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Acknowledgments and Remarks from the Editor-in-Chief

The second volume of *Contemporary Challenges: The Global Crime, Justice and Security Journal* marks our expansion and development. To truly reflect the global reach of our thematic focus, we decided to open submissions for authors outside of the University of Edinburgh and we are excited to have their contributions featured in the present volume. The articles and commentaries in this edition connect a variety of disciplines, including law, criminology, international relations, and political science; cover multiple regions of the world, addressing transnational and international issues; and draw on a wealth of approaches from feminist critiques and transitional justice concepts to zemiology and green criminology.

In her contribution, Woodward analyses the Deepwater Horizon explosion, applying a zemiological and green criminological lens to the causes of the catastrophe. Woodward finds that even though green criminology is increasingly cognisant of social harms, zemiological perspectives are, because of their independence from legal frameworks, ultimately still valuable for comprehensively understanding transnational environmental harms.

Florenz and Hawke propose an unusual case study for scholars interested in transitional justice: the US. They argue that recent US history, culminating in the Capitol Riots in early 2021, exposed a divided society in need of healing. The authors theorise that transitional justice scholars should scrutinise current US attempts at restoring unity as this may allow for the discovery of new, and the reassessment of old, transitional justice and democratic reform instruments.

In her article, Kulić scrutinises the use of citizenship deprivation as a counterterrorism measure. Investigating what causes the spread and rising popularity of citizenship deprivation, Kulić critically assesses its effectiveness, arguing that rather than addressing the problem of terrorism, citizenship deprivation shifts it, thereby potentially undermining counterterrorism efforts.

Zimmermann de Meireles Philippi takes stock of Southern criminology's contributions, exploring future avenues for the development of criminological knowledge. Instead of exclusively or predominantly hailing Southern criminology's challenge to the hegemony of criminological theory and knowledge emerging from the Global North, Zimmermann de Meireles Philippi argues that Southern criminology's greatest contribution to the academic discourse is its foregrounding of the continuing criminogenic effects of colonialism.

Kaptan sets out to find an answer to the question, why, given the clear military supremacy of one side to the conflict, the war in Yemen is still ongoing without an end in sight. Employing state-level analysis, she discusses three possible explanations and finds that conventional approaches relying on "winning hearts and minds" and military inadequacy arguments fail to satisfactorily account for the continuation of the conflict.

Applying Agnew's general strain theory, Niggeler investigates conflict-related sexual violence in the Democratic Republic of the Congo. She focuses on perpetrators in an attempt to understand what drives the violence, generating important insights for the design of prevention measures. Niggeler finds that conventional explanations focusing on the satisfaction of sexual desires or superior orders to use rape as a weapon of war paint an incomplete picture.

Whitchurch investigates the zeal with which war crime prosecutions are pursued in Serbia versus Bosnia and Herzegovina, scrutinising the impact of international incentives, judicial challenges, and ethnic composition. Her finding that ethnic composition is the most pivotal impacting factor can be used to shape measures surrounding war crimes prosecutions in future contexts.

Kovar exposes the continuing relevance of Durkheimian ideas for contemporary crime and punishment theory, focusing on inequalities in society. Drawing on the 2011 riots in London and the Black Lives Matter movement as case studies, Kovar argues that Durkheimian concepts are valuable tools for the recognition of inequalities, but that, ultimately, a shift in morality is required for this recognition to translate into practical changes.

Hale scrutinises the legal difficulties connected to preventing genocide. Shedding light on Article 3 of the Genocide Convention, Hale argues that the inchoate acts listed in the article generate a preventative framework, which, however, is difficult to operationalise since proving special intent to commit genocide is particularly complicated with regards to inchoate crimes.

Robertson analyses the impact conventions have on eliciting cooperation between law enforcement agencies across states. Focusing on transnational drug trafficking, Robertson argues that even though cooperation between police forces existed prior to the relevant UN conventions, legal codification of existing practices facilitates police cooperation and helps develop jurisprudence in the field.

Knap investigates femicide, arguing that this global and complex phenomenon cannot truly be grasped without the consideration of intersectional and multilateral approaches. She focuses specifically on the institutional and social structures of culture and class, shedding light on the ways in which these two factors impact femicide on the micro, meso, and macro levels and paving the way for improved legislation.

Drawing on coltan mining in the Democratic Republic of the Congo and lithium extraction in Argentina, Bolivia, and Chile, Lawrence argues that renewable resources and their markets are in need of closer scrutiny by criminologists. Lawrence demonstrates the superiority of green criminological approaches in relation to the case studies and focuses specifically on the emergent concept of “ecocide.”

Provan analyses the relationship between crime and conflict, arguing that conventional approaches suggesting that one breeds the other and vice versa are overly simplistic. Instead, Provan proposes that it is the interrelationship between crime and security, development, and

governance, on the one hand, and conflict and security, development, and governance, on the other, that explains the seeming entanglement of crime and conflict.

Contemporary Challenges would not be possible without the generous support our team receives from multiple sides. We would like to thank: Dr Andy Aydın-Aitchison for his words of advice and encouragement as our academic patron; Rebecca Wojturska for her incessant efforts to increase the journal's reach and her work in the background; the former editorial board and specifically, former Editor-in-Chief Frederik Florenz and former Deputy Editor-in-Chief June Shuler for their continued – and infectious – enthusiasm and support; our authors for their drive, patience, and engagement. Lastly, as Editor-in-Chief, I would like to express my deep appreciation of the current editorial board and specifically, Kağan Sürücü, Deputy Editor-in-Chief. Without the benefit of having met face-to-face once, you have proven to be an incredible team, working hard to produce and develop the journal. Thank you.

Alicja Polakiewicz
Editor-in-Chief

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Can Zemiology Add Anything to Our Understanding of Global Environmental Harm?

Georgina Woodward

LLM in Criminal Law and Criminal Justice, University of Edinburgh

1. Introduction

Zemiology emerged in the 1990s, placing at its epicentre an emphasis on social harm[1] rather than crime. In many ways, zemiology developed from a series of critiques of criminology.[2] One of the critiques of criminology offered by zemiology is that crime has been constructed in an individualised way,[3] and it is this critique which is central to this paper's analysis. This paper seeks to analyse how zemiology has contributed to our understanding of global environmental harm through a comparative analysis with green criminology[4] of the factors leading to the blowout of the Deepwater Horizon. On 20th April 2010, the Deepwater Horizon oil rig in the Gulf of Mexico suffered a blowout, exploded, and sank. Eleven workers were killed, and more than two-hundred million gallons of oil was leaked into the Gulf of Mexico. While the resulting harms were numerous and catastrophic, this paper is necessarily narrowed to examining the

[1] However, it is worth noting that the concept of harm is not necessarily clearly defined. For example, compare harms discourses put forth by Paddy Hillyard and Steve Tombs, "Beyond Criminology?," in *Beyond Criminology: Taking Harm Seriously,* ed. Paddy Hillyard, Christina Pantazis, Steve Tombs, and Dave Gordon (London: Pluto Press, 2004), 10-29, and Kristian Lasslett, "Crime or Social Harm? A Dialectical Perspective," *Crime, Law and Social Change* 54, no. 1 (2010): 1-19, https://doi.org/10.1007/s10611-010-9241-x.

[2] For an overview of the class critiques made by zemiologists, see Paddy Hillyard and Steve Tombs, "Social Harm and Zemiology," in *Oxford Handbook of Criminology*, 6th edition, ed. Alison Liebling, Shadd Maruna, and Lesley McAra (Oxford: Oxford University Press, 2017), 286-289.

[3] Hillyard and Tombs, 287.

[4] It must be noted that green criminology is an umbrella term and there are many conceptions which this paper does not seek to address. For an overview of the area, please see Avi Brisman and Nigel South, "Green Criminology and Environmental Crimes and Harms," *Sociology Compass* 13, no. 1 (2018): 1-12. https://doi.org/10.1111/soc4.12650.

factors which led to the blowout, highlighting the organisational features of the corporate actors involved: BP, Transocean and Halliburton, as well as considering the deregulation of the oil industry. Ultimately, we seek to demonstrate that, although the ambit of green criminology may have expanded, zemiology can still contribute to our understanding of global environmental harm by provoking deeper consideration of underlying structural features and how these can be effectively responded to.

2. Zemiology and Criminology

Against the backdrop of administrative criminology, it is easy to make a convincing argument that zemiology has contributed to our understanding of global environmental harm. However, the emphasis placed on the administrative strand of criminology by zemiologists has failed to recognise the pluralist nature of the discipline, and instead, has created a "caricature of criminology"[5] which is easily attacked.[6] Therefore, in order to examine whether zemiology has meaningfully contributed to our understanding of global environmental harm, it is necessary to compare it to a stronger opponent, green criminology.

Green criminology defines transnational environmental crime as harm encapsulating a greater range of acts than those strictly legally prohibited.[7] Most relevant for our purposes, is the inclusion of harms enabled by the state, corporations, or other powerful actors to the extent "these institutions have the capacity to shape official definitions of environmental crimes in ways that allow or condone environmentally harmful practices."[8] In analysing this, green criminology examines socio-political dynamics which motivate and shape the law-making process.[9] From this perspective, green criminology has expanded into several areas, which proponents of zemiology have claimed were outside the remit of the criminological discipline.

[5] Justin Kotzé, "Criminology or Zemiology? Yes, Please! On the Refusal of Choice Between False Alternatives," in *Zemiology: Reconnecting Crime and Social Harm*, ed. Avi Boukli and Justin Kotzé (Cham, Switzerland: Springer International Publishing, 2018), 95.

[6] Although some commentators have attempted to defend administrative criminology and its modern application, see Pat Mayhew, "In Defence of Administrative Criminology," *Crime Science* 5 (2016): 1–10, https://doi.org/10.1186/s40163-016-0055-8.

[7] Rob White, "Transnational Environmental Crime," in *International and Transnational Crime and Justice*, 2nd edition, ed. Mangai Natarajan (Cambridge: Cambridge University Press, 2019), 103.

[8] White, 103.

[9] Vincenzo Ruggiero and Nigel South, "Green Criminology and Crimes of the Economy: Theory, Research and Praxis," *Critical Criminology* 21, no. 3 (2013): 370, https://doi.org/10.1007/s10612-013-9191-6.

3. Case Study: The Deepwater Oil Spill

In order to investigate whether zemiology contributes to our understanding of global environmental harm, rather than simply constituting a re-packaging of previously examined criminological theory,[10] it will be applied to the case of the Deepwater Horizon oil spill.

At a surface level, the blowout of the Deepwater Horizon was caused by a series of acts committed primarily by BP, but also contributed to by Transocean and Halliburton.[11] However, the analysis of this article will focus primarily on the over-arching creation of an organisational culture and regulatory environment which condoned or contributed to the crisis. Within BP, the rapid expansion of the company by CEO John Browne created a culture which prioritised profits over safety. His aggressive cost-cutting measures (e.g. short-term contracts) and targets (e.g. contingent bonuses) placed undue pressure on employees to engage in illegal behaviour while his decentralisation policy reduced oversight.[12] Importantly, all of these decisions were taken against the backdrop of increasingly reduced regulation at a state level. The US government was motivated to reduce regulation as offshore drilling leases represented the second largest source of federal income,[13] and in particular, around 90% of this income came from leases in the Gulf of Mexico.[14] Even in key areas, such as the testing of blowout preventers, there was no mandatory requirements or governmental guidance. Building on this, the Mineral Management Service (MMS) overseeing the oil industry was simultaneously understaffed, poorly trained and corrupt;[15] the body was unable or unwilling to keep up

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[10] Lynne Copson, "Beyond 'Criminology vs. Zemiology': Reconciling Crime with Social Harm," in *Zemiology: Reconnecting Crime and Social Harm*, ed. Avi Boukli and Justin Kotzé (Cham, Switzerland: Springer International Publishing, 2018), 37.

[11] For insight into the serious of negligent acts which led to the blowout, please see Joseph A. Tainter and Tadeusz W. Patzek, *Drilling Down: The Gulf Oil Debacle and Our Energy Dilemma* (New York: Springer, 2012), 159-184.

[12] Elizabeth A. Bradshaw, "Deepwater, Deep Ties, Deep Trouble: A State-Corporate Environmental Crime Analysis of the 2010 Gulf of Mexico Oil Spill," PhD diss., (Western Michigan University, 2012), 79-82, ProQuest Dissertation Publishing.

[13] Elizabeth A. Bradshaw, "'Obviously, We're All Oil Industry': The Criminogenic Structure of the Offshore Oil Industry," *Theoretical Criminology* 19, no. 3 (2015): 377, https://doi.org/10.1177/1362480614553521.

[14] Juan Carlos Boué and Edgar Jones, *A Question of Rigs, of Rules, or of Rigging the Rules?: Upstream Profits and Taxes in US Gulf Offshore Oil and Gas* (Oxford: Oxford University Press for the Oxford Institute for Energy Studies, 2006), 1.

[15] US Department of the Interior, Office of the Inspector General, Minerals Management Service, *Investigative Report: Island Operating Company et al* by Mary L. Kendall (Washington, D.C.: Department of the Interior, Office of Inspector General, 2010), https://www.hsdl.org/?view&did=24383 (accessed June 11, 2021).

oversight of the oil industry in light of the increasing expansion of drilling leases in this area. While this is not a complete picture of the multiple factors which caused the incident, it serves to highlight the root causes which led to the Deepwater Horizon oil spill.

4. What Can Zemiology Contribute?

Following from the example above, zemiology contributes to our understanding of global environmental harm by allowing us to understand that the harm generated by the Deepwater Horizon oil spill was not just an incident of corporate negligence by BP, but more accurately the "effect of processes […] which arise in organisational settings, through forms of economic and social organisations, and in structures."[16] This moves away from the individual, intent-focused approach favoured by criminology, and toward a structural approach which views the blowout of Deepwater Horizon as an effect of a process,[17] namely capitalism and the pursuit of profit to the exclusion of the prevention of harm. Pemberton reinforces this view through his comparison of societies which demonstrates that capitalist harm is perpetuated through low levels of regulation.[18]

However, it may be argued that the analytic lens of zemiology is superfluous, given that green criminology also enables examination of these structural features. As highlighted above, green criminology has moved away from the emphasis on the individual, and instead, looks at the political and social dynamics which create environmental harm and how they influence law-making. Stretesky, Long and Lynch have connected green criminology with the "Treadmill of Crime"[19] highlighting how capitalism governs the relationship "between state and non-state actors and how powerful treadmill actors use their economic power to shape the law."[20] Clearly, BP (and the wider oil industry) were engaged in a mutually re-enforcing profitable relationship with the state which pushed towards deregulation. In this way, green criminology is capable of recognising the underlying structural factors related to harm production in this context.

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[16] Hillyard and Tombs, "Social Harm and Zemiology," 291.
[17] Hillyard and Tombs, 291.
[18] Simon Pemberton, *Harmful Societies: Understanding Social Harm* (Bristol: Policy Press, 2015).
[19] Paul B. Stretesky, Michael A. Long, and Michael J. Lynch, *The Treadmill of Crime: Political Economy and Green Criminology* (Abingdon, Oxfordshire: Routledge, 2014).
[20] Stretesky, 149.

Yet, it would be inaccurate to state that zemiology offers no more than green criminology in this area. Green criminology still purports to act within the realm of criminology and is therefore bound by the "inherent limitations of working within the discipline."[21] In other words, although green criminology has attempted to escape the narrow pitfalls of administrative criminology, it is still to some extent linked to the criminal, civil and regulatory system. This is reflected in the way that green criminology examines structural features only to the extent that they shape the law-making process. In this way, green criminology arguably fails to take into account the organisational factors which did not contribute to how the law was defined but still drove the actions which resulted in this environmental harm. Applying this to the facts of the Deepwater Horizon oil spill, green criminology would be unable to examine the organisational cost-cutting culture (which resulted in failures of management and communication) of the corporate actors involved, despite this being identified as one of the root causes of the incident.[22] Contrastingly, zemiology is not bound by the boundaries of criminology and thus, can examine these factors.

Interlinked with this connection to a legal framework is green criminology's emphasis on themes of rights and protections which focus on the creation of new laws rather than systemic change. Despite attempts by some commentators to move beyond this limited scope,[23] green criminology still relies heavily on regulatory laws and criminal enforcement. In other words, what distinguishes green criminology from zemiology is "not a question of ultimate ends (e.g. addressing or at least reducing harm) but about the more effective means."[24] For instance, many

[21] Hillyard and Tombs, "Social Harm and Zemiology," 296.

[22] US National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Oil Drilling – Report to the President (BP Oil Spill Commission Report)*, United States: Executive Agency Publications, 2011, https://babel.hathitrust.org/cgi/pt?id=osu.32437123071751&view=1up&seq=1 (accessed June 11, 2021), 122.

[23] For example, by applying either a concept of shaming – see John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989) – for a concept of restorative justice – see Polly Higgins, *Eradicating Ecocide: Laws and Governance to Prevent the Destruction of our Planet* (London: Shepheard-Walwyn, 2010).

[24] Copson, "Beyond 'Criminology vs. Zemiology'," 34. Hillyard and Tombs similarly echo this sentiment stating that critical criminology ultimately ends up with an "implicit or explicit call for the law […] to be more effectively developed or enforced, in ways that promote greater social justice through criminal justice and in ways that uphold or extend various rights": Hillyard and Tombs, "Social Harm and Zemiology," 299.

commentators have called for the crime of "ecocide" to be introduced into international law.[25] However, as illustrated through our example, there are deeper structural features which produce harms that cannot be addressed through a legal individualist rights-centric approach. Dissimilarly, zemiology seeks to "deliberately [...] disrupt and challenge dominant ways of framing social problems [without reliance on] existing structures of thought and dominance."[26] In this way, zemiology contributes to our understanding of global environmental harm by introducing a new perspective from which to address harm prevention.

5. Conclusion

Through an analysis of the Deepwater Horizon oil spill, this paper has demonstrated that, despite the growing recognition of social harm within green criminology, zemiology contributes to our understanding of global environmental in relation to transnational environmental harm, by escaping a link with the criminal law and the wider legal framework. Hence, zemiology allows us to examine structural features not considered by green criminology and to begin to formulate a new response in how to address these, free from individualised notions of rights and responsibilities. On a final note, zemiology and green criminology have frequently been treated as mutually exclusive. However, both green criminology and zemiology emerged around the 1990s and it would be illogical to suggest that they had developed in isolation, especially given that green criminology is heralded as an "inter- and multi-disciplinary rendezvous point."[27] Therefore, zemiology has contributed, and can continue to contribute, to our understanding of global environmental harm.

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[25] For example, see Martin Crook, Damien Short, and Nigel South, "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Glocal Ecosystems Environments," *Theoretical Criminology* 22, no. 3 (2018): 298–317, https://doi.org/10.1177/1362480618787176.

[26] Copson, "Beyond 'Criminology vs. Zemiology'," 48.

[27] Ruggiero and South, "Green Criminology and Crimes of the Economy," 361.

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Uniting States:

New Avenues for Transitional Justice

Frederik Florenz[1] and Boudicca Hawke[2]

[1]DPhil Student in International Relations; [2]LLM. This commentary reflects the views of the author.

1. Introduction

How can transitional justice form unity amongst deeply divided societies? This commentary argues that the election of President Joe Biden in the United States (US) provides an interesting case to interrogate this question. After decades of polarisation, which culminated in the Capitol Riots of the 6th of January 2021, the US is facing questions of how to move forward and unify a deeply divided country. By extension, calls for accountability and reform are mounting in US political discourse. This paper attempts to outline ways in which a close look at the US case can add novel instruments to the toolbox of transitional justice.

The first section of this essay will establish the backdrop of transitional justice, establishing its benefits, use, and shortcomings. The second section will then outline the way in which the US case could help identify new answers to questions raised by transitional justice. Lastly, this essay concludes by providing impetuses for further research.

2. The Contours of Transitional Justice

Transitional justice works to heal deeply divided societies after they have experienced severe conflict.[1] It does this by using creative mechanisms for accountability, which often stray from western standards of strict justice. Its end goal is to turn the deeply divided society or

[1] Martti Koskenniemi, "Between Impunity and Show Trials," *Max Planck Yearbook of United Nations Law Online* 6, no. 1 (2002). https://doi.org/10.1163/18757413-00601002; Louise Arbour, "Economic And Social Justice For Societies In Transition," *New York University Journal of International Law and Politics* 40, no. 1 (2007).

state into one with sustainable peace and democratic rule.[2] The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.”[3]

The central and most common mechanism is the truth commission, which provides enough accountability to “satisfy political, moral, and normative demands, while falling short of criminal responsibility as investigation, prosecution, and punishment.”[4] Indeed, these trials exist to reveal the truth, instead of providing for deterrence or punishment, as most trials do in an established democracy.[5] This lack of punitive measure is commonly accepted in post-conflict societies since it is only granted to those lower on the chain of responsibility. Those responsible for the most serious crimes are often still held criminally accountable.[6]

The exceptionality of transitional justice as a form of the law lies in its unique application of international law. A negative reading of the subject, as Bell puts it, recognises that the readjustment of human rights norms needed for transitional justice cannot always be limited to the transitional situation in which they are applied.[7] Perhaps it is for this very reason that transitional justice hinges on a high threshold of violence having occurred during conflict. Roht-Arriaza, for example, suggests that transitional justice should be used only in situations of “grave” (international, that is) human rights abuses.[8] This is because “a balance must be struck between the state’s sovereignty interest” and “the international community’s interest in protection of international human rights norms”.[9] This tension is emblematic of the whole of transitional justice which attempts to balance binaries: dictatorship or democracy, peace or war,

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[2] Christine Bell. *On the Law of Peace: Peace Agreements and the Lex Pacificatoria.* (Oxford: Oxford University Press, 2008); Catherine Turner, “Deconstructing Transitional Justice," *Law and Critique* 24, no. 2 (2013). https://doi.org/10.1007/s10978-013-9119-z.

[3] United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (New York: United Nations, 2004), 4, https://www.un.org/ruleoflaw/files/2004%20report.pdf.

[4] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*, 250.

[5] Koskenniemi, “Between Impunity and Show Trials.”

[6] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria.*

[7] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*, 256.

[8] Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Javier Mariezcurrena and Naomi Roht-Arriaza (Cambridge: Cambridge University Press, 2006), 405.

[9] Roht-Arriaza, “The New Landscape of Transitional Justice,” 405.

amnesty or accountability. Undoubtedly, the parties to a deeply dividing conflict will be at odds; just as there will be societal cries for accountability for the perpetrators of the atrocities, there will be hesitancy amongst the perpetrators to enter peace negotiations and adhere to peace agreements since the presumption is that they will face subsequent punishment.[10] In short, transitional justice attempts to balance the binaries of law and politics, struggling to bring justice and accountability to fruition through the very real, local politics inundating it.

Transitional justice can be broken down into three functional aspects. Firstly, there is an antecedent problem of division, i.e., the atrocities that precede the transitional justice process. Secondly, there are responses that tackle the atrocities directly. Thirdly, there are responses that aim to reform the society so that the atrocities are not repeated. Since the level of atrocity is so great in common occurrences of transitional justice, resource allocation is, albeit justly, greatly skewed towards addressing the second aspect instead of the third. This results commonly in the underutilisation of transitional justice's unique ability to help an evolving state to develop economic, social, and cultural rights – which are crucial to that state's long-term success.[11] While it is imperative for transitional justice to address the deep-rooted societal issues that led to the conflict, skewing of resource allocation makes this more challenging, if not impossible, to attain.[12] To be clear, this is not a critique. Resources are commonly not allocated to addressing economic, social, and cultural rights development or tangentially the deep-rooted issues that build up to the conflict. Within transitional justice processes, more attention should thus be focused on providing for the development of economic, social, and cultural rights in order to address the issues driving divisions.[13]

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[10] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*; Diane F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *The Yale Law Journal* 100, no. 8 (1991), https://doi.org/10.2307/796903; David Cohen, "Transitional Justice in Divided Germany after 1945," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (Cambridge University Press, 2006).

[11] United Nations Office of the High Commissioner for Human Rights, *Transitional Justice and Economic, Social and Cultural Rights* (New York and Geneva: United Nations Office of the High Commissioner for Human Rights, 2014), https://www.ohchr.org/Documents/Publications/hr-pub-13-05.pdf.

[12] Niamh Reilly, "Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach," *International Journal of Law in Context* 3, no. 2 (2007), https://doi.org/10.1017/S1744552307002054.

[13] OHCHR, *Transitional Justice and Economic, Social and Cultural Rights*.

In the next section, we will give an overview of the US case before purporting that a deeper analysis thereof could inspire transitional justice scholars to design creative responses that may help overcome political divisions driving violence.

3. The US Case

On the 3rd of November 2020, millions of US citizens cast their ballots and elected Joe Biden as the new President.[14] Biden's predecessor may be characterised as having led the most controversial administration in modern US history – not least because of the President's explicit disdain for democratic guardrails, such as freedom of the press, independent courts, and law enforcement. Throughout its four years in power, President Trump's administration has further divided US society by distorting facts, stirring fears of immigrants and demonising parts of the US populace (e.g., Trump labelling the press "enemies of the people").[15] This pattern intensified in the weeks before and after the 3rd of November election, as Trump spread unfounded claims of voter fraud, endorsed conspiracy theories which allege satanic cabals among the US' political elites and ordered a far-right militia group to "stand by."[16] All this culminated in a violent riot at the US Capitol on the 6th of January 2021, the day on which Congress gathered to certify the results of the election, during which five people lost their lives.[17]

Just fourteen days later, Joe Biden was inaugurated as the 46th President of the US. Speaking on the steps of the capitol, President Biden emphasised the importance of unity within the US.[18] However, the new President, and the Democratic Party are, as a whole, facing important questions. How should this unity come about? Should the new administration try to hold the Trump administration accountable, risking potential further division and alienation in

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[14] Katie Glueck, "Joe Biden is elected the 46th president of the United States," *New York Times*, November 7, 2020, https://www.nytimes.com/2020/11/07/us/politics/joe-biden-is-elected-the-46th-president-of-the-united-states.html?searchResultPosition=1.

[15] Richard S. Conley, *Donald Trump and American Populism*: *New perspectives on the American Presidency* (Edinburgh: Edinburgh University Press, 2020).

[16] "Trump now tells far right to "stand down" amid white supremacy row," *BBC News*, October 1, 2020, https://www.bbc.co.uk/news/election-us-2020-54359993.

[17] "Donald Trump's Reckoning: The Right and Wrong Ways to Hold the President to Account," *The Economist*, January 16, 2021, https://www.economist.com/leaders/2021/01/16/donald-trumps-reckoning.

[18] Joe Biden, "Full Transcript of Joe Biden's Inauguration Speech." *BBC News*, January 20, 2021, https://www.bbc.co.uk/news/world-us-canada-55656824.

an already deeply divided congress, or should they try to "reach across the aisle" to pass policy initiatives? If the former option was to be chosen, what would accountability look like? These questions run parallel to questions of transitional justice, that is after an unprecedented and exceptional period of division, how does a society reform itself?

To be sure, the US does *not* mandate transitional justice. First of all, in modern US history, there has not been large-scale violence or atrocities that would make a transitional justice process necessary. In other words, political divisions in the US have not met the implicit "threshold of violence" that makes transitional justice an exceptional tool of international law.[19] Secondly, the democratic system of the US did not fail. Despite some setbacks, the US still ranks as one of the freest countries in the world, and the election of Joe Biden can be interpreted as proof that the US system of checks and balances works.[20] Thirdly, the cleavages that persist in the US are of a political nature and have not yet translated into outright violence on a scale that would constitute the invocation of transitional justice, since the capitol riots and recent events of hate crimes/police brutality fall short of this measure. Lastly, the US remains the most powerful actor in international affairs by both hard and soft power measures.[21] US exceptionalism makes the imposition of transitional justice, in this context, fairly unlikely, as the government is capable of resisting such an outright infringement on its sovereignty.

Despite these limitations, the US case may serve as an interesting case to study for transitional justice scholars. In his article *Give War a Chance*, Edward Luttwak argued that peace settlements may be unsustainable, as they often fail to address the political grievances that sparked violence in the first place.[22] To address the issue of unresolved political cleavages, Luttwak proposed to let wars run their course and have the warring parties quite literally "fight it out".

[19] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*; Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime."

[20] "United States: Freedom of the World 2020 Country Report," *Freedomhouse*, accessed February 13, 2021, https://freedomhouse.org/country/united-states/freedom-world/2020.

[21] Doug Stokes, "Trump, American Hegemony and the Future of the Liberal International Order," *International Affairs* 94, no. 1 (2018), https://doi.org/10.1093/ia/iix238; The International Institute for Strategic Studies, "Chapter Three: North America," in *The Military Balance 2020* (London: Routledge, 2020), 45.

[22] Luttwak, "Give War a Chance."

In contrast to Luttwak, we argue that a closer look at the US case may provide transitional justice scholars with inspiration to design responses that help overcome political divisions underlying violence. We suggest three key insights that could be drawn from the US case, and which work at the different functional aspects outlined above. These insights concern: (1) the nature of political cleavages, (2) the concept of accountability, and (3) reforms to democratic stability.

Firstly, the US serves as an interesting case to investigate the nature of political cleavages. As Barber and Pope highlight, supporters of Donald Trump do express an immense flexibility of policy preferences.[23] Instead of advocating for a specific set of policies that broadly fall into the same ideological basket, they rather adhere to the personalistic appeal of Donald Trump. A lack of clearly defined policies is a common characteristic of warring parties in post-conflict societies.[24] The way in which the US addresses this problem could help inform transitional justice reforms.

Secondly, transitional justice raises questions regarding what accountability means and to whom it should be applied. Questions of accountability, especially where actions were non-violent but may have the potential to inspire violence, sat at the core of the second impeachment trial of Donald Trump.[25] Though the trial was a function of party affiliation rather than a thorough analysis of the meaning of accountability, the arguments brought forward, as well as possible reforms that will follow, may reshape and help deepen our understanding of accountability in society.

