequality, hunger, malnutrition, vulnerability, illiteracy) is the breeding ground for past and future Genocidal acts and that identifying their permanence in certain contexts may serve as "early warning" signs that would hopefully prevent future crimes and punish those responsible.

Due to the various factors that may foster poverty, this article will solely focus on the role of the State in permitting systematic, continuous and repeated acts against specific segments of the population due to its obligation to prevent such abuses under international law (Greenawalt, 1990, p. 2260). To prove this point the article will analyse examples of how deteriorating socio-economic conditions or underlying economic interests fostered the social unrest that lead to extreme social violence, in return excluding the fictitious leitmotiv of "ethnic conflict" used to rationalise their occurrence.

In doing so it is the author's intention to overcome the predominantly Euro-American legal thinking that excludes economic inequalities as necessary fostering mechanisms of internal social conflict. In doing so the article will not only challenge the current cognitive

dissonance that justifies and rationalises genocide as a conflict amongst races or ethnicities, but also attempt to reveal how this rationalisation is in itself a racist and discriminatory starting point that perpetuates a Western infused legal practice, which rationally (or irrationally) neglects the current disorders of the status quo.

THE DEFINITION OF GROUP AND SUBSEQUENT CRIMINAL RESPONSIBILITY

Genocide holds a series of special qualifications that distinguish it from war crimes or crimes against humanity; mainly the identity of the victims, who are usually non-combatants (ergo the general civilian population), the unnecessary condition of international conflict, (Card, 2003, p. 68) as well as the intentional, systematic and widespread (Akayesu Judgment, paras. 8) severe deprivation of human rights (Schabas, 2008–2009, p. 161) within a targeted group. Hence the focus of the prohibited conduct is in its results rather than its reasons (Greenawalt, 1990, p. 2275). Moreover genocide as a prohibited act creates a positive obligation among States to ensure the survival of a specific human group, whilst crimes against humanity protect the general civilian population from persecution (Greenawalt, 1990, p. 2293).

When referencing the travaux préparatoires to the Genocide Convention the ICTR explicitly excluded "mobile" groups as protected categories under the Genocide Convention due to the individual "voluntary commitment" (Akayesu Judgment, para. 511) that is present in their conformation. In other words they are not "conditions" to which one is born or that may be made evident throughout one's life, i.e. skin colour.

This referencing also excluded groups not encompassed in the wording of Article 2 of the Convention (i.e. economic groups). In addition the ICTR stated that when identifying "the protected group", the application of a subjective approach in exclusion of its combination with an objective one contravened the Genocide Convention (Stakić Judgment, paras. 25). This interpretation fortunately favoured the

inclusion of objective criteria when defining protected group categories.

The conception of group and the innate belongingness necessary to conform to it is evidenced throughout the prevailing academic literature. Many argue that genocide is committed against groups of people whose identity is ascribed at the moment of their birth, as it is "an identity that remains relatively unchangeable throughout one's life" (Campbell, 2009, p. 154). Furthermore their group identity is what makes them targets and hence victims of genocide (Greenwalt, 1990, p. 2264). The International Law Commission (ILC) in reference stated that:

> *'[t]he prohibited act must be committed against an individual … as an incremental step in the overall objective of destroying the group … The group itself is the ultimate target … [and] the action taken against the individual members of the group is the means used to achieve the ultimate criminal objective…'*
>
> (Watts, 1999, p. 1742).

Thus the travaux préparatoires to the Genocide Convention indicate the inclusion of the term ethnical as an added layer of judicial safe guards within the list of protected human groups in an effort to permeate vulnerable groups in doubtful cases (GA, 1948 p. 97). Unfortunately this added layer reduced the pre-existing expansive group category intended for the Genocide Convention reducing human groups to unique groups identified solely by their political, national, ethnic or religious belongingness (Akhavan, 2005: p. 1005). In addition to defining the protected groups within it, the Genocide Convention also underlines the prohibited acts that constitute genocide. Contrary to the mass graves and extermination camps that invade popular psyche, genocide is a crime of non–material (i.e. incitement) actions. Hence its definition includes complicity as well as conspiracy, incitement and the attempt to commit genocide (Genocide Convention, Art 3.b.c.d.e).

Omissions, as well as aiding and abetting a principal who has

requisite intent, can attribute criminal responsibility to the individual (Greenwalt, 1990, p. 2282). This ultimately complements the superior responsibility doctrine, (Akayesu Judgment: 490) which for the purposes of this article shapes a collective criminal enterprise spearheaded by the State and its officials, through the organisations under their control and the power invested in them when doing so. This construction illustrates the role of the State, as the aforementioned doctrine will attribute individual criminal responsibility in response to actions committed by subordinates, if the superior fails to take necessary and reasonable measures to prevent them.

With regards to individual criminal responsibility the ICTR defined that in order to complete the dolus specialis required for genocide the specific intent of the perpetrator towards the protected group should be made visible (Akayesu Judgment, paras. 122). Thus material acts of genocide will only be attributable if such acts specifically constitute genocide, a position that differs considerably from the requirements cited for complicity (aiding and abetting), which focus on omissions (Akayesu Judgment, paras. 547). Consequently the Appeals Chamber in Stakić stressed that the Tribunals Jurisprudence regarding genocide is not interested in the motive that guides actions but rather the intention by which the ulterior goal is pursued (Stakić Judgment, paras. 45).

The inherent collective dimension in the perpetration of genocide is also relevant in understanding how the individual via the State and its organs plays a significant function in its occurrence. The "extended subjective element" that guides it is unknown within domestic criminal law as no single perpetrator may destroy a group in whole or in part (Vest, 2007, p. 784). Thus, for the conceptual framework in the present article the "extended mental element to destroy refers to the conduct and result of a collective action," which is executed through repeated criminal acts (Vest, 2007, p. 784). For the above-mentioned reasons the collective action (prohibited through the Genocide Convention) is exercised through cumulative individual intent via the State and its organs, which ultimately results in an "administrative massacre" (Greenwalt, 1990, p. 2280) through the deployment of the bureaucratic Leviathan (Hobbes, 2010).

In order to define individual criminal responsibility and effectively ascertain it, a knowledge-based (Greenwalt, 1990, p. 2284) approach is proposed. When an actor knows his conduct will inevitably lead to a specific result connected with what he or she ultimately pursues, this creates an underlying connection that can be categorised as an integrated part of his consciousness. In other words, the perpetrator may not only be responsible for what he or she positively desires but also "any other consequence known to be inseparable from it" (Vest, 2007, p. 788). Genocidal intent is thus formed through "knowledge-based acts" (Krstic Judgment, paras. 571). This formulation of criminal responsibility is consistent with existing jurisprudence on genocide and forms part of Customary International Law (CIL) (Vest, 2007, pp. 795 – 796).

Additionally the motive of each participant may differ but the overall objective of the criminal enterprise remains the same (Krstic Judgment, paras. 549). In return the collective nature of the acts (collective criminal enterprise) and the consciousness (knowledge based) of its inseparable consequences (individual responsibility) attribute criminal responsibility. Therefore the dolus specialis required for genocide is formed by the "individual wrong doing enhanced by genocidal intent," however the necessity for demonstrating specific genocidal intent when a threat of mass destruction is present has been argued to be 'incidental' (Greenawalt, 1990, pp. 2291–2292).

The genocidal intent to destroy a group has been categorised and shaped through the language of the Genocide Convention. For this reason various judgments have defined what such destruction entails. This topic and definition was dealt with in the Krajisnk Case, in which the Court determined that the destruction of the group is not limited "to physical or biological destruction of the groups members" (Krajisnik Judgment, para. 854) hence the acts falling under "destructive" can be "cruel or inhuman treatment, inhumane living conditions and forced labour" which would ultimately "inflict on the group conditions of life to bring about its physical destruction" (Krajisnik Judgment, para. 861). This is further enhanced by the imposition of "grave and long-term disadvantages to a person's ability to lead a normal and constructive life" (Krajisnik Judgment, para. 862) within its group or society in general.

It can further be indicated that through "individual command responsibility" (Simpson, 2009, p. 96) collective genocidal acts, such as imposing destructive conditions of life, orchestrated via institutional organs such as the state will be sufficient to attribute individual criminal responsibility. Consequently a social dimension of genocide is ever present throughout existing jurisprudence, international instruments and academic literature. The safeguarding of conditions of life of a specific group attends the social structures through which a community, group or enclave of humans perform their activities. Furthermore genocidal intent through knowledge-based acts can attribute criminal responsibility to those who systematically destroy a group's structures for survival.

ETHNICITY, ECONOMIC GROUPS AND GENOCIDE

The Oxford Handbook on Genocide Studies, defines genocide as a "peculiarly sociological crime," (Shaw, 2012, p. 1) hence review of the sociological elements which give context to the crime of genocide is relevant when understanding its occurrence but much more so in light of successfully attributing individual criminal responsibility. Modern times have witnessed the emergence of a "bio-power" that is exercised through explicit calculations that transform human life into a form of governance that may be administered by the Leviathan (Foucault, 2012, p. 300).

For the purpose at hand the emergence of a neo form of power must be integrated with other traditional forms of power that degrade and destroy the social structures that support community settings such as inequality, food insecurity or health. By analysing the destruction, elimination and systematic decomposition of sociological components vital for human groups to survive, it will be argued that the current closed conception of protected groups within the Genocide Convention not only neglects a comprehensive and dynamic evolution of international law (to modern standards) but furthermore conceals the cumulative elements that incite, promote or even sponsor genocidal acts.

Genocide as a form of "social control" (Campbell, 2009, p. 155) is the ultimate expression of systematic repressive actions against a targeted

group. In line with the above-cited jurisprudence, genocide is structured on various cumulative elements, which amount to genocidal intent, hence the relevance of comprehending the gradual decomposition of social living conditions inflicted on groups. (Krstic Judgment, paras. 514).

Although a knowledge-based approach is used to demonstrate genocidal intent, the group categories protected within the Genocide Convention seem to focus on "the why" of human conflict permeating it with a veil of 'cognitive dissonance' (McLeod, 2008) that rationalises the actus reus through long lasting ethnic, racial or religious disputes. In one case the "obsessive focus on ethnicity" (Kamola, 2007, p. 572) (i.e. Rwanda or Guatemala) overlooks the underlying symptomology of a broader sociological breakdown. Hence by analysing the economic-material relationships that precede genocidal acts, one finds a pattern of overall social decomposition that if applied to the wording of the Genocide Convention and cited jurisprudence, could amount to intent, which in return would construct the necessary elements of individual criminal responsibility.

Ethnicity

However before this can be achieved it is necessary to overcome the wording limitations that are contained in Article 2 of the Genocide Convention as well as current jurisprudence. The concept of group is limited to a racial, ethnic, national or religious category, which is then further qualified by existing jurisprudence as "stable and permanent", tacitly excluding economic groups due to the apparent "individual consent" needed to form them. This is further reinforced through the notion that the "condition" of belonging (to this or that group) is ascribed at the moment of birth.

The following discussion will focus solely on the inconsistency of ethnicity as a stable, permanent group to which one is ascribed at birth. First, the monolithic and outdated conception that one is ascribed an ethnicity at birth seems to overlook the progressive development of international law. Henceforth the Indigenous and Tribal Peoples Convention (ILO

169) states self-identification as indigenous as the fundamental criterion for determining the groups to which the Convention applies. If so, then how are the Genocide Convention and the provisions of ILO 169 to be jointly applied in order to protect collective rights? Furthermore, how do we reconcile the subjective element of self-determination of ILO 169 with the mandatory objective criterions that should jointly be applied when defining a group victim within the Genocide Convention?

These questions seem not only to reveal a paradoxical semantic and practical inconsistency if we were to apply both simultaneously, but more gravely they question the probative quality for defining an ethnic group as such. If simultaneous application of both Conventions is warranted, then ethnic categories must be excluded as being an "objectively definable and stable group". By focusing on ethnicity the definition of "groups" is deformed into a process of academic social engineering which replaces the objective realities lived and suffered by a group, transforming them into a dogmatically programmatic discourse "which can only be made meaningful by academics uniquely poised to decipher otherwise senseless violence" (Kamola, 2007, p.573).

Furthermore the subjective nature and value that may define a person's belonging to a particular indigenous (ethnic) group through self-identification (as stated in ILO 169) is subverted and decomposed by the language of the Genocide Convention. If the ethnic group is to be valued through both subjective and objective criteria, it remains to be answered if the categories of racial or ethnic identification as poised by the ICTR actually perpetuate an underlying racist and discriminatory discourse, by the simple fact that ethnicity would be defined through the eye of the beholder and not by virtue of individual self-identification.

Evidence of an underlying racist discourse in the protection of "ethnic" groups is derived from the genocide in Rwanda, where a fictitious ethnical divide imposed by colonial powers turned the term Hutu and Tutsi from a reference to an individual to a category encompassing a group, hence an "ethnic divide" was born of "racial or even racist consideration" (Akayesu Judgment, paras. 81–82). Through this rationalisation the abstraction of ethnicity displaces the narrative structure in which the true

complexity of violence is reduced to its essential components (Kamola, 2007, p. 575). By redefining Hutu and Tutsi on the basis of a malicious ethnic divide that allowed the fostering of power in favour of the oppressors, the rationalisation of repression through discriminatory and pejorative categories such as race and ethnicity permeated the discourse that would later legally and academically condemn the violence that broke out in 1994.

The elaborate portrayal of ethnicity as a "justification" of conflict and as a discourse of power displaces the underlying socio-economic circumstances that lead to a general social breakdown. Hence, the ethnic dimension that permeates the current discourse regarding "protected groups" allows for the economic and material relationships that engendered violence to remain invisible (Kamola, 2007, p. 575). In the case of Rwanda this superimposed reality aided in the looting of its wealth by the colonial masters of the time.

Consequently wealth and economic conditions are contingent elements when ensuring a modern conception of the conditions of life. It is thus relevant to now take into account the overall social conditions that are destroyed when genocide occurs, and how the continuous conflict between those who possess, seek and administer resources may lead to a systematic and widespread decomposition of social conditions that are an intrinsic element of modern genocides.

Socio-Economic Decomposition

By questioning ethnicity as an objective probative standard, some serious considerations arise when we try to reconcile it with the overall goal of the Genocide Convention of protecting the different human groups that might be subject to violent, systematic and continuous acts which threaten their existence. The overall protection of human rights underscores the international community's impetus towards instruments that punish acts of genocide or the ulterior intent of committing it. This vested concern of incorporating human rights into international legal practice is evident in international instruments, the emergence of

international custom, general principles of law and the subsidiary means of judicial decisions (Rome Statute, Art. 38). Recently the ICJ upheld the indivisibility of human rights instruments, (Gowlland-Debbas, 2011, p. 243) outlining a duty of prevention upon states party to the Genocide Convention, which mandated them "to take such actions as they can to prevent genocide from occurring" (Gowlland-Debbas, 2011, p.252). All of which nonetheless require a tremendous theoretical and practical leap forward, by allowing the "penetration of human rights into other functional regimes such as international criminal law" (Gowlland-Debbas, 2011, p. 243).

Considering the integrative process of human rights into various areas of international law, we are reaching a peak horizon of post-World War II conceptions of international criminal law and the legal interests it was originally conceived to protect. Much like the necessity that arose after the conclusion of the second Great War, we are faced with a mounting requirement to configure a new international ius puniendi that encompasses modern day social realities. To deny the progress of human rights in international criminal law would be to suggest that the world has been stationary since the 1948 Genocide Convention. This "progress" of human rights is advent to what some have labeled as a logical step of international law maturing into a much more socially aware and conscious legal order (Kaul et. al., 2011, p. 983).

Integrating human rights and their indivisibility poses a new challenge in defining genocide. Social decomposition and the elements it entails presents a new task when conceiving genocide, thus a structural approach (Shaw, 2012, p. 18) would suggest an analysis of the economic and social conflicts that give way to genocide so we may reveal the "social consciousness" of the international legal order. Including a social dimension also allows us to go beyond the "ethnic" based justification of genocide and treat law as a 'quantitative variable' by which social control is exercised acknowledging the violence within it and how it plays out amongst the greater social geometry (Campbell, 2009, p. 159). In other words, by focusing on the social spaces and settings in which systematic violence takes place, we may reveal the intent of genocide and the legal mandate to prevent, suppress and punish it.

Addressing the social geometries where genocidal violence takes place is also relevant in addressing individual criminal responsibility. As was proposed earlier, genocidal acts are orchestrated in forms and ways that differ greatly from the historical memory or pre conceived vox populi associations that are derived from it. This is of significant relevance when analysing the continuous and systematic actions that take place in order to diminish the living conditions of a targeted group. The importance of addressing these systematically and continuously decomposing social conditions could very well be the first step in preventing or even punishing future acts of genocide.

In doing so we may lift the fictitious veil by which orders are "issued by all types of political or military leaders, who at the same time make every effort to disguise their responsibility behind a smokescreen of allegedly legitimate actions or politics" (Kaul et.al., 2011, p. 1002), hence the deterioration of living conditions is a cumulative process whose final act is killing and mass murder, but whose ulterior execution demands a planned and executed set of objectives that can be qualified as a criminal enterprise. This conceptualisation would understand genocide as the unfortunate completion of underlying social and economic inequities that by effect of "official manipulation" (Wood, 2001, p.61) are labelled, disguised and fabricated as long lasting historic ethnic conflicts amongst genocidal populations.

Examples of how the overall deterioration of social conditions leads to genocide are present throughout academic literature. In Rwanda and Bosnia for example, some argue that the systematic collapse of social, economic and political institutions, as well as the allegiances and safety nets they sponsored, laid the foundations that allowed mass scale violence to occur (Wood, 2001, p. 62). In the case of the former Yugoslavia, it has been observed that the continuous economic and political crises of the 1980s as a consequence of Tito's death served as a breeding ground for the atrocities of the 1990s (Steiner, 2008, p. 1256).

By focusing on the knowingly orchestrated decomposition of social conditions we should understand them as a prohibited conduct under the Genocide Convention. The Statute of the ICTY for example

states that "inflicting conditions to bring the physical destruction of the group" is prohibited and should be punished. (Statute for the ICTY, Art 4.c) The relevance of "living conditions" must be better explored; surely "living conditions" cannot be understood as an ex post facto element that follows mass murder. Rather the intention must be related to the non-tangible (conspiracy, complicity, incitement) (Genocide Convention: Art. 3) prohibited conducts of the Genocide Convention, hence inflicting dire conditions of life encompasses actions that will bring upon a groups physical destruction in part or in whole (Akayesu Judgment, paras. 505). This of course encompasses but is not limited to the imposition of a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement (Akayesu Judgment, paras. 506).

Hence continuous and systematic actions such as food limitation, forced expulsion and deprivation of health assistance (all of which do not immediately kill a group) are to be considered as a prohibited conduct. Since the required mental element becomes almost impossible to determine, it must be deduced from the "general context" and preparation of culpable acts under which it was ordained so as to reveal the systematic fashion by which a group is targeted, all of which should build sufficient evidence of genocidal intent (Akayesu Judgment, paras. 523), hence intent was to be decided on a "case-by-case basis" that demonstrates a consistent pattern of conduct of the accused. (Akayesu Judgment, paras. 384).

Having defined the relevance of social conditions and the role they play within the determination of genocidal intent, we now turn to how living conditions may deteriorate in order to reach the threshold of intent. The decomposition of living conditions in Rwanda lead to a systematic exclusion and gradual consolidation of the Hutus as an impoverished agricultural class burdened by taxes and stripped of their property, which was then transferred to Tutsi or colonial ownership (Kamola, 2007, p. 578).

Living conditions, however, are not solely to be understood as economic interests stemming from taxes and private property. Genocide

constitutes a "social death," as it eliminates the intergenerational relationships that create individual and collective identity and which give meaning to life (Card, 2003, p. 63). Hence genocide annihilates the foundations of the group to which one was born, impeding the development of the "social vitality"' necessary to survive as a community (Card, 2003, p. 69). Prior to their deaths a targeted group is deprived of control of the necessary elements to shelter intergenerational interests such as health, education or food, excluding them from the protections and benefits of the society they were born to (Card, 2003, p. 73) and thus treating individuals of a specific group as social non-persons before they are murdered (Card, 2003, p. 73).

Structural discrimination against a target group systematically deprives it of necessary social elements for its survival. Jurisprudence has stated that "living conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group" (Krajisnki Judgment, paras. 863). However the means by which this is consolidated with "causing serious bodily or mental harm to members of the group" (Card, 2003, p. 75) is a matter that remains ambiguous as the lifelong physical ailments resulting from malnutrition or iodine deficiency may have serious consequences in present as well as future generations.

Social structures and the necessary elements they support for communal and individual survival are legal interests that are envisioned and protected within the scope of the Genocide Convention. Furthermore the penetration of human rights (particularly social, economic and cultural rights) and their indivisibility into international criminal law must be embraced. Past genocides have had a prologue plagued by the continual degradation of socio-economic structures that led to deteriorate life conditions of the victim group before they were murdered. Deprivation of food, property and health are all elements that if analysed on a case-by-case basis, reveal how the systematic and continuous annihilation of social life can later mutate into mass violence.

The criminal responsibility of those orchestrating these actions may be attributed if we determine their prior knowledge of the consequences

such actions or omissions would bring following the execution of the criminal enterprise.

Protecting the Economic Group of Extreme Poverty

The Genocide Convention harbours a limited scope by which necessarily protected human groups are outcastes and thus opens a black hole in international law where systematic and continuous violations of human rights are made possible. The dynamic and fluid evolution of international law must move forward in the development of a "social consciousness" that permeates it and which must necessarily be enforced. As such the scope of an ethnic group is not "an enduring social formation" or an "unchanging element of social formation," hence ethnicity can be labeled as over determinist when asymmetrically structured material conditions persist (Kamola, 2007, p. 573). This ultimately camouflages the systematic, endemic and continuous violations of human rights that precede murder, one of which is extreme poverty. Extreme poverty may be labelled as breeding ground where asymmetrically structured material conditions condemn a group to an "inability to meet basic needs including food, shelter, clothing, water, sanitation and healthcare" (Sustainable Development Network, 15 October 2012).

In the Akayseku Judgment, the stable and permanent groups adopted did not include economic groups as a "protected" category under the Genocide Convention. The reasoning of the Court was partly based on the individual consent element necessary to integrate such a group. To approach the matter through this lens however leaves various questions unresolved. For example: in contexts where extreme poverty exists and is a result of endemic structural exclusion can it really be argued that an individual "consents" his belonging to such a group? Furthermore, if poverty is endemic and the prospects of leaving the group are non-existent (due to the lack of education, health or wealth), is one not ascribed the label of poor at birth? Finally, if a small elite controls the powers of the state and use institutions against the poorest segments of the population, reducing their living conditions to standards where their

survival is jeopardised, does this not constitute a vested legal interest worth protecting under the Genocide Convention? Thus we must further analyse the potential legal gains of expanding the concept of human groups and the rationale that could justify said expansion.

The first legal gain of focusing on extreme poverty is its objectiveness as in order to determine a group one must apply both an objective and subjective approach. Having contested the validity of ethnicity as an objective category we now focus on extreme poverty as an alternative. For the purposes of complying with objectiveness, pinpointing and determining a specific human group subjected to conditions of extreme poverty would not only reveal specific segments of the population but also conform a specific and stable group.

Malnutrition, hunger and food insecurity are ailments suffered by the poor as an objectively identifiable group is systematically subjected to continuous conditions of life that threaten its existence and survival. Furthermore in the case of child mortality the loss of future generations reduces the possibility of any human group fulfilling the intergenerational social vitality required for its survival. In this sense poverty poses a trap where no escape is possible (Sachs, 2004, p. 122).

Producing and imposing conditions of poverty is also contingent with a priori actions of mass social violence that takes place in genocide eventsx. In the case of Rwanda the inequality imposed through mass expropriations of land (which would later be destined to monocultivation of coffee) meant that by 1980 26 per cent of the population had no land. This is return signified that the displaced small-scale sustenance farmers comprised a new and extremely impoverished group (Kamola, 2007, p. 582) to which they had not consented.

Another example of poverty and economic repression as an amphitheatre of genocide was the initial displacement and subsequent slaughter of Paraguay's Northern Aché Indians, massacred between 1962 and 1972 in an effort to clear their territory for large-scale farming (Greenwalt, 1990, p. 2285). In the notorious case of Guatemala, the economic interests of the minority ruling elite and those of the United Fruit Company led to systemic and continuous repression of rural

communities which ultimately resulted in mass land expropriations and a re-distribution process that left 200,000 dead (Velázquez Carrera, El Periodico (online): 8 November 2013).

