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# CREATING THE CULT OF XI JINPING: THE CHINESE DREAM AS A LEADER SYMBOL

BRIAN HART<sup>1</sup>

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## ABSTRACT

*Since the founding of the People's Republic of China in 1949, the Chinese Communist Party has used publicly displayed propaganda art as a means of maintaining power. During the early years of the PRC, propaganda posters played a large role in establishing a cult of personality around Mao Zedong. Today's propaganda art seeks primarily to garner popular support for President Xi Jinping's "China Dream" campaign. The China Dream, popularized by Xi in 2012, is a nebulous concept that shares many of the materialistic components of the "American Dream," but simultaneously—and more importantly—emphasizes the Chinese nation's rejuvenation to a position of wealth and power. China Dream art deviates significantly from Mao era posters and ideology by heavily incorporating ancient Confucian concepts and images. The art focuses not on communist values, but on moralistic ones drawn from the teachings of Confucius that emphasize hierarchy and filial piety. This paper argues that China Dream art is being used not only to create a new source of legitimacy for the Communist Party, but also to establish a cult of personality around President Xi Jinping. As a result, China is transforming into a leader state where the relationship between Xi Jinping and the people is becoming a relationship between ruler and ruled.*

Propaganda art has long been an important means of political communication and expression in China. Since the founding of the People's Republic of China (PRC) in 1949, the Chinese Communist Party (CCP) has used publicly displayed propaganda art as a means of retaining its power and ideological legitimacy. During the Cultural Revolution (1966-1976), propaganda art—mainly posters (*haibao* 海报)—played a key role in establishing a cult of personality around Mao Zedong. The legacy of propaganda poster art is still present in contemporary

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<sup>1</sup>Brian Hart is a Senior at Wake Forest University majoring in Politics and International Affairs with minors in History and Chinese Language and Culture.

China. Today's propaganda art seeks primarily to garner support for President Xi Jinping's "China Dream" (*zhongguo meng* 中国梦) campaign. The China Dream, popularized by Xi during a speech in 2012, is a nebulous concept that shares many of the materialistic components of the "American Dream," but simultaneously—and more importantly—emphasizes China's rejuvenation as a nation with wealth and power (*fuqiang* 富强). Since the fall of the Qing Empire in 1911, China's leaders have dreamed of restoring the Chinese nation to its former glory. The China Dream is Xi Jinping's contribution towards this goal. After Xi first proposed the concept of the China Dream in a speech in 2012, China Dream propaganda art began appearing in cities across China. In some of the largest cities, especially Beijing, the art effectively dominates many public spaces.

This paper uncovers the role that China Dream propaganda art plays in creating a cult of personality around President Xi Jinping. To do this, it first uses contemporary social and political evidence to show that a cult of personality is forming around Xi. It then interprets the proliferation of China Dream propaganda art both within the historical context of Mao era propaganda art and within the context of the contemporary Chinese political and social climate. It demonstrates that the propaganda art of the Mao era and today's China Dream art share two key aims: propagating Party ideology as a means of retaining legitimacy and creating a cult of personality around the top national leader. However, the implementation of the two exhibits key differences. First, China Dream propaganda art deviates significantly from that of the Mao era because it relies not on the communist values of that period, but on moralistic ones drawn from Confucian teachings emphasizing hierarchy and filial piety. This is because as China continues to liberalize its economy, and economic growth slows, it needs to find new sources of ideological legitimacy. Second, unlike the art of the Mao era, which depicted the figure of Mao on a vast number of posters, China Dream art typically contains no direct references or depictions of Xi Jinping. Because Xi's image is not typically directly invoked in China Dream art, demonstrating that the art helps to create Xi's personality cult requires a deeper level of analysis. Grounding its analysis in the theory of "leader symbols," this paper argues that China Dream art is a powerful and ambiguous leader symbol that continuously constructs and shapes Xi's personality cult. This paper is not the first to claim that Xi Jinping's immense power is tantamount to a cult of personality.<sup>2</sup> However, its argument is unique in its assess-

<sup>2</sup> "The Power of Xi Jinping," *The Economist*, September 2014, <http://www.economist.com/>

ment of the centrality that China Dream propaganda art plays in constructing Xi's personality cult. Lastly, this paper argues that Xi Jinping's massive accumulation of political power and the building up of his personality cult are creating a leader state in which the fundamental relationship between the Chinese state and its citizens is changing. The results of this process will have significant implications for both China and the world.

This research employs multiple sources and methodologies. Most importantly, it draws on primary photographic evidence of China Dream propaganda art that I collected during field research in China from May to August 2015. While in China, I traveled to five cities: Shenzhen, Shanghai, Nanjing, Beijing, and Qufu. These cities were specifically chosen for methodological purposes to account for variation in their historical, cultural, political, and economic characteristics. Shenzhen, located just across the mainland's border with Hong Kong, was China's first Special Economic Zone and one of its most successful ones. Known popularly as "China's Silicon Valley," Shenzhen's population has grown rapidly to about 11 million as migrants move to work in its massive manufacturing and technology industries.<sup>3</sup> Shanghai was included because it is one of China's most populous and economically developed cities. It is one of China's most globalized cities, primarily due to its business activity and human capital.<sup>4</sup> This puts it in stark contrast with China's less developed, more rural cities. Nanjing was chosen because it has a medium-sized population of around 7 million, and also has a notable history as one of the Four Great Ancient Capitals of China. Beijing was chosen for obvious reasons: it is China's second most populous city after Shanghai, and it is the capital city of China. Beijing is the seat of power from which the CCP governs. As such, I expected to find the greatest amount of China Dream propaganda here; indeed, the presence of China Dream posters in Beijing far exceeded that of any other city. Last, Qufu was selected because, in addition to being a very rural city with a small population, it is famous for being the hometown of Confucius. Given China Dream propaganda's emphasis on Confucianism, this offered the potential for interesting variance in its propa-

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news/china/21618882-cult-personality-growing-around-chinas-president-what-will-he-do-his-political.

<sup>3</sup> Shenzhen Municipal Government, "Overview," accessed January 29, 2016, <http://english.sz.gov.cn/gi/>.

<sup>4</sup> Hales et al. *Global Cities 2015: The Race Accelerates* (Chicago: A.T. Kearney Inc, 2015), 4.

ganda art.

In addition to primary sources of China Dream art, this paper also relies on the informal conversations that I had with Chinese citizens. These conversations were not formal interviews and were not designed to account for variation among different people; they are simply used to provide context. I also reference scholarly and journalistic sources to provide additional evidence of Xi Jinping's growing political and social influence and the development of a personality cult. To ground the paper's theoretical claims, it builds on the theory of "leader symbols," which was developed by Jae-Cheon Lim. While Lim's work focuses on the personality cult of North Korean leaders, it provides a helpful theoretical lens through which to interpret and analyze propaganda art in China.

### CULT OF PERSONALITY: CONTEXT AND THEORY

Since assuming power in 2012, Xi Jinping has amassed more centralized authority than any Chinese leader since Mao Zedong. He has taken on the traditional roles of "Paramount Leader": President of the PRC, General Secretary of the CCP Central Committee, and Chairman of the Central Military Commission. However, he has also become the head of two newly created bodies: the Central Leading Group for Comprehensively Deepening Reforms and the National Security Commission. In doing so he has gained direct control over the central state and Party apparatuses. Most notably, immediately after assuming office, Xi announced a major new campaign to root out corruption within the Party. In addition to being widely popular among the Chinese public, these anti-corruption reforms have also been used as a tactic for centralizing power under Xi so that he can pursue greater reforms in the future.<sup>5</sup>

Does Xi's immense power warrant the label of a personality cult? There is no greater example of a cult of personality than the cult of Mao Zedong, the founder of the People's Republic of China and long-time leader of the Communist Party. In his book *Mao Cult: Rhetoric and Rituals in China's Cultural Revolution*, Daniel Leese lists some of the characteristics of the Mao cult: "Daily reading of Mao's Little Red Book . . . , confessions of possible thought crimes in front of Mao's

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<sup>5</sup> Wang Xiangwei, "Good Start but Drastic Reforms Unlikely," in *The China Renaissance: The Rise of Xi Jinping and the 18<sup>th</sup> Communist Party Congress*, ed. Jonathan Sharp (Hackensack, NJ: World Scientific Publishing Co., 2013).

portrait, and even physical performances such as the ‘loyalty dance.’”<sup>6</sup> He later describes the role that the media played in creating Mao’s cult by referencing the fact that in 1968 at the height of the Cultural Revolution, the phrase “Loyal to Chairman Mao” (*zhongyu Mao zhuxi 忠于毛主席*) appeared in the state-run newspaper *People’s Daily* almost 1,500 times.<sup>7</sup>

Are these same phenomena, then, required for a Chinese leader to have a cult of personality? What would a post-Mao cult look like? If these characteristics are necessary, then Xi Jinping cannot be said to have a personality cult. However, even on the basis of these characteristics, he comes surprisingly close. There are no loyalty dances to Xi, but recently the ritual of self-confession (*jiantao 检讨*) has returned for the first time since the Mao era. However, the confessions do not take place in front of Xi’s image; they take place on public media.<sup>8</sup> Today’s self-confessions are also different from those of the Mao era because they are now primarily confessions of corruption by Party officials or business leaders, not confessions of deviation from Maoist thought. Despite not being overtly related to Xi, today’s self-confessions are a direct reminder of the power that Xi and his anti-corruption campaign exert over individuals.

Additionally, while Xi’s appearance in the newspaper is still eclipsed by Mao’s, in his first 18 months as leader his name was mentioned nearly twice as much as any other leader since Mao.<sup>9</sup> This shows that despite not reaching the full extent of Mao’s media presence, Xi’s media presence is significantly larger than that of any other previous Chinese leader, even Deng Xiaoping. This trend shows no sign of slowing. On December 4, 2015, *People’s Daily* mentioned Xi’s name in 11 different front-page headlines. In an article about this phenomenon, Felicia Sonmez of *the Wall Street Journal* wrote: “State media’s unswerving focus on Mr. Xi has set China’s leader apart from his recent predecessors and spurred much speculation among China watchers over whether the country is on the path toward another personality cult similar to the one that surrounded Mao

<sup>6</sup> Daniel Leese, *Mao Cult: Rhetoric and Ritual in China’s Cultural Revolution* (Cambridge: Cambridge University Press, 2011), 2.

<sup>7</sup> *Ibid.*, 186

<sup>8</sup> David Bandurski, “Fifty Shades of Xi,” *China Media Project*. Last modified March 30, 2015, <http://cmp.hku.hk/2015/03/30/38540/>.

<sup>9</sup> 中国数字时代, “钱钢|语象报告:领导人姓名传播强度观察,” August 21, 2014, <http://chinadigitaltimes.net/chinese/2014/07/钱钢-语象报告:领导人姓名传播强度观察/>.



Zedong in the 1960s and '70s.”<sup>10</sup> She then went on to explain why this shift is so important. Since Mao’s death, the CCP has gone to great lengths to ensure that another personality cult does not arise within the Party leadership. The Party has typically played down the public presence of leaders; yet the fact that the *People’s Daily* focuses so much attention on Xi shows a marked shift from this pattern.<sup>11</sup>

There is other evidence that suggests Xi is building up a cult of personality. In September 2015, China held a massive military parade through Tiananmen Square to commemorate the defeat of Japan in World War II. This event is what Lisa Wedeen refers to as a “spectacle”: a public symbol through which power is displayed and projected.<sup>12</sup> Of course, parades and events such as this have taken place under past leaders; however, Xi used this particularly important event to demonstrate his power. In a speech given at the parade, he announced that the Chinese military would demobilize 300,000 troops. Ironically, in demobilizing troops, Xi demonstrates the firm grasp he has over the military and the extent of his reform capabilities.<sup>13</sup> Given the Chinese military’s rapid development in recent years, Xi’s demonstration of his firm grip over the military is an especially potent utilization of a “spectacle” to show his authority.

Taken together, this evidence suggests that a cult of personality is forming around Xi Jinping, but it does not explain how the cult came to exist. The core argument this paper makes is that the China Dream and its propaganda art play a key role in creating this personality cult. But how exactly does propaganda art help to bring about a cult of personality? Looking at other cases of personality cults helps to explain how they come to be. One does not have to look far from China to find a robust, modern cult of personality; North Korea’s Kim dynasty provides a prototypical example of what a personality cult and a “leader state” look like. Jae-Cheon Lim argues: “North Korea can be systematically considered a ‘leader

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<sup>10</sup> Felicia Sonmez, “China’s People’s Daily Runs 11 Xi Jinping Headlines on its Front Page,” *The Wall Street Journal, China Real Time*, December 4, 2015, <http://blogs.wsj.com/chinarealtime/2015/12/04/chinas-peoples-daily-runs-11-xi-jinping-headlines-on-its-front-page/>

<sup>11</sup> Ibid.

<sup>12</sup> Lisa Wedeen, *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria* (Chicago: University of Chicago Press, 1999), 21-22.

<sup>13</sup> Chris Buckley, “Military Parade in China Gives Xi Jinping a Platform to Show Grip on Power,” *The New York Times*, September 3, 2015, [http://www.nytimes.com/2015/09/04/world/asia/china-military-parade-xi-jinping.html?\\_r=0](http://www.nytimes.com/2015/09/04/world/asia/china-military-parade-xi-jinping.html?_r=0).

state' whose legitimacy is based solely on the leaders' personal legitimacy and is maintained mainly by the indoctrination of people with leader symbols and the enactment of leadership cults in daily life."<sup>14</sup> He says that the prevalence of leader symbols and the routine, everyday encounters with leader symbols bring about the indoctrination of people into a cult of personality and the creation of the "leader state."<sup>15</sup>

Before applying this theory to the China Dream, the issue of the China Dream's ubiquity as a symbol must first be established, because leader symbols must be present in all areas of life, both public and private, to be effective at indoctrinating people into a personality cult. This paper does not argue that China Dream art is as prevalent as leader symbols in North Korea. The extent to which the Kim dynasty has consolidated a personality cult is without match, even in comparison to the Mao cult. Yet China Dream art is still a ubiquitous symbol that incorporates practices of cult rituals. However, this is only true in certain areas. For instance, Beijing's public spaces are heavily covered in China Dream art. At various locations throughout the city, building walls alongside roads are covered with posters, often for a hundred meters or more (see Figure 1). For those who walk these streets every day, it is impossible not to notice them. One potential weakness of this paper's argument is that the presence of these posters is not as prominent in other cities. In the small, rural village of Qufu, for example, I saw very little presence of China Dream posters in comparison to Beijing. But this does not discount my theory for two reasons. First, rural Chinese towns and villages such as Qufu are significantly less important politically than massive cities like Beijing. As stated previously, Beijing is the seat of power of the Party and the government. In the hierarchy of Chinese cities, Beijing is at the very top. Second, Xi Jinping has only been in power for about three years. Thus, the China Dream is a young, developing leader symbol. The Kim dynasty has had decades to create and build its leader symbols. For these reasons, the smaller presence of posters in more rural areas should not discount the overall effect that posters have in shaping Xi's cult.

Second, China Dream art has entered into citizens' private lives, giving it more indoctrinating power. For example, in China, giving calendars during the

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<sup>14</sup> Jae-Cheon Lim, *Leader Symbols and Personality Cult in North Korea: The Leader State* (New York, NY: Routledge, 2015), 4.

<sup>15</sup> *Ibid.*

New Year—China’s most important holiday—is an old tradition. In January 2015, the most popular New Year calendars depicted Xi and his wife underneath the Chinese characters for “China Dream.”<sup>16</sup> This is important for two reasons. First, these calendars are typically cherished gifts that people share with each other, and they are brought into the home for decoration. This shows the incorporation of the leader symbol into the private, intimate space of the home. Second, these calendars are particularly important because they directly associate the image of Xi Jinping with the China Dream, which the publicly displayed posters did not. These calendars not only incorporate the leader symbol into the private space of the home, but also into a ritualized custom of sharing gifts during the annual Chinese New Year season. This shows the increasing presence that China Dream art plays as a ubiquitous leader symbol helping to create a personality cult around Xi Jinping.



*Figure 1*<sup>17</sup>

<sup>16</sup> Calum MacLeod, “Chinese Calendars’ Days Are Numbered,” *USA Today*, February 15, 2015, <http://www.usatoday.com/story/news/world/2015/02/15/beijing-china-calendars-lunar-new-year/23122395/>.

<sup>17</sup> “Series of China Dream Posters,” South side of Chengfu Rd, Beijing, China, photographed by

## COMPARING THE CULTS OF MAO AND XI

In applying Lim's theory of leader symbols to Xi Jinping and China, this paper focuses specifically on the use of leader symbols as a means of developing and maintaining Xi's cult. Lim lays out six specific functions of leader symbols: communication, relationship objectification, meaning condensation, integration, legitimacy promotion, and mass mobilization.<sup>18</sup> On the basis of Lim's theory, if a symbol is ubiquitously incorporated into everyday life and successfully serves these six important functions, this suggests that such a symbol is in fact a leader symbol being used to create a cult of personality and transform the state into a leader state. As discussed earlier, Mao Zedong built one of the most robust personality cults in history. This section systematically shows how Mao used propaganda art as a successfully functioning leader symbol to create his cult of personality. Then, it shows how Xi Jinping is also successfully doing so in ways that are both similar and different from Mao.

### *Communication Function*

The first function, communication, is simply the ability to employ a leader symbol—in this case, propaganda art—to persuade the people to serve the aims of the leader.<sup>19</sup> Communication was, perhaps, one of the most important functions of the propaganda posters during the Mao years, especially during the Great Leap Forward and the Cultural Revolution. The CCP constantly put out posters promulgating Mao's policy ideas. One example of this is the posters calling for all Chinese people to carry out Mao's Four Pests Campaign, which asked everyone to do all they could to kill rats, flies, mosquitos, and sparrows. The poster shown in Figure 2 shows a Four Pests Campaign poster that says, “人人动手消灭四害” (“Everybody get to work to destroy the Four Pests”).<sup>20</sup> Unfortunately, Mao's calls to kill the Four Pests and the corresponding propaganda campaign were highly successful. They resulted in the destabilization of China's ecological system, which, among other factors, contributed to terrible famine and the deaths of tens of millions of Chinese people.

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Brian Hart, July 31, 2015.

<sup>18</sup> Lim, *Leader Symbols*, 6-8.

<sup>19</sup> Lim, *Leader Symbols*, 6.

<sup>20</sup> “Great Leap Forward (1956-1960),” *Chinese Posters*, last modified November 16, 2014, <http://chineseposters.net/gallery/e16-358.php>.



*Figure 2<sup>21</sup>*

Xi's China Dream art certainly serves the communication function in many aspects. A common theme among many of the posters in every city is the emphasis on natural landscapes and environmental conservation. An example of this can be seen in Figure 3, which shows a massive wall poster located on the north side of Picai Hutong, just a few blocks west of the Forbidden City. At this location, there was a long stretch of giant posters stretching for hundreds of feet. This particular poster contains a classical mountain painting scene along with the phrase “人心敬畏天地，才有水美山青，” which loosely translates to “until the will of the people reveres heaven and earth, there will not be beautiful waters and green mountains.” This directly communicates that in order for the China Dream to be attained, there must be a clean environment. It is a call for people to respect the environment and recognize the importance of environmental protection, even as China develops. Given Xi's announcement during his 2015 state visit to the U.S. that China will implement an aggressive cap and trade program to curb greenhouse gas emissions, this poster is a call for the Chinese people to support and follow these new regulations—a difficult request in a developing economy such as China's. The existence of such China Dream posters suggests that this propaganda art is effectively fulfilling the “communication function” of leader symbols.

<sup>21</sup> “Great Leap Forward (1956-1960)”



*Figure 3*<sup>22</sup>



*Figure 4*<sup>23</sup>

<sup>22</sup> “Until the Will of the People Reveres Heaven and Earth, There Will Not Be Beautiful Waters and Green Mountains,” Poster located on the north side of Picai Hutong Rd, Beijing, China, photographed by Brian Hart, July 31, 2015.

<sup>23</sup> “Great teacher, Great leader...”

*Relationship Objectification Function*

The second leader symbol function, relationship objectification, is actually more readily demonstrated by the Xi cult than the Mao cult. During the time of Chairman Mao's leadership, many posters showed images of him and referred to him as the Great Leader. For example, the poster in Figure 4 calls Mao “伟大的导师 伟大的领袖 伟大的统帅 伟大的舵手,” meaning “Great Teacher, Great Leader, Great Commander, Great Helmsman.”<sup>24</sup> While these epithets convey a relationship of power over the people, they do not convey a sense of closeness and familiarity. President Xi, on the other hand, is commonly referred to as 习大大 (*Xi Dada*), which literally means “Xi big big,” but translates colloquially to Uncle or Father Xi.<sup>25</sup> While this has the effect of familiarizing Xi and making him seem like part of one's family, it also has a very significant meaning within Confucian notions of order, which emphasize filial piety. The relationship between father and children is extremely important—it is one of the five fundamental relationships of Confucian social order.<sup>26</sup> Thus, when people refer to Xi as Xi Dada, they are equating him with a father figure and making him into China's father figure. This is very important, because as Tatlow says, quoting Daniel K. Gardner: “By embracing the nickname ‘Xi Dada,’ Xi Jinping is allowing himself to be likened to an imperial ruler who governs by dint of wisdom, compassion and deep familial affection for the people, a ruler who is responsible for doing right by his subjects and guiding them.”<sup>27</sup>

China Dream art represents this as well. As previously noted, one thing that makes China Dream propaganda so different from Mao era propaganda is that it draws from Confucian concepts and images, not Communist ones. The poster that best demonstrates this is shown in Figure 5. This poster, located near Longhua Temple in Shanghai, is very common in both Beijing and Shanghai. It depicts a little girl trying to feed her paternal grandfather (爷爷) saying: “爷爷吃!” or “Grandpa, eat!” The text says, “孝道, 中国人的血脉,” which translates

<sup>24</sup> “Great Teacher, Great Leader, Great Commander, Great Helmsman—Long Live Chairman Mao,” *Chinese Posters*, last modified October 23, 2013. <http://chineseposters.net/posters/pc-1967-018.php>.

<sup>25</sup> Didi Kristen Tatlow, “Confucian, Stubborn and Macho: China's Leader is ‘Xi Bigbig,’” *The New York Times*, October 22, 2014, <http://sinosphere.blogs.nytimes.com/2014/10/22/confucian-stubborn-and-macho-chinas-leader-is-xi-bigbig/>.

<sup>26</sup> The five major relationships in Confucian thought are: ruler and subject, father and son, husband and wife, oldest son and younger brothers, and elders and juniors.

<sup>27</sup> *Ibid.*

to “filial piety, the Chinese people’s blood lineage.” This poster is not only important because it invokes Confucianism, but also because it specifically invokes filial piety. Because Xi is known colloquially as “Father Xi,” when China Dream art summons concepts of filial piety, it does two things. First, it incorporates Confucian values into the China Dream. Second, because Xi popularized and operationalized the China Dream, it is indirectly associated with him, and therefore he is also associated with filial piety and notions of Confucian hierarchy.



*Figure 5*<sup>28</sup>

This is an archetypical example of the relationship objectification function of leader symbols. It is the same thing that Kim Jong Il did when carrying out a transition of power from his father to himself. The North Korean leader drew on Confucian notions of loyalty, respect, virtue, benevolence, and filial piety to invoke a hierarchical and ordered Confucian version of the state, which emphasized the role of Kim Jong Il as ruler within the relationship between him and his people.<sup>29</sup> In pre-modern Korea, filial piety was a defining attribute of relationships within the family, but as the concept of the “great family” came to exist, it also became a characteristic of the relationship between Kim and the people.<sup>30</sup> Just as Kim Jong Il used Confucianism to cement his dominance over

<sup>28</sup> “Filial Piety, A Chinese Person’s Blood Lineage,” a wall near Longhua Temple, Shanghai, China, photographed by Brian Hart, May 29, 2015.

<sup>29</sup> Lim, *Leader Symbols*, 84.

<sup>30</sup> *Ibid.*



the rest of society, Xi Jinping and the CCP are relying on modernized notions of Confucianism to retain their ideological legitimacy. Shufang Wu sums it up well: “The government’s overall strategy is to repackage Confucianism, institutionalize it, and integrate it into the current ideology. The aim is to provide further justifications for the CCP’s political strategies and policies, make them acceptable to society, legitimate the party’s rule, and consolidate its leadership.”<sup>31</sup> This paper argues that the use of Confucianism is more powerful than any other potential source of ideological legitimacy because it is, at its very core, Chinese. Chairman Mao’s legitimizing ideology, known as Mao Zedong Thought, while still highly influential, was a form of communism very similar to Marxist-Leninist thought borrowed from Russia. Communism is not a Chinese creation. Confucianism, however, was the governing ideology in China for hundreds of years and was created and cultivated in China. As a result, Confucianism brings with it a stronger sense of national pride and unity than any other ideology might provide. In short, the China Dream’s inclusion of Confucian values, especially filial piety, make it particularly effective in its relationship objectification function, in much the same way as in North Korea.

### *Meaning Condensation Function*

The third function, meaning condensation, is the ambiguous quality of a leader symbol that allows people to experience and internalize it differently at different moments.<sup>32</sup> For example, Lim notes that peoples’ reactions to seeing images of Kim Il Sung laughing in the media can bring about emotions of longing or disgust, depending on which side of the Korean War one was. Similarly, posters of Mao Zedong can have the exact same effects, depending on which side one supported during the Chinese Civil War. Any of the many Mao posters, which directly sought to create his personality cult, could be said to be ambiguously positive or negative in this way. However, the China Dream campaign is so ambiguous that it is hard to have a negative reaction to it. That is because there is no strict definition of the China Dream. One particular message, found in posters, online, and even in a television commercial, is perhaps the most famous China Dream message: “中国梦，我的梦，” which means “The China Dream, My Dream.” The famous poster

<sup>31</sup> Wu Shufang, “‘Modernizing’ Confucianism in China: A Repackaging of Institutionalization to Consolidate Party Leadership,” *Asian Perspectives* 39, no. 2 (2015), 319.

<sup>32</sup> Lim, *Leader Symbols*, 7.

bearing this message, which I saw in Shenzhen, Shanghai, Nanjing, and Beijing, can be seen in Figure 6. The particular photo shown in Figure 6 was taken at a station on Line 1 of the Nanjing Subway system. On that particular line, every station I visited had multiple China Dream posters, usually including the “China Dream, My Dream” poster found in Figure 6.



Figure 6<sup>33</sup>

Why is this China Dream message the most prolifically displayed? Since the message being sent is that the China Dream is intentionally ambiguous, it is up to people to decide for themselves what their China Dream looks like. This not only enables personal connection with the government’s propaganda campaign, it also gives individuals some sense of agency in pursuing their version of the China Dream. In my conversations with Chinese citizens, I heard many different definitions of what the China Dream means for them. In Shenzhen, I talked to a worker at a police training school in his late twenties, who worked

<sup>33</sup> “China Dream, My Dream,” a station on Line 1 of the Nanjing Metro System, photographed by Brian Hart, June 4, 2015.

under the mother of the family hosting me. He talked openly about the China Dream and said that because he likes to travel, for him, the China Dream means a passport that will let him travel anywhere in the world. The father of my host family, who is a very wealthy CEO of a Chinese company, told me that his China Dream meant being able to come up from poverty to own a large house, and especially to have his own garden. Both he and his wife constantly showed me the vegetables that they were growing in their garden, and they seemed more proud of the garden than their massive house. In a large, crowded city such as Shenzhen, owning a house with the space to grow a garden is a symbol of wealth and privilege.

The differences in these two narratives of the China Dream show the extent to which Chinese people interpret it individualistically. This paper argues that the ambiguity of the China Dream as a leader symbol is one of the characteristics that makes it so powerful as a tool for propaganda and especially for creating a cult around Xi. Previous propaganda campaigns in contemporary China, such as Hu Jintao's "Harmonious Society," did not allow for the openness of interpretation that the China Dream does. This ostensible inclusivity and granting of agency allows people of vastly differing backgrounds and views to still support Xi Jinping and his goal of attaining the collective China dream. This gives Xi a chance to shape and use the China Dream to shore up support for himself, and build up his own cult, while still allowing the Chinese people to feel a sense of agency. This reality is expressed by Professor Steve Tsang, director of the Chinese Policy Institute at the University of Nottingham: "The Chinese Dream is not the dream of the people of China freely articulated by them. It is the 'Chinese Dream' to be articulated on their behalf by Xi and the Communist Party."<sup>34</sup> Thus, in appearance the China Dream leaves open all sorts of interpretation, which in turn serves to support Xi and his policies; but in reality, it is Xi and the CCP articulating the dream. In this way, the China Dream remains an ostensibly inclusive leader symbol that is actually shaped solely by Xi. This is one of the things that makes the China Dream such a uniquely powerful leader symbol.

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<sup>34</sup> Cary Huang, "Xi's Chinese Dream," In *The China Renaissance: The Rise of Xi Jinping and the 18<sup>th</sup> Communist Party Congress*, ed. Jonathan Sharp (Hackensack, NJ: World Scientific Publishing Co., 2013), 36

*Integration Function*

The fourth function of leader symbols, the integration function, can be seen widely in Mao era leader symbols. The integration function helps to stabilize society by constantly forcing new institutions to integrate into the system dominated by leader symbols. If these symbols are then removed from the institutions of society, the institutions would be inherently different. One notable example of the integration function during the Mao era was the practice of reading Mao Zedong's *Little Red Book* daily. For members of the People's Liberation Army (PLA) in particular, this repetitive practice became a fundamental part of the institution of the PLA and constantly shaped the lives of soldiers as well as the Chinese people as a whole. Without this extremely powerful leader symbol and the important integration function it served, institutions were changed fundamentally. This is one of the reasons there was such a power vacuum after Mao's death.

While the *Little Red Book* was a physical leader symbol that became regularized and integrated into state institutions and practices of everyday life, the same cannot yet be said for Xi Jinping's China Dream. The reason is that Xi has only been the leader of China for 3 years. Because the integration function takes place through a process of repetitive institutionalization, the leader symbols of Xi Jinping have not had an adequate amount of time to fully permeate existing institutions, such as the military and the education system, which played important roles in creating the cult of Mao. However, the extent to which Beijing's public spaces are dominated by China Dream art does show the potential for strong integration. In Beijing, valuable advertisement space on public walls, "jumbo-trons," billboards, and buildings is increasingly taken up by China Dream art. Some private companies are even incorporating the China Dream into their advertisements, further permeating public spaces and bridging the public-private divide. For example, a massive electronic billboard on the corner of Zhongguancun North Avenue and Beishuan West Road (on the southeast corner of Peking University) regularly showed an advertisement for a brand of *baijiu* (a type of liquor) called 梦之蓝 (*mengzhiblan* "Blue Dream"). The advertisement, shown in Figure 7, says "中国梦 - 梦之蓝" ("China Dream - Blue Dream"). It is significant that a private company is incorporating the China Dream into its advertising, because it suggests that the term "China Dream" is no longer an empty phrase; it is now part of a widely recognizable brand created by Xi Jinping.