The third and last parallel pertains to democratic stability. Transitioning to peace and democracy is only the first of many hurdles for post-conflict societies.[26] An integral question for transitional justice is how to prevent another conflict. Similarly, the US is interrogating its

[23] Michael Barber and Jeremy C. Pope, "Does Party Trump Ideology? Disentangling Party and Ideology in America," *American Political Science Review* 113, no. 1 (2019), https://doi.org/10.1017/S0003055418000795.

[24] Stathis N. Kalyvas, "How Civil Wars Help Explain Organized Crime — And How They Do Not" *Journal of Conflict Resolution* 59, no. 8 (2015), https://doi.org/10.1177/0022002715587101.

[25] The Editorial Board, "Accountability After Trump," *New York Times*, December 19, 2020, https://www.nytimes.com/2020/12/19/opinion/sunday/trump-presidency-accountability.html; The Economist, "Donald Trump's Reckoning: The Right and Wrong Ways to Hold the President to Account."

[26] Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*.

democratic stability with the aim of preventing another populist government, which could risk shattering the foundations of US democracy. For example, discussions regarding the control of social media companies, and their role in giving a platform to falsehoods and conspiracy theories, may yield innovative policies that could serve as inspiration for both old and new democracies around the world.[27]

It is important to reiterate that the point of this commentary is not to argue that transitional justice should be applied to the US. This would not only be inadequate to the US situation, but would also severely damage the exceptionality of transitional justice, harming the integrity of international law. Rather, we aim to highlight the different insights that can be drawn from the US case to the study of transitional justice, specifically addressing the political cleavages underlying violence.

We should also be wary of an interventionist agenda. Potential lessons that can be drawn from the US case should not be viewed as universally applicable best practice. The lessons we have outlined can only serve as inspiration for reforms that may be helpful for transitional justice societies to stabilise their newfound peace and democracy.

4. Conclusion

This commentary makes the case for an analysis of the US after Trump to derive lessons for democratic reform. These reforms, as we argue, tackle deep divisions that are prevalent in both the US and societies in which transitional justice is applied. A greater focus on the political cleavages within societies could help transitional justice scholars and practitioners to generate creative and more sustainable solutions to the questions with which transitional justice wrestles. As Capoccia argues: “The decision on whether to prosecute the violators or to declare an amnesty is an entirely political one [...]”.[28] This case raises notable questions. For example, how can resource allocation in common cases on transitional justice better help to develop economic, social, and cultural rights? Likewise, careful questions could be asked about the

[27] Robert H. Frank, “The Economic Case for Regulating Social Media,” *New York Times*, February 11, 2021, https://www.nytimes.com/2021/02/11/business/social-media-facebook-regulation.html?searchResultPosition=1.

[28] Giovanni Capoccia, *Defending Democracy: Reactions to Extremism in Interwar Europe* (Baltimore: Johns Hopkins University Press, 2007), 53.

value of transitional justice in political science. For example, could US policymakers borrow ideas from transitional justice to solve the impasses they face? Why or why not? We hope that this commentary may inspire some to find new avenues between the study of transitional justice and politics.

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Citizenship Deprivation as a Counterterrorism Measure in Europe:

Rationale and Challenges

Sara Kulić

MSc in International Crimes, Conflict and Criminology, Vrije Universiteit Amsterdam

Abstract

Since the proclamation of the Islamic State in Iraq and Syria (ISIS) Caliphate in June 2014, an unprecedented number of jihadi supporters in Europe have left their countries to fight alongside the organisation in Iraq and Syria. Over the years, ISIS has lost much of its territory and was militarily defeated in 2019, leaving a large number of members waiting in Kurdish camps and Iraqi prisons for their fate to be decided. Instead of repatriating foreign fighters, many European countries have started to use citizenship deprivation as a tool of preventing them from returning. Under the rationale of protecting national security and deterring possible supporters, it has been argued that citizenship deprivation is nothing more than risk exportation, with notable implications for a whole international community. This article provides an overview of the rationale behind citizenship deprivation as a counterterrorism measure and highlights how, from a counterterrorism perspective, shifting the problem instead of addressing it, could be counterproductive and undermine the fight against terrorism. The article concludes that despite numerous implications, following the public pressure to harshly respond to terrorism, it is unlikely that the popularity and use of citizenship deprivation as a counterterrorism measure will be in decrease soon.

Keywords: citizenship deprivation, foreign fighters, counterterrorism

1. Introduction

Since the proclamation of the Islamic State in Iraq and Syria (ISIS) Caliphate in June 2014, thousands of jihadi supporters have travelled to Iraq and Syria to settle in ISIS territories and fight alongside the organisation. This is with an unprecedented number of jihadi supporters in Europe expressing their support for the group.[1] In 2017, according to the Pew Research Center survey, people around the globe identified ISIS as the leading threat to national security.[2] Over the past years, the Islamic State (IS) has, however, lost most of the territories it controlled and its Caliphate was militarily defeated in March 2019, leaving a large number of surviving members waiting in Kurdish camps and Iraqi prisons for their fate to be decided.[3] Although there have been calls upon European countries to repatriate foreign fighters, most countries refuse to take them back, and in fact do what is in their power to prevent them from returning by making use of legislative reforms that have expanded the use of deprivation powers in recent years, or initiating new reforms to prevent a similar situation in the future.[4] According to Paulussen, the situation can be described as "legislation fever," and governments, not being prepared for this new security landscape, have adopted many new measures, including citizenship deprivation,

[1] Léa Eveline Jeanne Stéphanie Massé, "Losing Mood(s): Examining Jihadi Supporters' Responses to ISIS' Territorial Decline," *Terrorism and Political Violence,* (October 2020): 1-21, https://doi.org/10.1080/09546553.2020.1733989;

After the declaration of the caliphate in June 2014, the group shortened its name to "Islamic State" (IS) to reflect its expansionist ambitions: Faisal Irshaid, "Isis, Isil, IS or Daesh? One Group, Many Names," *BBC News,* last modified December 2, 2015, https://www.bbc.com/news/world-middle-east-27994277.

[2] Jacob Poushter and Dorothy Manevich, "ISIS and Climate Change Seen as Top Threats Globally," *Pew Research Center's Global Attitudes Project,* accessed July 28, 2020, https://www.pewresearch.org/global/2017/08/01/globally-people-point-to-isis-and-climate-change-as-leading-security-threats/?utm_content=buffer5b9c6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

[3] Léa Eveline Jeanne Stéphanie Massé, "Losing Mood(s)," 1-21; Although militarily defeated, the IS continues to pose a threat. As it was stated by the Secretary-General on the threat posed by ISIL (Da'esh): "In the aftermath of the territorial defeat of ISIL, ISIL continues to aspire to global relevance, in particular through its affiliates and inspired attacks (…) the current lull in directed attacks by ISIL may be temporary (…) : "Ninth Report of the Secretary-General on the Threat Posed by ISIL (Da'esh)," *United Nations*, last modified July 31, 2019, https://undocs.org/S/2019/612.

[4] Maarten P. Bolhuis and Joris van Wijk, "Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism," *European Journal of Migration and Law* 22, no. 3 (October 7, 2020): 338-365, https://doi.org/10.1163/15718166-12340079.; Foreign fighters are defined by the UN Security Resolution 2178 as*: "individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict":* United Nations Security Council, "Resolution 2178," *United Nations Security Council*, last modified September 24, 2014, https://www.undocs.org/S/RES/2178%20(2014).

without critical evaluation.[5] According to Boutin, these kinds of measures are territorially focused, aiming at addressing terrorism and the foreign fighters problem within a state's own territory.[6] Furthermore, they are preventive, focusing on reducing the terrorist threat and preventing the occurrence of terrorist acts in the future. Additionally, these measures are restrictive, regarding the individuals to whom they are applied.[7] With concerns rising about terrorism and the number of foreign fighters mobilising around the ideology of the IS, politicians have justified the expanded deprivation powers, presenting citizenship deprivation as a logical move and as an instrument in the protection of their national security interest.[8]

On the other hand, some argue that these policies are nothing more than risk exportation, shifting the problem without addressing it. These experts highlight how governments acting in this way should be careful not to export the risk to other countries.[9] Hence, it is doubtful whether depriving foreign fighters of their citizenship can make these countries more secure. The article will focus on some of the countereffects of using citizenship deprivation in the fight against terrorism. Additionally, it is important to note that citizenship deprivation has a longer history in national legislation and a wider application than the post-9/11 counter-terrorism context.[10] Historically, legislation such as this has been symbolic of "punishing disloyal behaviour." It is particularly evident in the context of counterterrorism, where the involvement in terrorism symbolises a severe form of disloyalty to the state. In the post-9/11 era, due to their predominantly proactive and preventive nature, administrative measures became increasingly popular as an

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[5] Christophe Paulussen, "Countering Terrorism Through the Stripping of Citizenship: Ineffective and Counterproductive," *ICCT*, last modified October 17, 2018, https://icct.nl/publication/countering-terrorism-through-the-stripping-of-citizenship-ineffective-and-counterproductive/.

[6] Bérénice Boutin, "Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards," *Terrorism and Counter-Terrorism Studies – The Hague* 7*,* no. 12 (December 2016): 1-36, https://doi.org/10.19165/2016.1.15.

[7] Boutin.

[8] Laura Van Waas, "Foreign Fighters and the Deprivation of Nationality: National Practices and International Law Implications," in *Foreign Fighters under International Law and Beyond*, eds. Andrea de Guttry, Francesca Capone and Christophe Paulussen (The Hague: Asser Press, 2016), 469-487.

[9] Christophe Paulussen, "Citizenship Stripping: Protecting National Security or Passing the Buck?," *Justice Hub*, last modified February 21, 2019, https://justicehub.org/article/citizenship-stripping-protecting-national-security-passing-buck/.; Tamara Laine, "'Passing the Buck': Western States Race to Denationalise Foreign Terrorist Fighters," *Journal of Peacebuilding & Development* 12, no. 2 (August 1, 2017): 22-35, https://doi.org/10.1080/15423166.2017.1333448.

[10] Sangita Jaghai and Laura van Waas, "Stripped of Citizenship, Stripped of Dignity? A Critical Exploration of Nationality Deprivation as a Counter-Terrorism Measure," in *Human Dignity and Human Security in Times of Terrorism*, eds. Christophe Paulussen and Martin Scheinin (The Hague: T.M.C. Asser Press, October 2019), 153-179, https://doi.org/10.1007/978-94-6265-355-9_8.

alternative to traditional criminal sanctions. However, although primarily presented as preventive rather than punitive, administrative measures may have a punitive and a repressive dimension, with more severe and far-reaching consequences than traditional criminal sanctions.[11] This paper explores the symbolic nature of the policy of citizenship deprivation, highlighting how politicians reacting to the foreign fighters phenomenon frequently emphasised the sense of betrayal of fundamental democratic values. Therefore, citizenship deprivation could be described as a quasi-criminal sanction for "disloyal individuals," enshrined in a policy regulated by administrative law.

According to Paulussen, the rationale behind the policy is "we do not want to import the risk which is currently over there, and we want to keep it that way."[12] Citizenship deprivation as a policy not only moves the problem around like a hot potato, but may even make the problem worse. Instead of deterring individuals it may instead further the radicalisation and identification of individuals already with those groups.[13] Despite the strong foundations in national security protection, citizenship deprivation as a policy has a wide range of implications, from international law obligations, to the protection of human rights.[14] For the purpose of this paper, the focus will be on some of the outcomes of citizenship deprivation as a counterterrorism measure that will be discussed hereinafter. The following section provides an overview of the justifications behind citizenship deprivation as a counterterrorism measure. Subsequently, section three discusses the implications and possible consequences of citizenship deprivation for counterterrorism. The fourth section concludes that the policy of citizenship deprivation risks causing more problems than it aims to solve, undermining the essence of counterterrorism.

[11] Tuomas Ojanen, "Administrative Counter-Terrorism Measures – a Strategy to Circumvent Human Rights in the Fight against Terrorism?," in *Secrecy, National Security and the Vindication of Constitutional Law*, eds. David Cole, Federico Fabbrini and Arianna Vedasch (UK: Edward Elgar Publishing, 2013), 249-267, https://doi.org/10.4337/9781781953860.00025.

[12] Paulussen, "Citizenship Stripping."

[13] Paulussen, "Countering Terrorism."

[14] Tom L. Boekestein and Gerard-René de Groot, "Discussing the Human Rights Limits on Loss of Citizenship: a Normative-Legal Perspective on Egalitarian Arguments Regarding Dutch Nationality Laws Targeting Dutch-Moroccans," *Citizenship Studies* 23, no. 4 (May 13, 2019): 320-337, https://doi.org/10.1080/13621025.2019.1616448.; Laura Van Waas, "Foreign Fighters," 469-487; Letta Tayler, "Foreign Terrorist Fighter Laws: Human Rights Rollbacks Under Un Security Council Resolution 2178," *International Community Law Review* 18, no. 5 (December 8, 2016): 455-482, https://doi.org/10.1163/18719732-12341342.

Paradoxically, citizenship deprivation could undermine one of its central aims – to reduce further radicalisation and prevent terrorist attacks. This conclusion is followed by a discussion of the challenges governments face in finding "the best solution" for the foreign fighters phenomenon through counterterrorism.

2. Protecting National Security

Many European countries, such as Belgium, France, and Germany, have used citizenship deprivation as a counterterrorism measure. This has been done based on diverse grounds and conditions but mainly allows only dual nationals to be deprived of citizenship.[15] It is important to emphasise that the UK took a step further by allowing the ability to revoke citizenship from individuals with only one nationality or citizenship status.[16] The reasoning behind such a decision is explained by the UK Home Office as follows:

> It is not right that a person who has acquired British citizenship – and accepted the rights, responsibilities, and privileges that derive from this – can act in a way that threatens the security of the UK and retain British nationality simply because they may be left stateless as a result of deprivation.[17]

Although not all returnees will pose a threat, returning foreign fighters can be particularly dangerous. If only a small percentage of them plan to commit attacks, that poses great challenges for the security services.[18] Following the omnipresent emphasis on the seriousness of the crimes committed by the IS, it could be argued that citizenship deprivation is a logical counterterrorism response, justified by the need to protect national security. In the recent high profile Shamima Begum case in the UK, the British government justified its decision to revoke Begum's citizenship on the grounds that she was a security threat.[19] This reasoning mirrored

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[15] Bolhuis and van Wijk, "Citizenship Deprivation," 349.

[16] See British Nationality Act 1981, available at http://www.legislation.gov.uk/ukpga/1981/61.

[17] "Immigration Bill, Fact Sheet: Deprivation of Citizenship (clause 60)," *Home Office UK*, last modified January 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277578/Factsheet_15_Deprivation.pdf.

[18] Gilles de Kerchove, Christiane Höhn, "The Regional Answers and Governance Structure for Dealing with Foreign Fighters: The Case of the EU." In Foreign Fighters under International Law and Beyond, eds. Andrea de Guttry, Francesca Capone and Christophe Paulussen (The Hague: Asser Press, 2016), 299-331.

[19] Begum left the UK and joined IS in 2015, when she was 15. Her case has caused political divisions in the UK. For some, as being underaged when she left, she is a victim of grooming and online radicalisation, with some even arguing that she is a trafficking victim. In the eyes of others, and the UK government, as she was a willing participant, she represents a threat to national security. The government revoked her citizenship claiming

that of other countries. For example, in one of its rulings, France's highest administrative court expressed: "Due to the nature and seriousness of the terrorist acts committed (...) the punishment of the stripping of nationality was not disproportionate."[20] Steffen Seibert, the spokesman for Chancellor Angela Merkel, emphasised: "We must not forget what this is about. This is about concrete participation in combat operations for a terror militia abroad."[21] Moreover, The Danish Prime Minister expressed: "These people have turned their backs on Denmark and used violence to combat our democracy and freedom. They are not wanted in Denmark."[22] The Dutch Justice Minister supported the policy of revoking the Dutch citizenship of people with dual nationality if they are deemed to have joined foreign terror groups like IS or Al-Qaeda by stating: "These jihadists can pose a threat to national security when they return to the Netherlands."[23] Finally, the appeals court in Antwerp, Belgium, withdrew the accused's citizenship after he was charged with recruiting jihadists for the war in Syria. This was on the grounds that "he seriously failed to meet his obligations as a Belgian citizen and posed a permanent threat to public security."[24]

As has been made apparent, several European countries have expressed concerns for national security in their justifications of citizenship deprivation as a counterterrorism measure, mirroring prevalent public and political debates on the merits of expanding the powers of

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that she is entitled to Bangladeshi citizenship. However, Bangladesh's state minister for foreign affairs said that she would not be accepted in Bangladesh. On February 26, 2021, the UK's Supreme Court unanimously ruled that Shamima Begum should not be allowed to return to the UK:

Al Jazeera, "Shamima Begum's Husband: 'We Should Live in Holland'," *Al Jazeera*, last modified March 3, 2019, https://www.aljazeera.com/news/2019/3/3/shamima-begums-dutch-isil-husband-we-should-live-in-holland ; "Shamima Begum: Terrorist or Victim of Child Grooming?," *Crime+Investigation UK*, accessed March 2, 2021, https://www.crimeandinvestigation.co.uk/article/shamima-begum-terrorist-or-victim-of-child-grooming.; "Jamie Grierson, Shamima Begum Ruling Sets Dangerous Precedent, Say Legal Experts," *The Guardian*, last modified February 26, 2021, https://www.theguardian.com/uk-news/2021/feb/26/shamima-begum-ruling-sets-dangerous-precedent-say-legal-experts.

[20] "French Court Upholds Stripping of Nationality for Terrorism," *RFI*, last modified June 8, 2016, https://www.rfi.fr/en/france/20160608-french-court-upholds-stripping-nationality-terrorism.

[21] Al Jazeera, "Germany Plans to Strip Passports of Fighters with 2nd Nationality," *Al Jazeera,* last modified March 4, 2019, https://www.aljazeera.com/news/2019/3/4/germany-plans-to-strip-passports-of-fighters-with-2nd-nationality.

[22] Al Jazeera, "Denmark Passes Legislation to Strip ISIL Fighters of Citizenship," *Al Jazeera*, last modified October 24, 2019, https://www.aljazeera.com/news/2019/10/24/denmark-passes-legislation-to-strip-isil-fighters-of-citizenship/.

[23] News Wires, "Dutch MPs Vote to Strip Jihadists of Dual Nationality," *France 24*, last modified May 24, 2016, https://www.france24.com/en/20160524-dutch-mps-vote-strip-jihadists-dual-nationality.

[24] AFP, "Belgium Court Strips Citizenship of Man Convicted of Recruiting Jihadists for Syria," *The Defense Post*, last modified October 23, 2018, https://www.thedefensepost.com/2018/10/23/belgium-strips-citizenship-fouad-belkacem-sharia4belgium-syria/.

deprivation. Boutin (2016) stresses how the reasoning behind this approach is in the potential threat posed by those aligning themselves with the IS in respect of their country of nationality upon return. Thus, it could be argued that citizenship deprivation is a preventive measure aiming to "pre-emptively protect nations from their own citizens."[25] The preventive aspect of citizenship deprivation is in line with the broader context of administrative measures, as ex-ante responses to terrorism. It seeks to prevent terrorism and radicalisation by banning a potential perpetrator from returning from a training camp or fighting abroad.[26] In other words, by stripping the "unwanted citizens" of their citizenship, a country is preventing their return. Additionally, there is a possibility that deterring individuals will further radicalise them and encourage membership in terrorist groups like IS by implementing such a policy.[27] Deprivation is ultimately presented as a way to suppress or punish unwanted behaviour, "be it where individuals are too keen to fight or not keen enough."[28] By depriving "bad and disloyal citizens" of citizenship, countries hope to prevent others from being involved in terrorism and strengthen citizens' sense of loyalty.[29] For instance, Germany, when discussing legislative measures to deprive its citizens of German citizenship, explicitly stressed the hope for preventive effects and the discouraging of citizens from joining such armed groups.[30] The UK stressed the same position by stating that it is important for people to know they cannot be a "gap-year jihadi,"[31] exemplifying the symbolic aspect of such a measure. Public pressure to increase the protection of national security also warrants the need to punish foreign fighters, as they have not only committed monstrous crimes but are deemed to have betrayed their countries. Therefore, the severity of crimes committed by the IS demands a severe response.[32] It is suggested that

[25] De Guttry, Paulussen, and Capone, *Foreign Fighters,* 475.

[26] Christophe Paulussen and Laura Van Waas, "UK Measures Rendering Terror Suspects Stateless: A Punishment More Primitive Than Torture," *ICCT*, last modified June 5, 2014, https://icct.nl/publication/uk-measures-rendering-terror-suspects-stateless-a-punishment-more-primitive-than-torture/.

[27] Natalia Banulescu-Bogdan and Meghan Benton, "Foreign Fighters: Will Revoking Citizenship Mitigate the Threat?," *Migration Policy Institut*e, last modified April 3, 2019, https://www.migrationpolicy.org/article/foreign-fighters-will-revoking-citizenship-mitigate-threat.

[28] Paulussen and Van Waas, "UK Measures."

[29] Jaghai and van Waas, "Stripped of Citizenship," 153-179.

[30] Al Jazeera, "Germany Plans to Strip Passports."

[31] "Powers to Stop British Jihadists Returning to UK - PM," *BBC News*, last modified November 14, 2014, https://www.bbc.com/news/uk-politics-30041923.

[32] Christophe Paulussen and Laura van Waas, "The Counter-Productiveness of Deprivation of Nationality as a National Security Measure," *ASSER Institute*, last modified March 23, 2013, https://www.asser.nl/about-the-

citizenship deprivation is sending out the message to those considering joining the IS that they need to take personal responsibility and know the consequences of their actions.[33]

Summarising the abovementioned, the rationale for passing or expanding citizenship deprivation laws could be practical and logical. The aim is to reduce the security threat by preventing potential terrorists from returning home and deterring those considering involvement in terrorist offences by sending a strong signal that people who have reneged on their obligations as citizens are no longer entitled to the protection of the state.[34] However, despite the strong foundations in national security protection, it is argued that these extended powers have numerous implications, some of which will be discussed below.[35]

3. Implications

From a national security perspective, it is questionable whether citizenship deprivation measures will ultimately make countries (thus Europe) a safer place. Depriving foreign fighters of citizenship, may, from the perspective of the depriving state, temporarily be an effective measure, preventing them from returning to their home country while they are abroad.[36] However, depriving foreign fighters of citizenship does not mean preventing them, or their associates from perpetrating an attack, which they may simply commit elsewhere.[37] They may remain involved in terrorist activities or travel to other countries, establish and maintain contacts with other foreign fighters, and possibly be involved in attacks in other areas.[38] Another important point to consider, is that those determined to re-enter the country will still be able to find ways to do so irregularly, such as disappearing from the radar making it

institute/asser-today/blog-post-the-counter-productiveness-of-deprivation-of-nationality-as-a-national-security-measure/.

[33] Paulussen and van Waas.

[34] Banulescu-Bogdan and Benton, “Foreign Fighters.”

[35] Boutin, “Administrative Measures,” 1-36; Banulescu-Bogdan and Benton, “Foreign Fighters”; Paulussen, “Countering Terrorism”; Tayler, “Foreign Terrorist,” 455-482.

[36] Bolhuis and van Wijk, “Citizenship Deprivation,” 364; Mattia Pinto, “The Denationalisation of Foreign Fighters: How European States Expel Unwanted Citizens,” *The King’s Student Law Review* 9, no. 1 (2018): 67-78, https://www.academia.edu/37315829/The_Denationalisation_of_Foreign_Fighters_How_European_States_Expel_Unwanted_The_Denationalisation_of_Foreign_Fi.

[37] Banulescu-Bogdan and Benton, “Foreign Fighters”; Tayler, “Foreign Terrorist,” 455-482.

[38] Pinto, “The Denationalisation,” 78.

impossible to monitor their whereabouts.[39] Indeed, escapes from the notorious Al-Hawl camp in Syria exemplify this threat. A number of foreign, IS-affiliated women have escaped the Al-Hawl camp, using human smuggling networks, with unknown whereabouts.[40] Removing those who pose a threat to the security of a country means that country loses control, which also has a significant impact on the security of other countries. Looking from an immigration perspective, the rhetoric behind such a measure is that it will protect the national security by preventing the expatriated individual, who represents a security risk, from entering the country.[41] Paradoxically, by exerting control, a country may also lose it, increasing the likelihood of under-the-radar onward travel. In addition, there is a possibility that a person who initially may not constitute a threat to the home country, after being deprived of citizenship, develops into a frustrated radical seeing their home country as a potential target.[42] Therefore, citizenship deprivation may eventually assist the terrorists in "creating a fertile context in which radicalization can flourish."[43]

Moreover, it appears that deprivation of citizenship is not the ultimate solution for protecting national security, because it shifts the problem without addressing it. Boutin stresses how countries using citizenship deprivation refuse to directly address the problem posed by these individuals, and attempt to shift responsibility for it to another state.[44] According to Paulussen, citizenship deprivation can be described as "addressing the problem by making it someone else's responsibility, it is a risk exportation, it reflects a pass the buck mentality."[45]

[39] Bolhuis and van Wijk, "Citizenship Deprivation*";* Rebecca Mignot-Mahdavi," Blog: Citizenship Deprivation Will Strengthen IS Jihadist Ideology,"*ASSER,* last modified November 8, 2019, https://www.asser.nl/about-the-institute/asser-today/blog-citizenship-deprivation-will-strengthen-is-jihadist-ideology/.

[40] "Belgian Jihadi Brides Escape from Kurdish Detention Camp," *VRT News,* last modified May 25, 2019, https://www.vrt.be/vrtnws/en/2019/05/25/belgian-jihadi-brides-escape-from-kurdish-detention-camp/.; Bethan McKernan , Vera Mironova, and Emma Graham-Harrison, "How Women of Isis in Syrian Camps Are Marrying Their Way to Freedom," *The Guardian*, last modified July 2, 2021, https://www.theguardian.com/world/2021/jul/02/women-isis-syrian-camps-marrying-way-to-freedom.

[41] Bolhuis and van Wijk, "Citizenship Deprivation."

[42] Paulussen, "Countering Terrorism."

[43] Paulussen.

[44] Boutin, "Administrative Measures," 1-36.

[45] Paulussen, "Countering Terrorism."

The said policy could result in a "race to see which country can strip citizenship first and to the loser goes the citizen."[46]

Additionally, another reason to question the aim of safeguarding national security is the potential countereffect of facilitating radicalisation in multiple ways. According to some authors, deprivation can marginalise certain groups. Given the predominantly accepted practice of depriving dual-nationals of citizenship, the policy can be used against small groups and can result in unequal treatment between the citizens of a country, which in turn can lead to perceived discrimination.[47] Those from "targeted groups" (often minority groups) may perceive that only "their" people are targeted and will feel even more alienated and discriminated against.[48] Paulussen emphasises how this exclusion, marginalisation and perceived discrimination can result in scapegoating and further alienation.[49] The said combination may result in people radicalising and joining extremist groups as a response.

Furthermore, regarding the expressed purpose of the measure, some argue that the deterrent effect of citizenship deprivation is extremely weak.[50] Young people, often from minority groups, who feel alienated from their communities, are particularly vulnerable to recruitment by extremist groups. Such individuals may not be aware of the implications of losing their citizenship, or it may make "targeted groups," particularly young men, feel victimised and additionally fuel extremism.[51] Mignot-Mahdavi, focusing on citizenship deprivation in the context of IS foreign fighters, argues that citizenship deprivation is not only an ineffective measure, but its deterrent effect is considerably low. She further stresses that the policy, in fact, strengthens jihadist ideology based on the rejection of citizenship.[52] IS foreign fighters embrace

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[46] Laura Van Waas, "Foreign Fighters," 469-487; An example of the "who is the quickest" approach is the case of Jack Letts aka Jihadi Jack. He possessed citizenship of Canada and the UK, and the UK revoked his citizenship. Canada denounced the UK's decision and stated: *Canada is disappointed that the United Kingdom has taken this unilateral action to offload their responsibilities*: "Canada 'Disappointed' by UK Decision on Suspected ISIL Fighter," *Al Jazeera*, last modified August 19, 2019, https://www.aljazeera.com/news/2019/8/19/canada-disappointed-by-uk-decision-on-suspected-isil-fighter.

[47] Laura Van Waas, "Foreign Fighters," 469-487; Boutin, "Administrative Measures," 1-36.

[48] Paulussen, "Countering Terrorism."

[49] Paulussen.

[50] Pinto, "The Denationalisation," 67-78; Banulescu-Bogdan and Benton, "Foreign Fighters"; Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."

[51] Banulescu-Bogdan and Benton, "Foreign Fighters."

[52] Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."

a jihadist ideology that highlights, through numerous propaganda documents, the destruction of national identity and citizenship.[53] According to Mignot-Mahdavi, disbelief in citizenship is a condition to belong to IS, and citizenship deprivation confirms, to those tempted to join such groups, that the link with IS is more stable than their citizenship status.[54] Mignot-Mahdavi concludes that citizenship deprivation as a measure replicates the essence of the behaviour it condemns and can be counterproductive in a way that facilitates radicalisation.[55]

By reviewing the abovementioned, it is evident how pressure caused by the foreign fighters phenomenon has led politicians to adopt highly symbolic measures, without considering long-term effectiveness, primarily to appear strong and stress that certain behaviours will not be tolerated.[56] When politicians are called upon to appear tough on terrorism, citizenship deprivation has a significant symbolic appeal and visibility, sending a strong message of citizenship as a privilege, not a right, to those who violated "our morals and values."[57] Additionally, it is a cheaper and faster solution, unlike measures such as monitoring, detaining, and prosecuting suspected terrorists.[58] Boutin stresses how such a symbolic measure does not constitute an efficient tool against terrorism and in fact exemplifies a lack of global vision and appropriate response to the foreign fighters phenomenon.[59] More importantly, aside from ineffectiveness as a counterterrorism measure, it may work against the goals of counterterrorism policy, and even reinforce the ideology it aims to fight.[60]

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[53] Mignot-Mahdavi.

[54] Mignot-Mahdavi.

[55] Mignot-Mahdavi.

[56] Paulussen, "Countering Terrorism."

[57] Alice Ross and Patrick Galey, "Rise in Citizenship-Stripping as Government Cracks down on UK Fighters in Syria," *The Bureau of Investigative Journalism*, last modified December 23, 2013, https://www.thebureauinvestigates.com/stories/2013-12-23/rise-in-citizenship-stripping-as-government-cracks-down-on-uk-fighters-in-syria.