Economic repression is part of the incremental steps that lead to genocide. In the cases previously illustrated the condition of ethnicity is merely incidental and holds no substance in the rational ulterior motive of eliminating the poor in order to advance the economic interests of the few. By attacking the foundations for group survival an "endeavor or plan capable of destroying a group" (Kirsch, 2008–2009, p. 352) is orchestrated and played out. Hence by inflicting conditions of continuous and targeted extreme poverty a continuum that resists analytical discrimination surfaces to evidence the ulterior intent of destroying parts or the totality of a group (Greenawalt, 1990, p. 2887).

Modern day imposed poverty is evidence of the repressive implementation of a post-industrial bio-power by which the life of many is determined by the calculations of few, a modern day globalised massacre where human life is governed, permitted or disposed of. Focusing on the extreme poor as a classification within vulnerable human groups is justified if their overall welfare (health, food, nutrition education, etc.) conditions depend on the possibility of generating income (World Bank, (online) 8 November 2013).

By widening the scope of the Genocide Convention in relation to protected groups and at the same time acknowledging the dire conditions of life imposed on the poor, the possibility of exonerating individual criminal responsibility of those who premeditated and orchestrated them vanishes. Allowing for a comprehensive understanding and protection of human rights, as any knowingly systematic and continuously imposed conditions of life that threaten a human groups ulterior survival are tantamount to genocidal intent. This of course is not to say that all inadequate living conditions are akin to genocide, hence the author agrees with standing jurisprudence that only those that threaten the survival of the group are deemed punishable. Furthermore we must also qualify said conditions with the specific intent necessary to meet the dolus specialis of genocide.

Modern scholarship has labelled famine mortality as an event entirely preventable by governments (Devereux, 2006). This is further sustained by scholarship arguing that it may be politically rational for a government to remain inactive when faced with mass famine mortality in an effort to retain political support (Neumayer et. al., 2006, p. 1). An example of what is proposed can be found in the Israeli government's limit of food supply to the Palestinian Occupied Territories in an effort to pressure Hamas (Associated Press in Jerusalem, (online) 18 October 2012). The imposition of a systematic, continuous and targeted limitation of dietary needs against a targeted group would hold those who inflicted it responsible if mass deaths were to occur.

As an example of this proposition we return to the Aché Indians of Paraguay. Their slaughtering was not product of an entrenched ethnic hatred but a "governmental necessity" to foster economic development in the region. Hence the initial warning signs that revealed the underlying "mechanics of genocide" were early attempts forcibly to expulse them from their traditional land (Greenawalt, 1990: 2285), When General Marcial Samaniego Minister of Defense of Paraguay was asked about the military sponsored actions against the Aché between 1962 and 1972, he acknowledged the killings but denied the existence of genocide, as there were insufficient grounds to establish genocidal intent (Greenawalt, 1990: 2285).

In the case of Paraguay, the Aché were not targeted because of their ethnic background but due to their presence in a specific geographical location that rendered them an impediment to national economic development. Thus genocidal intent does not necessarily emerge from a group's ethnicity but through the acts orchestrated for their removal (not killing) and the underlying economic interest of nation building (Wood, 2001, p. 66). Additionally, the incorporation of a knowledge based acts approach would clearly support the necessary elements to hold Mr. Samaniego responsible of genocide against a rural economic group that due to secondary circumstances formed an ethnic group. Hence the objective knowledge based approach would suffice to attribute criminal responsibility independently from the ethnic identification of the targeted group.

Focusing on an economic group titled the "extremely poor and vulnerable" is consistent with the progressive development of international law. The protection of human rights based on their economic and social dimension has received backing by the ICJ. In the Wall AO it stated that even as an occupying power Israel was "bound by the provisions of the International Covenant on Economic, Social and Cultural Rights" and that it had the obligation not to create any obstacle towards their exercise. (Wall AO, paras. 112) It would be difficult to argue that a democratically elected sovereign peacetime government would fall under different obligations.

Furthermore the importance of economic rights as an indivisible part of other human rights is essential in defining genocidal intent or understanding the actus reus itself. Extreme economic inequality and the underscoring depravation of human rights can entail acts of unilateral collective violence towards a socially vulnerable group (Campbell, 2009, p. 160). This may be explained by the fact that genocide is more common when a large 'relational distance' exists between victim and perpetrator. In this sense extreme poverty converts the poor into a socially perceived "other" whose rights maybe violated (Campbell, 2009, p. 160).

Additionally the economic relationships generated in a society and the forms of relational distance they engender prove to be a measuring bar of not only the likelihood but severity of genocide (Campbell, 2009, p. 160). Through an economic based study we may reveal the "functional dependence" one group has towards another, where the stronger "economic link" exists the less likely acts of unilateral collective violence are to take place (Campbell, 2009, p. 164). In return the greater the distribution of wealth in a society the less likely acts of mass violence or genocide are to occur (Campbell, 2009, p. 166).

Modern society has created an endemic and chronic poverty trap where people might never acquire a percentage of wealth necessary to generate economic links, hence mass scale violence is likely. In a technologically driven society, manual labour has become a final resource for economic survival, consequently the poor, unable to acquire the means necessary to improve the conditions which create stronger

economic links, are transformed into silent witnesses to the collapsing and targeted destruction of the safeguards to their modern conceived humanity. Worsening economic conditions throughout the world and the human rights breaches they engender pose a serious obstacle for the survival of the extremely poor as a vulnerable human group.

CONCLUSION

This article has argued that the current groups present in the Genocide Convention suppose a subjective limitation when defining a protected group. It has also been argued that categories such as ethnicity perpetuate a discriminatory and racist undertone that depends on the subjectivity of the beholder. Furthermore it has been contended that an economic group supposes an objective category of identification, and in doing so it has also been argued that no one consents to their labelling as chronically poor. Moreover poverty imposes a trap by which social mobility is made impossible.

This article has also focused on the poor due to their "vulnerable" nature and the contracted welfare net they live by, in contrast with other segments of society. Additionally, focusing on the poor allows other elements of economic repression that constitute incremental steps towards genocide (as was exemplified in the Aché Indians case) to be revealed. From this a neo bio power emerges from the post-industrial setting by which the lives of the poor are controlled through the limitation of health, food and other basic elements of human life. The relational distances created by economic inequality in modern day society will serve as the building blocks for future violence against those who are most vulnerable. Those who despotically and calculatingly exercise their newly found bio-power may under certain contexts find themselves culpable of genocidal intent.

However the focus of this article has not been on ex post facto events, as the Genocide Convention does not only punish those who have murdered. It rather enshrines a mandate to prevent; hence a positive duty on signatories has existed since 1948. However, an obsessive focus

on ethnicity and other subjective categories has diluted this obligation and in return curtailed the escalating events that led to unilateral mass violence. This of course has limited the actions that could have prevented such events from taking place or that could be set forth in order to punish those responsible. A progressive development of the Genocide Convention is warranted if the protection of human rights and the groups that constitute humanity as a whole is to take place.

If not, we will remain in the constant black hole Judge Simma warned of, making the entire enterprise of international criminal law something truly less worthwhile by the simple fact that "in a country where there is plenty of food, every child, woman and man dying from hunger is assassinated" (Devereux et. al., 2008, p. 77).

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Beyond Substantive Representation: Increasing Political Sophistication and Political Engagement Through Descriptive Representation

KELLAN SCOTT

In an attempt to capture Hispanic voters, President Lyndon B. Johnson (hereinafter 'LBJ') famously ate Tamale when campaigning in Texas (Popkin, 1994, p.3). An example of descriptive representation, LBJ's actions personified a 'shared understanding' between Latinos and the political elite. By eating Tamale, a traditional Mesoamerican dish, Johnson sought to create a likeness between himself and Latinos – Latinos could identify with Johnson's actions and therefore vote for him.

Understanding political representation has remained an important area of study among political scientists for centuries. Using the principal-agent model, where the principle (voter) legitimises the agent (political representative) to act on his or her behalf, scholars sought to define the role of representatives. In particular, Edmund Burke (1790 [1968]) is associated with a 'trustee' model of representation. Under this conception, a representative, once elected to political office, acts according to his

or her own preference. In contrast, the 'delegate' model assumes that representatives act on behalf of their voters' preferences (Madison et al., 1787-8 [1987]). However, when it comes to discussing descriptive representation, Pitkin's four types of representation are most important. Of particular relevance to this article is descriptive representation and substantive representation.

With explicit reference to African-Americans, Latinos and women, this article will argue that it is problematic for representative democracy when politicians do not resemble their voters descriptively. While substantive representation of under-represented groups is weak, the benefits attributed to descriptive representation of increased political sophistication, engagement and declining political alienation outweigh negative connotations traditionally associated with descriptive representation, namely poor accountability (Pitkin, 1967). In fact, as demonstrated by this article, increased descriptive representation does produce increased accountability.

This article proceeds as follows: following section two's overview of descriptive and substantive representation, section three will discuss an alternative to descriptive representation, namely deliberative democracy, but will argue that it cannot account for the present problem of underrepresentation. As such, section four will evaluate quotas and while they yield unimpressive results in increasing substantive representation, section five will argue that contrary to traditional belief, descriptive representation can produce political accountability.

Furthermore, section five will also outline the benefits of descriptive representation, namely the inclusion of underrepresented citizens within the democratic process. Throughout this article, it should be acknowledged that representation should focus on a marginalised group's ability to communicate their interests, not necessarily legislative dominance of one group over another (Schildkraut, 2013, p.721).

DESCRIPTIVE AND SUBSTANTIVE REPRESENTATION

Hannah Pitkin identifies four aspects of representation: formalistic

representation, symbolic representation, descriptive representation and substantive representation (Pitkin, 1967). Having received the majority of academic attention, this article will focus on the latter two. However, Lawless (2004) has discussed symbolic representation in more detail, while formalistic representation has been discussed with regards to the European Union (Nezi et al., 2010).

Descriptive representation is underlain by the premise that representatives resemble constituents both physically and by partaking in 'shared experiences' (Young, 1990; Philips, 1995; Mansbridge, 1999), the actions of LBJ typifying the latter criterion. Jane Mansbridge has been highly influential in the development of descriptive representation. Mansbridge argues that representatives should be judged based on four criteria: (i) communication between representatives and the represented, (ii) innovative policy thinking, (iii) establishing legitimacy to represent constituents of groups that historically have been marginalised and (iv) increasing the "polity's de facto legitimacy" in areas of historic discrimination (Mansbridge, 1999, p.628).

However, the underrepresentation of race and gender has reduced the ability to engage in the political process. For example, African Americans and Latinos feel disengaged and alienated from politics (Swain, 1993; Schildkraut, 2013). Women also feel distant from political processes on a regular basis (Philips, 1995). For both race and gender, as argued later, this is because of non-descriptive representation. As such, the merits of representative democracy underlain by the principal-agent theory are neglected. As discussed later, however, descriptive representation offers a means through which Mansbridge's criteria can be realised. As such, theorists have advocated an increase in the substantive representation of those underrepresented.

The objective of substantive representation is that representatives will act on behalf of citizens based on descriptive qualities (Pitkin, 1967; Celis, 2009). This is a highly presumptuous model and implies that voters of similar physical characteristics share the same interests (Philips, 1995). For instance, regarding gender, although some have postulated that childcare and the division of labour are female-specific interests

(Sapiro, 1981; Diamond & Hartsock, 1981), these issues may be of similar importance to men. Nevertheless, abortion is a growing issue specifically among females in the United States (Shapiro & Mahajan, 1986; Gallup, 2012). But to understand the need for descriptive representation one must analyse Lupia & McCubbins' "Democratic Dilemma: Can Citizens Learn What They Need to Know?" (1998). Lupia & McCubbins' thesis is based on 'deliberative democracy'; a type of democracy that scholars suggest competes with traditional representative and direct democracy. Deliberative democracy places an emphasis on the articulation of voter concerns through communication between voters and representatives, rather than electoral processes (Chambers, 2003). While it produces a credible theory of representation, its scope is limited to those already represented as the following section argues.

DELIBERATIVE DEMOCRACY

Starting from the premise that voters cannot make informed political decisions because of a level of ignorance of the political system, Lupia & McCubbins (1998, p.4) argue that limited information does not always prevent people from making informed decisions. While scholars have traditionally held that voters use party identification (Downs, 1957), issue biases (Calvert, 1985), and media sources (Iyengar & Kinder, 2010) to make reasoned decisions (Popkin, 1994), Lupia & McCubbins argue that representatives can persuade voters and inform voters of the important information. Under these circumstances of limited information, people can make informed decisions (Lupia & McCubbins, 1998). Furthermore, this model is dynamic: voters can provide cues to inform their representatives of voter concerns.

Consequently, representatives can make reasoned choices on behalf of voters (Lupia & McCubbins, 1998, p.12). Transposed onto this debate, and using the authors' logic, African-Americans, Latinos and women can influence their representatives by providing information on their needs.

However, Lupia & McCubbins' argument cannot solve representative democracy's problem when voters are descriptively

underrepresented. Although convincing theoretically, its scope cannot fix the problem of representative democracy when politicians do not resemble their constituents. Their claim is based on the importance of group collective-action (Lupia & McCubbins, 1998, p.63). However, when under-represented groups, often societal minorities, cannot collectively organise, they encounter further problems (Hochshild, 1995). For example, delegates of constituencies that provide consistent cues, have greater levels of congruence to their constituents ($r2 = 0.85$) than delegates in constituencies that provide fewer cues (McCrone & Kuklinski, 1979, p.296). Linked with the problem of minority collective-action, their model also places great emphasis on the facilitation of communication creating trust between a constituent and representative (Lupia & McCubbins, 1998, p.12). Nevertheless, African-Americans are more likely to contact descriptive representatives while Latinos contact representatives who are Spanish-speakers, and have the same country-of-origin trusting non-descriptive representatives less (Gay, 2002; Schildkraut, 2013).

In its current form, then, Lupia & McCubbins' theory is too focused on voters that are willing to engage within the policy process. As discussed later, a benefit of descriptive representation is increased political engagement among those not already engaged in politics. Once represented by descriptive representatives, disengaged voters are more likely to interact with the political process. Therefore, Lupia & McCubbins' deliberative democracy approach does not solve the problem of underrepresented voters.

Therefore, political elites have introduced the notion of quotas into their manifestos, in particular, gender quotas, to boost representation among the underrepresented (Krook, 2007).

Linked with the 'critical mass' theory, once a specific gender or race comprises a set percentage of the legislature, an increase in policy favoured towards voters of similar description will occur. While this idea became associated with gender representation (Kanter, 1977), the same logic applies to ethnic minorities.

'CRITICAL MASS' AND REPRESENTATION: QUOTAS

Gender Quotas

The issue of gender is a topical issue within Irish politics. Clare McGing argues that in order to include more women in politics, political parties themselves must reconfigure the candidate selection process before elections (McGing, 2013). Nevertheless, Buckley shows that Irish political parties are highly gendered, and rhetoric of gender equality has not produced equality of representation (Buckley, 2013). Indeed, this gendered aspect to Irish politics is entrenched in political institutions. Connolly (2013) demonstrates that senior cabinet portfolios have been allocated to men. This is in line with Krook and O'Brien's (2012) division of masculine portfolios – defence, agriculture, and foreign affairs – and feminine portfolios – education, health, and children. Overwhelmingly, as Connolly finds, this stereotype has become entrenched in Irish politics. In 2012, the Electoral (Amendment) (Political) Funding Act was signed into law. Under this Act, parties must run a minimum of 30% candidates of either gender. If not, their state funding is halved (RTÉ, 2011). While the Act is a step closer to achieving equality of representation, political parties have remained opposed to the introduction of gender-specific quotas.

Elsewhere, gender has dominated much political research. Britain, for example, has received scholarly attention as to the effectiveness of gender quotas in increasing female representation (Krook & Squires, 2006). Likewise, political reform in Mexico culminated in the enactment of a 30% gender quota law in 2002 (Baldez, 2004). Furthermore, following periods of intense violence, the United Nations placed pressure on Kosovo and Afghanistan to introduce electoral quotas in an attempt to increase gender equality. Nonetheless, domestic opposition in both states has reduced their effectiveness (Krook, 2006).

Despite increased descriptive representation, substantive representation has witnessed no significant increase. Overall, scholars have found no significant influence of descriptive representation on

policy-outputs. The increased level of female representation has not produced 'women-friendly' legislation (Hughes, 2011; Celis et al., 2014). While Argentina became the first country to introduce gender quotas in 1991, despite increased level of female representation, of the 93 bills introduced by women surrounding reproductive rights, only two succeeded in becoming law (Franceschet & Piscopo, 2008, p.415). Gender quotas in sub-Saharan Africa have also produced modest results. In Rwanda, for example, despite a constitutional requirement enacted in 2008 that reserves 30% of the legislature for women, policy output has not reflected the increased gender balance (Bauer & Burnet, 2013). Indeed, while increased female representation has increased democratic legitimacy (Darcy et al., 1994), overall, quotas stifle electoral competition (Norris & Lovenduski, 1995; Craske, 1999). Women selected by political parties as electoral candidates often had former links to the party or were relatives of incumbents (Vincent, 2004; Tripp, 2006).

Furthermore, on the 'supply-side' of representation, women entering representative office face significant barriers (Norris & Franklin, 1997, pp.192-5). For example, a Catholic political culture often decreases the number of women candidates; Green parties support more female candidates, Christian Democrats do not; the British and US ballot system is also significant in reducing female participation, contrary to proportional representation systems (Mayer & Smith, 1985; Lovenduski & Norris, 1993; Darcy et al., 1994). But most importantly, political enthusiasm in US and European Parliament elections is low among women, thus giving them little incentive to campaign (Carroll, 1994; Norris & Franklin, 1997). Women, more than men, see education as a barrier to campaigning for political office, with higher education levels resulting in a greater likelihood to run for office (Fox & Lawless, 2004, p.273). Additionally, ethnic quotas might cause more problems than originally intended to solve.

Race Quotas

Compared to gender quotas, the introduction of race quotas has

received less scholarly attention, but they are nonetheless important. Recent incidences of violence in the United States have reignited debate over the possibility of renewed racial tensions (Financial Times, 2014). Despite Barack Obama being elected as the first African- American US President, political commentators have questioned his ability to reach-out to marginalised African-Americans (Condon & O'Sullivan, 2013). But the introduction of race quotas poses much greater problems than gender quotas.

One obvious concern over ethnicity quotas is which race deserves the most representation. Whilst the notion of the most 'historically disadvantaged' is one solution, it is difficult to objectively evaluate this criterion (Dunning & Nilekani, 2013). Furthermore, descriptive representation does not heal ethnic conflicts, but merely recognises them in parliament, and if one group is more represented than another, conflict might ensue (Young, 1990; Posner, 2004).

Nonetheless, 'selective' parliaments have "set aside" seats for minorities (Mansbridge, 1999, p.633). For example, Christians and Samaritans have been assigned seats in the Palestinian assembly, six and one respectively, whilst in Niger, Tauregs have been granted eight. Furthermore, Croats, Serbs, and Bosnians, share fifteen seats each as a power-sharing agreement (Reynolds, 2005, p.305). So while questions remain over this 'critical mass' theory and the benefits of substantive representation, it should be remembered that representation is about communication between representatives and constituents, and not necessarily about quantitative results (Schildkraut, 2013, p.721).

Similar to increased gender descriptive representation, studies show that increased descriptive representation of ethnic groups yields little substantive representation.

Although active in specific policy areas like immigration, voting in the US Congress is highly related to partisanship and not ethnicity (Wallace, 2014). A Republican-controlled Congress is more likely to suppress minority legislation compared to a Democratic Congress (Rocca & Sanchez, 2008).

Discussion

On the whole, therefore, descriptive representation produces little substantive representation. Gender quotas to increase female representativeness have not produced policy-outputs that attend to the needs of women. Furthermore, descriptive representation of Latinos and African Americans in the US Congress has had little effect on the policy process due to the partisan nature of Congressional voting. The success of quota in advancing policy concerns over others, therefore, largely depends on the institutional structure of any given state.

Nevertheless, the central issue of this article is not about advancing interests of one group over another, but increasing representation of underrepresented groups. The needs to increase democratic accountability of representatives and political sophistication and involvement of under-represented grouping of society are of primary importance (Celis, 2012). Quotas can be understood as instruments to maximising long-term gains despite distortion of the electoral process in the short-term (Norris & Inglehart, 2001; Burnet, 2008).

As discussed in the following section, descriptive representation produces many advantages for under-represented voters. More engaged voters can influence representatives through engagement with the political process. As such, both democratic accountability and political sophistication increases generating a healthier democracy.

DESCRIPTIVE REPRESENTATION

Accountability

While Pitkin maintains that there is "no room" for accountability within descriptive representation (Pitkin, 1967, p.89), the following section argues conversely. Descriptive representation can produce accountability, and those who believe accountability is not important (e.g. Sapiro, 1981; Mansbridge, 2009) sacrifice it as the integral criterion

of democracy (Madison et al., 1787-8 [1987]; Dahl, 1961). However, whilst some anecdotal evidence confirms low descriptive accountability (Swain, 1993, p.73), the lack of accountability might not be as related to descriptive representation as Pitkin and others argue. The following section will argue that it is problematic for democratic representation if politicians do not represent their voters, because it encourages political unsophistication and alienation. But descriptive representation does increase sophistication and reduces alienation, and consequently Pitkin's problem of low accountability becomes obsolete.

Overall, those who do not vote are poorly represented in parliament and lack the means or will to hold elites to account (Griffin & Newman, 2005, p.1224). This problem for representative democracy is exaggerated when those with a lower socio-economic class and less education fail to vote (Wright, 1976; Finifter, 1970). When certain minorities fall into these categories, the need for descriptive democracy is even greater (Guiner, 1994; Michelson, 2000; Pantoja & Segura, 2003). In these circumstances, political accountability is at its lowest. But when citizens are descriptively represented, positive effects of accountability begin to emerge, offering a remedy to representative democracy (Prezeworski et al., 1999).

Political Sophistication and Alienation

An increase in political sophistication and a decrease in alienation are common effects of descriptive representation among ethnic minorities. Overall, voters are vulnerable to priming and framing. Priming is often used by media outlets that have ideological allegiances to particular political parties or candidates (Stroud & Muddiman, 2013). Certain matters to judge political candidates are acknowledged while others are ignored. Voters, therefore, often receive distorted information about candidates, and are unable to make informed decisions (Iyengar & Kinder, 2010, p.63). Priming is designed to activate existing attitudes between a representative and represented (Lawrence & Shapiro, 1994, p.528). For example, Waismel-Manor & Stroud (2013) found that college students in Israel reacted differently to President Barack Obama's middle

name, "Hussein", regarding his policies surrounding the Middle East. Israeli Arabs respondent more positively to Obama's Middle East policy when "Hussein" was included; this, however, is in contrast to Israeli Jews who responded negatively to Obama's involvement in Middle Eastern affairs once "Hussein" was mentioned (Waismel-Manor & Stroud, 2013).

In contrast, framing is "the process by which people develop a particular conceptualisation of an issue or reorient their thinking about an issue" (Chong & Druckman, 2007, p.104). As demonstrated by Zaller, in a survey of voters' attitudes to increase US military expenditure to fight the 'Contras', support to increase military expenditure was low. However, once the objective of "communist containment" was mentioned, support for greater military expenditure increased (Zaller, 1992, pp.24-25). Overall, therefore, voters are generally unaware of the consequences of political decisions and can be easily manipulated through priming and framing of political discourse (Lawrence & Shapiro, 1994; Bartels, 2005; Iyengar & Kinder, 2010). This accentuates the problem of voter unsophistication (Converse, 1964; Campbell et al., 1976). Nonetheless, descriptive representation can reduce this problem and produce increased activity among voters who are marginalised.

Constituents with descriptive representatives are more likely to engage positively in the policy sphere (Lublin & Tate, 1995; Gay, 2002). Once the Voting Rights Act was passed in 1965 to abolish discriminatory voting laws, roll-call votes of southern congressmen and women were substantially moderated, suggesting increased political scrutiny of elites by voters (Bullock, 1981). In Rwanda, whilst the impact of gender quotas has not been reflected in policy output, constituents descriptively represented by women have influenced the policy agenda by highlighting problems of HIV/AIDS (Devlin & Elgie, 2008). Across much of sub-Saharan Africa, women have increased their participation in politics due to the presence of a descriptive representative (Barnes & Burchard, 2013).

Furthermore, descriptive representation is also linked with declining levels of political alienation. Descriptive representatives are more likely to motivate co-ethnicities to engage in the political process stimulating political engagement among those underrepresented

(Barreto, 2010; McConnaughy et al., 2010). For example, Latinos and African Americans feel significantly less alienated when represented by a descriptive representative (Pantoja & Segura, 2003; Tate, 2003). With respect to gender, the results are the same. When represented by a descriptive representative, women also feel less politically alienated (Atkeson, 2003).