In addition to private advertisements, the China Dream has been incorporated into schools and the Chinese education system in different forms. At some schools and universities, students are encouraged to write their China Dreams on “dream walls” on campus. There were even student singing competitions that eventually resulted in a “chart-topping folk song” based on the China Dream.<sup>35</sup> Similarly, throughout July 2015 at Peking University, there were multiple signs advertising the event “Writing the Chinese Dream: China Youth Calligraphy Competition for Charity” (“书写中国梦：中华青少年书法公益比赛”). These examples show the increasing incorporation of China Dream leader symbols into China’s education system, which, in addition to China Dream art’s incorporation into commercial spaces, fulfills the integration function of leader symbols.



Figure 7<sup>36</sup>

<sup>35</sup> “What Does Xi Jinping’s China Dream Mean?,” *BBC*, June 6, 2013, <http://www.bbc.com/news/world-asia-china-22726375>.

<sup>36</sup> “China Dream—Blue Dream,” at the corner of Zhongguancun North Avenue and Beishuan West Road, Beijing, China, photographed by Brian Hart, June 26, 2015.

*Legitimacy Promotion Function*

The fifth leader symbol function, legitimacy promotion, is perhaps the most important but also the most elusive for leaders to obtain. This paper has shown how leader symbols served to legitimize both Mao and Xi. For Mao's cult, leadership symbols such as the daily ritual of reading the *Little Red Book*, confessing in front of Mao's image, and of course propaganda art all served to build and sustain Mao's legitimacy. Similarly, practices such as calling Xi Jinping "Xi Dada," making public confessions of guilt, and the China Dream's emphasis on Confucian values and filial piety have all sought to bolster his public image and legitimacy. Yet neither Mao nor Xi has achieved legitimacy promotion on the scale of the Kim dynasty in North Korea. In North Korea, legitimacy promotion through leader symbols has been so strong that the legitimacy of the initial leader, Kim Il-sung was passed onto his son Kim Jong-il, and in 2011 passed onto his son, Kim Jong-un. In the North Korean leader state, the level of adoration for its leaders has surpassed a mere cult of personality. North Korean leaders are deified and worshipped to such an extent that their legitimacy has transgressed time and generations.<sup>37</sup> North Korea is unique in the modern world for the extent to which the popular legitimacy of its leaders has been so thoroughly established. Neither the cults of Mao or Xi can claim to have been so successful in establishing legitimacy. After his death, Deng Xiaoping, one of China's greatest leaders, weakened Mao's legitimacy and cult by officially acknowledging that Mao's policies were 70 percent good and 30 percent bad.<sup>38</sup> So even Mao's legitimacy does not stand up to that of the Kim dynasty. However, this does not mean that the legitimacy of Mao and Xi is insufficient to warrant them possessing cults of personality; as has been shown, their legitimacy too is deeply institutionalized and publicly shown.

*Mass Mobilization Function*

The sixth and final function of leader symbols is mass mobilization. This function is very similar to the first function of communication, in that it involves the leader's ability to utilize leader symbols to achieve massive public mobilization

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<sup>37</sup> Lim, *Leader Symbols*, 8.

<sup>38</sup> Nicholas D. Kristof, "Legacy of Mao Called 'Great Disaster,'" *New York Times*, February 7, 1989, <http://www.nytimes.com/1989/02/07/world/legacy-of-mao-called-great-disaster.html>.

to achieve the leader's aims. However, it differs slightly from the communication function because rather than asking the people to support a specific policy, the process of massive public mobilization itself serves to bolster the leader's legitimacy and leader status. Lim says that this most often takes the form of a "tour" by the leader.<sup>39</sup> There are many examples of Mao carrying out acts of mass mobilization, including in the form of "tours." One such example is Mao's famous swimming of the Yangtze River on July 16, 1966. Mao's swim was widely publicized in the media to show that Mao was still fit to lead China and the Party, despite his advancing age. A year later, Mao embarked on his "Inspection Tour of the Three Regions," between July and September 1967. The inspection tour included several key provinces and cities in the North, Mid-South, and East of China. Over the course of the inspection tour, the media followed Mao to publicize his support of the Cultural Revolution and his call to end the factional violence that was going on between warring Red Guard factions.<sup>40</sup> Mao's swim in the Yangtze helped to revitalize Mao's cult after the disastrous years of the Great Leap Forward, and the inspection tour consolidated his leadership status because it demonstrated that he had enough influence to quell the turmoil of Red Guard fighting. Thus, both events represent successful examples of the mass mobilization function.

President Xi has also achieved mass mobilization in the form of tours similar to those of his predecessor Deng Xiaoping. In December 2012, soon after assuming the office of Party General Secretary, Xi Jinping went on his first official trip outside of Beijing. Like Deng Xiaoping, Xi traveled to the city of Shenzhen in Guangdong Province. Because of Shenzhen's status as a Special Economic Zone, the symbolic nature of this trip suggested that Xi will, like Deng, pursue economic reforms to promote China's economic growth. According to some observers, Xi played down the pomp of his official visit in order to focus on the issues; as a result, he gained a lot of public support for his actions.<sup>41</sup> Another interesting "tour" was Xi's visit in 2013 to Qufu, the hometown of Confucius. He was the first Chinese leader to visit Qufu in two decades, and many noted the significance of the trip. An *Economist* article even referenced that it signified the union of the cult of Con-

<sup>39</sup> Lim, *Leader Symbols*, 8.

<sup>40</sup> Jian, Guo, Yongyi Song, and Yuan Zhou, *Historical Dictionary of the Chinese Cultural Revolution*, Second Edition (Lanham: Rowman and Littlefield, 2015), 210.

<sup>41</sup> Chen Zhuang, "The Symbolism of Xi Jinping's Trip South," *BBC*, December 10, 2012, <http://www.bbc.com/news/world-asia-china-20662947>.

fucius with the cult of Xi.<sup>42</sup> The southern tour to Guangdong represented a call for mass mobilization in achieving economic reforms. The Qufu trip represented a call for bringing back the morals and values of Confucius; it sought to legitimize Xi and the CCP by uniting them with one of the oldest cults in China, the cult of Confucius.

### IMPLICATIONS OF THE CULT

This paper does not claim that the cult of Xi exists on the same scale as the Mao cult or the Kim dynasty. Cults of personality exist on a spectrum. Mao's cult never reached the extent of the Kims' cult, but it is still widely considered a cult of personality.<sup>43</sup> Similarly, the Xi cult has not consolidated to the point that the Mao cult did; nor does this study predict that it will. Nevertheless, this paper argues that it is developing and consolidating into a functioning cult of personality. What, then, are the domestic and foreign implications? Within China, the most significant impact has been the changing nature of the relationship between Chinese citizens and the state. As Xi consolidates power over state institutions and begins to reshape China's society into a Confucian order, the relationship between Chinese citizens and Xi has transformed into a relationship of ruler and ruled. For viewers in liberal democracies, this shift towards a personality cult and stricter authoritarian rule is worrying. As A. T. Nuyen argues, Confucianism's emphasis on hierarchy and communitarianism make it incompatible with liberal conceptions of citizenship.<sup>44</sup> However, Nuyen suggests that Confucianism might provide constructive critiques of liberalism by emphasizing the role of citizenship as constructed through the community, and by reshaping the concept of equality through citizens' roles in the community. Nuyen continues by saying that the claim that Confucianism is incompatible with democracy and equality needs to be reevaluated by applying a "thick" conception of citizenship rather

<sup>42</sup> "Confucius Says, Xi Does: The Communist Party Turns to Ancient Philosophy for Support," *The Economist*, July 25, 2015, <http://www.economist.com/news/china/21659753-communist-party-turns-ancient-philosophy-support-confucius-says-xi-does>.

<sup>43</sup> Daniel Leese, *Mao Cult: Rhetoric and Ritual in China's Cultural Revolution* (Cambridge: Cambridge University Press, 2011).

<sup>44</sup> A. T. Nuyen, "Confucianism and the Idea of Citizenship," *Asian Philosophy* 12, no. 2 (2002): 132.



than a “thin” one, like that of liberalism.<sup>45</sup> However, Xi and the CCP do not seem to share this non-hierarchical conception of citizenship. China Dream propaganda art’s particular emphasis on the Confucian value of filial piety suggests that, in the view of Xi and the CCP leadership, Confucianism’s inherently hierarchical nature is useful for establishing a more stable order—with Xi and the Party at the top.

Some have argued that there is sizable opposition to Xi within China, particularly among China’s online “netizens.” Chin-fu Hung argues that in the age of cyberspace and the internet, propaganda such as the China Dream campaign constantly runs up against “alternate discourses” that fight for ownership of discourse rights, both within physical spaces and especially on the Internet.<sup>46</sup> Critics like Hung hold that, because of technologies like the internet, a cult of personality is not possible in contemporary China. Yet, at the same time, there is tremendous domestic support for President Xi. In fact, according to recent polls analyzed by Anthony Saich, Xi’s public approval ratings make him the most popular leader in the world. His domestic approval, as previously stated, comes largely from support for his anti-corruption campaign and his social influence.<sup>47</sup> The fact that he maintains overwhelming support domestically shows that, despite potential opposition from a small portion of society, his cult is well and strong.

Moreover, as Lisa Wedeen points out, it does not even matter whether everyone legitimizes Xi or buys into his leader symbol of the China Dream; what is important is that they comply.<sup>48</sup> In her view, in maintaining a personality cult, it is more important for a leader to force compliance rather than expend resources trying to maintain his or her legitimacy. This line of thinking fits with Xi’s response to netizens and online opposition. Beginning in early 2015, the Chinese government increased its already oppressive control over the internet by limiting the use of many popular VPNs, which people in China use to access sites blocked inside China. It also limited the use of Gmail through third party clients, making

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<sup>45</sup> Ibid., 137.

<sup>46</sup> Hung Chin-fu, in “Chapter 5: The ‘China Dream’ in the Xi-Li Administration in the Information Age: Shared Dreams, or Same Bed, Different Dreams?,” in *China Dreams: China’s New Leadership and Future Impacts*, ed. Chih-Shian Liou and Arthur S. Ding, 111-143 (Singapore: World Scientific Publishing, 2015), 143.

<sup>47</sup> Simon Denyer, “Why a Communist Dictator May Be the World’s Most Popular Leader—At Home and Abroad,” *Washington Post*, December 18, 2014, <https://www.washingtonpost.com/news/worldviews/wp/2014/12/18/why-a-communist-dictator-may-be-the-worlds-most-popular-leader-at-home-and-abroad/>.

<sup>48</sup> Wedeen, *Ambiguities of Domination*, 6.

communication with people outside of the country even harder for many.<sup>49</sup> The great lengths to which Xi and the Party are going to limit Internet freedoms, despite public frustration, proves that in some cases they are more concerned about compliance than legitimacy-building tactics.

Outside of China, the China Dream's newfound incorporation of Confucianism significantly impacts the way that China sees itself in the international system, and also the ways that it behaves. This is because Confucianism subscribes to a Sinocentric worldview. The literal meaning of the term 'China' is "The Middle Kingdom" (*zhongguo* 中国). In imperial China, "The Emperor was conceived as mankind's supreme sovereign – the Emperor of Humanity, standing atop a world political hierarchy that mirrored China's hierarchical Confucian social structure. Chinese protocol insisted on recognizing his overlordship via the kowtow."<sup>50</sup> Particularly in East Asia, China saw itself at the top of a Confucian hierarchy with neighboring states like Korea and Vietnam separated from China not so much by political and territorial boundaries, but by cultural ones.<sup>51</sup> Given that Xi's China Dream seeks the rejuvenation of the Chinese nation, might that rejuvenation also entail a reestablishment of a hierarchical order in East Asia, with China at the top? This brings into question whether China can indeed rise peacefully.

President Xi's consolidation and use of state power in the region is concerning. Nowhere is this truer than in the South China Sea, where in recent years China has been pursuing an aggressive, and arguably illegal, campaign of island building. The region has become a flashpoint for potential conflicts, with multiple states claiming conflicting ownership of various reefs and islands. Because China's economy and military have grown rapidly in recent years, despite pledged future reductions in personnel, China is now at a point where, besides the U.S., it is by far the strongest naval power in the region. Because of China's rapid military modernization, Xi is in the unique position of not only being strong domestically but also internationally.<sup>52</sup> He is the first leader of modern

<sup>49</sup> Andrew Jacobs, "China Further Tightens Grip on the Internet," *The New York Times*, January 29, 2014, <http://www.nytimes.com/2015/01/30/world/asia/china-clamps-down-still-harder-on-internet-access.html>.

<sup>50</sup> Henry Kissinger, *On China* (New York: Penguin Press, 2011), 15.

<sup>51</sup> *Ibid.*, 10.

<sup>52</sup> "The Dragon's New Teeth," *The Economist*, April 7, 2012, <http://www.economist.com/node/21552193>.

China to have a military capable of dictating terms in the region. Because China still has not forgotten the “century of shame” of the late 1800s and early 1900s, during which it was invaded and colonized by Japan and Western imperial powers, the significance of possessing and being able to use China’s strong military cannot be overstated. Part of the China Dream is the notion of national strength and prosperity (*fuqiang* 富强), to which a strong military is essential. It can therefore be expected that Xi will continue to employ a heavy hand in the South China Sea. Within the U.S., some fear that China has global ambitions to replace the U.S. as the leading hegemon in the international system. Given the increasing tensions between China and the U.S. in the South China Sea, as well as recent, massive Chinese cyber attacks against the U.S. government, it is easy to see why some people outside of China are becoming more nervous about China’s increasingly assertive role in the international system, and particularly Xi’s strong grip over the military and state institutions.<sup>53</sup>

The claim that Xi Jinping is developing a cult of personality through the use of China Dream art is a provocative one, but not one without evidence. His widespread centralization of state power, unique social stature, and intentional use of the China Dream campaign as a leader symbol all point to Xi’s desire and ability to create a personality cult. As said before, such a cult does not, and probably will not, look like that of Mao, or like that of the Kim dynasty cult in North Korea. Nevertheless, it is still a cult. The leadership symbol functions of the Xi cult match and in some cases even exceed the effectiveness of those of the Mao cult – most notably with regard to Confucianism outperforming communism in the relationship objectification function. The China Dream campaign’s utilization of Confucianism as a means to solidify the power and legitimacy of both the CCP and Xi reflects not just a desire to maintain power, but to fundamentally restructure the nature of Chinese citizenship. Xi is not necessarily building up his cult for selfish purposes, but rather so that he can more quickly and effectively carry out the important structural, political, and economic reforms necessary to keep China on the track towards modernization under Party rule. People have for years claimed that the CCP and the Chinese state is on the verge of crumbling down. Yet the Communist Party has shown an enormous capacity to adjust and adapt for over 60

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<sup>53</sup> Ellen Nakashima, “Chinese Breach Data of 4 Million Federal Workers,” *The Washington Post*, June 4, 2015, [https://www.washingtonpost.com/world/national-security/chinese-hackers-breach-federal-governments-personnel-office/2015/06/04/889c0e52-0af7-11e5-95fd-d580f1c5d44e\\_story.html](https://www.washingtonpost.com/world/national-security/chinese-hackers-breach-federal-governments-personnel-office/2015/06/04/889c0e52-0af7-11e5-95fd-d580f1c5d44e_story.html).

years, despite the fact that the People's Republic of China has experienced great trauma and chaos during that time. Xi's growing personality cult may be a function of that. The best that can be hoped for is that Xi will use his personality cult and his power at home and abroad to pursue peace and prosperity, not conflict and personal gain.

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# HEARTS AND MINDS: A COMPARISON OF COUNTER-RADICALIZATION STRATEGIES IN BRITAIN AND THE UNITED STATES

ADRIENNE OU<sup>1</sup>

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## ABSTRACT

*Bataclan. San Bernadino. One need not read any further to understand how radicalization is crucial to counterterrorism and national security. Some states have implemented counter-radicalization strategies to cull terrorism at its root. These tactics fall within two broad groups: the North American method, which emphasizes behavioral radicalization, and the European method, which stresses cognitive radicalization. This paper compares the two methods by examining counter-radicalization strategies in the United States and in the United Kingdom. Case studies explain the social ramifications and the effectiveness of the US' Countering Violent Extremism policy and the UK's Prevent strategy, and the roles they play in abolishing or inadvertently incentivizing social divisions that lead to radicalization and terrorism. While the US strategy emphasizes the role of law enforcement, the UK strategy focuses on the role of community in preventing terrorism, including those of universities and healthcare providers. This difference is crucial in how Muslim communities view their place in the broader context of society, which makes up a fundamental precept of political alienation. Consequentially, this paper brings radicalization studies out of the ivory tower and into its broader sociopolitical context and effects.*

## INTRODUCTION

On 11 November 2015, Antoine Leiris lost his wife in the Bataclan attacks. In the following days, he wrote a Facebook post that went viral:

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<sup>1</sup> Adrienne Ou is a fourth-year undergraduate at UCLA, majoring in political science with a focus in international relations. Her research interests include terrorism, national security, and East Asian politics.

I will not grant you the gift of my hatred. You're asking for it, but responding to hatred with anger is falling victim to the same ignorance that has made you what you are. You want me to be scared, to view my countrymen with mistrust, to sacrifice my liberty for my security. You lost.<sup>2</sup>

Responses to the post on *The Independent's* website were divided. The first commenter acknowledged Leiris' bravery and wished that he or she could be so brave in similar circumstances. In a sharp contrast, the second comment read: "Exactly the sort of appeasing, apologist response which terrorist would crave. In part, they despise the West because we are so weak."<sup>3</sup> The questions on how to best combat terror in Western states remain unanswered. More importantly, they remain central to national security discussions following the Brussels airport bombing on 22 March 2016. Nevertheless, this paper seeks to comparatively analyze two methods of radicalization as a way of furthering our understanding of what good counter-radicalization programs can achieve, and how such programs can inadvertently create terrorists.

## HYPOTHESIS

People are mortal, but ideas are immortal. The European method of stressing cognitive radicalization in preventing jihadi extremism is founded in the belief that this form of radicalism is akin to the rise of fascism in the 1930s.<sup>4</sup> This is not the case. Hitler's rise was founded on the basis of racial supremacy, while radicalization in Western states comes from a place of political marginalization, as evidenced by the case studies in this paper. Furthermore, the idea of labeling certain types of speech as "dangerous" establishes a precedent for the erosion of free speech and could lead to more backlash than actual cognitive cohesion. As

<sup>2</sup> Rose Troup Buchanan, "Paris terror attack: Husband pays touching tribute to 'love of his life' in defiant message to attackers," *The Independent*, 19 November 2015, <http://www.independent.co.uk/news/world/europe/paris-terror-husband-pays-touching-tribute-to-love-of-his-life-in-defiant-message-to-attackers-a6737231.html>.

<sup>3</sup> Commenters "KField" and "oldwease," in response to Buchanan's "Paris terror attack" piece in *The Independent*, 19 November 2015, <http://www.independent.co.uk/news/world/europe/paris-terror-husband-pays-touching-tribute-to-love-of-his-life-in-defiant-message-to-attackers-a6737231.html>.

<sup>4</sup> Peter R. Neumann, "The trouble with radicalization," *International Affairs* 89:4 (2013): 887.

such, the North American method<sup>5</sup> of preventing behavioral radicalization is more effective. By not publicly labeling a social group as “likely to become terrorists” and delineating the threshold for government intervention at terrorist acts rather than radical statements, the American government is able to better maintain social cohesion in a way that the UK’s method seeks to achieve, but fails in reality.

### *A Tale of Two Methods*

The director of the International Center for the Study of Radicalisation (ICSR), Peter R. Neumann, details a fragmentation in radicalization studies in a 2013 article. Radicalization has come to mean multiple things. One definition of radicalization emphasizes cognitive radicalization, in which an individual has extremist beliefs but might not act upon them due to social and legal norms. They are the individuals at the zenith of McCauley and Moskalenko’s opinion radicalization pyramid, as shown in Figure 1.2. The other definition is behavioral radicalization, in which an individual expresses extremist beliefs and will do anything to see those beliefs imposed onto society or brought into reality.<sup>6</sup> These are the individuals atop both the opinion radicalization and action radicalization pyramids. To summarize, all behavioral extremists are cognitive extremists, but not all cognitive extremists are behavioral extremists.

This academic debate has influenced policymakers, as the US and UK have pursued counter-radicalization strategies based on different definitions of radicalization. In accordance with the First Amendment, which protects free speech, the United States’ counter-radicalization strategy is targeted at behavioral radicalization. It has the effect of clearly demarcating a line between what is legal versus what is illegal. Neumann describes the American society as having a deep belief in the freedom of speech and an abiding faith in the strength of its republican institutions. The result is that divisive and anti-democratic speech, such as that used by the Westboro Baptist Church, is allowed despite being frowned upon by the vast majority of American society. Since it clearly demarcates what is legal and not, this strategy relies on law enforcement to prevent what is already illegal from happening and prevents citizens from acting upon their implicit biases. This is important

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<sup>5</sup> Peter Neumann calls this method the “Anglo-Saxon method.” However, the term “Anglo-Saxon” has traditionally referred to people of British origin, which is confusing in this context because the UK represents the European method. Hence, I have renamed “Anglo-Saxon” to “North American” for clarification purposes.

<sup>6</sup> Peter R. Neumann, “The trouble with radicalization,” *International Affairs* 89:4 (2013): 873.

to Americans, as the country is commonly referred to as a melting pot of cultures and ethnicities. According to Neumann: “[North Americans], in fact, do not like using the term ‘counter-radicalization’, which they believe smacks of ‘thought police’, preferring to talk of ‘countering violent extremism’.”<sup>7</sup>

In contrast, the European approach stresses the importance of preventing cognitive radicalization. This belief stems from the long shadow Hitler’s Germany left over the continent. It posits that extremist beliefs, if widely held, can manipulate and transform democracies into authoritarian regimes. Hence, terrorism is not illegal action in the pursuit of political goals but rather the result of failing to prevent cognitive radicalization.<sup>8</sup> He invokes Karl Popper: “If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.”<sup>9</sup> Even though it muddles the law by drawing increasing shades of illegality on certain types of thought, counter-radicalization is about promoting democracy and social cohesion.<sup>10</sup> In other words, the European method is about promoting the greatest amount of good for the greatest number of people.

Unfortunately, combating fascism and combating jihadism are not alike. Hitler detailed how he would make Germany a great empire again in the form of the Third Reich. He seized political control by taking advantage of severe economic and political malaise and turbulence caused by the ravages of World War I. On the other hand, jihadists claim that the global Muslim community is under attack by intolerant Western societies that would happily burn the Qu’ran. The methods to counteract the two cannot be the same, because their goals are not the same. Consequently, to implement a policy that would allow for implicit intolerance to turn from thought into action is exactly what the terrorists would use as fodder for their propaganda. The rest of this paper will detail what it takes to combat the jihadist narrative, and what it really means to effectively counter radicalization.

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<sup>7</sup> Neumann, “The trouble with radicalization,” 885-886. Quote from page 886.

<sup>8</sup> Ibid. 887.

<sup>9</sup> Karl Popper, *The open society and its enemies*, vol. 1: *The spell of Plato*, 4<sup>th</sup> ed. (London: Routledge, 1995), 293.

<sup>10</sup> Neumann, “The trouble with radicalization,” 888.

### *The Theory of Radicalism*

To best understand how counter-radicalization works, it is important to understand how people reach a state where they are classified as violent fundamentalists. The vast majority of Muslims will never become fundamentalists, and even fewer of them are socialized in a violent manner that leads to terrorism. Clark McCauley and Sophia Moskalkenko describe radicalization as a pyramid with three overarching stages. The three main stages of radicalization are: individual, group, and mass. The base of the pyramid represents the broad social movement, whereas the apex of the pyramid represents the few that are terrorists.<sup>11</sup>

At the base of the pyramid, the broad social movement encompasses all sorts of people who vaguely align with the cause the terrorists are supporting. In the case of jihadism, it can mean anyone who does not believe that the Iraq or Afghanistan wars were warranted and that Muslims are demonized in the media. Such is the individualistic and petty nature of personal grievance. When personal grievances mobilize people because the issue affects a large swath of people, it turns into political grievance. From there, individuals enter radical groups, and become pressured to think alike and conform for the sake of the group and the cause they are representing. The group competes with other radical groups to be the main or the sole group representing the cause; for example, al-Qaeda and Daesh competed throughout 2014 to see which group would become the face of the jihadi movement. The large movement also experiences fissioning, as members compete for authenticity and recognition as “true believers.”<sup>12</sup> To illustrate, Daesh was once a faction of al-Qaeda before getting expelled by Ayman al-Zawahiri, the head of al-Qaeda, for being too radical in their beliefs.<sup>13</sup>

At the apex of the pyramid, the group turns into a mass that uses fear to achieve its political goals. Dehumanization of the enemy occurs; with Daesh, they label anyone who does not believe in the jihadist ideology as a *kafir*, or infidel.<sup>14</sup> The radicalized viewpoint, no matter what ideology or time period, tends to follow

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<sup>11</sup> Clark McCauley and Sophia Moskalkenko, “Mechanisms of Political Radicalization: Pathways Toward Terrorism,” *Terrorism and Political Violence* 20, no. 3 (2008): 418.

<sup>12</sup> *Ibid.* 422-427.

<sup>13</sup> Liz Sly, “Al-Qaeda disavows any ties with radical Islamist ISIS group in Syria, Iraq,” *Washington Post*, 3 February 2014, [https://www.washingtonpost.com/world/middle\\_east/al-qaeda-disavows-any-ties-with-radical-islamist-isis-group-in-syria-iraq/2014/02/03/2c9afc3a-8cef-11e3-98ab-fe5228217bd1\\_story.html](https://www.washingtonpost.com/world/middle_east/al-qaeda-disavows-any-ties-with-radical-islamist-isis-group-in-syria-iraq/2014/02/03/2c9afc3a-8cef-11e3-98ab-fe5228217bd1_story.html).

<sup>14</sup> McCauley and Moskalkenko, “Mechanisms of Political Radicalization,” 427.

the same trend: “We are a special or chosen group (superiority) who have been unfairly treated and betrayed (injustice), no one cares about us or will help us (distrust), and the situation is dire – our group and our cause are in danger of extinction (vulnerability).”<sup>15</sup> This explains how people become part of terrorist groups, but does not fully explain homegrown terrorism.



*Figure 1.1: Pyramid of radicalization*<sup>16</sup>

Since 9/11, there has not been an attack on US or UK soil that has been orchestrated by a group like al-Qaeda. Homegrown terrorists have all been lone wolf terrorists, or radicals inspired by the actions of groups like al-Qaeda and Daesh. However, they have not been in contact with terrorists in the Middle East, which makes it more difficult for law enforcement to detect their plans. Equally perplexing is how such people became radicalized without direct contact with the terrorist groups they glorified. According to McCauley and Moskalkenko, though, the radicalization occurs in a bifurcated process: opinion radicalization and action radicalization. Opinion radicalization is the metric by which

<sup>15</sup> Ibid. 416.

<sup>16</sup> McCauley and Moskalkenko, 2008.

people either are neutral or agree that the jihadists are justified. For example, a sympathizer may agree that a war on terror equals a war on Islam, but a justifier believes that jihadists are right to detonate improvised explosive devices (IEDs) at American troops in Iraq.<sup>17</sup> At the very apex of the pyramid, a person holds the same *Weltanschauung* as a terrorist in an organized group. Having radical opinions does not mean that all radicals are violent, though.



Figure 1. Opinion radicalization pyramid.

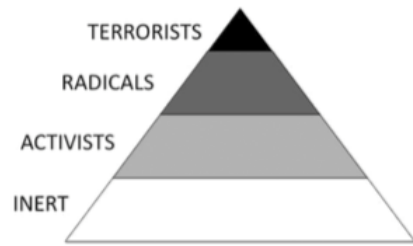


Figure 2. Action radicalization pyramid.

*Figure 1.2: Opinion vs. action radicalization pyramids<sup>18</sup>*

Psychological studies show a massive variation exists in how beliefs influence actions. The gap between beliefs and actions is small in voting choices, but large when strong social and legal norms run counter to the person's attitude. That is why it is difficult to determine who is a peaceful radical and who is a terrorist, because some radicals are deterred from acting upon their violent words by sheer fact that murder and mayhem are illegal. As such, they may be at the apex of the opinion radicalization pyramid, but only rank amid the bottom two tiers of the action radicalization pyramid. Meanwhile, some individuals with criminal histories do not see the law as a deterrent, and pursue terrorism for the thrill, status, and the ability to act out their personal grievances.<sup>19</sup> Conversely, they may rank lowly on the opinion radicalization pyramid, but represent the top of the action radicalization pyramid.

McCauley and Moskalenko's research shows that three factors are import-

<sup>17</sup> Clark McCauley and Sophia Moskalenko, "Toward a Profile of Lone Wolf Terrorists: What Moves an Individual From Radical Opinion to Radical Action," *Terrorism and Political Violence* 26, no. 1 (2014): 71.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid. 72.

ant in bridging the gap between radical opinions and actions: 1) inability to cope with perceived hypocrisy, or the internal need for consistency between words and actions, 2) strong identification with perceived victims, and 3) opportunity and means to carry out violence. While terrorists in a group tend to have a normal psychological profile and are pushed towards radicalism by groupthink, lone wolf terrorists have greater instances of psychiatric problems. In that sense, lone wolves are akin to school shooters and assassins. The latter two categories of people also carry out attacks based on personal grievances, albeit generally not linked to any “higher cause.” Among school shooters and assassins, four characteristics are common: grievance, depression, unfreezing (situational crisis of personal disconnection and maladjustment), and prior experience with weapons. In many cases, lone wolves display one or more of these characteristics. Nidal Hasan, the Fort Hood terrorist, for example, experienced all four characteristics before carrying out his attack. He was unsettled and depressed by the death of his parents, viewed the Iraq and Afghanistan wars as a war against Islam, and had prior experience with weapons due to his career in the US Army.<sup>20</sup>

*Extant literature on comparative counter-radicalization*

The vast majority of counter-radicalization literature bears titles like: “Online De-Radicalization? Countering Violent Extremist Narratives: Message, Messenger and Media Strategy,”<sup>21</sup> or “Terrorist Drop-outs: One Way of Promoting a Counter-Narrative.”<sup>22</sup> They are solution-oriented, designed to provide a solution to the homegrown terrorism problem. They center on a few key policy recommendations:

1. Engage, engage, and engage: Central to al-Qaeda and Daesh’s philosophy is the idea that Muslims are under attack from the world, led by Western states. Western states should not ostracize their Muslim populations by subjecting them to increased scrutiny or background checks, as it feeds into the jihadist

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<sup>20</sup> Ibid. 80-82.

<sup>21</sup> Omar Ashour, “Online De-Radicalization? Countering Violent Extremist Narratives: Message, Messenger and Media Strategy,” *Perspectives on Terrorism* 4, no. 6 (2012): 15-19.