[58] Jaghai and van Waas, "Stripped of Citizenship," 153-179; Alice Ross and Patrick Galey, "Rise in Citizenship-Stripping."

[59] Boutin, "Administrative Measures," 1-36.

[60] Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS"; Christophe Paulussen, "The Counter-Productiveness of Deprivation of Nationality as a National Security Measure," *European Network on Statelessness*, last modified March 18, 2020, https://www.statelessness.eu/updates/blog/counter-productiveness-deprivation-nationality-national-security-measure.; Said was concluded in the Resolution 2263 adopted by the Parliamentary Assembly of the Council of Europe in 2019, and it was further emphasised how the said policy may lead to the risk of exportation, and despite a strong symbolic function, it has a weak deterrent effect: "PACE - Resolution 2263 (2019) - Withdrawing Nationality as a Measure to Combat Terrorism: a Human-Rights Compatible Approach?," *Parliamentary Assembly Council of Europe*, last modified January 25, 2019, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25430.

4. Conclusion

While summarising the abovementioned, one can ask if depriving these citizens of their citizenship makes us more secure. On the one hand, it is a practical, fast, and relatively cheap option. Under the pressure imposed after exposure of the atrocities committed by the IS, it is an immediate response by politicians, exporting the problem in an attempt to demonstrate that they are acting decisively and substantively to avoid further terrorist attacks, as well as punishing those previously implicated in fighting. Additionally, citizenship deprivation provides leeway for governments in the name of counterterrorism, without arduous court proceedings and strong safeguards of due process.[61] However, on the other hand, a pervasive rationale behind the policy is to prevent terrorism and radicalisation, either by banning a potential perpetrator from returning from a training camp or fighting abroad or otherwise deterring those who may wish to do so in the future.[62] It can be argued that the policy has proven politically popular, particularly because of its symbolic nature, satisfying the need for governments to act decisively on terrorism to assuage national security concerns. These countries do not want to allow those who fought with terrorist organisations to enjoy the privileges of citizenship.[63] Therefore, such behaviour demands a severe response that is persuasive to the general public. According to Benton and Banulescu-Bogdan and the politicians mentioned above, as a response to the severe crimes committed by foreign fighters and terrorist groups, citizenship deprivation is the only decisive response that the public can see to alleviate public anxiety and protect national security.[64] Having reviewed the following, despite the understandable reasons behind support for a policy which protects national security by excluding those that have caused great harm, this paper argues that citizenship deprivation will ultimately be counterproductive as a counterterrorism approach.[65] This policy may lead to alienation and perceived "targeting" or discrimination, which could result in scapegoating, thus reinforcing the ideology it aims to fight.[66] Additionally, there is strong criticism that the said policy is nothing more than risk

[61] Tuomas Ojanen, "Administrative Counter-Terrorism Measur*es*," 249-267.

[62] Banulescu-Bogdan and Benton, "Foreign Fighters."

[63] Jaclyn Diaz, "No Country Will Take Them: Alleged ISIS Widow with Kids the Latest of Many in Limbo," *NPR,* last modified March 26, 2021, https://www.npr.org/2021/03/26/975149256/no-country-will-take-them-alleged-isis-widow-with-kids-the-latest-of-many-in-lim.

[64] Diaz.

[65] Bolhuis and van Wijk, "Citizenship Deprivation," 364.

[66] Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."

exportation, which may backfire not only on the security of the deprivation country but the wider international community. Laine argues that the current trend of depriving individuals who pose security threats of their citizenship has the potential to undermine global counterterrorism and peacekeeping efforts.[67] Thus, from a counterterrorism perspective, citizenship deprivation arguably does more harm than good, as it is a sanction with perilous consequences for society as a whole.[68]

5. Alternative Solutions

One thing every author mentioned above unanimously agreed upon is the complexity of the foreign fighters phenomenon. There is no simple solution. Many argue that instead of depriving fighters of citizenship, there are other mechanisms to employ, such as repatriation, criminal prosecution, and/or rehabilitation.[69] Depriving foreign fighters of citizenship makes prosecution, and consequently, justice much more unlikely and removes the chance for rehabilitation. However, each of the abovementioned mechanisms has its own set of implications. If we take criminal prosecution as an example, there are numerous challenges. First, there is a lack of evidence to prosecute actual crimes committed due to the instability of the region and the absence of law enforcement for cooperation.[70] The alternative is lowering the burden of proof in a sense to criminalise participation in terrorist training camps, going abroad to join groups such as IS, providing or receiving terrorist training, etc.[71] However, both mentioned scenarios may result in settling for minimum sentences, hence neither victims nor society, witnessing horrible crimes committed by the IS, find justice. Additionally, the prosecution also raises the question of rehabilitation and reintegration programs. Mignot-Mahdavi emphasises how the effectiveness of criminal prosecution as a long-term strategy depends on the broader criminal justice system, including comprehensive support that people leaving prison receive to reintegrate into society.[72] Time spent in prison risks further radicalisation or may provide a fertile ground for the radicalisation of other inmates. According

[67] Laine, "Passing the Buck," 22-35.
[68] Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."
[69] Paulussen, "Citizenship Stripping"; Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."
[70] Mignot-Mahdavi, "Citizenship Deprivation Will Strengthen IS."
[71] Mignot-Mahdavi.
[72] Mignot-Mahdavi.

to Speckhard et al., prosecution requires an assessment of whether the incarceration, without the option for rehabilitation, poses a risk of potentially radicalised individuals seeding terrorist ideology throughout the prison, whereas short prison sentences risk returning would-be terrorists back into society.[73] Thus, the complexity of finding *"the best"* solution is evident. The recent judgement in the Begum case shows how citizenship stripping is still a favoured practice. Therefore, given the strong interest in maintaining sovereignty and protecting national security, following public pressure to harshly respond to terrorism and increase security, it is not so clear whether the popularity and use of citizenship deprivation as a counterterrorism measure will be in decrease anytime soon. However as mentioned above, abdicating to address the problem by simply shifting it to another country will be counterproductive, undermining global counterterrorism efforts.

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[73] Anne Speckhard, Ardian Shajkovci, and Ahmet S. Yayla, "Defected from ISIS or Simply Returned, and for How Long?- Challenges for the West in Dealing with Returning Foreign Fighters," *Homeland Security Affairs*, last modified January 18, 2018, https://www.hsaj.org/articles/14263.

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The Import of Southern Criminology:

Post-Colonialism Trumps the Defiance of Universalism

Ana Paula Zimmermann de Meireles Philippi

MSc in Criminology and Criminal Justice, University of Edinburgh

Abstract

Southern Criminology is a post-colonial movement of knowledge production that has political, empirical and theoretical facades. This article argues that the most significant characteristic of Southern Criminology is the highlighting of the everlasting criminogenic effects of colonialism. It challenges the suggestion made by Roger Matthews, in his paper "False starts, wrong turns and dead ends: Reflections of recent developments in Criminology," that the greatest import of such a movement is the defiance of universalism of the theories of the Global North. It does so by examining the concepts of Southern Criminology, the risks of recognising the defiance of universalism as its main output and the potentialities of recognising its post-colonial characteristics for the advancement of theoretical criminology both in the Global South and the Global North.

Keywords: Southern criminology, universalism, post-colonialism, criminological knowledge building, defying northern hegemony

1. Introduction

In the paper "False starts, wrong turns and dead ends: Reflections of recent developments in Criminology," Roger Matthews states that the primary significance of Southern Criminology has been to defy the allegation of universalism of the criminological theories from the Global North.[1] Roger's article reflects on the "decline in substantial theoretical contributions" over the last couple of decades[2] and the "political and cultural reductionism" of some scholars for developing new theories.[3] It also discusses how criminologists have refrained from providing causal explanations to the phenomena in favour of description and statistical analysis, as well as disregarded class dynamics in inquiry. Finally, it considers the import of victimisation for the study of crime. On what is precisely important for this article, Roger touches upon what he calls "theoretical discussions," such as cultural criminology, green criminology, feminist criminology, and, amongst others, Southern Criminology.

Matthews does not conduct his analysis in a way that allows him to reflect extensively on what these theoretical discussions are per se; the focus of the paper is of another nature. However, given his mention of Southern Criminology as "the most significant theoretical development in the recent period,"[4] it becomes crucial that its relevance is discussed.

Particularly, it is vital to understand the importance of Southern Criminology's attempt to bring the ongoing effects of colonisation to matters of crime and punishment. To do so, this essay will explore the concept of "Southern Criminology" and what we are referring to when we name South and North. It will then detail why defying universalism is not the most meaningful output of Southern Criminology and why the unveiling of colonialism is. Finally, it will debate the implications of considering colonialism as an indisputable criminological

[1] Roger Matthews, "False Starts, Wrong Turns and Dead Ends: Reflections on Recent Developments in Criminology," *Critical Criminology* 25, no. 4 (2017): 581, https://doi.org/10.1007/s10612-017-9372-9.

[2] Matthews, 579.

[3] Matthews, 581, mentioning David Garland, *The Culture of Control* (Oxford: Oxford University Press, 2001); John Pratt, *Penal Populism* (London: Routledge, 2007); David A. Green, "Feeding Wolves: Punitiveness and Culture," *European Journal of Criminology* 6, no. 6 (2009), https://doi.org/10.1177/1477370809341227; David Indermaur, "What Can We Do to Engender a More Rational and Less Punitive Crime Policy*?,"* *European Journal of Criminal Policy and Research* 15, no. 1-2 (2009), https://doi.org/10.1007/s10610-008-9096-1; Jonathan Simon, "Entitlement to Cruelty: Neo-Liberalism and the Punitive Mentality in the United States," in *Crime, Risk and Justice*, eds. Kevin Stenson and Robert R. Sullivan (Coullompton, Devon: Willan Publishing, 2001); and Loïc Wacquant, "Ordering Insecurity: Social Polarization and the Punitive Upsurge," *Radical Philosophy Review* 11, no. 1 (2008), https://doi.org/10.5840/radphilrev20081112.

[4] Matthews, "False Starts," 581.

topic for the development of criminological theory in the 21st century and attest to the possible political potentials of Southern Criminology's advancement.

2. Southern Criminology and Conceptualising the South and the North

Southern Criminology can be described as a theoretical project which seeks to adequately clarify "patterns of crime, violence and justice"[5] in formerly colonised countries and other places where the production of knowledge was historically undermined. By modifying the perspective for analysis and reclaiming narratives that are entrenched in the colonial history, it also works as an empirical endeavour, attempting to transform the area of knowledge into a more comprehensive one. Another way of representing Southern Criminology is as a political project that hopes to connect international estrangements and democratise what is understood as "knowledge."[6]

One might comprehend all these concepts by seeing Southern Criminology as a post-colonial movement of knowledge production that has political, empirical and theoretical facades. Furthermore, it is a movement that arises from places and communities whose voices were ignored, not to say silenced, throughout the main history of the criminological discipline. These overlooked places and communities are referred to as the Global South, because of the bone-crushing underdevelopment still plaguing the majority of the areas geographically situated on the South of the globe.[7] Clear examples of such areas are some places in Latin America and Africa. The former for being home to generations of marginalised groups of people.[8] The latter for the complete dependency on other continents to which it was subjected[9] that left the region shattered in consequence of the everlasting loss of sovereignty.[10] Nevertheless, there are communities that are also included in the concept of Global South, even

[5] Kerry Carrington, Russell Hogg, and Máximo Sozzo, "Southern Criminology," *The British Journal of Criminology* 56, no. 1 (2016): 15, https://doi.org/10.1093/bjc/azv083.

[6] Carrington, 15.

[7] Carrington, 6.

[8] Eugenio Raúl Zaffaroni, *Criminología: Aproximación Desde un Margen* (Bogotá: Editorial Temis S.A., 1988), 76.

[9] Rodrigo Codino, "Por Uma Outra Criminologia Do Terceiro Mundo: Perspectivas da Criminologia Crítica no Sul [For Another Third World Criminology: Perspectives from the South's Critical Criminology]," *Revista Liberdades*, no. 20 (September/December 2015): 30, https://www.ibccrim.org.br/publicacoes/edicoes/462/7428.

[10] Biko Agozino, "Imperialism, Crime and Criminology: Towards the Decolonisation of Criminology," *Crime, Law and Social Change* 41, no. 4 (2004): 347, https://doi.org/10.1023/B:CRIS.0000025766.99876.4c.

though they are objectively located in countries in the North or within other countries, which can be considered part of the Global North. For instance, Native Americans, in the United States of America and Canada,[11] and Indigenous Australians.[12] These groups of people are more related to the Global South than to the Global North, because, in the context of knowledge production and power control, they have been often overpowered and silenced.[13] In this sense, the Global South stands for an analogy of the periphery, of the inferior and the different, whilst the Global North is often perceived as the standard, which everyone else supposedly wishes to achieve.[14] Thus, the divisions between the Global North and South are not steady,[15] since it is clear that we can find aspects of the South within the North and vice-versa.[16]

3. The Most Important Output of Southern Criminology

One of the products of Southern Criminology is its opposition to the universalism claimed by Northern theories, as mentioned by Matthews,[17] but this is not its primary output. Universalism is a belief that there are objective "universal values" which can explain particular events.[18] For example, one of the universalised social science assumptions, pushed by the Global North, was that a "strong central state" is imperative for preventing the horrors of civil war.[19]

Being one of the main characteristics of social science from the Global North,[20] universalism is responsible for establishing a standard according to which Western Europe and

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[11] Elaine Fishwick and Marinella Marmo, "Criminology in Australia: A Global South Perspective," in *The Handbook of the History and Philosophy of Criminology*, ed. Ruth Ann Triplett (Hoboken, NJ: Wiley-Blackwell, 2018), https://doi.org/10.1002/9781119011385.ch19.

[12] Kerry Carrington and Russell Hogg, "Deconstructing Criminology's Origin Stories," *Asian Journal of Criminology* 12, no. 3 (2017), https://doi.org/10.1007/s11417-017-9248-7.

[13] Barret Weber and Rob Shields, "The Virtual North: On the Boundaries of Sovereignty," *Ethnic and Racial Studies* 34, no. 1 (2011), https://doi.org/10.1080/01419870.2010.490592.

[14] Carrington, Hogg, and Sozzo, "Southern Criminology," 5.

[15] Katja Franko Aas, "'The Earth Is One but the World Is Not': Criminological Theory and Its Geopolitical Divisions," *Theoretical Criminology* 16, no. 1 (2012): 14, https://doi.org/10.1177/1362480611433433; Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 183.

[16] Carrington, Hogg, and Sozzo, "Southern Criminology," 3.

[17] Matthews, "False Starts."

[18] Walter D. Mignolo, "The Geopolitics of Knowledge and the Colonial Difference," *South Atlantic Quarterly* 101, no. 1 (2002), https://doi.org/10.1215/00382876-101-1-57.

[19] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 188.

[20] Aas, "'The Earth Is One,'" 7.

North America are the only legitimate sources of knowledge.[21] This approach also downgrades cultural and legal products from the Global South,[22] which, in contrast to the scholarly development of the North, is perceived as being unorthodox and less methodical.[23] In the Global South, knowledge production is further complicated by the lack of theoretical and informational support and the shortage of objectivity, which is due to scholars' profound relation to the observed phenomena.[24]

The problem with seeing "the defiance of universalism" as the principal output of Southern Criminology is that it might suggest that scholars from the Global North may overcome it by digging into the Global South as a site of inquiry. Such a view would keep the Global South as a "data mine,"[25] even if analysed with a different mind-set. It also does not break with the "linear narrative"[26] of knowledge production, according to which every world experience is capable of "evolving" to arrive at some kind of modern and European civilisation. On this account, defying universalism would only imply "opening social sciences"[27] to work in a different way, but that is also not sufficient.

Conversely, Southern Criminology does not only aspire to make further comments and inclusions to the ever-growing inventory of "criminologies,"[28] which would happen if the mentioned scenario were to occur. Criminology produced in the Global South is instead an emancipation operation.[29] It questions what the penal system is, what are its effects and its connections to the systems of control and power. Furthermore, it acknowledges that all the central answers were formulated ignoring the specificities of the margins.[30] By doing this, Southern Criminology hopes to find which criminological expertise is relevant to transform

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[21] Codino, "Por Uma Outra Criminologia," 26.
[22] Chris Cunneen, "Postcolonial Perspectives for Criminology," in *What Is Criminology?*, ed. Mary Bosworth and Carolyn Hoyle (Oxford: Oxford University Press, 2011), 261, https://doi.org/10.1093/acprof:oso/9780199571826.003.0018.
[23] Zaffaroni, Criminología, 4.
[24] Zaffaroni, 4.
[25] Carrington, Hogg, and Sozzo, "Southern Criminology," 2.
[26] Mignolo, "The Geopolitics of Knowledge," 88.
[27] Mignolo, 73.
[28] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 185.
[29] Carrington and Hogg, 185.
[30] Zaffaroni, Criminología, 19.

lives in the periphery and support people in those various peripheries to reveal all their capacities.[31]

On this view, the main import of Southern Criminology is that it highlights the criminological effects of colonialism and the way this knowledge empowers those Southern communities and nations.

Despite the development of this knowledge, Northern criminological theorists still broadly ignore that the rise of criminology as a field coincides with the climax of colonial dominance.[32] Not to mention that, throughout its history, central criminology, that is the criminological knowledge produced in countries of the Global North, devoted fewer endeavours in understanding and solving the consequences of enslavement and indigenous genocide than it did to "street robbery."[33] Contemporary figures on the overrepresentation of minorities in the criminal justice system exemplify the connection of the system to the continuous pauperism of "formerly enslaved people."[34] Even so, the effects of enslavement are not sufficiently explored in mainstream criminology.

Scholars of mainstream criminology keep attempting to interpret and solve urban violence whilst ignoring colonial violence and the events that made the world as it is,[35] even though the latter had probably far more profound consequences for current trends in crime and crime control than the former. Focusing on aspects of crime in a peaceful internal context was another way of dismissing colonialism's criminological effects.[36] This lens of criminology was unsuccessful in developing relevant conclusions about the massacre and annihilation of entire societies that has made the world as we know it.[37]

[31] Zaffaroni, 19.
[32] Agozino, "Imperialism, Crime and Criminology," 349.
[33] Maureen Cain, "Counter-Colonial Criminology: A Critique of Imperialist Reason by B. Agozino," *The Howard Journal of Criminal Justice* 46, no. 5 (2007): 535, https://doi.org/10.1111/j.1468-2311.2007.00499.x.
[34] Cunneen, "Postcolonial Perspectives for Criminology," 250-251.
[35] Carrington, Hogg, and Sozzo, "Southern Criminology," 8.
[36] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 188.
[37] Carrington, Hogg, and Sozzo, "Southern Criminology," 2.

From a central perspective, the enterprise of colonisation and imperialism seems to be more of a topic for international law and economic development than criminological interest. On the other hand, for the Global South, it is at the very core of its foundation as nation-states, and at the core of the evolution of its systems of "justice" and social control. Therefore, criminology anywhere cannot go ahead without considering the criminogenic consequences of colonialism.

Southern Criminology prevents the further growth of this "collective amnesia."[38] It forces a scholarly dialogue about why some forms of violence, such as state violence and collective brutality against entire groups of people, were and are still legitimated.[39] Likewise, it obliges both colonised countries and colonisers to recognise that colonialism is not something in the past, but a remaining process that demands theorisation from criminology.[40]

This phenomenon becomes transparent when we analyse patterns of incarceration and over-representation of certain groups in the criminal justice system. On this account, it is well known that the representation of indigenous people and formerly enslaved minorities in the criminal justice systems of formerly colonised countries is considerably high.[41]

Besides highlighting the perception of state crime, considering colonialism when interpreting crime and social control also allows for a better consciousness of how public bodies perform criminal justice in colonised nations and how minorities might not legitimise such a performance and see it as wrongful.[42]

Southern Criminology brings to light that criminological knowledge was one of the scientific foundations that legitimised the invasion and exploitation of the broadly understood Global South by northern nation-states. For this reason, criminology has been previously termed "an imperialist science."[43] For example, whilst severe punishments were questioned in

[38] Willie Henderson, "Metaphors, Narrative and 'Truth': South Africa's TRC," *African Affairs* 99, no. 396 (2000): 457, https://doi.org/10.1093/afraf/99.396.457.
[39] Cain, "Counter-Colonial Criminology," 536.
[40] Cunneen, "Postcolonial Perspectives for Criminology," 249.
[41] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 191.
[42] Cunneen, "Postcolonial Perspectives for Criminology," 254.
[43] Agozino, "Imperialism, Crime and Criminology," 344.

Europe, in the 18th century, this wisdom was not spread to favour Africans exploited by slave trade during colonial rule.[44]

To illustrate the relevance of bringing the topic of colonisation to criminological theorising, it is important to remember that mainstream criminology for a long time, and some might say even today, connected criminality to characteristics that are common to the Global South. Lombroso, one of the founding fathers of traditional criminology, characterised Asian and African exhibits as examples of underdevelopment, an idea that still finds followers in this century's criminological field.[45] More recently, a belief has arisen that societal disorder generates criminal behaviour.[46] This is explicit in Wilson and Kelling's "Broken Window Theory,"[47] which links societal disorder to impunity, due to a general acquiescence to "incivilities and infractions."[48] Such a conceptualisation might seem neutral at first, but what Northern theorists deemed uncivil and disorderly is remarkably similar to Southern ways of living and infrastructure, which once again might serve to explain crime trends in the Global South as predetermined by its "unfitness" to Northern standards. Be it for religious, civic or scientific reasons, the Global North has frequently generated new logics for considering phenomena categorised as "different", which generally coincided with those occurring in the South. The North often translated "different" phenomena or cultures as second-rate, vicious, oppressed by tyrants or extremist.[49] This conceptualisation, which defined the "Other" as second-rate, was fundamental for the colonial enterprise. It generated the supposed necessity for "civilising," but also helped to establish who was decent and law-abiding,[50] which unsurprisingly usually coincided with the residents of colonising nations.

[44] Agozino, 346.

[45] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 186.

[46] Carrington and Hogg, 188.

[47] James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly* 249, no. 3 (1982), https://www.semanticscholar.org/paper/BROKEN-WINDOWS%3A-THE-POLICE-AND-NEIGHBOURHOOD-SAFETY-Wilson-Kelling/afac4ce61a0a68b81964a29efccb3cf4b81f2ff9.

[48] Stefano Bloch, "Broken Windows Ideology and the (Mis)Reading of Graffiti," *Critical Criminology* 28, no. 4 (2020): 707–708, https://doi.org/10.1007/s10612-019-09444-w.

[49] Zaffaroni, Criminología, 76.

[50] Cunneen, "Postcolonial Perspectives for Criminology," 261.

After acknowledging these underlying truths, it takes little reasoning to understand why the Global South receives classical criminological knowledge with scepticism. It becomes even more evident considering that this knowledge departs from the promise of internal stability that was achieved in coloniser states by the intimidation of the colonised territories[51] and the fact that such peace never existed in colonised countries which were founded through state violence.[52] In a general sense, the Global South had a history of dominance and violence as the foundation for criminological knowledge production, in a way that scholarship centred on "shattered gardens" as the subject matter, whilst the North centred on "appealing gardens."[53]

Still, it is not necessarily the fact that post-colonialism should be understood only as an insubordinate or insurgent project, as it has been by some.[54] It should not be ignored that, regularly, the post-colonial theory is distinguished from Southern Criminology because it tends to sentimentalise indigeneity.[55] However, it is arguable that the post-colonial aspect of Southern Criminology, as its primary output, allows a process of recognition by the Global South to unveil all its potentialities, a process which is not possible without a full understanding of colonisation.

4. The Implications of Considering Colonialism an Indisputable Subject for Criminology on the Development of Criminological Theory in the 21st Century

By bringing to light the still aching scars of colonisation, Southern Criminology opens up the path for the appreciation of nations of the Global South. It highlights what makes them what they are and how they can promote peace within their communities. Furthermore, it allows for the emergence of solutions that reflect their histories and singularities, instead of simply perpetuating imported ones.

However, the path for achieving this is not yet paved.

[51] Zaffaroni, Criminología, 216.
[52] Carrington, Hogg, and Sozzo, "Southern Criminology," 3.
[53] Codino, "Por Uma Outra Criminologia," 30.
[54] Carrington, Hogg, and Sozzo, "Southern Criminology," 2.
[55] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 194.

The leading schools of criminological knowledge remain in the Global North, notably in Anglophone countries,[56] whilst there is a notable lack of specific university courses in criminology in countries of the South.[57] Unsurprisingly, theorists from the South are rarely read or praised in the North and African, Latin-American, Asian and arguably, to some extent, Australian scholarship does not stand in a place of significance as compared with Northern scholarship.[58] Furthermore, there is minimal opportunity for the many peripheral communities that share a history of domination to engage in criminological debate. Instead, communities such as these usually connect through the intermediation of the North.[59]

Also, when regarding Asia and the Pacific,[60] the variety of spoken languages limits the possibility for knowledge exchange. It has been suggested that, perhaps the so-called "Third World," a term that was coined after World War II to refer to impoverished Africa, Asia and Latin-America,[61] did not establish a criminological scholarship of their own because of the absence of applicability of the mainstream knowledge to their experiences.[62] On the other hand, it is undeniable that throughout the colonial enterprise, it was not only political and economic institutions imposed on the Global South but also educational and intellectual systems leading to a scholarship dependency.[63] This imposition, undeniably, also impedes the establishment of a Southern-specific scholarship, since it first demands emancipation from imposed intellectuality.

It must be stated that this movement is not about idealising the production of knowledge in the South.[64] Southern Criminology is not a set of consolidated beliefs, nor are Southern criminologists unaffected by existent theories and dominant influences.[65] Still, listening to the

[56] Aas, "'The Earth Is One,'" 6.

[57] Agozino, "Imperialism, Crime and Criminology," 343.

[58] Kerry Carrington, "Book Review: Southern Theory: The Global Dynamics of Knowledge in the Social Sciences by Raewyn Connell," *Journal of Sociology* 44, no. 3 (2008): 301, https://doi.org/10.1177/1440783308092886.

[59] Zaffaroni, Criminología, 3.

[60] John Braithwaite, "Rethinking Criminology Through Radical Diversity in Asian Reconciliation," *Asian Journal of Criminology* 10, no. 3 (2015): 183, https://doi.org/10.1007/s11417-014-9200-z.

[61] Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 2011), https://doi.org/10.2307/3034652.

[62] Agozino, "Imperialism, Crime and Criminology," 351.

[63] Mignolo, "The Geopolitics of Knowledge," 63.

[64] Carrington, Hogg, and Sozzo, "Southern Criminology," 2.

[65] Aas, "'The Earth Is One,'" 16.

criminologists of the South is a bet on avoiding the rejection of any knowledge's analytical aspect.[66]

To avoid solely relying on the use of Northern theory, Southern Criminology aims to create its own.[67] Perhaps, not a theory of answers, since the discipline of criminology in the margins is filled with doubts and questions that do not necessarily arise from the academia, but from daily experiences and hardships.[68] Instead, it focuses on essential factors of political life, bringing to light the control inflicted on the Global South through the authoritarian dominance of determinate families and groups throughout history.[69]

In this sense, criminologists from the centre, or those with a Northern perspective, can also learn from Southern scholars, notably about the experiences of those living in the margins.[70] Additionally, when the ruinous effects of the enterprise of colonisation are recognised and vastly acknowledged, the assumption that the world must rely on countries of the Global North as the conveyors of how to understand and deal with crime and social control, will not stand.[71] Not to mention that it would no longer be viable to ignore human rights crimes as such issues are indeed worthy of criminological inquiry.[72]

Additionally, the rise of a Southern criminological scholarship would favour finding new approaches for dealing with crime.[73] Viewed in this way, the Global North would also have the opportunity to take advantage of this endeavour, as it would provide inspiration for innovation and new concepts and programmes of inquiry reflected by the events in the Global South.[74] Moreover, the recognition of the legacies of colonisation would provide Northern countries with a deeper and more holistic understanding of current issues within their own criminal justice systems, like the overrepresentation of racial minorities.[75]

[66] Aas, 16.
[67] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 185.
[68] Zaffaroni, Criminología, 2.
[69] Codino, "Por Uma Outra Criminologia," 23.
[70] Agozino, "Imperialism, Crime and Criminology."
[71] Agozino, 356.
[72] Agozino, 355.
[73] Agozino, 353.
[74] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 194.
[75] Carrington and Hogg, 194.

From a more peripheral standpoint, Southern Criminology must aim to dismantle and reassemble criminology from its roots.[76] In this sense, it must be recognised that there are various sources of criminological knowledge.[77] For that matter, some of the "innovative" products of Southern Criminology simply reflect traditional solutions of peripheral communities that were earlier ignored by imposing colonial powers. An example of this is the practice of restorative justice,[78] which has strong connections with ancient Confucian philosophical ideas.[79]

Compared to the central or Northern context, the integration of supposed unorthodox perspectives from peripheral nations and communities, significantly allows for the potential combination of more contemporary and traditional knowledge sets.[80] This merger balances the weaknesses and advantages of each source.[81] A criminological movement from the South would reflect its cultural diversity, allowing for creative responses to arise.[82]

5. Political Potentials of the Advancement of Southern Criminology

More than contributing to criminology's theoretical development in the 21st century, the advancement of post-colonial Southern Criminology has the potential to strengthen legitimacy and sovereignty of the countries comprising the Global South. As Max Weber stated, "a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."[83] On the other hand, social contract theorists professed that the provision of security was the sole purpose of forming nation-states.[84] These presumptions are part of a concept established in the Global North, more specifically in Europe. Still, the

[76] Carrington and Hogg, 185.
[77] Carrington and Hogg, 185.
[78] Jianhong Liu, "Asian Criminology - Challenges, Opportunities, and Directions," *Asian Journal of Criminology* 4, no. 1 (2009): 7, https://doi.org/10.1007/s11417-009-9066-7.
[79] Jianhong Liu, "Principles of Restorative Justice and Confucian Philosophy in China," *Newsletter of the European Forum for Restorative Justice* 8, no. 1 (2007), https://www.researchgate.net/publication/285055041_Principles_of_Restorative_Justice_and_Confucius_Philosophy_in_China.
[80] Braithwaite, "Rethinking Criminology," 184.
[81] Braithwaite, 188.
[82] Zaffaroni, Criminología, 95.
[83] Max Weber et al., *From Max Weber: Essays in Sociology* (New York: Routledge, 2009), 78 https://doi.org/10.4324/9780203452196.
[84] Melissa M. Lee, Gregor Walter-Drop, and John Wiesel, "Taking the State (Back) Out? Statehood and the Delivery of Collective Goods," *Governance* 27, no. 4 (2014): 636, https://doi.org/10.1111/gove.12069.

monopoly of force and the provision of safety as the foundations for the nation-state were imposed on the Global South, and they are yet to be adjusted to align with local realities. This mismatch between state-founding theories and local experience is where Southern Criminology's theoretical advancement can play its most significant role.