In summary, citizens with descriptive representatives are more likely to have favourable opinions of governmental institutions (Gay, 2002; Sanchez & Morin, 2011), engage with the political process, feel less alienated, increase sophistication, and thus, increase accountability. Representative democracy faces a serious problem when representatives do not resemble their constituents in terms of gender or race.

Whilst beyond the immediate remit of this article, electoral institutions, other than quotas, can increase descriptive representation. Adopting proportional representation electoral systems (Rule & Zimmerman, 1994), electoral redistricting (Gelman & King, 1994), a more responsible party model to encourage gender and race inclusion (Mair, 2008), and the extension of voting rights to minorities (Song, 2009) can increase electoral congruence and responsiveness to facilitate better representative democracy. Though both gender and race quotas yield unconvincing substantive results, to return to Schildkraut, representation is about "the ability to communicate" rather than domination over another group (Schildkraut, 2013, p.721). When constituents cannot communicate their interests, it is problematic for representative democracy.

CONCLUSION

This article has argued that it is problematic for representative democracy when politicians do not resemble their constituents in terms of gender and race as descriptive representation fosters political sophistication, reduces alienation and increases electoral congruence.

After delineating the differences between descriptive and substantive representation, this article argued that Lupia & McCubbins'

(1998) sole focus on communication between representatives and voters is difficult to attain when minorities are underrepresented. Section four examined quotas and their inability to produce convincing substantive results, but section five discussed descriptive representation and accountability, and while scholars posit the notion that descriptive representation reduces accountability (Pitkin, 1967; Mansbridge, 2009), this article refuted this notion. When representatives resemble their constituents, political sophistication increases, and alienation decreases, therefore, constituents become more engaged in democracy, increasing accountability (Prezeworski et al., 1999), thus proving the validity of descriptive representation and the usefulness of quotas at least in the long-term.

Political representation must also adapt to the new realities of the nation state. The proliferation of international institutions in recent decades means that states have become increasingly integrated under a global framework. The increase in international institutions raises two concerns for representation. Firstly, it is important to examine the advantages and disadvantages of descriptive representation in world politics. Secondly, in order to ensure world politics operates as a healthy democracy, citizens must ensure that accountability over international leaders remains a priority (Grant & Keohane, 2005). Indeed, further research should be carried out on the effects of descriptive representation in international organisations.

When LBJ ate Tamale, he triggered shared experiences among Latinos throughout America, and in the following election, LBJ won ninety per cent of the Hispanic vote (Pycior Leininger, 1997, p.68). One cannot deny the power and importance of descriptive representation for underrepresented constituents. Therefore, complications emerge when politicians do not mirror their voters in terms of gender and race.

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The Role of International Intellectual Property Law in the Development of the Chinese Economy and Legal System

MAX DOYLE

Its emergence as an economic superpower has raised many questions about whether China can fit into the Western market, and the norms that govern it. Chinese culture and practices often contradict the conventions with which we are familiar, with few differences more apparent than the contrast in attitude towards Intellectual Property Rights (hereinafter 'IPR'). To explore the reasons behind this, we must look at China's attitude towards IPR and how it has developed alongside ancient culture and modern politics, while comparing its development to other post socialist nations. Following that, we must look at the impact that international standards have had since China began to open up to the global economy and how they have often lead to unintended consequences, as well as the role that individual states have had to play in that regard. Finally, we will look at why it has proved difficult for IPR to take root in China and whether an IPR regime would even benefit the

country, while proposing ways in which this may come about.

Following successful talks with Jiang Zenmin in 1998 regarding the importance of Intellectual Property protection, Charlene Barshefsky, the US Trade Representative, returned from Beijing with President Clinton and was unexpectedly stopped by US customs. What they found could be considered one of the biggest embarrassments in recent politics - in her bag she had forty-odd counterfeit Beanie Babies that she had purchased during her stay in the Chinese capital! Barshefsky's humiliation and carelessness aside (whose purchases were seized and incinerated), the fact that this could happen illustrates the gravity of the issue: IP infringement is so commonplace in China that even an IP protection expert could unknowingly purchase counterfeit goods.

This is a phenomenon that is not unique to China but the Chinese example is a particularly interesting one. International standards and laws have differed in their effect on China compared to most other countries and while intervention by other states on the matter has been attempted, the cultural, political and societal clash between the West and China has acted as a firewall to any cohesive enforcement of IPR. Should China care about IPR or are they just holding them back? Either way, with so many barriers and difficulties, if IPR can be established in China, it is a short leap to the conclusion that IP can take root anywhere.

HISTORICAL CONTEXT

Historical Incompatibility with IPR

Long before the Industrial Revolution or The Renaissance, China had developed the most advanced society of its time (Yu & Doyle, 2009, Chpt. 6). They had discovered paper, the compass, gunpowder, porcelain, paper money, silk, printing, the wheelbarrow, and acupuncture before many Western societies had even learned how to write. It was a society rich with innovation. Entrenched in Chinese culture, even before the beginning of Imperial China, were the principles of Taoism and

Confucianism. Taoism, developed during the Zhou dynasty (1046BC-256BC), was based on the principles of protecting harmony, balance and social totality (Li, 2010, p. 6), while Confucianism (c. 500BC) eschewed the idea of personal gain at the expense of others (Hoobler, 2009, p. 40). As a result, for over 2000 years, China encouraged its citizens to share inventions, discoveries and creative public works (Maguire, 2012, p. 893).

Sharing property and discouraging individualism meant that the sole reward for invention or success was public recognition and endowments from the King. Chinese dynasties were famously authoritarian and brutal but, given that it is the goal of any innovator, even today, to have their work held in the highest possible regard, royal recognition was considered far more valuable than monetary gain. Like so many ancient principles and values, the importance of reputation (or mianzi) over all other matters remains in China today.

Failed Ventures into IP

The first signs of Intellectual Property Rights appeared during the Han Dynasty, no more than 100 years before the beginning of the Common Era. They permitted privileges to certain industries for some processes like salt distilling or iron smelting (Ganea & Pattloch, 2005, p. 2), but the word for patent (zhuanli) did not appear in China until the 19th century. The final Qing dynasty granted regulations on rewards for technological advance, enacting a patent act in 1898, and an Intellectual Property (IP) treaty with the US in 1903. However, the concept of IPR was not well received, and Empress Dowager Cixi quashed this brief IPR movement emphatically in the latter years of the 19th century as she gave way to conservative attitudes, presumably an (ultimately unsuccessful) attempt to delay any republican revolt.

After the revolution in 1911 and the establishment of the People's Republic of China in 1949, any residue of a Chinese IP regime was wiped out with the onset of communism. Given that communist principles of shared property flowed seamlessly from China's Confucian and Taoist background, a strong sense of communist ideology spread

quickly throughout the nation. IPR were cast aside as a bad experiment (Shi, 2008, p. 103). The government began to imitate the Soviet Union's socialist, two-track approach of issuing certificates of invention (Ganea & Pattloch, 2005, p. 3). However, modern society and two world wars had lessened the potential for the draconian, brutal authority, and so simple recognition was no longer held in the same esteem as it was when innovation was so prevalent during the imperial ages. By 1963, private property rights had essentially been abolished following Mao's "Great Leap Forward" (Erickson, 2009). The subsequent Cultural Revolution, during which the government imprisoned writers, scientists, doctors and other intellectuals in an attempt to eradicate individualism (Maguire, 2012, p. 893), meant that advocacy of IP laws had vanished by the early '70s.

A Difficult Turnaround for IPR

By 1978, Deng Xiaoping had outmanoeuvred Mao's chosen successor (Rohlf, 2014, pp. 696-698) to become "paramount leader." One precondition of Deng's China was a sufficiently well off population, and he believed that foreign investment as a consequence of IPR would bring about this (Rohlf, 2014, pp. 696-698). China joined WIPO in 1980 and, following a 1983 agreement with Germany to aid in drafting legislation, China enacted its first ever patent law in 1984. However, such a radical U-turn in policy was predictably met with opposition.

The legacies from China's Confucian past and its more recent experience with socialism have contributed to the development of certain scepticism about the social benefits of the Western IP system (Suttmeier & Yao, 2011, p. 17), augmented by propaganda-fuelled perceptions that the West abuses IPR. Its socialist legacy is characterised by weak traditions of rule of law and protection of property, and it is therefore not surprising that a culture of IP protection based on western norms did not immediately take deep root when China's current IP regime began to emerge in the 1980s. The IP regime thus unfolds against a residual distrust of the international IP system as a whole. Despite the fact that

China was not particularly receptive to the idea that IP was even a form of individual property that should be legally protected, Deng believed that it was necessary to give it recognition as it would underline the legitimacy of China's claim to global leadership. However, he never foresaw the challenge that the Western concept of IP would pose and the clash of cultures and principles that would ensue.

ACCESSION TO INTERNATIONAL STANDARDS

China's newfound focus on the world market was the catalyst for enacting the prevailing international principles into Chinese law. This, however, has not been without issue. When they entered the WTO in 2001, the talking point was immediately apparent - for the purposes of TRIPS; would China be considered a developing or a developed state? Member states argued over China's status as a developing nation (Chow, 2001, p. 4), and ultimately classified China as 'developed' for the purposes of IP. China, a country that had an IP regime that was barely 15 years old, was therefore forced to agree to almost immediately implement provisions drafted by states that had been developing such laws for hundreds of years, only to be later subjected to criticism for the ineffectiveness of their application. One must, at this point, clarify that China is by no means the little guy in this equation. With double-digit growth for well over a decade and more billionaires in Shanghai than the entire UK, few would be willing to argue that they deserve special dispensations. But they are the new kid on the IP scene, and regardless of the power, size and disruption that comes with them, they cannot yet be held accountable to the same standards as the seasoned veterans of IPR.

Introducing Foreign IP and its Problematic Consequences

China has based its legal framework for IPR on 3 foreign concepts; Patent Law, Trademark Law and Copyright Law. Usually, translations of new concepts into Chinese are very literal and understandable but,

with the exception of 'Patent' (zhuanli means "special interest"), the language used for 'Trademark', 'Copyright' and other new terms was quite technical in nature. Despite the fact that these were NPC (National People's Congress) enacted laws, many people did not understand their meaning. and this acted as a significant initial barrier.

Following accession to WIPO in 1980, China enacted its first patent law in 1984, which ironically became the spark for the disenchantment of the western world with China's IP regime. Given its bureaucratic background and lack of IP recognition in principle, China opted for a "first-to-file" principle, as opposed to a "prior use" one. It did not account for certain subject matter like food, beverages and pharmaceuticals because of a (legitimate) fear that the population would be deprived of an adequate supply of vital commodities at a reasonable price, a view shared with most developing countries. China also wanted to develop its private sector slowly, so it was reasonable to phase in IPR slowly and develop the "duality" (public and private sectors) of the Chinese Economy in the most controlled manner. Influenced by international standards, Patent law was amended 3 times:

1) 1992 (included pharmaceuticals)
2) 2000 (encouraged applications and improved protection)
3) 2008 (counteracted petty applications and increased monetary damages)

The reality of these seemingly satisfactory developments was that the latter two have produced counterintuitive results. Given China's first-to-file principle, a subsequent encouragement of applications resulted in one overwhelming phenomenon; mass applications for strategic or defensive patents. Foreign stakeholders are troubled by these abusive assertions of rights by Chinese companies, and this hinders foreign investment and therefore also China. Given that only 1 of the 3 types of patent goes through stringent screening and there was a desire to speed up the application process, 99.1% of patents were granted to Chinese companies (European Patent Office, 1994). By increasing the number

of patents and flooding the market with variations of basic products, quality predictably began to give way to quantity (Suttmeier & Yao, 2011, p. 14). The 2008 amendment, which was subtly designed to counteract this outcome, has also proved ineffective because of the lack of incentive for local administrations to actually implement it and, with one notable exception (Chint Group v Schneider Electric, 2007), Chinese courts do not impose heavy monetary damages.

By the time it had implemented its most significant development for Trademarks in 2001, China was a member of most international IP conventions and was on the verge of joining the WTO and TRIPS, so it was reasonable to believe that the legislation would have faced international scrutiny. China decided to apply the law in conjunction with the Unfair Competition law; legal standards were, and still generally are, deemed to be satisfactory. However, problems once again arise with the first-to-file system and the fact that there is no common law principle of protection of unregistered trademarks, except for "well known" ones. The issue is the classification of "well known": This is defined by the knowledge of the trademark by relevant consumers, its publicity, and its history. However, standards of investigation are loosely defined, and in such a large country it is difficult to be considered "well known", which has generally resulted in courts finding that there is insufficient proof that the Trademark qualifies as such (Kariyawasam, 2011, p. 70). Consequently, defensive and strategic filings have taken precedence over reasonable use and ownership.

The PRC has both Copyright Law (1990) and legislation for the implementation for the rules of Copyright Law (1991 and 2002). The 1991 law was enacted to comply with the Universal Copyright Convention (UNESCO, 1952), but did not cover computer software until China joined the Berne Convention the following year, which does not require the registration of rights per se. However, with bureaucracy and abundant infringement related litigation, this can save a lot of frustration. The issue here is that registration requires the disclosure of very detailed information regarding the copyright, which many companies are unwilling to divulge and therefore leaves them vulnerable to infringement.

The pattern is clear; satisfactory legislation has been enacted but has not produced intended, or indeed desirable, results. The problems with IP in China today are not inadequate legislation, but a result of the practical difficulties encountered in exercising rights. Implementing laws, at least initially, seemed to be enough to satisfy the requirements of the WTO. The West wanted adherence to international standards, China wanted gradual implementation. In the end, both have got their wish: a consequence that renders the whole regime potentially futile.

THE ROLE OF FOREIGN RELATIONS

Beginnings of International Influence

The most interesting facet of China's venture into IPR is that it has not been the international conventions that have had the biggest impact; it has been their member states. In February '88, Chinese software production regulators initiated US-Sino negotiations to be advised on the best way to protect software IP. Differing standards had been the source of a lot of contention between the two nations prior to this (the US feared that violations in China would undercut the profitability of American technology sales abroad) (US International Trade Commission, 2010, p. xiii), and the Senate was debating as to whether to adhere to the Berne convention at the time. They wanted to engage China on the matter because they had come to an interesting conclusion: that by establishing bilateral relations on the matter, if the US adhered to the convention, China would follow. They were right, too.

Establishment of subsequent IPR involved extensive interaction between the United States Trade Representative (USTR) and IPR trade associations. It was the demands to which Beijing could not concur that provided the framework for the three bilateral Sino-US IPR agreements. After being (strategically) placed on the US "Special 301" report, both parties were compelled to negotiate. The 1990 round was important for the US to demonstrate its dominance, not just over China but also over the rest of the world, especially considering that the USSR had just

broken up and the US had firmly turned their attention to China. The round focused primarily on copyright and the US concerns regarding "reverse engineering." The EEC had deemed that such a practice did not amount to an infringement of community law but the US did. The goal was to ensure that it would be classified according to US standards in China, and not those of the EEC. Having now been placed on the "301 Blacklist", dissatisfied with China's progress regardless of what steps they actually took, and trade sanctions looming just hours away, in April 1991, China was pressurised into signing a last minute agreement to include US pharmaceuticals as patentable material. What began as dialogue had now developed into something much more confrontational: China was now under the proverbial gun.

Development into International 'Pressure'

China has spent the 20 years since then yo-yoing in and out of the 301 Blacklist. They entered a memorandum of understanding for the protection of American works in '92, and in '95 signed a copyright and trademark agreement with the US, just two days before the US was to impose a $1.08bn trade sanction against China. In 1995, barely 10 years after China had enacted its first IP law, China entered into talks with the US under threat of a "serious trade-war." The American contingent, a firm believer in shock therapy, approached these talks with what can only be deemed as utterly unrealistic expectations of demanding that China "eliminate piracy" within one year. Statistics were also a source of contention; with the US claiming that 98% of software in China was pirated. However, half of the PC's in China come from abroad with software already installed and Chinese software developing companies, in a Chinese speaking market, claimed to be profitable. Therefore the accuracy of such damning statistics was dubious, at best. The USTR's aggressive stance on sanctions were intimidating and though Chinese officials speculated that the US had more to lose than China, given that other countries would be willing to negotiate with them, China signed off the round in 1996 and sanctions were averted. Despite its superfluousness,

US pressure was so successful that at one point, China's copyright regime afforded foreign copyright holders greater protection in China than it did for Chinese citizens.

There was thus a growing belief that international complaints against the administration in China would accelerate institutional change. Despite the fact that the US engineered higher standards by using or threatening to use trade sanctions against China from '89, little has developed in terms of external pressures imposed by other foreign governments, presumably (and rationally) because of a lack of will to antagonise what will soon be the world's largest economy.

Lack of Effectiveness of Pressure

Despite substantial and often over zealous pressure from abroad for over 25 years, it has translated into an astonishingly low degree of IP enforcement. Although figures pitched by the USTR during negotiations in 1995 were somewhat implausible, it is unlikely that current estimates that China accounts for 87% of counterfeit goods worldwide are too far from removed what the reality was then. The CPC (Communist Party of China) would argue that there has been an exponential growth in litigation against IP infringement but few statistics support the fact that this has actually made a difference. China is neither an ally nor an adversary of the US and although it would appear that a lot of legislation was implemented in response to US pressure, the actual administrative enforcement patterns, although moderate and sporadic, have occurred independently of this. Effectiveness is judged by the extent to which a signed agreement is implemented (Mertha, 2005, p. 3); the fact that there are still close ties between pirate entrepreneurs and local governments makes it difficult to offer a positive evaluation of the effectiveness of US pressure. The US's failed efforts to police Chinese infringement suggest that IP reform in China must be initiated within China rather than through impositions by foreign governments.

CHINA VS THE WEST: TWO SIDES PLAYING A DIFFERENT GAME?

Any foreigner who has lived in China will attest to the chasm between our attitudes to merchandise, both premium and knockoff. IKEA in China demonstrates this perfectly. The showroom floor is always mobbed with people trying beds, opening cupboards and sampling colours, showing genuine interest in what was on display. The tepid activity at the checkout, however, suggests an alternative reality: most of these Chinese consumers will later purchase knockoff IKEA furniture online or at a local store. We have seen that IP has not taken hold but the question now is why. This raises probably the most important question: How fair is it to assume China, as a whole, can grasp the western principle of IP?

Initial Reasons for Difficulty

In the early '90s many Eastern Block countries, more or less abruptly renouncing the planned economy, were faced with the difficulty of establishing and securing a functioning market, by employing Friedmanesque shock therapy. Whereas the majority of these Eastern European countries opted for a big bang transformation that overthrew the old order overnight, China's transformation from extreme communism to a socialist market economy has been a steady process lasting for over 20 years. Given the subsequent economic growth, this strategy has ultimately been vindicated.

At the time, however, China wanted to participate in the global capitalist economy and its institutions, not just the western market. WTO membership would act as the springboard to the world market. However, given that the WTO is predominantly of occidental influence and the idea of an inherently global IP regime is not in its mandate, China struggled to appreciate its values.

Difficulties with China

International standards face four principal issues when trying to enforce IP in China:

1) Local governments so often face a conflict of interest between large state enterprises and national laws. They either ignore legislation or frustrate its enforcement, which is exacerbated by collusion and corruption with officials.

2) There is a lack of resources and manpower, brought on by a lack of general interest in the very concept of IP.

3) Divided responsibilities and orders between levels of enforcement are inherent in any bureaucracy, none more so than in China.

4) Manufacturers have become increasingly professional and well organised that it has become so difficult to identify the actual infringers.

Why IP Just Doesn't Fit

Culture

It is difficult to see how an internationally harmonised IP system can exist where the concept of rights is so weakly established and the rule of law in society is hostage to politics. Traditionally, copying was a legitimate method of learning in China, and students of sculpture, painting and calligraphy honoured their master by copying his style and work closely (Maguire, 2012, p. 893). Anyone who studies a country in depth will be biased towards the unique aspects of the region and this creates a tendency towards exceptionalism, as against compatibility. However, with China, this seems to genuinely be the case. It raises issues that international IP standards have never faced before, or at least of such

magnitude. Having established laws, it is also perhaps unsurprising that Chinese parties would seek to use the legal infrastructure to advance their interests against rivals, given the highly competitive nature of Chinese commercial society. Because of the legal differences, critics are quick to highlight the flaws and violations of China's IP legislation. However, the assumption that a country that is one of the world's great infringers of IP should embrace and develop an IP strategy is in some ways contradictory. The Chinese legal system is trending towards harmonisation but traditional ideology and social values more often than not trump formal objectives (Suttmeier & Yao, 2011, p. 19).

Policy

Given such discrepancies, it is uncertain that conventional IPR can function in China at all. In the early stages of industrial or economic revolution, imitation is common and right now China pursuing this avenue in a major effort at technological catch-up. As long as the government "finds and incentive in enacting good laws but a disincentive in enforcing them, then laws and reality will never collide" (Zhang, 2010, pp.950-976).

Given the benefit piracy and infringement bring to local economies and officials, there is currently no reason why government policies will augment enforcement on a local level. China is a communist country where consumption assists in maintaining social stability. By ensuring people have access to cheap counterfeit goods that can provide entertainment, they do not find time to join social movements. Furthermore, as long as black markets are tolerated but not officially state sanctioned, they are denied the legitimacy that can threaten state organs charged with censorship and thus not necessary to alter the standards of censorship that exists. In short, IP infringement and a communist China go hand in hand.

Making their Mark on International Standards

'By what standards must we adopt the Western model?'

(Fang, 2011).

In recent years, this has been the question. China is clearly reaching a stage of technological and legal maturity where it will want a much greater voice in determining how international IP norms and procedures should develop in the face of these changing circumstances. Internal tensions between traditional Chinese values and the desire for economic prosperity have earmarked IP as a key issue that will determine China's economic and political trajectory, but the international IP regime will need to accommodate new participants and perspectives to allow economic prosperity in China trump traditional values. Going back to the initial question of fairness therefore, it becomes "How fair is to assume that the west is unable to take on Chinese practices, or indeed those of other emerging non-western nations?"

ARE INTELLECTUAL PROPERTY RIGHTS HELPING CHINA?

Theoretical benefit

Having seen the growth that the Chinese economy has experienced, have IPR been conducive to this growth and will they aid in its continuation? It is believed that IPR are crucial to attracting Foreign Investment and boosting innovation. Current practices like piracy, cybersquatting and counterfeit markets have hugely deterred foreign entities from setting up in China and have also impeded the development of the Chinese software industry. An effective IPR regime would, in theory, solve this problem and attract foreign investment. However, why would the Chinese government invest in developing sophisticated IP legislation and then fail to provide the resources necessary for proper enforcement? The most rational explanation is that the CPC will only

make enforcement of IPR a priority if the economic climate would benefit from doing so and right now, it wouldn't.

Why It Doesn't Help

Creation of Lower Class Unemployment

Foreign investment as a result of a promising IPR regime has opened up China's economy, helping to thwart political reform. IP infringement creates employment but in implementing IPR, you make a clear policy choice. It will grow employment for IP managers as well as lawyers but will forgo the jobs of those who benefit from infringement; sacrificing lower classes for middle ones and hoping the consequent benefits outweigh the cost of mass unemployment. However, it is the lower classes that are the potential political problem and if lack of access to counterfeit goods poses a potential problem (as we saw above), then illegalising the whole industry poses a threat of unrest that would be intolerable.

Holding Back the Political Administration

It is clear that it is much easier to enact a law than it is to inspire political change and an IP regime is about a lot more than just legal framework. IP can be looked at in a political and organisational framework as well as a legal or judicial one. The irony of the lack of literature around the politico-administrative dimension is that this is the focus of many foreign and domestic bodies when viewing the concept of IP in China, not legislation. The burden of compelling change is therefore not on the legislature but on the administration and system that surrounds it. The National Peoples Congress (NPC) has tried to assure the WTO of the influence of its administration and argues that the bureaucracy in China is so strong that it has been able to withstand the US demands and hold its ground. In reality, the exact opposite is true: China's copyright

bureaucracy is so weak that it has been singularly unable to enforce China's own copyright related laws and regulations, regardless of whether representatives want to do so or not (Mertha, 2005, p. 15). Explanations for the current inactivity of some enforcement agencies are far more nuanced than conventional wisdom would have us believe (i.e. "They are simply corrupt") (Mertha, 2005, p. 34). They have neither the resources nor the will to combat all infringements and so only pursue the ones that threaten social stability and political status quo. Successful enforcement would thus require a significant overhaul of the system. In the eyes of the NPC, is IPR holding China back legally? Not really. Politically? Probably; and this is what really counts.