<sup>22</sup> Michael Jacobson, “Terrorist Drop-outs: One Way of Promoting a Counter-Narrative,” *Perspectives on Terrorism* 3, no. 2 (2009): 12-17.



narrative.<sup>23</sup>

2. The need for a moderate narrative: Jihadists seek to impose a politicized narrative that demonizes the West and glorifies the jihadists as some sort of amalgamation between holy crusaders, anti-colonialists, and freedom fighters. Western states need to work with local Muslim communities and organizations to promote a moderate counter-narrative.<sup>24</sup>
3. Take the fight online: al-Qaeda and Daesh's social media savvy have made its message publicly available to vulnerable citizens living in the West. Jihadists post about their lives on Twitter and Tumblr, romanticizing such a lifestyle. Not only should Western governments work with social media companies to shut down these accounts, governments should use social media and technology to expose jihadists' hypocrisy and the brutality inherent in the jihadist lifestyle.<sup>25</sup>

Because counter-radicalization scholars are mainly focused on how to counter online terrorism and combat jihadist propaganda, comparative studies of extant counter-radicalization studies have been given short shrift. Noted counter-radicalization scholar Lorenzo Vidino briefly discusses the choice between targeting cognitive radicalization versus behavioral radicalization in a single paragraph in his U.S. Institute of Peace report: "Policymakers need to decide whether to target only violent radicalization or, more broadly, cognitive radicalism. ... Such intervention would take very different forms, depending on whether it sought to tackle cognitive or behavioral radicalism."<sup>26</sup> While Vidino loosely suggests considering a strategy that includes cognitive radicalization as its target, it is not the aim of the study. This gap is evidenced in other papers, where the comparison between cognitive and behavioral radicalization as well as the programs resulting from each strategy is overlooked. In comparing the US's CVE tactics to the UK's Prevent strategy, this paper seeks to rectify this gap in the literature.

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<sup>23</sup> Ashour, "Online De-Radicalization?" 15 & 17.

<sup>24</sup> Ibid. 15-19.

<sup>25</sup> Ibid. 15.

<sup>26</sup> Lorenzo Vidino, "Countering Radicalization in America: Lessons from Europe," United States Institute of Peace, Special Report 262, November 2010, [http://www.usip.org/sites/default/files/SR262%20-%20Countering\\_Radicalization\\_in\\_America.pdf](http://www.usip.org/sites/default/files/SR262%20-%20Countering_Radicalization_in_America.pdf). 10.

*US' Countering Violent Extremism strategy*

The United States' Countering Violent Extremism (CVE) strategy is an umbrella term for broad group of strategies and programs designed to supplement the US's robust counterterrorism program. Programs include the "If You See Something, Say Something" campaign and the Building Communities of Trust Initiative, both developed by the Nationwide Suspicious Activity Reporting (SAR) Initiative. The Nationwide SAR Initiative (NSI) is under the dual jurisdiction of the Department of Homeland Security and the Department of Justice.<sup>27</sup> The White House has also published a Strategic Implementation Plan (SIP) to coordinate this strategy among the plethora of federal, state, and local agencies.

The White House describes its method as "community-based" and centered around different forms of violent extremism, including religious, right-wing, and anti-Semitic terrorism. The strategy is focused on establishing connections between law enforcement and Muslim communities. The SIP stresses engagement as a main objective, in order to counter the "us vs. them" narrative that Daesh and other radical groups perpetuate. It also explicitly notes the dangers that misinformation can present, and the concern that it may cause anti-Muslim sentiment and terror attacks.<sup>28</sup> However, the centerpiece of the CVE strategy is the lack of government intervention in personal affairs:

Countering the ideologies and narratives that legitimize violence is central to our effort, but it also is the most challenging area of work, requiring careful consideration of a number of legal issues, especially those related to the First Amendment. In many instances, it will be more effective to empower communities to develop credible alternatives that challenge violent extremist narratives rather than having the Federal Government attempt to do so.<sup>29</sup>

In doing so, the SIP acknowledges the role of civil society in rejecting radicalism itself and the distrust that a government-sponsored message might

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<sup>27</sup> Building Communities of Trust Initiative, *Building Communities of Trust: Fact Sheet*, January 2014.

<sup>28</sup> Office of the White House, *Empowering Local Partners to Prevent Violent Extremism in the United States*, August 2011.

<sup>29</sup> *Ibid*, 18.

foster. It concludes by noting that opportunity and meritocracy comprise the core of the American dream, and that those values are central to combating violent extremism.

### *UK's Prevent strategy*

In contrast to the brevity of the American strategy documents, which number no more than thirty pages combined, the single Prevent strategy document is over a hundred pages. Its contents describe the many ways the British government and its people will challenge terrorism. Its themes include the necessity for all British citizens to combat terrorism and to protect British values, maintaining freedom of speech and social cohesion, and the use of social channels to achieve this. These themes resonate in the three objectives of the Prevent strategy: challenging the ideology that supports terrorism and those who promote it, protecting vulnerable people, and supporting sectors and institutions where there are risks of radicalization.<sup>30</sup> In sharp contrast to the CVE strategy, the Prevent strategy is designed to identify vulnerable individuals during their road to radicalization during either the individual (bottom) stages or the group (intermediate) stages of McCauley and Moskalkenko's pyramid of radicalization. By having Prevent-trained school officials and healthcare providers reporting vulnerable officials to authorities, the strategy seeks to "pre-empt and not facilitate law enforcement activity," as labeling Prevent as an avenue for police to arrest people can "create suspicion of Prevent and a reluctance to engage with it."<sup>31</sup> It is not designed to punish vulnerable citizens but rather to teach them the error of their ways.

The Prevent strategy document explicitly mentions that terrorists are overwhelmingly under the age of thirty. A substantial number received post-secondary education. Hence, the cornerstone of Prevent falls on secondary and post-secondary school officials, because they are most likely to recognize when a peer is being radicalized. Schoolchildren are not encouraged under the belief that some too immature to understand and recognize the patterns of behavior involved in radicalization. The second pillar of prevention is with the healthcare system. Nearly every British citizen encounters the National Health Service (NHS) at some point in their lives; hence, healthcare providers are likely to recognize the "signs that someone is vulnerable to radicalisation, interpret those signs correctly and access

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<sup>30</sup> HM Government, *Prevent Strategy*, June 2011.

<sup>31</sup> *Ibid.* 8 & 36.

the relevant support.”<sup>32</sup>

## METHODOLOGY

First, I will use four case studies to study whether the strategy has been successful or not. Each strategy will have one “success” and one “failure” case study. The first metric is numeric. While complete statistics are unavailable due to the clandestine nature of most national security operations, there are a number of sources that track radicalization instances since 9/11.<sup>33</sup> I will provide quantitative data outlining the general success of law enforcement in preventing radicalization or terrorist plots when it is available.

The second metric is success. A criterion for a successful counter-radicalization strategy should take into consideration criticisms of counter-radicalization programs. It should prevent terrorist activity while not causing further sociopolitical marginalization of the Muslim community in the country (see the “Extant literature” section). The case studies should illuminate in what ways the strategy succeeds, and in what areas it fails. The second criterion is that it should address the root concerns of homegrown terrorism in Western states, namely political marginalization.

The third metric is time. The study will be bounded from 2011 to the end of 2015, when this paper was first written. As previously described in the formation of the CVE and Prevent strategies above, both strategies were implemented in 2011. Hence, case studies that take place before the implementation of these strategies are irrelevant; this study only uses case studies that take place after the counter-radicalization strategies are implemented to examine the hypotheses. Nevertheless, this study integrates statistics from before the implementation of the counter-radicalization strategies in order to show relevant longer-term terrorism and radicalization trends that may not be immediately apparent when examining a four-year time period.

### *Methodological difficulties*

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<sup>32</sup> Ibid. 85.

<sup>33</sup> For an example of the incompleteness of counter-terrorism statistics and how confidential information affects terrorism studies, note the number of detections that were labeled as “unclear/unknown” in Figure 1.5.

For most Americans, homegrown terrorism and radicalization has never been as major a concern as terrorism abroad. The reason is clear, as the number of attempted terror attacks in the United States never number more than ten per year. Out of all the incidents described above, only five succeeded,<sup>34</sup> resulting in thirty-four casualties total.<sup>35</sup> The rest ended in arrest and law enforcement intervention. Attacks dating back to 2001 are shown below in order to depict the unusually high level of jihadist terrorist activity from 2009 to 2011. Moreover, this graph does not show the numbers of Americans going abroad to serve as foreign fighters for Daesh; in late October, the FBI detained nearly seventy people who had alleged connections to Daesh.<sup>36</sup> Two conclusions can be drawn from these data. First, this paper does not include radicals who go abroad to fight for Daesh and other jihadist groups, although they construe a major part of the modern terrorist threat to Western states. Second, this explains the lack of data regarding counter-terrorism and counter-radicalization in Western states in prior years, as a majority of scholarly attention was focused on terrorism in the Middle Eastern region throughout the 2000s.

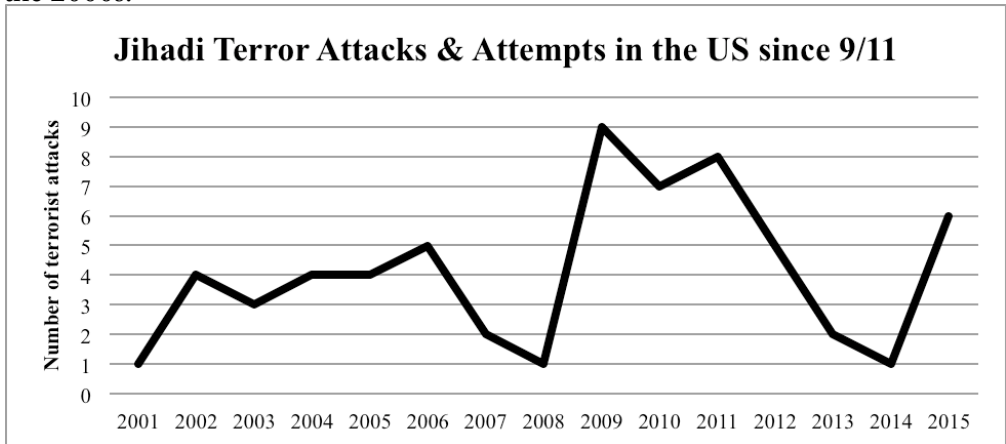


Figure 1.3: Jihadi terror attacks and attempts in the United States since Sept. 11,

<sup>34</sup> Here, New America lists four jihadi terrorist attacks not included in Mueller's compendium. In order to keep the paper consistent, these attacks and their casualties have not been included here. However, the San Bernadino shooting casualties on 2 December 2015 have been included.

<sup>35</sup> The International Security Program, "Homegrown Extremism: Deadly Attacks Since 9/11," *New America*, <http://securitydata.newamerica.net/extremists/deadly-attacks.html>.

<sup>36</sup> "FBI, Homeland Security Arrest Some 70 ISIL-Related Persons in US," *Sputnik International*, 21 October 2015, <http://sptnkne.ws/Wva>.

2001<sup>37</sup>

Moreover, even though the UK and the US suffer the second and third highest rates of terrorism among OECD countries (see Appendix A), it is important to note that the United States does not face the same threat from radicalization that its European allies face. By August 2015, an estimated 350 Daesh foreign fighters originate from the United States and Canada combined. Meanwhile, over 700 foreign fighters are from the United Kingdom alone. The UK ranks among the world’s top ten countries from which foreign fighters originate; among European countries, only Russia and France outrank it.<sup>38</sup> As such, radicalization is a much more immediate concern to the British than to the Americans. The case studies cannot be separated from the environmental and political contexts in which they took place.

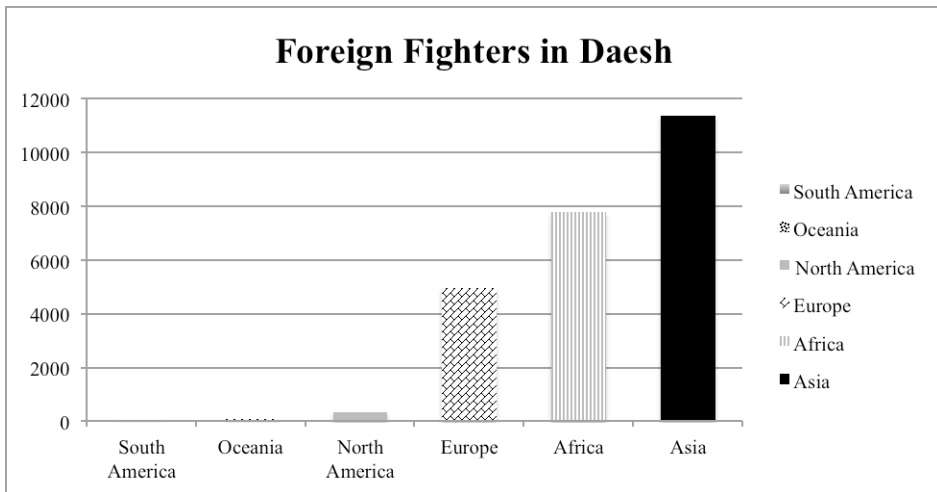


Figure 1.4: Foreign fighters in Daesh<sup>39</sup>

Thirdly, this study is limited in the sense that counter-radicalization is

<sup>37</sup> See Appendix B.

<sup>38</sup> Ashley Kirk, “Iraq and Syria: How many foreign fighters are fighting for ISIL?” *The Telegraph*, 12 August 2015, <http://www.telegraph.co.uk/news/worldnews/islamic-state/11770816/Iraq-and-Syria-How-many-foreign-fighters-are-fighting-for-Isil.html>.

<sup>39</sup> Kirk, “Iraq and Syria,” *The Telegraph*, 12 August 2015.

inherently difficult to measure: its successes is defined by its absences, not its incidents. As explained by Vidino, a successful counter-radicalization strategy can only be measured by the number of people who would have gone on to commit terrorist attacks but opted not to or were stopped by authorities due to the counter-radicalization strategy.<sup>40</sup> The latter is measurable, the former nearly impossible. Moreover, Lorenzo also raises a serious quandary about assessing failure: “If, for example, one hundred individuals go through a deradicalization program and only a handful of them revert to terrorism, how is the program to be assessed?”<sup>41</sup> Those questions are difficult to answer and far beyond the purview of this paper. Hence, this study will use the metrics described above, but they are in no way comprehensive metrics of success.

## SUCCESSFUL PREVENTION EFFORTS

### *Pipe bombs in Manhattan*

Noted terrorism scholar John Mueller published a book of case studies of US radicalization since 9/11.<sup>42</sup> Out of sixty-one documented cases, twenty take place after 2011. Most of these cases end in arrest, either by local law enforcement or the FBI. One such case is that of Jose Pimentel. Pimentel started reading the Qu’ran in 2001, and converted to Islam in 2004. In 2010, following divorce and personal failure, he was worrying relatives with his increasing obsession with Islam. Around that time, he started to post online about his radical beliefs, praising Osama bin Laden for perpetrating the 9/11 attacks. By this time, law enforcement had been tailing Pimentel for over two years. Initially, Schenectady police tipped the NYPD off when Pimentel moved to New York City, because Pimentel had expressed a desire to undergo terrorist training in Yemen. NYPD informants later befriended Pimentel and accompanied him as he purchased materials for his pipe bombs. On 19 November 2011, Pimentel was arrested by the NYPD after being videotaped making pipe bombs, which he intended to send to American military personnel returning from abroad. The timing of the plot came soon after Anwar al-Awlaki, an American radical Islamic cleric hiding in Yemen, was killed by drone strike.<sup>43</sup>

<sup>40</sup> Lorenzo Vidino, “Countering Radicalization in America.” 9.

<sup>41</sup> Ibid.

<sup>42</sup> John Mueller, *Terrorism Since 9/11: The American Cases* (2015), 688-690, <http://politicalscience.osu.edu/faculty/jmueller/since.html>.

<sup>43</sup> Ibid.

It is suspected that he was so easily caught because of the freeness with which he would discuss his radical opinions, especially online. The NYPD is considered to be the most prepared in the nation regarding possible terrorist attacks. Police departments across the nation emulate their tactics, especially the use of agent provocateurs, in detecting and preventing homegrown terrorism.<sup>44</sup>

### *Bristol's failed suicide bomber*

Andrew Ibrahim frequently smoked marijuana, spent the vast majority of his time on Internet games, got expelled from a series of private schools, and frequently researched Osama bin Laden and explosives on his father's computer while growing up. After drug abuse, he failed out of his college courses, and experienced numerous other personal failures. By this time in 2007, he had found Islam and converted, changing his name to Isa; he started to wear the traditional white robes, headscarf, and sandals. He briefly returned to drugs and studying for his A-levels as he was more interested in the politics than the religion, but quickly became obsessed with suicide bombers and the ongoing war in Iraq.<sup>45</sup> After failing his exams in early spring 2008, he started to purchase suicide bomb equipment. He then researched the history and the process of making a suicide bomb vest. On 16 April 2008, his suspicious activities were reported to the police. They quickly arrested him and removed the explosives from his council flat in Bristol.<sup>46</sup>

### *Analysis*

The CVE strategy has been considered a success in apprehending and preventing dozens of would-be terrorists via the use of agent provocateurs, so the strategy remains in place. That Pimentel was noticed and followed by the NYPD the moment he returned to New York shows careful observation, and the fact that he was arrested the moment he entered the hardware store to purchase bomb

<sup>44</sup> Rohan Gunaratna and Cleo Haynal, "Current and Emerging Threats of Homegrown Terrorism: The Case of the Boston Bombings." *Perspectives on Terrorism* 7, no. 3 (2013): 55.

<sup>45</sup> Duncan Gardham, "Andrew Ibrahim: How a public schoolboy became a terrorist," *The Telegraph*, 18 July 2009, <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/5850765/Andrew-Ibrahim-How-a-public-schoolboy-became-a-terrorist.html>.

<sup>46</sup> Duncan Gardham, "Terrorist Andrew Ibrahim was turned in by the Muslim community," *The Telegraph*, 18 July 2011, <http://www.telegraph.co.uk/news/5851168/Terrorist-Andrew-Ibrahim-was-turned-in-by-the-Muslim-community.html>.



supplies is evidence of law enforcement assiduousness in taking reported threats seriously and moving to prevent violence effectively. Speaking more broadly, what is noticeable about Mueller’s documented case studies is just how few of them result in violence. In the wake of the San Bernadino attacks, it may not seem as if Americans are safe from terrorists armed with guns. However, out of sixty-two incidents, only five failed to be caught by police or the FBI (see Appendix B). Americans are more likely to hear about the terrorist attacks that do occur instead of the plots that failed, but the evidence shows just how assiduous law enforcement is in monitoring individuals with radical tendencies. Pimentel’s case study is the most typical instance of homegrown terrorism in the US.

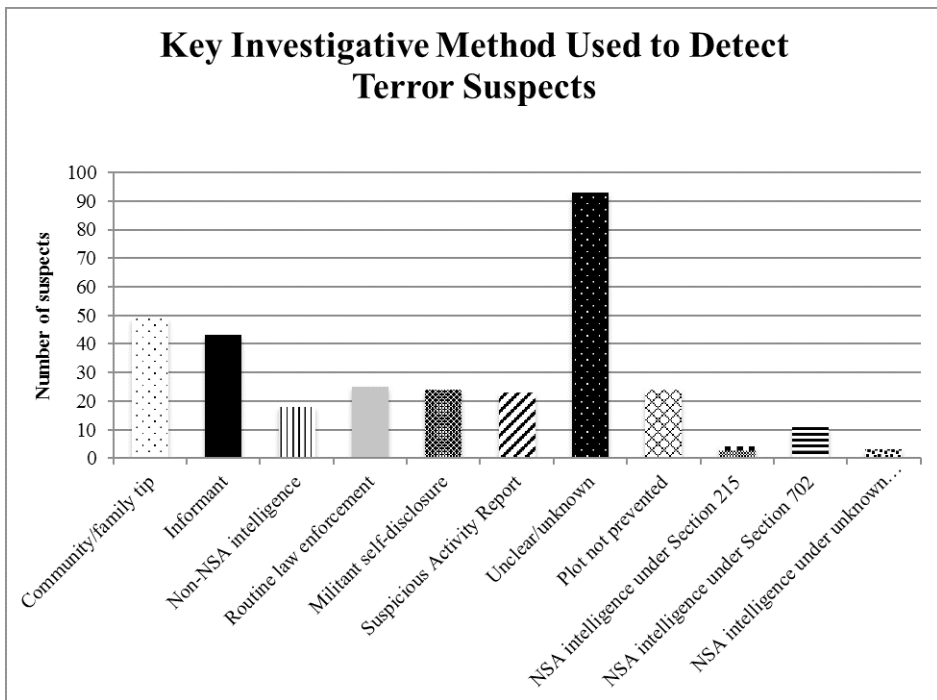


Figure 5: Key investigative methods used to detect terror suspects<sup>47</sup>

Out of 317 jihadist suspects since 9/11, 182 of them were foiled by tra-

<sup>47</sup> Peter Bergen, David Sterman, Emily Schneider, and Bailey Cahall, “Do NSA’s Bulk Surveillance Programs Stop Terrorists?” New America Foundation, January 2014. 5.

ditional investigative measures. Traditional investigative measures include six categories: community/family tip, informant, non-NSA intelligence (provided by the CIA, FBI, etc.), routine law enforcement, militant self-disclosure, and Suspicious Activity Reports. Pimentel's case study falls underneath the routine law enforcement category, but it also has an element of militant self-disclosure, as Pimentel posted his sentiments online prior to his arrest.

Pimentel's case study exposes how little the CVE strategy relies on signals intelligence (SIGINT), the kind of intelligence popularized by public perceptions of the NSA. NSA data collection counts for very few case studies; to be exact, only eighteen of the 317 suspects were caught via SIGINT. The vast majority of domestic terror suspects are detected through traditional human intelligence (HUMINT) methods. HUMINT typically uses informants and agent provocateurs to collect enough evidence to indict suspects.<sup>48</sup> This has raised a great level of controversy among Americans, because nonviolent radicals may be incited to do something illegal via an agent provocateur's goading. It sounds eerily like the plot of 1984, which is enough to scare the majority of American citizens. However, it is worth noting the sheer number of Mueller's case studies that have been foiled; the vast majority of them were achieved via the use of agent provocateurs, so no one can deny that it actually succeeds in bringing out violent terrorists and preventing them from turning their violent deeds from aspirations into operations.

Meanwhile, Ibrahim was identified via community tip by a number of people in Bristol's Muslim community who had attended a Prevent awareness workshop.<sup>49</sup> As such, it shows the importance of raising awareness about radicalization and its threats to the public at large, especially Muslim communities. However, the case study still results in arrest, which belies the intention of Prevent being used to preempt police activity and prevent young Brits from being jailed. Nevertheless, the importance of community participation in preventing terrorism remains paramount, as civilians are far more likely to come into contact with a would-be terrorist than a law enforcement officer on duty. That the British have mobilized their public and promoted safety regarding radicalization is also commendable. In this case study, that awareness has saved countless lives.

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<sup>48</sup> "Intelligence Collection Disciplines (INTs)," Federal Bureau of Investigation, accessed 2 April 2016, <https://www.fbi.gov/about-us/intelligence/disciplines>.

<sup>49</sup> HM Government, *Prevent Strategy*, 2011, 56.

The Ibrahim and Pimentel case studies are quite similar. Both men were under thirty years of age and were not socialized in strict Muslim households. They lived in urban environments that promoted a sense of isolation being separated from society. They ran against social norms with their criminal activity, which moved them up the action radicalization pyramid. Pimentel and Ibrahim both studied Islam and were part of the religion, enjoying the social structure that entered their lives, which moved them to the base of the opinion radicalization pyramid. The combination of the two made them incredibly vulnerable to the jihadist narrative; that narrative invited both men to become part of a special group who had been unfairly treated by society and whose situation was dire – they had to act or face extinction.<sup>50</sup> Both men disengaged from the religious nature of Islam and gravitated towards the political events involving the Middle East, which is what made them shift to the apex of the opinion radicalization pyramid. Jocelyne Cesari describes the social shift: “The temporary loss of embeddedness [in the Tabligh, or the apolitical movement whose goal is to increase Muslim orthodoxy, commonly called the ‘Jehovah’s Witnesses of Islam’] made these jihadis vulnerable to Salafi interpretations ... It provides an alternative to the isolation and estrangement of an urban environment that caters to the affluent and culturally dominant citizen.”<sup>51</sup> Because both had lower thresholds to breaking the law due to prior criminal histories, it allowed both to bridge the gap between believing in jihadism and attempting it.

However, an interesting twist emerges at the end of the Ibrahim case study. By the time authorities raided Ibrahim’s flat, he had already purchased suicide bomb materials. For all of the case study similarities, Pimentel was arrested before he could complete purchasing suicide bomb materials. I argue that Ibrahim would have never completed the suicide bomb had this case taken place in the US. Prevent was less effective than CVE in terms of how quickly authorities were able to determine the existence of a national security threat in this case study comparison.

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<sup>50</sup> Narrative borrowed from McCauley and Moskalenko.

<sup>51</sup> Jocelyne Cesari, “Muslims in Europe and the US: A Shared but Overrated Risk of Radicalism,” in *Jihadi Terrorism and the Radicalisation Challenge: European and American Experiences*, 2<sup>nd</sup> ed., ed. Rik Coolsaet (Surrey: Ashgate, 2011), 106 & 111.

**FAILED PREVENTION ATTEMPTS***Tragedy in Boston*

Tamerlan and Dzhokhar Tsarnaev are the two brothers who gained notoriety for carrying out the Boston Marathon Bombing. Tamerlan Tsarnaev, the elder brother, also experienced personal failure; during this time, Zubeidat encouraged him to turn to religion. In January 2012, Tamerlan visited Chechnya in order to renew his Russian passport; it is thought that he made contact with Chechen insurgents at this time. Meanwhile, the younger brother Dzhokhar admired his elder immensely, and became embedded in Tamerlan's increasing radicalism. The brothers originally plotted to bomb the Charles River area in Boston on July 4, but when incendiary devices proved easy to procure, they modified their plans. On 15 April 2013, the Tsarnaev brothers set off two improvised explosive devices (IEDs) at the Boston Marathon finish line, killing four and wounding over 200 people. They had originally planned to commit a suicide bombing in Times New Square with six other IEDs, but were intercepted by police.<sup>52</sup> Tamerlan was killed in a police shootout and Dzhokhar was apprehended less than a day later. Two years later, he was sentenced to death in a jury trial.<sup>53</sup>

*Not a surveillance state, but a suspicious one*

In this case study, names have not been released to the public. As such, each person will be designated with an initial in order to help identify the plethora of characters in this case study. A twelve year-old schoolboy ("A") was also reported to the Prevent authorities on suspicion of being radicalized. A was doing a home economics lesson, and the teacher ("B") had instructed his or her students to procure a chicken. At the time, there was a news story about halal slaughterhouses being shut down. A told his teacher that he would not be able to procure a halal chicken. When asked by B as to why, A responded, "It's because the government hates Muslims." B told the preteen's mother ("C"), who agreed to talk to her child. C said that she was careful about the material she showed her son. However, child services still rang a week later. Because A was being bullied

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<sup>52</sup> Gunaratna and Haynal, "Current and Emerging Threats of Homegrown Terrorism," 46-47.

<sup>53</sup> Jennifer Levitz, "Boston Marathon Bomber Dzhokhar Tsarnaev Sentenced to Death, Apologizes to Victims," Wall Street Journal, 24 June 2015, <http://www.wsj.com/articles/dzhokhar-tsarnaev-apologizes-before-being-sentenced-to-death-for-boston-bombing-1435170191>.

at his school, he was frequently tardy. The tardiness, though, was attributed to praying at a mosque, not because he was reluctant to go to a school where he'd be bullied. Furthermore, C went on holiday and left A and his brother ("D") with her husband ("E"). A was ill during this time, and E called his school to excuse his absence. Since A and D did not attend the same school, A's school called D's school to check whether D was in class or not. A's school was under the presumption that C had taken her children off to the Middle East, presumably to join Daesh. This is but one case study among many reports of Muslim schoolchildren finding themselves being reported to Prevent authorities as a result of teachers being mandated to report any suspicious activity to Prevent.<sup>54</sup>

### *Analysis*

Most noticeably, Tamerlan Tsarnaev had been placed in an FBI database following a notification from the Russian security services (FSB); however, after an interview, the FBI was unable to declare him an important enough threat to national security to warrant close observation. Later that year, the FSB warned the CIA of the threat that Tamerlan posed to US national security. Unlike the Pimentel case study, the Tsarnaev brothers did not post their beliefs or plans online, as the former did. Moreover, neither of the Tsarnaev brothers had any connection with al-Qaeda or any other radical group, although al-Qaeda's *Inspire* magazine was quick to claim responsibility for the attack. Law enforcement and intelligence agencies failed to detect the Tsarnaev brothers until it was too late for the first set of bombings, but acted quickly and effectively to prevent the second set of bombings.<sup>55</sup>

The Boston Marathon Bombing case study shows the limitations of relying so heavily upon HUMINT. Even though traditional surveillance methods have caught so many individuals, they failed to catch 7.6% of the perpetrators. SIGINT requires few personnel; the bulk of expenses are for sophisticated technology and equipment. By comparison, HUMINT requires several personnel to serve as agent provocateurs and analysts. Technology is still at the stage where a human can detect a terror plot better than a machine, but it is also a weakness because the US does not have the financial means and the time to investigate every suspected terrorist. Law enforcement individuals need to be lucky all the time, but terrorists need to

<sup>54</sup> Homa Khaleeli, "You worry they could take your kids': is the Prevent strategy demonizing Muslim schoolchildren?" *The Guardian*, 23 September 2015, <http://www.theguardian.com/uk-news/2015/sep/23/prevent-counter-terrorism-strategy-schools-demonising-muslim-children>.

<sup>55</sup> Gunaratna and Haynal, "Current and Emerging Threats of Homegrown Terrorism," 55.

be lucky just once in order to strike fear into the heart of a nation. Even though 1.3 million people die in car crashes annually, the fear and public discourse that goes into terrorism versus car crashes is much greater.

By contrast, the effects of over-reporting are much less newsworthy as they do not cause casualties. There are noticeable consequences of mandating that teachers and other private citizens report suspicious activity to the government, but they are not detrimental to society in the short-term, as the Tsarnaev case study was. Nonetheless, in a socially and economically stratified society that results from centuries of a land-based aristocracy, the suspects for radicalization are inevitably from the Muslim minority subject to heightened scrutiny ever since the 7/7 tube bombings. That is not to say that people will impose certain Islamophobic biases upon their reporting of radicalization, but Homa Khaleeli's article makes it clear that no one has reported a young Caucasian student for white supremacist statements like those made by Anders Breivik, who shot and killed twenty-nine Oslo children in 2009.<sup>56</sup>

Those reported to Prevent are all Muslim schoolchildren with ethnic Arab backgrounds, one of them three years old. The title of the article reflects the fear the parents have: that the British government will take the children to properly instill "British values" into them. It reeks of targeted political repercussions instead of social cohesion. A large part of this phenomenon is that the Prevent strategy likens radicalization to other anti-social behavior and psychiatric issues akin to those exhibited by assassins and school shooters. While homegrown terrorists and school shooters do exhibit some similarities (as noted in "The theory of radicalism" section), stronger indications of radicalization are the inability to endure perceived hypocrisy and the personal connection with alleged victims, which allows homegrown extremists to connect with terrorists outside of an organized group. As such, the Prevent strategy may be telling its citizens to look for the wrong signs and to misinterpret them. The schoolchild in the halal chicken case study should have been referred to a counselor or psychologist, not counterterrorism authorities.