The history of domination and violence previously mentioned left a legacy of disconnection between the people of the Global South and their states, which unsurprisingly harms the existence of republics themselves.[85] Criminal justice systems were assumed legitimate from a positivist perspective, even though opinions on this matter from the local population's relevant segments, such as indigenous groups, were solemnly ignored.[86]

For a state and its security system to endure, its people must legitimate it.[87] By analysing recent state-building movements in "non-liberal" nations, Jackson brings to the surface relevant insights that are entirely applicable to the Global South's history with colonialism. Mainly, he refers to the risk of creating "empty-shells" when a state is built without significant legitimacy to the broad public and works solely in favour of a privileged group of people.[88] It takes little understanding of the Global South's reality to note that the hollow foundations of many states with illegitimate criminal justice systems are a consequence of the establishments of colonial rule.

In this sense, Southern Criminology as a political movement can work to dislodge the foundations of local criminal justice systems that do not represent the interests of Southern populations; simultaneously, it has the capability to translate regional praxis into policy. For example, state sovereignty, understood as the capability of dictating or even influencing the social order in a territory, is a challengeable concept under a post-colonial perspective. First, because it is not globally endorsed. Second, it has direct effects on how criminological ideas of punitiveness, safety and deviance are understood.[89] From a post-colonial standpoint, when

[85] Justin Mueller, "Temporality, Sovereignty, and Imperialism: When is Imperialism?," *Politics* 36, no. 4 (2016): 431, https://doi.org/10.1177/0263395716644941.

[86] Cunneen, "Postcolonial Perspectives for Criminology," 254.

[87] Paul Jackson, "Security Sector Reform and State Building," *Third World Quarterly* 32, no. 10 (2011): 1808, https://doi.org/10.1080/01436597.2011.610577.

[88] Jackson, 1804.

[89] Aas, "'The Earth Is One,'" 15.

analysing a state's sovereignty, one should consider the variety of the population in a territory, and not rely solely on identifying a single form of control within the state.

Due to globalisation and an ever-growing international system of connection and reliance,[90] this movement calls for a reshuffling of power[91] and a more representative distribution of knowledge production throughout the globe to amend asymmetries.[92] However, for Global South countries, these shifts must be independent of a transnational movement. A transformation of colonial concepts is essential for establishing comprehensive stability within Global South territories. That is, because the foundations of states in the Global South were based on a theoretical idea imported from the North (contract theory), which, at the same time, excluded the participation of entire groups of people (e.g. enslaved Africans, natives).[93] Such arrangements contributed to long-standing internal instabilities and a crisis of legitimacy, since large groups were and remain removed from the social contract.

A post-colonial application of Southern Criminology reveals that state sovereignty, and its legitimacy for punishing, are only theoretical presumptions in the Global South because they began from an exclusionary starting point. On this view, it is necessary to establish a theory of security and peace that considers and gives voice to the multitude of groups with different shares of power that exist in Southern territories. Consequently, by having all groups heard, seen and considered, there will be room for greater cohesion amongst the entire population of formerly colonised countries, leading them to legitimate a more suitable criminal justice system.

6. Conclusion

This essay discussed Roger Matthew's claim suggesting that the most significant import of Southern Criminology was to defy the plea of universalism made by Northern social theories. It started by verifying that Southern Criminology is a political, empirical and theoretical post-colonial movement, that arises from former silenced nations and communities in the Global

[90] Aas, 8.
[91] Cunneen, "Postcolonial Perspectives for Criminology," 255-256.
[92] Aas, "'The Earth Is One,'" 8.
[93] Carrington and Hogg, "Deconstructing Criminology's Origin Stories," 188.

South. Next, it described how the name "Global South," besides describing specific geographical locations, also referred to some groups of people physically located in the Global North. Conversely, it stated that the Global North is a metaphor for powerful countries and groups of people whose body of knowledge and way of being was reckoned as the ideal standard of achievement.

While universalism considers the products of northern social science as the standard applicable to the rest of the world, Southern Criminology challenges this. This essay, however, claimed there is an issue with seeing the defiance of universalism as the main import of Southern Criminology. The risk is that scholars could be led to believe that such a problem could be overcome by criminological theories made with knowledge acquired in the Global South by representatives of the Global North, ignoring the perspectives of Southern criminologists themselves.

Challenging this view, this essay claims that the main product of Southern Criminology is to bring the criminogenic consequences of colonisation to light. Such a topic demands that representatives of any place produce criminological knowledge, recognising the harmful effects of colonisation and its connection to how we perceive crime, criminals and social control to this day. This essay concludes by portraying the potentialities of developing such criminological knowledge in central and peripheral nations and highlighting the political capacity of advancing Southern Criminology.

The displayed potentialities were, first, criminologists' theorisation of the South that highlights authoritarian dominance. Second, the rupture of the assumption that countries that performed the worst humanitarian crimes in history, namely coloniser countries, would continue to be seen as the emissaries of criminological knowledge. This essay also highlighted the fact that innovative solutions could be lifted from the experience of the Global South such as specific events and other ancient practices formerly ignored. For Northern countries, besides the undeniable advantages of finding new ideas for dealing with crime, it was argued that the recognition of the harmful effects of colonisation, enabled by the expansion of post-colonial Southern Criminology, helps to explain the over-representation of minorities in the criminal

justice system. Lastly, this essay defended the fact that Southern Criminology's advancement will enhance the legitimacy and sovereignty of states from the Global South and their criminal justice institutions, by constructively criticising the features of states that are directly connected to colonialism and helping to build a system that conforms better to localities and regional praxis.

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The Unending War in Yemen:

An Examination of the Unnatural Balance of Power Between Saudi Arabia and Iran

Deniz Kaptan

MA in International Relations, Bilkent University

Abstract

Yemen has been a warzone for at least seven years now. The conflict is seemingly a civil war between the government and opposition forces. It also serves as a proxy war that determines the balance of power between Saudi Arabia and Iran in the region. The government in Yemen is aided by the Saudi-led Gulf Cooperation Countries (GCC), where Saudi Arabia (as well as other GCC members) purchases military technologies from the United States, Britain, France, and Germany. On the other hand, the opposition groups – the most prominent one being the Houthis – use Iranian technology in their fight. Considering the sophistication of military technology of the US and other Western countries vis-à-vis Iran, the duration of the war in Yemen stands out as a puzzle which this article attempts to explain using state-level analysis. After reviewing the situation since 2014, this article examines two existing arguments regarding the balance of power between Iran and Saudi-backed warring parties, namely, the hearts and minds argument and the military inadequacy arguments. Demonstrating the limitations of these, this article suggests that the Western powers contribute to the perpetuation of the war as they accrue a stream of revenue from arms production.

Keywords: balance of power, proxy war, arms production, security, war crimes

1. Relevance and Significance: War Crimes in Yemen

The civil war in Yemen is widely considered one of the worst humanitarian crises of today. The UN estimates that 75% of the entire population currently requires more humanitarian assistance than any other single country.[1] The casualties of war are hard to track, which makes it possible for the clashing forces to breach international humanitarian law and cover their actions when accused by the international community.

According to Article 8 of the Rome Statute of the International Criminal Court willful killing or causing of great suffering, extensive destruction of property without military necessity, or intentionally directing attacks at civilian populations are among the list of war crimes.[2] These crimes are observed and reported in the current Yemeni conflict. The Yemen Data Project[3] provides the best estimates available and also divides the targets of air raids (which are the most used military tactic in the conflict) as military, civilian and unknown. From the total air raid numbering 22,879 during the ongoing campaign that has lasted over six years, 7,464 have targeted military, 6,658 have targeted civilian and 8,757 have targeted unknown areas (areas that cannot be distinguished as military or civilian) according to the findings of the Yemen Data Project. This points to serious breaches of the Rome Statute on the part of the Yemeni government.

The most recent report on the war crimes in Yemen, issued by the United Nations, states that "the parties to the conflict continue to show no regard for international law or the lives, dignity, and rights of people in Yemen, while third States have helped to perpetuate the conflict by continuing to supply the parties with weapons".[4] Highlighting the unlawful airstrikes, the 2020 Human Rights Watch World Report also accused the warring parties in the region of creating and perpetuating injustices that result in civilian deaths and other inhumane practices

[1] "World Report 2019: Yemen," *Human Rights Watch*, published January 17, 2019, https://www.hrw.org/world-report/2019/country-chapters/yemen.

[2] "Rome Statute of the International Criminal Court," *International Criminal Court* (The Hague, 2011), https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf.

[3] "Yemen Data Project," accessed July 31, 2021, https://yemendataproject.org/.

[4] "Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014: Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen, " *Human Rights Council* (New York, September 28, 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf.

including the recruitment of child soldiers, arbitrary detentions and torture, and blockading humanitarian access.[5]

1.1. Political Angle of the Conflict

Thus, there is a significant humanitarian angle to this conflict, as well as political and economic angles. That being said, this paper focuses on the political angle which undertakes a state-level analysis, as it contains the root causes for the ongoing humanitarian conditions in the region. Within the political angle, there are two aspects of this conflict that are important to assess. One aspect is that currently, the conflict is seen to be a proxy war between Iran and Saudi Arabia, whereby a domestic conflict is used by two larger powers as an extension of their political, economic or diplomatic disputes. As Saudi Arabia is defending the government and Iran is aiding the Houthi rebellion against the government,[6] the settlement of the conflict in Yemen will define the balance of power in the wider region.[7] According to the 2019 Global Firepower annual review, Iran and Saudi Arabia are seen to have military powers of similar strength.[8] However, the game-changer comes with the US support of Saudi Arabia. The American-Saudi alliance dates back to the 1930s and strengthened with the end of the Second World War, shaped mostly by the oil exports from Saudi Arabia to the US, and arms imports to Saudi Arabia.[9] This alliance can be seen as an internal advantage for Saudi Arabia since it relates to its military capabilities. According to the Stockholm International Peace Research Institute (SIPRI) Data for all countries from 1988–2018, as a share of GDP, Saudi Arabia is the third-largest country in military expenditure, following the US and China.[10] Seen explicitly

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[5] "World Report 2020: Yemen," *Human Rights Watch*, publushed December 12, 2019, https://www.hrw.org/world-report/2020/country-chapters/yemen.

[6] "Yemen's Complicated War Explained," *TRT World*, published August 10, 2018, video, 3:56, https://www.youtube.com/watch?v=AkyXDDXzPyw.

[7] Ahmed Salah Hashim, "Saudi-Iranian Rivalry and Conflict: Shia Province as Casus Belli?" S. Rajaratnam School of International Studies (RSIS) Commentary No. 022 (Singapore, January 29, 2016): 3, https://www.files.ethz.ch/isn/196140/CO16022.pdf; Peter Salisbury, "Yemen and the Saudi–Iranian 'Cold War'," *Chatham House: The Royal Institute of International Affairs Research Paper*, published February 2015, 2, https://www.chathamhouse.org/sites/default/files/field/field_document/20150218YemenIranSaudi.pdf.

[8] "Comparison Results of World Military Strengths," *Global Fire Power*, accessed July 30, 2021, https://www.globalfirepower.com/countries-comparison-detail.asp.

[9] "The US May Be Aiding War Crimes in Yemen," *VOX*. published December 12, 2016, video, 7:31, https://www.youtube.com/watch?v=CwwP3SiBIC8; Third Way, "Country Brief: Saudi Arabia and its Role in Yemen" *Third Way Report,* published March 7, 2019, https://www.jstor.org/stable/resrep20139.

[10] Pieter D. Wezeman, "Saudi Arabia, Armaments and Conflict in the Middle East" *Stockholm International Peace Research Institute*, published December 14, 2018, https://www.sipri.org/commentary/topical-backgrounder/2018/saudi-arabia-armaments-and-conflict-middle-east.

from the trend in imports of major arms by Saudi Arabia between 1998–2017, there has been a constant increase in the arms imports since 2015.[11]

The second aspect to assess is the fragmented opposition forces that mostly operate as irregular militia forces, rather than an established military force bound to a strict chain of command and the government.[12] Having a set of fractured opposition comes with the problems of not having a common goal and having shifting alliances, which births instability and ultimately prevents the possibility of a united front. So, even if Iran is backing a part of the opposition forces (the Houthi rebellion), there is not one united force against the government, which can be seen as an external advantage for Saudi Arabia, as it relates to Saudi Arabia's adversaries' capabilities to respond.

This part of the article explains the puzzle in Saudi Arabia's failure to end a war that has caused huge humanitarian atrocities in Yemen, despite both its external and internal advantages vis-à-vis Iran and the opposition forces, most notably, the Houthis. After clarifying the current situation in Yemen in terms of the warring parties, the government, opposition forces, Iran, Saudi Arabia and the United States, I first explain the two arguments widely present in the literature: the hearts and minds argument and the ineffectiveness of the Saudi army argument. The explanations highlight how these two arguments' aid an understanding of the dynamics at play in the conflict. However, as I examine both of their limitations in the later section, I develop a rather original, complementary third strand of argument which takes into consideration the economic interests of the US in its involvement in the proxy war.

2. Background and Recent Developments in the Region

Although the conflict in Yemen has been present for a long time, including during the Cold War years, the division in Yemeni society widened and deepened with the wave of uprisings throughout the Middle East in 2011.[13] Following the social unrest in Yemen, the then-President Sadullah Saleh was forced to resign in 2011, and there was initially a peaceful

[11] Wezeman.

[12] "Who's Who in Yemen's Opposition?" *Al Jazeera News*, published March 10, 2011, https://www.aljazeera.com/news/2011/3/10/whos-who-in-yemens-opposition.

[13] "Middle East: Yemen - The World Factbook," *Central Intelligence Agency,* last modified July 27, 2021, https://www.cia.gov/the-world-factbook/countries/yemen.

transition of power orchestrated by the Gulf Cooperation Council (hereafter, GCC or Saudi-led coalition) in 2012, which made Abdrabbuh Mansour Hadi the legitimate President.[14] However, in the political, social and economic turmoil, several distinct opposition groups started to grow against the legitimate government. The crisis was exacerbated when, viewing the situation as a window of opportunity, the Al-Qaeda and ISIS forces separately sought to hold territory and expand in the region.[15] One of the groups opposing the government is the Houthi Shia Rebels, currently led by Mohammed Ali al-Houthi.[16] The Yemeni government and the Houthi rebels have been officially at war since 2015, and the conflict has caused more than half of the population to live in conditions of near starvation.[17] Since 2015, the Houthi forces' activities have been countered by the GCC members comprising of Egypt, Jordan, Bahrain, Sudan, Qatar, Kuwait, United Arab Emirates, Morocco and Senegal,[18] although today, the coalition forces in Yemen are made up of only four countries namely, the Kingdom of Saudi Arabia, the United Arab Emirates, Sudan, and Bahrain.[19] Most importantly, the US is contributing enormously to the cause of Saudi Arabia, maintaining their alliance. In addition to the Houthis, there is the separatist movement coming from the south, the Southern Movement, which is backed mostly by the United Arab Emirates.[20]

A significant turning point came in September 2015 when the Houthis took over the capital, Sanaa, a few months after the White House released the Statement of US National Security Council (NSC) Spokesperson Bernadette Meehan on the situation in Yemen and announced the US support of the legitimate Yemeni government. In the same statement, Mr. Hadi, condemned the Houthi actions that perpetuated instability in the region.[21] From this point

[14] Central Intelligence Agency.
[15] TRT World, "Yemen's Complicated War Explained."
[16] TRT World.
[17] Disclose, "Yemen Papers," *Made in France,* published April 15, 2019, https://made-in-france.disclose.ngo/en/chapter/yemen-papers.
[18] Enea Gjoza and Benjamin H. Friedman, "End U.S. Military Support for The Saudi-Led War in Yemen," Defene Priorities, (January 2019): 12, https://www.defensepriorities.org/explainers/end-us-military-support-for-the-saudi-led-war-in-yemen.; Jon Gambrell, "Here Are the Members of the Saudi-Led Coalition in Yemen and What They're Contributing," *Business Insider*, published March 30, 2015, https://www.businessinsider.com/members-of-saudi-led-coalition-in-yemen-their-contributions-2015-3.
[19] Disclose, "Yemen Papers."
[20] TRT World, "Yemen's Complicated War Explained."
[21] "Statement by NSC Spokesperson Bernadette Meehan on the Situation in Yemen," *Office of the Press Secretary - Press Release*, published March 25, 2015, https://obamawhitehouse.archives.gov/the-press-office/2015/03/25/statement-nsc-spokesperson-bernadette-meehan-situation-yemen.

on, the US became highly involved in the conflict alongside the GCC through arms sales (mostly of aircrafts) and airstrikes.[22] The statement also expressed decisiveness in countering the opposition forces in Yemen with the words: "The international community has spoken clearly through the UN Security Council and in other fora that the violent takeover of Yemen by an armed faction is unacceptable and that a legitimate political transition – long sought by the Yemeni people – can be accomplished only through political negotiations and a consensus agreement among all of the parties".[23] Despite the decisive tone of the statement, as seen in Figures 1 and 2 (below), the Houthi advancement slowed after 2015, albeit not fully stopping while both the US and the GCC contribution increased.

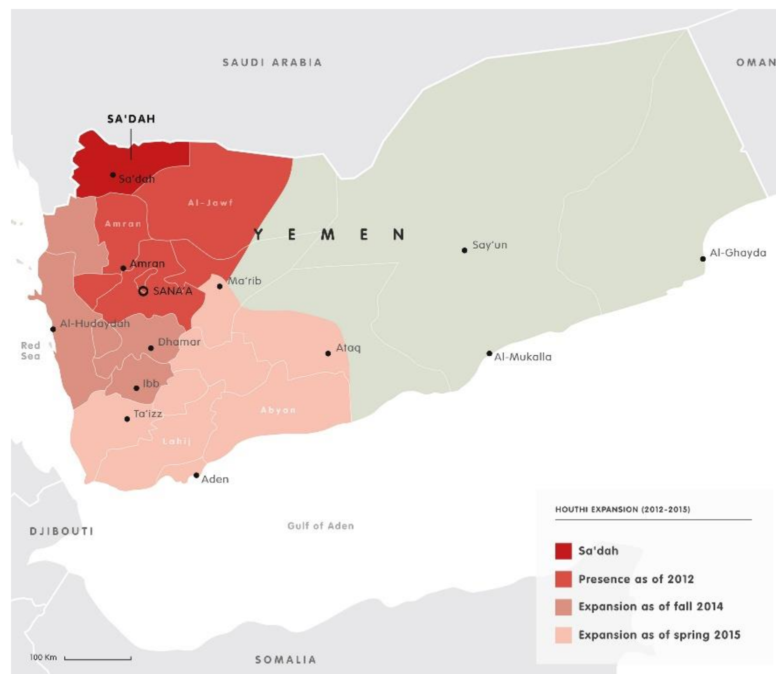

Figure 1: Situation between 2011-2015. Obtained from Baron, 2019 (https://www.ecfr.eu/mena/yemen#).

[22] "Kingdom of Saudi Arabia - UH-60M Black Hawk Utility Helicopters" *Defense Security Cooperation Agency News Release Transmittal No. 15-66*, , published September 14, 2015, https://dsca.mil/major-arms-sales/kingdom-saudi-arabia-uh-60m-black-hawk-utility-helicopters.

[23] "Statement by NSC Spokesperson Bernadette Mechan on the Situation in Yemen". *Office of the Press Secretary,* https://obamawhitehouse.archives.gov/the-press-office/2015/03/25/statement-nsc-spokesperson-bernadette-meehan-situation-yemen.

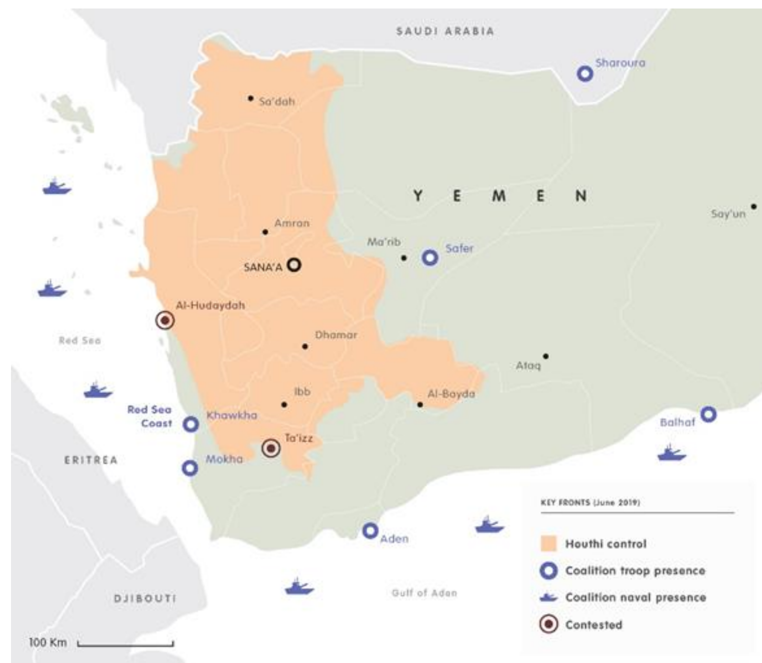

Figure 1: Situation in 2019. Obtained from Baron, 2019 (https://www.ecfr.eu/mena/yemen#).

3. Explaining the Balance of Power

Why is it that Saudi Arabia, despite its many and considerable military advantages, failed to put an end to this war? In this section, two theories that have been proposed to answer this question will be assessed. There is no doubt these theories have some truth to them, but it is important to move further and touch upon the root causes, as shown in the following section by the third theory focusing on US economic interests.

3.1. The Hearts and Minds Argument

One explanation advanced for the continuing war in Saudi Arabia is the country's failure to win the hearts and minds of the local population, which is crucial for winning the war. The "hearts and minds"[24] argument explains individuals' attitudes towards the external state intervening brutally in a country. The violent actions of an external player create feelings of hatred and resentment among local people against the "foreigners", causing them to either form their own opposition groups or to work with an existing opposition group. Due to its interventions, the US has been subject to criticism many times in history, most notably in Korea, Vietnam, and Afghanistan. George Herring explains that "American firepower destroyed

[24] 6 Billy Moncure, "'Winning Hearts and Minds' - The Long History of a Failed Strategy," *War History Online*, published October 3, 2018, https://www.warhistoryonline.com/instant-articles/winning-hearts-and-minds.html.

homes, villages, and crops, and alienated those whose hearts and minds were to be won" as the main reason for failure during the Vietnam War.[25]

The situation in Yemen today causes civilians to face daily challenges, such as involuntary internal displacement, living in crowded and unsanitary conditions, and most importantly, being caught in the crossfire between drone attacks mostly controlled by the CIA (rather than the Saudis)[26] and the counter-attacks by Houthis.[27] Although "winning the hearts and minds" is a famous motto of American foreign policy,[28] for the current Yemeni case, it does not seems to be a priority of US officials or the Saudi-led coalition that is supported by the US.

Contrary to American foreign policy, it can be argued that another player on the field is more cautious of the hearts and minds of the people they are trying to affect. AQAP, or Al-Qaeda on the Arabian Peninsula, has learned the significance of the impact of local people in a possible victory. Thus, they are working to indoctrinate locals' minds against ISIS in the region for the sake of the competition between AQAP and ISIS, a separate but related competition in the region which is not the main focus of this paper.[29] Thomas Joscelyn, a senior fellow at the Foundation for Defence of Democracies and senior editor of the Long War Journal summarises the situation as; "ISIS and Al Qaeda [have] different [approaches]. ISIS thinks that [it] will brutalize [a population] into submission. Al Qaeda knows that some people are turned off by this brutality."[30] Through social services, the AQAP is "indoctrinating many people in need of vital and primary sources,"[31] whereas the US-backed GCC is only contributing to the conflict via military power despite the long history of American promotion of human rights through humanitarian assistance.

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[25] Moncure.

[26] Letta Tayler, "Losing Yemeni Hearts and Minds," *Human Rights Watch,* published May 31, 2012, https://www.hrw.org/news/2012/05/31/losing-yemeni-hearts-and-minds.

[27] Caleb Weiss, "Saudi Oil Facilities Set Ablaze by Houthi Drone Strikes," *FDD's Long War Journal*, published September 14, 2019, https://www.longwarjournal.org/archives/2019/09/saudi-oil-facilities-set-ablaze-by-houthi-drone-strikes.php.

[28] Elizabeth Dickinson, "A Bright Shining Slogan: How 'Hearts and Minds' Came to Be," *Foreign Policy*, published August 22, 2009, https://foreignpolicy.com/2009/08/22/a-bright-shining-slogan/.

[29] Alessandria Masi, "Al Qaeda Winning Hearts and Minds Over ISIS In Yemen with Social Services," *Internationl Business Times*, published July 4, 2016, https://www.ibtimes.com/al-qaeda-winning-hearts-minds-over-isis-yemen-social-services-2346835.

[30] Masi.

[31] Masi.

Both Al-Qaeda and ISIS are known for their terrorist acts, so their dichotomous race to win hearts and minds is sure to have larger consequences. For example, if and when one of them influences enough people, their unity may enlarge to bring more challenges to the government. In other words, if Al-Qaeda outsmarts ISIS in the region with this strategy, the opposition will be less fragmented, and more people will be channelled to one cause. Hence, for the GCC to be dominant among the various opposition groups, they need to be more aware of the hearts and minds of the locals, whose territory they are operating within.

3.1.1. Main Challenges on the Field

This section considers the humanitarian challenges that occur daily in Yemen, for example the airstrikes, drone attacks and deadly diseases caused by the unsanitary and crowded conditions in which Yemenis are living in.[32] These are also among the causes of a mounting hatred towards the Yemeni government, the Saudi-led coalition and Western powers that are seen as complicit in the war. Ironically, airstrikes, drone attacks, and the resultant humanitarian situation necessitate humanitarian assistance, which mostly flows from the West, but does not help to win the hearts and minds of the local people.

First, the airstrikes that Saudi Arabia is undertaking target militias as well as public facilities and civilians.[33] Targeting civilian public spaces in the context of war is a war crime, and it is argued and proved that the Saudi-led air campaign has "failed to respect the principle of proportionality," and "to take the necessary precautions to minimise civilian harm."[34] According to international law, this implies that the US, UK, and France, as main suppliers of the warplanes and bombs used in the aerial bombardment, are complicit in war crimes.[35] This

[32] Reuters Staff, "Dengue Fever Finds Breeding Ground in War-Weary Yemen," *Reuters*, published December 16, 2019, https://www.reuters.com/article/us-yemen-security-health-dengue/dengue-fever-finds-breeding-ground-in-war-weary-yemen-idUSKBN1YK1AC.

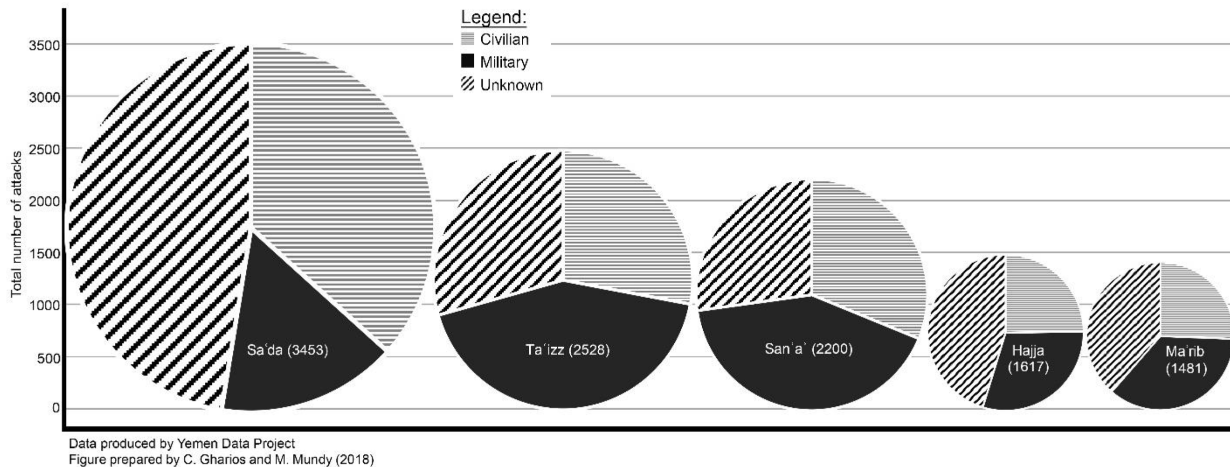
[33] Mohamad Bazzi, "America Is Likely Complicit in War Crimes in Yemen. It's Time to Hold the US to Account," *The Guardian*, published October 3, 2019, https://www.theguardian.com/commentisfree/2019/oct/03/yemen-airstrikes-saudi-arabia-mbs-us.

[34] Human Rights Council, "Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014: Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen," (New York, September 3, 2019) 17–19, https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF.

[35] Patrick Wintour, "UK, US and France May Be Complicit in Yemen War Crimes – UN Report," *The Guardian*, published September 3, 2019, https://www.theguardian.com/world/2019/sep/03/uk-us-and-france-may-be-complicit-in-yemen-war-crimes-un-report.

should also attract human rights activists as well as other states to call for correcting such actions. However, for the locals, these bombardments have consequences, making them more proactive in getting together to halt the aggression by the GCC countries supported by the West.