Hiding the Problem by Shifting the Burden to the Courts

The Central Patent Office got 308,487 patent applications in 2003, up 22% on the previous year (SIPO, 2003). 4,000 patent infringement cases were also filed in 2008 to China's 69 new special IP courts (created on the advice of the WTO [Bloomberg, 2014]). (Anon., n.d.) These are statistics that the Chinese government broadcasts to the world, as if to say, "Look at us, IPR is booming!" But when you analyse the real impact of these figures, they reveal a more adverse development regarding their effect on the courts. By granting so many patents and processing them more quickly, the standard of review decreases, which opens the door to challenges of patents and applications for a determination of non-infringement (which also leads to a torpedo of a potentially legitimate infringement action) (Chint Group v Schneider Electric, 2007). Penalties for infringement (which is rarely found) have been so minimal that they are simply viewed as business costs. Therefore legality is only shifting the problem from infringement to litigation.

Questionable Economic Trade-off

There is a belief that IPR leads to better innovation, which in turn

leads to economic benefit. However, questions remain about the actual relationship between IP protection and innovation. As we have seen, Ancient China was one of the most innovative societies in history despite not possessing anything that resembled IP protection or material reward. After finding that patents in China were largely used for strategic and defensive purposes, Mansfield demonstrated a rather weak relationship for most industries between the initiation of innovative activities and the existence of a patent system (Suttmeier & Yao, 2011, p. 15). This doesn't challenge the notion that IPR boost innovation. In fact, there is no sensible argument to say IP protection alone is detrimental to the economic development of a State. However, it merely indicates that IPR may not figure as prominently in explaining innovation as commonly believed. And in the case of China, are the negative political as well as fiscal effects of an effective IP regime worth the economic benefit?

WHAT HAPPENS NEXT?

So where does that leave China now? If WIPO, the WTO and TRIPS want to see China elevate its IPR protection standards to be commensurate with countries like the US in the near future, they will need two things: colossal resources to deploy in China and a very good imagination. The latter because that simply won't happen, while the former is the only way to aid a stubborn political administration to try and even incrementally alter cultural inertia that have existed for millennia.

Cultural Alteration

To see benefit in an IPR regime, there would have to be a change in the mind-set of the whole population. It is estimated that 80% of Chinese counterfeit products are knockoffs of Chinese brands themselves (Zheng, 1997), meaning this is not a just a vendetta against foreign, IP hogging tyrants. It is just a principle with which the country is not well acquainted and has a deeply ingrained cultural antipathy to: a credible historical

explanation for their stance on IP. Other serial infringers like Russia or Indonesia infringe global IP because of the benefits it reaps rather than having a culture that permits it.

Institutionally Driven Change

Training programs for companies and officials alike would have to be implemented on a massive scale for IP to have a chance of succeeding. The more they are convinced to turn to innovation and services rather than manufacturing, the more Chinese consumers will additionally become creative producers and stakeholders in IP reform. Bringing such a change into reality, however, would be a task of monumental proportion.

CONCLUSION

IPR provide an excellent window into the policymaking and policy enforcement processes of contemporary China. As we have seen, China's political system suffers from fragmentation and differing degrees of institutionalisation, making it an even more inhospitable environment for IPR to take root. International pressure has been more successful in compelling China to craft laws and institutions that accord with international expectations but considerably less successful in changing societal values vis à vis IP.

The most important thing to understand is that this is not a question of law. An effective IPR regime will not come down to legislation, statistics or politics, but to its integration into Chinese society. Having studied there for a significant period of time, it is clear that the biggest problem is that very few people even know what IP is because Chinese culture still seems to struggle valuing intangible assets. The international community has tried desperately to intervene and they have succeeded in transforming China's legal system for the better. However, it must now come to terms with the fact that this may be as far as International Influence can go. We must wait for China to see a benefit of an IPR

regime and with the fear of unemployment, a weakened administration, overburdened courts and unsure consequences as to the benefits of IPR, this may well be a long way off.

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Finland as an Inspiration for Penal Reform in Ireland

REBECCA RYAN

Ireland has been subject to heavy criticism recently due to the issue of overcrowding in its prisons. In 2011, the Council of Europe recommended that a remedy to this problem would be the reduction in the number of inmates serving shorter sentences thereby freeing up resources for prisoners with longer-term sentences (European Council Report, 2014, p. 15). It is submitted that current imprisonment rates do not reflect actual rates of crime. This article will examine the approach of the Finnish legal system and its use of alternative sanctions to incarceration; in particular community service, and how successful it has been. The article will also look at the Irish position in relation to community service and it will recommend that Ireland should extend its use of community service as an alternative to imprisonment in order to reduce short-term sentences. Finally, this article will contrast imprisonment and community service orders (hereinafter 'CSO')

through the lens of various criminological theories of crime, and analyse which of these would lead to favourable recidivism rates.

NEED FOR A CHANGE IN PENAL CULTURE

> *'Finland's penal history illustrates that prison figures are not created by crime, but by cultural/political decisions'*
>
> (Warner, 2011, p. 10).

Nils Christie maintains that the relationship between prison figures and crime is misunderstood as "there is little to indicate that the rate of crime in a country decides the rate of imprisonment". Current figures in Ireland support Christie's argument (Irish Penal Reform Trust, 1996, p. 1). The increase in imprisonment rates does not have an equivalent increase in crime rates; contrarily, crime has diminished by approximately 13%. This demonstrates that there is a need for our legislative bodies and judiciary to improve sanction policies, as the high numbers of prisoners are straining the infrastructure and resources available to the Irish Prison Service. In 2011, the Thornton Review Group documented the "severe" issue of overcrowding, which has prevented the Irish Prison Service from providing "safe and secure custody, dignity of care and rehabilitation to prisoners" (Irish Prison Service Statement, 2014; Thornton Hall Project Review, 2011). The Irish Prison Service is obliged to admit any prisoner committed by the courts. This obligation on prisons places high strain on the service as there is no numerical limit on capacity in prisons and the prison service cannot refuse to admit prisoners on the grounds of overcrowding. A change in penal culture is necessary in order to improve the current system and to deal with pressing issues such as overcrowding.

A change in penal culture must be approached in the correct manner in order to ensure its support and success. Finland's imprisonment and recidivism rates are significantly lower than here in Ireland and thus it is submitted that Finland's penal culture should be used as a role

model for Ireland. Finland's success in lowering imprisonment rates is based on recent penal reform, which can be used as an inspiration for Ireland to push changes in that direction. This article will now offer an analysis of Finland's use of community service as a tool and alternative to incarceration and how Ireland should adopt it.

In the 1960's Finland began to make a 'determined political effort' to lower imprisonment rates. This new policy began to have a real impact on imprisonment statistics in 2005, where the prison population fell from 4,000 – 3,000 prisoners (Report on Penal Reform, 2013). This success was due to a number of elements; nevertheless the common denominator in several law-reforms was the reduction in the use of custodial sentences. A tangible result of this policy was a long-term systematic reduction of incarceration' (Lappi-Seppala, 2012, p. 334). An example of this can be seen where Finland implemented a reduction in the use of prison as punishment for non-payment of fines.

Klaus Mäkelä, a strong influence behind the reform of penal law in Finland, focused on the concept of priorities of society (On the Effects of Punishments, 1975, p. 237). The penal system should reflect the ladder of priorities set out by society. The more severe acts have to be met by equally severe punishments; "the sanction ought to be dependent upon how dangerous or deplorable the crime is" (Brottsförebyggande, 1977, p. 200). This idea was broadened in application in practice where the severity of the offence is the determining factor in the length and harshness of the punishment in Finland.

The Finnish Penal Reform embraces Makela's idea of priorities in the system and that the punishment of the crime should have a direct correlation with the severity of the crime committed.

Ireland's overuse of prisons for short sentences was noted by the European Council, which recommended that a reduction in the number of inmates serving shorter sentences would free up resources to address the needs of prisoners with longer-term sentences. The Irish Times reported that over half of all prison committals are made up by people who have not paid their fines (52% of 15,735 committals in 2009) (EC Report, 2014, p. 15). The non-payment of fines, although a crime, resulting in

imprisonment seems to be an extreme and unnecessary sanction. There is no half way punishment for these types of crimes, which is straining the system in terms of incarceration and it is submitted that it is an unnecessary course of action (Lally, 2014). The Strategic Review of Penal Policy report found that:

> *"Imprisonment serves an important role in the punishment of serious offences, it can adversely affect a person's job prospects, family links, access to accommodation and social attitude, all of which have a negative effect on a person's rehabilitation and, ultimately, desistance from crime. Reducing reoffending behaviour and reliance on prison are key aims of the penal system and in pursuing those aims, law and practice in the area of penal policy should be just, proportionate and humane"*
>
> (Strategic Review of Penal Policy, 2014, p. 9).

Furthermore, similar to Finland, the European Council in the 1960's and 1970's began to strongly advocate for a more diverse range of penalty options thought to facilitate matching particular sentences to particular offenders. An emerging focus on individualising sentencing developed to reflect the rehabilitative aims which sentencing sought to achieve.

The European Council's position can be summarised as follows: incarceration should be used as a sanction for offenders at risk of relapse into serious crimes and in need of long term therapeutic intervention; whereas community sanctions or non-prosecution policies should apply for petty crime or low-risk offenders. Debate has been sparked in Austria and Germany on alternatives to imprisonment, in particular, short-term imprisonment. These debates are based primarily upon the negative effects of short-term prison sentences that came to light with Franz v Liszt. Franz v Liszt voiced mistrust against prisons and short-term imprisonment. In 1969, when the 'Comprehensive Criminal Law Reform' in Germany was implemented, the legislature introduced also

a quasi-prohibition of short-term prison sentences (up to six months). Instead of short-term prison sentences, (day) fines have to be imposed. One recommendation the authors of the aforementioned report made was that the Probation Service 'examine the feasibility' of the introduction of more sophisticated forms of community service.

In summary, there is a need to address the issue of overcrowding in prisons. The Sub-Committee involved in the Penal Reform report advised that "to ensure the introduction of back-door strategies […] every effort needs to be made to bring down the numbers of those in custody, and to expand the use of non-custodial alternative sanctions" (Report on Penal Reform, 2013, p. 27).

COMMUNITY SERVICE ORDERS

A community service order is "a sentencing option for persons convicted of crimes in which the court orders the defendant to perform a number of hours of unpaid work for the benefit of the public" (Legal Dictionary, 2014). These orders require offenders to perform community services as restitution for their wrongdoings committed towards the community. Community service and the guidance provided by probation officers throughout the process is a viable alternative to imprisonment.

One of the main aims of a CSO is rehabilitation. Offenders are helped to observe regulations, take up their own responsibility for self-progress, broaden perspective, develop an enriched sense of self-worth, cultivate a more constructive pattern of living and steer away from committing further crime. There are numerous benefits to CSO's. Firstly, it reduces costs. In the penal reform report, it the Sub-Committee evaluated the annual cost of maintaining a prisoner in a medium security prison is circa €70,000 per year. On the other hand, cost of a community service order (40-240 hours total) roughly amounts to €2,400.

Secondly, community service is beneficial and constructive for societies. The Community Return Programme in Ireland calculated that, based on the national minimum wage in 2014, a massive €1,739,135 worth of unpaid work was completed for the community by participants

of the programme (Irish Prison Service, 2013). Community service orders allow offenders to be reintegrated into society. Furthermore, the use of these orders should be used as an alternative sanction to imprisonment, which would assist the government in lowering imprisonment rates. Another compelling argument for the introduction of these orders was made by Peter McVerry who argued that Irish prisons are not safe as there is very little dignity of care, and rehabilitation for the majority of prisoners. McVerry stated that these issues in the imprisonment system could be dealt with more effectively in the community.

COMMUNITY SERVICE IN FINLAND

In 1991, Finland introduced community service as an experiment in four judicial districts. The scheme was a success and warmly welcomed as part of the Finnish penal system in 1995. Community service sentences vary between 20 and 200 hours, in relation to the offence and on the basis of the offender's capacity to perform the community service determined by a specific suitability report, which is established by the Probation Service. There are certain criteria that must be met for an offender to be sentenced to community service, which are as follows:

1) The offender must consent to receiving community service.

2) The sentence must be no longer than eight months.

3) The offender must have the capacity to perform the community service order.

4) The offender does not have prior convictions (prior convictions may render community service as being prohibited).

A two-step procedure was implemented with the community service scheme to ensure that it was established effectively. Firstly, the court must decide the offender's sentence with complete disregard to the

possibility of community service. Secondly, if the verdict is unconditional imprisonment, the sentence may become community service.

It is for the court to decide the amount of hours of community service that the offender must do, this tendentially correlates to the duration of imprisonment originally ordered. Generally, for every day of imprisonment ordered, the offender must complete one hour of community service.

The Probation Service sets out the plan for the community service order. The probation service works alongside the relevant organisations in order to set out the plan. The offender is also involved in the process and has the opportunity to be heard during the drafting stage of the service plan. CSO's are generally divided into slots of approximately three-hour periods twice a week and is supervised attentively to ensure that the work is done properly. Minor violations are reprimanded, whereas more serious violations are reported to the public prosecutor, and may be taken to court. If the court holds the community service order to have been seriously violated, it may convert the remaining portion of the community service order into unconditional imprisonment.

A 2012 article by Lappi-Seppälä, reported that in Finland the courts impose 3,500 community service orders every year (Seppälä, 2014). This corresponds to approximately 275,000 hours of community service and a reduction of 400 prisoners, equivalent to 10–15 % of the prison population, every day.

This evidence suggests that community service is a promising alternative for reducing recidivism. The appeal of such an alternative including positive contact with a working environment, involvement in the community and maintenance of family bonds are compelling reasons, especially in Ireland where the penal culture is in desperate need of change. It is submitted that community service orders are a solution to overcrowding which Ireland should take into consideration, and should be used as an alternative. However, its success in terms of recidivism in Finland should also be taken with a pinch of salt, as these figures are based on a small proportion of the criminal history that is accounted for.

COMMUNITY SERVICE IN IRELAND

In October 2011, the Probation Service and the Irish Prison Service launched a pilot Community Return Programme. The programme was established following the recommendations of the Thornton Hall Project Review Group in their report. The participants of the programme revealed both capability and enthusiasm to collaborate with the prison service in the process of this new scheme. Ireland is a world leader for this scheme, as there is no reported initiative that is similar to this one anywhere else in the world.

Throughout the programme, qualifying prisoners may be released early from their custodial sentences, with a period of unpaid community work as a condition of their incentivised, structured and reviewable temporary release. The Community Return Programme pilot, which ran between October 2011 and April 2012, proved to be very successful in assessing compliance with the conditions of release and behaviour, and in terms of the very low level of reconviction of participants. The success of the pilot led to the programme being inaugurated in November 2011.

The study cohort comprised all 761 Community Return Programme participants between October 2011 and 31st December 2013. A mixed methods approach was employed in the study, as well as an analysis of anonymous pre-existing data on participants held by the Irish Prison Service. Relevant Irish Prison Service and Probation Service personnel completed questionnaires. Out of the 761 participants who had commenced the Community Return Programme between October 2011 and 31st December 2013, 548 had completed it and 108 were still in progress. 88, approximately 11%, breached conditions of the Community Return Programme and were returned to custody. Almost 89% had either successfully completed their Community Return Programme or were still working on the programme. Of those participants released during the first year of the programme, 91% had not been committed to prison on a new custodial sentence in the period up to the end of 2013.

Supervisors reported that Community Return Programme participants performed positively in their work and displayed a positive

attitude towards the work. The Irish Prison Service found that the programme has potential for further expansion in the future (Irish Prison Service, 2014).

Although Ireland has begun implementing community service, as the JELR team claimed there is a need for expansion of these kinds of schemes (Irish Prison Service, 2014). This scheme was solely set up for offenders as an 'early release programme', however in Finland it is used as a complete alternative to imprisonment. It is submitted that through the Community Return Programme, Ireland has demonstrated that community return schemes can be a huge success for all parties involved including the offender, the community and prison services. The community return programme has taken sail and in doing so has demonstrated how Ireland has the capacity to implement this genre of scheme and how an expansion of such schemes would be beneficial to society at large. The use of community service as an alternative to imprisonment would also help reduce numbers in prisons and allow for the better care of prisoners.

KEY TO SUCCESSFUL IMPLEMENTATION OF COMMUNITY SERVICE

In his report Dr Lappi-Seppala listed a series of recommendations to ensure a straightforward introduction and application of community service as an alternative to imprisonment (Seppälä, 202). This article will briefly outline and analyse some of his recommendations.

Firstly, he recommends clear statutory implementation by ensuring that officials practice community service as an alternative to imprisonment, encouraging the offenders to consent and cooperate and ensuring that no discrimination arises in application of such sanctions.

Secondly, legislation should be straightforward and clear and leave no scope for ambiguity and interpretation for the courts as to how community service should be used as an alternative to imprisonment.

The courts should have sufficient material provided to them to seriously consider the use of community service as a sanction and what role it plays in society.

Although the use of community service is an option in many countries, the figures in Finland are superior as they demand directly that "only prison sentences may be commuted to community service" and this has led to a replacement rate of 90% (Seppälä, 2007). In other words, it is crucial that the legislation also set out a structure by which community service is really applied as an alternative.

Thirdly, the success in Ireland of the Community Return Programme was based on the consent and cooperation of the offenders. This should be maintained. The humane treatment of prisoners is fundamental in ensuring the success of such reform. The offender should have the freedom to choose whether to engage in a term of community service or to opt for a prison sentence instead. Offenders are individuals capable of entering into such decisions and although it should be encouraged that they take that alternative, "experience indicates, that explicit and well informed consent is a highly motivating factor for the offender" (Seppälä, 2007). It is through consent and cooperation that success in this area can be achieved.

Furthermore, Dr Lappi-Sepala recognised that sanctions such as community service may lead to discrimination towards socially privileged offenders. This is one of the stronger arguments against such alternatives. The law must ensure that the system provides equality and justice in the treatment of all offenders and a tailored system designed towards certain offences/groups of offenders is therefore proposed. This method has been adopted in Sweden where, in the instance of a drug-related offence, the court may hand down a sentence of contract treatment in lieu of a prison term. This sentence is a probation order with a specific instruction to enrol in a drug treatment and rehabilitation program (Lindström and Leijonram, 2014, p. 559).

Finally, the idea must be promoted well to the public. Public credibility in the implementation of such sanctions is necessary. Public demand plays a huge role in policy making, particularly in countries

such as the UK and Ireland, which have experienced a dramatic increase in prisoner rates in recent years. Criminological literature has shown that the high dependence placed by legislators in public opinion has led to "unnecessary suffering and extensive material and social costs in its unfounded reliance on incarceration" (Seppala, 2007). However this has not necessarily been correct, Hough & Roberts concluded that the majority of the population does recognise the high costs of prisons and people empathise with the concept of redemption and second chances, if they believe it is a genuine case. Therefore, the costs of imprisonment plus the idea of redemption combined show that there is scope for community service as an alternative to imprisonment being embraced by the public, however this relies upon it being promoted in the correct manner.

RECIDIVISM OF COMMUNITY SERVICE AND IMPRISONMENT THROUGH A CRIMINOLOGICAL PERSPECTIVE

Analysing community service and imprisonment through criminological theories can lead to different results. In order to analyse which alternative is most favourable, this article will focus on recidivism from a theoretical perspective through analysing the following criminological theories; 'Deterrence Theory', 'Differential Association Theory', 'Social Control Theory' and 'Social Reaction Theory'.

The deterrence theory, proposed by social contract thinkers such as Hobbes and Beccaria, would predict community service to result in higher recidivism than imprisonment. This theory is designed to deter an offender from committing crimes. Proponents of the specific deterrence theory contend that punishing offenders severely will make them unwilling to reoffend in the future. Spohn and Holleran 2002 argue that specific deterrence occurs when those who have been punished cease offending, commit less serious offenses, or offend at a lower rate because of the fear of a future sanction (Criminology 40, 2002, p. 237). The stiffer the punishment, the more the punished will try to avoid future punishments, and the higher the deterrent effect of the punishment. According to Windzio, the "pains of imprisonment" are more severe than

the "pains" of community service (Windizio, 2002, p. 341). Consequently, the deterrent effect of community service can be expected to be weaker than the deterrent effect of imprisonment. In summary, the deterrence theory leads to the hypothesis that community service will ultimately lead to higher post-sentencing recidivism rates than imprisonment.

In contrast, there are several criminological theories that forecast a reduction in recidivism rates through community service rather than imprisonment. Sutherland's 'Differential Association Theory' and subsequent theories such as Aker's 'Social Learning Theory' suggest that individuals learn to commit crime through interaction with others; individuals learn the values and attitudes and are influenced and shaped by the individuals they associate with (Akers, 1966, p. 128). Therefore the assumption exists that criminal behaviour is learned through interaction and communication processes with lawbreakers or individuals who support law-breaking behaviour. Prisons in this scenario are viewed as 'schools of crime,' a place where offenders learn deviant attitudes and criminal behaviour, whereas the likelihood of gaining and embracing the notion of deviance in a community service context is inferior. Harris and Lo claim that contact with conventional co-workers plays a significant role in the rehabilitation of prisoners in community service (Harris & Lo, 2002, p. 427).

According to Hirshi's 'Social Control Theory' all individuals possess the hedonistic drive to act in selfish and aggressive ways that lead to criminal behaviour from birth and that it is the bonds formed to conventional society that restrain individuals from committing crime. Hirschi argued that juvenile delinquents and adult criminals lack these bonds to conventional society and therefore break the law because their "natural instincts" are not controlled (Hirschi, 1969, p. 16). Thus, individuals abstain from crime to refrain from jeopardising their accumulated bonds towards society and as a result they conform to criminal law. Incarceration may endanger these social bonds to family or work, whereas community service preserves these societal bonds, and may even reinforce them (Bazemore, 1994). To review, social control theories would contend that imprisonment would diminish social control by nature of weakening social bonds and as a result lead to higher

recidivism rates than community service.

Lastly, 'Social Reactions Theories' (also known as 'Labelling Theories'), proposed by academics such as Becker (Outsiders, 1963, p. 9) suggest that individuals become criminals when they are labelled criminals. Once the person accepts the label of a criminal it becomes an inherent part of their personal identity. Important concepts in labelling theory include primary and secondary deviance, retroactive and prospective labelling, as well as the importance of being stigmatised. Becker found official intervention to be a causative factor in the development of a criminal career and labelling gradually segregates individuals branded delinquents from society; consequently causing them to commit crime. Community service has a lower level of stigma attached to it than a prison sentence. Offenders with a former prison sentence are subject to higher levels of economic and social stigmatisation than offenders who were punished with community service. According to labelling theories recidivism rates would fall through increased use of community service as there is less stigma attached to such a punishment.

To briefly summarise, there are numerous theories in the field of criminology. The multitude of theories can often point to different directions and have yet to be harmonised. Thus, contrasting hypotheses exist with regard to whether community service or imprisonment would lead to lower recidivism rates.

CONCLUSION

In Ireland, if the number of individuals being sentenced to prison terms continues to increase at the current rate there is no doubt that overcrowding will remain a defining feature of the Irish prison system. There is a need for our penal culture to change. Currently, Ireland uses imprisonment as a solution to societal problems, however numerous reports have recommended that the use of incarceration be used as a last resort for serious crimes. Finland's successful penal reform steered towards the adaptation of new community sanctions to offer a more constructive, rational and humane substitute to incarceration. Finland

is a prime example of how these alternatives have been successful in regulating prison rates and reducing recidivism. Finland has proven that their results in crime statistics "can be done within a reasonable timeframe and the results are impressive" (Report on Penal Reform, 2013). In Ireland, community service could be adopted on a wider scale as an alternative to incarceration to promote the use of restorative justice. Community sanctions should be developed so as to be capable of addressing the higher risk offender and address the underlying causes of offending. The unnecessary use of imprisonment, such as for the non-payment of fines, must be greatly reduced. Community service in this jurisdiction has been successfully implemented in Ireland as a form of early release; it is submitted that normalising it as a sanction could be one effective remedy to improve the system. The success of changes in policy relies highly on the manner in which they are established. The key to successful implementation of community service is to present clear statutory implementation, ensure officials use this alternative in practice, continue to encourage consent and cooperation of offenders, create adequate safeguards to ensure discrimination between offenders does not arise and promote the idea well to the general public. Although Finland's recidivism rates are lower with community service this is only based on restricted empirical research. It is submitted that expanding the use of community service is necessary in Ireland to deal with overcrowding, however whether it will be more successful than imprisonment with regards to recidivism remains to be seen, as analysing community service through theoretical criminological theories leads to contrasting results.