There is a real problem in creating such a public and visible strategy with a simple moniker as Prevent. The word "prevent" alone has a massive range of

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<sup>56</sup> Brian Masters, "Anders Breivik isn't mad – he was a man on a mission," *The Telegraph*, 16 April 2012, <http://www.telegraph.co.uk/news/worldnews/europe/norway/9206958/Anders-Breivik-isnt-mad-he-was-a-man-on-a-mission.html>.

interpretation. Among the general public, it might evoke a sense of “preventing violent extremism,” but among English Defence League members, it might imply a legal pretext for bigotry. This is a group that promotes xenophobia as a matter of public policy. It explicitly labels radical ideas and statements as a problem, and this can result in overreaction when a citizen does not know the difference between depression and radicalization. The Prevent strategy chips away at civil society by mandating that citizens report on each other on the basis of suspicions, which targets Muslims in practice because of the larger sociopolitical context in which this policy takes place, exacerbated by the twenty-four-hour news cycle that brings fresh news of Daesh’s barbaric tactics every day when the sun dawns.

Every citizen, even Prevent-trained, will have a different education level when it comes to political science and counterterrorism studies and a different threshold of what constitute or does not constitute radicalization. By not taking into account citizens’ political identity and upbringing, the British government implies that all citizens are treated equally in society, which is not true. The delay in a moderate Muslim countermovement, epitomized by Twitter hashtags such as #NotInMyName, has harmed the perception of Muslims in Western countries, which allows Islamophobic demagoguery to gain traction. By assuming that citizens are effectively unbiased and always able to discern between an actual case of radicalization and potential overreaction, the British government is in effect allowing citizens to act upon any implicit biases, which can lead to further political radicalization from Muslims who feel that they are being targeted by the government and non-Muslim Brits. Of course, with that being said, this is a society that created and popularized the #YouAintNoMuslimBruv hashtag, which was applauded by Prime Minister Cameron.<sup>57</sup> Suffice to say that Islamophobia is not a popular sentiment in the UK as it is among presidential candidate Donald Trump’s xenophobic supporters. With that being said, policies like Prevent that attempt to cull cognitive radicalization would likely lead to several problems in America.

The questions raised by this comparison reveal the crux behind the debate as whether to focus on cognitive or behavioral radicalization. Should a country only focus on behavioral radicalization, its law enforcement capability may be limited by the influx of simultaneously monitoring many would-be terrorists, since

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<sup>57</sup> Yanan Wang and Niraj Chokshi, “You ain’t no Muslim, bruv’: David Cameron champions rallying cry against Islamophobia,” *Washington Post*, 7 December 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/07/you-aint-no-muslim-bruv-brits-champion-rallying-cry-against-islamophobia/>.

there is no single path of radicalization. As evidenced by the three case studies of radicalization, all three connected to radical Islam via different methods: Internet, controversial political actions taken by the US, and connections with Chechen terrorists. This has been borne out by other studies as well, as noted by other scholars.<sup>58</sup> This can result in another Boston Marathon Bombing again, where authorities may not be able to effectively detect a serious terror threat until it is too late. On the other hand, if one includes measures against cognitive radicalization from the outset, then it can potentially deter some of these threats, but at an additional cost of alienating a segment of the population that feels unfairly targeted. That resentment can incite violence, which is the opposite of its goal. Conversely, by including the First Amendment as priority in its counter-radicalization strategy, the American method is very clear and explicit about its goals. It does not brand the strategy with a simple moniker that can be misrepresented; it labels itself as countering violent extremism only, not permitting inadvertent bigotry, and separating itself from bigoted statements.

The CVE strategy is much more downplayed and utilizes a number of existing frameworks rather than establishing a new program entirely. The White House justifies this by saying: “This reliance, however must not change the nature or purpose of existing relationships. In many instances, our partnerships and related activities were not created for national security purposes but nonetheless have an indirect impact on countering violent extremism (CVE).”<sup>59</sup> It is careful to utilize existing law enforcement methods and frameworks so that it is not perceived as breaking the law in the name of national security but rather maintaining the law to defend Americans from what would already be considered illegal. It does, however, court controversy through its use of agent provocateurs and its use in inspiring a small cabal of citizens towards further radicalism instead of dissuading them from extremism. Nevertheless, its success cannot be understated in an era of increasing identity-driven divisions in the American political atmosphere.<sup>60</sup>

<sup>58</sup> Vidino, “Countering Radicalisation in America,” 10-11.

<sup>59</sup> Office of the White House, *Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States*, December 2011. 1.

<sup>60</sup> For a more detailed analysis of this phenomenon, see: Bill Bishop and Robert G. Cushing, *The Big Sort: Why the Clustering of Like-Minded America is Tearing Us Apart*, Boston: Mariner Books, 2009.



## AVENUES FOR FURTHER STUDY

As previously mentioned, the UK and the US suffer some of the highest rates of terrorism among developed nations. In fact, among the nations that comprise the Organization for Economic Cooperation and Development (OECD), the UK and the US rank second and third on the 2014 Global Terrorism Index, surpassed only by Turkey.<sup>61</sup> While focusing on jihadi terrorism is of greatest import, an important finding emerged from studying instances of US radicalization: the growing right-wing terror movement. Up until December 2, right-wing terrorists killed nearly twice as many Americans as homegrown jihadists had. Even now, the International Security Project at New America says that homegrown jihadists have killed forty-five individuals since 9/11, whereas right-wing terrorists have killed forty-eight individuals in that same time span.<sup>62</sup> Even as the intelligence community combats today's terror threats, Western states' eyes should always be looking forward in preventing future terror attacks regardless of the ideology it springs from.

## CONCLUSION

We would like to believe that combating terrorism is as easy as catching perpetrators. Unfortunately, the reality is that so long as there are people who value their beliefs over human lives and there is a social movement that allows these people to be mobilized together in an absolute willingness to achieve their goals irrespective of the horror their tactics inspire, there will be a threat of terrorism. David Rapoport, the father of modern terrorism studies, describes four waves of modern terrorism reaching back to the anarchist movement in the late nineteenth century. Almost 2,000 years prior to Archduke Franz Ferdinand's assassination, the Zealots stabbed fellow Jews to protest Roman occupation of Judea in the first century CE.<sup>63</sup> Fear is encoded in humanity's hindbrains; it is universally felt. As such, history is often written in blood and terror. Terrorists take advantage of this by exploiting vulnerable individuals and inspiring them to carry out the attacks like the midday shooting in San Bernadino. As such, counter-radicalization strategies

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<sup>61</sup> Institute for Economics and Peace, *Global Terrorism Index*, 2014.

<sup>62</sup> International Security Project, "Homegrown Extremism: Deadly Attacks Since 9/11," *New America*, <http://securitydata.newamerica.net/extremists/deadly-attacks.html>.

<sup>63</sup> Richard A. Horsley, "The Sicarii: Ancient Jewish 'Terrorists,'" *The Journal of Religion* 59 no. 4 (1979): 435-458.

will never completely succeed as new threats and forms of extremism emerge and evolve over time. That raises the question: why attempt something impossible?

This research paper shows the crucial importance of political alienation in the creation of homegrown terrorism. It also shows the strengths and weaknesses of utilizing various strategies. Most importantly, it shows how counter-radicalization strategies can be either a unifying or dividing factor that either mitigates or exacerbates the shadow that terrorism leaves on society. The CVE strategy seeks to target a small selection of individuals and allows law enforcement to be mostly effective, albeit with questions raised about the use of agent provocateurs. The Prevent strategy casts a wide net over the land of Great Britain, calling not only law enforcement but also the everyman to prevent radicalization. It does prevent terrorism, but it also catches schoolchildren in its snare. In an Orwellian twist, it has already raised questions about its social repercussions and its likelihood to foster resentment instead of culling said sentiment at its root.

This should inform administrations present and future how to proceed with counter-radicalization policies. Moreover, it should be a personal guide in understanding how to treat others in this era of courage and fear. Policy is the expression of sentiment into legislation. The US and UK need to be careful what political sentiments they encourage, just as we citizens need to be careful about how we include and exclude people from civil society through our words and actions. Our lives and wellbeing depend on it.

## APPENDIX A

### TERRORISM IN OECD COUNTRIES

The following data set is excerpted from the *2014 Global Terrorism Index*, prepared by the Institute for Economics & Peace. Countries here are ordered in the ranking from most likely to suffer from terrorist attacks to least likely. It does not reflect any attack that happened in 2015; as such, the rankings for France and Belgium are not updated to reflect current events.

GTI RANK	COUNTRY	2014 SCORE (0-10)	CHANGE IN SCORE (2012-2013)
17	Turkey	5.98	-0.12
27	United Kingdom	5.17	+0.72
30	United States	4.71	+0.85
=32	Israel	4.66	-0.46
=32	Mexico	4.66	+1.53
44	Norway	3.57	-0.68
47	Ireland	3.09	+0.15
56	France	2.67	-0.17
=58	Chile	2.59	+0.33
62	Italy	2.55	-0.09
69	Spain	1.84	-0.53
77	Switzerland	1.34	+0.87
83	Germany	1.02	-0.70
84	Canada	0.95	0
85	Czech Republic	0.81	+0.55
=89	Netherlands	0.58	-0.71
93	Belgium	0.53	-0.68
=95	Australia	0.41	-0.62
=103	Austria	0.24	-0.43
=105	Portugal	0.23	-0.24
=107	Denmark	0.19	+0.11
=109	Estonia	0.16	-0.15
=113	Iceland	0.08	-0.08
116	Hungary	0.07	-0.11
=121	Japan	0.01	-0.05
=124	Finland	0	-0.03
=124	New Zealand	0	-0.05
=124	Poland	0	0
=124	Slovakia	0	0
=124	Slovenia	0	0
=124	South Korea (ROK)	0	0

Source: Institute for Economics & Peace. Global Terrorism Index 2014. [http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014\\_0.pdf](http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf).

**APPENDIX B****LIST OF AMERICAN CASE STUDIES**

This is the data set used to determine statistics in the “Combating Terrorism in Our Backyards” section and chart the “Jihadi Terror Attacks & Attempts in the US since 9/11” graph. It is a combination of the efforts of John Mueller and New America’s International Security Program. Boldfaced and italicized case studies indicate that the terror plot succeeded and killed individuals. The number of casualties is included in brackets at the end.

YEAR	CASE STUDY DESCRIPTION
2001	Shoe Bomber
2002	Padilla
2002	Mount Rushmore
<b>2002</b>	<b><i>El Al at LAX [2]</i></b>
2002	Lackawanna
2003	Kahn and the Parachas
2003	Abu Ali in Saudi Arabia
2003	Columbus and the Brooklyn Bridge
2004	Barot and the financial buildings
2004	Albany
2004	Nettles
2004	Herald Square
2005	Grecula
2005	Lodi
2005	JIS
2005	Pipelines and the terrorist hunter
2006	U of North Carolina
2006	Hudson River tunnels
2006	Sears Tower
2006	Bombing transatlantic airliners
2006	Rockford Mall
<b>2006</b>	<b><i>Seattle Jewish Federation [1]*</i></b>
2007	Fort Dix
2007	JFK Airport
2008	Vinas
2009	Bronx synagogues
<b>2009</b>	<b><i>Little Rock [1]</i></b>
2009	Boyd and Quantico
2009	Zazi
2009	Springfield
2009	Dallas skyscraper
2009	Mehama
<b>2009</b>	<b><i>Killings at Fort Hood [13]</i></b>
2009	The underwear bomber
2010	Times Square
2010	Alaska
2010	Parcel bombs on car planes
2010	DC Metro – bomb plot

2010	Oregon
2010	DC Metro – Facebook
2010	Baltimore
2011	Texas
2011	Manhattan’s pair of lone wolves
2011	Pentagon shooter
2011	Seattle
2011	Abdo
2011	Model planes
2011	Iran and Scarface
2011	Pimentel’s pipe bomb
2012	Tampa
2012	Capitol bomber
2012	Chicago bar
2012	Bombing the Federal Reserve Bank
2012	The brothers plot
<b>2013</b>	<b><i>Boston Marathon bombing [4]</i></b>
2013	Wichita airport
2014	Rochester
2014	<i>Oklahoma beheading [1]*</i>
2014	<i>Washington and New Jersey killing spree [4]*</i>
2015	Cincinnati
2015	Aurora
2015	Two women in Queens
2015	Fort Riley
2015	Ohio returnee from Syria
2015	<i>Chattanooga military shooting [5]*</i>
<b>2015</b>	<b><i>San Bernadino shooting [14]</i></b>

*\* These cases were included in the list of lethal jihadi attacks in New America’s list, but were not included in Mueller’s list of case studies. They have been excluded from the paper’s statistics.*

Sources: (1) International Security Program. “Homegrown Extremism: Deadly Attacks Since 9/11.” New America. <http://securitydata.newamerica.net/extremists/deadly-attacks.html>.

(2) Mueller, John. Terrorism Since 9/11: The American Cases (2015). <http://politicalscience.osu.edu/faculty/jmueller/since.html>.

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# ANGOLA, 1990-2000: OIL, DEMOCRACY, AND A “SUCCESSFUL FAILED STATE”

Eric Wilcox<sup>1</sup>

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## ABSTRACT

*Four decades after independence from Portugal, Angola remains a country with significant barriers to good governance and social development. Although the state's constitution established a multiparty democracy in the early 1990s, measures of high poverty and low state provision of public goods, in addition to high levels of corruption from the Angolan executive government headed by President José Eduardo dos Santos, do not equate with the proclaimed status of a democracy. Through an analysis of Angola's attempts at and challenges in democratization, particularly in the decade of the constitutional change (1990–2000), I attempt to explain why the government has remained largely authoritarian. What specific factors are most significant in the discrepancy between legal framework on paper and politics in practice? Why, in the terms of Ricardo Soares de Oliveira, has Angola become a “successful failed state”? By tracing a history of the parastatal Sonangol, the complex system of petrodollar patronage, and the attempts of the executive government to constrain civil society, I explain how the growth of the Angolan oil industry is most responsible for the failure of democratization. With special attention to the rise of Angola's oil dependence, measured by total oil rents as a share of gross domestic product, I hypothesize that the country's GDP growth during the 1990s (my independent variable) will produce opposite trends in its level of democracy (my dependent variable, using Polity scores).*

## INTRODUCTION

Four decades after independence from Portugal, and over two since the “Constitutional Revision Law no. 23/92,” described in the preamble to the Angolan

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<sup>1</sup> Eric Wilcox is a junior at UC Berkeley, majoring in International Development and Gender and Women's Studies. From Salt Lake City, he wishes to attend law school after Berkeley, particularly interested in constitutional law and its interactions with environmental and feminist litigation.

Constitution as “ensuring multi-party democracy” and guaranteeing “the fundamental rights and freedoms of citizens and a market economy,”<sup>2</sup> Angola remains a country with significant barriers to good governance and social development. Ranked 149<sup>th</sup> in the UNDP’s 2015 Human Development Index, Angolans have an average life expectancy of 52 years, one of the world’s lowest. The combination of high poverty, low state provision of public goods, and high levels of corruption from the Angolan executive government headed by President José Eduardo dos Santos, call into question the state’s democratic status. Through an analysis of Angola’s attempts at and challenges in democratization, particularly the decade during the constitutional change (1990–2000), I attempt to explain why the government has remained largely authoritarian. What specific factors account for the significant discrepancy between Angola’s constitutional framework—which promotes democratic norms—and its non-democratic political practices? Borrowing the language of de Oliveira, Why has Angola achieved the status of a “successful failed state?”<sup>3</sup>

In order to trace levels of democracy in Angola during the 1990s, I use the Polity score. Selected for its focus on the actions of central governments and the political groups that function within their authority, Polity monitors yearly changes in regime leadership. It measures countries on a 21-point scale from -10 (a “hereditary monarchy”) to 10 (a “consolidated democracy”).<sup>4</sup> During my chosen range of study, Angola’s Polity score fluctuates from a -7 in 1990, -3 in 1991, and a 0 in 1992, leveling down to -3 towards the end of the decade. Comparing Angola’s 1990s average of -2.5 to sub-Saharan Africa’s of -1.35, Angola displays a lower level of democracy than the rest of the region, yet follows the same general trend of a significant increase during the decade, associated in part with the region’s large-scale movement of establishing multi-party democracies.

In this paper, I argue that international and economic conditions are most important in the study of Angolan political development. By tracing a history of the parastatal Sonangol, the complex system of “petrodollar patronage,”

<sup>2</sup> “Angola 2010,” Constitute, [https://www.constituteproject.org/constitution/Angola\\_2010?lang=en](https://www.constituteproject.org/constitution/Angola_2010?lang=en).

<sup>3</sup> Ricardo Soares de Oliveira, “Business Success, Angola-style: Postcolonial Politics and the Rise and Rise of Sonangol,” *The Journal of Modern African Studies* 45, no. 4 (2007): 595-619.

<sup>4</sup> “About Polity,” The Polity Project. Center for Systemic Peace, 2014, <http://www.systemicpeace.org/polityproject.html>.

and the attempts of the executive government to constrain civil society, I explain how the growth of the Angolan oil industry is most responsible for the failure of democratization. With special attention to the rise of Angola's oil-dependence, measured by total oil rents as a share of gross domestic product, I hypothesize that the country's GDP growth during the 1990s will produce opposite trends in its Polity scores: increases in economic growth have led to a persistence in authoritarian leadership by President dos Santos and his ruling party, MPLA, and a decline in levels of democracy.

### EXISTING EXPLANATIONS

In "Approaches to Democratization," Bratton and van de Walle raise distinctions across competing literature on African regime transitions. They identify multiple systemic forces at play in democratization processes, dismissing the notion of supposed "preconditions"<sup>5</sup> of democracy that often characterize a Western approach based on the illogical task of objectively ordering subjective human processes. I, however, distance myself from the authors' central claim that "macroeconomic and international factors are too blunt to discriminate among the particular political histories of countries undergoing regime transition" and more, "Except that it is often overlooked the point is so obvious that it hardly seems necessary to make: A country's political prospects derive directly from its own inherited practices."<sup>6</sup> I make the opposite claim, that instead of focusing on "*domestic political factors*" with attention to their "*structured contingency*"<sup>7</sup> (authors' emphasis), one must study Angola's political challenges in light of its embedded position in an *international economic* system. The view that a postcolonial nation has "inherited practices" unchanged by the economic, political, social, and psychic devastations of colonialism is groundless. Further, Cold War politics had a massive effect on domestic politics in Angola. Specifically, Angola was the site of proxy conflicts between the superpowers of the Cold War. This, in combination with the growth of the international oil industry, the powerful impacts of global economic crises, and the transplanted Western blueprints of "liberal democracy" in the early 1990s, played a role in determining both the success and failure of African democratization.

<sup>5</sup> Bratton, Michael, and Nicolas van de Walle. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge University Press, 1997, 22.

<sup>6</sup> *Ibid.*, 41.

<sup>7</sup> *Ibid.*, 20.

In the subsequent chapter “Africa’s Divergent Transitions,” Bratton and van de Walle name Angola a “blocked transition” in which “incumbent elites avoided elections.”<sup>8</sup> I again argue that the authors place too much power in the individual, in Angola’s case President dos Santos, who appears to have independently made the decision to delay an election until an indeterminable, opportune time. The image of the all-powerful African incumbent presented by Bratton and van de Walle’s characterization of Angola’s “liberalized autocracy” in which “new political freedoms coexisted uneasily alongside practices of governance inherited from the past.” This articulation employs the discursive strategy of alluding to a tribal imaginary that breeds authoritarian qualities. Aside from these normative concerns, Bratton and van de Walle’s theory does not explain how the 1992 elections, Angola’s first attempt at multipartyism, lead to intense disputes and “UNITA’s (MPLA’s rival party) return to a civil war that would kill hundreds of thousands in only two years and continue intermittently for another decade.”<sup>9</sup> Instead, the realities of transition failure are better explained by a ravaging war caused by complex party politics — each, described later, with their connections to separate *international* partners and *economic* resources.

While Bratton and van de Walle dismiss the role of the economy (both integration into the global political economy as well as the role of national business arrangements) in regime developments, Arriola explains the causal linkage between financial liberalization and the growth of multiethnic coalitions. Such coalitions are necessary for a democracy as they function as an effective opposition and a constraint to an authoritarian regime. By achieving a degree of fiscal decentralization, liberalization reforms “erode the state’s role as a gatekeeper for capital” and “enable business to underwrite the electoral coalitions of their choice.”<sup>10</sup> When multiethnic oppositions are funded, they are able to mimic incumbents’ strategy of patronage, they are able to purchase cross-ethnic support. Arriola’s claims can be applied to my later analysis of Sonangol, a state-owned-enterprise entrenched in networks of MPLA patronage that prohibit the formation of a threatening opposition.

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<sup>8</sup> *Ibid.*, 119.

<sup>9</sup> Ricardo Soares de Oliveira, “Business Success, Angola-style...,” 603.

<sup>10</sup> Leonardo R. Arriola, “Capital and Opposition in Africa: Coalition Building in Multiethnic Societies,” *World Politics* 65, no. 2 (2013): 233-72, 234.

## THEORETICAL ARGUMENTS

Along with the selected text from Arriola, the unsustainable rise and subsequent fall in Angolan levels of democracy during the 1990s, due in part to the country's expanding oil industry, is perhaps best complemented by the work of Ross and Watts. In "Does Oil Hinder Democracy?" Ross questions the validity of whether a country's rising income from oil wealth has democratic or antidemocratic properties. He employs the concept of the "rentier state," useful for considering Angola (globally ranked sixth in Ross's report for oil reliance, and fifth for nonfuel mineral reliance — based on total exports divided by GDP), as "one where the rents are paid by foreign actors, where they accrue directly to the state, and where only a few are engaged in the generation of this rent (wealth), the majority being only involved in the distribution or utilization of it."<sup>11</sup> In other words, when a state uses its resources (e.g. land or shorelines, for oil drilling) to make a profit from others, without giving back to its people through wealth-creation or social development.

From "pooled time-series cross-national data from 113 states,"<sup>12</sup> Ross shows that the oil-impedes-democracy claim is both valid and statistically significant. He points to three important components of a pervasive "rentier effect," where "governments use their oil revenues to relieve social pressures that might otherwise lead to demands for greater accountability."<sup>13</sup> Through the "taxation effect," governments limit the collection of taxes to prevent the demand for representation and transparency on government funding; the "spending effect" (the last two are most relevant for my case study) leads to greater spending on patronage in order to reduce dissent; and the "group formation effect" in which the government will use its power to prevent the formation of non-state organizations and civil society.

Watts's pieces are especially salient to my claim that international economic dynamics matter when studying the struggles of Angolan democracy. He characterizes the predatory search for new sources of oil beyond the "special relationship" with the Middle East as an imperial strategy, or a "new scramble for Africa in the making."<sup>14</sup> Writing a decade ago, Watts notes that Big Oil's corporate profits and the billions of dollars of foreign direct investment in sub-Saharan Africa are

<sup>11</sup> Michael L. Ross, "Does Oil Hinder Democracy?" *World Politics* 53 (2001): 325-61, 329.

<sup>12</sup> *Ibid.*, 325.

<sup>13</sup> *Ibid.*, 332.

<sup>14</sup> Michael Watts, "Empire of Oil: Capitalist Dispossession and the Scramble for Africa," *Monthly Review*, 2006, 1-17, 2.

historically unprecedented. Primitive accumulation, African dispossession, and existing sociopolitical conflict combined with the militarization of the American “energy security” regime form the “perfect storm in which one can grasp the descent into violence and ungovernability.”<sup>15</sup> This reading provides context of the West’s petroleum addiction playing out in the form of neocolonial, militaristic oversight of oil production and its implications for a ruling elite heavily invested in the rise and rise of their nation’s oil sector.

Watts also discusses the violent properties unique to the commodification of oil: “...the entire history of petroleum is replete with criminality, corruption, fabulous wealth, and the worst of rapacious frontier capitalism.”<sup>16</sup> Oil also transforms those who direct its production—its finite quantity, instantaneous wealth, and “mysterious powers” come to define the state that exports more of it than anything else as an *oil nation*, sealed by OPEC membership, joined in a “sort of Faustian pact in which oil was traded for progress, wealth, and modernity.”<sup>17</sup> The following euphoria of rising oil wealth then disregards “ecological catastrophe, social deprivation, political marginalization, and a rapacious company capitalism in which unaccountable foreign transnationals are granted a sort of immunity by the state,”<sup>18</sup> a fitting description of how Angolan citizens’ rights of democratic representation were methodically displaced by the need for a close rapport between corporate oil and the dos Santos regime.

## EMPIRICAL ANALYSIS

The growth of the de facto regime of the MPLA and President José Eduardo dos Santos began during the colonial era. After being fervently held by the Portuguese through a decade of violent insurgencies, the Popular Movement for the Liberation of Angola (MPLA) declared independence and independently elected a president. Replacing the first President after his death, dos Santos came into office in 1979 and has remained ever since. In a struggle for political control, the MPLA and the National Union for the Total Independence of Angola (UNITA)

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<sup>15</sup> *Ibid.*, 12.

<sup>16</sup> Michael Watts, “Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity,” In *The Violent Environments: Social Bonds and Racial Hubris*, edited by Nancy Peluso, Cornell University Press, 2001, 190.

<sup>17</sup> *Ibid.*, 200.

<sup>18</sup> *Ibid.*, 196.

rebel group became engaged in a civil war lasting 26 years, only to end with the assassination of the UNITA leader, Joseph Savimbi, in 2002.<sup>19</sup>

Despite two substantial attempts at peace in the early 1990s, the fighting became largely unabated: “with each failed attempt the war became more intractable and more brutal.”<sup>20</sup> One of the mechanisms that prolonged the war was how each side controlled a monopoly of enclavic production—the MPLA with oil, and UNITA with diamonds. Revenues from their respective industries allowed each party to secure weapons and explosives. Also significant were international alliances, especially as Angola became the site of a Cold War proxy conflict. The United States and South Africa favored UNITA, while the USSR and Cuba favored the Marxist-Leninist MPLA. Political intervention also brought aid, sustained after the USSR’s collapse (not surprisingly occurring at the same time as Angola’s abandonment of Marxism) by support from new donors such as Brazil and China. Aid often comes from oil-backed loans and agencies that believe in Angola’s rhetoric of transition and development.

Unfortunately, although there exists a legal framework for political liberalization, Angola could easily be called an illiberal democracy. Until the beginning of the 1990’s, Angola’s situation would best have been described as a single-party regime. MPLA remained the party in control of national government, and the UNITA, while violently contesting MPLA’s authority, was legitimized as the political enemy.<sup>21</sup> Since the ruling of Angola as a multi-party democracy, the country’s party politics have followed a dominant party-system. The MPLA has held a large majority of legislative seats, with UNITA, the largest opposition party, holding about 10% of the seats in the two most recent elections. Since the establishment of a multi-party system, the 1992, 2008, and 2012 elections have had 18, 14, and 9 parties running, respectively, and 12, 5, and 5 parties holding seats.<sup>22</sup> Thus we see a dominant party and several smaller, fragmented opposition parties. Following the 1992 election, a violent stretch of the civil war occurred due to UNITA forces opposing the election results that again placed MPLA in power.<sup>23</sup> Elections were

<sup>19</sup> Gretchen Bauer and Scott D. Taylor, *Politics in Southern Africa: Transition and Transformation*, 2nd ed. Boulder, Colo.: Lynne Rienner Publishers, 2011, 165.

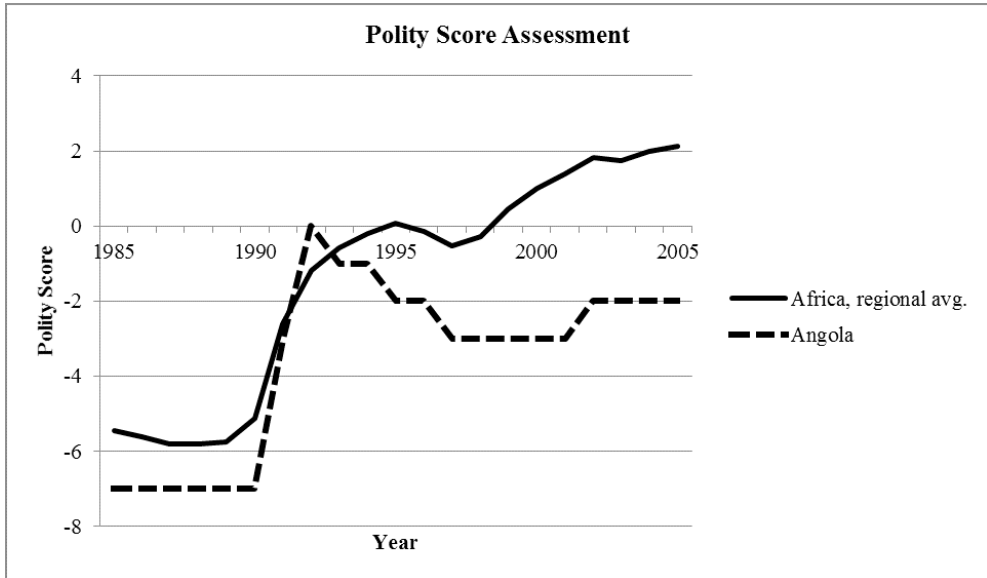
<sup>20</sup> *Ibid.*, 158.

<sup>21</sup> *Ibid.*, 164.

<sup>22</sup> “Elections in Angola,” African Elections Database. October 10, 2012, <http://africanelections.tripod.com/ao.html>.

<sup>23</sup> Gretchen Bauer and Scott D. Taylor, *Politics in Southern Africa*, page 161.

stalled for sixteen years, and the two elections in the 21st century illustrate the highest levels of MPLA legislative representation.



Patterns in Angola's Polity score include a sharp rise from -7 in 1990 to 0 in 1992, followed by a gradual decrease to -3 for the last part of the decade. Not surprisingly, these trends closely mirror the changes in the country's executive government and electoral participation. After 1990, the MPLA began moving away from a centrally planned economy and their ties to the Soviet Union. Such a move should ideally have reduced the power of the executive and allowed new constituents to enter freely into the market. Also responsible for the large Polity increase is the 1992 election that marks the beginning of multiparty representation. Although several constitutional reforms were made during the early 1990s, they proved in many regards to solely be nominal in a state system that remained heavily centralized and resembled the one-party regime of the earlier decades (thus the Polity decrease soon after).

Having situated Angola in a political history in which its conflict, single-party dominance, and struggle for democratization is situated in an international context (including past allies, oil consumers, and potential suppliers of development aid) as well as an economic system (in which resource-dependen-



cy provides short-term booms that benefit the elite class of Angolans), I narrow the scope and identify three qualitative trends and two quantitative measures that link the rise of Angola's oil industry during with the perpetuation of authoritarian rule during the 1990s. Following Ross's notion of "rentier effects," I describe the "spending effect" and "group formation effect" in action, as the former relates to petrodollar patronage fueled through the parastatal Sonangol, and the latter connects to conscious efforts by the dos Santos administration in limiting Angolans' access to a civil society free from the influences of the state. Finally, I look at the growth of Angola's oil rents, and return to the Polity score alongside levels of GDP growth to compare my dependent variable (levels of democracy) with my independent variable (the rise in Angola's economy), expecting an inverse relationship.