Figure 2: Proportion of civilian, military, and unknown targets in governorates of Yemen. March 2015- March 2018

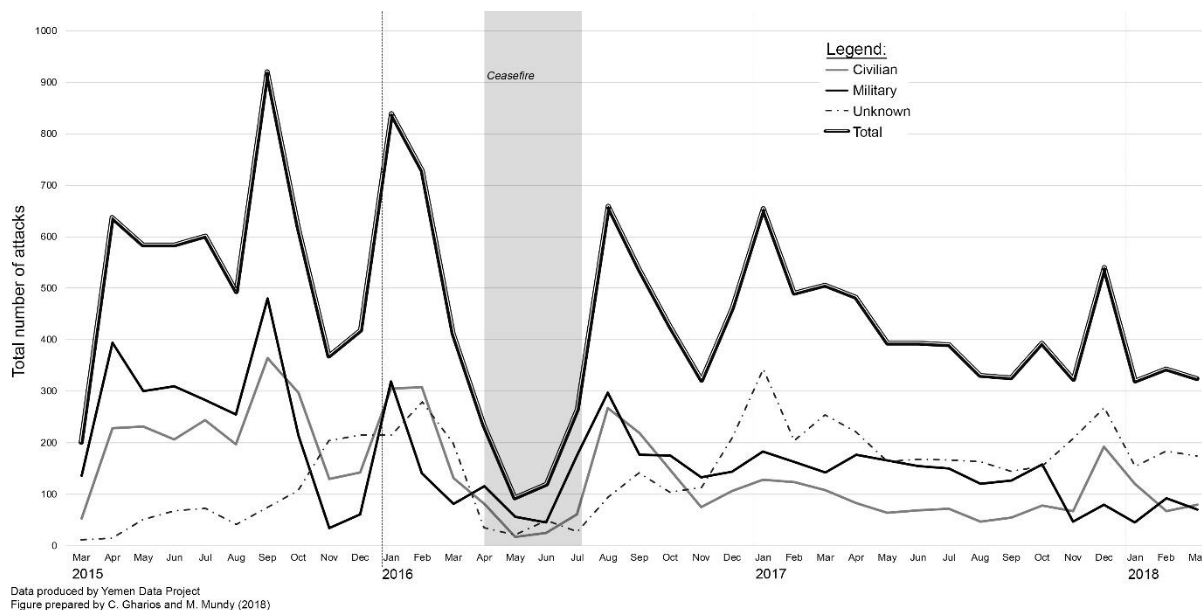


Note 1: Obtained from [36] (https://sites.tufts.edu/wpf/strategies-of-the-coalition-in-the-yemen-war/).

Figure 3 shows the proportions of civilian and military zones targeted by the Coalition forces for some of the cities in Yemen. Such proportions reveal misconduct on the part of the Saudi-led GCC, as the civilian zones are targeted more than the military zones in certain cities. In a similar vein, Figure 4 shows the complete timeline of airstrikes. Again, as seen from the very beginning of the war effort, the line for military and civilian zones are parallel, making it evident that there has been no intention to overturn such misconduct.

[36] Martha Mundy, "Strategies of the Coalition in the Yemen War," *World Peace Foundation*, published October 9, 2018, https://sites.tufts.edu/wpf/strategies-of-the-coalition-in-the-yemen-war/.

Figure 3: Timeline of GCC airstrikes from March 2015- March 2018



Note 2: Obtained from World Peace Foundation, 2018 (https://sites.tufts.edu/wpf/strategies-of-the-coalition-in-the-yemen-war/).

In terms of drone strikes, there is a general discussion about the extent to which they are effective in countering unconventional wars.[37] While some argue that drones today are the best options for military advancement,[38] it is also suggested by many that drones used by the US, as an external actor, encourage locals to side with groups that oppose the US.[39] The rationale behind this is that such methods of extermination harm the psychological wellbeing of people and fuel extremism.[40] In addition to this, there are worries about the legitimacy and ethics of the technology.[41] It is reported that the US has waged an ongoing drone campaign against AQAP in response to the group's attempts to strike American targets in the US and abroad.[42] In

[37] Harrison Akins, "Policy Brief 2:17: 'Lawnmowers in the Sky': The Turbulent Past and Uncertain Future of Drone Warfare," *Howard H. Baker Jr. Center for Public Policy*, accessed November 21, 2019, from http://bakercenter.utk.edu/wp-content/uploads/2017/03/PolicyBrief2-2017.

[38] C. Christine Fair, "For Now, Drones Are the Best Option," *New York Times*, published January 29, 2013, https://www.nytimes.com/roomfordebate/2012/09/25/do-drone-attacks-do-more-harm-than-good/for-now-drones-are-the-best-option.

[39] Raf Sanchez, "Yemen Drones Strikes Cause Civilians to 'Fear the US as Much as al-Qaeda'," *The Telegraph*, published October 22, 2013, https://www.telegraph.co.uk/news/worldnews/middleeast/yemen/10397294/Yemen-drones-strikes-cause-civilians-to-fear-the-US-as-much-as-al-Qaeda.html.

[40] İbrahim Mothana, "More Diplomacy, Fewer Drones," *New York Times*, published September 26, 2012, https://www.nytimes.com/roomfordebate/2012/09/25/do-drone-attacks-do-more-harm-than-good/more-diplomacy-less-drones.

[41] Greg Kennedy, "Drones: Legitimacy and Anti-Americanism," *Parameters* 42, No. 4-1 (2013), https://link.galegroup.com/apps/doc/A335069992/AONE?sid=lms.

[42] Adam Baron, "Mapping the Yemen Conflict," *European Council on Foreign Relations*, published October 19, 2015, https://www.ecfr.eu/mena/yemen#.

terms of humanitarian consequences and the hearts and minds argument, the effect of drones is explicit. As put by an activist in Yemen, “these drone strikes are stupid policy. Every time they kill Yemeni civilians, they create more hatred of America.”[43]

Another problem that has attracted relatively little attention is the emergence of the serious mosquito-borne dengue virus, and its spread around the areas that displaced Yemenis occupy.[44] The implication of the disease on the hearts and minds argument is again, hatred fuelled potentially by the harsh living conditions and loss of loved ones because of the disease and the ongoing war-time conditions. It is reported by the medical staff in the field that the disease is “thriving among crowded populations of people displaced and weakened by war living in unsanitary conditions.”[45] Makiah al-Aslami, a nurse in Hajjah who is helping to treat acutely malnourished children, said that it is possible to find an entire camp of 600-700 people infected with dengue.[46]

In sum, although there is much to do about the betterment of people suffering from war and war-related problems, the GCC is mainly contributing to the catastrophic situation through more hard power, which in turn, shifts more people towards different groups of opposition where they work and fight against the GCC’s efforts. Air and drone strikes are also potentially consolidating opposition as growing feelings of anger, fear, and revanchism against the US and GCC countries are likely to bring together more people, uniting them under one cause.

3.1.2. Humanitarian Assistance

Whilst aid coming from the West might be thought to win over the hearts and minds of the local population, the air raids of the coalition forces, backed by the US, give a contrary impression to the local people. Humanitarian assistance flows primarily from the EU under Civil Protection and Humanitarian Aid Operations, and the UN under the United Nations Office for the Coordination of Humanitarian Affairs.[47] These organisations are sometimes seen as

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[43] “Losing Yemeni Hearts and Minds.”

[44] Khair Alah A. Alghazali et al., “Dengue Outbreak During Ongoing Civil War, Taiz, Yemen,” *Emerging Infectious Diseases* 25, no. 7 (2019): 5, https://doi.org/10.3201/eid2507.180046.

[45] Reuters Staff, “Dengue Fever Finds Breeding Ground in War-Weary Yemen.”

[46] Reuters Staff.

[47] “Yemen,” *United Nations Office for the Coordination of Humanitarian Affairs,* last modified July 11, 2021, https://www.unocha.org/yemen.

representatives of the West, causing local Yemenis to sympathise with other groups. However, even in the reports of these Western aid channels, there are accusations of war crimes against the leaders of the US, the GCC Countries, and the Yemeni government supported by the coalition. This is specifically voiced in the OCHA report as the Humanitarian Coordinator in Yemen, Lise Grande, called the attacks “deeply disturbing” particularly as they occurred against the backdrop of the UN General Assembly, “when world leaders were coming together to advance peace and security.”[48] In other words, the amount of money donor countries contribute to humanitarian aid, cannot pay for the civilians, children and loved ones killed by the attacks sponsored by the US and the Saudi-led GCC. That is why, the hearts and minds argument for the current case is relevant, although it is unable to give the full explanation of the failure since military technology can be more important than the sheer number of people fighting. Therefore, the following section will attempt to explain the Saudi-led GCC’s failure to end the war by discussing the levels of development of the Saudi army fighting on the field, and the technology that the US exports to the GCC members, mostly to Saudi Arabia for the Yemeni war.

3.2. The Inadequate Army Personnel Argument

Another explanation for the Saudi-led coalition’s failure to end the war is on military terms. It has been argued that the coalition’s use of military tactics is ineffective in ending the war despite the level of technology employed. Heavy air bombardment by the GCC members, especially Saudi Arabia’s Royal Saudi Land Forces Aviation Command has slowed the Houthi expansion, as they maintain a hold in key central and northern provinces.[49] This section will focus on the army of the Kingdom of Saudi Arabia as the main subject because it has had the biggest contribution to the war effort in Yemen. Therefore, the internal efficiency of the Saudi army will be assessed in an attempt to see if, despite the advanced weaponry, it is the army officials who are unable to use them efficiently. That being said, under military efficiency, the paper will focus on whether the strategy is viable and if military personnel can use the installed technology.

[48] United Nations Office for the Coordination of Humanitarian Affairs.
[49] “Mapping the Yemen Conflict.”

A classified report by the French defence ministry, criticising the ineffectiveness of Saudi operations, and determining that the border control operations were a complete failure[50] was leaked by the journalism website *Disclose*. One interesting detail to note is that the report acknowledges Saudis' lack of mobility and imprecise strikes, which leaves the Saudis vulnerable in the face of the guerrilla attacks of the "nimbler" Houthi forces.[51] The report itself is criticised by the leakers because it reveals that the French government provided far more support than publicly acknowledged,[52] which makes it clear that Western states are covertly supporting the war much more than they claimed.

There is no doubt that in terms of firepower, Saudi Arabia is supported heavily by Western technology. It is reported by the Centre for International Policy that "US firearms offers increased by more than 12% in 2018, to $759 million from $662 million in 2017 and the biggest recipient by far was Saudi Arabia, with over $579 million in deals that included machine guns, semi-automatic sniper rifles, and grenade launchers."[53] It is also known that the majority of US produced firearms went to Saudi Arabia to contribute to the brutal war in Yemen.[54] Therefore, rather than the technology, the conditions of the army are to blame for the failure to end the war.

3.2.1. Strategy Incorporating the Installed Technology

Despite the advanced weaponry, it seems that one major miscalculation on the part of the Saudi military is not having sufficient land forces on the field. Michael Knights who specialises in the military and security affairs of Iraq, Iran, and the Persian Gulf, explains that there needs to be around 10,000 to 20,000 troops for the military to be effective. However, the Saudi military has so far avoided deploying ground troops. As Knights presumes, the ground

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[50] José Olivares, "Under Trump, U.S. Still Leads World's Arms Exporters — And Yemenis Are Still Paying the Price," *The Intercept* (blog), published March 14, 2018, https://theintercept.com/2018/03/14/us-arms-sales-saudi-arabia-yemen/.

[51] Alex Emmons, "Secret Report Reveals Saudi Incompetence and Widespread Use of U.S. Weapons in Yemen," *The Intercept* (blog), published April 15, 2019, https://theintercept.com/2019/04/15/saudi-weapons-yemen-us-france/.

[52] Disclose, "Yemen Papers."

[53] William Hartung and Christina Arabia, "Trends in Major U.S. Arms Sales in 2018: The Trump Record - Rhetoric Versus Reality," *Center for International Policy*, published April 2019, https://securityassistance.org/publications/trends-in-major-u-s-arms-sales-in-2018-the-trump-record-rhetoric-versus-reality/.

[54] Hartung and Arabia.

forces would "suffer from significant weaknesses," due to tactical deficiencies.[55] Without deploying more land forces, the consequence is lack of effectiveness, vis-à-vis the Yemeni guerrilla fighters who are knowledgeable about the geography they inhabit. This means that, by using mostly air forces, the Saudi military can more easily target innocent civilians, instead of militants as they are well aware of where and how to hide.

From this front, the reason for failure looks similar to the Vietnam War, in which American soldiers lacked knowledge of the geographical features of the land they were fighting on. Meanwhile, the Viet Kong members, with their knowledge of territory and skills of guerrilla fighting, were able to outsmart the American army by building the Ho Chi Min Trail.[56] What the Saudi military lacks in their specific situation, is the logistical means and experience with warfare on the ground, in addition to the lack of appropriate training and recruitment.[57] Together, these factors show that, at least in the region, the Saudi military is ill-equipped for unconventional warfare,[58] thus, the Houthis and other opposition forces can hope to defeat the Saudi army. No matter how advanced the Saudis are in terms of their air force, it will not suffice to end the war because their power on land will remain weak in the face of the opposition groups, as land forces are of great significance in an unconventional war.

The paper has demonstrated so far that Saudi Arabia can purchase the most advanced artillery and materials, that could end the war, and still fail to do so because their weakness seems to stem from strategic incapability rather than material capability. That is to say that if they were advised by their suppliers, with more appropriate arms and strategies, the Saudi-led

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[55] Ben Brimelow, "Saudi Arabia Has the Best Military Equipment Money Can Buy — But It's Still Not a Threat to Iran," *Business Insider*, published December 16, 2017, https://www.businessinsider.com/saudi-arabia-iran-yemen-military-proxy-war-2017-12.

[56] For historical context on the Ho Chi Minh Trail and its importance for the Vietnamese war effort: John Prados, *The Blood Road: The Ho Chi Minh Trail and the Vietnam War* (Wiley Publishing, 1999); Virginia Morris and Clive A. Hills, *Ho Chi Minh's Blueprint for Revolution: In the Words of Vietnamese Strategists and Operatives* (McFarland, 2018); Merle L. Pribbenow, *Victory in Vietnam: The Official History of the People's Army of Vietnam, 1954-1975* (Lawrence, Kansas: University Press of Kansas, 2002).

[57] Brimelow, "Saudi Arabia Has the Best Military Equipment Money Can Buy — But It's Still Not a Threat to Iran."

[58] Conventional war is war between two states and armies, whereas unconventional war refers to warring parties that are not legitimate monopolies of power, that is, non-state actors, and the tactics used in unconventional war are substantially different from those used in conventional wars. For more on the concept of unconventional war: Andrew C. Janos, "Unconventional Warfare: Framework and Analysis," *World Politics* 15, no. 4 (1963), https://doi.org/10.2307/2009460.

war effort could be more successful. Building on this assumption, the next section argues that, in addition to the aforementioned arguments, there is the effect of Western powers' (mostly the US) economic interest on arms sales to the Saudi army.

4. The Western Economic Interest Argument

In this last section, the paper will suggest an original argument that the Western – more specifically, American – economic interests perpetuate the conflict. The arguments above are not enough to solely demonstrate Saudi Arabia's failure to end the war. In my opinion, the missing piece is the Americans' strategy of arms sales that leave Saudis at a disadvantage against the opposition groups and Iran. Based on the US and other Western powers' arms sales, it can be inferred that they are more interested in selling arms than in helping Saudi Arabia to end the war. The catalogue of artillery and materials used by the Saudi military demonstrates the point of my argument, which includes, American F-15s, British EF-2000 Typhoons, and European Tornado fighters, American Apache and Black Hawk, French AS-532 Cougar, American Abrams and French AMX 30 tanks, and at least five types of Western-made artillery guns.[59] It is explicit that the whole military, its personnel and the broader war effort rely very much on Western products. In other words, the struggle in Yemen could also be a revenue stream perpetuated – and maybe even created – by these Western supplier states, especially the US.

Saudi Arabia's own military industry started to work on technologies as recently as 2017, with the launch of the Saudi Arabian Military Industry (SAMI) wholly owned by the Public Investment Fund.[60] What is more interesting is that SAMI appointed Andreas Schwer as chief executive, who is also on the management board of Germany's Rheinmetall AG, the "boss of combat systems," and a former employee of Airbus,[61] implying that the state-owned institution is left to Western control rather than a Saudi specialist. Consequently, even after the launching of the institution, Saudi Arabia signed a memorandum of understanding (MoU) with

[59] Emmons, "Secret Report Reveals Saudi Incompetence and Widespread Use of U.S. Weapons in Yemen," 3.

[60] "Saudi Arabian Military Industries (SAMI)," *SAMI*, accessed April 6, 2021, https://www.sami.com.sa/en.

[61] Katie Paul, "Saudi State-Owned Defence Company SAMI Taps Rheinmetall Executive as CEO," *Reuters*, published October 31, 2017, https://www.reuters.com/article/saudi-defence-idUSL8N1N62AM.

defence contractors Boeing, Lockheed Martin, Raytheon and General Dynamics as part of a $110 billion arms package in 2017.[62] Perhaps this was a sensible strategy for Saudi Arabia because starting from scratch by trial and error would be too costly. Since it takes money and time to invest in expertise, it is reasonable to believe that Saudi Arabia was dependent on Western technology purchases for much of the conflict in Yemen.

Using the armed forces comparison tool online, the difference in both military personnel and material between the US and Iran is evident, with the US being superior.[63] In addition, it is known that Saudi Arabia is not only getting support from the US but also the GCC countries. So, it is surprising that the Saudi Arabian military has been unable to end the conflict in Yemen. One explanation for this is that Western powers, led by the US, are using this conflict as a revenue flow, and thus, are not contributing to decisively ending the war. One way of strategising is possible: By selling less advanced materials to Saudi Arabia, an internal balance is created between the forces of Iran-backed opposition and the Saudi-led GCC. Another strategy to ensure the same result would be by selling advanced materials that are inappropriate for the current conflict. Both strategies are plausible for Western states since Saudi Arabia is one of the countries that buys military products rather than producing its own, indicating that it does not have the proper expertise, and thus, is reliant on what the manufacturing states offer to sell. I argue, however, that the latter is at play, in the following part, focusing on the strategy of selling advanced but inappropriate material by using the American Abrams Tank as an example component of the Saudi army purchases.

4.1. The M1 Abrams Tank – Advanced but Inappropriate

The Abrams Tank is referred to as one of the best battle tanks, and dubbed "the beast" after proving its power in the Gulf War of 1991.[64] Despite its sophisticated technology of computer-controlled firing systems,[65] simple Iranian-made anti-tank missiles used by Houthis,

[62] Paul.

[63] "USA vs Iran: Comparison Military Strength," *Armed Forces*, accessed July 30, 2021, https://armedforces.eu/compare/country_USA_vs_Iran.

[64] "M1 Abrams Main battle tank", published 2018, https://www.youtube.com/watch?v=2kTmsAAZYkc.

[65] "How does a Tank work? (M1A2 Abrams)", published 2020, https://www.youtube.com/watch?v=SdL55HWNPRM.

repeatedly destroyed the Abrams in Yemen.[66] Moreover, throughout the post-Cold War era, it has repeatedly been proven in Chechnya, Afghanistan, and Iraq that when tanks are used in unconventional conflicts, they become mobile bombs rather than armour that keeps the soldiers safe.[67] To make the Abrams Tank more up-to-date, the Americans added the TUSK System (Tank Urban Survival Kit) to strengthen the armour, and in turn, more powerful grenades were produced to damage and blow up the Abrams Tank equipped with the TUSK System.

Consequently, the Saudis are coming up with new deals to buy more Abrams Tanks, to recover or replace the ones that have been destroyed, creating a vicious cycle.[68] The problem here is that the conflict in Yemen is obviously not a conventional war, which makes the Abrams Tank – regardless of its power – largely irrelevant. The U.S. State Department and Pentagon, regardless of the reasons for losses of their tanks, continue to sell the same product to the Saudis at a high price, two examples being the 2016 deal amounting to $1.5 billion,[69] and another being the defence capabilities package that costs nearly $110 billion, including Abrams Tanks as well as ammunitions, helicopters, and combatant ships.[70]

It should also be noted that now with the added armour and technology, the production of tanks has become increasingly costly, making tanks a more luxurious product. States such as Canada and the Netherlands have decided that they will not purchase more tanks as they are too expensive and do not necessarily have a place on the modern battlefield.[71] Therefore, for tank producers, states such as Saudi Arabia that are still willing to pay for these tanks are valuable

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[66] Tyler Rogoway, "Houthi Rebels Destroy M1 Abrams Tanks with Basic Iranian Guided Missiles," *Jalopnik*, published August 25, 2015, https://foxtrotalpha.jalopnik.com/houthi-rebels-destroy-m1-abrams-tanks-with-basic-irania-1726478735.

[67] *The Age of Tanks*, directed by Florian Dedio, Barbara Necek, and Anna Kwak-Sialelli (2017; Lagardere Studios Distribution), https://www.lagardere-studiosdistribution.com/programme/en/4258/age-of-tanks.

[68] Marcus Weisberger, "Saudi Losses in Yemen War Exposed by US Tank Deal," *Defense One*, published August 9, 2016, https://www.defenseone.com/business/2016/08/us-tank-deal-exposes-saudi-losses-yemen-war/130623/.

[69] Defense Security Cooperation Agency, "Kingdom of Saudi Arabia - M1A2S Saudi Abrams Main Battle Tanks and M88A1/A2 Heavy Equipment Combat Utility Life Evacuation System (HERCULES) Armored Recovery Vehicles (ARV)," *Defense Security Cooperation Agency News Release Transmittal No. 16-22*, , published August 9, 2016, https://www.dsca.mil/major-arms-sales/kingdom-saudi-arabia-m1a2s-saudi-abrams-main-battle-tanks-and-m88ala2-heavy.

[70] "Fact Sheet: Intended Sales to Saudi Arabia via Foreign Military Sales," *Defense Security Cooperation Agency,* published May 20, 2017), accessed April 26, 2021, https://www.dsca.mil/news-media/news-archive/fact-sheet-intended-sales-saudi-arabia-foreign-military-sales.

[71] *The Age of Tanks*.

customers. They are the customers that should not be lost. The distinction between contributing to ending the war and contributing to the revenue can be made at this point: knowing Abrams Tanks, as well as most other military materials, Americans should make it clear to their counterpart that they might need something else. However, since they continue to sell the same battle tank, they are perpetuating the conflict by manufacturing a balance between the Saudi-led Coalition and the Iranian-backed Houthis.

5. Conclusion

This paper assessed the arguments behind the Saudi-led GCC's failure to end the devastating war in Yemen, even though they have the upper hand against the Iranian-backed Houthis, especially militarily. The arguments discussed, namely, the hearts and minds argument, the inadequate military argument, and the Western economic interests argument are all relevant to a certain extent. This paper presented the first two arguments which are more conventional and deliberated the limits of these explanations. After showing that both arguments are insufficient to explain the failure of the Saudi Arabian army to end the war, this paper proposed a rather unique argument that is critical of Western (mainly American) attitudes against the conflict in Yemen.

Noting the similar experiences of *artificial* divisions between the locals of a certain territory, I argue that the US and other Western states are using the conflict in Yemen as a flow of revenue as they constantly sell their military products – even the ones that Western states have abandoned themselves, such as tanks. The paper mentioned different layers of the conflict: a civil war between the government and opposition forces, a proxy war between Saudi Arabia and Iran, and lastly, a competition of indoctrination between AQAP and ISIS. My argument sheds light especially on the proxy war and helps to infer that while the conflict is perpetuated due to Saudi Arabia's dependence on Western military technology and Western powers' economic interests, dynamics in the two other layers continue to make the overall situation more complicated.

As stated before, the ongoing conflict in Yemen can be looked at from different angles. This paper incorporated the political and economic angles and revealed the implications of

them. Turning back to the humanitarian angle, it is a rather disturbing paradox that the US and other Western states, as well as the Gulf countries, are involved in such aggression in Yemen despite being members of the UN and its numerous conventions relating to the protection of human rights and definition of warfare and war crimes. Nevertheless, with the newly elected President Joe Biden, there seems to be some hope in decreasing the US involvement in the region as he announced "the war in Yemen must end" during his first major foreign policy focused speech.[72] Still, the policy suggestions of the President's speech must be followed with action for the betterment of the people of Yemen. Moreover, the situation in the region must be addressed immediately and decisively by the international community, making sure that governments are held responsible for their actions against international law and their accomplices.

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[72] "Yemen War: Joe Biden Ends Support for Operations in Foreign Policy Reset," *BBC News*, published February 5, 2021, https://www.bbc.com/news/world-middle-east-55941588.

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"The Worst Place in the World for Women"

Understanding the Causes of Conflict-Related Sexual Violence in the Democratic Republic of Congo: An Application of General Strain Theory

Coralie Gaia Niggeler

MSc in International Crime, Conflict and Criminology, Vrije Universiteit Amsterdam

Abstract

This paper explores the nature of conflict-related sexual violence committed by the State Armed Forces (FARDC) in the Democratic Republic of Congo, through the application of the general strain theory. Findings show that sexual violence committed by the FARDC is commonly used as a form of personal catharsis and emotional release from perceived strains, as opposed to resulting from sexual desires or external institutional pressures. Further, the most influential contextual elements present in the local context of the FARDC, and which particularly encourage the propagation of sexual violence, include female FARDC soldiers receiving desired military positions, the centrality of strains to personal notions of masculinity and aspirations, the dismantling of social cohesion through patronage networks, and a lack of behavioural coping options. In turn, these factors reduce the efficiency of non-criminal coping strategies. Hence, interventions aimed at reducing the propagation of conflict-related sexual violence may benefit from more bottom-up and inductive approaches improving the individual circumstances of soldiers as opposed to solely focusing upon organisational change and military reform.

Keywords: conflict-related sexual violence, general strain theory, Democratic Republic of Congo, theoretical criminology, civil conflict

1. Introduction

"The Worst Place in the World for Women"

The Democratic Republic of Congo (DRC) is deemed to be the "rape capital of the world," and "the worst place in the world for women."[1] The origin of this claim stems from the armed conflict that erupted in the eastern territories of the DRC in 1998, which continues spreading unprecedented levels of violence and destruction to this day.[2] In 2008, conflict-related deaths reached a high, with the war claiming approximately 45,000 lives per month.[3] Conflict-related sexual violence (CRSV) was, and arguably still is, the most widely used weapon in the DRC. It is defined as "rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity […] that is directly or indirectly linked to a conflict."[4] By approximations, CRSV has victimised a minimum of 200,000 women since the start of the armed conflict in the DRC.[5] A significant proportion of this violence can be attributed to the State Armed Forces – Forces Armées de la République Démocratique du Congo (FARDC).[6]

This paper aims at furthering the understanding of FARDC sexual violence, by applying Agnew's general strain theory (GST) to narratives found in available academic sources. Although this theory – which will be defined and addressed further in the subsequent section – has not been used to explain CRSV in the past, its breadth and relevance make its application to CRSV a valuable new avenue of analysis. Further, it will enable the

[1] Jack Kahorha, "The Worst Places in the World for Women: Congo," *The Guardian,* June 14, 2011, https://www.theguardian.com/world/2011/jun/14/worst-places-in-the-world-for-women-congo.

[2] Kjeld van Wieringen, "To Counter the Rationality of Sexual Violence: Existing and Potential Policies Against the Genocidal Use of Rape as a Weapon of War in the Democratic Republic of Congo," *Journal of International Humanitarian Action* 5, no. 8 (2020), https://doi.org/10.1186/s41018-020-00074-4.

[3] Peter Moszynski, "5.4 Million People Have Died in the Democratic Republic of Congo Since 1998 Because of Conflict, Report Says," *BMJ: British Medical Journal* 336 (2008): 235, https://doi.org/10.1136/bmj.39475.524282.DB.

[4] United Nations Secretary-General, *Conflict Related Sexual Violence: Report of the United Nations Secretary-General* (United Nations, New York, March 29, 2019), 3. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf.

[5] Maria Eriksson Baaz and Maria Stern, *Sexual violence as a Weapon of War?: Perceptions, Prescriptions, Problems in the Congo and Beyond* (London: Zed Books, 2013), 45

[6] Maria Eriksson Baaz and Maria Stern, "Making Sense of Violence: Voices of Soldiers in the Congo (DRC)," *The Journal of Modern African Studies* 46, no. 1 (2008): 60, https://doi.org/10.1017/S0022278X07003072.

contextualisation of CRSV, and assist the understanding of underlying motives that have potentially been overlooked in previous victim-oriented studies. Therefore, this paper seeks to answer the question: How can the causes of conflict-related sexual violence in the Congo (DRC) be understood in terms of Agnew's general strain theory?

Previous attempts at understanding the causes of CRSV have focused upon the exploration of victim testimonies and the framework of sexual violence as an institutionalised strategy.[7] However, to comprehend the fundamental reasons driving CRSV, it is essential to incorporate the perspective of the perpetrators. In attempting to understand the perpetrators' perspective, this paper is in no way seeking to justify or excuse their actions, nor to discredit the victims' perspective. Rather, the idea is that in trying to address CRSV, it is of importance to understand what is driving those who commit it, as this is of necessity to effectively prevent and counter its future commission.

To constructively explore the drivers of CRSV, this paper will first provide further information on the theoretical framework, namely GST and its relevance in Section 2. This will be followed by Section 3 which will briefly explore the contextual background of the conflict in the DRC, particularly focusing upon conflict-related sexual violence. Finally, Section 4 will delve into the analysis by attempting to apply Agnew's theory to the context of CRSV in the DRC. This section will focus upon the identification of specific strains, complemented by Section 5 which will recognise the contextual characteristics of the conflict that increase the likelihood of strains resulting in CRSV. The paper will be concluded with a discussion of the analysis' implications for further academic research and policy, and a final summary.