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Northern Ireland; Conflict Resolution Through Pragmatic Use of Knowledge

MARC BECKER, LOUISE DUFFY, MAX MUNCHMEYER, LUKE O CALLAGHAN-WHITE & JAMES ROONEY

Between 1969 and 1998, more than 3,500 people died in the conflict in Northern Ireland. More than half of these were civilians (CAIN, 2001). Furthermore, over 40,000 were injured and there were 18,000 accusations of "terrorist or serious public order type offences" (Korstian, 2008, p. 15). The vast dimensions of this conflict are elucidated by the fact that within an area of 5,500 square miles there were 10,000 explosions, 350,000 house searches, 20,000 armed robberies, and 35,000 shootings (CAIN, 2001).

15 years after the Good Friday Agreement brought 'The Troubles' to an end, one question still remains: how many lives could have been saved and how much of the suffering could have been prevented? If one looks at previous failed peace-making attempts, it becomes obvious that if these possible solutions had been implemented differently, the Northern Ireland conflict could have been resolved peacefully much earlier. For

example, the Sunningdale Agreement of 1973 failed mainly because it did not manage to include all of the parties concerned in the conflict, as will be discussed later. Keeping that in mind, it is interesting to think of counterfactuals. This paper argues that a pragmatic approach to the use of knowledge in conflict prevention could have contributed to the avoidance of the conflict in Northern Ireland.

Since practical knowledge is needed to create useful strategies of conflict resolution, this paper bases its work on a pragmatic approach to peace research. The basic idea of this theoretical setting and its implications will be explained in the first part of this article. It will also lead to the structure of the analysis of the conflict in Northern Ireland, which consists of the following pieces: it will first look at how the antagonistic agency was built. It must be examined how both the Unionist and the Republican side created an opposing identity to each other, and which cleavages played a role in this process of division.

With this knowledge, a better understanding of the emergence of the motive for violence is sought. To be able to develop realistic alternatives later on, parties' reasons for the use of violence, such as separation, sectarianism and frustration with the political situation, must be conceived. Subsequently, the failure of obstacles and hindrances to violence will be discussed. For example, the role of the police force must be regarded critically, as they failed – among others – to prevent the conflict.

Based on the acquired knowledge of the conflict, in part two of the article, alternatives, by using this knowledge in a pragmatic way, will be developed. The same three steps as the analysis in part one - to show how the conflict in Northern Ireland could have been directed in a more peaceful way - will be followed.

Thus, the paper is concerned with thinking about how the creation of the antagonistic agency, as well as the emergence of the motives for violence could have been prevented, and also, suggestions on how the obstacles and hindrances to violence could have been used or implemented more successfully, are presented.

A PRAGMATIC APPROACH TO PEACE

The Theoretical Basis

Political scientists have analysed the conflict in Northern Ireland in various ways. For example, there have been approaches in cultural sociology to explain the "politics of martyrdom" of the IRA (Pettenkofer, 2008) as well as neo-institutional perspectives on the institutional structures of its terrorism (Krücken and Meier, 2008). Efforts like these focus on certain aspects of the conflict, and in order to gain a deeper understanding of their appearance, different theories are used. Each theoretical approach can be seen as a heuristic tool that brings new aspects of a topic to light, just like taking a look through different glasses in order to make specific facets visible. Theories work as "mechanisms of selectivity" that distinguish useful information regarding the cognitive interest of the researcher from useless information (Noetzel, 2009, p. 52).

Therefore, the theory that is needed for the research is always depending on that which one seeks to discover. In this case study, the paper is trying to explore possible actions that would have literally made peace (or, at least would have contributed to that long-term goal) if they had been implemented during the peace process. In doing so, it is assumed that scientific work can serve for developing reality-related strategies of conflict resolution and thus, this work fits into approaches of practical peace research.

This field of peace research has its roots in Johan Galtung's differentiation between personal (direct) and structural violence. His "extended concept of violence leads to an extended concept of peace" (Galtung, 1969, p. 183). The state of peace is seen in a normative way as the absence of both direct and structural violence. In this way, the aim of peace research can also be defined normatively as to prevent violence – in order to reduce "the number of years lost" (Galtung and Höivik, 1971, p. 73) because of the threat of both types of violence. Certainly, setting this goal raises the question of how to reach it; how can (academic) knowledge change a conflict reality and how can violence be avoided in practice?

A Pragmatic Approach

Every theory ought to be somehow related to reality. For example, normative theories aim to reconstruct the underlying norms of actions and develop alternatives; they bind theory with the real world. In this sense, "every normative theory with scientific value must be designed in a pragmatic way" (Noetzel, 2009, p. 59). A pragmatic approach to peace research finally tears down all walls between theory and practice; it is always related to making peace and because of this, its theory has to be based on reality. Hence, it is easy to set criteria for knowledge that should be considered pragmatic: knowledge that is helpful for making peace. Pragmatic peace research is looking for ways of practical interactions to deal with reality, and therefore relevance and utility, as well as coherence with already known information, define a good theory. In this way, (neo-) pragmatism can be seen as the study of 'what works' rather than an approach to seek the absolute truth. In a pragmatist setting, our findings "prove their validity by being practical" (Kivimäki, 2012, p. 21).

Basic Assumptions of Pragmatism

It is worthwhile to point out some of the basic assumptions of pragmatism. The pragmatic concept, developed in the 19th century, was driven by the ideas of William James and Charles Sanders Peirce, whose work was later continued notably by John Dewey and George Herbert Mead (Noetzel, 2006, p. 287). Pragmatist thinking challenged the hitherto existing understanding of philosophy, theory, knowledge and truth. One cannot experience objective reality; what one can see and feel is always referring to one's knowledge of things and to the meaning given to sensual perception. In this way, our knowledge "also creates realities" (Kivimäki, 2012, p. 22), and these realities become relevant in social practices. Following this argument, the paper rejects the assumption that social behaviour is only driven by naturally given determinants. If one relied only on simplistic causalities, one would not be able to analyse the underlying meanings that actors give to their behaviour. Neo-

pragmatists like Richard Rorty (2003) have developed this constructivist setting for their research. They focus on the interplay between structures and actors, and in doing so, socially constructed realities become visible. For example, the rules of politeness are not given by nature. They are based on some sort of social consensus that is constantly changing and which differs according to the cultural context. Thus, the rules are socially constructed. Surely, these constructs can be understood in different ways. That is why it is a main goal for pragmatic peace research to recognise social constructs in conflicts; the different perceptions of the conflicting parties must be considered as well as their construction of the conflict 'reality', of their own and the other party's identities. By reconstructing the meanings actors give to their actions, the underlying motives and symbolic functions of violence are explored (Kivimäki, 2012, p. 22). And finally, this pragmatic knowledge will help develop alternatives and possibilities to change the framing of social constructs in order to make peace. In this sense, by tackling social mechanisms that lead to violence, pragmatic peace research has a critical function.

Before this paper can devise ideas of conflict resolution for Northern Ireland, it has to gain knowledge about the core of the conflict that afterwards can be used pragmatically. The paper is looking at the case in three steps that was adopted from Timo Kivimäki's (2012) analysis of the conflict in West Kalimantan, Indonesia, which proved to be a useful tool for this investigation. The three steps are the following:

> 1) What created the antagonistic agency?
>
> 2) What caused the emergence of the motive for violence?
>
> 3) Why did obstacles and hindrances to violence fail to prevent conflict?
>
> (Kivimäki, 2012, p. 32)

After answering these questions, suggestions are offered as to how the outbreak of violence could have been prevented, or at least reduced,

had pragmatic knowledge been used. This is a way to show which other possible directions had been there at different stages of the conflict.

GATHERING KNOWLEDGE ABOUT THE CONFLICT IN NORTHERN IRELAND

The Antagonistic Agency

A key creator of antagonistic agents is the existence of two competing identities where both groups identify themselves oppositionally and thus become "negatively interdependent" (Kivimäki, 2012, p. 46). In the Northern Ireland conflict the identities are those of Catholic-Nationalist and Protestant-Unionist, with the latter upon the outbreak of violence holding unchallenged the monopoly on violence and political discourse within the state. These dualist identities – the Catholic and Nationalist, the Protestant and Unionist – are due to the historical linking of these two identities into the key evaluating markers of citizens of Ulster. To understand why the antagonistic agencies that emerged in the Northern Ireland conflict were formed, it is important to briefly examine where these oppositional identities came from. The answer can be found in the inherent threat that each side felt from the other.

The Formation of a Protestant-Unionist Identity

Examination of the history of Ulster leads one to conclude that religious intolerance, principally hegemonic Protestant supremacism, has existed since the proposed 'civilisation' of Ulster Catholics through the Plantations of the 17th century (Hennessy, 1997, p. 1). For Northern Protestants, history presents a constant battle to protect their distinct identity and way of life against the hegemonic Catholicism of the rest of the island. Ulster's Protestant majority has since the Plantation received favoured status, due to their sharing of religious faith and fealty with the colonial power and were naturally afraid that in a unified Irish state they

would be subjected to discriminatory Catholicised laws, (Lee, 1989, p. 7) leading to their desire for a Northern Irish state as "a Protestant State for a Protestant People" (The Stormont Papers, 1933, p. 1095). Agitation for the creation of the Northern Irish state in the late 19th and early 20th centuries was organised along religious lines – exploiting the fear of Protestants of 'Rome Rule' in a United Ireland. This linking of religious and political oppositional identities eroded the previously present, if small, hybrid groups of Catholic Unionists or Protestant Nationalists, and succeeded in fusing these two identities into one, creating a complex antagonism between the two sides given not only was there religiously-based antipathy between both sides but also political bitterness – the foundation of the atavism in the discussed conflict.

The discriminatory practices upon which the Northern Irish state operated until the proroguing of its parliament in 1972, favouring Protestants and distrusting Catholics – evident in Prime Minister Brookeborough's assertion that "Catholics are 99% disloyal" (Boyd, 1985, p. 60) – only served to exacerbate the sense of marginalisation on behalf of Catholics and of superiority on behalf of Protestants. The inculcation of antagonistic anti-Catholic Protestantism, locally termed Orangeism, with politics, is made explicit in that the creation of the party that singlehandedly governed Northern Ireland before 1972 occurred at an Orange Order meeting (McAuley and Tonge, 2007, pp. 38-39). A state's "suppression of ethnic identities and discrimination towards individuals on grounds of their ethnic association is related to ethno-political violence," (Kivimäki, 2012, pp. 45-46) and state suppression of Catholics, through discriminatory employment and housing-allocation practices, and through the establishment of a police force symptomatically hostile to Catholics was instrumental to the creation of Nationalist agencies antagonistic to the state. These practices also reveal the antagonistic institutionalised Unionist identity of "staunch and proud resistance against the Catholic threat" as justifiable independent of the constitutional threat posed by nationalism.

Protestantism and Unionism are notably intricately linked within the founding document of the Northern Irish state – the Ulster Covenant. The use of religious imagery in the naming of the Covenant

and throughout Unionist literature is substantiation of the cultivated perception that many Ulster Protestants have that their role in Northern Ireland is one of "indispensability, a cherished role as a chosen people," (Lee, 1989, p. 9) where "each new threat is constructed as forming a historical continuity with identifiable pseudo-mythological episodes, some of which have taken place hundreds of years before" (McAuley and Tonge, 2007, p. 39). These historical events in which Protestants have been victorious against Catholics, celebrated every year such as on the 12th of July, reinforce the idea of two separate, primordial, and necessarily conflicting identities, in that they "institutionalise the Protestant instinct of racial superiority over the conquered Catholics" (Lee, 1989, p. 2). This deterministic understanding of the history of Protestant Ulster, and lionisation of past Protestant glories, unavoidably bred antagonism towards Catholics and, in the period 1921 – 1972, "Protestantism served as a mark of superiority, both morally justifying their dominance, and preventing dispersal of their privileges" (Mulholland, 2002, p. 29). This is argued to be the major antagonistic misconception of Ulster Unionism.

The Formation of a Catholic-Nationalist Identity

The major antagonistic misconception of Ulster Nationalism is the belief that "the people of Ireland form one nation; and the responsibility for Irish division lies with the British" (Fay et al. ,1999, p. 66). Like its Unionist equivalent, the fallacy of "the Protestant Province of Ulster" derived from the abovementioned misconception. This thinking belies the complex demography of the Northern Irish state, and leads to a view of Ulster Unionists as dispensable targets due to their purported 'Britishness' obstructing Ireland's fated reunification (Mulholland, 2002, p. 19). Also mirroring the 'other' community, nationalists look to the history of the Irish struggle for independence as a readily available source of identity. The reliance on this 'historical struggle' as a basis for identity again reinforced the idea that both groups were historically and primordially compelled to conflict. Noticeably, this identity involves the glorification of political violence, which increases the threat felt by Protestants, which

subsequently buttresses Protestant validations for keeping Catholics marginalised. Such a cycle reinforces the reality of separateness of the antagonistic identities of the two groups. Both groups' myths are central to understanding the antagonism between the two agents as it shows "each group has attempted to maximise its superiority over the other by employing a preferred narrative history depicting a glorious past for the in-group and an inglorious tale of treachery for the out-group (McGinty and du Toit, 2007, p. 17).

The Perpetuation of Antagonistic Identities

Identity is an important factor in the emergence of antagonistic agency, as in the Northern Ireland conflict "one tribe's gain is seen as, by definition, another tribe's loss" (Lee, 1989, p. 420). The identities cannot merely co-exist; they must necessarily be antagonistic. For Catholics, allowing 'offensive' triumphalist parades to pass uninterrupted is an admission of defeat; a concession that the Protestants have 'won,' as "[due to] the territorial imperative, parades are contests in machismo, expressions of tribal virility, taunts to the manliness and muscle power of the tribal enemy" (Lee, 1989, p. 420). This is what Barry alludes to when he discusses the perceived link between cultural and political power, as politics is centred around the two 'groups,' the leading politicians from either side find it incumbent upon them to promote and defend the cultural practices of their community (Barry, 2003). This is the case with even seemingly innocuous cultural activities like sport; the promotion of the sport played by one side in public life is used by the other side as an illustration of their privileged status. Thus superficially apolitical cultural acts take on political and antagonistic meanings, leading not only to segregation in sports and arts, but also in the intensification of 'difference' between the two groups, as their primes are separated and considered either 'native' or 'imperial' – both here meant as indictments.

The replication of the differences between the two communities by their respective politicians also needs examination in order to explain the creation of antagonistic agencies. "Political entrepreneurs promote

political identity around discourses of national identity and moral tales of suffering and 'blamelessness,'" which has the twin process of "encouraging those whose lifestyles and identity is pluralistic and secular to remain generally silent or become apolitical," and also reinforces and justifies antagonism (Murtagh and Shirlow, 2004, p. 49). Indeed, the original fusion of a joint Unionist-Protestant identity was the product of political shrewdness of Unionist leaders such as Carson and Craig in the late 19th century (Mulholland, 2002, p. 19). The polarisation of politics along group lines serves to legitimise the existence of such groups as social realities, and portrays the leaders of these communities as defenders of an endangered culture and identity – a portrayal the leaders themselves seek to epitomise as it has the effect of scaremongering members of both "nationally imagined communities" to vote for them to challenge what is alleged by political actors of both sides: a dominance by the 'other' (Anderson, 2006, p. 441). So in understanding the influence political actors play in the perpetuation of group identities, and their promotion of the incompatibility of one group with the 'other' for their own personal gain, we can see how antagonism between both sides can be created by persons hoping to capitalise on the fear both sides have for one another.

The Militarisation of the Catholic-Nationalist Identity

Whilst oppositional identity issues are formative in creating antagonistic agents, it can be stated "the actual birth of the Provisional IRA [hereinafter 'PIRA'] was a direct response to the sectarian violence that erupted in Derry and Belfast in 1969" (Fay et al., 1999, p. 11). First, "rising education levels and civil expectations, combined with an interest in human rights and direct action politics, wrought a dramatic change in the Catholic community in the 1960s" leading to the organisation of civil rights groups such as NICRA (Bryson, 2007, p. 49). Fay notes how "traditional Unionist analysis contended that the initial civil rights campaign had at its core a nationalist (and thus republican) agenda designed to destabilise the state through the granting of 'transitional' demands" (Fay et al., 1999, p. 140). Acting upon this misinterpretation of

the demands of the civil rights groups, the security forces heavy-handedly suppressed their peaceful demonstrations, confirming Nationalist suspicions that the police were not to be trusted due to their allegiance to the purportedly illegitimate status quo. The PIRA "quickly built on the strength of local defence communities," (Fay et al., 19999, p. 11) which had emerged to police the nationalist communities in substitution for the evidently partisan police force. Thus the actual formation of the antagonistic agent on the nationalist side resulted from the oppressive tactics of the police in response to the peaceful demonstrations of the late 1960s.

The Militarisation of the Protestant-Unionist Identity

There was more than one antagonistic agency of the 'other' side of the conflict. To nationalists, the RUC – "de jure the state police, but completely Protestant at senior level, and with 99% Protestant membership, a de facto Protestant paramilitary organisation" (Lee, 1989, p. 421); the UDR – the Northern Irish regiment of the British Army, so Protestant "the percentage of Catholic soldiers […] was so low it is difficult to find figures" (Fay et al., 1999, p. 22), and subsequently the British Army, were all antagonists due to their considering violent subversives and Catholic citizens as if they were one and the same. Their formation is related directly to the establishment of the state, and the reconstructing of the previously outlawed Ulster Volunteer Force, one that threatened insurrection if Britain considered segueing Ulster in the peace settlement following the Irish War of Independence, as the RUC (Mulholland, 2002, p. 28). That the forerunner to the Northern Irish security force was the paramilitary wing of the Protestant-Unionist campaign to keep Ulster out of a United Ireland, and given the involvement of these security forces in the pogroms against Catholics in the 1920s, the Catholic perception of the security forces as antagonistic and unrepresentative and not protective of their community, seems justified.

Later, the formation of loyalist paramilitary groups, who "employed classic counterinsurgency tactics by terrorising the Catholic

population which 'hid' the Republican guerrillas" (Mulholland, 2002, p. 135) is seen to have been a direct result of the formation of the PIRA, and subsequently a perception of the Troubles as "a period when the traditional foundations of social, political, and economic life in Ulster had been steadily eroded and the bulwarks in place to stem the republican threat have been removed" (Mulholland, 2002, p. 103). Loyalists saw the security forces as insufficient in clamping down on Catholic advancement, and were suspicious of the peace-making or moderate Protestant leaders who they saw as compromising with Catholics at the expense of their birth-right to the domination of Ulster. This particularly unpleasant strand of Protestant Supremacism is displayed in the fact that they killed more Catholic civilians than members of the PIRA, especially given the formation of the PIRA was what spurred the Loyalist community to reactivate and rearm.

Motives for Violence

The issue of what motivated both sides to resort to violence is now addressed. The main underlying motives of nationalist and unionist violence will be identified.

The main motive for violence was frustration with the system and the institutions of government. Both sides perceived the system to be unfairly biased against them, which eliminated a political alternative to resolve conflicts and thus lead to violence. Richard Rose, in his 1972 analysis of the conflict in Northern Ireland, explains that the Stormont government was never a legitimate regime, as it never enjoyed the full support of the people. This was mainly due to the "Institutions of Discord" of the government, which fostered a culture in which, for both sides, defiance of the law was seen not as a crime but as an assertion of discontent with the ruling powers (Rose, 1972, p. 113).

This led to Nationalists believing that their interests were not represented in government. In particular, the fact that the vast majority of policemen in the RUC were Protestant contributed to this view. Thus, "[t]he Royal Ulster Constabulary was perceived in the Nationalist

community as a paramilitary force under the political control of the Stormont Government" (Fay et al., 1999: 21) and "the British army along with the local police force became symbols of oppression in the Catholic community…." (Fay et al., 1999, p. 59).

Rose argues persuasively that the institutions of government enjoyed far too much discretion (Rose, 1972, p. 125-139). For example, policemen, not public prosecutors, determined which crime a person arrested for breaking of the peace would be charged with. Furthermore, judges in Northern Irish courts enjoyed a lot of discretion when it came to sentencing these criminals. This seemed to only confirm the nationalist perception that the system was working against them. But this also affected the Unionist community as in some instances they perceived that the government was treating acts of nationalist disturbances of the peace with too much lenience, leaving them with no other option but to resort to violence. In 1972, for example, former Stormont Minister Bill Craig told a large group of Unionists at a rally that "we must build up a dossier of the men and women who are a menace to this country…. Because if and when the politicians fail us, it may be our job to liquidate the enemy " (Mulholland, 2002, p. 86).

Another crucial factor that motivated violence in Northern Ireland is the sectarianism of the neighbourhoods, especially in Belfast and Derry, as this fostered the dehumanisation of the other side whilst also making it easy to organise violent protests. Rose (1972, pp. 114-115) speaks of the "intimacy" of these northern Ireland districts that facilitate such crimes and Shirlow (2004, p. 21) confirms this by stating that, "segregation provides the base rationale upon which paramilitarism can flourish given that paramilitary groups act as regional defence forces."

As has been explained, both parties were so entrenched in their convictions that they saw every act as a threat to their identities, which they were then eager to defend, even by violent means. Thus, the desire of both groups to protect their identities and their unwillingness to compromise formed another motive for violence.

McGarry and O'Leary (1995, p. 264) speak of a "national sovereignty trap", which means "there is a deadly belief that each national

culture must have one, and only one, political roof for its protection and expression."

Justifying Violence through Historically Subjective Narratives

Although it is not advisable to rely only upon historical evidence, the way in which Anglo-Irish history was perceived by both nationalists and unionists (and used by the extreme elements of those sides) plays a crucial role in determining the motives for violence. Nationalists perceive the history between Ireland and England as being one of the constant struggles of the Irish people for independence against the overwhelming force of the ruling powers; especially the leaders of the Irish Rebellions of 1798 and 1916 who have long become romanticised as heroes. Venerating these individuals in that way creates a mind-set in which it is acceptable for one to violently resolve conflicts with the perceived English intruders, as this results in prestige and glory. The threshold to violence is effectively lowered. Of course, it has to be kept in mind that conflict cannot simply be explained by saying that one or both side's culture makes conflict inevitable, but earning prestige and striving to be like the Irish national heroes can be counted as a motive for nationalist violence. As Shirlow (2004, p. 75) puts it: "[C]onvincing sections of each respective community that resistance to the 'other' community is a historical struggle, that the residents in harmed spaces are the makers of a profound history."

Unionists have a similar desire to protect their identity. They claim that it is an acceptable way to protect these values to block nationalist civil rights marches to "physically and politically ghettoizing civil rights protesters" (Mulholland, 2002, p. 56). First with the help of the police and later illegally. The desire to separate themselves from the Nationalists even lead to the UVF carrying out bomb strikes in the Belfast area to manipulate the authorities into thinking that they were IRA attacks and thus leading to the impositions of sanctions upon the Nationalist side (Mulholland ,2002, p. 57). Through these attacks and "a strategy designed to isolate and provoke" the Nationalists, Unionists hoped to bring about nationalist attacks which could then be used to weaken the nationalist

position (Mulholland, 2002, p. 62).

Therefore, it can be noted that the perception of both parties, for historical reasons or otherwise, was that their identities were being threatened by the activities of the other side, which, combined with a regime that did not enjoy full legitimacy from either side, motivated the emergence of violence.

Obstacles and Hindrances to Violence Failed to Prevent Conflict

British State Responsibility

A strong argument that persists to this day is that the British State did not appreciate nor understand the grievances of the Nationalist community of Northern Ireland during the stage of peaceful protests. Indeed, the Cameron report of 1969 frames the large-scale student protests of that year as an attempt to "polarise society since the movement did not believe in any success of reform or moderation" (Wichet, 1991, p. 129). The report further alienated those who already held strong grievances against the British state. More seriously, it brought into play questions of democratic freedoms, for example, the right to peaceful protest. Westminster's apathy concerning the demands of the protesters exacerbated the complexity of the 'Northern Ireland situation'. Given such detachment between the State and the people on the ground, Merlyn Rees, the Secretary of State for Northern Ireland was "forever chasing events and never determining outcomes" (Bourke, 2003, p. 232). The British government adopted a policy of normalising events in a highly precarious setting in an attempt to appease the general public of the Union. Nonetheless it remained apparent to all involved that such a level of perceived effectiveness and concomitant acceptance by the citizens of Northern Ireland could not be broached.