As de Oliveira explains, the decision to spare the oil sector from postcolonial Angola's poor Marxist government is what first allowed the national oil company, Sonangol, to flourish.<sup>24</sup> During the 1970s and 1980s, the parastatal began contractual negotiations with oil firms, who would have a large degree of autonomy in the exploration and production of oil. While oil production remained largely in the hands of private international corporations (Sonangol's list of partners would grow as time went on and the country opened more and more land to the industry), the key figures in the business's leadership were MPLA members.

Even during the long period of enmity with the US (largely spurred by US-backing of UNITA rebels), American oil companies like Chevron and Gulf proved to be reliable allies. As early as 1979, de Oliveira states, "Gulf's impression of Angola's government as able 'to understand the difference between a multinational and its home government' was being publicly conveyed, and the hostility of the Reagan Administration did not change the thrust of its Angola engagement."<sup>25</sup> Thus, Sonangol was able to accomplish the hard task of transcending the instability and violence of its country and remaining a targeted recipient of foreign direct investment. Sentiments like Gulf's also add to Watts's contributions, illustrating that Western partners were more than willing to engage in less than optimal political conditions if it meant a new source of oil.

By the 1990s, when MPLA dropped its Marxist ideologies, Sonangol was the leading domestic entity in Angola's political economy. It attracted oil companies from all over the world, including British Petroleum, Royal Dutch/Shell,

<sup>24</sup> Ricardo Soares de Oliveira, "Business Success, Angola-style..." 598.

<sup>25</sup> *Ibid.*, 602.

and ExxonMobil.<sup>26</sup> Beyond the business arrangements, de Oliveira reveals the “other side of Sonangol,” as the “pivotal tool for the interests of the presidential clique.” It arrogated responsibilities normally held in the domains of presidential cabinets and the national bank, becoming responsible for millions of dollars in unaccounted-for revenue. Through the high levels of fiscal centralization, petrodollar patronage has been used to hush dissidents through corporate shares and rewards.

Beyond unethical and exclusionary practices of expanding the oil industry, and facilitating a large-scale system of political patronage through oil rents, in perhaps its most manipulative strategy to promote a veneer of democracy, the Angolan executive government follows Ross’s example of “group formation effect.” Efforts are made to restrict citizens from acting as members of a democracy, aware of their rights and engaged with political life through a nonbiased civil society. Bauer and Taylor affirm that throughout the 1990s, “civil society organizations were perceived as adversaries or enemies of the state,”<sup>27</sup> even well after the legal framework of multipartyism was put in place. In the mid-1990s, a key mechanism for political participation erasure was created as the “Eduardo dos Santos Foundation” (FESA), described by Messiant as “an attempt to take over civil society,”<sup>28</sup> engaged in developing executive-sponsored media programs, schools, and youth groups. Seen as a small yet institutionalized step towards extreme authoritarianism, FESA remains in existence today.

Not surprisingly, Sonangol has its own share of influence in public life and civil society. Today, The Sonangol Group has expanded to employ thousands of people, and has its own telecommunications group, insurance company, marketing and trading units, and air transport company, and various other joint ventures. The Group is involved with Luanda’s cultural and sports spheres, sponsoring two football teams and organizing a “well-endowed bi-yearly literary prize and hundreds of scholarships for the children of insiders.”<sup>29</sup>

I conclude this study of the growth of Angola’s oil industry and its political force by analyzing the two following graphs created from World Bank data.

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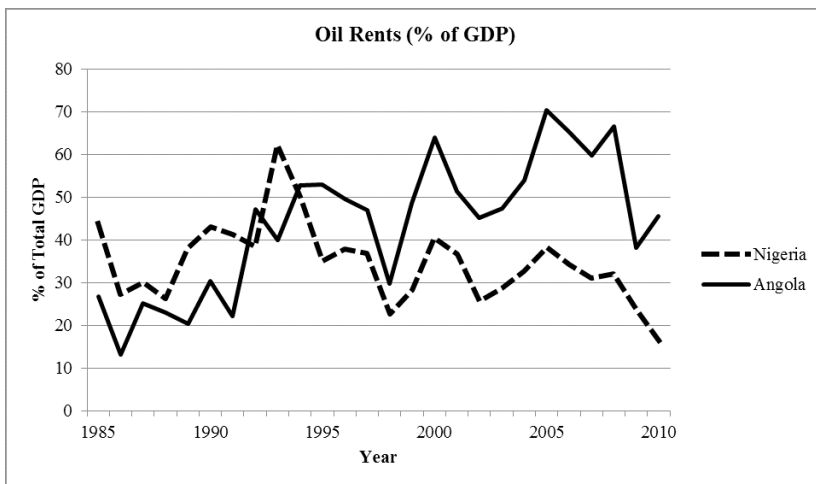
<sup>26</sup> *Ibid.*, 603.

<sup>27</sup> Gretchen Bauer and Scott D. Taylor, *Politics in Southern Africa*, page 175.

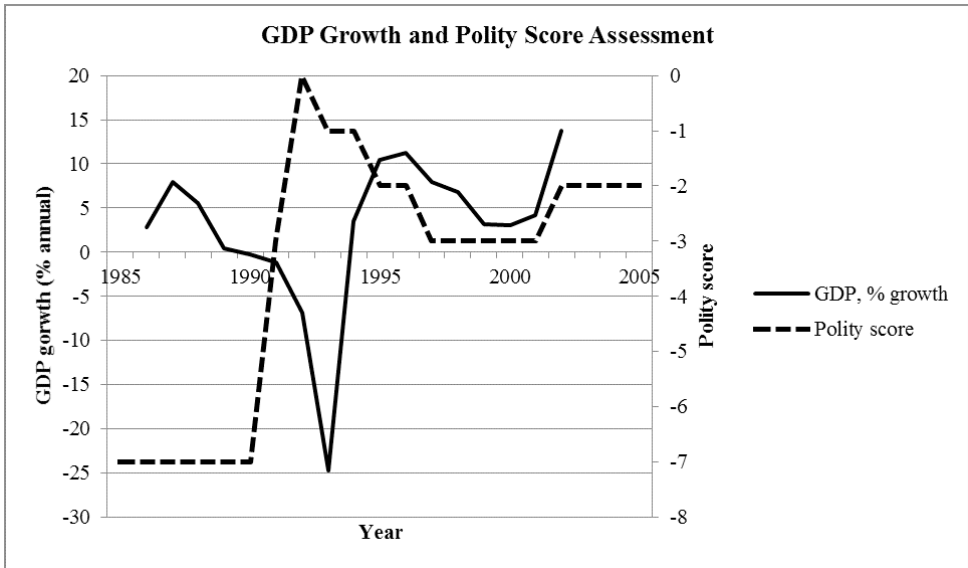
<sup>28</sup> Christine Messiant, “The Eduardo Dos Santos Foundation: Or, How Angola’s Regime Is Taking over Civil Society,” *African Affairs* 100, no. 399 (2001): 287-309, 288.

<sup>29</sup> Ricardo Soares de Oliveira, “Business Success, Angola-style...,” 604.

The first displays the total amount of oil rents in Angola (the difference between the value of crude oil production and total costs of production) expressed in the total share of the national GDP. I've chosen this measure to best display the country's growing reliance on oil. At the beginning of the 1990s, oil rents represented approximately 20% of total GDP, and at the start of the 21st century, close to 65%. It is clear that the oil industry went through unprecedented growth during the decade, in no doubt related to the strains on the national government headed by MPLA and dos Santos. Embroiled in an intense civil war, and under foreign and national expectations of promoting a multipartyism that would result in the weakening of the regime, oil growth remained an effective route for the MPLA to sustain its power. Angolan oil is limited geographically (virtually all of production takes place in the northwest region, close to the MPLA-controlled capital), ethnically, and socially, as only individuals valued or sought after by the MPLA are employed or coopted by Sonangol. The growth in oil rents therefore indicates increases in oil reliance, and might also be related to a rise in authoritarian governance. Lastly, I included a comparative measure for Nigeria. Nigeria, Africa's largest oil-producer, displays many similar fluctuations in its graph, likely due to global petroleum trends. However, since the mid-1990s, Angola has overtaken Nigeria in oil rents as a share of GDP. I draw the conclusion that Nigeria is less reliant on oil revenue than Angola and has a more diversified economy. It is also known that Nigeria has a higher level of democracy than Angola, perhaps in part due to this divergence starting in the 1990s on oil dependency. Nigeria would be less likely compared to Angola to display the characteristics of Ross's "resource trap," including long-term economic declines and authoritarian rule.



The second graph is a comparison between the Polity score as the dependent variable, and the percentage of annual GDP growth as the main independent variable. First, I connect the rise of Angola’s oil industry to GDP growth, as oil is a significant sector of the nation’s income (approximately 45% of national GDP, 80% of government revenues, and 95% of exports). As hypothesized, GDP growth and levels of democracy from an inverse relationship. The gradual decrease in Angola’s income starting in 1990 coincides with the subsequent rise in Polity score. As GDP increased after 1993, the Polity score followed suit and decreased. Towards the end of the decade, as GDP growth stabilized, the level of democracy also stabilized at -3, reflective of Angola’s position as an largely authoritative state a decade after unmet Constitutional changes.



**CONCLUSION**

In exposing the Angolan government’s lack of transparency in oil revenues and its corrupt rent-seeking behavior, I hope to call attention to several situational factors responsible for the unfortunate reality that although Angola’s GDP is that of a middle-income country, its indicators of social development (e.g., health, education, and persistent poverty) remain among the worlds lowest. Through an analysis of Angola’s process of democratization, I have found that the economic

and international factors are particularly salient in explaining Angola's position as a peripheral, resource-rich country incorporated into the global capitalist economy through massive oil exports. Angola's position as both a major oil producer and yet one of the worst-governed states leads de Oliveria to call Angola a "successful failed state:" successful in sustaining a rich elite class who fails other citizens by not building a responsive, democratic state invested in the protection of freedoms and rights. As growth from oil is still on the rise and Angola's rewritten 2010 Constitution allows for more executive power, patronage politics—including the predation of national oil revenues for personal gain via the parastatal Sonangol—will continue to be employed to prevent opposition and safeguard the authoritarian regime of dos Santos and the MPLA.

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# CONSEQUENCES OF IRAQI DE-BAATHIFICATION

CHERISH M. ZINN<sup>1</sup>

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## ABSTRACT

*Ambassador Paul Bremer of the Coalition Provisional Authority, America's interim government between Saddam's fall and the independent establishment of a new Iraqi government, issued two specific orders during his term which combined to create a power vacuum in the weakened nation. The first order, or the De-Baathification order, eliminated the top four tiers of Saddam's Baath party from current and future positions of civil service. The second disbanded the Iraqi military. Both orders worked to eliminate the institutional memory of all Iraqi institutions, requiring Bremer to establish the nation's new government from its foundations up. This resulted in a poor security situation that ultimately allowed a strong insurgency, recruited from unemployed disaffected youth, to develop, which paved the way for the beginnings of the Islamic State in Iraq and al-Sham.*

## INTRODUCTION

While the 2003 US invasion of Iraq led to the fall of abusive dictator Saddam Hussein and his Baathist party, it also contributed to the formation of a power vacuum in the weakened nation. Hussein's ousting brought the Iraqi people a chance for political freedom while also ending a stable, established regime. This Baathist government was replaced by a series of US-led reconstruction efforts ending with the Coalition Provisional Authority (CPA), chaired by Ambassador Paul L. Bremer, who ran the interim organization from 21 April, 2003 to 28 June 2004. Decisions made by Bremer and other top policymakers of the Bush

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<sup>1</sup> Cherish Zinn is a 4th year undergraduate majoring in Political Science and Middle Eastern Studies at the University of California, Los Angeles. Next year she will be attending the Institute of World Politics in Washington D.C. where she will work towards an MA in Statecraft and National Security Affairs.



administration, paired with the new liberation of the Iraqi people, led to greater sectarian violence which ultimately proved catastrophic for the future of Iraq. This paper aims to outline the consequences, both direct and secondary, of the Coalition Provisional Authority Orders 1 and 2, including the De-Baathification of the Iraqi political and military institutions, in hopes of explaining the emergence of the power vacuum in the nation which worked against US reconstruction efforts.

## **METHODOLOGY**

The research for this paper focused first on close readings of the CPA orders, specifically Order 1, 2 and 22. The inclusion of Bremer's intentions, as well as the details he chose to include in these documents provide context to the controversial orders. Order 22 was included alongside the primary Orders 1 and 2 in order to show the extent necessary reconstruction required in reinstating what was demolished by the first orders. Research then transferred to the personal memoir of Paul Bremer in order to provide an individual perspective of the events which occurred during the time that the CPA was in power. Since many analyses of the Iraq war point to a variety of conclusions, many facts and anecdotes were taken from other accounts and reorganized and reanalyzed for this paper. Additionally, interviews, both new and derived from online transcripts provide key perspectives from various military and policy leaders who were firsthand witnesses in country during the CPA's rule. Finally, some assistance for the paper's analysis was developed with assistance by discussion with National Defense University personnel. A timeline of events and a chart showing Baath/ISIS relations follow this paper in two attached appendices.

## **THE COALITION PROVISIONAL AUTHORITY**

The Coalition Provisional Authority was the second interim US government in Iraq after the defeat and fall of the authoritarian regime of Saddam Hussein. Administrator of the organization, Ambassador Paul L. Bremer, was then presidential convoy to Iraq and was given near autonomy, answering only to President George W. Bush and Secretary of Defense Donald Rumsfeld, in the reconstruction of the war-torn nation. The CPA was the organization which took over the rebuilding of Iraq from the Office for Reconstruction and Humanitarian Assistance (ORHA), the initial US humanitarian organization deployed to Iraq from 20 January, 2003 until the CPA took over that April. Lieutenant General Jay Garner provided its leadership, however the ORHA was replaced with the Department of State's CPA

in hopes that a civilian body could better integrate political aspects with the reconstruction efforts.

Ambassador L. Paul Bremer was a long time Department of State employee who served as a Foreign Service officer in various countries, finishing his service as Ambassador to the Netherlands under President Ronald Reagan. Upon retiring, Bremer served both as “managing director of Henry Kissinger’s “Kissinger and Associates” and Chairman and CEO of Marsh Crisis Consulting. Prior to returning to government, Bremer also took part in publishing multiple reports for the US federal government on Counterterrorism Strategies before and after September 11, 2001. In 2003 Ambassador Paul Bremer was approached to serve once again, this time as Presidential Convoy to Iraq and head of the Coalition Provisional Authority. While Bremer had incomparable experience as a diplomat and businessman, many argued against his placement within the CPA since he had limited experience in the Middle East. Bremer echoed this concern when describing a colleagues’ credentials, “...he was one of the State Department’s leading Arabists, had spent much of his career in the Middle East, and knew Baghdad well. I did not.”<sup>2</sup> Paul Bremer, other than a short tour in Afghanistan, spent little time in the Middle East and no time in Iraq. As a result, he admittedly had limitations in his knowledge of the Arabic language and culture, however he believed his experience in interagency politics, resulting from his counterterrorism work, provided him and his team more potential benefit than harm.

The CPA had three main goals that Ambassador Bremer wished to accomplish before initiating the ultimate goal of handing the Iraqi government back to the Iraqi people. First, the security situation of the nation would have to be improved in order to develop stability on which to rebuild the Iraqi society. Even though official combat operations ended before the creation of the CPA, a growing insurgency intensified violence in Iraq, violence often targeting US forces. This chaos led to little remaining sense of the rule of law in the nation, causing all political progression to become dangerous until the insurgency and crime in Baghdad and throughout the nation was controlled. Second, Bremer needed to repair or rebuild the nation’s infrastructure, including the government’s ministries. In addition to the security issue that came as a result of the lack of law and

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<sup>2</sup> Bremer, L. Paul., and Malcolm McConnell. *My Year in Iraq*. New York: Threshold Editions, 2006. Print. 4.

order, widespread looting, which took place throughout Baghdad shortly after the fall of Saddam, left many government ministries and other forms of infrastructure, such as the oil refineries and power grid, destroyed. As a result of such looting, Bremer and his team had to rebuild ministry buildings from the ground up, as well as keep them and oil refineries guarded from insurgent attacks. Such attackers wished to push back the successes of the CPA in order to both tarnish the image of the “infidel” CPA and Coalition forces and push the nation into a sectarian war, allowing the Sunni Arabs to restore power. Third, Bremer and his team needed to organize a representative body which, it was hoped, would lead the country’s push towards establishing a new constitution and running elections for the first time. As stated above, no power existed within the Iraqi political system that could begin to counter Saddam’s Sunni Baathists. As a result, there were limited sources in which to pull new leadership from for the nation. Therefore, Bremer and his team had to travel throughout the various ethnic and religious regions in the country recruiting respected individuals who would eventually form an inclusive governing council until the nation was in a state to hold secure, honest elections. This interim body would work with the CPA in the transfer of power from the US back to Iraq, as well as draft a new democratic constitution that would ultimately be put to referendum by the Iraqi people.

### **CPA ORDER 1**

Less than a month after the establishment of his organization, Bremer released the first of what would end up as a hundred documents aiming to reconstruct war battered Iraq. Coalition Provisional Authority Order 1 is known as the “De-Baathification of Iraqi Society,” and succeeded to eliminate “Senior Party Members” from any position of civil service. It also banned them from future service in the private sector. The order defined “Senior Party Members” as those who were identified with the top 4 levels of the former Baathist party, more specifically group, section, branch, and regional command leaders. Additionally, the top three tiers of management of “national government ministry, affiliated corporations and other government institutions”<sup>3</sup> would be intently interviewed for ties to the Baath Party, including lower member and active member tiers. Those labeled as a security risk would be removed from government employment. There is no clause in the order however that bans the 4th and 5th levels of Baath membership from future

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<sup>3</sup> Coalition Provisional Authority. Order 1: De-Baathification of Iraqi Society. 2003.

employment in government institutions.

There are many reasons for Bremer to issue such an order. First, the disestablishment of any ties between the former regime and the newly sprouting Iraqi institutions would limit the possibility for Saddam's Baathists to regain power and influence in the nation. As the insurgency in Iraq began to surface, this distancing would also provide greater security for the new Iraqi government. Bremer also explained his intentions to be a response to the brutality of Saddam's former regime. The order is quoted to recognize the "large scale human rights abuses and deprivations" and note the "threat" and "intimidation"<sup>4</sup> that the Iraqi citizens encountered at the hands of the Baathists. Bremer understands that full dissolution of the former regime and its political institutions was required to develop the desired Iraqi democratic institutions, as well as gain the trust of the Iraqi citizens. Moreover, continued Baathist stronghold, no matter how small, would have provided major security concerns for the Coalition Forces. The men of the Baath party were the same men who faced Coalition Forces during the 21 days of combat missions in Iraq during March of the same year.

## **CPA ORDER 2**

The second order issued by Paul Bremer's organization was the CPA Order 2 or the "Dissolution of Entities." While this order was issued to dissolve all defense, intelligence, and related organizations within the Iraqi government, its primary implication was its inclusive termination of the Iraqi military, which included the Republican Guard, Navy, and Air Force.<sup>5</sup> All chain of command, rank, title, or status which once resulted from the Iraqi military was also canceled. In addition, Bremer added any member of the military holding the rank of Colonel or above in the former regime to his past classification of "Senior Party Member," unless they were able to prove to the CPA otherwise. Finally, the order stated that all of the property once owned by these organizations was now under the authority of the Administrator, Paul Bremer himself.

Ambassador Bremer's reasons to issue this order were aligned closely to those of the first order. Primarily, he feared that possible military loyalties to Saddam's regime would threaten his efforts to reconstruct the nation. How could Bremer trust individuals who just led the defense against the Coalition Forces earlier that

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<sup>4</sup> Ibid.

<sup>5</sup> Coalition Provisional Authority. Order 2: Dissolution of Entities with Annex A. 2003.

year? Furthermore, Bremer included that, “the prior Iraqi regime used certain government entities to oppress the Iraqi people and as instruments of torture, repression and corruption.”<sup>6</sup> The Iraqi people would never begin the transition towards governmental trust if the same people who conducted themselves with brutality towards Iraqi citizens kept their positions after the fall of Saddam’s regime.

### **POLITICAL CONSEQUENCES 2003-2006**

Longtime Iraqi president and Authoritarian Saddam Hussein was a Sunni Muslim and leading member of the Iraqi Baath party. This political party ran the nation for the entirety of Saddam’s regime with an exclusive, militant, and secular doctrine. All civil and military leaders, even at the lower levels of society, were required to have membership within the party. Bremer elaborates, “Many people had joined the party because it was often the only way to get a job as a teacher or civil servant or because the person or a family member had been coerced.”<sup>7</sup> This not only led to an overwhelming majority of the Baath party in Iraq’s white collar society, but the inclusion of Baath membership—which was tied to civil careers— complicated the CPA’s ability to implement overarching orders of De-Baathification. The CPA had to account for the inclusion of possible Coalition supporters within the “Baath” classification, who simply identify as such for employment reasons. This muddled the De-Baathification orders, which led to the conclusion that an exception clause was needed.

The Baathists, who consisted of a majority of Sunni Muslims, but a minority of the Iraqi people, held a constant hostility towards their mostly Shia Muslim citizens. Therefore, Saddam kept a strong grasp on the people of Iraq, outlawing any opposition party in order to maintain his rule. Not only did he use violence to maintain Iraqi submission, Saddam also worked to, “ensure that the Iraqi state had a secure grip on the collective deployment of violence within society.”<sup>8</sup> If Saddam loosened his hold of power, sectarian violence within the different religious sects of Iraq could escalate, ultimately endangering Saddam’s

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<sup>6</sup> Ibid.

<sup>7</sup> Bremer, L. Paul., and Malcolm McConnell. *My Year in Iraq*. New York: Threshold Editions, 2006. Print. 40.

<sup>8</sup> Dodge, Toby. *Iraq: From War to a New Authoritarianism*. London: International Institute for Strategic Studies, 2012. Print. 32.

rule. This authoritarianism kept sectarian tensions at bay, as Saddam's security forces would target anyone who stood up against Sunnis Islam, Saddam, or the Baath Party.

The CPA Order 1 purged the Iraqi government of anyone who identified as or was tied to the upper levels of the Baath party. Therefore all senior political, military, and civil leaders within Iraq's exclusive society were removed from employment, leaving the entire top tier of Iraqi society vacant. Additionally, as CIA station chief in Baghdad, Charlie Sidell explained to Bremer: "[Y]ou will have between 30,000 and 50,000 Baathists go underground by sundown; the number is closer to 50 than to 30."<sup>9</sup> As a result of being the only existing political party during Saddam's reign, the Baath party, although a minority, became a sizable group within Iraqi society. Therefore, the De-Baathification order isolated many employees, forcing them into unemployment. This provided the US with their first of many Iraqi subpopulations that would become disenfranchised from the Iraqi reconstruction efforts.

Bremer's first CPA order also did little to help improve Iraq's already failing infrastructure. Many of the governmental leaders who were removed through the De-Baathification order came from head offices of each of Iraq's ministries. Consequently, the Iraqi government largely stalled after the order, causing all government funding, revenue, and services to halt. This combined with a great influx of looting in the streets of Baghdad which had the effect of destroying many ministry buildings and structures, ultimately made Iraqi reconstruction even more difficult. In addition to the looting of the ministries, much of the Iraq's power grid and oil infrastructure was also targeted by those looking for quick profit. This provided an even worse situation for the CPA, leaving the organization to reconstruct a war-torn, fractious nation with no governmental foundation or means of revenue.

Alongside its effects on Iraqi infrastructure, CPA Order 1 also forced an overall reorganization of the Iraqi political system. While this was a primary objective of the order, its ability to demolish all of Iraq's political institutional memory was greatly underestimated. As mentioned, the Baath party was the only significant party that was legal in the country under Saddam, therefore many political opposition leaders were forced into exile during Saddam's rule. This left no opposition within Iraq who could restore order after the Baathist collapse, allowing the

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<sup>9</sup> Rudd, Gordon W. *Reconstructing Iraq: Regime Change, Jay Garner, and the ORHA Story*. Lawrence: U of Kansas, 2011. Print. 313.

formation of an early power vacuum in the nation. Moreover, this vacuum could not be filled by immediate elections since no political foundation remained in the country. Bremer described the political condition of Iraq during this time stating that, “Thirty years of tyranny had gravely distorted civil administration, jurisprudence, and any semblance of representing governance. Elections and the rule of law had been a rude charade.”<sup>10</sup> If Bremer was going to succeed in the formation of a democratic Iraq, he would have to build an entirely new political groundwork, including reintroducing political parties into the nation and leading the efforts for the Iraqis to write a new constitution.

### **IRAQI GOVERNING COUNCIL**

Bremer’s strategy in forming a new Iraqi government began by recruiting the former politicians, who were exiled abroad under Saddam, to return to Iraq. This movement was ignited by what Bremer nicknamed the “Council of Exile,” a group of seven former Iraqi political leaders who would provide the foundation for a new Iraqi democracy. Bremer’s goal was to add to this group until it was representative of Iraqi society, containing a proportionate number of Sunni, Shia, Kurds, men, and women, and then transfer authority from the CPA to this Iraqi Governing Council (IGC). Once the group contained a representative number of around thirty members, Bremer planned to, “officially name the enlarged body the ‘interim administration’ and then quickly give it ministerial power.”<sup>11</sup> It was important to Bremer and other senior US government officials to put the Iraqi government into the hands of the Iraqi people as soon as a stable enough body existed to maintain control. This would provide the entire political process with greater legitimacy in the eyes of Iraqi citizens.

While the sprouting IGC clearly needed US assistance, the CPA understood that prolonged, intense US influence in Iraqi governing affairs would lead to increased anti-Coalition sentiments. This was echoed in a conversation between IGC member Dr. Ahmad Chalabi and Ambassador Bremer, where Dr. Chalabi explains how any potential slowing of a political transition to the IGC would not be a good “signal” to the Iraqi people. Bremer followed by declaring,

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<sup>10</sup> Bremer, L. Paul., and Malcolm McConnell. *My Year in Iraq*. New York: Threshold Editions, 2006. Print. 79.

<sup>11</sup> *Ibid.*

“The president has been very clear. We will stay in Iraq until the job is done but not a day longer.” Dr. Chalabi followed, “I know he [President Bush] said that. But by going slowly, you give the impression to some people that America wants to stay in Iraq.”<sup>12</sup> This exchange between the current and a future leader of Iraq reveals misunderstandings of both the political processes occurring and desired outcome. First, Dr. Chalabi, as well as the entirety of the IGC underestimated the process of reconstruction, and the necessity of a complete inclusive political body. The basic principles of democracy are new to these emerging national leaders, leading them to undervalue the importance of time in the transition of power. This time would allow the Iraqi society to develop balanced political parties, notable candidates, and a generally informed electorate, all of which took a significant span of time to blossom. Additionally, this dialogue between these leaders hinted at inconstancies relating to the overall end state of the CPA. As an experienced American politician, Bremer was well informed of the complexities of democratic governments and developed his actions aiming towards a stable Iraqi democracy. Even though Dr. Chalabi (a Shia Muslim) supported Bremer’s promotion of democracy, he focused a greater bulk of his efforts towards establishing Shia dominance in the evolving political system. No matter how cooperative Dr. Chalabi was towards Bremer’s plans, it would take a great deal of work on Bremer’s part to help the Shia leaders of Iraq to begin mending the sectarian-fueled mistrust of their Sunni counterparts, which they developed under Saddam’s rule. This glimpse of mistrust between Shia and Sunni leaders of the IGC stood as the first hint at the political “tug of war” that developed within the post invasion Iraqi government. This political stalemate within the IGC continued until 13 July 2003 when the CPA officially rolled over authority of the Iraqi state to a twenty-five person, ethnoreligiously proportionate Iraqi Governing Council. This success however did not imply an end to sectarian rivalries, as evident by the council’s nine person rotating presidency which was the closest the IGC could come in a structural compromise for the position.

Although Bremer’s efforts regarding the IGC were met with constant friction, the organization managed to make a few leaps towards stability and order. At their first press conference, the IGC was confronted with mixed views regarding the body’s ties to Western powers. For instance, Council Member Jalal Talabani, in responding to a BBC reference to the IGC as an American creature, declared, “The Council is the most representative government Iraq has ever had.” In both support

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<sup>12</sup> Ibid. 89.



of and rivalry towards Talabani, fellow Council Member Nasser al-Chaderchi added, “I say this to the Arab media: stop advising the Iraqis to fight the Americans.”<sup>13</sup> This support of the US efforts in Iraq, as well as for the premise and future of the IGC, provided a sign of democratic hope for Iraq and its people. The new government was representative of its electorate, supportive of relative compromise, and proud of the change they were making for their country. This hope continued in Iraq through two elections, the second of which instituted an Iraqi governing body who, for better or worse, maintained power of the country in some sense from 2006 to 2014.

### **MILITARY CONSEQUENCES 2003-2006**

While the CPA was initiating the full implementation of De-Baathification, Paul Bremer was simultaneously combatting a decreasing security situation in the nation. This increase in violence rapidly developed into an insurgency in Iraq as US military leaders and policy makers made numerous small decisions which, when combined, worked to segregate portions of Iraqi society. Upon the US invasion of Iraq, the Iraqi forces simply deserted, which allowed for quick combat operations. However, this “self-demobilization” was in part due to prior deals the ORHA made to moderate Iraqi officers; if their men resisted confrontations with Coalition forces, they would be recalled into the new Iraqi army. This promise, however, was not carried through to the CPA’s administration. Bremer believed, like the Baathist party, that Saddam’s Army was one of the former dictator’s “instrument of repression” and therefore held the nation back from reconstruction.

Franklin C. Miller, Member of Bush’s National Security Council during the time of the invasion, explained the fear others had in regards to Bremer’s plan. He recalls, “It was recommended to maintain the regular Iraqi army as an institution, as we believed it would be dangerous to put 300,000 men on the street with guns, without jobs.”<sup>14</sup> As feared by some within the Bush administration, the CPA Order 2 created a 400,000 man influx of newly unemployed and mostly uneducated, yet armed, men onto the already insecure Iraqi streets. These former soldiers were angry with the US’s unfulfilled promises and were desperate

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<sup>13</sup> Ibid. 102.

<sup>14</sup> Franklin C. Miller as interviewed in: *Frontline: Losing Iraq*. Documentary. Directed by Michael Kirk. PBS, 2014. 16:10.

to locate some form of income to support their families. As a result these men, who held no loyalty to the US and often very limited loyalties to their national government, simply followed financial opportunities regardless of if they supported or opposed Coalition causes. In an interview with retired Marine Colonel Clark Lethin, Assistant to the Chief of Staff of Operations for the First Marine Division during the first battle of Fallujah, he explains many instances where someone witnessed the same man assist US intelligence one day, while being paid to plant insurgent IEDs the next.<sup>15</sup> The young men of Iraq became isolated from society after Bremer's second order and, as a result, turned towards actions in which took advantage of the security deficiencies.