2. Theoretical Framework

2.1. Agnew's General Strain Theory

The general strain theory argues that strains increase the perception of negative emotions, which in turn create internal tensions resulting in corrective actions, commonly

[7] Susan Bartels et al., "Militarized Sexual Violence in South Kivu, Democratic Republic of Congo," *Journal of Interpersonal Violence* 28, no. 2 (2013), https://doi.org/10.1177/0886260512454742; Anna Maedl, "Rape as a Weapon of War in the Eastern DRC?: The Victims' Perspective," *Human Rights Quarterly* 33, no. 1 (2011), https://doi.org/10.1353/hrq.2011.0005.

crime.[8] Agnew defines strain as "negative relationships with others: relationships in which the individual is not treated as he or she wants to be treated."[9] The three main types of strain refer to three different negative situations. Specifically, circumstances which actively "(1) prevent one from achieving positively valued goals [goal blockage], (2) present or threaten to present one with noxious or negative stimuli, (3) remove or threaten to remove positively valued stimuli […]."[10] The first explains negative emotions and resulting deviance through a disjunction between aspirations and actual achievements. The second states that the presentation of negative stimuli may encourage deviance through an attempt at escaping, alleviating, managing, or seeking revenge for the presentation of said negative stimuli. Finally, the third may lead to deviance as the individual attempts to prevent, retrieve, or substitute these lost stimuli.[11]

In 2001, Agnew published a further paper in which he explored the contextual factors of strains that are most likely to cause said strains to result in criminal behaviour. He concluded that "strains are said to be most likely to result in crime when they (1) are seen as unjust, (2) are seen as high in magnitude, (3) are associated with low social control, and (4) create some pressure or incentive to engage in criminal coping."[12]

When strains are perceived as unjust, they are more likely to provoke negative emotions which contribute to criminal behaviour, particularly anger, which tends to disrupt cognitive processes, obstructing non-criminal coping.[13] In addition, a strain of higher magnitude is more difficult to cognitively minimise, meaning that non-criminal coping mechanisms tend to be less effective.[14] When a strain is associated with low social control, it reduces the cost of crime for the individual, whilst also lessening the ability to cope in a non-criminal manner, due to a lack

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[8] Robert Agnew, "Foundation for a General Strain Theory of Crime and Delinquency," *Criminology* 30, no. 1 (1992), https://doi.org/10.1111/j.1745-9125.1992.tb01093.x.

[9] Agnew, 48.

[10] Agnew, 50.

[11] Agnew.

[12] Robert Agnew, "Building on the Foundation of General Strain Theory: Specifying the Types of Strain Most Likely to Lead to Crime and Delinquency," *Journal of Research in Crime and Delinquency* 38, no. 4 (2001): 319, https://doi.org/10.1177/0022427801038004001.

[13] Agnew.

[14] Agnew.

of conventional commitments.[15] Finally, strains particularly create pressure to engage in criminal coping when they are associated with other individuals who model criminal coping as the most effective way of dealing with said strain,[16] substantiated through a lack of behavioural options.

2.2. Relevance with Regards to Conflict Related Sexual Violence

Although Agnew principally focused upon adolescent delinquency when developing GST, it remains a theory that can be extrapolated to different scenarios because of its breadth.[17] This is particularly the case because Agnew sought to develop a general strain theory that built upon the limitations of previous strain theories, particularly Merton's theory of social strain. Merton's theory posits that strain results from a lack of alignment between socially accepted aspirations (i.e. The American Dream) and the means available to people to achieve these objectives.[18] Hence, its application remains very limited as it primarily focuses upon lower-class delinquency, whilst solely emphasising social stratification as a barrier to achieving goals. In addition, it is unable to explain why some individuals who experience strain do not turn to criminal activities as coping measures.[19]

Contrastingly, Agnew introduces the aforementioned three strain categories in order to explain individual differences. Hence, said categories are applicable to a vast array of individuals, irrespective of their social, economic, or cultural background. Additionally, the general strain theory's acknowledgment of the multitude of factors that may contribute to crime enables it to be closely related to other theories of crime.[20] Particularly it addresses both cognitive and behavioural aspects that are conducive to crime, examples of the former would include the notion that negative emotions obstruct effective cognitive processing, whilst the latter can be found in the ideas pertaining to the social learning aspect of crime, addressed

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[15] Agnew.

[16] Agnew.

[17] Tim Newburn, *Criminology: A Very Short Introduction* (Oxford: Oxford University Press, 2018), 193-194.

[18] Newburn.

[19] Newburn.

[20] Robert Agnew and Timothy Brezina, "General Strain Theory," in *Handbook on Crime and Deviance,* eds. Marvin D. Krohn, Nicole Hendrix, Gina Penly Hall, and Alan J. Lizotte (Cham: Springer, 2019).

within the contextual factors of GST.[21] The inclusion of other theories and perspectives enables GST to provide a holistic and complete approach to understanding the commission of crimes. Hence, GST remains one of the leading theories of crime and delinquency within the criminological field,[22] thus its application in explaining CRSV seems undeniably rational.

3. Congolese Civil Conflict

3.1. The Origins of War

The ongoing conflict in the DRC originated in 1998, and is, as a result of the conflict's immersion in further African hostilities, referred to as "Africa's First World War", principally involving: the Rwandan genocide, the Ugandan, Angolan, and Sudanese civil wars.[23] Following the Rwandan genocide in 1995, Hutus and Tutsis fled to eastern DRC which resulted in the formation of armed groups, and further opportunistic rebel groups.[24] Rebel groups and third-party involvement in the conflict was fuelled by the DRC's extensive mineral wealth in the eastern part of the country.[25] In 1998, Uganda and Rwanda began supporting these anti-government rebel groups, which enabled them to control and exploit the resource rich areas.[26] Their support was prompted as the DRC's president, Laurent Kabila, began dismissing high-ranking Rwandan officials in the DRC's government in 1998; despite Rwandan and Ugandan support during Laurent Kabila's coup against former president Mobutu Sese Seko in 1996.[27] Hence, between 1998 and 2003, conflict broke out between the rebel groups, backed by Uganda and Rwandan forces, and government forces supported by Angola, Namibia, and Zimbabwe.[28] The conflict over resources, the collapse of state functions, and wide-scale poverty contributed to the escalation of violence.[29]

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[21] Agnew and Brezina.

[22] Nina Barbieri et al., "Assessing General Strain Theory and Measures of Victimization, 2002–2018," *Aggression and Violent Behavior* 49, (2019) Article 101304, https://doi.org/10.1016/j.avb.2019.06.005.

[23] Sara Meger, "Rape of the Congo: Understanding Sexual Violence in the Conflict in the Democratic Republic of Congo," *Journal of Contemporary African Studies* 28, no. 2 (2010): 124, https://doi.org/10.1080/02589001003736728.

[24] Council on Foreign Relations, "Violence in the Democratic Republic of Congo," last modified August 5, 2021, https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo.

[25] Meger, "Rape of the Congo," 125.

[26] Meger.

[27] Meger.

[28] Council on Foreign Relations, "Violence in the Democratic Republic of Congo."

[29] Baaz and Stern, "Making Sense of Violence," 62.

There have been various attempts at restoring peace within the DRC, principally through a peace deal signed between the governments of Rwanda and the DRC in 2002 and the nationally-led establishment of a transitional government in 2003.[30] However, conflict and violence between numerous militia groups remains widely present in the country, particularly in the eastern regions of Ituri and North and South Kivu, bordering Uganda and Rwanda. This can primarily be attributed to a lack of governance, weak institutions, and protracted corruption.[31]

3.2. Conflict-Related Sexual Violence in the DRC and the FARDC

In times of war, CRSV is frequently perceived as an inevitable collateral damage, explained through the disruption of morals and societal norms.[32] CRSV in the DRC is of an especially brutal nature, with acts being committed against girls as young as six months old.[33]

The study of sexual violence in the DRC is particularly puzzling because combatants openly acknowledge that the act of rape is immoral, in both military and non-military environments, however, they excuse it as a product of war. Prior to the outbreak of war, rape was seen as a grave crime. A former FARDC soldier who became a pastor after disarming stated, "God forbade this deed because the raped person is marked for the rest of her life,"[34] but the traditional system – and with it arguably traditional values – fell apart as the conflict progressed.[35] Hence, this enabled perpetrators to deem their acts of sexual violence as exceptional, and attributable to the circumstances of war.

After the creation of a transitional government in June 2003, the FARDC was created through the process of *brassage*; the mixing of soldiers from the main rebel groups in order to

[30] Council on Foreign Relations, "Violence in the Democratic Republic of Congo."

[31] Council on Foreign Relations.

[32] Meger, "Rape of the Congo," 119.

[33] Michelle Nichols, "Babies as Young as Six Months Victims of Rape in War: U.N. Envoy," *Reuters,* April 17, 2013, https://www.reuters.com/article/us-war-rape-un/babies-as-young-as-six-months-victims-of-rape-in-war-u-n-envoy-idUSBRE93G13U20130417.

[34] *Weapon of War*, directed by Ilse van Velzen and Femke van Velzen, 2009. Amsterdam, IF Productions. https://www.idfa.nl/en/film/546ec94b-99d9-49eb-97b8-e3208567482b/weapon-of-war, 0:27:39.

[35] Maria Eriksson Baaz and Maria Stern, "Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)," *International Studies Quarterly* 53, no. 2 (2009), https://www.jstor.org/stable/27735106.

form new brigades.[36] This mixing of rebel groups, along with the fact that by 2009 the FARDC comprised an estimated 60,000 combatants, aggravated issues of control, regular pay, discipline etc. leading to a recurrent abuse of power.[37] According to The United Nations Organization Mission in the Democratic Republic of Congo (MONUC), the FARDC accounted for 40% of the sexual violence committed in the DRC in the first six months of 2007.[38] In addition, there have been a series of events reflecting the widespread involvement of the FARDC in CRSV, notably, the conviction and imprisonment of Lt. Col. Kibibi Mutware of the FARDC, in 2011, for instigating mass rape, and a 2014 landmark case where 30 members of the FARDC were tried for committing rape.[39]

Finally, the FARDC did not predominantly use rape as a strategic tool, and none of the soldiers reported being ordered to rape or abduct individuals.[40] This makes the FARDC an interesting case study as the removal of a coercive external order, originating from a political or military institution, may mean that motives to rape are inherently more personal.[41] This allows the study of how a conflict environment may create internal pressures and strains.

4. Identifying Strains

General strain theory centres upon the notion that strains increase the perception of negative emotions, which create internal tensions commonly resulting in delinquency.[42] Members of the FARDC have extensively described such sentiments. In order to understand the effect of strains on the individual, and whether they promote deviance (i.e. sexual violence), this section will align them with each of Agnew's aforementioned classes of strain.

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[36] "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo," Human Rights Watch, July 16, 2009, https://www.hrw.org/report/2009/07/16/soldiers-who-rape-commanders-who-condone/sexual-violence-and-military-reform.

[37] Human Rights Watch, "Soldiers Who Rape, Commanders Who Condone."

[38] MONUC, "DR Congo: Monthly Human Rights Assessment – Nov 2007," Relief Web, January 21, 2008, https://reliefweb.int/report/democratic-republic-congo/dr-congo-monthly-human-rights-assessment-nov-2007.

[39] Stacy Banwell, "Conflict Related Sexual Violence in the DRC," in *Gender and the Violence(s) of War and Armed Conflict: More Dangerous to be a Woman?,* ed. Stacy Banwell (Bingley, UK: Emerald Publishing Limited, 2020), 50.

[40] Gerald Schneider, Lilli Banholzer, and Laura Albarracin, "Ordered Rape: A Principal-Agent Analysis of Wartime Sexual Violence in the DR Congo," *Violence Against Women* 21, no. 11 (2015): 1353, https://doi.org/10.1177/1077801215593645.

[41] Schneider, Banholzer and Albarracin, "Ordered Rape."

[42] Agnew, "Foundation for General Strain Theory."

4.1. Failure to Achieve Positively Valued Stimuli

The failure of achieving positively valued stimuli causes a separation between ambitions and reality, causing internal tensions which may result in deviance.[43]

4.1.1. The Règlement Militaire (RM)

In the FARDC, the Règlement Militaire – military rules prescribing guidelines to which FARDC members are expected to adhere – play an important role in regulating the behaviour of soldiers, and ascribe what is perceived as proper conduct. Under the RM, the ideal soldier is described as being dignified, disciplined, educated, and a protector of the nation.[44] FARDC members explicitly described the prohibition of sexual violence under the RM. A sub-lieutenant noted; "in the Règlement Militaire […] we are not supposed to take people's women. That is bad."[45]

However, grievances shared by FARDC soldiers include poverty, hunger, and lack of medical care, brought on as a result of abandonment from their superiors. Soldiers explained; "there are no bad soldiers. It is our leaders who are bad."[46] "We fought for them but weren't paid. That's why we asked the population for food so we could survive,"[47] explained another soldier. This lack of support eventually forced the soldiers to get involved in activities that fundamentally contradicted RM in order to survive and provide for their families. This included stealing from civilians and collecting illegal taxes.[48]

Countering the notions of RM failed to create a positively valued stimulus for the members of the FARDC. The respected image of an ideal soldier, adhering to RM, remained out of reach. In turn, the soldiers began experiencing negative feelings and adopted aggressive coping mechanisms. "[W]e smoked weed, we beat people, we raped, we did lots of bad things. We were like animals,"[49] are some of the accounts of the soldiers. Others had this to say about their acts: "why do we commit rapes? Poverty and suffering"[50] Since the idea of a perfect

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[43] Agnew.
[44] Baaz and Stern, "Making Sense of Violence," 74.
[45] Baaz and Stern, 75.
[46] Baaz and Stern, 77.
[47] *Weapon of War,* 0:07:27.
[48] Baaz and Stern, "Making Sense of Violence," 76.
[49] *Weapon of War,* 0:05:55.
[50] Baaz and Stern, "Making Sense of Violence," 77.

soldier under RM was unattainable, the soldiers arguably may have felt an urge to contradict the very foundations of what it stood for. The most straightforward way was to attack those that should be protected under RM, the civil society, with women and girls being the easiest targets. The ensuing sexual violence, committed as a form of catharsis, resulted in severely damaged consciences. Accounts such as "I did a lot of bad things, I raped girls and women. I'm suffering from my conscience" abound.[51] Whilst by no means excusing such actions, this perspective substantiates the idea of coping with external driving factors (strains) as opposed to intrinsic desires.

In turn, this aggression caused civil society to rapidly replace the respect and admiration, previously felt for the armed forces, with fear and disrespect. In the words of some soldiers, "they [the civilians] do not understand. They no longer respect us. They see us as useless people […]. Of course, they also fear us because of some of the bad things people in uniforms do."[52] Protecting a civil society which respected and honoured their armed forces was a substantial element under RM. This meant that the ensuing civil disrespect highlighted the failure of the soldiers to attain the RM ideals.

4.1.2. Men's Role as Providers

The dominant ideal of masculinity in the DRC relies heavily on the notion of men being providers.[53] Providing for families was perceived as being necessary to keep their wives faithful.[54] However, poverty prevented soldiers from achieving this positively valued stimulus. The ensuing negative sentiments triggered CRSV which temporarily enhanced their dominance and heterosexuality, and also fulfilled their image of providers.[55] Hence, this form of sexual violence was a display of power,[56] triggered by feelings of anger and failure, specifically a failure of achieving the role of a provider, as opposed to purely sexual desires.

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[51] *Weapon of War,* 0:41:50.

[52] Baaz and Stern, "Making Sense of Violence," 74.

[53] Hanno Brankamp, "Hegemonic Masculinity, Victimhood and Male Bodies as 'Battlefields' in Eastern DR Congo," *Student Journal of International Relations 2015* 2, no. 1 (2015).

[54] Meger, "Rape of the Congo," 128.

[55] Baaz and Stern, "Why Do Soldiers Rape?" 505-508.

[56] Brankamp, "Hegemonic Masculinity."

4.2. Presence of Negative Stimuli

Negative stimuli encourage deviance as it can be used as an outlet to escape or manage the negative emotions associated with said stimuli.[57]

4.2.1. Poverty, Suffering, and Lack of Acknowledgment

The presence of negative stimuli largely coincides with the failure of achieving positively valued stimuli, as they tend to prevent the latter from occurring. They also have a direct effect on the propagation of CRSV. Due to the lack of acknowledgment and appreciation from superiors, FARDC soldiers began viewing the conquering of villages and the ensuing rape and plunder as their reward. According to them, "when you arrive in a village and conquer it, everything you find is yours. The women, the goods, everything is yours."[58] Arguably, they commit rape due to its severe consequences and repercussions on the society, allowing them to get rid of their negative stimuli through the destruction of something else.[59] It could be inferred that soldiers found it to be the "best" way of expressing frustrations with the system, and also a way of gaining attention, irrespective of its positive or negative connotations.

Furthermore, in the army, both female and male soldiers noted the close interconnection between sexuality and money. One corporal stated; "sex and money go hand in hand. If you have no money, you will have no sex."[60] Hence, the presence of the negative stimuli of poverty and suffering also pushed soldiers towards sexual violence, in order to deal with the resulting lack of legitimate sexual opportunities. In the words of a FARDC lieutenant colonel, "a soldier needs a bit of money [in] his pocket, and he needs to have leave. If that would happen it would reduce the rapes a lot."[61] Sadly, conflict also pushes more women towards transactional sex, as their husbands are conscripted, and they are left primarily in charge of the family income.[62] Hence, in this circumstance, CRSV finds itself in a spiral of ongoing violence. Conflict creates

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[57] Agnew, "Foundation for General Strain Theory."

[58] *Weapon of War,* 0:24:39.

[59] Birthe Steiner et al., "Sexual Violence in the Protracted Conflict of the DRC Programming for Rape Survivors in South Kivu," *Conflict and Health* 3, no. 3 (2009), https://doi.org/10.1186/1752-1505-3-3.

[60] Baaz and Stern, "Why Do Soldiers Rape?" 510.

[61] Baaz and Stern, 509.

[62] Beth Maclin et al., "'They Have Embraced a Different Behaviour': Transactional Sex and Family Dynamics in Eastern Congo's Conflict," *Culture, Health & Sexuality* 17, no. 1 (2015), https://doi.org/10.1080/13691058.2014.951395.

poverty-stricken soldiers, whilst also forcing women to use sex as a commodity, creating the very division that encourages CRSV.

4.2.2. Female Soldiers

Female soldiers were common in the FARDC, however their presence was seen as being corrosive of fragile militarised masculinities.[63] Thus, female military involvement may also be classified as the presence of a negative stimulus. The presence of women feminised the militarised sphere hence, the soldiers needed to adjust to female presence whilst avoiding the destruction of masculinity upon which the army was founded.[64] This was often done by viewing women as “a temporary intruder who serves as an outlet or receptacle for male sexual lust.”[65] This is a direct example of how sexual violence was being used to cope with a negative stimulus. However, this coping mechanism was particularly damaging as the internal sexual violence committed amidst the armed forces facilitated the spill-over towards sexual violence being committed against the civil society. More disturbing is the fact that the portrayal of women as a receptacle for male sexual desire was also internalised by the female soldiers present in the FARDC ranks, particularly in reference to the CRSV committed against civilian women.[66] This shows the degree to which the perspective of women as negative stimuli – that need to be weakened through the use of violence – was spread and internalised within the armed forces.

4.3. Removal of Positively Valued Stimuli

The removal of positively valued stimuli may trigger deviance as an attempt to replace or recover said stimulus.[67]

4.3.1. Loss of Superiority Towards Wives

In the DRC women’s sexuality is often portrayed as being motivated by economic needs. A FARDC male sergeant explained; “[when] I have no money to give for food she will get tired and when I am at work she will give her body to another man just to get a little

[63] Baaz and Stern, “Why Do Soldiers Rape?” 505-508.
[64] Baaz and Stern.
[65] Baaz and Stern, 507.
[66] Baaz and Stern, 509.
[67] Agnew, “Foundation for General Strain Theory.”

something to feed the children."[68] Hence, if a man does not have the time or financial capabilities to provide and care for his family, as a result of being conscripted, it is commonly believed that their wives will no longer acknowledge their superiority. This comprises the removal of a positively valued stimulus. Therefore, with reference to the general strain theory,[69] the complete or anticipated removal of their wife's respect may explain sexual violence as a way of coping with this lost stimulus. The idea of coercing or retrieving lost respect or physical affection through violence was not uncommon.

5. Contextual Elements of Strains

Agnew[70] explored contextual elements of strains that particularly encourage criminal behaviour (i.e., sexual violence). This section will explore whether said contextual factors are described in FARDC narratives, in order to analyse whether the context in the DRC is particularly conducive to CRSV.

5.1. Perceived as Unjust

In terms of the FARDC, most of the soldiers shared a belief that a successful soldier (according to RM), was "an educated soldier who does administrative work, works in the military courts […] not the tough, brave soldier fighting at the front line."[71] Many FARDC members did not join the army to engage in violence but rather as a last resort. It can be inferred that their perspective of masculinity holds Western influences; "a wealthy urban man who works in an office, owns a luxurious house and a nice car."[72]

Intensifying this strain is the fact that the aforementioned desirable positions are administered to the female soldiers in the FARDC. A male corporal noted thus; "our superiors say that they are fair – that is equality. But they are not. They give the women all the good jobs. […] If you look at the administrative jobs – it is only women!"[73] In their perspective, this aggravates the discord between their status as soldiers and their view of an ideal solider. The strain is seen as unfair, and increases the general hostility felt towards women. This has the

[68] Baaz and Stern, "Why Do Soldiers Rape?" 507.
[69] Agnew, "Foundation for General Strain Theory."
[70] Agnew, "Building on the Foundation."
[71] Baaz and Stern, "Making Sense of Violence," 70.
[72] Baaz and Stern, 71.
[73] Baaz and Stern, 72.

potential of increasing CRSV as individuals are less likely to perceive guilt when they believe that the injustice they face warrants the crime they commit.

5.2. High in Magnitude

Despite the magnitude of a strain being perceived subjectively, there are some measures that can be applied in an attempt at understanding its degree. These are the centrality, currency, and frequency of the strain.[74] All of the strains mentioned in Section 4 are of a long-term nature, and were present during the entirety of the soldiers' career in the FARDC. The strains were central to the soldiers as they threatened their core masculine and aspirational values. Hence, it can be inferred that the subjective strains felt by the soldiers were of an intense and invasive nature.

5.3. Associated with Low Social Control

The FARDC soldiers have been distanced from familial and social ties in two ways: due to the indirect result of the aforementioned strains, or, more generally, as a common consequence of joining the armed forces. Furthermore, the patronage networks in the FARDC severely undermine cohesion and bonding between peers and commanders. This is due to the fact that patrons differ in power (services in the FARDC are heavily dependent upon negotiations), meaning that some colleagues in the same unit can be more well off compared to others.[75] As a former member of the FARDC stated, "it hurts me to see my comrades get paid well and not me."[76] Hence, soldiers find themselves in environments with low social control, whilst simultaneously being indoctrinated into a militarised environment in which sexual violence plays a dominant role in the overarching discourse – particularly, the conception of an ideal soldier and the inability of the soldiers to adhere to such an image as discussed previously.

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[74] Agnew, "Building on the Foundation," 332-335.

[75] Judith Verweijen, "Soldiers Without an Army? Patronage Networks and Cohesion in the Armed Forces of the DR Congo," *Armed Forces & Society* 44, no. 4 (2018), https://doi.org/10.1177/0095327X17740096.

[76] *Weapon of War,* 0:46:30.

5.4. Lack of Behavioural Options Incentivising Criminal Coping

Strains tend to incentivise criminal coping when subcultural beliefs define the strain as unjust and high in magnitude.[77] Hence, this contextual element tends to be embedded in the aforementioned ones, and is, to an extent, already satisfied. Additionally, a strain particularly incentivises criminal coping in the context of a lack, or complete absence of other behavioural options. This is illustrated within the narrative of various FARDC soldiers, as they do not qualify their violence as normal, as quoted from a former soldier: "my Captain, please do your best to make me a civilian again,"[78] but still engage in it to challenge the idolised image of the soldier they cannot attain. From this, it may be deduced that their limited behavioural options of either accepting their predicament or rebelling against it (with the former becoming less bearable as strains become more intense) may account for incentivising this criminal behaviour. In addition to this, criminal coping is imitated and reinforced by fellow soldiers.

6. Discussion

6.1. Methodological Limitations

As mentioned in Section 2, GST was initially developed to explore teenage delinquency. Hence, the strain categories may not fully encompass those experienced in times of conflict. Some elements cannot be applied to said categories without extreme interpretations, especially because they focus primarily on inter-personal relations, which often disregards the macro- and meso-level influences of war. In addition, GST does explain deviance, however it is not specific to sexual violence, hence it may be believed that this analysis distorts the essence of the theory, making it less reliable. Therefore, it may be beneficial to apply a further theory alongside Agnew's, to expand the scope of analysis.

Finally, the findings of this analysis may be difficult to generalise seeing as CRSV is strongly dependent upon local, cultural, and societal perceptions.

With these limitations in mind, the paper will now proceed to the policy and theoretical implications of its analysis.

[77] Agnew, "Building on the Foundation."
[78] *Weapon of War*, 0:46:23.

6.2. Policy and Theoretical Implications

Conflict-related sexual violence does not occur in a vacuum. Instead, it is the result of the confluence of personal, relational, and societal circumstances. This is important to note because personal circumstances seem to have been neglected in past policies which principally aimed at institutionalising changes. Although adopting a more individually-focused perspective may provide for viable approaches to the effective reduction of CRSV, it is essential to reiterate that in doing so, this paper is in no way diminishing the experience of the victims, and by no means excusing the acts committed by the perpetrators.

In order to target personal circumstances, it would be beneficial to complement the already established top-down interventions focusing on organisational change and military reform,[79] with a bottom-up and inductive approach improving the individual circumstances of soldiers. Said circumstances may have the potential of reducing the impact of external relational and societal effects, which are both more difficult to control and account for, and from where strains tend to originate.

Granting soldiers access to psychological support may be fruitful as it will provide them with an alternate method of emotional release, in turn reducing the propagation of CRSV; especially as this is associated with a higher cost. This is apparent in the long-term psychological impact that the sexual violation had on the conscience of FARDC soldiers. Furthermore, the establishment of discussion forums may be beneficial, as open discussion may aid reflection, resulting in behavioural changes. This could lessen the number of individuals committing CRSV to cope with their frustrations.

Finally, it is important to attempt to understand why CRSV in the DRC is of a particularly brutal nature. Exploring this poses challenges and warrants extensive research, as the source of the brutality could be found in, arguably, all levels of society, including in the personal dispositions of individuals, inter-personal influences, publicly held beliefs on gender

[79] Anette B. Houge and Kjersti Lohne, "End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law," *Law & Society Review* 51, no. 4 (2017), https://doi.org/10.1111/lasr.12294; Louise Olsson et al., "Peacekeeping Prevention: Strengthening Efforts to Preempt Conflict-Related Sexual Violence," *International Peacekeeping* 27, no. 4 (2020), https://doi.org/10.1080/13533312.2020.1782752.

relations, etc. However, the contextual elements increasing strain intensity and thus ensuing violence, mentioned in Section 6, may be a viable starting point, as FARDC members have extensively described scenarios that line up with Agnew's contextual categories. In turn, this may increase the importance of adopting a broad multi-level intervention, in order to target contextual factors that may arguably account for the inherent cruelty of CRSV. However, further investigation will be necessary to, not only list possible contextual elements, but also discern which ones are the most influential, and thus should take precedence in interventions.

7. Conclusion

7.1. Cathartic Properties of Conflict-Related Sexual Violence

This paper used GST to understand, but under no circumstances excuse, the causes of CRSV committed by the FARDC in the Congo (DRC). The application of GST facilitated the categorisation of the factors facilitating CRSV, and their independent relation to sexual violence. This study concluded that sexual violence was committed as a result of a variety of strains. Particularly, this paper analysed the failure of achieving positively valued stimuli (RM, and the male role of providers), the presence of negative stimuli (poverty, suffering, a lack of acknowledgment, and female FARDC soldiers), and the removal of positively valued stimuli (superiority towards wives). Hence, it may be inferred that sexual violence may commonly be used as a form of personal catharsis and emotional release from strains, as opposed to solely resulting from sexual desires, or external institutional pressures, particularly the notion of rape being used as a weapon of war.

The comprehension of internal motives and strains was substantiated by the identification of contextual elements that enforced said strains and thus ensuing CRSV. These included, female FARDC soldiers receiving desired military positions, the centrality of strains to personal notions of masculinity and aspirations, the dismantling of social cohesion by patronage networks, and a lack of behavioural options, incentivising criminal coping. The presence of these contextual elements meant that strains would become more intense, reducing the efficiency and ability of non-criminal coping for FARDC members.

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A Comparative Study of War Crimes Prosecutions by Bosnia and Herzegovina and Serbia

Eleanor Whitchurch

LLM in Criminal Law and Criminal Justice, University of Edinburgh

Abstract

This paper contrasts the diverging war crimes prosecution efforts of Serbia and of Bosnia and Herzegovina with the aim of determining which factors played a role in the radically different outcomes, and to what extent. It will measure three elements: the effect of international incentives, structural judicial challenges, and ethnic composition, in order to establish which element played the most prominent role in the strikingly lower effectiveness and efficiency of war crimes prosecutions by Serbia in comparison to Bosnia and Herzegovina. The findings suggest that ethnic composition has the strongest influence over the degree to which war crimes prosecutions are pursued, and that this can consequently determine the effectiveness of international incentives. These findings will allow for a better understanding of the success of past post-conflict criminal prosecutions. This enhanced understanding will in turn inform future war crimes prosecutions and help shape measures that could be taken to mitigate the destructive effects of the most prominent spoiling components.

Keywords: war crimes, nationbuilding, peacebuilding, transitional justice, international crimes prosecution

1. Introduction

Nearly 25 years after the conclusion of the Bosnian war, in which primarily ethnic Serbs committed large-scale atrocities against predominantly Muslim Bosnians,[1] Serbia and Bosnia and Herzegovina (BiH) continue to strongly diverge in the intensity of their war crimes prosecution efforts. Upon its closure in 2017, the International Criminal Tribunal for the former Yugoslavia (ICTY), a United Nations-led court, implemented to prosecute war crimes that occurred during the Balkan conflicts of the 1990s,[2] observed a profound lack of cooperation from Serbia, which stood in stark contrast with the commitment to promoting criminal accountability.