The police force of Northern Ireland (RUC) drew its base from the Protestant community and thus, from the start of the Troubles, had no real capacity to truly govern Northern Ireland. It failed to encompass

Catholics and the majority of the Nationalist community. Even in 1992, just 8% of the entire police force was Catholic (Dixon, 2001). The RUC were seen by many as perpetuating a culture of structural violence against Catholics. In keeping with Charles Tilly's Law of Resource Mobilisation (1978), with no true monopoly on law enforcement, other groups sought to implement their own law. In Northern Ireland, paramilitary groups like the PIRA were able to act as bastions of the law for local communities. This gave their actions a status of credibility and a degree of legitimacy that would aid the justification process of brutal attacks to come.

In the wake of disasters like Bloody Sunday, where peaceful Nationalist protesters were shot dead by British armed forces, chaos engulfed Northern Ireland. Large-scale bombings and killings pushed Britain from a state of perceived apathy into one where it needed a swift peace process. Perhaps the first failure of the peace attempts was assuming that the immediate transition from violence to peace was logical. With no stopgap measures and no understanding of the root cause of the brutality, the first peace process was doomed to fail. The British proposed a power sharing experiment that attempted to balance claims on both ideological sides and find a compromise to which the Northern Ireland elites could bring to their followers (Dixon, 2001). The British attempts to build up the voice of the moderates seemed "reminiscent of its imperial policy" (Dixon, 2001, p. 129) according to many Nationalists. The proposed barrier to violence was crushed with the outcome of the 1973 Assembly election. The two moderate parties were almost obliterated and "cross-sectarian voting was less than 0.25%" (Dixon, 2001, p. 130).

An underlying problem, which besieged the British government's mentality towards peace processes, was the assumption that all parties wanted peace. This was simply not the case. Peace as an end result was not at the programmatic core of the PIRA's raison d'etre. As IRA leaders have admitted, "an offer of peace needed to be accompanied by violence to show their volunteers that they were not surrendering" (Dixon, 2001, p. 224). The misconception of the many desires and demands by the British state proved to provide further opportunity for the violent regime of paramilitary organisations to continue unhindered, indeed bolstered by the botched attempt to 'woo moderates' and conduct power-sharing.

At the end of the first peace process moderate nationalists and unionists were more divided than they had been before (Wichet 1991).

USING KNOWLEDGE PRAGMATICALLY TO PREVENT CONFLICT

The Application of Pragmatic Knowledge to Influence Antagonistic Agency

This section will examine the issue of the antagonistic agency; how it was dealt with in the Northern Ireland Peace process, and how it could have been dealt with differently through the application of pragmatic knowledge. On one level, the Peace Process can be regarded as having been a success, with relatively few deaths having occurred since 1998. On the other hand however, the approach can be criticised for not having facilitated peace earlier, and for having left unresolved divisions which prevent Northern Irish political and social life from normalising. While there was important work done with regards to decommissioning and policing, many of the wider issues of the conflict were ignored. It is these particular omissions that might have been remedied though the application of pragmatic knowledge, which could have facilitated a more fully transitioned peace. First, this section will talk about how the Northern Ireland Peace process managed to eliminate large-scale violence by removing the primary violent antagonistic agents. Second, it will move on to the issue that the process did not sufficiently address: that of identity, which constitutes the platform upon which the violent antagonistic agency is based.

The Creation of Antagonistic Agency

Identity is crucial. Without a collective identity, there are no opposing 'sides'; there is no conflict. The first part of this article identified the problem of opposing, competitive identities; the idea that the

enactment of one identity is perceived as directly diminishing the status of the other. It was also established that, in line with Barry's (2003) ideas, the perceived link between political and cultural power is such that a blow to one is experienced also as a blow to the other. In order to address this problem, most of the peace-making attempts in Northern Ireland (and indeed the Good Friday Agreement) placed a focus on consociationalism. At a political level, precisely balanced power sharing agreements were instituted. At a cultural level, various traditional 'rights' were guaranteed. The issue with consociationalism, however, as pointed out by Wilford and Wilson (2001), is that it is premised upon the divisions it aims to resolve: it assumes that identities are primordial and exclusive rather than malleable and relational. Shirlow and Murtagh (2004) acknowledge in particular the role the Good Friday Agreement in legitimising ethno-sectarian competition under the banner of benign 'traditions.' They concur with Aughey (2005) in condemning the agreement for failing to challenge the "comforting illusions about themselves that each ethno-sectarian bloc clings to with moral indignation." This same approach of 'managing' rather than 'resolving' inter-community tensions is evidenced in the policy of interface walls, discussed earlier.

Cross-Cutting Cleavages

Instead of accepting the idea, that Catholics and Protestants are destined to conflict, an approach is advocated which recognises both that individuals have more than one dimension to their identity, and that identities are socially constructed, and can therefore be socially reconstructed and changed. In order to keep antagonistic agencies at bay, one must de-emphasise the social significance that has been placed upon national and religious identities.

'Cross-cutting cleavages,' or dimensions of identity with which members of opposing national or ethnic identity groups may also identify, have often been to be related to peace in heterogeneous societies where conflict or social division might have otherwise been expected to occur. For example, Dunning and Harrison (2010), argue that the

informal institution of 'cousinage' in Mali helps to explain the weak association between ethnicity and individual vote choice. Similarly, Lehmann (2009) cites cross-cutting cleavages as an explanation for the now peaceful co-existence of Poles and Ukrainians in rural southeast Poland. In Northern Ireland, cross cutting cleavages would seek to emphasise identities such as professional ones, in order to give a sense of belonging to individuals which is not detrimental to peace. For example, through the establishment of cross-community professional and cultural groups and the establishment in schools of cross-community bridges. The main advantage of cross-cutting ties is that they help to 're-humanise' the national 'other,'; 'Catholics' or 'Protestants' would be seen not just in terms of these labels but also as fellow-workers, fathers, sisters, musicians, artists, football fans, etc. Seeing 'the other' in this way helps to rebuild the moral norms against violence and aggression that conflict and the resort to history and rhetoric (and especially 'national myths') tend to erode. It helps to reduce antagonistic agency by blurring the lines between the 'two sides.' Again, without 'agents' who see themselves as a collective group with important common interests, there can be no conflict.

Re-channelling of Oppositional Energies

Secondly, in reference to antagonistic agencies, it is important to note the role that re-channelling has played. Only to the extent that antagonistic agencies cannot be immediately dissolved or sufficiently weakened, it is important to ensure that disagreements between the two groups are not resolved through recourse to violence. To a large extent, the northern Irish peace process did provide a viable alternative to violent 'conversation' in that it established inclusive political institutions. The political institutional arrangements were designed such that as large a section as possible felt intimately connected with the direction of the state. This can be seen in the extremely high number of MLA's (108) that are elected to parliament. Likewise, the main sectarian actors were invited to take leading roles in the life of the new parliament, offering them a way of ceasing violence without indicating to their followers that they had

somehow 'given up' on their cause. Again, however, while this may have been an important part of the peace process in Northern Ireland, the downsides of this approach still blight Northern Irish society: In a polity where all efforts are focussed on appeasing factions which may possibly engage in armed conflict, the larger, more moderate section of society is left voiceless, and the exclusive identities of 'catholic' and 'protestant' are reinforced. As Shirlow and Murtagh (2004) point out, for political actors the capacity to win political support has been based upon delivering a singular narrative of victimhood and exclusion.

Town Planning

Of course, the spatial segregation of Protestants and Catholics has its roots in historical developments that started long before 'The Troubles' occurred. And surely, most Northern Irish towns developed in a process of hundreds or even thousands of years, and this process cannot be changed overnight. But nevertheless, the concept of neutral spaces leads to some possible actions that could have been implemented to weaken the threats of the spatial separation of the two parties. One has to consider that Northern Ireland is not and has never been a static society. Towns and villages are constantly changing due to demographic shifts, economic development, or (sub-)urbanisation (Jarman, 2005, p. 11). For example, former Protestant areas became more mixed "as Protestants have moved out [...] and Catholics have moved in" (Jarman, 2005, p. 12). Processes like these imply the possibility of manipulating them in order to avoid spaces of violence.

Shared Spaces

As has been noted, the presence of 'interface walls' did not manage to prevent violence but helped to legitimise the use of violence in these areas. Murtagh and Shirlow (2004, p. 5) argue "the disparate ideological and cultural boundaries between the two communities are maintained

by a lack of interaction across the 'interfaces' that physically replicate these discursive edges." Therefore, the goal of town planning efforts must be to take down the interface walls and to create shared spaces that are accessible to both Protestants and Catholics. Following the Contact Hypothesis of Gordon W. Allport (1954), peaceful contact will help to reduce prejudices and stereotyping between the rival groups and thus lead to integration instead of separation. Examples for such shared spaces are sports fields, shopping centres and community centres. Also, the idea of creating open spaces as public spaces such as recreational areas has received increasing support in recent years. Among other advantages, the social function of "promoting social encounters, equality and social integration" (Maruani and Cohen, 2007, p. 2) has been emphasised (see also Bomans et al., 2010, p. 198).

Whereas the "culturally blind" (Murtagh, 2003, p. 169) policies of the UK government since the imposition of the Direct Rule in 1972 even increased ethnic fracturing, town planning efforts were for the first time considered in conflict resolution through the Sunningdale Agreement. Article 2(i) of the agreement was an attempt to "promote residential integration where possible, whilst at the same time recognising the desire of some people and communities to live apart" (Bomans et al., 2010, p. 181). The breaking down of contact barriers alone could not fully resolve the antagonistic agencies, issues of resource distribution must also be considered.

Furthermore, even in recent years violence occurred in the newly formed public spaces. Jarman lists "emergence of interface issues in the suburbs [of Belfast]; violence in parks […]; segregation of shared spaces, such as town centres and shopping areas; and violence related to schools" (Jarman, 2005, p. 10). It seems complicated to maintain these shared spaces and mutually accessible resources, and new violence could lead to the withdrawal of the members of one community from this places. Pragmatic suggestions to deal with these problems would be to guarantee the neutrality of the spaces through a legitimised police or to strengthen for example the local identity of a town or village that is shared by both Catholics and Protestants.

Denaturalisation and Reframing

This subsection will consider the ways in which the motives for violence outlined earlier could be eliminated or replaced. What is especially important in this part is to consider material as well as ideological factors that facilitate the emergence of violent motives. Due to the limited scope of this article, the focus here will be on examples how to resolve certain motives for conflict, especially on the nationalist side, the general principles of which could then be applied to Unionists' social constructs as well.

The neo-pragmatist approach to the use of knowledge is unique in the way that it sees ideological concepts such as social constructs not as rigid points but as something that can be changed. The notion in the Catholic community that violence and rebellion are effective ways for change and opportunities to earn prestige for oneself and one's community mentioned earlier in this article could thus have been tackled by following the three steps to denaturalise social constructs:

1) By showing how some constructs serve the past but not the present.

2) By showing how they serve only a small minority that does not have the power in our democracy to sustain them if only the majority can be shown how much false consciousness a certain construct is.

3) By showing how these social constructs are impractical in general human security.

Application of Steps

These steps could have been carried out in the contexts of forums, lectures or seminars with local figures of authority, religious leaders and teachers. It is important to remember that one cannot force one's idea of

peace onto the people, but that it is preferable to provide them with the necessary tools to find solutions for themselves. Thus, the first step in this process would have entailed convincing people that while the violence during the Irish Risings of 1798 and 1916 may have been useful in bringing about Irish independence, there now are more effective means to achieving this; namely democratic discourse and participation in government. The second step could have been accomplished by showing that this social construct is only used by paramilitary organisations such as the IRA in order to recruit new members and does not actually contribute to overall well-being. Finally, it should not have been hard considering the deaths that occurred in the Northern Irish Conflict and the relatively small progress that was made resulting from these, that this social construct is impractical and should be abandoned.

Denaturalisation of such unnecessary and even dangerous social constructs would have made the reframing of certain other social issues much easier. Here, investigation will focus on an example of how this could have been done by considering one of the biggest factors that give rise to violence, which has been mentioned at several points in this article: the dissatisfaction with, and lack of legitimacy of, the RUC in the Nationalist Community. It is especially important that both sides can trust the police force to represent their interests and to be without bias against any particular group.

First of all, the physical hindrances for Catholics to join the police force could have been removed through the introduction of quotas for Catholic membership much earlier than they actually were. Secondly, and more importantly, social constructs and other ideological factors preventing Catholics from joining the RUC should have been seen not as rigid facts that one had to work around but rather, as further facts that could be changed. This could not be achieved by a name change from "Royal Ulster Constabulary" to "Northern Ireland Police Service" as was done in 2001 (Mulholland, 2002, p. 146). For example, it would have been of crucial importance to denaturalise the stigma present in the Catholic community associated with joining the RUC: Nationalists who voluntarily joined the police force were often seen as traitors in their communities. Only understanding of the neopragmatic approach to the usage of

knowledge in conflict prevention can help achieve the denaturalisation of this construct. In seminars, lectures and other academic materials, this issue could have been reframed by portraying joining the police force not as a betrayal but as a legal and more effective opportunity to protect one's own community, and thus to effect a "change from within" through involvement in the police force. Success in this reframing would have had the further consequence of deterring Catholics from joining paramilitary organisations such as the PIRA. Thus it is evident that a neopragmatic approach to the use of knowledge, had it been employed in tackling motives for violence in Northern Ireland, would have contributed greatly to doing away with unnecessary social constructs.

By applying the use of pragmatic knowledge, one may come to an understanding of how indeed the supposed material obstacles and hindrances to violence could have prevented the conflict or at least aided its cessation earlier.

Horizontal Cleavages

It is necessary to analyse the existence of horizontal cleavages in perpetuating the conflict. Cooperation along lines of similar identity allows for the pooling of resources, both material and ideational that may, in turn, aid the process of ending the conflict. In the case of Northern Ireland, having one nationalist organisation advocating peace talks while the other was fundamentally determined to pursue armed conflict created a situation where meaningful and lasting peace could not be broached. In this regard, both the moderate SDLP and IRA/Sinn Fein held fundamentally polarised views of how to tackle the material opposition of the British Army. Nonetheless, both groups agreed on a united Ireland, both represented elements of the Nationalist community, yet both championed and fostered a vision of the other as an element of the 'enemy'. The SDLP was relentless in its condemnation of IRA actions…which prompted Sinn Fein/IRA to further castigate the SDLP. Cooperation along similar ethnic lines depends on the existence of shared understanding of war and peace in general. This was, in Northern

Ireland, non-existent for the duration of 'The Troubles'. With both organisations alienating the other, control of the conflict became more or less impossible and the support base for both organisations continued to fracture as the conflict continued. Both the IRA and SDLP failed to recognise the existence of shared beliefs and the substantial ideological overlap and chose instead to highlight the differences between them.

The Good Friday Agreement of 1998 occurred following the Provisional IRA ceasefire of 1994. The commencement of a period in Irish society where all violent elements saw violence as ultimately pointless did not come about unaided. Indeed, as Wichet (1991) argues the talks between Gerry Adams of Sinn Fein/IRA and John Hume of the SDLP in 1988 proved paramount in realising the 1994 ceasefire. Such talks were the first of their kind and the period of brief cooperation was incredibly successful. The question must be asked, however: why, if the SDLP were in a position, to bring Sinn Fein into a more moderate position did Northern Ireland have to wait until 1988 for this to happen? Perhaps, had both elements of the Nationalist movement been less concerned about the success of their own organisation and more involved with a lasting peace the violence could have been ended much earlier than it was.

A second element that must be examined retrospectively is the role of Irish culture in fuelling the violence. Throughout the 1960s, '70s and '80s Ireland was arguably the most Catholic and culturally conservative state in Europe. Indeed the Catholic Church was given a special position in the role of Irish life in the Constitution of Ireland. Its influence during 'The Troubles' cannot be overstated. While, as already mentioned, there was overarching support for a united Ireland in the Irish Republic; the Church was strongly reluctant to encompass the Protestant minority, which would make up almost 20% of the reunified state.

John Hume and the moderate SDLP argued that the two cultures of Northern Ireland needed to be recognised and reconciled. The PIRA, however, held Unionism as an artificial concept and one which would disappear with British presence" (Wichet, 1991, p. 198). As Irish culture had a hearty influence on the actions of the paramilitary organisation, it is plausible that the culture of Catholic conservatism in the Irish Republic

influenced and fuelled the xenophobic outlook of the PIRA, which was incompatible with peace. Had the Irish state encouraged and fostered a culture of tolerance and acceptance perhaps the PIRA would have altered its radical conception of Unionism and thus bring all parties concerned closer to peace.

CONCLUSION

Now, upon analysing the antagonistic agents, their motives for violence, and the past failures to prevent conflict in Northern Ireland, this paper concludes that a pragmatic approach to the use of knowledge could have disrupted the conflict in Northern Ireland and would have contributed to all parties having a more measured and objective understanding of why violence was used, and why peaceful discourse was better than violent discourse in both actualising goals.

Knowledge of material and especially social or ideological truths about what caused conflict in Northern Ireland could have prevented further conflict if used pragmatically, as this would have enabled peace researchers to find effective ways to eliminate the causes of conflict through both social engineering and the effective and appropriate use of material resources.

In the attempts to end violence that were made after 1969, actors especially failed to acknowledge some socially constructed truths and thus failed to use these pragmatically to prevent further conflict. This limited them to purely material tools for peace-making which in some cases only augmented violence and sectarianism in Northern Ireland.

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Classism and Other Failures of the Irish Prison System: An Abolitionist Perspective

MICHAEL MULLAN

The Irish prison system is in a state of crisis as evidenced by chronic overcrowding, budgetary cuts (Delaney, 2011), high recidivism rates, endemic fear of crime, poor prisoner conditions, and, in particular, accusations of discrimination as elements of the crisis (Sim, 1994, pp. 275-276). Yet the existence of prisons remains largely unquestioned (Cavadino and Dignan, 2007, p. 75). This article, while relying on an interdisciplinary approach of critical perspectives on law, sociology, penology and criminology, uses an abolitionist perspective to determine whether prison is a viable solution in dealing with offenders

of the criminal law in the context of these failures, especially in terms of its arguable classist nature. More particularly, relative abolitionism seeks the abolition of prison for the majority of prisoners that pose no known physical danger to the public, while acknowledging the need to physically confine a minority of dangerous offenders but not in a prison-like system. The need to abolish prisons resides not only in its clear failure to reduce offending, but also in the proposed classist nature of the Irish prison system, which means the majority of prisoners are likely to come from poor socio-economic backgrounds.

The article asks; what purpose does prison supposedly serve, whether this is a valid purpose, what its impacts are, and whether it actually achieves that goal, and how prison persists if it does not achieve its aims (Scull, 1977, p. 4). Finally, the article considers whether partial abolitionism is a laudable and practical solution.

CRITICAL PERSPECTIVES ON LAW

This article is rooted in the critical perspectives on law (hereinafter 'CPL') standpoint. CPL invites us to critically assess taken for granted institutions in the legal environment from a theoretical and empirical/effectual standpoint that have thus far have remained largely unquestioned (Kelman, 1987, p. 9). One such institution that is physically and socially engrained in modern society as self-serving, self-perpetuating and self-evident is the prison. A key foundation of CPL is the lack of free will which many legal foundations rely upon, particularly the criminal law and the use of imprisonment (Kelman, 1987, p. 9).

This article looks at how the socio-economic backgrounds of criminals play a major role in why those of poorer socio-economic demographics in Ireland are more likely to be incarcerated. In the tradition of the CPL scholarship, a holistic radical overhaul of the system is proposed in the form of abolitionism, rather than a tinkering of the use of and treatment in prison within the current system.

THE THEORETICAL JUSTIFICATIONS FOR AND OBJECTIVES OF PRISON

Retribution

Much legal and philosophical scholarship has been undertaken on the state's power to punish and imprison (Garland and Young, 1983, p. 11). The author agrees with the consensus amongst the majority of academics who agree that, to at least some degree, the state has the power to punish transgressors of the criminal law. However, from a CPL lens, the theoretical justifications for prisons and punishment under the criminal law (and the validity of these objectives) need to be reviewed before critically evaluating their effectiveness.

According to traditional legal thinkers, social contract theory is the theoretical basis for the criminal law itself (Cavadino and Dignan, 2007, p. 45), and retributivism the key moral justification for administering punishment (Hart, 1960, p. 21; Zedner, 2002, pp. 344-345). When an offender breaks the criminal law, he has unfairly gained an illegitimate advantage over the remaining law-abiding citizens by breaking the social contract (Cavadino and Dignan, 2007, p. 45). However, this "theory only applies if our society is a just one in which all citizens are genuinely equal. Otherwise there is no equilibrium to restore" (Cavadino and Dignan, 2007, pp. 45-46).

Criminal law infractions, as opposed to civil law breaches, can be differentiated based upon the 'moralness' supposedly associated with criminal law offences. For example, clear moral breaches of physical harm are generally universally seen as warranting the force of the criminal law, under most circumstances (Hall, Winlow and Andcrum, 2008, p. 142). However, beyond these core inherently immoral and criminal acts, it has been argued that the criminal law has become a mechanism whereby the norms and morals of one particular group in society are being imposed on another (Hall, Winlow and Andcrum, 2008, p. 142).

Different theories have been developed to provide justifications, and act as the goals for such punishment. While there are many purposes

that are interrelated (O'Mahony, 2002, p. 13) and muddled (Sommer, 1976, p. 17), Hart's belief on the paramount nature of the grand justification of retributivism has emerged as the primary justification. However, varied justifications for prison expressed by its proponents and administrators can be divided into two main rationales – reductivism and retributivism. The prison system acts to reduce crime in some way and/or to give offenders their just desserts for gaining an illegitimate advantage by breaking the rules of the game. The commendability of prison's retributivist purpose is less clear-cut than reductivism. Beyond the inherent gut-feeling of retaliation that a criminal violation 'deserves' to be punished, a sounder justification for retributive punishment lies in the fact that the morality of the wrong must be punished as a matter of justice (Kant, referred to by Brooks, 2003, p. 206; Hart, 2008, pp. 4-5). However, punishment need not take the form of prison (Sommer, 1976, p. 45).

Reductivism

The other expressed justification for punishment and prison is more practically beneficial to society. Reductivism, if achieved, does serve a valid purpose, and benefits society if deviant and harmful behaviour (which is consensually construed as criminal in nature) is discouraged. Reductivism, with its roots in utilitarianism (Brown, 2012, p. 86), can be subdivided by the manner in which prison seeks to reduce and control crime - deterrence and reform (Cavadino and Dignan, 2007, p. 37). Prison purports to provide deterrence for that particular offender (Dodge, 1979, p. 8) and other members of society by making it less attractive to commit crimes in the future (Cavadino and Dignan, 2007, p. 38). A reformist approach can reduce the incidence of crime by reforming the individual prisoner into a law-abiding citizen (Dodge, 1979, p. 8). Crime can also be reduced through the physical incapacitation that prison provides, where the offender is deprived of the opportunity to commit crime, and thus protects society (Cavadino and Dignan, 2007, p. 40). Additionally, prison can be seen as a symbolic expression, denouncing and condemning

breaches of society's moral standards (O'Mahony, 2002, p. 3). But again, this can be perceived as coming from a reductivist background, given that such condemnation seeks to reaffirm and maintain such standards (Cavadino and Dignan, 2007, p. 47).

Initially during the inception of the modern prison, reform and repentance were the primary motivations (Dodge, 1979, p. 4). Prison, in its current form, falls excessively on the side of retribution, even though the language used by politicians is framed in reductivist terms.

On balance, the author agrees with the consensus of the legal theorists that punishment can be lawful and moral under certain circumstances, and so the question of distribution of punishment becomes vital (Hart, 2008). Given that the state has the power to punish and imprison, to what extent can it do so? Becarria believed that the answer lies again in the social contract; citizens of a state would not allow a state to punish excessively, and so proportionality is a requirement for legitimacy (Cavadino and Dignan, 2007, p. 51). The excessive (O'Mahony, 1998, p. 52) and discriminatory distribution of punishment through prison is now placing the prison, and by extension, the rule of law under question (Garland and Young, 1983, p. 140).