In addition to unanswered promises, the US did not provide adequate resources to fill the security gap that existed between the end of combat operations and the formation of new Iraqi forces. In *Lessons Encountered: Learning from the Long War*, a book written by the National Defense University's Institute for National Security Studies, coeditors Dr. Joseph J. Collins and Dr. Richard D. Hooker, explain, "Because there were not enough forces to occupy the entirety of Iraqi population centers, these 'Former Regime Elements' had time and space to recover and organize their forces for a campaign against the coalition."<sup>16</sup> Baath Party loyalists were able to take advantage of the inadequate number of troops who were stationed in country by mobilizing disgruntled "Former Regime Elements" against US forces. These hostile forces eventually spread throughout Iraq, succeeding in creating an even worse security situation. General Jack Keane, former Army Vice Chief of Staff reflected, "We never made a commitment to secure the population."<sup>17</sup> The inherent consequences of dissolving the military may have been avoided if Washington provided US commanders in Iraq with a greater number of combat units.

As alluded to above, Bremer's decision to dissolve Saddam's military forces before organizing a sufficient replacement force caused a gap in the effectiveness of the rule of law in the Iraqi society. In his book *Iraq: From War to a New Authoritarianism*, Toby Dodge states, "There was a growing perception amongst Iraqis that, after the removal of the Baathist regime, US troops were not in full control of the situation. This understanding helped turn criminal violence and looting

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<sup>15</sup> Lethin, Colonel Clark, USMC. Telephone Interview. Apr. 2015.

<sup>16</sup> Richard D. Hooker and Joseph J. Collins. *Lessons Encountered: Learning from the Long War* NDU Press, 2015. 96.

<sup>17</sup> General Jack Keane as interviewed in: *Frontline: Losing Iraq*. Documentary. Directed by Michael Kirk. PBS, 2014. 4:40.

into an organized and politically motivated insurgency.”<sup>18</sup> The second CPA order erased the Iraqi institutions which provided security to the nation’s citizens. This was paired with a newly disenfranchised and displeased population which led to increased anti-Coalition sentiments, and eventually actions. In order to combat this declining situation, Paul Bremer needed to quickly begin the long process of creating a new military.

In August 2003 Bremer issued the 22nd order of the CPA, the Creation of a New Iraqi Army. When he did this, the true effect of Order 2 became clear. The 22nd order began by recalling the Army’s dissolution and acknowledging the need to establish an armed body as a new institution. The order then follows to describe the basic framework of the military, from code of conduct and purpose, to rank structure and personal requirements.<sup>19</sup> The inclusion of these rudimentary principles show how immature the organization was, and how much time and resources it would take to form the military into an effective institution. Continuing, Order 22 also establishes the new Iraqi Military as a volunteer service with a twenty-six month minimum term of office. The volunteer, and extremely short nature of these military enlistments will later prove to be a hindrance in formatting an institutional memory for the new army, as training had to stay limited and soldier turnover rates proved to be high.

## INSURGENCY

By early 2004, the incomplete approach towards the defense of Iraqi society, stemming from the initial effects of the CPA’s second order, allowed the disgruntled citizens and the expelled Baathist members to join together and refocus their efforts against Coalition forces. The first battle of Fallujah in spring 2004 marked the initial heights of the insurgency within the country.

Known as the city of mosques, Fallujah provided a home for the two most intense battles of the Iraq War. As a large suburb forty-three miles west of Baghdad, Fallujah lays in Iraqi’s, Al-Anbar province and provided a safe haven to former Baathists during the war. Fallujah provides an useful case study regarding Iraqi insurgency as its population is comprised of 95% Sunni Muslims, many

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<sup>18</sup> Dodge, Toby. Iraq: From War to a New Authoritarianism. London: International Institute for Strategic Studies, 2012. Print. 55.

<sup>19</sup> Coalition Provisional Authority. Order 22: CREATION OF A NEW IRAQI ARMY. 2003.

of which turned towards violence as Coalition and Shia leaders rose in Saddam's shadow. The first battle in the city was sparked by an insurgent ambush that targeted a group of four Blackwater USA military contractors, where insurgents murdered the contractors, and hung their burned bodies from a bridge in the city. The Sunnis in Fallujah were directly affected by Bremer's order as interpreted by former CPA Military Strategist, Colonel Thomas X. Hammes, as he explained, "Now you have a couple hundred thousand people who are armed, cause they took their weapons home with them, who know how to use the weapons, who have no future and have a reason to be angry at you."<sup>20</sup> While Hammes's analysis stands true for the entire country, it proved exaggerated in Fallujah as the quantity of both hostile personnel and hidden weapon caches located in the city soared above that of the rest of the nation.

### **SUNNI AWAKENING**

To combat this now overwhelming insurgency, General David Petraeus rallied for Sunni support, hoping moderate Sunni tribal leaders in Al-Anbar could be paid to provide resistance against their extremist counterparts. The need for an increased support from the often hostile sect within Iraqi society descends directly from the military void resulting from the first Iraqi army's initial disbandment. General Petraeus did not have the bodies he needed to combat the insurgency and therefore had to become creative with his acquirement of resources. Petraeus, "placed 'local security bargains', deals between neighborhood militias and the US military, at the center of consolidating and expanding the security gains made by the US military operations."<sup>21</sup> This concept, called the Sunni Awakening, began in the Al-Anbar province and was met with much skepticism by the international community. Many thought it counterintuitive to arm the same Muslim sect that were the least predictable in their ties to the insurgency. However, as we have already concluded, many of the low end hostile fighters were more in line with a chance for income than any ideology. Therefore, Petraeus's attempts in allying with moderate Sunni tribesmen both worked to keep moderate Sunnis engaged outside of the insurgency, and assisted to begin bridging the fracture between the Iraqi populations.

<sup>20</sup> Colonel Thomas X. Hammes as interviewed in: *Frontline: Losing Iraq*. Documentary. Directed by Michael Kirk. PBS, 2014. 16:52.

<sup>21</sup> Dodge, Toby. *Iraq: From War to a New Authoritarianism*. London: International Institute for Strategic Studies, 2012. Print. 95.

If the principles of the Sunni Awakening proved effective, moderate Sunni and Shia Muslims would unite towards a common cause: defeating the insurgency. In fact this concept worked. With help from an increased US presence in the country, these Sunni tribesmen assisted in forming an Iraq with the lowest rates of violence in years. This paired with the first Iraq elections in January 2005 and May 2006, began to pave the way towards a blossoming Iraqi democracy.

### **NOURI AL-MALIKI**

On 20 May 2006, Nouri al-Maliki was democratically elected as Prime Minister of Iraq. He was a Shia Muslim of the formerly illegal Islamic Dawa Party, who lived abroad in exile during the Hussein regime. Maliki came to office with little experience and connection to the current state of Iraqi society, due to his 24 year exile in Iran, and therefore required much mentorship from US President George W. Bush. While US officials were optimistic towards the new leader, hoping he would assist the US push towards a democratic Iraq, Maliki quickly pulled away from his initial democratic tendencies and grasped power with an increasingly authoritarian nature.

Maliki entered office carrying the support of an optimistic American president who was often said to trust the leader, regardless of his lack of political experience. However, after some time in office, especially after the end of the Bush administration, the image of optimism of the new Iraqi political system started to rapidly change. From the start of his rein, Maliki faced a heavily divided Iraqi population where sectarian violence and resentment, only intensified from the first CPA order, kept the society from uniting to rebuild its struggling nation. As stated, once Saddam's Baathist regime fell, the Shia population of Iraq leaped to grasp power which they held with fear and resentment towards the Sunni population. Maliki did little to initially mend the growing sectarian rift in the nation, eventually overcompensating for his lack of experience and sectarian nation by turning towards increased authoritarianism.

As the US began to give Maliki increased independence in order to begin to turn the government over to the Iraqi people, he started to act for fear of being challenged, grasping power with a rigid approach. Toby Dodge described Maliki's actions as:

[F]aced with a fractured political elite consumed with infighting and

self-enrichment, Maliki placed the Malikiyoun (his crony followers) at the center of a network of influence and patronage that bypassed the cabinet and linked the prime minister directly to those generals and senior civil servants who were exercising stat power below ministerial level.<sup>22</sup>

Fear of rebellion led Maliki to undo all the work of the CPA. His reinstatement of sectarian favoritism into the Iraqi “representative” government caused the invalidation of the organization, essentially causing the history of the IGC to be proven pointless. Even though Shia Muslims fill the authoritarian seat this time, the general lack of equality and compromise between the Islamic sects caused a repeat decline in political freedom and confidence parallel to Saddam’s Baathist regime.

Not only did Maliki lead Iraq’s political matters with crony leaders, he also altered the US built military in favor of Shia dominance. In an interview for PBS, *The Gamble* author Thomas Ricks stated, “Maliki gets rid of a lot of well-trained commanders in the Iraqi army and replaces them with political loyalists. It’s as if he’s more worried about a coup than he is in having an effective military.”<sup>23</sup> Maliki, once again afraid of challenge, traded experience for guaranteed loyalty. This isolated angry Sunni commanders as well as many Sunni followers, leading to additional fuel for the insurgency. These actions also began the eventual conversion of the Sunni Awakening tribesman from friend to foe, as the tribesman greatly resented their declining political status. These now traders against the US took the US funds and increasingly turned to align with the insurgency, eventually becoming radicalized and joining the region’s various terror networks.

The rise and fall of a Nouri al-Maliki would not have been likely outside of the political and military vacuums created by the CPA orders. While President Bush did trust Maliki, Bush and the rest of the US government did not have many viable non-Baathist options to head the new Iraqi government after the first CPA order. Additionally, any leader, regardless of their level of experience, would not have found easy success in Maliki’s position. The chaos which was beginning to ensue in every portion of Iraqi society after the CPA’s orders simply did not give Maliki a fighting chance to run his own government successfully. The overall effects of Maliki’s actions ignited a civil war as the overall Iraqi infrastructure, already

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<sup>22</sup> Ibid.

<sup>23</sup> Thomas Ricks as interviewed in: *Frontline: Losing Iraq*. Documentary. Directed by Michael Kirk. PBS, 2014. 1:06:40.

fractured by the actions of the CPA, could not endure further internal friction.

## CIVIL WAR

The combined actions by the Sunni Awakening tribesmen and Prime Minister Maliki paved the way for deepened sectarian rifts within Iraq, a majority of such Iraq has still failed to mend. The Sunni dominated insurgency in Iraq progressively transformed into a nationwide civil war as anti-Coalition violence turned overwhelmingly sectarian, leading to a cycle of attack and retaliation between the Sunni and Shia populations. On 22 February 2006 the Al-Askari Mosque in Samarra was bombed and destroyed by what many believe to be a symbolic, religion-based attack against Shia Muslims. This event is described by some as the final event that provided the catalyst for the beginning of the outright civil war within Iraq, a concept further examined by Dr. Collins, “In February 2006, Iraq exploded in sectarian violence after the bombing of the Shiite al-Askari mosque in Samarra ... Shiite militias went on the warpath after the bombing, and al Qaeda exploited the alienation of the Sunni from the Shia-dominated Iraqi government under Nouri al-Maliki.”<sup>24</sup> Since the 2003 invasion, but with extreme emphasis after the destruction of Al-Askari, Iraqi society became a battlefield of exploited opportunity. This terrorist exploitation of the sectarian disorder of Iraqi political and security structure created the foundation for the failing of the Iraqi state. Dodge adds, “[The] Iraqi state lost the ability to control its own borders, which has left Baghdad vulnerable to extended covert and overt interference from its neighbors.”<sup>25</sup> This national collapse led to an immense power vacuum which kept Iraq from securing its borders when neighboring Syria spiraled into its own internal conflict, spilling terrorist leaders across the border. Baathists and the Islamic State

While the rise of the Islamic State of Iraq and al-Sham (ISIS) has never been limited to the borders of Iraq, no matter how porous, long-term ties to De-Baathification and forced demilitarization helped provide resources and leadership for the group. This convergence between former Baathist leaders and current members of ISIS is examined by Truls Hallberg Tonnessen in an article

<sup>24</sup> Richard D. Hooker and Joseph J. Collins. *Lessons Encountered: Learning from the Long War* NDU Press, 2015. 68.

<sup>25</sup> Dodge, Toby. *Iraq: From War to a New Authoritarianism*. London: International Institute for Strategic Studies, 2012. Print. 208.

titled, “Heirs of Zarqawi or Saddam? The Relationship Between al-Qaida in Iraq and the Islamic State.” Tonnessen begins by explaining, “The top leadership of ISIS seems to have been populated by former Iraqi officers who were removed from their positions when the Iraqi army was disbanded in 2003.”<sup>26</sup> This analysis directly correlates to CPA Order 2. As noted, the Sunni leaders of Saddam’s regime became isolated from the state and were pushed into radicalization, ultimately aligning themselves with the extreme ideology of ISIS. Furthermore, “Several of the former Baathist were reportedly influenced by the ideology of [al-Qaeda in Iraq (AQI) and ISIS] in prison. This, in combination with a shared enmity toward the Shiite-dominated regime of Nouri al-Maliki, may have facilitated cooperation and integration of AQI members, former Baathists and other incarcerated insurgents.”<sup>27</sup> Maliki’s authoritarian surge worked to push away Sunni leaders, forcing them to unite with other outside radicals until all remotely related terror networks unified their efforts against the Iraqi state.

## CONCLUSION

Even though combat operations in Iraq at the beginning of the US invasion were relatively straightforward, the CPA’s reconstruction efforts proved overwhelmingly complex. In the name of security, Paul Bremer demolished the Baath Party and military institutions. However, this led to an outpouring of now-unemployed citizens onto Iraqi streets. Additionally, rivalries within the IGC limited the organization’s effectiveness. Hope for democracy did, however, manage to emerge during the early days of 2006, but was short-lived after Prime Minister Nouri al-Maliki and General Petraeus’s Sunni Awakening backfired and increased the extent of sectarian violence. This violence quickly spiraled into a full-blown civil war, spreading to a regional conflict with the addition of the Syrian conflicts. Conditions continued to deteriorate, allowing the CPA-created power vacuum in Iraq to expand rapidly, allowing alienated former Baathist members to align with emerging terrorist networks. These groups grew until ISIS claimed a global caliphate in the summer of 2014. The events which followed the US invasion of Iraq stand as an omnipresent reminder that, while intentions may prove sincere, a nation’s indecision toward

<sup>26</sup> Truls Hallberg Tonnessen. “Heirs of Zarqawi Or Saddam? The Relationship between Al-Qaida in Iraq and the Islamic State.” *Perspectives on Terrorism* 9, no. 4 (2015).

<sup>27</sup> *Ibid.*



full intellectual and material commitment to a conflict can lead to vacuums of power strong enough to inhale entire nations.

**APPENDIX 1: IRAQI TIMELINE MARCH 2003- JUNE 2014**

2003 March 20: U.S.-led invasion of Iraq begins.

2003 April 9: Saddam's rule is toppled and Baghdad comes under direct U.S. control.

2003 April 21: Coalition Provisional Authority (CPA) is established.

2003 May 1: President Bush declares end of combat phase in Iraq.

2003 May 16: CPA Order 1

2003 May 23: CPA Order 2

2004 March 31: Four private security contractors killed in Fallujah.

2004 June 28: CPA hands over its ruling power to the Iraqi Governing Council

2005 October 15: Iraqi citizens vote for new constitution that will create Islamic federal democracy. The new constitution is approved.

2006 February 22: Al-Askari Mosque in Samarra is bombed.

2006 April 22: Nouri al-Maliki becomes Prime Minister.

2014 June: ISIS renames itself the Islamic State and declares an Islamic caliphate covering territories in Syria and Iraq.

**APPENDIX 2: TOP LEADERSHIP OF ISIS 2010-2014**

<b>Name</b>	<b>Nationality</b>	<b>Former Baath</b>
Abu Muslim al-Turkmani	Iraqi (Turkmen)	X
Abu Muhammad al-Adnani	Syrian	
Abu Bakr al-Baghdadi	Iraqi	
Haji Bakr/Abu Bakr al-Iraqi	Iraqi	X
Abu Ala' al-Afri	Iraqi (Turkmen)	
Abu Ali al-Anbari	Iraqi (Turkmen)	X
Muhammad al-Nada al-Juburi	Iraqi	X
Abu Ayman al-Iraqi	Iraqi	X
Abu Ahmad al-Alwani	Iraqi	X
Abu Abd al-Rahman al-Bilawi	Iraqi	(X)
Nasir al-Din Allah Abu Sulayman	(Non-Iraqi)	
(Abu Faysal al-Zayidi)	Iraqi	X
Abu Umar al-Shishani	Georgian/Chechen	

Source: Truls Hallberg Tonnessen. "Heirs of Zarqawi Or Saddam? The Relationship between Al-Qaida in Iraq and the Islamic State." *Perspectives on Terrorism* 9, no. 4 (2015).

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# TRANSITIONAL JUSTICE IN ONGOING CONFLICT: COLOMBIA'S INTEGRATIVE APPROACH TO PEACE AND JUSTICE

MARIA ALEXANDRA VAN NIEVELT<sup>12</sup>

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## INTRODUCTION

*It is clear that the peace should not be purchased at any price. But the illusion that it can be free is ridiculous.*

– Francisco Gutiérrez Sanín, “¿Alternativas?” May 2012

*We need [...] peace without impunity. I understand that in the balance between peace and justice, this balance needs some sacrifice on the part of justice, but we cannot accept impunity.*

– Former Colombian President Álvaro Uribe Vélez,  
interview with the author, November 2012

In September 2013, Colombian President Juan Manuel Santos told the United Nations General Assembly that those affected by the Colombian conflict are “entitled to justice, to the truth, to reparation, to non-repetition.” Interestingly, Santos echoed these rights—some of the core ideals of transitional justice—in

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<sup>1</sup> Maria Alexandra van Nievelt is a Chilean student pursuing a Master's degree in International Affairs with a concentration in international security policy. Alex's research focuses on civil war violence and comparative peace processes in Latin America.

<sup>2</sup> I am grateful to Professor Graeme Simpson for his guidance and feedback as I delved into this project. I also want to thank Elisabeth Wood, Francisco Gutiérrez Sanín, Ana Arjona, Roxane Cassehgari, and Juan Pablo Toro for sharing their expertise on the Colombian conflict.

a speech primarily intended to secure endorsement for his government's ongoing peace talks with the FARC-EP,<sup>3</sup> Colombia's main insurgent group. The president acknowledged the difficulty of negotiating an end to a complex intrastate problem while simultaneously fulfilling the country's moral and legal obligations to investigate and prosecute the worst abusers of human rights and humanitarian law. Santos stated that Colombia's transitional justice strategy would prioritize the "maximum possible satisfaction" of victims' rights rather than aim—and fail—to investigate every violation committed during fifty years of armed conflict. The Colombian Executive views his country as pioneering the deployment of transitional justice tools in the midst of conflict and expects that this agenda will "enable" and "support" a transition toward peace.<sup>4</sup>

Indeed, Colombia's ongoing peace talks with the Marxist guerrillas were facilitated by a package of transitional justice instruments written into the Colombian constitution through the adoption of the Legal Framework for Peace (See Appendix 2) in July 2012. By creating the space for Santos' peacemaking efforts while also preventing impunity for conflict-related crimes and providing guarantees to victims,<sup>5</sup> the Framework is an innovative effort to make transitional jurisprudence and conflict resolution complementary rather than competitive ventures.

The effort is not without its critics. This development departs from the original understanding of transitional justice as addressing past abuses rather than still-ongoing abuses.<sup>6</sup> While some scholars and practitioners applaud this "era of complementarity"<sup>7</sup> between transitional justice and peacemaking, others remain skeptical about the "overly-ambitious aim" of "justice-seeking in the absence of peace."<sup>8</sup> In Colombia, former President Álvaro Uribe is among the loudest de-

<sup>3</sup> See the Glossary in Appendix 1 for the expansion of this and every important acronym hereafter.

<sup>4</sup> Juan Manuel Santos, "Statement by the President of the Republic of Colombia," Address before the General Assembly of the United Nations in its 68th Session, (New York: 24 September, 2013).

<sup>5</sup> Felipe Gómez Isa, "Justice, Truth and Reparation in the Colombian Peace Process," *Norwegian Peacebuilding Resource Center* (2013), [http://peacebuilding.no/var/ezflow\\_site/storage/original/application/5e7c839d7cf77846086b6065c72d13c5.pdf](http://peacebuilding.no/var/ezflow_site/storage/original/application/5e7c839d7cf77846086b6065c72d13c5.pdf).

<sup>6</sup> Rosario Figari Layús, *The Role of Transitional Justice in the Midst of Ongoing Armed Conflict: The Case of Colombia*, (Potsdam, Germany: Universitätsverlag Potsdam, 2010), 31.

<sup>7</sup> Graeme Simpson, "Transitional Justice and Peace Negotiations," International Center for Transitional Justice (discussion paper, 2008), 21.

<sup>8</sup> Catalina Díaz, "Colombia's Bid for Justice and Peace," Building a Future on Peace and Justice," Workshop 5 at the Building a Future on Peace and Justice Conference, (Nuremberg, Germany):

tractors of the process, arguing that his country needs “peace without impunity.”<sup>9</sup> While not the most credible objector, his words echo the concern that the simultaneous use of transitional justice and peacemaking heightens the tension between the demands of peace and those of justice.

There are reasons to remain optimistic about the Colombian experiment, however. Despite its imperfections, the framework that undergirds the ongoing Colombian negotiations places transitional justice at the heart of this peacemaking effort. The negotiation program itself novelly considers victims’ rights, however briefly and vaguely. In addition, the process incorporates Congress and constituents in the ratification and implementation of the peace agreement, including transitional justice measures emerging from the process. Any deal will also face the scrutiny of national, regional, and international courts. These facts suggest that both the Colombian government and the FARC must look beyond their narrow interests to broker a peace agreement that can minimally satisfy both local and global expectations of justice.

Through an investigation of transitional justice efforts in Colombia, I argue that the use of transitional justice instruments in ongoing conflict is not only possible, but that a wise use of such instruments can even facilitate bringing an end to conflict itself. This paper explores the potential complementarity of peacemaking and transitional justice instruments in the midst of ongoing conflict as well as the challenges that such an enterprise creates. I first discuss the opportunities and challenges presented by the rise in the use of transitional justice during ongoing conflict and the growing aspirational and operational overlaps between the transitional justice and peacemaking fields. I then contextualize the current transitional justice and conflict resolution architecture, tracking Colombia’s first steps—and missteps—in its controversial use of transitional justice. I go on to analyze the Legal Framework for Peace: the novel instrument that enabled the ongoing peace process by writing transitional justice instruments into the Constitution. Here, I also consider the development of the negotiations with the FARC in light of the embedment of transitional justice in Colombia’s conflict resolution labors. Finally, I analyze the opportunities and challenges faced

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June 25-27, 2007), 7, citing Ruth Teitel, “Law and Politics of Contemporary Transitional Justice,” *Cornell International Law Journal* 38 (2005): 838-862.

<sup>9</sup> Álvaro Uribe Vélez, interview with the author, Yale University Podcast Video, November 7, 2012.

by Colombia's complementary formula—and its implications for our understanding of the nature and purpose of transitional jurisprudence.

## TRANSITIONAL JUSTICE AND PEACEMAKING: A GROWING OVERLAP

### *Causes and Origins*

At the negotiating table, harmonizing the positions of parties engaged in intrastate conflict is a monumental undertaking. Even finding the lowest common denominator of the belligerents' interests that is preferable to warfare is no easy task.<sup>10</sup> Moreover, in the wake of the rise of the "global accountability regime," such a lowest-common-denominator agreement may be insufficient to earn global legitimacy or even uncontested legality.<sup>11</sup> Under current international law and prevalent worldwide-responsibility norms, peace between warring parties can no longer be bartered at the cost of justice for the victims to the conflict.

Yet in the last few decades peacemaking itself has become more holistic, and most discourse surrounding conflict resolution now seeks long-term "sustainable peace." Increasingly, peacemaking aims to generate transformative processes in war-torn nations by attending to the roots of a conflict and by advancing democratic reforms and agendas of sociopolitical, ethnic, and—more rarely—economic inclusion. While punishing perpetrators of conflict-related violence still causes tension during peace processes, accountability has become a part of peacebuilders' policy objectives,<sup>12</sup> especially as the field becomes sensitized to the relationship between recurring violence and the perception of unaddressed injustices.<sup>13</sup>

Transitional justice refers to the judicial and non-judicial mechanisms im-

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<sup>10</sup> Although quantitative analyses regarding the success rate of civil war mediation efforts are fraught with problematic claims regarding, among others, the definitions of an intrastate conflict and a mediation success, a generous analysis of 438 diplomatic interventions in 68 conflicts between 1945 and 1999 concluded that only 38% of mediations achieved full or partial settlement, although around 57% resulted in at least a temporary ceasefire. See Patrick Regan, Richard W. Frank and Aysegul Aydin, "Diplomatic Interventions and Civil War: A New Dataset," *Journal of Peace Research* 46:1 (2009): 135-46.

<sup>11</sup> Par Engstrom, "Transitional Justice and Ongoing Conflict," in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, ed. Chandra Lekha Sriram, et al. (London: Routledge, 2013), 41.

<sup>12</sup> Engstrom, "Transitional Justice and Ongoing Conflict," 46.

<sup>13</sup> Simpson, "Transitional Justice and Peace Negotiations," 7; Richard Ponzio, *Democratic Peacebuilding: Aiding Afghanistan and other Fragile States* (Oxford: Oxford University Press, 2011).



plemented by different countries in the wake of conflict in order to overcome a violent past and redress the legacy of large-scale human rights violations. Just as the ambitions of conflict resolution have increased in the recent past, transitional justice has also evolved to share some of the goals and operational timelines of peacemaking. This is in part due to the intractability of contemporary conflict, which blurs the boundaries between war and peace. Transitional justice policies are used in situations where transition is uncertain, fragile, or even unapparent.<sup>14</sup> The expanded legal architecture around human rights violations is another factor: an ever-more-ambitious international human rights agenda has labored to broaden the notion of threats to collective peace and security to include a concern for “human security.” The international human rights enterprise has succeeded, for example, recognizing the emerging principle of the “responsibility to protect,” and—most crucially for transitional justice as a field—in creating the International Criminal Court (ICC).<sup>15</sup> The widespread ratification of the Rome Statute that established the ICC signals that accountability for genocide, war crimes, and crimes against humanity is no longer purely a matter of local prerogative. Finally, the emergence of a “victim-centered” approach to justice has also contributed to the evolving normative ambitions of transitional jurisprudence.

Transitional justice now aims to frame peacemaking efforts and delineate “the politics of transition within certain legal standards, particularly those regarding victims’ rights to truth, justice, and reparations.”<sup>16</sup> Further, transitional justice has been increasingly recast as a means to bring about—or at least support—a transition in the first place. The ICC somewhat relies on the notion that its involvement during conflict deters future violence,<sup>17</sup> even without clear

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<sup>14</sup> Engstrom, “Transitional Justice and Ongoing Conflict,” 43-44.

<sup>15</sup> Engstrom, “Transitional Justice and Ongoing Conflict,” 44.

<sup>16</sup> María Paula Saffon and Rodrigo Uprimny, “Uses and Abuses of Transitional Justice in Colombia,” Reprinted in *Law and Peace Negotiations*, ed. Morten Bergsmo and Pablo Kalmanovitz, *Forum for International Criminal and Humanitarian Law (FICHL) Publication Series 5* (2007; Reprinted in 2009): 217-245, [https://www.fichl.org/fileadmin/fichl/documents/Pre-TOAEP/090325\\_FICHL\\_5\\_\\_law\\_in\\_peace\\_negotiations\\_.pdf](https://www.fichl.org/fileadmin/fichl/documents/Pre-TOAEP/090325_FICHL_5__law_in_peace_negotiations_.pdf).

<sup>17</sup> ICC Prosecutor Luis Moreno Ocampo has repeatedly argued that his office prevents and deters future violence, and has cited Cote d’Ivoire as evidence (see Luis Moreno Ocampo, “Building a Future on Peace and Justice,” Keynote Address at the Building a Future on Peace and Justice Conference, [Nuremberg, Germany: June 2007], 25-27). He also has more generally stated that the ICC seeks to “reshape the norms of human conduct while violence is still ongoing, thus aiming, as stated in the Rome Statute, to contribute to the prevention

empirical evidence for such a consequentialist argument.<sup>18</sup> Nevertheless, those who support transitional jurisprudence going beyond prosecutions and punishment have suggested creative and feasible ways in which transitional justice and peacemaking can work in productive tandem.

### *Opportunities and Advantages*

To many, the potential for complementarity between peacemaking and transitional justice is paradoxical because of the traditional view that peace and justice are values at odds with each other in transitional periods. Under this view, achieving peace often comes at the cost of achieving justice, and vice versa. For example, peacemaking often involves extracting a negotiated settlement in exchange for more lenient sentences for the perpetrators of conflict-related violence. On the other hand, the implementation of retributive—or punishment-focused—justice is viewed as a crucial aspect of realizing the value of justice. As a consequence, decision-making in the transition from conflict to post-conflict is viewed as a compromise between the aims of peace and justice.<sup>19</sup>

And yet the “stakeholders” of peacebuilding and transitional justice—mediators, human rights advocates, and victims—share common goals in transitions from violent conflict.<sup>20</sup> Peacemakers must acknowledge that justice and accountability measures are crucial to a peace process’s sustainability, and transitional justice practitioners should recognize that ending the conflict is necessary to avoid ongoing and future violations.<sup>21</sup> Each field’s success is interdependent. Exposure to “each others’ dilemmas, disciplines and opportunities” is essential to the integrity of a transition, and cooperation is feasible if practitioners understand that they operate “within a *peace-building and transitional justice continuum*” that resists re-

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of future crimes” (Moreno Ocampo, “Transitional Justice in Ongoing Conflicts,” *International Journal of Transitional Justice* 1 (2007): 8-9, doi:10.1093/ijtj/ijm014). Practically speaking, the temporal jurisdiction of the ICC, which limits prosecutions to violations occurring after July 1, 2002, is a big part of why the court engages with ongoing conflict.

<sup>18</sup> Oskar N. T. Thoms, James Ron and Roland Paris, “State-level Effects of Transitional Justice: What Do We Know,” *International Journal of Transitional Justice* (2010): 1-26; Oskar N. T. Thoms, James Ron and Roland Paris, “The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners,” *Centre for International Policy Studies Working Paper* (April, 2008).

<sup>19</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia,” 235.

<sup>20</sup> Simpson, “Transitional Justice and Peace Negotiations,” 7.