Regarding Serbia, the ICTY noted that "positive results in war crimes investigations and prosecutions remain very limited,"[3] "impunity for many well-established crimes remains the norm"[4] and "the absence of political will to cooperate with the Tribunal further calls into question the country's commitment to justice for war crimes and its adherence to the rule of law."[5] In contrast, it stated that BiH "continued to investigate and prosecute complex cases… including cases involving senior- and mid-level suspects"[6] and that "these results demonstrate again that national prosecutions, appropriately supported by international partners, can meaningfully advance accountability."[7]

Against this background, this paper evaluates Serbian and BiH war crimes prosecution efforts by measuring caseload, conviction rates, criminal profiles, and international cooperation. It subsequently assesses the degree to which international influences, technical issues, and ethnic compositions have affected these results. This paper seeks to answer the following question that has relevance to other post-conflict nation-building efforts: Which factors have the most eroding effect on international criminal prosecutions? It concludes that

[1] "Balkans War: A Brief Guide," BBC, March 18, 2016, https://www.bbc.com/news/world-europe-17632399.

[2] "About the ICTY," International Criminal Tribunal for the Former Yugoslavia, accessed on April 11, 2021, https://www.icty.org/en/about.

[3] Untied Nations, "Report of the International Tribunal for the Former Yugoslavia," August 1, 2017, 15, https://www.icty.org/x/file/About/Reports and Publications/AnnualReports/annual_report_2017_en.pdf.

[4] United Nations.

[5] United Nations, 13.

[6] United Nations, 15.

[7] United Nations.

ethnic composition trumps international incentives, technical proficiency, and organisational effectiveness in determining war crimes prosecution outcomes.

2. A Quantitative Analysis of War Crimes Prosecution: Serbia vs. BiH

Both Serbia and BiH have a special department responsible for prosecuting the bulk of war crimes. The Serbian Office of the War Crimes Prosecutor (OWCP) was founded on 1 July 2003,[8] based on inter alia the principles of cooperation with the ICTY and independence from politics.[9] The Bosnian Special Department for War Crimes was established within the Prosecutor's Office (PO) in December 2004, nearly 18 months later.[10] However, in BiH, entity and district level courts have played an important role in bringing war crimes cases to completion, as have the Higher Court and Court of Appeal of Belgrade in Serbia. The following data primarily pertain to the OWCP and PO, but, for purposes of contextualisation, it also relates to the Higher Court and Court of Appeal of Belgrade as well as local Bosnian courts.

According to its website, the OWCP has concluded a total of 66 war crimes cases, convicting 83 accused and acquitting 49.[11] It claims to currently be handling 13 cases comprising 43 defendants, and an additional 14 cases, with 74 defendants, at the investigative stage.[12] European Union (EU) statistics show that an additional 2,382 cases remain at the pre-investigation stage.[13] In addition to the OWCP, the War Crimes Department of the Higher Court and Court of Appeal of Belgrade conducted 26 cases between 2004 and 2013, which resulted in 55 convictions and 32 acquittals.[14] The OWCP issued no indictments of its own in

[8] "Foundation," Office of the War Crimes Prosecutor, accessed on December 1, 2019, https://www.tuzilastvorz.org.rs/en/about-us/foundation.

[9] "Goals and Strategy," Office of the War Crimes Prosecutor, accessed on December 1, 2019, https://www.tuzilastvorz.org.rs/en/about-us/goals-and-strategy.

[10] "Department I (Special Department for War Crimes)," The Prosecutor's Office of Bosnia and Herzegovina, accessed on December 1, 2019, http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=4&jezik=e.

[11] "Statistics," Office of the War Crimes Prosecutor, accessed on December 1, 2019, https://www.tuzilastvorz.org.rs/en/cases/statistics.

[12] Office of the War Crimes Prosecutor.

[13] European Commission, "Serbia 2019 Report: Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2019 Communication on EU Enlargement Policy," May 29, 2019, 18, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

[14] Humanitarian Law Center, "Ten Years of War Crimes Prosecutions in Serbia: Contours of Justice: Analysis of the Prosecution of War Crimes in Serbia 2004-2013," 2014, 39, http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf.

2016[15] or 2017, but instead only received cases by transferal from inter alia BiH.[16] Out of all the criminal cases filed in Serbia between 2003 and 2018, only 13 involved mid-level officials and virtually none high-ranking officers.[17] The case against Yugoslav Army General Dragan Živanović constituted the only investigation into a high-level official. This investigation into the case was completed in 2016, but dropped in 2017 due to insufficient evidence to prosecute.[18] Moreover, only one case ever concerned events that occurred on Serbian soil, and it was referred by the Croatian Prosecutor's office and involved a low-ranked police official.[19]

The official Bosnian PO website describes the department as "an institution with the highest number of defendants in the international context after World War II and the Nuremberg and Tokyo Tribunals."[20] Between 2004 and 2018, 217 war crimes trials were completed at the national level, including a number of high-level cases.[21] Between 2010 and 2018, the PO transferred an additional 501 cases to the entity and district courts of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko.[22]

These statistics indicate the divergence in prosecutorial performance between Serbia and BiH, on which this paper will further elaborate. BiH has consistently managed a significantly greater caseload than Serbia, while targeting perpetrators at different levels, including high-ranking officers, whereas Serbia has noticeably failed to hold higher-level officials accountable. This apparent lack of commitment to war crimes prosecution from Serbia is further reflected in the comparative number of requests for international assistance. The United Nations International Residual Mechanism for Criminal Tribunals (IRMCT), instituted in 2010 to take over the functions of the international tribunals for the former Yugoslavia and

[15] Humanitarian Law Center, "Report on War Crimes Trials in Serbia During 2016," 2017, 16, http://www.hlc-rdc.org/wp-content/uploads/2017/05/Izvestaj_o_sudjenjima_za_2016_eng.pdf.
[16] Humanitarian Law Center, "Report on War Crimes Trials in Serbia During 2019," 2019, 18, http://www.hlc-rdc.org/wp-content/uploads/2019/05/Report-on-War-Crimes-Trials-in-Serbia.pdf.
[17] European Commission, "Serbia 2019 Report," 18.
[18] Humanitarian Law Center, "Report on War Crimes Trials in Serbia During 2019," 21.
[19] "Cases," Office of the War Crimes Prosecutor.
[20] "Department I (Special Department for War Crimes)," The Prosecutor's Office of Bosnia and Herzegovina.
[21] Organisation for Security and Cooperation in Europe, "War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina," 2019, 5, https://www.osce.org/files/f/documents/6/9/423209.pdf.
[22] Organisation for Security and cooperation in Europe, 15.

Rwanda,[23] received disproportionately fewer requests for assistance and witness protection from Serbia than it did from BiH. Between 2016 and 2017, BiH submitted 146 assistance and 37 witness protection requests, while Serbia submitted 3 and 1 respectively.[24] Between 2017 and 2018, BiH issued 309 assistance and 3 witness protection requests, whereas Serbia only had 27 assistance requests.[25] Finally, between 2018 and 2019, BiH submitted 156 assistance requests, compared to Serbia's 28.[26]

Given that both Serbia and BiH have pledged cooperation to the ICTY and IRMCT, while also promising to meet the prosecution standards required for EU accession, one might expect similar levels of commitment to war crimes prosecutions. However, the data analysed above indicate that Serbia is not acting in accordance with these guarantees, whereas, despite certain inefficiencies, BiH is processing its international criminal caseload as required by international organisations.

3. Explaining the Divergence

Such a great discrepancy in prosecutorial performance calls for further exploration of potential variables. Three explanations are assessed here: **a)** external influence, **b)** technical and organisational impediments, and **c)** ethnic composition.

a) External Influences

The initial independent variables this paper will examine are regional relations and funding. Closer ties to regional institutions and greater quantities of funding might explain BiH's disproportionately larger caseload and stronger inclusion of higher-level perpetrators. The desire to accede to regional organisations might explain a greater commitment to fulfilling pledges of prosecuting war criminals.

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[23] Giorgia Tortora, "The Mechanism for International Criminal Tribunals: A Unique Model and Some of Its Distinctive Challenges," *American Society of International Law*, April 6, 2017, https://www.asil.org/insights/volume/21/issue/5/mechanism-international-criminal-tribunals.

[24] United Nations, "Fifth Annual Report of the International Residual Mechanism for Criminal Tribunals," 2017, 12, https://www.irmct.org/sites/default/files/documents/170801-fifth-annual-report-en.pdf.

[25] United Nations, "Sixth Annual Report of the International Residual Mechanism for Criminal Tribunals," 2018, 12, https://www.irmct.org/sites/default/files/documents/180801-sixth-annual-report-en.pdf.

[26] United Nations, "Seventh Annual Report of the International Residual Mechanism for Criminal Tribunals," 2019, 12, https://www.irmct.org/sites/default/files/documents/190801-seventh-annual-report-en.pdf.

NATO is an important regional organisation, of which BiH aspires to become a member. The country joined the Partnership for Peace programme in 2006 and established its first Individual Partnership Action Plan in 2008.[27] In December 2018, NATO accepted the country's first Annual National Programme, building on the Individual Partnership Action Plan.[28] However, the requirements for NATO membership concentrate on the military capabilities and the efficiency and transparency of states.[29] As such, NATO membership does not seem to constitute a strong incentive for BiH to conduct large-scale and fair war crimes prosecutions. The fact that Serbia has expressed no interest in joining the organisation[30] does not explain why the country is lagging behind in its prosecution efforts. However, Serbia's historical alliance with Russia might shed light on Serbia's lack of interest in closely complying with regional demands.

Russia has provided Serbia with support in a variety of ways, thus the country may not be as dependent on technical and financial assistance with other organisations. This can help explain Serbia's lack of international cooperation on the criminal prosecution front. Firstly, Russia has propagated anti-NATO sentiment in Serbia,[31] which could explain an absence of Serbian desire for NATO membership. Secondly, and more importantly with regards to war crimes prosecutions, Russia has profiled itself as the primary provider of trade opportunities, aid, and military assistance, which might diminish Serbian incentives to attain EU membership. Russian influences in Serbia have heavily obscured the amount of European support the country receives in practice. For example, the Russian flag appears on billboards sponsored by Gazprom on highways that were in fact funded by the EU. In addition, 65% of Serbian trade is with the EU while only 6.7% is with Russia. In another vein, Serbian soldiers trained twenty times with NATO countries in 2017, whereas only two exercises occurred with Russia, and the

[27] "Relations with Bosnia and Herzegovina," North Atlantic Treaty Organisation, December 6, 2018, https://www.nato.int/cps/en/natohq/topics_49127.htm.

[28] North Atlantic Treaty Organisation.

[29] North Atlantic Treaty Organisation.

[30] North Atlantic Treaty Organisation, "Relations with Serbia."

[31] Dusan Stojanovic, "Russia, Serbia Blame NATO for Kosovo Tensions," *U.S. News & World Report*, March 29, 2019, https://www.usnews.com/news/world/articles/2019-05-29/russia-serbia-blame-nato-for-kosovo-police-raid.

EU offered fifty times as much aid to Serbia as Russia did in 2016.[32] Distorted perceptions of Russian aid may decrease Serbia's motivations for EU accession and consequently for compliance with EU war prosecution requirements. Despite increasing attempts to assert its influence in BiH by infiltrating the country's intelligence service and supporting nationalist Croat and Serb leaders,[33] Russia, as of yet, does not have the same power over BiH that it does over Serbia. Consequently, BiH might be more intent on bridging its EU accession gaps, since it does not have an alternative regional backer. This might increase BiH's incentives for meeting EU war prosecution demands.

Although Russian support could help inform why Serbia is less diligently seeking to meet its EU accession requirements, it is insufficient in explaining the comparative difference in war crimes prosecutions between Serbia and BiH. This is because, contrary to what one might expect given its Russian support, Serbia receives more EU funding and is closer to being a full EU member than BiH. Serbia has been a candidate country since 2012.[34] It signed the Stabilisation and Association Agreement in 2013 and had its first EU-Serbia Intergovernmental Conference in 2014.[35] Between 2014 and 2020, Serbia received a total of €1.5bn, of which €675mn went to governance and the rule of law.[36] BiH, on the other hand, has remained a potential candidate since 2003, despite having signed the Interim Agreement on Trade and Trade-Related Issue in 2008 and the Stabilisation and Association Agreement in 2015.[37] The country received nearly a third of Serbia's funding in that same time period, collecting a total

[32] Michael Birnbaum, "Russia's Low-Cost Influence Strategy Finds Success in Serbia," *Washington Post*, October 3, 2018, https://www.washingtonpost.com/world/europe/russias-low-cost-influence-strategy-finds-success-in-serbia--with-the-help-of-fighter-jets-media-conspiracies-and-a-biker-gang/2018/10/03/49dbf48e-8f47-11e8-ae59-01880eac5f1d_story.html.

[33] Mersiha Gadzo and Harun Karcic, "Bosnia as the New 'Battleground' Between NATO and Russia," *Al Jazeera*, July 7, 2019, https://www.aljazeera.com/indepth/features/bosnia-battleground-nato-russia-190627202133942.html.

[34] "Serbia," European Neighbourhood Policy and Enlargement Negotiations, accessed December 1, 2019, https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en.

[35] European Neighbourhood Policy and Enlargement Negotiations.

[36] "Serbia on its European Path," European Neighbourhood Policy and Enlargement Negotiations, October 2019, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/near_factograph_serbia.pdf.

[37] "Bosnia and Herzegovina," European Neighbourhood Policy and Enlargement Negotiations, accessed December 1, 2019, https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina_en.

of €530mn, of which €326.48mn went to governance and the rule of law.[38] This governance and rule of law funding is less than half of what Serbia receives, which might suggest that Serbia has more resources than BiH to pursue war crimes prosecutions. In fact, given that cooperation with international criminal tribunals has been a central point of accession negotiations with Serbia,[39] the logical assumption might be that Serbia would be more eager to address this point, since it is closer to achieving full membership. However, the data suggest the opposite.

Data from the Organisation for Security and Cooperation in Europe (OSCE) yield more intuitive results. The mission in Serbia only has 124 posts, with a 2019 budget of €6.259mn, which is similar to the funding the country received from the OSCE over the last few years.[40] The Bosnian mission, on the other hand, comprised 315.5 posts and had a 2019 budget of €11.682mn, which equally mirrors funding from past years.[41] As such, BiH had nearly twice as much funding as Serbia. This is especially important to note because the funds for Serbia were meant to contribute to judiciary reforms,[42] which could have a direct influence on war crimes prosecution efforts. However, the assistance for BiH focused more on issues of democracy as opposed to the rule of law.[43] Despite receiving more funding, BiH might not necessarily see many changes in its judiciary as a result.

b) Technical and Organisational Impediments

The second variable this paper will assess as a potential explanation for the different caseloads and conviction rates of BiH and Serbia is technical or organisational impediments that result from the varying capabilities and degrees of complexity of the Serbian and Bosnian courts.

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[38] "Bosnia and Herzegovina on its European Path," European Neighbourhood Policy and Enlargement Negotiations, September 2019, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/near_factograph_bosnia_and_herzegovina.pdf.

[39] Jelena Subotic, "Truth, Justice, and Reconciliation on the Ground: Normative Divergence in the Western Balkans," *Journal of International Relations and Development* 18, no. 3 (2015): 363, https://doi.org/10.1057/jird.2015.13.

[40] Organisation for Security and Cooperation in Europe, "Survey of OSCE Field Operations," 2019, 18, https://www.osce.org/cpc/74783?download=true.

[41] Organisation for Security and Cooperation in Europe, 13.

[42] Organisation for Security and Cooperation in Europe, 17.

[43] Organisation for Security and Cooperation in Europe, 12.

The transfer of more cases by the ICTY to either the Serbian OWCP or Bosnian PO might cause the entity in question to process its total caseload more slowly, which in turn could explain lower numbers of completed cases. The ICTY referred a total of eight cases, involving 13 accused, to the courts of the former Yugoslavia.[44] One of these, involving Rahim Ademi and Mirko Norac, Croatian nationals, was transferred to Croatia and is therefore beyond the scope of this paper.[45] A second case concerned a Bosnian Serb, Nikola Kovačević, who committed atrocities in Croatia.[46] This was the only case that the ICTY transferred to Serbia. Thus, the Serbian workload was not significantly expanded through international case transfers. Serbia originally charged Kovačević, but then ruled him unfit for trial.[47] This creates a weak track record for Serbia when compared to BiH. BiH managed five ICTY cases, three of which involved multiple defendants, all of them Bosnian Serbs, and convicted every single accused. Milorad Trbić,[48] Mitar Rašević,[49] Savo Todović,[50] Gojko Janković,[51] Radovan Stanković,[52] Zeljko Mejakić,[53] Momčilo Gruban,[54] Dušan Fuštar,[55] Duško Knežević,[56] and Paško Lubićić.[57] Given that BiH carried the brunt of international transfers, the argument of compounded caseload fails to elucidate Serbia's weaker prosecutorial performance.

[44] "Transfer of Cases," International Criminal Tribunal for the Former Yugoslavia, accessed December 1 2019, https://www.icty.org/en/cases/transfer-cases.

[45] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'MEDAK POCKET' (IT-04-78) ADEMI & NORAC," 2005, https://www.icty.org/x/cases/ademi/cis/en/cis_ademi_norac.pdf.

[46] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'DUBROVNIK' (IT-01-42/2) VLADIMIR KOVAČEVIĆ," https://www.icty.org/x/cases/kovacevic_vladimir/cis/en/cis_kovacevic_vladimir.pdf.

[47] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[48] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'SREBRENICA' (IT-05-88/1) MILORAD TRBIĆ," https://www.icty.org/x/cases/trbic/cis/en/cis_trbic_en.pdf.

[49] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'FOČA' (IT-97-25/1) RAŠEVIĆ & TODOVIĆ," https://www.icty.org/x/cases/todovic_rasevic/cis/en/cis_rasevic_todovic.pdf.

[50] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[51] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'FOČA' (IT-96-23/2) JANKOVIĆ & STANKOVIĆ,"

[52] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[53] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'OMARSKA CAMP & KERATERM CAMP' (IT-02-65) MEJAKIĆ et Al.," https://www.icty.org/x/cases/mejakic/cis/en/cis_mejakic_al_en.pdf.

[54] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[55] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[56] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia.

[57] The Communication Service of the International Criminal Tribunal for the Former Yugoslavia, "'LAŠVA VALLEY' (IT-00-41) PAŠKO LJUBIČIĆ," https://www.icty.org/x/cases/ljubicic/cis/en/cis_ljubicic.pdf.

An analysis of both countries' war crimes departments and wider judiciaries similarly shows Serbia faces significantly fewer obstacles to successful war crimes prosecutions, and where it does is often the result of conscious governmental choices. As of 2018, Serbia had 2,418 judges and 769 public prosecutors, as well as a judiciary budget of €299mn.[58] This outnumbers the 1,013 Bosnian judges and 377 Bosnian prosecutors, as well as the Bosnian judiciary budget of €122.2mn.[59] However, the OWCP only has a total of 27 staff members covering 18 different positions.[60] The structure of the office means that if all positions, other than those of the deputy and assistant prosecutors, were only held by one person, the OWCP could only have a maximum of 11 prosecutors. In contrast, BiH's PO has a total of 25 prosecutors, as well as a chief prosecutor.[61] It is clear that Serbia has specific policies towards war crimes prosecutions, which means that it has allocated minimal resources to the OWCP. As such, the problem might not be insufficient funding or staff as much as a refusal to accept responsibility, as will be discussed in section c) below.

Likewise, structural inefficiencies do not explain Serbia's low caseload and conviction rate. Just as the resources allocated to war crimes prosecutions were not an accurate representation of overall judiciary resources, the protracted delays in Serbia's war crimes trials[62] do not mirror those in the broader judiciary. Serbia has a case clearance rate of 110.03% (meaning the country is processing more cases than it receives, thus combatting its backlog) and a total backlog of 78,135 cases.[63] BiH, on the other hand, has a clearance rate of 105% and a total backlog of 2.2mn cases, almost thirty times as many.[64] The lower clearance rate and much greater overall backlog of BiH would only explain weaker war crimes prosecutions by BiH in comparison to Serbia, presuming that these statistics are indicative of state capacity to prosecute war crimes.

[58] European Commission, "Serbia 2019 Report," 16.

[59] European Commission, "Analytical Report: Communication from the Commission to the European Parliament and the Council: Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union," May 29, 2019, 35, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf.

[60] "Organization," Office of the War Crimes Prosecutor, accessed December 1, 2019, https://www.tuzilastvorz.org.rs/en/about-us/organization.

[61] "Chief Prosecutor," The Prosecutor's Office of Bosnia and Herzegovina, accessed December 1, 2019, http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=15&id=93&jezik=e.

[62] Humanitarian Law Center, "Report on War Crimes Trials in Serbia During 2019," 8.

[63] European Commission, "Serbia 2019 Report," 17.

[64] European Commission, "Analytical Report," 36.

In fact, in addition to this, national war crimes prosecutions in BiH face further obstacles. Its reduction in caseload proceeds much more slowly than at the entity and district level. Between 2014 and 2018, the PO whittled 682 cases down to 489, a reduction of 193, whereas the entity and district courts moved from 541 to 205 cases, a reduction of 336.[65] One procedural deficiency that may help explain the slower rate of processing national cases is the poor quality of indictments. In 2014, 33 out of 60 indictments were returned to the PO.[66] In 2015, this was 22 out of 51;[67] in 2016, 17 out of 38; and in 2018, 9 out of 27.[68] All these elements would increase the likelihood of BiH falling behind Serbia, yet the opposite is the case. However, it is important to note that the EU granted the Bosnian judiciary €14.96mn to pay for judges', prosecutors', and support staff's salaries, as well as material costs, with the aim of reducing the country's war crimes cases backlog.[69] Yet, this funding, in addition to the country's judiciary budget, still does not come close to the resources of the Serbian court system.

Serbia and BiH both face certain organisational obstacles to more efficiently and effectively managing their war crimes cases. However, it would appear that BiH faces more institutionalised challenges than Serbia. BiH struggles with poor coordination between the PO and the Court of Bosnia and Herzegovina, which results in the PO working on cases that should be referred to entity and district courts.[70] This results in an unnecessary loss of PO resources.[71] The PO also faces case fragmentation, whereby it separates already existing cases.[72] In recent years alone, the PO has thus generated 350 new cases.[73] This increases the overall workload of the office, while also producing a repetition of efforts, which results in a further loss of efficiency and waste of resources.[74] Where Bosnian prosecution processes inherently decrease the PO's ability to efficiently manage its war crimes cases, Serbia faces difficulties that reflect

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[65] Organisation for Security and Cooperation in Europe, "War Crimes Case Management," 18.
[66] Organisation for Security and Cooperation in Europe, "Processing of War Crimes at the State Level in Bosnia and Herzegovina," 32, https://www.osce.org/bih/247221?download=true.
[67] Organisation for Security and Cooperation in Europe.
[68] Organisation for Security and Cooperation in Europe, "War Crimes Case Management," 26.
[69] Organisation for Security and Cooperation in Europe, 9.
[70] Organisation for Security and Cooperation in Europe, 25.
[71] Organisation for Security and Cooperation in Europe.
[72] Organisation for Security and Cooperation in Europe, 18.
[73] Organisation for Security and Cooperation in Europe.
[74] Organisation for Security and Cooperation in Europe.

a lack of commitment to war crimes prosecutions as opposed to structural impediments like in BiH. Serbia's Prosecutorial Strategy does not provide the OWCP with guidelines on how to prioritise war crimes cases.[75] In addition, between 1 January 2016 and 31 May 2017, all indictments and actions were undertaken by deputy war crimes prosecutors in the absence of an acting war crimes prosecutor, as a result of which charges brought in that period were dismissed and had to be reopened.[76] All this suggests that Serbia is falling behind on war crimes case management due to a lack of engagement, whereas BiH's engagement is consistent but flawed due to a number of pragmatic problems.

c) Ethnic Composition

The third and final variable which calls for examination is the different ethnic compositions of Serbia and BiH, to establish whether different perceptions of the war and responsibility have an impact on how intensively the countries are processing war crimes cases. Could diverging ethnic compositions of the two populations and the degree to which these were victimised during the war inform the different approaches to war crimes prosecutions in BiH and Serbia?

The geographical concentration of war crimes corresponds closely to the degree to which countries have pursued war crimes prosecutions. Out of the war crimes prosecuted before the ICTY, only one occurred in Serbia.[77] BiH was the site for over 50 of the cases prosecuted before the ICTY.[78] As the primary victim, it would be logical that the country would be more intent on procuring justice for the war crimes committed. This point is strengthened by the fact that ethnic Serbs were the primary perpetrators of war crimes. It also more generally suggests that larger numbers of war crimes victims in a country increases the likelihood of that country pursuing war crimes prosecutions, even if the perpetrators are citizens of that country. The absence of war crimes in Serbia would thus help to explain the apparently lower commitment to prosecuting war crimes.

[75] Humanitarian Law Center, "Report on War Crimes Trials in Serbia during 2019," 16.
[76] Humanitarian Law Center, 30.
[77] "Interactive Map," International Criminal Tribunal for the Former Yugoslavia, accessed December 1, 2019, https://www.icty.org/en/cases/interactive-map.
[78] International Criminal Tribunal for the Former Yugoslavia.

However, this picture becomes more complex when considering the war crimes that occurred in Kosovo. For the sake of this paper, we will consider Kosovo a part of Serbia, given Serbia's perception of the issue. Moreover, we choose to do so because if Serbia holds that Kosovo falls within its borders, then the victims of the war crimes committed there would constitute Serbian citizens. The ICTY prosecuted between 15-20 war crimes that occurred in Kosovo.[79] Under the argument above, this would increase the incentives for Serbia to prosecute war criminals. The fact that they continue to do so comparatively less well than BiH therefore requires a further explanation. This paper proposes that the greater cohesion and potentially exclusionary nature of national and ethnic identity can elucidate this difference.

The different ethnic compositions of BiH and Serbia contribute to vastly different attitudes to the war and responsibility for war crimes between the two countries. As of 2013, BiH consisted of 48.4% Bosniaks, 32.7% Serbs and 14.6% Croats.[80] The fact that the majority group in the country corresponds to the group that was most intensely targeted in war crimes during the Bosnian war (80% of war casualties being Bosniaks[81]) could explain why BiH performs better in war crimes prosecutions. The desire to procure justice for war crimes victims is much more likely to be prevalent in the country that holds the majority of the victims.

This idea is reinforced by the analysis of cases referred to the two autonomous entities that make up BiH, i.e. the Federation of Bosnia and Herzegovina and the Republika Srpska (RS).[82] The Federation comprises of 88.23% of the Bosnian Bosniaks, while the RS held 92.11% of Bosnian Serbs.[83] Until 2017, the number of cases transferred to the RS hardly ever exceeded half that of those referred to the Federation.[84] The lower number of cases received by the RS mirrors the lower levels of war crimes prosecutions in Serbia which was 83.3% Serb, and only

[79] International Criminal Tribunal for the Former Yugoslavia.

[80] "People of Bosnia and Herzegovina," Encyclopaedia Britannica, accessed December 1, 2019, https://www.britannica.com/place/Bosnia-and-Herzegovina/People.

[81] "Bosnia and Herzegovina, 1992-1995," United States Holocaust Memorial Museum, accessed December 1, 2019, https://www.ushmm.org/genocide-prevention/countries/bosnia-herzegovina/case-study/background/1992-1995.

[82] "Bosnia and Herzegovina," Encyclopaedia Britannica, accessed April 11, 2021, https://www.britannica.com/place/Bosnia-and-Herzegovina.

[83] Roldolfo Toè, "Census Reveals Bosnia's Changed Demography," *Balkan Insight*, June 30, 2016, https://balkaninsight.com/2016/06/30/new-demographic-picture-of-bosnia-finally-revealed-06-30-2016/.

[84] Organisation for Security and Cooperation in Europe, "War Crimes Case Management,"15.

2.1% Bosniak.[85] The Serb majority in Serbia increased during the Bosnian war with the influx of Serb refugees from BiH and Croatia, and the relocation of many Bosniaks to BiH.[86] The dominance of ethnic Serbs in Serbia facilitates the promotion of Serb-centered narratives concerning the war, which have tended to involve very little acknowledgment of criminal responsibility. The war crimes prosecution efforts in Serbia suggest that the country has little interest in procuring justice for non-Serbs or in supporting processes that involve the possible indictment of ethnic Serbs, as demonstrated by EU and ICTY reports that note the lack of Serbian cooperation. In fact, a survey conducted after the arrest of Radovan Karadžić, the president of the RS during the Bosnian war, indicated that only 17% of the Serb responders considered the man a criminal, and that 86% considered the arrest a result of anti-Serb bias amid the ICTY.[87] The continued denial of criminal responsibility by Serbs as a broader group is further reflected in the Republika Srpska's vote in 2018 to revoke its recognition of Srebrenica as a case of genocide.[88]

Many political scientists support the notion that the presence of a dominant core group can have nefarious effects on post-conflict justice. Professor Jelena Subotic argues that national identity has the ability to block international justice interventions and generate resistance thereto.[89] She suggests that in multi-ethnic contexts, justice only means "justice for crimes committed against oneself or one's ethnic group, but not justice for crimes committed in one's name or the name of the group one belongs to."[90] Former prosecutor with the ICTY, Dan Saxon, further proposes that none of the three dominant ethnic groups perceives themselves as

[85] "People of Serbia," Encyclopaedia Britannica, accessed December 1 2019, https://www.britannica.com/place/Serbia/People.

[86] Encyclopaedia Britannica.

[87] Jelena Subotic, "Expanding the Scope of Post-Conflict Justice: Individual, State and Societal Responsibility for Mass Atrocity," *Journal of Peace Research* 48, no. 2 (March 1, 2011): 158, https://doi.org/10.1177/0022343310394696.

[88] Lisa Schlein, "Serb Rejection of Report on Srebrenica Massacre Sows Division," *Voice of America*, August 19, 2018, https://www.voanews.com/europe/serb-rejection-report-srebrenica-massacre-sows-division.

[89] Jelena Subotic, "Truth, justice, and Reconciliation on the Ground: Normative Divergence in the Western Balkans," *Journal of International Relations and Development* 18, no. 3 (2015): 364, https://doi.org/10.1057/jird.2015.13.