ASSESSMENT OF PRISON

Failure to Achieve its Own Goals

Research shows "the prison does not have a defence, the prison is a fiasco in terms of its own purposes" (Mathiesen, 2005, p. 141). While it is difficult to assess the success of prison in terms of retribution, it seems that prison in Ireland operates in an overly retaliatory and excessive manner (Taylor and Taylor, 1968, p. 29; Sommer, 1976, p. 194). In relation to prison's other key objective, recidivist studies have shown that prison manifestly fails to reduce crime. In 2013, 62.3% of prisoners reoffended within three years (IPS, 2013, p. 9). The ineffectiveness of general deterrence and reform is reflected in the fact that prison numbers

since 1970s have increased relatively consistently, and yet crime levels have not increased to the same degree (O'Sullivan and O'Donnell, 2003, pp. 45-46; O'Sullivan and O'Donnell, 2001, p. 2). Not only does prison fail to reduce crime, prison itself can actually be criminogenic as a result of processes such as labelling (Shelden, and Brown, 2000, p. 58; Logan, 2008, pp. 10-11; Clear, 1996, p. 5; Sommer, 1976, p. 45; Cayle, p. 1988, p. 1). A key reasons its failure to reduce crime and "reform most prisoners (is) because we fail to deal with the systemic social and economic causes and inequities which contribute to criminality" (Logan, 2008, p. 237; IPRT, 2012, p. 12; National Crime Council, 2002, p. 30). At the crux of the argument in this article is that prison is not only a symptom of poverty, but a driver of it.

Classism

Not only does prison fail to meet its own objectives, it has separate negative effects in by operating in a classist manner (Logan, 2008, p. 237).

How Classism Operates

1. The drafting of the criminal law can criminalise the lifestyle of those from poor socio-economic backgrounds (IPRT, 2012, p. 11; Gustafson, 2009, p. 714). Cavadino and Dignan argue that the legislature's bias (Cavadino and Dignan, 2007, pp. 68 and 73) has a tendency to leave the interests of the powerless unaccounted for, as evident in the criminalisation of begging (IPRT, 2012, p. 11), drugs, prostitution and other offences such as drunk and disorderly (Kelman, 1987, p. 97). Many of these offending behaviours can be seen, from the perspective of offenders for such offences (the majority of whom are of poor socio-economic background) as alternative sense-making tools (as opposed to the mainstream tool of consumption) or as attempts to make a living in order to consume (as opposed to legitimate sources of income) (Hall, Winlow and Andcrum, 2008, pp. 11, 13, 17 and 34). From the perspective

of the public, they can be perceived as "annoyance" crimes, albeit framed in a 'protectionist' manner (Ellickson, 1996, p. 1181).

2. The implementation of criminal law also has a disproportionate effect on the poorer classes. Discretionary selective police enforcement of the law in working-class neighbourhoods (Mulcahy and O'Mahony, 2005, p. 30; Shelden, and Brown, 2000, p. 59), and judicial bias can lead to a higher likelihood that citizens from poor socio-economic backgrounds will get arrested, convicted and receive harsher sentences (Bacik, 1998, pp. 19 and 21; Shelden, and Brown, 2000, p. 58; Neitz, 2013, p. 148). Discrepancies emerge in the prosecution of 'white collar' fraud criminals compared to other property related crimes (IPRT, 2012, p. 14; Department of Justice and Law Reform, 2010, p. 36; O'Donnell, 1997, p. 33). Similarly, up until very recently the operation of the courts system in relation to the imprisonment for the failure to pay debts or court fines clearly had a more onerous effect on the poor who are less likely to be able to repay despite no differential in terms of behaviour (IPRT, 2012, p. 9; IPS, 2013, p. 21). This discrepancy in the criminal law was, however, recognised in Section 19 of the Fines (Payment and Recovery) Act 2014 that introduces a presumption of community service orders upon failure to pay a fine. Imprisonment should only arise where the Court deems it not possible to make a community service order or a community service order is not complied with. The IPRT do however point to certain failings of the new legislation, in particular its impact on poorer sections of the community. For instance, note that the ability to pay fines via instalments is restricted to fines over a value of €100 despite that some families may struggle to make a lump sum payment of up to €100 (IPRT, 2014).

3. It is submitted that it is more difficult for the poor to refrain from breaking the criminal law, particularly in relation to its protection of private property (Cavadino and Dignan, 2007, p. 47; Healy and others, 2013, pp. 16 and 41). This comes about as a result of the unequal distribution of wealth brought about by "accident of birth" (O'Mahony, 2002, p. 5). The criminal law can perpetuate this inequality by prohibiting 'illegitimate' appropriation of the current holders' property, and by making the "fundamental crime of capitalist society, the expropriation of property" (Taylor and Taylor, 1968). Indeed, property related offences

of theft, robbery, burglary, fraud and property damage made up 20.5% of new committals to Irish prison (IPS, 2013, p. 25). Society's obsession with property, and its inherent value to the being, has reached new heights in the consumerist era (Bauman, 2004, pp. 82 and 116). Such property related offences are an attempt by the 'underclass' (Hall, Winlow and Andcrum, 2008, p. 4; O'Mahony, 1997, p. 61), who are denied access to the social capital (such as education and other support) that would otherwise entitle them access to such consumer goods, to participate in the societal need of consumerism ((Garland and Young, 1983, p. 133; (Hall, Winlow and Andcrum, 2008, pp. 34, 35, and 39). Indeed, Hall et. al., make a fascinating argument that low level criminality has increased as a means to participate as a consumer, which gives all citizens meaning and identities in modern life ((Hall, Winlow and Andcrum, 2008, p. 7). This argument is a departure from the traditional Marxist criminological hypothesis where most instances of crime are perceived as class battles and expressions of the proletariat's frustration with the system (Taylor and Taylor, 1968). The former is more applicable to modern Irish society. Given that the essence of one's being and identity is now expressed through conspicuous consumption of designer branded goods, the innately unequal opportunities and distribution of wealth based on accident of birth allows the upper-half of society (who are productive and gain income to consume) to engage with society, leaving the underclass without the means of becoming fulfilled (Reza Barmaki, 2009, p. 261); except through crime (Hall, Winlow and Andcrum, 2008, pp. 7, 10, and 34). Most crimes are now committed out of economic necessity– necessary in consumer culture does not mean to physically survive, but to survive socially in a world of conspicuous consumption; or as a form of escapism from the daily reminders of 'losing' in such a competitive world ((Hall, Winlow and Andcrum, 2008, pp. 7, 11, 13 and 17).

Evidence of Classism

Irish statistical data supports the assertion that the criminal law, criminal justice system and prison system disproportionately impacts

and criminalises the poor. O'Mahony calls these "undeniable facts" (O'Mahony, 2003). Numerous domestic studies have expressed the disproportionate imprisonment of those from poorer socio-economic backgrounds (O'Mahony, 1998, p. 55; O'Mahony, 1997, p. 39 and 61; Quinlan, 2011, p. 243; O'Donnell, and others, 2007, p. 3); as well as the tendency for prisoners to exhibit characteristics indicative of poverty or deprivation, including low levels of education (Morgan and Kett, 2003, p. 45; O'Mahony 1997, p. 57; Seymour and Costello, 2005, p. 52), unemployment (O'Mahony, 1998, p. 55; O'Donnell and others, 2008, p. 130; Mc Hugh, 2013, p. 6), addiction problems (Carr, and others 1980, p. 459; O'Mahony 1997, chapter 5), mental health (Kennedy, and others, 2004, p. 17; O'Mahony, 2002, 5; Carmody and McEvoy, 1996, p. 20), and homelessness (Hickey, 2002).

The geographic dispersion of prisoners' addresses in 2011 (IPS, 2011, p. 20) is indicative of this trend when compared to the most recent Census in 2011. The notoriety of inner-city communities in Dublin and Limerick as criminogenic areas is backed up by these statistics (McNamara, and others, 2011, p. 251). Dublin accounted for 27.7% of Ireland's total population in the 2011 Census, and yet almost a third (32.4%) of committals to prison gave Dublin as their residence. Again, Limerick accounted for 4.2% of the Irish population, but 7% of Irish prisoners were from Limerick. Incorporating unemployment rates into this analysis is also useful. Limerick and Dublin were designated as having the most unemployment 'blackspots' in 2011(CSO 2012, p. 19), with Limerick City having the highest unemployment rate in Ireland at 28.6% (CSO, 2012, p. 17). When applying the same analysis to other groups in prison, foreign nationals (CSO, 2012, p. 25; IPS, 211, p. 20) and Irish travellers (Drummond and Quirke, 2010, p. 134) are overrepresented in prison, again related to their unemployed and poverty status.

Why Classism Exists

While a conspiracy against the poor is not being alleged, a tacit exploitation of the poor for political and power purposes exists in

Ireland. Prison, its architecture and its raw materials (the poor) act as physical representations and proof of political promises to find a solution to the endemic fear of crime and to criminal sections of the population ((Mathiesen, 2005, p. 143). Prison is being used not only to gain votes (Scholosser, 1998, pp. 4-5), but on a more subversive level is dividing society in two. The hallowing out of the middle class leaves the privileged upper classes on one side (the interests of whom the politicians represent) and the poor on the other. The criminal law and prison (Cavadino and Dignan, 2007, p. 74) play key roles in the process of making the lines between 'us' and 'them' ((Shelden, and Brown, 2000, p. 49), the 'useful' and 'useless' (Spitzer, 1975, p. 647), more pronounced. The underclass are economically redundant in a globally competitive Irish economy which is delineated along the lines of highly skilled jobs and low end service jobs (Bauman, 2004, p. 83; Mauer, 2005, p. 609). The former traditional jobs of the working class in lowly skilled manufacturing have been eradicated and off-shored to cheaper locations (Hall, Winlow and Andcrum, 2008, pp. 4 and 23).The underclass, who are largely unemployed, are a surplus population in capitalist society, and certain portions can pose a threat to economic growth (Logan, 2008, pp. 38-39; Zedner, 2009, p. 87). McMahon and Roberts note the ongoing transition shift from a welfare to a criminal justice state characterised by inequality (2008, p. 1). Prison and the criminal justice system (hereinafter 'CJS') serve to deal with the volatile segments of society (Bauman, 2004, p. 116; (Shelden, and Brown, 2000, p. 58; O'Mahony, 2002, p. 620), whom Sptizer called the social dynamite (1975, p. 646). By predominantly criminalising young men [almost half, of the total prison population are males under 30 (IPS, 2013, p. 20)] from poor socio-economic backgrounds, social inequality is exacerbated with the poor in general being tainted with the label of criminality and treated as a homogenous group (Bauman, 2004, p. 82). It is arguable that certain aspects of the criminal justice, judicial and political processes discussed in this article culminate in the criminalisation of poverty (Bauman, 2004, p. 82; Bauman, 1997, p. 44).

While the complex intricacies of the direct links between poverty, criminalisation and ways of life should not be underplayed and a more nuanced multitude of factors are at play, it nonetheless is an argument

with some weight. Logan describes the phenomena as the "social apartheid" of the poor (2008, p. 98).

ABOLITIONISM

Having considered the appropriateness and morality of the objectives of prison, as well as its intended, actual and other effects, it is apparent that prison is an untenable option. It is an inappropriate and ineffective tool to deal with, first, the surplus populations (the poor), and secondly, offenders who not only fail to become more contributing and law-abiding citizens, but whose criminal tendencies are often exacerbated in prison. We should bear in mind here the other unintended collateral consequences to the wider community (Breen, 2010, p. 47).

Any effective alternative to prison will inevitably involve a number of key fundamental changes in different sectors of society, not limited to the CJS (Davis, 2003, p. 111). A complete re-appraisal of how we deal with violators of the criminal law and the non-productive in society is needed (Davis, 2003, p. 113). However, the most immediate concern, particularly for the poor who are most directly impacted, is the removal of prison from the social landscape (Davis, 2003, pp. 108-109). The abolitionist perspective is useful in attempting to envisage and implement such sweeping changes throughout society. It seeks to address the underlying roots of crime, without perpetuating the divide and power imbalance by oppressing the underclass through the use of imprisonment.

The abolitionist perspective should be set apart from the prison reform and decarceration movements. It involves a more radical and systemic overhaul of society (Davis, 2003, p. 9; Logan, 2008, p. 299). The failures of the latter movements have removed legitimacy from possible open discussion on the merits of an abolitionist solution (Martinson, 1974, p. 25; Davis, 2003, p. 100). For example, the net-widening effect of certain reformist alternative programs has not only expanded the carceral archipelago into society (Foucault, 1977, p. 301), but actually diverted offenders into the CJS and prison (Scull, 1977, p. 179).

Proposals to close prisons are likely to meet widespread public and

institutional defiance on foot of the failures of the previous movements; a misunderstanding of what abolitionism entails, and certain vested interests (the Irish version of the Prison-Industrial Complex, involving primarily politicians and the mass media who use the fear of crime and criminals to gain votes and consumers (The National Crime Council, 2009, p. 21)). Scull describes the likely reaction to a proposal of abolitionism from such actors and the general public - "(t)o allow criminals violate the law, with something approaching impunity, significantly weakens the incentives to conform while simultaneously provoking public outrage. It is likely to trigger vigilante responses, thus threatening the state's monopoly of legal violence… undermin(ing) the legitimacy of a social and political order" (Scull, 1977, p. 180). This is an example of how critics of the abolitionist movement often misinterpret what penal abolitionism involves; relative abolitionism is probably a more apt and informative term. Relative abolitionism still involves the destruction of prison and any prison-like alternatives, but does concede that "incapacitation of some kind or another will still need to be reserved for society's most violent" criminals (Logan, 2008, p. 239). This small minority of criminals who actually pose a danger to society, such as those sentenced for assaults, homicides and sexual crimes should still be restrained. However, the relative abolitionist solution does allow for the reintegration into society "for a substantial percentage of the imprisoned population" (Davis, 1994, p. 430).

The physical institutions of prison should be shut down. Any prisoner sentenced for dangerous offences, those who will actually pose a threat to society, must be relocated to "something other than cages or fortress(es)", such as entirely new incapacitative homes or communal compounds (Logan, 2008, p. 239). These offenders should be afforded the same human rights as other citizens so far as they are not required to be forfeited in order to protect society. They should also be assumed to be capable of changing their ways (Kelman, 1987, p. 88) and being capable of being contributing members of society in the future. In this regard, they should receive treatment (anger management, addiction, counselling etc) that tackles the causes of the crime for which the offender was prosecuted (Logan, 2008, pp. 89 and 93). The determination in regards to their liberty

and perceived threat to society should be re-evaluated periodically by a panel of jurors (Sommer, 1976, p. 16).

An amnesty should be not only granted to former prisoners to allow them truly integrate into society and employment without permanent labelling, but also to current prisoners sentenced for non-dangerous crimes (IPRT, 2012, p. 20). This would account for 65% of Ireland's prison population (IPS, 2013, p. 21). They should be de-institutionalised as a matter of priority and re-immersed into their communities. The savings from the current cost of €165,5396,524 housing of these 2,531 prisoners [at €65,404 per annum (IPS, 2013, p. 2)], should be invested in a variety of programs of which offenders must avail of. These programs should address the underlying issues of criminality and poverty such as education, training, addiction etc. They would operate alongside the Community Service Order hours, which would also be compulsory and increasing in length relative to severity of punishment in order to provide some general deterrent value and retribution on the part of society (Walsh and Sexton, 1999, p. 98).

In order to bring about a less discriminatory and classist society, abolitionists argue that other societal and criminal law changes will be needed in conjunction to penal abolitionism, such as the challenges posed by the decline of the welfare state (Wilkinson, 2008) as well as the decriminalisation of drugs and prostitution - which are two examples of a quasi-criminalisation of the lifestyle of the underclass (Davis, 2003, pp. 108-110; Parenti, 1999, p. 242). Furthermore, by reserving prison solely for dangerous prisoners, the poor will be less likely to violate the criminal law both in the future (given the criminogenic effect of prison in many cases), and more importantly in the first instance due to incarceration for drugs and non-violent offences.

CONCLUSION

Relative penal abolitionism, and the concurrent societal changes, can provide a viable solution to how we deal with those who violate the criminal law according to whether they are in need of help, or should

be incapacitated for the safety of others. It also provides an avenue for finding less punitive and more appropriate ways of dealing with those who fail to 'make it' in consumer society as evidenced by wealth and consumption. Abolitionism has been labelled a utopian notion (Herbert, 2008), but surely a utopian society is one worth discussing and striving for? The public are acutely aware of some of the failings of prison discussed in this article such as unsatisfactory conditions and its inability to reduce crime (Brown, 2008, p. 61). Yet, institutional vested interests in maintaining the prison myth mean that the public are unwilling to confront some of the deeper social inequality issues at the heart of the prison system, and continue to demand more punitive sanctions to crime without appreciating the socio-economic causes of it, nor indeed its criminogenic and other negative effects. Abolitionism as an academic discourse may not immediately be enforceable in Irish society, but certain trends internationally and domestically suggest that public and political appetite for decarceration in this regard is increasing. However, decarceration will be insufficient to remove the classist effects of the CJS; relative penal abolitionist is a preferential approach.

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Courting the Dragon: Domestic Perceptions of Ireland's Expanding Relationship With China

DANIEL McCARRON

In 2013 a Chinese translation of James Joyce's infamous work 'Finnegans Wake' reached number two on Shanghai's bestseller list, second only to a biography of Deng Xiaoping (Kaiman, 2013). Nigh unreadable in its mother tongue 'Finnegans Wake' took eight years to partially translate into mandarin and promptly sold 8,000 copies in its first month (Kaiman, 2013). This literary enthusiasm on the part of the Chinese reflects well on any attempt to discern a meaningful discourse surrounding domestic perceptions of Sino-Irish relations. One would be forgiven for disregarding the chance of any meaningful Sino-Irish

relations due to the sheer discrepancy in size between the two nations. Indeed, the entirety of the Republic of Ireland's 4. 5 million inhabitants could fit comfortably inside a small Chinese city. Yet, when taking a closer look, one quickly realises that the relationship between the two nations has deep cultural, economic, and diplomatic roots. Indeed, Ireland may be emerging as a choice child for China in her relations with the EU. A strong tradition of neutrality, a lack of imperialist baggage and a shared history of colonisation may make Ireland the perfect suitor for the Chinese leadership.

However, debate rages within Ireland about a perceived 'blind eye' being turned to China's human rights abuses in favour of economic benefit. Undoubtedly the perception of Sino-Irish relations is fast becoming a driving force in the struggle to conceive of Ireland's place within the European Union and the international system as a whole. The following is an attempt to delineate the domestic Irish perception of Sino-Irish Relations in the key areas of activity: Business, Education, and Human Rights. In doing so, it will be argued, first, that the expansion of Sino-Irish trade relations is something which successive governments have pursued aggressively and will continue to do so, secondly, that this expansion is being reinforced by a formalised education policy which views Irish higher education as a global brand that can be used to foster further trade relations, and thirdly, that as trade relations with China deepen, so too will concerns over its human rights record. Academic research in this area is only beginning to emerge and as such a wide range of governmental publications, media, and online resources are utilised in order to given an accurate and up to date description of the prevailing domestic perceptions.

SINO-IRISH RELATIONS

The visit of the now Chinese President Xi Jinping to Ireland in 2012 and the more recent visit of the leader of the Communist Party Liu Yunshan in 2014 mark seminal moments in Sino-Irish relations (Irish Department of Foreign Affairs, 2014b). Not only was this visit the sole

European destination for the Chinese President (RTÉ, 2012) it also capped off what has been a veritable stream of high profile visits (Embassy of the People's Republic of China in Ireland, 2014f.). The 35 years of diplomatic relations have become, in the words of the current Chinese ambassador to Ireland Luo Linquan, 'a model of friendly co-existence for countries with differences in size, social systems, and cultural traditions' (Embassy of the People's Republic of China in Ireland, 2014a). Formal diplomatic relations between Ireland and the People's Republic of China began on the 22nd of June 1979 (Embassy of the People's Republic of China in Ireland, 2014f) but in actual fact historical ties with the Chinese empire stretch back as far as Lord MacCartney, the Irish-born Head of the first British Embassy to the Qianlong Emperor of China in 1793 (Cuffe, 2010).

Xi Jinping noted on his most recent visit to Ireland that both nations 'share common aspirations for promoting the national development and well being of their people' (Embassy of the People's Republic of China in Ireland, 2014d). Ireland, like many other European countries, adheres to a 'One-China' policy in its diplomatic ties with China (Embassy of the People's Republic of China in Ireland, 2014b). However, this deferral to a One-China stance goes deeper than mere habitual recognition, with Ireland being an original supporter of China's admission to the UN in 1957.(O'Clery, 2000). Furthermore, Ireland's adoption of a One-China policy explicitly includes recognition that both Taiwan and Tibet are integral parts of China (Irish Embassy in China, 2014b). Despite the increasing Europeanisation of Ireland's foreign policy it continues to structure its China policy around the opportunities, which can be gained from a favourable relationship with the world's rising economic power.

BUSINESS

By far the most prominent perception of Sino-Irish relations in the public zeitgeist, economic trade with China is expanding and growing in importance annually. During the period of opening up and reform, China sent a delegation around the world to see what were called special economic zones in action. The delegation, which included Jiang

Zemin, was most impressed by the Irish Shannon industrial duty-free zone (O'Clery, 2000). The Chinese government subsequently opened four special economic zones in the 1980's, based at least partially on the Shannon Model.

In the aftermath of the 2008 financial crisis, this growth in trade with China is perceived positively and pursued aggressively by the Irish government. Bilateral trade between Ireland and China stood at €8 billion in 2014, with China being Ireland's largest Asian trading partner for the past seven consecutive years and Ireland running a trade surplus in its trade with China for the last five years (Irish Department of Foreign Affairs, 2014b).

Moreover, 1998 visit of the then Taoiseach (Prime Minister) Bertie Ahern to China spawned a document entitled 'The Asia Strategy' (Cuffe, 2010). In 2012, both counties announced the building of a 'Strategic Partnership for Mutually Beneficial Cooperation' (Embassy of the People's Republic of China in Ireland 2014e). Furthermore, a $100m Co-Financed Investment Fund was announced by the Tánaiste (Deputy) Eamon Gilmore in 2014, and can possibly be seen as the maturing fruit of 'The Asia Strategy' implemented fifteen years ago (Irish Department of Foreign Affairs, 2014b). The Fund will seek to establish investment opportunities for Irish and Chinese technology companies with a specific focus on Ireland acting as a 'gateway to the European Market' (Irish Department of Foreign Affairs, 2014b).

This concept of Ireland acting as a gateway for China's trade with the European market is influencing much of the discourse surrounding Sino-Irish relations. McDonnell argues that China sees Ireland as a key partner in Europe and that this perception is a major driving force in the recent growth in importance of Sino-Irish relations (McDonnell, 2014). Indeed many actors within the Irish government see this as an opportunity to benefit from the bilateral trade between the EU and China which already totalled €478 billion in 2013 (Mc Donnell, 2014). With trade between China and Ireland set to grow, the domestic benefits of this business will remain the dominant perception of Sino-Irish relations.

EDUCATION

Ireland hosts more Chinese students than any other EU country on a per capita basis (Embassy of the People's Republic of China in Ireland, 2014a). By 2011 it was noted there was approximately over 10,000 Chinese students studying in Ireland (Embassy of the People's Republic of China in Ireland, 2014f). Major Irish Universities (Trinity College Dublin, University College Dublin, University College Cork) have developed exchange programmes with their Chinese counterparts such as Peking, Qinghua and Fudan (Armstrong and Ning, 2010). The Irish government perceives this exchange of knowledge as being important in increasing the strength of trade and development ties between the two countries. Chinese students who return home after receiving degrees from Irish universities build both ties with Irish businesses operating in Asia but also increase the creditability and reputation of the Irish education brand (Hong, 2010).

The valuing of education as an 'economic and trade commodity' was outlined in the Irish Government's report on 'A decade of the Asia Strategy' (Hong, 2010). This was formalised with the signing of an intergovernmental agreement on the 'Mutual Recognition of Qualifications between China and Ireland' in February 2006 (Hong, 2010). On the 15th of June 2014, Liu Yunshan attended the Foundation Stone Laying Ceremony for the Model Confucius Building in the UCD Confucius Institute for Ireland (CII) (Confucius Institute for Ireland, 2014a). The institute is being co-funded by both nations with the UCD CII being in operation since 2006 (Confucius Institute for Ireland, 2014b). China sees the development of a Global Confucian Network as a means of channelling 'soft power' in an attempt to combat the 'China Threat' thesis by providing a broader education on modern Chinese language, culture, and history (Armstrong and Ning, 2010). This use of cultural diplomacy is not lost on domestic perception as Joe Humphreys notes for the Irish Times that 'In the US there is growing disquiet over China's attempts to exert 'soft power' by claiming a footprint on university campuses'. (2014). Humphreys highlights the closing of two Confucius

Institutes in the US on the grounds of 'academic freedom' and begins to question whether 'Belfield's state-sponsored temple may start to look like an anomaly'(2014). However, the growing unease in the US with the establishment of Confucius Institutes is not mirrored in Ireland. In contrast, Ireland is, if anything, a willing participant in the expansion of the global Confucius Network and the strengthening benefits it brings to Sino-Irish relations.