<sup>21</sup> *Ibid.*, 3.

ducing transitional justice to criminal prosecutions and peacemaking to striking deals between warring parties.<sup>22</sup>

Transitional justice tools beyond prosecution can help prevent patterns of abuse from repeating and hostilities from resurfacing. While criminal trials might deter future violence, individual punitive accountability does not primarily seek to buttress peace processes.<sup>23</sup> Therefore, satisfying the ambitions of both peace and justice also requires victims-oriented reparations programs. These approaches, already less of a threat to peace processes, can offer a “*peace dividend*” in the form of “civic trust,” an essential component of legitimate and sustainable peacemaking outcomes.<sup>24</sup>

Moreover, pursuing ‘transformative’ rather than merely ‘restitutive’ transitional justice may be particularly appropriate under the auspices of peacemaking and in the context of a transition in the making. In other words, it might be worth pursuing transitional justice strategies that seek to improve upon the status quo prior to the conflict rather than to merely restore the country to such a state. This might be especially true in a transition from a “conflicted democracy”: A political system that meets the minimum formal requirements of procedural democracy, but faces such entrenched polarization and divisions that it is either subjected to, or perpetually threatened by, violent conflict.<sup>25</sup> Rosario Figari applies this concept to the Colombian state and Rodrigo Uprimny suggests a similar understanding when describing the country as a “dangerous democracy in danger.”<sup>26</sup> A conflicted democracy such as Colombia’s has the need to distance itself from a political legacy of long-standing exclusion—to the particular injury of the rural poor—and active violations of human rights and international humanitarian law. A break with such illegitimate order is at the heart of a conflict-

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<sup>22</sup> Ibid., 4.

<sup>23</sup> Ibid., 7.

<sup>24</sup> Ibid., 6.

<sup>25</sup> Colm Campbell and Fionnuala Ni Aolain, “The Paradox of Transition in Conflicted Democracies,” *Human Rights Quarterly* 27 (2005): 175.

<sup>26</sup> Figari Layús, *Transitional Justice*, 18-47; Rodrigo Uprimny Yepes, “Transitional Justice Without Transition? Possible Lessons From the Use and (Misuse) of Transitional Justice Discourse in Colombia,” Paper presented at the Building a Future on Peace and Justice Conference, (Nuremberg, Germany: June 25-27, 2007), [http://www.peace-justice-conference.info/download/ws\\_5\\_-\\_expert\\_paper\\_-\\_uprimny.pdf](http://www.peace-justice-conference.info/download/ws_5_-_expert_paper_-_uprimny.pdf).

ed democracy's transition to a state of peace and substantive liberal democracy.<sup>27</sup> Colombia's new transitional justice framework must prove itself more efficacious and politically transparent than the Uribe administration's agenda to demobilize the pro-systemic paramilitaries.

Transformative justice envisions a holistic approach to justice, comprising retributive, restorative, and socioeconomic elements.<sup>28</sup> Under this approach, transitional justice must coordinate with interventions that are often under the umbrella of peacebuilding or statebuilding such as psychosocial, development, and infrastructure rebuilding programs as well as reforms that widen political participation. Transformative justice aims to address the factors that spurred violence in the first place, rather than merely returning victims to the status quo prior to the armed confrontation.<sup>29</sup> Such an approach is arguably essential to achieving comprehensive justice and durable peace when state-perpetuated inequities and marginalization lie at the root of a conflict, as in the case of Colombia.<sup>30</sup>

There are broader advantages to deploying transitional justice mechanisms in the framework of a peace process. Legal benchmarks on transitional justice can act as "virtuous restrictions" on a mediated process.<sup>31</sup> Consensus on certain minimum, non-negotiable normative imperatives regarding the rights of victims—standards that are not merely rhetorically appealing, but also credibly and legally enforceable—diminishes the universe of possible outcomes and may channel discussions toward a space where agreement between opposing parties is more, not less, likely.<sup>32</sup>

Finally, transitional justice discourse empowers victims as relevant political agents and elevates their rights in the list of priorities of a society emerging from conflict. Even though the victims' rights agenda appears to be especially vulner-

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<sup>27</sup> Figari Layús, *Transitional Justice*, 24-5, 30.

<sup>28</sup> María Paula Saffon and Rodrigo Uprimny, *Plan Nacional de Desarrollo y Reparaciones. Propuesta de un programa nacional masivo de reparaciones administrativas para las víctimas de crímenes atroces en el marco del conflicto armado*, (Bogotá, Colombia: DejuSticia, 2007).

<sup>29</sup> Figari Layús, *Transitional Justice*, 29; Saffon and Uprimny, *Plan Nacional de Desarrollo y Reparaciones*.

<sup>30</sup> Saffon and Uprimny, *Plan Nacional de Desarrollo y Reparaciones*.

<sup>31</sup> Nelson Camilo Sánchez and Rodrigo Uprimny, "Transitional Justice Without Transition? The Colombian Experience in the Implementation of Transition Measures," in InterAmerican Institute of Human Rights, *Contribution of Truth, Justice, and Reparation Policies to Latin American Democracies* (San José: Inter-American Institute of Human Rights, 2011), 143.

<sup>32</sup> Saffon and Uprimny, "Uses and Abuses of Transitional Justice in Colombia," 236.

able to manipulation during ongoing conflict, the Colombian experience surrounding Uribe's Justice and Peace Law shows how human rights advocates and victims' groups can at least partially re-appropriate the discourse of transitional justice to make non-trivial gains.<sup>33</sup> Indeed, victims' rights are now firmly at the center of the peace process between the Colombian government and the FARC, which hints at a positive transformation of the power dynamics between victims and perpetrators.

### *Risks and Challenges*

Deploying transitional justice during ongoing conflict in general, and complementing transitional justice with peacemaking in particular, raises many challenges. Critics such as Ruti Teitel stress the risks of politicizing justice in the first place.<sup>34</sup> Other scholars argue that using transitional justice policies—which is “always a political decision” and a “political tool”—is particularly vulnerable to political manipulation during conflict.<sup>35</sup> Doing so presents security risks to victims and complicates state fragility and potentially compromised institutions. Therefore, transitional justice in this context can be easily misused to legitimize rather than combat impunity and to benefit local elite interests.<sup>36</sup> For these reasons, justice is a “field of contention” when implemented in the midst of conflict, and the various actors with distinct goals and views of the conflict must be recognized.<sup>37</sup>

Combining conflict resolution and transitional justice approaches also brings about the increased complexity of any hybrid endeavor. Such an endeavor's success is predicated on its perceived legitimacy. Legitimacy, in turn, depends on the effective implementation of both the transitional justice *and* the peacemaking agendas. The failure of either endangers the viability of the other. For example, the Colombian attempt to use the same legal instrument to pursue

<sup>33</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia.”

<sup>34</sup> Ruti Teitel, “Law and Politics of Contemporary Transitional Justice,” *Cornell International Law Journal* 38 (2005): 838-862.

<sup>35</sup> Figari Layús, *Transitional Justice*, 31, citing Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia.”

<sup>36</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia”; Engstrom, “Transitional Justice and Ongoing Conflict,” 50, 53.

<sup>37</sup> Adriana Rincón Villegas, “Transitional Justice in Ongoing Conflicts: The Case of Colombia” (master's thesis, University of Georgia, 2015), 7.

accountability and the disarmament, demobilization, and reintegration (DDR) of paramilitary forces was impaired by the imperfect demobilization of the latter and the reorganization of many former combatants under new structures.<sup>38</sup> There, the miscarriage of the peacemaking arm of the initiative became a political and logistical obstacle to the achievement of transitional justice.

## CIVIL WAR IN COLOMBIA: FIFTY YEARS OF VIOLENCE

### *A History of The Colombian Conflict*

Colombia has suffered over five decades of an internal armed conflict that has claimed the lives, homes, and livelihoods of hundreds of thousands of its citizens—particularly in the rural countryside. The Colombian conflict is especially complex due to its protracted duration, multiplicity of actors, serious violations of human rights and humanitarian law, and the effect of the drug trade in criminalizing the civil strife.<sup>39</sup> The dynamics, actors, and scale of the conflict have changed throughout the years.

The conflict can be traced to a civil war waged from 1948 to 1958 known as *La Violencia*. After claiming over 200,000 lives, the conflict ended with a power-sharing agreement between liberal and conservative party leaders in Bogotá.<sup>40</sup> However, radical liberals rejected the coalition's legitimacy and allied with the Communist Party, which had been excluded from power. These dissidents took to the countryside. The FARC emerged in 1964 with roots in these peasant self-defense leagues.<sup>41</sup> That same year, Colombian rebels trained in Communist Cuba founded the ELN, the other guerrilla group active today.<sup>42</sup> A second generation of insurgent groups emerged in the 1970s, most of which demobilized between 1989

<sup>38</sup> Jemima García-Godos, "Colombia: Accountability and DDR in the Pursuit of Peace?" in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, ed. Chandra Lekha Sriram et al. (New York: Routledge, 2013).

<sup>39</sup> Ana M. Arjona and Stathis Kalyvas, "Recruitment into Armed Groups in Colombia," in *Understanding Collective Political Violence*, ed. Yvan Guichaoua (Houndmills, Basingstoke: Palgrave Macmillan, 2012), 143-71.

<sup>40</sup> Marc Chernick, "Negotiating Peace amid Multiple Forms of Violence: The Protracted Search for a Settlement to the Armed Conflicts in Colombia," in *Comparative Peace Processes in Latin America*, ed. Cynthia Arnson (Washington, D.C.: Woodrow Wilson Center Press, 1999), 162.

<sup>41</sup> Nazih Richani, *Systems of Violence: The Political Economy of War and Peace in Colombia*, (Albany: State University of New York Press, 2002), 62-64.

<sup>42</sup> Paul Wolf, "ELN and University Violence 1965-1973," <http://www.icdc.com/~paulwolf/colombia/universityviolence.htm#eln>.

and 1990.<sup>43</sup>

The FARC's military capacities took off when Colombia emerged as a producer of illegal drugs, especially cocaine. In 1978, after a badly handled economic liberalization wrecked the subsistence farming lifestyle of the guerrillas' constituency, the FARC decided to accept—and tax—peasants' illegal coca plantations across its controlled territory.<sup>44</sup> Other insurgents would soon come to similar decisions. The new financial resources allowed the FARC and other guerrillas to finance better equipment, territorial expansion, and an immense increase in its number of fighters. Between 1982 and 1998, the FARC grew from 10,000 combatants to almost 17,000.<sup>45</sup>

A new actor also spurred the hike in violence—the paramilitaries. In the early 1980s, drug lords and large landowners began to establish strong private armies to protect their economic interests.<sup>46</sup> Convinced that vigilante activity was an effective counterinsurgency strategy, the Colombian armed forces directly supported and trained these newly established paramilitary groups.<sup>47</sup> In 1997, these paramilitary groups came together under an umbrella organization, the United Self-Defense Forces of Colombia (AUC). The AUC quickly became the conflict's most violent actor, but the army and police failed to stop it.<sup>48</sup> Indeed, the Colombian state and the paramilitaries maintained a long, tacit alliance, with the AUC funding many politicians' campaigns or intervening with strong-arm tactics in so-called Colombian “parapolitics.”<sup>49</sup>

<sup>43</sup> García-Godos, “Colombia: Accountability and DDR in the Pursuit of Peace?” 221.

<sup>44</sup> Jeremy M. Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, (Cambridge: Cambridge University Press, 2007), 293; Juan Guillermo Ferro Medina and Graciela Uribe Ramón, *El Orden de la Guerra, las FARC-EP: Entre la Organización y la Política* (Bogotá: Centro editorial Javeriano, CEJA, 2002).

<sup>45</sup> Christopher Thornton and Rainer Gude, “Towards Peace in Colombia: The Economic Obstacles to a Colombian Peace Process,” *Peace & Conflict Review* 5:2 (2011): 5.

<sup>46</sup> UCDP Conflict Encyclopedia. “Colombia,” Uppsala University Department of Peace and Conflict Research.

<sup>47</sup> Carlos Medina, *Autodefensas, Paramilitares y Narcotráfico en Colombia: Origen, Desarrollo y Consolidación*, (Bogotá: Editorial Documentos Periodísticos, 1990).

<sup>48</sup> Comisión Interamericana de Derechos Humanos (CIDH), “Violencia y la Violación del Derecho Internacional de los Derechos Humanos y el Derecho Internacional Humanitario,” in *Colombia Country Report* 1999, Chapter 4, <http://www.cidh.org/countryrep/Colom99sp/capitulo-4e.htm>.

<sup>49</sup> Adriaan Alsema, “37 Colombian Congressmen, 5 Governors Convicted for Ties to Paramilitaries,” *Colombia Reports*, (May 16, 2013); Sam Logan and Tatiana García,

But as it became clear that the paramilitaries did not limit their violence to the guerrillas, the Colombian government came under international pressure to outlaw paramilitary groups. When this proved unsuccessful, President Uribe brokered the demobilization of the AUC in 2003, in exchange for reduced prison time.<sup>50</sup> The left-wing guerrillas, catalogued as a “terrorist threat” by the Uribe administration, were left out of the peace process.<sup>51</sup> The bulk of the AUC had demobilized by early 2006, and its former leadership was extradited to the United States in 2008.<sup>52</sup> The legal instrument that enabled this demobilization was known as the Justice and Peace Law, which came into effect in 2005. While there is no explicit reference to transitional justice in the legal text, the state has since acknowledged it as a transitional justice instrument. Indeed, at the time, the government alluded to the “restorative justice paradigm” and justified the lenient sentences in the name of national reconciliation.<sup>53</sup>

Demobilizing a large number of trained fighters, however, contributed to the rise of new criminal networks lacking centralized control—the so-called *bandas criminales*, or *bacrim*.<sup>54</sup> In 2011, the *bacrim* comprised 6,000 individuals operating on six fronts.<sup>55</sup> The *bacrim* adeptly filled in the authority vacuums in territories where the state presence was not consolidated swiftly enough after the military rollback of the FARC.<sup>56</sup> These groups have directly taken over illicit economies, especially drug trafficking and illegal mining, and carried out extortions, disappearances, and forced displacements. The Colombian police estimated that these successors to the AUC were responsible for 47% of the 15,400 murders per-

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“Paramilitary Politics: A Colombian Reality,” *International Relations and Security Network* (2006), <http://www.isn.ethz.ch/isn/Digital-Library/Articles/Detail/?lng=en&id=108000>.

<sup>50</sup> Stephanie Hanson, “Colombia’s Right-Wing Paramilitaries and Splinter Groups,” *Council on Foreign Relations* (CFR), (11 January, 2008), <http://www.cfr.org/colombia/colombias-right-wing-paramilitaries-splinter-groups/p15239>.

<sup>51</sup> Villegas, “Transitional Justice in Ongoing Conflicts: The Case of Colombia,” 4.

<sup>52</sup> Sam Goffman, “Colombia: Paramilitaries Get Sweetheart Deal,” *NACLA Report on the Americas* 39:2 (2005): 50-1.

<sup>53</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia,” 223-24.

<sup>54</sup> Comisión Nacional de Reparación y Reconciliación (CNRR), “Disidentes, Rearmados y Emergentes: ¿Bandas Criminales o Tercera Generación Paramilitar?” (2007).

<sup>55</sup> Sally Palomino, “Las Bacrim tendrían unos seis mil hombres, en seis estructuras,” *La Semana* (January 18, 2011).

<sup>56</sup> Jeremy McDermott, “Colombia’s Criminal Bands Pose New Security Challenge,” *BBC News*, (April 25, 2011).



petrated in 2010.<sup>57</sup>

In 2010, Juan Manuel Santos, Uribe's former defense minister, was elected president and adopted a new approach to the conflict. For the first time, the state acknowledged an "internal armed conflict" and applied the discourse of human rights and international humanitarian law.<sup>58</sup> In June 2011, Santos passed the Victims and Land Restitution Law, establishing a massive reparations program for over five million internally displaced Colombians.<sup>59</sup> In July 2012, his administration passed a constitutional reform dubbed the Legal Framework for Peace, which wrote exceptional transitional justice instruments into the Colombian Constitution. The ongoing peace process with the FARC was formally inaugurated only a few months later.

### *International Crimes and Legal Obligations*

Fifty years of conflict led to the death of more than 200,000 Colombians, most of them civilians. Each party to the conflict has perpetrated crimes against humanity, human rights abuses, and violations of international humanitarian law. Kidnappings, torture, sexual and gender-based violence, enforced disappearances, child-soldier recruitment, extrajudicial killings, and large-scale massacres have been used strategically and wantonly throughout the conflict.<sup>60</sup> Roughly 12 percent of Colombians are victims of displacement, the second-largest percentage in the world.<sup>61</sup> Further, the conflict has disproportionately affected Colombia's most marginalized groups: indigenous peoples, Afro-Colombians, and impoverished rural communities.

The Colombian state has certain international obligations to uphold in light of these crimes. As a monist country, Colombia recognizes the international human rights treaties it ratifies to be in the same category as the constitution.<sup>62</sup> The state has ratified all major human rights treaties, including the Rome Stat-

<sup>57</sup> "Las bacrim cometen la mitad de los asesinatos en Colombia," *Infobae* (January 26, 2011).

<sup>58</sup> Villegas, "Transitional Justice in Ongoing Conflicts: The Case of Colombia," 4.

<sup>59</sup> United Nations High Commissioner for Refugees (UNHCR), "Colombia: 2015 UNHCR country operations profile," (2005) <http://www.unhcr.org/pages/49e492ad6.html>.

<sup>60</sup> International Crisis Group (ICG), *Transitional Justice and Colombia's Peace Talks*, Latin America Report N°49, (August 29, 2013), ii.

<sup>61</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Fondo de Respuesta a Emergencias – Colombia," *Informe Segundo Trimestre* (2014), 1.

<sup>62</sup> Colombian Constitution of 1991, Art. 93.

ute, which accepts the jurisdiction of the International Criminal Court (ICC) over crimes against humanity and genocide from 2002 onwards, and over crimes of war from 2009 onwards. Colombia is also party to the Inter-American Commission of Human Rights (IACHR), having agreed to be bound by the decisions of the Inter-American Court of Human Rights in 1985.<sup>63</sup>

Further, the jurisprudence of the Colombian Constitutional Court is in line with the global accountability regime, adjudicating with reference not only to legally binding treaty law, but also soft law such as the Pinheiro Principles on Land Restitution; the UN Basic Principles and Guidelines (UNBPG) on the right to remedy and reparation for victims of gross violations of international human rights and humanitarian law; and the so-called Joinet/Orentlicher Principles against impunity.<sup>64</sup> This complex framework structures and restricts the state's maneuvers in its negotiations with the FARC. Extensive amnesties like those offered to guerrilla groups in 1990 and 1991 would not be feasible today.<sup>65</sup>

## TRANSITIONAL JUSTICE IN COLOMBIA

### *The Justice and Peace Law (Ley No. 975, 2005)*

Colombia's first transitional justice instrument was passed in 2005 under the Uribe regime and is commonly known as the *Ley de Justicia y Paz*, or the Justice and Peace Law (JPL).<sup>66</sup> The JPL offered reduced sentences to demobilized combatants who had committed serious crimes on the condition that they would take on the responsibility of recompensing their victims. The instrument was conceived to incentivize the demobilization of the state-friendly paramilitaries. Around 4,800 former combatants—mostly paramilitaries—qualified for alternative sentences.<sup>67</sup>

As a first attempt to use transitional justice in complementarity with peace-

<sup>63</sup> ICG, *Transitional Justice and Colombia's Peace Talks*, 6-7.

<sup>64</sup> The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity was formulated by UN expert Louis Joinet in 1997, and updated by Diane Orentlicher in 2005; Gustavo Gallón, "Human Rights in Crisis: The Case of Colombia Lecture at the School of International Relations of the University of Saint Andrews," (November 14, 2013), [http://www.coljuristas.org/documentos/adicionales/speech\\_st\\_andrews\\_2013-11-14.pdf](http://www.coljuristas.org/documentos/adicionales/speech_st_andrews_2013-11-14.pdf).

<sup>65</sup> ICG, *Transitional Justice and Colombia's Peace Talks*, 7; Sánchez and Uprimny, "Transitional Justice Without Transition? The Colombian Experience in the Implementation of Transition Measures," 12-13.

<sup>66</sup> "Ley No. 975," Official Website of the Presidency of Colombia (July 25, 2005), <http://wsp.presidencia.gov.co/>.

<sup>67</sup> ICG, *Transitional Justice and Colombia's Peace Talks*, 4.

making, the JPL has a spotty record at best. The legitimacy of Uribe's initiative was questionable due to the links between the Colombian state and the paramilitaries. Some scholars expressed fear that if the initiative succeeded, the state's manipulative use of transitional justice discourse in the absence of a transition would, in effect, legitimize impunity to the benefit of the paramilitaries and certain political elites.<sup>68</sup> But the Colombian JPL experience also demonstrated how activists, international actors, and nongovernmental organizations could re-appropriate transitional justice discourse to obtain fairer legislation. Indeed, the advocacy of victim groups, the UN High Commissioner for Human Rights, the European Union, and others brought about the enormous procedural, if not ultimately substantive, gains for victims' rights when one compares the 2005 JPL against the government's first draft of the instrument.<sup>69</sup>

Crucially, the JPL as it was passed in 2005 incorporated language regarding victims' rights to truth, justice, and reparations—a starting point that helped victims gain a central role in all future transitional justice and peacemaking discussions. Colombia's own Constitutional Court determined that paramilitary assets should be expropriated to fund the material reparations owed to victims. The Court also ensured that the authorities administering the JPL were subject to investigation so that prosecutors and victims could corroborate the narratives of the law's applicants. Finally, the JPL replaced the lenient “alternative” punishments it had originally envisioned with reduced prison sentences, lasting five to eight years.

Unfortunately, the instrument still had several failings. First, under the JPL victims could gain reparations only by judicial proceedings. Thus, victims had to report a crime against paramilitaries who the state had already identified as gross violators of human rights.<sup>70</sup> This was especially controversial in light of the close relationship between paramilitaries and the government. Further, the paramilitaries were not the only victimizers in the conflict; Colombians who suffered violence at the hands of the state or the guerrillas still had no way to see

<sup>68</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia,” 229.

<sup>69</sup> Nicole Summers, “Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict?” *Harvard Human Rights Journal* 25:1 (2012): 225.

<sup>70</sup> Because Uribe's government did not recognize the existence of an international armed conflict in Colombia, the national legislation from this period does not speak of violations of international humanitarian law, i.e. war crimes.

their rights vindicated. And even if victims reported a crime against a “state-approved” perpetrator—at great personal risk of paramilitary retaliation—they still needed to endure a time-consuming legal process in a time of conflict-induced institutional weakness. Only after a court had established culpability could victims seek restitution and damages. Because of these obstacles and risks, by 2008 the JPL had resulted in the compensation of a grand total of twenty-four victims.<sup>71</sup>

Further, the JPL did not condition leniency for ex-combatants on the *effective* restitution of their victims, despite speaking of a “general duty to repair.”<sup>72</sup> The JPL only obligated its applicants to relinquish illicitly-gained assets to the state, and paramilitaries could easily hide these assets via third parties.<sup>73</sup> Consequently, Colombia’s victims’ reparations fund was dwarfed by the estimated reparations owed to victims of the AUC.

The success of combined transitional justice and peacemaking efforts depends on the success of both enterprises; the failure of one inevitably compromises the other. As a transitional justice tool, the JPL falls somewhere between an inadequate attempt to do justice and a blatant desecration of the justice itself. Additionally, the outcome of the JPL’s peacemaking goals is problematic at best: while the AUC umbrella organization was dissolved, the structures of power and control it exerted did not disappear. The armed groups that arose after the official demobilization of the AUC maintain similar influences, especially over local politics.<sup>74</sup> While so-called neo-paramilitaries like the post-AUC *bacrim* have not tried to remobilize officially, their camouflaged political influence, lasting illegal economies, and continuing violence highlight the shortcomings of the JPL when it comes to making peace.

Finally, a conflicted democracy such as Colombia may need not only “moral restoration”<sup>75</sup> but also truly transformative reforms that address the roots of the conflict, empower disenfranchised groups, and dismantle structures of economic

<sup>71</sup> Diana Esther Guzmán et al., “Colombia,” *Las Víctimas y la Justicia Transicional: ¿Están Cumpliendo los Estados Latinoamericanos con los Estándares Internacionales?* (Washington, DC: Fundación para el Debido Proceso Legal, 2010), 109; Summers, “Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?” 224.

<sup>72</sup> Díaz, “Colombia’s Bid for Justice and Peace,” *Building a Future on Peace and Justice*, 16.

<sup>73</sup> *Ibid.*, 17-18.

<sup>74</sup> “Los intereses electorales de las Bacrim,” *La Semana* (October 10, 2011).

<sup>75</sup> In the admittedly not unbiased words of Luciano Marín, aka Iván Márquez, one of the FARC’s representatives in Havana; “Farc llama a Gobierno a eliminar trabas jurídicas para la paz,” *El Espectador* (March 26, 2015).

and political oppression. This need is especially strong with accountability and demobilization schemes designed for state-friendly actors such as paramilitaries. Indeed, failure to discriminate between the transitional justice instruments required for anti-state actors and pro-system actors such as the Colombian paramilitaries can explain many of the JPL's shortcomings.<sup>76</sup> Disarming an anti-state actor constitutes a near total renunciation of power, but a state-friendly paramilitary group can relinquish its arms while retaining its power.<sup>77</sup> A successful transitional justice scheme must uphold non-repetition guarantees by preventing the perpetrators of crimes from maintaining the victim-victimizer power dynamic. With state-friendly actors, there must be conscientious institutional reform and vetting—initiatives that were, of course, unappealing to many of the powerful state actors behind the JPL.

*Reform to the Justice and Peace Law (Ley No. 1592, 2012)*

The JPL, which relied on a slow and weakened judiciary to vindicate victims, proved ineffective in its application. According to the official *Informe de Gestión* published by the public prosecutor's office, only fourteen out of the 4,800 eligible ex-combatants that applied for consideration under the JPL had received final sentences as of 2013.<sup>78</sup> The JPL experience was a lesson in the perils of overburdening a judiciary in the midst of conflict. In the context of the theoretical framework discussed above, the JPL's conception of transitional justice was too reliant on judiciary proceedings. It was neither holistic nor flexible enough to deliver on its justice and conflict resolution ambitions in the midst of ongoing conflict.

To remedy the situation, the Santos administration passed legislation in 2012 to redirect prosecutorial efforts to those “most responsible” for a set of serious and “representative” crimes. The verdicts obtained would then be applied to the ex-combatants in the JPL system subordinate to those “most responsible.”<sup>79</sup> This reform still focuses on individual accountability, but takes a prag-

<sup>76</sup> Saffon and Uprimny, “Uses and Abuses of Transitional Justice in Colombia.”

<sup>77</sup> Uprimny, “Transitional Justice Without Transition? Possible Lessons From the Use and (Misuse) of Transitional Justice Discourse in Colombia,” 4-5.

<sup>78</sup> “Informe de Gestión 2012-2013,” Fiscalía General de la Nación, (March 2013).

<sup>79</sup> “Ley No. 1592,” Official Website of the Presidency of Colombia (December 3, 2012), <http://wsp.presidencia.gov.co/>.

matic stance to what transitional justice can do in an ongoing conflict. It arguably also recognizes that a transition may require justice to act swiftly, even by selecting some cases for their symbolic impact.

*Victims and Land Restitution Law (Ley No. 1448, 2011)*

The JPL reparations mechanism also underwent revision. Already in 2008, the state had responded to international and domestic pressure and acknowledged its obligations to victims beyond the monetary compensation it could recoup from the AUC. Thus, it established a non-judicial, administrative process through which victims could apply for monetary compensation. The administration acted in “solidarity,” however, rejecting any responsibility for the atrocities committed throughout the conflict—despite growing evidence of state collusion with the AUC and of the military’s own hand in the violence.<sup>80</sup> Unfortunately, the parallel options of judicial or administrative remedy made the process even harder to navigate. In 2012, Santos eliminated this largely unsuccessful mass-reparations scheme, obligating victims eligible under the JPL to seek reparations under the “Victims and Land Restitution Law” (VL), passed in 2011.<sup>81</sup>

The VL is the first well-known transitional justice instrument in Colombia that revolves entirely around victims’ rights to reparations. It also represents a radical departure from previous legislation by endorsing transitional justice—and victims’ rights in particular—as a means to promote peace. In force since 2012, the VL is an ambitious piece of legislation that seeks to provide reparations to victims of crimes that occurred after 1985 and land restitution for events that took place after 1991. Following the soft law adopted by the General Assembly on the right to remedy, the VL uses the language of “integral reparations,”<sup>82</sup> consist-

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<sup>80</sup> A well-known example of the military’s abuses is the “false positives” scandal, which revealed the practice—spurred on by perverse incentives stemming from rewarding high body counts—of murdering civilians to pass off them off as “combat killings.” (See Adam Isacson, “Ending 50 Years of Conflict: The Challenges Ahead and the U.S. Role in Colombia,” *Washington Office on Latin America* (2014): 8, <http://www.wola.org/>).

<sup>81</sup> “Ley No. 1448,” Official Website of the Presidency of Colombia (December 3, 2011), <http://wsp.presidencia.gov.co/>.

<sup>82</sup> “Ley No. 1448,” Official Website of the Presidency of Colombia, Art. 21 cf. United Nations Commission on Human Rights, “United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (UNBPG), (2005), UN Doc E/CN.4/RES/2005/35, I.2.c.

ing of restitution, compensation, satisfaction, and guarantees of non-repetition.<sup>83</sup> The instrument also comprises other collective and individual measures seeking to strengthen the social norms eroded by the conflict, including symbolic reparation, the provision of social services, and the preservation of historical memory through oral accounts.

The VL crucially acknowledges the existence of an internal armed conflict, which introduces considerations of international humanitarian law and human rights law. The VL also shifts the responsibility for financial compensation to the state, thus recognizing that *all* victims of the conflict possess the aforementioned rights as well as special protections in judicial proceedings.<sup>84</sup> In short, the state is taking responsibility as a party to the violence—a far cry from the “principle of solidarity” upon which the state took on some of the burden of reparations under the JPL. In effect, the VL’s definition of victimhood is not perpetrator specific: those who suffered at the hands of the state’s armed forces can use the same mechanism as the victims of the AUC and the left-wing guerrillas to seek reparations.

The VL is also novel in that it pays special attention to the problem of conflict-related land displacement. This is significant for several reasons. First, as mentioned above, approximately 12 percent of Colombia’s population has suffered displacement. Second, land inequity and state neglect toward usurped and exploited peasant communities are among the very roots of civil strife in Colombia. In this sense, while the VL seeks restoration, it lays the groundwork for the transformative measures taken in the context of the peace negotiations with the FARC. Procedurally, the VL shifts legal presumptions regarding land ownership in favor of victims, and it establishes a well-crafted institution to oversee and adjudicate land restitution claims.

The VL is not without its limitations. The law’s lofty ambitions have led to some perhaps inevitable disappointment and claims of “unfulfilled promises” made to the 5.7 million victims of land displacement.<sup>85</sup> The VL also disqualifies former combatants of illegal armed groups and their relatives from benefiting from the legislation—failing to recognize that throughout the long conflict,

<sup>83</sup> “Ley No. 1448,” Official Website of the Presidency of Colombia, Art. 25 cf. UNBPG IX

<sup>84</sup> Sánchez and Uprimny, “Transitional Justice Without Transition? The Colombian Experience in the Implementation of Transition Measures,” 134.