HUMAN RIGHTS

Despite there being a generally positive perception of Sino-Irish relations domestically, it is increasingly pervaded by a sense of uneasiness in doing business with a country whose human rights record is regularly condemned internationally. Furthermore, the aggressive pursuance of Chinese investment by the government moves Ireland from passive bystander to an actively engaged party who can no longer claim ignorance or neutrality when faced with a human rights record such as China's. Yet from the perspective of Irish human rights groups this is precisely what the government is doing in hope of maintaining a favoured position within the China-EU relationship. Ahead of An Taoiseach Enda Kenny's visit to China in 2012 the Irish wing of Amnesty International joined with the Tibetan Community of Ireland in calling for the 'Irish Government to make human rights a central part of the discourse with the Chinese authorities' (Bohan, 2014).

Amnesty further recognised the importance of the business ties between the two countries but urged Ireland not to 'shy away' from human rights abuses. (Bohan, 2014). Aoife O'Donoghue of 'Human Rights in Ireland' feels that Ireland failed in pressing the human rights issue with the Chinese leadership and instead chose to advance its own strategic position in view of a bid for admission to the Human Rights Council of the United Nations. (O'Donoghue, 2012). With Ireland and China already voting differently on Human Rights issues at the UN, O'Donoghue argues that the opportunity could have been used to highlight the need for states with vetoes, such as China, to take action in cases of on-going human

rights abuses. (2012). This omission of a pressing human rights agenda on the part of the Irish government can be explained at least in part by a growing trend among European countries to defer such controversial issues to European institutions when dealing with China. (Cuffe, 2010). This is part of an attempt to develop a more cohesive and coherent EU foreign policy for dealing with China over issues such as human rights. This approach may be more beneficial in exerting meaningful pressure on the Chinese government while also maintaining amicable trade relations in the wake of economic recession.

CONCLUSION

It is both easy and persuasive to confine Sino-Irish relations to the international relations bin of irrelevance. However, by doing so one also adopts an unduly restrictive view of both Chinese foreign policy and the China-EU relationship. By examining Ireland's perception of this relationship one uncovers subtle manoeuvring on behalf of the government in an attempt to promote Sino-Irish trade relations while also attempting to differentiate itself from an increasingly restrictive European foreign policy towards China. In 2014, the positive view of Sino-Irish relations as being a source of continued investment for Ireland remains the dominant perception. This overwhelmingly positive perception of the relationship is reinforced by an education policy which views, first, the growth of exchange programmes as essential to building stronger trade relations and, secondly, the establishment of Irish Confucius Institutes as an encouraging development in the relationship.

However, one cannot ignore the growing disquiet over an apparent 'blind eye' being turned to China's human rights abuses in return for continued trade and investment. While the human rights concern is being partly addressed on a European level, Ireland cannot in good faith accept the benefits that come from a productive Sino-Irish relationship while also remaining silent on the humanitarian front.

Despite this claim that Ireland is blinded in its relationship with China by economic gain, as long as trade continues to grow and

investment continues to flow, the over whelming perception of Sino-Irish relations will be a positive one.

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Is Interculturalism an Updated Version of Multiculturalism?

CLÍODHNA GOLDEN

The current worldwide issues of ageing populations, ever-increasing levels of migration, declining populations and problems of national security are resulting in the need for the discussion and re-evaluation of models of social and cultural integration; an area of social policy which is now of the utmost importance for modern globalised states and economies, just as important as pressing social policy areas such as educational programmes and elderly care services for some European government officials (Gutenberg, 2013). Multiculturalism has been used as a model of integration by

many countries such as Canada, Britain and Australia but in recent times, it has been said to have failed or to be "in crisis," (Lentin, 2005, p. 380) and many countries are now either trying to rethink and adjust multiculturalism or are turning to new models of integration for a more successful result. It could be argued that this is why interculturalism has become a popular topic of discussion in recent times, years after its first official adoption by Quebec in 1971. However, this article will hold the view that interculturalism is not an updated form of multiculturalism, but rather that interculturalism and multiculturalism are two distinct models of integration that are similar in their mutual focus on cultural plurality but differ in their varying degrees of emphasis on interaction and dialogue between different ethnic groups and in the societal goals they aim to achieve. This paper will contend that interculturalism is not an updated version of multiculturalism, and it will demonstrate this view by exploring how these two models of integration are differentiated using differing definitions of the two models of integration, the contexts in which they arise and interpretations of them; how they are employed as policies in Canada and Quebec; and how they are used in an educational context in countries such as Greece

INTERCULTURALISM AND MULTICULTURALISM: DIFFERENCES AND SIMILARITIES

It has long been debated whether interculturalism is an updated version of multiculturalism, and many commentators and sociologists differ on how to define the differences and similarities between these two models. This is often because the models are used differently in different countries and contexts. Multiculturalism can be seen as an institutional policy which encouraged anti-racism and was borne out of the post-World War II era, when issues of culture and racism became important in politics after the Holocaust (Lentin, 2005, p. 379). It historically developed as a result of an emphasis on culture as a means of achieving a state of "racelessness" (Lentin, 2006). Multiculturalists put an emphasis on cultural differences, which is implied by the prefix "multi". They

also insist on a distinction between the majority and minority cultures (McDonald, 2011, p. 373). Multiculturalism has often been compared to interculturalism, and it has been said that there is very little difference between the two models of integration. However, multiculturalism and interculturalism are indeed two different models of integration, although both models bring about the same thing: they both aim to integrate different cultures and demolish "othering" in modern globalised democracies (Lentin, 2007, p. 394).

One could say that the view that interculturalism is an updated version of multiculturalism derives from the fact that both models are centred on cultural plurality and diversity. The central aim of multiculturalism is to promote and recognise cultural diversity as a means of promoting social cohesion. Interculturalism also aims for this but the stark difference lies in how the model focuses on intercultural interaction and dialogue (Meer and Modood, 2011, pp. 3 - 8); putting a much higher emphasis on a sense of the "whole" or societal cohesion than multiculturalism, which can cause social fragmentation and social stratification due to the emphasis it puts on cultural difference (Malik, 2007; Policy Exchange, 2007, p. 17). Thus interculturalism is not an updated form of multiculturalism due to the fact that its goal as a model of integration is too different to that of multiculturalism. Interculturalism aims to establish a sense of social cohesion and national identity through intercultural dialogue, whereas multiculturalism aims to raise awareness and acceptance of cultural diversity and plurality within society without putting significance on intercultural dialogue.

MULTICULTURALISM AND INTERCULTURALISM IN CANADA AND QUEBEC

The differences and similarities between multiculturalism and interculturalism can be clearly seen in the context of Canada and Quebec. Multiculturalism was officially adopted by the Canadian Federal government, and interculturalism by the government of Quebec ,where the Francophone population favour interculturalism as they want it to

be recognised that Canada consists of two nations: Francophone and Anglophone, and they feel that multiculturalism as a policy undermines this effort and makes them simply one more ethnic group in Canada amongst many others due to its tendency to result in equal social stratification (Bouchard, 2011, p. 464). Québécois Interculturalism puts an emphasis on cross-cultural interactions in order to create a common culture on a national level whereas multiculturalism does not do this to the same degree; although it does encourage interaction and dialogue, it focuses more on the co-existence of different ethnic groups and intercultural interaction is not a defining characteristic of the model, nor is it overtly enforced. Quebec's interculturalism goes far beyond the co-existence of Canada's multiculturalism in that it aims for the creation of a common public culture, defined by the common use of the French language and common values, such as secularism and gender equality (Armony, 2012). Canadian multiculturalism also does not recognise the existence of a majority culture in Canada and believes that diversity is dominant, whereas Quebec interculturalism holds the view that dual majority and minority cultures do exist (Bouchard, 2011, p. 441). It is therefore clear to see that Quebec interculturalism is not an updated version of Canadian multiculturalism, as interculturalism was adopted by Quebec in order to establish a specific and unique goal: the establishment of a cohesive Québécois culture through interaction, an aim much different to that of Canadian multiculturalism, which strives for the recognition and acceptance of a culturally-rich and equal Canada. To say that Quebec interculturalism, being so fundamentally different to Canadian multiculturalism, is just an updated version or a variant, would be incorrect.

MULTICULTURAL AND INTERCULTURAL EDUCATION POLICIES

Many countries employ interculturalism and multiculturalism as educational policies and the differences between these policies clearly outline that interculturalism is not an updated version of

multiculturalism. Multicultural education has historically been used in countries such as Britain, Australia and the United States (Nieto and Bode, 2007). According to Banks (2004, p. 3), it aims to offer equal education opportunities to people of different ethnic groups, thus promoting greater cultural diversity. Intercultural education, on the other hand, has been used in countries such as Germany, Greece and Ireland (Nieto and Bode, 2007) and where intercultural education has been used in these countries, communication is its defining characteristic (Wood, Landry and Bloomfield; 2006; pp. 9 - 32). According to Palaiologou and Faas (2012, p. 580), intercultural education is significantly different to multicultural education in that it aims to achieve a greater sense of the whole; it is much more than the co-existence of different cultures. In particular, it aims for social cohesion, rather than just the focus on what makes diverse cultures different or unique, and their acceptance. Thus, it is clear to see that interculturalism and intercultural education are not updated versions of multiculturalism and multicultural education because although both models are both concerned with cultural plurality, they are too fundamentally different in regards to how they function; the latter aims to achieve a culturally-rich education system where people from all ethnic groups are accepted, whilst the former aims to achieve an education system in which intercultural communication encourages social cohesion and creates a greater sense of the whole.

CONCLUSION

Thus, interculturalism is not an updated version of multiculturalism. Interculturalism and multiculturalism are both models of integration that deal with problems and solutions related to cultural plurality and diversity and this is often why people confuse them and struggle to see a significant difference between them. However, the difference between multiculturalism and interculturalism lies in what they aim to achieve and the way they achieve it. Multiculturalism aims for a culturally-diverse society that enforces equality, and this can be seen in Canada's use of multiculturalism and the use of multicultural education in Britain,

for example. Interculturalism aims for a culturally-diverse society that uses interactions and dialogue to bring different cultures and ethnic groups together in order to form a sense of a "whole" cohesive and conclusive society. This is highlighted by the adoption of interculturalism by the Francophone population in Quebec and the use of intercultural education in countries such as Germany. The difference between interculturalism and multiculturalism can further be seen in the view that multiculturalism is more efficient than interculturalism as a political policy in that it acknowledges a greater sense of individuality and groupings, whereas interculturalism puts an emphasis on the unification of individuals and groups into a whole, where it is quite possible for culture, traditions and languages to become lost (Meer and Modood, 2011, p. 3). If the two models continue to evolve, in a similar way that Canadian multiculturalism has evolved since its adoption as a Canadian policy in 1971 in that it now focuses more importance on the ideas of interaction and cultural exchange (Bouchard, 2011, p. 462), it is possible for either models to become updated versions of each other as they converge together in their likeness. Thus it could be argued that Canadian multiculturalism is slowing turning into an updated version of Quebec interculturalism. However, it is evident that currently, interculturalism is not an updated version of multiculturalism.

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Does Economic Inequality Affect Social Cohesion? Stratification and a Case for the Welfare State

RYAN ALBERTO Ó GIOBÚIN

In recent years, the concept of social cohesion has received much attention both from politicians and social scientists. Politically, structural changes largely in the name of 'globalisation' have posed major challenges to the welfare state in western countries, comprising of "public disenchantment with democratic politics, persistent unemployment as a result of economic restructuring, increase in population, mobility and diversity, and new forms of exclusions in the age of information technology and network society, to name but a few" (Chan et al., 2006, p. 279).

In the social sciences, the role inequalities play in society form a core topic of social research, and when these inequalities are manifested primarily in an economic manner, they can also be analysed on how they impact upon social integration and cohesion, with the placing of economic inequalities high on the sociological agenda largely due to their perceived impact on social cohesion in society. Inequality not only correlates with negative health and decreased life expectancies in society, but also brews political conflict, increases crime rates, and reduces levels of social solidarity (Wilkinson and Pickett, 2009).

First, this article defines the concept of social cohesion and the difficulties in reaching an agreed upon definition appropriate to all contexts. The article then identifies the roles social inequalities play in fostering social solidarity along horizontally stratified lines, leading to a paradoxical situation of social inclusion through social exclusion. The article also investigates the impact intervention mechanisms such as the welfare state have on social cohesion levels. In conclusion, the article argues that the negative correlation between relative economic inequalities and social cohesion can be termed a causal relationship, with increased levels of economic equality not only holding benefits for social cohesion, but also potentially improving the functioning of economies.

DEFINITION

> '*[A] lesson to take from this very limited overview of…social cohesion is that there is no single way of even defining it. Meanings depend on the problems being addressed and who is speaking*'
>
> (Jenson, 1998, p. 17, in Chan et al., 2006, p. 286).

Part of the difficulty in analysing the extent to which economic inequality affects social cohesion can be attributed to the wide variety of definitions given to the term. Social cohesion has, at times, been equated

with solidarity and trust, whilst other interpretations have placed emphasis on notions of social capital, poverty and inclusion (Chan et al., 2006, p. 274). The sociological dialogue on 'social cohesion' can arguably trace its intellectual origins to Durkheim's (1997) interpretation of social cohesion, linked to solidarity and its impact on social integration (Dickes et al., 2010, p. 453). Durkheim's 'The Division of Labor in Society' engaged with the impact increased specialisation of labour had on social cohesion, solidarity and morality, and how this in turn can result in anomie (Paskov and Dewilde, 2012, p. 416).

If one traces the academic roots of the discourse on social cohesion to Durkheim, one must also place emphasis as Durkheim did, on the role of solidarity in the workings of society. Durkheim differentiates between solidarities, specifically organic solidarity and mechanical solidarity (or solidarity by similarities) (Ibid., p. 417). Organic solidarity is fostered by the interdependence of members of society on each other and their realisation that owing to their fates' inter-reliance, it is for their mutual benefit to collaborate progressively with each other. Mechanical solidarity, or solidarity based around similarities and identification with others, is more evident in small-scale societies.

Solidarity has been defined as the "willingness to promote the welfare of other people," differentiating between willingness to help others not only for 'affective' considerations, but also on rational, 'calculative' grounds (Ibid., p. 415). Both affective and calculative solidarity hold many similarities to Durkheim's differentiations of solidarity; the former in that at its basis is identification with others, whilst calculative solidarity holds similarities to organic solidarity in that it arises owing to "enlightened self-interest" (Ibid., p. 417).

Whilst social cohesion has been defined by some as a near equivalent term to solidarity and trust, other definitions have drawn on different aspects of measurement, ranging from social capital, inclusion and poverty (Chan et al., 2006, p. 274). Indeed, Paskov and Dewilde themselves note that solidarity itself does not necessarily equate with and should not be confused with concepts such as social cohesion or social capital, but rather ought to be seen as part of an interlinked mesh

of issues which together can influence the "coherence or unity of a group" (Paskov and Dewilde, 2012, p. 418).

Berger-Schmitt (2002) defines social cohesion as "a characteristic of a society dealing with the connection and relations between societal units such as individuals, groups, associations as well as territorial units" (p. 405). This description of social cohesion, stressing inter-societal ties and connections between different social actors, finds resonance in Chan et al.'s summation of social cohesion as a state of affairs (as opposed to a process) concerning both "the vertical and the horizontal interactions among members of society as characterised by a set of attitudes and norms that includes trust, a sense of belonging and the willingness to participate and help, as well as their behavioural manifestations" (Chan et al., 2006, p. 290).

Expanding on this concept, Chan et al. further distinguish three levels by which to measure social cohesion: the micro level (individual), the mezzo level (group) and the macro level (the state), allowing for the analysis of social cohesion to be approached through the relationships between individuals, between individuals and groups, and between individuals and national institutions (Dickes et al., p. 454).

Bernard's (1999) conceptual approach to social cohesion relates well to Chan et al., with his 'socio-cultural' domain corresponding to the horizontal interactions as defined by Chan et al. and his 'political' domain fitting into the interpretation of vertical interactions. Yet, Bernard also deals with a third 'economic' domain as a component of social cohesion, relating to economic inequality and social inclusion-exclusion (Bernard, 1999, p. 56).

In many ways, this 'economic' domain corresponds with 'horizontal' inter-communal interactions, and can perhaps best manifest their impact on social cohesion when viewed through the example of social stratification.

HORIZONTAL – STRATIFICATION

'In an atmosphere of economic stratification, the poor will feel degraded, will be envious and will continually covet the riches they lack'.

(Oxendine, 2009, p. 26).

Economic inequality and discussions on social cohesion are largely linked with globalisation and the resultant increase in population mobility. Globalisation has facilitated migration between countries, and foreign immigrants to Western countries often find themselves not only at the extremities of society in their host country, but also at the negative extremities of the economic hierarchy. In many ways, the renewed interest in social cohesion in Europe has arisen as part of a wider European dialogue on multiculturalism, where increased mobility and diversity since the formation of the EU has brought forward new social challenges to policy makers (Chan et al., 2006, p. 278).

Distances, be they economic, social or physical, make it harder for people to sympathise with others and feel morally engaged to help one another (Paskov and Dewilde, 2012, p. 420). These distances can lead to stratification of society along group lines – such as through the formation of ethnically homogenous neighbourhoods – often largely dictated by economic inequalities. While each group may exhibit high levels of social capital, this does not necessarily translate into high amounts of social cohesion within the wider society. For instance, in a highly ethnically segregated society, network ties may be formed solely along ethnic lines, with little to no inter-ethnic social ties existing at all (Chan et al., 2006, p. 292). As Berger-Schmitt points out, "[t]he issue of a strong social cohesion within a community which itself is exclusive has led to the question 'Can social cohesion be a threat to social cohesion?'...to the conclusion "that inclusion could also mean exclusion"' (Berger-Schmitt, 2002, p. 406).

The social distances created by inequality and resulting stratifications can also manifest themselves in a physical manner through the education system. Owing to the fact that immigrants are often found living in high concentrations within certain districts, schools in the local

area are also more likely to attract more immigrant students; a situation which in turn leads to what has been termed 'white flight', where parents native to the host society enrol their students in other schools because of the increasing number of minority students, something which is also followed by immigrant parents of higher education and economic standing (Van Houtte and Stevens, 2009, p. 218). This in turn has led to what Sierens termed as a concentration school, where immigrants are increasingly segregated into schools of high immigrant density and of lower economic class (Sierens, 2006).

Authors such as Wilkinson and Pickett (2009) have largely dealt with the psychosocial implications that status differences can place on individuals in more economically unequal societies. Neckerman and Torche argue that "living in a context of high inequality might intensify feelings of relative deprivation among low-income individuals" (in Van de Werfhorst and Salverda, 2012, p. 382). Psychosocial theory of inequality also concerns the tendency for individuals to want to associate with people most like themselves (Ibid., p. 382). Inequality increases the social distances and feeling of animosity between social groups, eroding feelings of mutual identification (Paskov and Dewilde, 2012, p. 416). When these differences between 'ourselves' and 'others' arise, they are less likely to feel solidarity or sympathy toward them. This trend can be identified in the research of Paskov and Dewilde, where they found people in Europe are most likely on average to feel sympathy toward the sick, disabled and old, closely followed by members of their community (those whom the respondents themselves have the lowest social distance toward), with much less sympathy and solidarity being extended towards immigrants (who are in the position likely to be perceived as least probable for oneself) (Ibid., p. 424; Van de Werfhorst and Salverda, 2012, p. 385).

THE WELFARE STATE AND OTHER INTERVENTIONS

> *'Under a neo-material interpretation, the effect of income inequality […] reflects a combination of negative exposures*

and lack of resources held by individuals, along with systematic underinvestment across a wide range of human, physical, health, and social infrastructure'

(Lynch et al., 2000, in Van de Werfhorst and Salverda, 2012, p. 382).

If social cohesion is interpreted as a characteristic of society as a whole, then inequality harms social cohesion by pulling social groups further apart (Van de Werfhorst and Salverda, 2012, p. 386). The risk economic inequality holds for the maintenance of social cohesion is in many ways the raison d'être of the welfare state. Richard Titmuss envisaged the welfare state not merely as a method of social administration, but as playing a central role in redistribution of resources, "reducing inequalities and enhancing social solidarity in industrial societies" whilst "restoring and deepening the sense of community and mutual care in society" (Rodger, 2003, p. 403). For Titmuss, state institutions set up as part of the welfare state were intended to serve as daily expressions of common bonds among society (Ibid., p. 403).

States where the unemployed use the same institutions (schools, nursing homes, hospitals etc.) as the more well-to-do citizens also exhibit higher levels of equality. In contrast, in more unequal societies the rich are more likely to be 'shielded' from the poor through the provision of separate services and the segregation of neighbourhoods, damaging social interaction and cohesion (Paskov and Dewille, 2012, p. 420). Unequal states not only show a disproportionate distribution of individual resources, but also display unequal provision of infrastructure and welfare state facilities benefitting society (Van de Werfhorst and Salverda, 2012, p. 383).

Questions have been raised as to whether the institutional care provided by welfare states is actually 'crowding out' informal care for people, and whether generous welfare expenditure may also be damaging solidarity owing to the fact that people feel they are already helping society through financial contributions to the welfare state via their taxes (Paskov and Dewille, 2012, p. 421). Analysis by Kangas on

norms of selfishness and altruism found that, while in general people speak clearly in favour of social solidarity, altruism diminishes as soon as people need to spend money on it (Rodger, 2003, p. 406). Likewise, in terms of expenditure, people are mostly to be in favour of increased social expenditure in their area of need, while they are most likely to oppose increases in expenditure in areas which they are least likely to benefit from (Ibid., p. 407).

According to the adjustment hypothesis however, a generous welfare state will encourage solidarity as individuals are inclined to adopt the attitudes of policy elites; namely in the case of generous welfare states by supporting the idea of collective responsibility (Jakobsen, 2009, p. 308). Likewise, higher income inequality correlates to lower levels of solidarity, seeming to further support the case for redistribution via the welfare state (Paskov and Dewille, 2012, p. 425). The lower levels of solidarity in more 'unequal' liberal regimes is described by Rodger as reflecting "the hegemony of markets and individualism in their dominant welfare discourses," something which would appear to further uphold the adjustment hypothesis argument outlined above (Rodger, 2003, p. 414).

We know that social cohesion relies heavily on solidarity and ability to relate with each other, with more economically equal societies also more likely to display higher levels of solidarity as well as lower levels of stratification. By negating aspects of economic inequality, the welfare state's "institutionalised solidarity" can be regarded as helping to tackle social exclusion, defined by Berger-Schmitt as a key determinant in social cohesion (Berger-Schmitt, 2002, p. 406; Rodger, 2003, p. 405). Social exclusion is largely related to economic inequality owing to the fact that economic disparities can lead to the inability of certain elements of a society to engage in civic participation or follow social activities and norms (Layte, 2012, p. 499). At the core of social bonds and communal harmony lies the requirement for interaction and intersection of lives. In economically unequal societies where rich and poor are more likely to be physically or socially distant from each other, these cross-societal interactions are less commonplace, leading to decreased empathy towards other people and the weakening of social cohesion (Rodger, 2003, p. 405; Paskov and Dewille, 2012, p. 420). Allowing poorer members of society to

sustain "ordinary" lifestyles reduces the risk of stigmatization and breaks down the inequality that "divides a society and poisons relationships between social groups and people" (Paskov and Dewille, 2012, p. 420).

CONCLUSION

This paper sought to identify the impact economic inequalities has on social cohesion. Over the course of the paper, it became clear that economic inequality holds disproportionately negative consequences for social cohesion. While elements of society obviously benefit both materially and immaterially from economic inequality (Paskov and Dewille, 2012, p. 417), and economic inequality can indeed even foster strong intra-group cohesion (Berger-Schmitt, 2002, p. 406), these all arise at the expense of pan-societal social cohesion. The work of Wilkinson and Pickett (2009) has helped bring public attention to the negative attributes inequalities play in quality of life across society as a whole, while Putnam (1993) has highlighted how economic success is related to voluntary association of people. The link between higher social cohesion and improved economic development is a positive one, to the extent that international organisations such as the World Bank and the OECD are exploring ways to improve the former in order to achieve higher gains in the latter (Chan et al., 2006, p. 278). Indeed, while there is certainly a negative relationship between economic inequality and social cohesion, arguments can be made as to the direction of causality, with Paskov and Dewille (2012) believing the causality to run in both directions. Should this be the case, improved economic equality ought to not only be beneficial for social cohesion, but should also hold return benefits in the functioning of economies.

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