<sup>85</sup> ICG, *Transitional Justice and Colombia’s Peace Talks*, 37.

many Colombians have been both victims and victimizers.<sup>86</sup> Further, it is unclear whether victims of the *bacrim*, mostly remobilized paramilitaries, ought to fall under the category of “victims” of the armed conflict rather than merely victims of ordinary crime.<sup>87</sup>

### COLOMBIA’S CURRENT ROUTE TO PEACE AND JUSTICE

#### *The Legal Framework for Peace (Acto Legislativo No. 1, 2012)*

The Legal Framework for Peace (“Framework”) is a constitutional amendment adopted by Congress in July 2012 to facilitate negotiations with the FARC. A paradigmatic example of the growing crosspollination of the transitional justice and peacemaking fields, the Framework writes “exceptional” transitional justice instruments into the Colombian constitution with the “prevailing end of facilitating the end of the internal armed conflict and the attainment of stable and lasting peace.”<sup>88</sup> The theoretical underpinning of such ambition is that transitional justice may not only work in concert with conflict resolution mechanisms such as peace negotiations, but that transitional jurisprudence can create the space for peacemaking and support the road to lasting peace.

The Act maintains that these exceptional transitional justice instruments will bring “guarantees of non-repetition” and “shall ensure, *in as much as possible*, the rights of victims to truth, justice and reparation.” While this language aligns with the core principles of the international community’s body of policy and law regarding transitional justice, the qualifying clause stands out starkly. As President Santos argues in the speech cited in this essay’s epigraph, a state in the midst of conflict has competing duties and absolute positions might not serve the ultimate demands of either peace or justice.

The Framework also establishes “differentiated treatment” for the different armed groups that have been party to the conflict as well as for state actors. This provision recognizes that the distinct nature of the paramilitary and the left-wing guerrillas calls for different transitional justice approaches—a lesson learned the

<sup>86</sup> Summers, “Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?” 226.

<sup>87</sup> Sánchez and Uprimny, “Transitional Justice Without Transition? The Colombian Experience in the Implementation of Transition Measures,” 134.

<sup>88</sup> “Acto Legislativo No. 1,” Official Website of the Presidency of Colombia (July 31, 2012), <http://wsp.presidencia.gov.co/>.

<sup>89</sup> All subsequent quotations are taken from the original text (see Appendix 2). All translations are my own.



hard way through the JPL experience. The Act states that the guerrillas, unlike the paramilitary, can be considered “political offenders” and that they therefore may qualify for benefits in the context of peace negotiations, except in the cases of crimes against humanity, war crimes, or genocide.

The core principles of the Framework are “prioritization” and “selection,” recognizing from the JPL experience that attempting to prosecute every violation is unfeasible. The Act assigns to the attorney general the task of determining the prioritization criteria—that is, on what grounds will some types of crimes most warrant prosecution.<sup>90</sup> Congress has the responsibility to craft a statutory law—pre-examined by the Constitutional Court and embraced by a qualified majority—to determine the “selection criteria that will allow efforts to be focused on the criminal investigation of those most responsible for all offences that acquire the connotation of crimes against humanity, genocide, or war crimes committed in a systematic manner” (Art. 67). In the words of Sánchez and Uprimny, Congress is tasked with the challenge of preventing the Framework from becoming either a “blank check” or a straightjacket for the peace negotiations.<sup>91</sup>

These vague and undefined prioritization and selection criteria are of concern to analysts who believe they should have been complemented with a commitment to “necessity” and “proportionality.”<sup>92</sup> Put more plainly, case selection should only be considered when doing so is indispensable to secure peace. Further, proportionality to the gravity of the crime in question should be maintained.<sup>93</sup>

Critics have raised other concerns. The Framework specifies that these transitional justice tools may also apply to individual demobilizations—an application that does not seem appropriate for an instrument that compromises on prosecutions under the justification that this is necessary to achieve peace. While

<sup>90</sup> Felipe Gómez Isa, “Justice, Truth and Reparation in the Colombian Peace Process,” 2.

<sup>91</sup> Nelson Camilo Sánchez and Rodrigo Uprimny Yepes, “El Marco Jurídico Para La Paz: ¿Cheque En Blanco O Camisa De Fuerza Para Las Negociaciones De Paz?” in *Justicia Para La Paz: Crímenes Atroces, Derecho a La Justicia Y Paz Negociada*, ed. Rodrigo Uprimny Yepes, Luz María Sánchez Duque and Nelson Camilo Sánchez León (Bogotá, Colombia: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2014), 184.

<sup>92</sup> Sánchez and Uprimny, “El Marco Jurídico Para La Paz,”.

<sup>93</sup> Gómez Isa, “Justice, Truth and Reparation in the Colombian Peace Process,” 2; Sánchez and Uprimny, “Transitional Justice Without Transition? The Colombian Experience in the Implementation of Transition Measures.”

individuals who want to demobilize on their own should be offered benefits for collaborating with the judicial system and furthering the cause of peace, it does not make sense to apply exceptional transitional justice to individuals—at least not under the logic of this Framework. An individual who has perpetrated crimes and demobilizes on her own is not going to bring about peace in a level that is proportional to the sacrifice of accountability. Further, if this provision applies to state agents, it may open the door to self-amnesty for gross violations of international law.

Granted, state agents are still included among those susceptible to international standards of accountability, truth, and reparations. This alone can be considered a triumph considering the state's prior denials of any wrongdoing, particularly with respect to the armed forces. Yet as argued by Sánchez and Uprimny, applying transitional justice mechanisms to the military misunderstands the purpose of such extraordinary tools.<sup>94</sup> Transitional jurisprudence in the context of accountability is premised on the understanding that an armed party may receive penal benefits or leniency because that party recognizes its role in a phase of widespread violence and seeks to be reintegrated into society. The Colombian military, however, continues to deny any institutional responsibility over human rights violations. For example, it describes the actions of the soldiers involved in the “false positives” scandal as “bad apples.” Further, even if the Colombian military admitted to prior wrongdoings, the Framework requires no non-repetition guarantees of the armed forces: there is no mention of vetting or security sector reform for the armed forces.

### *The Havana Peace Talks*

Negotiations between the Santos administration and the FARC were formally inaugurated in Oslo and are being held in Havana. So far, they have survived a contested presidential election, a series of military confrontations, and even the FARC's kidnapping of a high-ranking army general. Over the past three years of negotiations, the parties have achieved landmark agreements on an extensive array of issues. They have recently accelerated the pace of the negotiations, setting March as a deadline to sign a final peace agreement.<sup>95</sup> Colombia entered the talks

<sup>94</sup> Sánchez and Uprimny, “El Marco Jurídico Para La Paz.”

<sup>95</sup> “Everyone Throwing Their Support Behind Colombia's Peace Process,” *Telesur* (January 22, 2016), <http://www.telesurtv.net/english/news/Everyone-Throwing-Their-Support-Behind-Colombias-Peace-Process-20160122-0020.html>.

with a broad mediation agenda. It aimed to settle on institutional and social reforms as well as on the demobilization, disarmament, and reintegration (DDR) of FARC combatants to civilian life.<sup>96</sup> The parties have thus far reached partial agreements on land reform, political participation for ex-combatants, the end to the illegal drugs trade, and victim's rights. The current discussions have dealt with the logistics of the demobilization of the FARC. A final negotiated settlement will be ratified by direct citizen participation, expected to occur in May or June of this year.<sup>97</sup> Colombia is also keenly aware that any agreement with the armed group will need to withstand the scrutiny of the Inter-American Court of Human Rights and the International Criminal Court.

These negotiations have been facilitated by a transitional justice framework that emphasizes its peacemaking goals. In turn, they have incorporated elements usually identified with the aims of transitional justice, such as a victims-sensitive approach to the conflict, provisions for reparations to victims of human rights violations, and language on the right to truth. The land reform and political participation agenda items can also be understood in the context of a transformative approach to transitional justice and peacemaking. Even in 2013, the High Commissioner for Human Rights recognized this opportunity, encouraging the parties to “maximize societal transformation and address historic inequalities, preventing repetition and a return to armed groups through the promotion of mass long-term employment benefiting and empowering those communities most affected by the conflict.”<sup>98</sup>

The agreements reached so far may enable Colombia to substantially fulfill the preconditions for transition from conflicted democracy to integral, liberal democracy. Both peacemaking and justice have been deployed with a holistic

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<sup>96</sup> It should be noted that the FARC has rejected the term “disarmament” arguing that the term does not apply, as it has not been defeated militarily. The peace process has chosen the language of *dejación de armas* (“leaving weapons behind”) to refer to the FARC’s voluntary disarmament and disbandment as a guerrilla group. This careful word choice follows that of the Northern Ireland peace process, which spoke of decommissioning rather than disarming combatants.

<sup>97</sup> Rose Lander, “Colombia will Vote on FARC Peace Deal in May or June: Santos,” *Colombia Reports* (November 12, 2015), <http://colombiareports.com/how-should-colombia-ratify-the-peace-deal/>

<sup>98</sup> United Nations High Commissioner for Human Rights. “Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia,” (2013), UN Doc A/HRC/22/17/Add.3, 18.

and pragmatic eye: justice has not been reduced merely to criminal prosecutions, and the parties have recognized that addressing the marginalization and inequalities that lie at the root of the conflict is a crucial step toward both peace and justice. At the same time, the conflict resolution agenda has not been restricted to convincing the FARC to lay down its arms today—the mediation in Havana seeks to create sustainable peace by reforming some social, political, and economic foundations.

The land reform issue is particularly good news for Colombia. After all, inequities in socioeconomic power and political participation spurred the Colombian conflict and legitimized the Marxist guerrillas in the countryside; the plight of the rural poor was a motor for recruitment. A state cannot guarantee non-repetition—or, if not repetition, then the recurrence of violence in another form—if it leaves some of the key motivators of the conflict intact. In the land reform issue, there is an opportunity for real transformative justice.

In terms of punitive justice for crimes committed throughout the Colombian war, the parties have agreed to establish a Special Peace Jurisdiction—including special tribunals featuring international judges—to prosecute and judge conflict-related crimes committed by the FARC, state forces, and non-combatants. While purely political crimes, such as FARC membership, will be eligible for pardons, the special tribunals will handle war crimes and crimes against humanity. Those who acknowledge their crimes early will be eligible for sentences of five to eight years of restricted freedom while involved in activities such as demining the areas in which their crimes were committed. Those who admit their crimes belatedly shall pay with five to eight years of prison time. Finally, actors who do not admit responsibility and are found guilty, will be sentenced to up to twenty years in prison.<sup>99</sup>

These special tribunals will also determine reparations to victims.<sup>100</sup> While many questions remain regarding this complex punitive justice formula, the preliminary blueprint aims to be practicable both in terms of being a formula the parties can agree upon and one that will not overwhelm the judiciary. At the same

<sup>99</sup> Natalio Cosoy, “En qué consiste el pacto entre las FARC y el gobierno de Colombia que los deja a un paso de la paz,” *BBC*. (September 24, 2015), [http://www.bbc.com/mundo/noticias/2015/09/150923\\_colombia\\_farc\\_santos\\_acuerdo\\_paz\\_la\\_habana\\_ao](http://www.bbc.com/mundo/noticias/2015/09/150923_colombia_farc_santos_acuerdo_paz_la_habana_ao).

<sup>100</sup> “9 Unanswered Questions About Colombia’s Victims and Justice Accord,” *Washington Office on Latin America*, (2015), <http://colombiapace.org/2015/12/23/9-unanswered-questions-about-colombias-victims-and-justice-accord/>.

time, the scheme attempts to take some form of punitive action against the worst of crimes committed in the last fifty years of violent conflict.

Much still needs to be overcome. Security risks arise with demobilization in the midst of an ongoing conflict. These risks are particularly sensitive given the result of the FARC's last attempt to demobilize an arm of its cadres. In 1985, about 10% of the FARC demobilized and joined the *Unión Patriótica* (UP), trading guns for politics.<sup>101</sup> The 1986 elections yielded surprisingly positive results for the UP, which elected fourteen congressmen and senators as well as a number of local councilmen. In response, paramilitaries, drug lords, and rogue military operatives waged a dirty war against the party. In only five years, 3,000 UP members, including several presidential candidates, had been murdered.<sup>102</sup> One factor potentially lessening security risks, however, is the possibility of another armed actor dropping out of the conflict: ELN too is close to joining its own negotiation process with the Santos administration.

Further, the *bacrim* and neo-paramilitary structures continue to be a problem—so much so that the FARC insisted on including their existence on its negotiation agenda with the government. This is a sensitive subject given the lasting network of neo-paramilitary actors and the state. Indeed, the High Commissioner for Human Rights all but encouraged the government to undergo a vetting and institutional reform process, noting in the 2013 Annual Report that the administration must uncover armed groups' "political and economic origins and their links to State agents" and that Colombia must "strengthen the State's internal control mechanisms."<sup>103</sup> Putting such a process in place is a critical step toward a truly transformative transitional justice and peacemaking endeavor. The Colombian transition may well depend on the state's ability to identify and dismantle these networks and to divest itself from its unsavory past as a tacit oppressor.

## THE ROAD AHEAD: CONCLUSIONS AND IMPLICATIONS

*Hence, the purpose is not to sacrifice justice to achieve peace, but how to achieve peace with maximum justice.*

<sup>101</sup> Guáqueta, "Political and Economic Dimensions of the Colombian Conflict," 3.

<sup>102</sup> Chernick, "Negotiating Peace amid Multiple Forms of Violence," 159-95.

<sup>103</sup> United Nations High Commissioner for Human Rights, UN Doc A/HRC/22/17/Add.3, 18.

– Colombian President Juan Manuel Santos, UN General Assembly, September 2013

*International justice, national justice, search for the truth, peace negotiations can and must work together; they are not alternative ways to achieve a goal; they can be integrated into one comprehensive solution.*

– ICC Prosecutor Luis Moreno Ocampo, Building a Future on Peace and Justice, June 2007

This paper has explored the increasing overlaps between the transitional justice and conflict resolution fields. A state in conflict often finds itself weighing the needs for peace and justice against each other as it attempts to honor its many international and domestic commitments. Yet a holistic understanding of both enterprises reveals that peace and justice need not be mutually exclusive ideals. As Kofi Annan said in his Keynote Address in the recent ICTJ conference on transitional justice in Colombia, “justice is not an impediment to peace; it is an essential partner.”

The judicial instruments reviewed in this paper show Colombia’s growing embrace of this complementary approach to peacemaking and transitional justice. While the JPL and VL are examples of transitional justice instruments deployed during ongoing conflict, the Legal Framework for Peace is a tool that aims to facilitate an end to the conflict through a transitional justice instrument. Negotiating a final agreement with the FARC will involve striking a difficult equilibrium between the imperatives of full accountability and the desire to transition to a post-conflict scenario. An accord that forges sustainable peace in Colombia cannot neglect the human rights abuses committed by all sides of the conflict. Such an outcome would enrage victims and their advocates. It would generate mistrust among a public already wary of the guerrillas’ commitment to peace and the legitimacy of state institutions. These suspicions could intensify the conflict, especially since those who oppose peace with the FARC would use this discontent to discredit the current administration. This would also disrupt the reintegration of ex-combatants, which could in turn cause the group to rearm or splinter. And additional mistrust in the government and the rule of law could worsen the already serious levels of criminal violence. While it is much debated whether transitional justice in fact facilitates peace and deters future violence, a peace process resulting in grave *in*justice would surely not only fail to bring lasting peace, but could even

become a new source of violence.

Colombia has traveled a conflicted, tumultuous path in its complementary use of transitional justice and peacemaking efforts. Inevitably, the path will continue: the previous administration has already introduced the discourse of transitional justice—whether aptly or not—during the demobilization of the paramilitaries. Further, the international, regional, and national legal and normative obligations that Colombia faces today demand that any peace process address the satisfaction of victims' rights and the prosecution of the worst offenders of human rights and international humanitarian law.

Anything short of this result risks the demands of both peace and justice. A lax political deal could prompt the International Criminal Court, the Inter-American Court of Human Rights, or Colombia's own judiciary to intervene and reject the agreement. Even the threat of such scrutiny could instigate renewed violence. Since the FARC will want to rely on the fact that any agreement be honored, the silver lining is that both parties understand the need for a negotiated outcome to satisfy minimal commitments to justice—even if this requires some sacrifices. Further, the government needs its constituents' support both to ratify a peace treaty and to reintegrate the FARC into civilian life. A DDR scheme often clashes with victims' restitution programs and a country's general post-conflict development goals. Since the escalated violence and the guerrilla's drug-trafficking operations have eroded the group's legitimacy, a peace deal with the FARC must convince a skeptical Colombian public that the rebels are committed to abiding by the rule of law.

Finally, the outcome of the peace process and success of the transitional justice framework will test the legitimacy of the Colombian state, especially following the "parapolitical" and "false positives" scandals of the Uribe regime. The Santos administration must rebrand a governmental structure widely perceived as repressive, neglectful, and corrupt. A successful peace process and a victim-centered transitional process will advance this aim, but guarantees of non-repetition might also require a vetting and institutional reform of the government's most compromised structures. Rural development measures and guarantees of political reintegration are positive indicators that the parties are using the transitional process as an opportunity for "transformative" justice that will not merely seek to restore the pre-conflict status quo. Rather, measures such as land reform and opening the political arena address the crucial socioeconomic and political

oppression at the root of Colombia's fifty years of armed struggle.

In conclusion, there are serious obstacles to simultaneously deploying transitional justice and conflict resolution agendas. A complementary approach requires a holistic understanding of both fields as well as recognition of the relationship between justice and sustainable peace. Developing and implementing transitional justice while armed violence is ongoing is not unlike "repair[ing] the boat at high seas, amidst high winds and furious waves."<sup>104</sup> A pragmatic, victims-oriented transitional justice architecture that ambitions to improve upon rather than restore the status quo may very well buttress a transition toward peace. There are no guarantees: transitional justice instruments, even when carefully deployed, cannot assure a transition. Nevertheless, Colombia's strong institutions, judicial tradition, and prior experiences with transitional justice agendas offer the country a robust chance to pioneer the complementary use of transitional justice and peacemaking.

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<sup>104</sup> Villegas, "Transitional Justice in Ongoing Conflicts: The Case of Colombia," 7, quoting Eduardo Pizarro, "Reparando el bote en altamar," in *Ley de Justicia y Paz* (Bogotá, Colombia: Norma, 2009).



**APPENDIX 1: LIST OF ACRONYMS**

AUC: *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia) is an umbrella organization of far-right paramilitary groups in Colombia, each intending to protect their local political, economic and social interests by fighting left-wing insurgent groups in their regions. While the AUC was officially demobilized in 2006, some local successors remain.

Bacrim: *Bandas criminales emergentes*, criminal bands.

CNRR: *Comisión Nacional de Reparación y Reconciliación* was created under the 2005 Justice and Peace Law. The Commission, which operated for eight years, was tasked with publishing a report on the causes of the Colombia internal conflict and the emergence of armed groups.

DDR: Disarmament, Demobilization, and Reintegration.

FARC, or FARC-EP: *Las Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo* (Revolutionary Armed Forces of Colombia - Army of the People) is Colombia's main left-wing insurgent group. A Marxist-Leninist revolutionary guerrilla, the FARC opposes Colombia's central government advocating agrarianism and anti-imperialism, and has been involved in the ongoing armed conflict since the group's foundation in 1964.

ELN: The *Ejército de Liberación Nacional* (National Liberation Army) is Colombia's less known remaining left-wing guerrilla. The ELN's Communist political platform is a combination of Marxism and Liberation Theology. Also established in 1964, the ELN as an organization is an outgrowth of university unrest, founded by Colombian rebels trained in Communist Cuba, and later by a series of Catholic priests, advocates of Liberation Theology.

ICC: The *International Criminal Court*, which sits in the Hague in the Netherlands, is an international tribunal with jurisdiction over the international crimes of genocide, crimes against humanity, and war crimes. Its jurisdiction is governed by the Rome Statute. Colombia, which has ratified the Rome Statute, accepts

the jurisdiction of the ICC over crimes against humanity and genocide from 2002 onwards and over crimes of war from 2009 onwards.

JPL: *Ley de Justicia y Paz* (Justice and Peace Law) was Colombia's first transitional justice instrument, passed in 2005 under the Uribe regime.

M-19 - *Movimiento 19 de Abril* (April 19th Movement) was a Colombian guerilla movement. It was the second largest guerilla group in Columbia by mid-1985, but was demobilized in the late 1980s. After its demobilization, it formed the political party M-19 Democratic Alliance, or AD/M-19.

VL: The *Victims and Land Restitution Law* is Colombia's first well-known transitional justice instrument in Colombia that revolves entirely around victims' rights to reparation. It has been in forced since 2012.

**APPENDIX 2: THE LEGAL FRAMEWORK FOR PEACE**

ACTO LEGISLATIVO - No. - 01 **31 JUL 2012**

**"POR MEDIO DEL CUAL SE ESTABLECEN INSTRUMENTOS JURÍDICOS DE JUSTICIA TRANSICIONAL EN EL MARCO DEL ARTÍCULO 22 DE LA CONSTITUCIÓN POLÍTICA Y SE DICTAN OTRAS DISPOSICIONES"**

El Congreso de Colombia

**DECRETA:**

**ARTÍCULO 1º.** La Constitución Política tendrá un nuevo artículo transitorio que será el 66, así:

**Artículo Transitorio 66º.** Los instrumentos de justicia transicional serán excepcionales y tendrán como finalidad prevaiente facilitar la terminación del conflicto armado interno y el logro de la paz estable y duradera, con garantías de no repetición y de seguridad para todos los colombianos; y garantizarán en el mayor nivel posible, los derechos de las víctimas a la verdad, la justicia y la reparación. Una Ley estatutaria podrá autorizar que, en el marco de un acuerdo de paz, se dé un tratamiento diferenciado para los distintos grupos armados al margen de la ley que hayan sido parte en el conflicto armado interno y también para los agentes del Estado, en relación con su participación en el mismo.

Mediante una Ley estatutaria se establecerán instrumentos de justicia transicional de carácter judicial o extra-judicial que permitan garantizar los deberes estatales de investigación y sanción. En cualquier caso se aplicarán mecanismos de carácter extra-judicial para el esclarecimiento de la verdad y la reparación de las víctimas.

Una Ley deberá crear una Comisión de la Verdad y definir su objeto, composición, atribuciones y funciones. El mandato de la comisión podrá incluir la formulación de recomendaciones para la aplicación de los instrumentos de justicia transicional, incluyendo la aplicación de los criterios de selección.

Tanto los criterios de priorización como los de selección son inherentes a los instrumentos de justicia transicional. El Fiscal General de la Nación determinará criterios de priorización para el ejercicio de la acción penal. Sin perjuicio del deber general del Estado de investigar y sancionar las graves violaciones a los derechos humanos y al derecho internacional humanitario, en el marco de la justicia transicional, el Congreso de la República, por iniciativa del Gobierno Nacional, podrá mediante ley estatutaria

*Eni.*

determinar criterios de selección que permitan centrar los esfuerzos en la investigación penal de los máximos responsables de todos los delitos que adquieran la connotación de crímenes de lesa humanidad, genocidio, o crímenes de guerra cometidos de manera sistemática; establecer los casos, requisitos y condiciones en los que procedería la suspensión de la ejecución de la pena; establecer los casos en los que proceda la aplicación de sanciones extra-judiciales, de penas alternativas, o de modalidades especiales de ejecución y cumplimiento de la pena; y autorizar la renuncia condicionada a la persecución judicial penal de todos los casos no seleccionados. La Ley estatutaria tendrá en cuenta la gravedad y representatividad de los casos para determinar los criterios de selección.

En cualquier caso, el tratamiento penal especial mediante la aplicación de instrumentos constitucionales como los anteriores estará sujeto al cumplimiento de condiciones tales como la dejación de las armas, el reconocimiento de responsabilidad, la contribución al esclarecimiento de la verdad y a la reparación integral de las víctimas, la liberación de los secuestrados, y la desvinculación de los menores de edad reclutados ilícitamente que se encuentren en poder de los grupos armados al margen de la ley.

**Parágrafo 1°.** En los casos de la aplicación de instrumentos de justicia transicional a grupos armados al margen de la ley que hayan participado en las hostilidades, ésta se limitará a quienes se desmovilicen colectivamente en el marco de un acuerdo de paz o a quienes se desmovilicen de manera individual de conformidad con los procedimientos establecidos y con la autorización del Gobierno Nacional.

**Parágrafo 2°.** En ningún caso se podrán aplicar instrumentos de justicia transicional a grupos armados al margen de la ley que no hayan sido parte en el conflicto armado interno, ni a cualquier miembro de un grupo armado que una vez desmovilizado siga delinquiriendo.

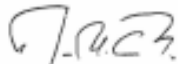
**ARTÍCULO 2°. Transitorio.** Una vez el gobierno nacional presente al Congreso de la República el primer proyecto de Ley que autorice la aplicación de los instrumentos penales establecidos en el inciso 4 del artículo 1 del presente Acto Legislativo, el Congreso tendrá cuatro (4) años para proferir todas las leyes que regulen esta materia.

**ARTÍCULO 3°.** La Constitución Política tendrá un nuevo artículo transitorio que será el 67, así:

**Artículo Transitorio 67°.** Una Ley estatutaria regulará cuáles serán los delitos considerados conexos al delito político para efectos de la posibilidad de participar en política. No podrán ser considerados conexos al delito político los delitos que adquieran la connotación de crímenes de lesa humanidad y genocidio cometidos de manera sistemática, y en consecuencia no podrán participar en política ni ser elegidos quienes hayan sido condenados y seleccionados por estos delitos.

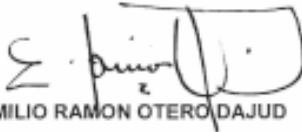
**ARTÍCULO 4°.** El presente Acto Legislativo rige a partir de su promulgación.

EL PRESIDENTE DEL HONORABLE SENADO DE LA REPÚBLICA



JUAN MANUEL CORZO ROMAN

EL SECRETARIO GENERAL DEL HONORABLE SENADO DE LA REPUBLICA



EMILIO RAMON OTERO DAJUD

EL PRESIDENTE DE LA HONORABLE CAMARA DE REPRESENTANTES



SIMON GAVIRIA MUÑOZ

EL SECRETARIO GENERAL DE LA HONORABLE CAMARA DE REPRESENTANTES

JESUS ALFONSO RODRIGUEZ CAMARGO

**APPENDIX 3: EXCERPTS FROM THE NEGOTIATION AGENDA**<sup>105</sup>

*General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace*

The delegates of the Government of the Republic of Colombia (National Government) and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP):

As a result of the Exploratory Meeting held in Havana, Cuba, between 23 February 2012 and 26 August 2012, that counted on the participation of the Government of the Republic of Cuba and the Government of Norway as guarantors, and on the support of the Government of the Bolivarian Republic of Venezuela as facilitator of logistics and companion:

With the mutual decision to put an end to the conflict as an essential condition for the construction of stable and lasting peace;

Attending the clamor of the people for peace, and recognizing that:

- construction of peace is a matter for society as a whole that requires the participation of all, without distinction, including other guerrilla forces that we invite to join this effort;
- respect of human rights within the entire national territory is a purpose of the State that should be promoted;
- economic development with social justice and in harmony with the environment is a guarantee for peace and progress;
- social development with equity and well-being that includes big majorities allows growing as a country;
- a Colombia in peace will play an active and sovereign role in peace as well as regional and worldwide development;
- it is important to broaden democracy as a condition to build solid foundations for peace.

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<sup>105</sup> Excerpts taken from the International Crisis Group's adaptation of the translation available at <http://colombiareports.com/colombia-news/fact-sheets/25784-agreement-colombiagovernment-and-rebel-group-farc.html>. (ICG 2012, 34).

With the government's and FARC-EP's full intention to come to an agreement, and the invitation to the entire Colombian society, as well as to the organisations of regional integration and the international community to accompany this process;

#### WE HAVE AGREED:

1. To initiate direct and uninterrupted talks about the points of the agenda established here that are aimed at reaching a Final Agreement for the termination of the conflict that will contribute to the construction of stable and lasting peace.
2. To establish a Table of Talks that will be opened publicly in Oslo, Norway, within the first two weeks of October 2012 and whose main seat will be Havana, Cuba. Meetings can take place in other countries.
3. To guarantee the effectiveness of the process and conclude the work on the points of the agenda expeditiously and in the shortest time possible, in order to fulfill the expectations of society for a prompt agreement. In any case, the duration will be subject to periodic evaluations of progress.
4. To develop the talks with the support of the governments of Cuba and Norway as guarantors and the governments of Venezuela and Chile as companions. In accordance with the needs of the process and subject to common agreement, others may be invited.
5. The following agenda:

#### **1. Integrated agricultural development policy**

Integrated agricultural development is crucial to boost regional integration and the equitable social and economic development of the country.

1. Access and use of land. Wastelands/unproductive land. Formalisation of property. Agricultural frontier and protection of reservation zones.
2. Development programs with territorial focus.
3. Infrastructure and land improvement.
4. Social development: health, education, housing, eradication of poverty.
5. Stimulus for agricultural production and for solidarity economy and cooper-

atives. Technical assistance. Subsidies. Credit. Generation of income. Marketing. Formalisation of employment.

6. Food security system.

## **2. Political participation**

1. Rights and guarantees for exercising political opposition in general and for the new movements that emerge after signature of the Final Agreement. Media access.
2. Democratic mechanisms for citizen participation, including direct participation, on different levels and on diverse issues.
3. Effective measures to promote greater participation of all sectors in national, regional and local politics, including the most vulnerable population, under conditions of equality and with security guarantees.

## **3. End of the conflict**

Comprehensive and simultaneous process that implies:

1. Bilateral and definitive ceasefire and end of hostilities.
2. Handover of weapons. Reintegration of FARC-EP into civilian life, economically, socially and politically, in accordance with their interests.
3. The National Government will coordinate revising the situation of persons detained, charged or convicted for belonging to or collaborating with FARC-EP.
4. In parallel, the National Government will intensify the combat to finish off criminal organisations and their support networks, including the fight against corruption and impunity, in particular against any organisation responsible for homicides and massacres or that targets human rights defenders, social movements or political movements.
5. The National Government will revise and make the reforms and institutional adjustments necessary to address the challenges of constructing peace.
6. Security guarantees.
7. Under the provisions of Point 5 (Victims) of this agreement, the phenomenon of paramilitarism, among others, will be clarified. The signing of the Final Agreement initiates this process, which must be carried out within a reasonable



period of time agreed by the parties.

#### **4. Solution to the problem of illicit drugs**

1. Illicit-crop substitution programs. Integral development plans with participation of communities in the design, execution and evaluation of substitution programs and environmental recovery of the areas affected by these crops.
2. Consumption prevention and public health programs.
3. Solution to the phenomenon of narcotics production and commercialization.

#### **5. Victims**

Compensating the victims is at the heart of the agreement between the National Government and FARC-EP. In this respect, the following will be addressed:

1. Human rights of the victims.
2. Truth.

#### **6. Implementation, verification and ratification**

The signing of the Final Agreement initiates the implementation of all of the agreed points.

1. Mechanisms of implementation and verification:
  - System of implementation, giving special importance to the regions.
  - Verification and follow-up commissions.
  - Mechanisms to settle differences.

These mechanisms will have the capacity and power of execution and will be composed of representatives of the parties and society, depending on the case.

2. International accompaniment.
3. Schedule.
4. Budget.

5. Tools for dissemination and communication.
6. Mechanism for ratification of the agreements.

Signed on 26 August 2012, in Havana, Cuba.

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