[90] Subotic, 367.

perpetrators.[91] Across the former Yugoslavia, these ethnicity-based perceptions of justice and responsibility persist. However, the greater ethnic diversity and disaggregation in BiH have impeded the creation of a single national identity.

The large numbers of war crimes that occurred around BiH and domestic disagreements on responsibility mean that no single and sufficiently strong ideological obstacle stands in the way of war crimes prosecutions. In Serbia, on the other hand, the prevalence of Serbs means that this group's experience and estimation of its criminal responsibility, whether as Serbian Serbs or Bosnian Serbs, defines the country's evidently reluctant policy on war crimes prosecutions.

4. Conclusion

When analysing the data concerning the support Serbia and BiH enjoy from international and regional organisations, as well as the countries' judicial capabilities and the cohesion of both national identities, Serbia appears capable of outperforming BiH in prosecuting war criminals. However, OWCP and OP data, as well as ICTY reporting, produce the opposite picture. Despite receiving significantly more EU funding and being closer to EU membership than BiH, Serbia has done less than BiH to meet the EU war crimes prosecution requirements.

A number of factors emerge to explain this. Firstly, due to Russian support, Serbia might feel a less pressing need to comply with EU war crimes prosecution requirements, despite receiving disproportionately more aid from the EU. Secondly, Serbia's tendency to prioritise the protection of its nationals over countering impunity has created an environment in which war prosecutions do not flourish. Although its judiciary has significantly fewer resources and capabilities than Serbia, BiH continues to give higher priority to convicting Bosnian war criminals.

One might argue that the larger number of war crimes in Bosnia automatically means that more war crimes prosecutions should take place in the country. Yet, not only did Bosnian Serb forces perpetrate atrocities with the support from Serbia, but the Bosnian population today is

[91] Dan Saxon, "Exporting Justice: Perceptions of the ICTY Among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia," *Journal of Human Rights* 4, no. 4 (October 2005): 562. https://doi.org/10.1080/14754830500332837.

still around one-third Serb. This research is therefore still necessary to demonstrate why this significant Serb presence and influence in BiH has not impeded prosecution efforts as it has in Serbia. This paper finds the balance of Serbs in relation to other ethnic groups to be crucial. Although the fragmented national identity of BiH has harmed its progress as a new nation, it has created favourable conditions for war crimes prosecutions.

The different approaches of these ex-Yugoslav states to domestic as well as international war crimes prosecutions provide valuable lessons about the challenges in producing post-conflict justice. This research suggests that states in which the political and national units are more separated might be those in which war crimes prosecutions can be most effectively implemented.

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A Durkheimian Analysis of Racialised Crime and Punishment Police Practices and the Demand for Change

Anna Kovar

MSc in Criminology and Criminal Justice, University of Edinburgh

Abstract

The analysis of racialised police attitudes has been frequently addressed in academic articles, but the application of a Neo-Durkheimian approach has been largely overlooked. This article will apply Durkheimian theory to illuminate the need for a shift in crime and punishment policy and practices to avoid the present societal moral stagnation. In order to do so it will address both, the recent Black Lives Matter protests in America and the 2011 Riots in London. The use of the two case studies signifies the continuity of problematic police behaviour and political address. It is evident that such an article is embedded in an extremely sensitive topic, therefore it does not presume to provide a solution to the overwhelming circumstances. Rather, in illuminating the relevance of Durkheimian theory it signifies that current global circumstances demand a moral shift in societal understandings of solidarity and "the cult of the individual", providing pivotal foundations for police practices. However, this requires participation of criminologists alongside practitioners and activists.

Keywords: Durkheim, cult of the individual, racialised policing, Black Lives Matter, 2011 Tottenham Riots

1. Introduction

Durkheim is considered to be a "founding father" of sociology.[1] It has been over a century since his passing, but his importance remains steadfast.[2] However, "Durkheim is in need of redemption and recognition"[3] in the field of criminology. Durkheim's ideas are still of relevance today, as they equip researchers with tools to challenge institutions and reflect on society's values and inequalities. This essay applies Durkheim's concepts to crime, punishment, and responses to the context of the 2011 riots in Tottenham, London, and the recent global Black Lives Matter (BLM) protests.

This paper does not presume to provide an all-encompassing interpretation of Durkheim's ideas. For example, this essay does not discuss his work on suicide,[4] nor does it perform an evaluation of his penal evolution.[5] While these related bodies of works are mentioned, they are not the central focus. Rather, this essay argues that Durkheim's radical notion of critiquing social structures[6] is central to the future of crime and punishment theory today. By contextualising Durkheim's concepts to align with contemporary crises, his concern for inequalities[7] will be expanded to include the consideration of race.

Throughout this paper, Durkheim's ideas on solidarity, anomie, collective effervescence, and the "cult of the individual"[8] will be applied to interpret the chosen events. Durkheim believed that observing reality induces morality.[9] The resulting morality in turn exposes the crime and punishment rationales of society, thereby signifying the values and inequalities upheld by society. The police, as central figures in crime control and punishment, embody such values and inequalities. This essay reveals that Durkheim's ideas are of value in exposing

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[1] Liza Herzog, "Durkheim on Social Justice: The Argument from 'Organic Solidarity'," *American Political Science Review* 112, no.1 (2018): 112.

[2] Robert Bierstedt, *Emile Durkheim* (London: Weidenfeld and Nicolson, 1966), 29.

[3] Shadd Maruna, "Reentry as a Rite of Passage," *Punishment and Society* 13 no. 1, (2011): 6.

[4] Ken Morrison, *Marx, Durkheim, Weber* (London: SAGE Publications Ltd, 1998).

[5] Steven Lukes, *Emile Durkheim: His Life and Work: A Historical and Critical Study* (Middlesex: Penguin Books Ltd, 1973), 159.

[6] Jennifer Lehmann, "The Question of Caste in Modern Society: Durkheim's Contradictory Theories of Race, Class and Sex," *American Sociological Review* 60, no. 4 (1995): 583.

[7] Anthony Giddens, *Emile Durkheim: Selected Writings* (Cambridge: Cambridge University Press, 1972), 12.

[8] Giddens, *Emile Durkheim,* 22.

[9] Giddens, 95.

inequalities and threats to solidarity, but if Durkheim is to be of any practical influence, a shift to avoid moral stagnation beginning with the police must be enforced.

This essay begins by discussing Durkheim's aforementioned ideas. It is then split into four sections, focusing on the Durkheimian police, the 2011 Tottenham riots, Black Lives Matter, and, finally, the demand for a shift. It continuously implements Durkheim's ideas to reveal the role of the police in conveying societal values and inequalities, whilst simultaneously portraying the evident need for an evolutionary transition[10] in moral solidarity.

2. Durkheim and His Concepts

David Émile Durkheim was born in the Lorraine region of France in 1858.[11] His childhood experience of war and Jewish upbringing led him to believe that social science could be a source for national unity.[12] Durkheim's major works include *The Division of Labor in Society* (1893), *The Rules of Sociological Method* (1895), *Suicide* (1897), and *The Elementary Forms of Religious Life* (1912). All are contextually rooted in the political climate of France and the unprecedented threat to group life at the time.[13] Durkheim saw a need for a revival,[14] with an attempt to balance individualism and socialism.[15] The emergence of an industrial society led to his idea of stratification[16] as an aim to address the advanced division of labour. His desire was to seek unity amongst the turmoil of modernity.[17] Durkheim's concern with individual freedom and social order[18] made the sociologist a moralist.[19]

In *The Division of Labor*, Durkheim focused on solidarity during the rapid social and economic transition of modernity. For him, industrialisation was not the end of solidarity, but

[10] Kenneth Thompson, *Emile Durkheim* (Chichester: Ellis Horwood Ltd., 1982), 68.
[11] Lukes, *Emile Durkheim,* 29.
[12] Thompson, *Emile Durkheim,* 12.
[13] Morrison, *Marx, Durkheim, Weber,* 121.
[14] Lukes, *Emile Durkheim,* 42.
[15] Roger Cotterrell, *Emile Durkheim: Law in a Moral Domain* (Edinburgh: Edinburgh University Press, 1999), 24.
[16] Jean-Claude Filloux, "Inequalities and Social Stratification in Durkheim's Sociology," in *Emile Durkheim: Sociologist and Moralist,* ed. Stephen Turner (London: Taylor and Francis Group, 1993), 205.
[17] Elgin Mannion, "Autonomy, Race and State Reproduction of Status: Durkheim and Weber on Education and Immigration," *Critical Sociology* 42, no. 4-5 (2016): 701.
[18] Thompson, *Emile Durkheim,* 71.
[19] Michèle Richman, *Sacred Revolutions: Durkheim and the Collège de Sociologie* (Minnesota: University of Minnesota Press, 2002), 62.

instead demanded a reconfiguration of its *origin*.[20] In his work, Durkheim expressed two evolutionary stages of solidarity: "mechanical solidarity," which can be found in unified societies and is based on the notion of sameness,[21] and "organic solidarity," consisting of a high level of differentiation.[22] He noted that dependency is present in organic solidarity, as "co-operation between individuals or groups of individuals" becomes essential.[23]

In stark contrast to solidarity, Durkheim proposed anomie. Anomie is a fluid concept with a long history of various uses. This essay refers to the anomie described in *The Division of Labor*, as opposed to the homo duplex form found in *Suicide*.[24] Anomie is the condition produced by the forced division of labour, a lack of regulation, inequalities, or unjust exchange rates in worth.[25] I specifically refer to anomie produced by inequalities in this essay. This form of anomie occurs if there are external inequalities[26] – that is, an unequal distribution of material factors hindering an individual's opportunities.[27] Durkheim focused on the external inequality present in inherited economic disparity and believed that solidarity demanded its abolition.[28] He also described the internal inequality of aptitude.[29] Referring to his concepts of solidarity, he maintained that organic solidarity could be assisted with the elimination of social inequalities, thereby avoiding anomie.[30]

In *The Elementary Forms of Religious Life*, Durkheim explained religion's role within society. He perceived it as the moral and cognitive basis of social solidarity, providing the base from which "various manifestations of collective life have occurred."[31] In 1882, a Primary Education law promoted free compulsory non-religious education for all children in France. In response, Durkheim felt responsible for finding a place for morality without familiar

[20] Keith Grint and Darren Nixon, *The Sociology of Work, 4th ed.,* (Cambridge: Polity Press, 2015), 83.
[21] Lukes, *Emile Durkheim,* 148-149.
[22] Lukes, *Emile Durkheim,* 153.
[23] Giddens, E*mile Durkheim,* 8.
[24] Philippe Besnard, "Anomie and Fatalism in Durkheim's Theory of Regulation" in *Emile Durkheim: Socialist and Moralist,* ed. Stephen Turner (London: Taylor and Francis Group, 1993), 180.
[25] Morrison, *Marx, Durkheim, Weber,* 149-151.
[26] Giddens, *Emile Durkheim,* 12.
[27] Lukes, *Emile Durkheim,* 174.
[28] Giddens, *Emile Durkheim,* 183.
[29] Giddens, 12.
[30] Thompson, *Emile Durkheim,* 82.
[31] Richman, *Sacred Revolutions,* 25.

religiosity.[32] He was critiqued for presenting a "dogmatic secular religion" contradicting the spiritual revival some longed for.[33] To Durkheim, religion was functional, conveying morality through group affirmation.[34] He studied Aboriginal societies in Australia to comprehend their notion of totemism and how symbolisation created the sacred which regulated relations.[35] He defined religion as "a system of collective beliefs and practices that have a special authority,"[36] arguing that religion derived from collective representations that expressed collective realities[37] – in other words, all that is social is religious.[38] To Durkheim, the sacred is produced through rituals that establish social bonds.[39] These bonds become sacred aims that provide the "ends of morality,"[40] tying morality to the ideal end of action.[41] Durkheim saw the sacred as nothing more "than society hypostasized and transfigured."[42] Therefore, to him, the divine is society.[43]

In his article *Individualism and the Intellectuals* (1898), Durkheim took this interpretation of religion to produce a religion of "today." The most "beloved thing" in modern societies, he argued, is "man himself."[44] "A religion of humanity is the religion of today."[45] This he named the "cult of the individual."[46] It is neither instinctive egoism, nor Spencer's egotistic economics,[47] but rather the sacrality of the individual.[48] To Durkheim, the co-dependency of solidarity occurs through placing the individual over the self.[49] Meanwhile, the collective conscience is the "set of beliefs and sentiments common to the average member of a single

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[32] Cotterrell, *Emile Durkheim,* 25.
[33] Richman, *Sacred Revolutions*, 24.
[34] Lukes, *Emile Durkheim,* 475.
[35] Thompson, *Emile Durkheim,* 133.
[36] Stephen Lukes, "Durkheim's Individualism and the Intellectuals," *Political Studies 17, no.*1, (Oxford: Oxford University Press, 1969), 25.
[37] Thompson, *Emile Durkheim,* 125.
[38] Lukes, *Emile Durkheim,* 152.
[39] Thompson, *Emile Durkheim,* 32.
[40] Raquel Weiss, "From Ideas to Ideals: Effervescence as the Key to Understanding Morality," *Durkheim Studies,* 18 (2012): 86.
[41] Ernest Wallwork, *Durkheim: Morality and Milieu* (Cambridge: Harvard University Press, 1972), 48.
[42] Emile Durkheim, *The Elementary Forms of Religious Life: A Study in Religious Sociology,* trans. Joseph Swain, (London: Allen and Unwin, 1915), 347.
[43] Emile Durkheim, *Sociology and Philosophy,* trans. David F. Pocock (London: Cohen and West, 1953), 52.
[44] Lukes, "Durkheim's Individualism", 26.
[45] Giddens, *Emile Durkheim,* 23.
[46] Giddens, 22.
[47] Lukes, "Durkheim's Individualism", 20.
[48] Giddens, *Emile Durkheim,* 22.
[49] Thompson, *Emile Durkheim,* 65.

society which forms a determinate system that has its own life."[50] The collective mind therefore structures society;[51] it forms the moral framework[52] and the religion of society.[53] For Durkheim, the collective is external to the individual, transmitted from the whole holding a special energy: effervescence.[54] Durkheim was not concerned with the psychological studies of the crowd but the functional outcomes of collective effervescence.[55] He argued that effervescence is a window to the sacred and is consequentially important to understanding morality.[56]

A crime "offends […] the collective conscience."[57] Since, according to Durkheim, the collective conscience represents shared beliefs,[58] which in modernity is the cult of the individual, an act against the individual is the most expressive form of a crime. However, Durkheim explained that a certain level of crime is normal,[59] allowing a society to reaffirm itself through criminal punishment.[60] He believed that crime could represent the morality of the future[61] if it transforms social beliefs. Therefore, from a Durkheimian perspective, punishment and crime control practices must symbolise and align with the cult of the individual if it intends to maintain solidarity within modernity.

3. Durkheimian Police

The representation of the collective conscience comes in the form of the state. However, the state does not encompass the entirety of the collective conscience. Rather, it represents the "most vivid" elements.[62] Organic solidarity is reliant on the state's regulation of corporations to ensure individual dignity.[63] Nevertheless, the core values of a society are not executed by

[50] Emile Durkheim, *The Division of Labor in Society,* trans. George Simpson (New York: Macmillan, 1933), 79.
[51] Thompson, *Emile Durkheim,* 14.
[52] Thompson, 74.
[53] Lukes, *Emile Durkheim,* 5.
[54] Bierstedt, *Emile Durkheim,* 106.
[55] Eduardo C. Torres, "Durkheim's Concealed Sociology of the Crowd," *Durkheimian Studies* 20, (2014): 105.
[56] Weiss, "From Ideas to Ideals," 81.
[57] Thompson, *Emile Durkheim,* 1 and 80.
[58] Lukes, *Emile Durkheim,* 5.
[59] Thompson, *Emile Durkheim,* 103.
[60] Giddens, *Emile Durkheim,* 127.
[61] Lukes, *Emile Durkheim,* 161.
[62] Giddens, *Emile Durkheim,* 192.
[63] Giddens, 19.

the state but through secondary agencies.[64] These agencies are the "channels of communication" that enable continuous integration between people and the state.[65] Durkheim's desire to avoid a socialist authoritarian government or a polarised democracy[66] led to other channels of communication being required.[67] To Durkheim, the communicative channels and the state are the directive through which collective life is symbolised.[68] The police are a regulative organ that communicates between the government and the masses, establishing them as one of these secondary agencies.[69] The police represent the moral architecture of the community,[70] constructing and reconstructing moral and social order.[71] Their actions are thus "socially generated and about society,"[72] expressing collective realities.[73] They must therefore be dignified, aligned, and fair, revolving around social cohesion[74] and the individual's sacredness.[75]

The police enact the most visible everyday forms of criminal punishment, which is a public ritual to restore social order by responding to a threat to the collective.[76] Durkheim considered the law to be the core morals,[77] which can cool popular convictions;[78] it is enacted to ensure cohesion in a specific context,[79] representing the common requirements of social well-being.[80] In societies with organic solidarity, the final morality is the "sacredness of man, human rights and international solidarity."[81] Therefore, moral action must not degrade the individual.[82] The

[64] Lukes, *Emile Durkheim,* 269.
[65] Giddens, *Emile Durkheim,* 19.
[66] Cotterrell, *Emile Durkheim,* 163.
[67] Wallwork, *Durkheim,* 107.
[68] Bierstedt, *Emile Durkheim,* 62.
[69] Bruce DiCristina, "Durkheim's Theory of Anomie and Crime: A Clarification and Elaboration," *Australia and New Zealand Journal of Criminology* 49, no. 3 (2016): 317.
[70] Jonathan Jackson and Jason Sunshine, "Public Confidence in Policing: A Neo-Durkheimian Perspective," *The British Journal of Criminology* 47, no. 2 (2007): 215.
[71] Jackson and Sunshine, "Public Confidence," 220.
[72] Lukes, *Emile Durkheim,* 7.
[73] Morrison, *Marx, Durkheim, Weber,* 154.
[74] Jackson and Sunshine, "Public Confidence," 214.
[75] Lukes, *Emile Durkheim,* 518.
[76] Maruna, "Reentry as a Rite", 6.
[77] Cotterrell, *Emile Durkheim,* 50.
[78] Cotterrell, *Emile Durkheim,* 190.
[79] Roger Cotterrell, "Justice, Dignity, Torture, Headscarves: Can Durkheim's Sociology Clarify Legal Values," *Social and Legal Studies* 20, no. 1 (2011): 6-7.
[80] Cotterrell, *Emile Durkheim,* 72.
[81] Wallwork, *Durkheim,* 191.
[82] Giddens, *Emile Durkheim,* 178.

collective effervescence provides an emotional exterior to the individual, thus maintaining harmony and solidarity.[83] Since punishment is an "expressive institution,"[84] the cult of the individual requires the reduction of punishment that offends individual dignity.[85] The need to reject such actions indicates that penal practices hold social meaning.[86]

A neo-Durkheimian task is to consider when "punishment becomes dysfunctional"[87] – those which hinder solidarity. The communicative power of punishment to disrupt solidarity is unparalleled.[88] Varying penal practices may have different cultural meanings. For example, to conservative Americans, the death penalty is seen as an underused tool, whilst for "African Americans, it communicates the message of unacceptable racial violence and lynching."[89] Any change in penal culture necessarily reflects a change in social relations.[90] Where actions that contravene beliefs occur, the masses must be consulted in order to evaluate how crime and punishment is practiced, particularly in cases of violent and racist behaviour on the part of the police. In recognising the communicative power of punishment and the police's representation of the core values of society, questions concerning whose solidarity is being formed must be asked when considering dysfunctional punishment – just as Burkhardt and Connor ask when critiquing the privatisation of prisons.[91]

In the two letters he wrote in response to the Dreyfus Affair,[92] Durkheim argued that there is no reason for a state to place outrage against one person.[93] If solidarity is based on the value

[83] Wallwork, *Durkheim,* 27.

[84] David Garland, "Frameworks of Inquiry in the Sociology of Punishment," *The British Journal of Sociology* 41, no. 1 (1990): 8.

[85] Cotterrell, *Emile Durkheim,* 79.

[86] David Garland, "Concepts of Culture in the Sociology of Punishment," *Theoretical Criminology* 10, no. 4 (2006): 428.

[87] Brett C. Burkhardt and Brian T. Connor, "Durkheim, Punishment and Prison Privatization," *Social Currents* 3, no. 1 (2016): 86.

[88] Burkhardt and Connor, "Durkheim," 93.

[89] Garland, "Concepts of Culture," 435.

[90] Garland, 434.

[91] Burkhardt and Connor, "Durkheim," 84-85.

[92] In the 18th century Alfred Dreyfus, a Jewish artillery officer, was falsely convicted of passing military secrets to the enemy Germans and sentenced to death on Devil's Island. It created society wide anti-Semitic attitudes that contradicted the inclusive motif of the French emancipation. The trial turned into an international affair due to evidence proving Dreyfus' innocence leading to politically and ideologically infused riots. Dreyfus was returned to France in 1899 to be re-trialed. He was once again sentenced guilty, but the President of France pardoned him. In 1906 Dreyfus was acquitted.

[93] Lukes, "Durkheim's Individualism," 14.

of the individual, an attempt on a man's life will produce "horror as though in touch with the profane."[94] Homicide should thus decrease.[95] Yet the killing of Black men by the police in America and the UK is "institutionalised behaviour."[96] These racist killings by the police suggest a continuation of punishment that disregards the dignity of the individual. If beliefs and values are crystallised in institutions that sanction, the police perform as a cult of the individual that excludes Black individuals. A segmentary society is one in which the laws protect the elite, making it repressive.[97] Messner et al. argue that if solidarity is hierarchical, it is criminogenic.[98] The law which excludes Blackness from sacredness is therefore criminogenic.

The criminalisation of Black individuals – by the police,[99] the prison system,[100] and the media[101] – is evident. Tamir Rice's death in 2014 conveyed the extent of this criminalisation, which robs Black children of their childhood.[102] White supremacy has normalised Black criminality, creating a "new morality."[103] There is a connection between these moral values and the "production of racism."[104] Is it not central for the production of non-criminogenic solidarity that Black individuals are sacralised so moral norms repel racism. However, Maruna explains that rituals of re-entry (societal recognition of belonging or, in Durkheimian terms, sacredness) can be undermined by subsequent degradation.[105] The killing of Black individuals by the police is symbolic of the repeated undermining of sacred Blackness. The law that protects white supremacy is disguised by "post-race institutions," making race "invisible to those [who are]

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[94] Lukes, 22.

[95] Steven F. Messner et al., "Institutions, Anomie and Violent Crime: Clarifying and Elaborating Institutional-Anomie Theory," *International Journal of Conflict and Violence* 2, no. 2 (2008): 170.

[96] Messner et al., "Institutions, Anomie and Violent Crime," 166.

[97] Fergus McNeill and Matt Dawson, "Social Solidarity, Penal Evolution and Probation," *The British Journal of Criminology* 54, no. 5 (2014): 895.

[98] Messner et al., "Institutions, Anomie and Violent Crime," 170.

[99] Lisa J. Long, *Perpetual Suspects* (London: Palgrave Studies, 2018), 177.

[100] Katheryn Russell-Brown, "Critical Black Protectionism, Black Lives Matter, and Social Media: Building a Bridge to Social Justice," *Howard Law Journal,* 60 (2017): 382.

[101] Stuart Hall, *Policing the Crisis: Mugging, the State and Law and Order* (New York: Macmillan Publishers, 1978); Russell-Brown, "Critical Black Protectionism," 380.

[102] Stacey J. Lee et al., "Asians for Black Lives, Not Asians for Asians: Building Southeast Asian American and Black Solidarity," *Anthropology and Education* 51, no. 4 (2020): 413.

[103] Weiss, "From Ideas to Ideals," 89.

[104] Long, *Perpetual Suspects,* 196.

[105] Maruna, "Reentry as a Rite," 17.

privileged."[106] Therefore, the solidarity and morality of society represented by the police is one of exclusion, as evidenced in the lack of Black individuals seeking police help.[107] The repeated use of institutions to control Black individuals[108] or citizenship to protect white power from an imperial history[109] is inextricably linked to the exclusion of Black individuals from the cult of the individual. The actions of the police confirm the racialised reality in which Black lives are devalued.[110]

The need to shift away from the criminogenic solidarity requires a new morality and sacralised individual implemented by the police. This morality, prior to its crystallisation, is brought about through "socially sanctioning actions,"[111] such as protests and riots.

4. The 2011 Tottenham Riots

Durkheim's critique of inequalities and institutions has been deemed "radical."[112] Durkheim believed social equality upheld solidarity.[113] While his contemporary, W.E.B. Du Bois, saw "the colour line"[114] as a crucial inequality, Durkheim failed to recognise the prominence of race.[115] In a neo-Durkheimian approach to inequalities, race is included, making Durkheim's separation of internal and external inequalities paradoxical.[116] Race significantly impacts material inequalities and one's aptitude, as aptitude may have derived from the external inequalities inherited over generations. This essay places race in Durkheim's concerns for equality. The criminalisation of Black people needs to be critiqued in order to remove inequalities. The following discussions of the chosen contemporary events enables the application of Durkheimian concepts in the context of racial inequalities.

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[106] Long, *Perpetual Suspects,* 196.

[107] Long, *Perpetual Suspects,* 214.

[108] Loic Wacquant, "From Slavery to Mass Incarceration," *New Left Review* 1, (2002): 41.

[109] Long, *Perpetual Suspects,* 206.

[110] Meredith D. Clark, "White Folks' Work: Digital Allyship Praxis in the #BlackLivesMatter Movement," *Social Movement Studies* 18, no. 5 (2019): 526.

[111] Richman, *Sacred Revolutions,* 59.

[112] Lehmann, "The Question of Caste", 583.

[113] Thompson, *Emile Durkheim,* 82.

[114] Nisha Kapoor and Kasia Narkowicz, "Characterising Citizenship: Race, Criminalisation and the Extension of Internal Borders," *Sociology* 53, no. 4 (2019): 656; Walter R. Allen and Angie Chung "Your Blues Ain't Like My Blues: Race Ethnicity and Social Inequality in America," *Contemporary Sociology* 29, no. 6 (2000): 797.

[115] David Roediger, "Making Solidarity Uneasy: Cautions on a Keyword from BLM to the Past," *The American Studies Association* 68, no. 2 (2016): 233.

[116] Filloux, "Inequalities and Social Stratification," 210.

It must be noted that this analysis of the application of Durkheim's concepts to the selected events does not provide any solutions. It does, however, use Durkheim's work to refract light onto the policing surrounding these circumstances, thereby illuminating the morality and beliefs upheld by the relevant society. It also provides an opportunity to consider alternative approaches to crime and punishment in order to secure solidarity and avoid anomie through responding to the collective conscience.

On the 4th of August 2011, Mark Duggan, a Black British man, was shot dead by police in Tottenham.[117] The media initially vilified Duggan,[118] suggesting that he shot first,[119] thereby attempting to legitimise the killing. This in turn spawned heavily documented riots, mass looting, and arson, lasting six days.[120] Tottenham's Black community saw Duggan's death as a violation of the collective individual.[121] Durkheim presents four forms of rites within the sacralisation process that demand action.[122] The "piacular" rite is of relevance here. Piacular rites occur "when a society goes through circumstances which sadden, perplex or irritate it"[123] and takes the form of public mourning to reclaim unity.[124] The piacular rite both mobilises and passes on beliefs.[125] The initial response to Duggan's death was a piacular protest demanding respect for all. Duggan's death and the ritualised march became what Waddington calls a "flashpoint" event, as it was counteracted with intensified policing that exaggerated negative police-community relations.[126] The police's response of criminalising Duggan, alongside increased control and punishment distribution, indicated a segmentary society. It also reaffirmed the devaluing of Black individuals seen in the "disproportional representation [of

[117] Adam Elliot-Cooper, "The Struggle That Cannot Be Named: Violence, Space and The Re-articulation of Anti-racism in Post-Duggan Britain," *Ethnic and Racial Studies* 41, no. 14 (2018): 2446.

[118] Lynette Goddard, "BlackLivesMatter: Remembering Mark Duggan and David Oluwale in Contemporary British Plays," *Journal of Contemporary Drama in English* 6, no. 1 (2018): 76.

[119] Elliot-Cooper, "The Struggle That Cannot Be Named," 2445.

[120] Aaron Reeves and Robert deVries, "Does Media Coverage Influence Public Attitudes Towards Welfare Recipients? The Impact of the 2011 English Riots," *The British Journal of Sociology* 67, no. 2 (2016): 282.

[121] Herzog, "Durkheim on Social Justice", 117.

[122] Morrison, *Marx, Durkheim, Weber,* 205.

[123] Morrison, 211.

[124] Morrison, 211.

[125] Giddens, *Emile Durkheim,* 220.

[126] David Waddington, "The Law of Moments: Understanding the Flashpoint That Ignited the Riots," *Criminal Justice Matters* 87, no. 1 (2012): 6.

Black individuals] in the criminal justice system."[127] This event is indicative of a hierarchical society that protects white supremacy.

Since the 1980s, Tottenham has been a site of Black struggle.[128] The death of Duggan produced a collective memory of the 1985 Broadwater Farm Riots.[129] Riots had since become cultural heritage.[130] Although in 2011 many rioters' justifications were based on anger toward the police,[131] it was not always at the forefront of their minds.[132] Other frustrations interlinked, such as unemployment and welfare cuts.[133] In applying a Durkheimian interpretive approach, these riots can be understood as a crisis in modernity's evolution. The anomie produced through inequalities resulted in a "loss of direction, a sense of apathy, an absence of attachment to life itself."[134] The looting was described as a spontaneous unity,[135] correlating to the power of collective effervescence and its ability to produce sentiments one could not achieve alone.[136] Crowds and mass gatherings produce "intense passion"[137] and the killing of Mark Duggan offended solidarity because it disregarded the sacrality of the individual. The law embodied by the police is supposed to cool popular emotion,[138] but their response amplified passion. If there is "no respect for those producing legislations," then cooperation will stop and "collective solidarity will collapse."[139]

Cohen coined the term "moral panics," which emerge out of a threat to societal values stylised by the mass media.[140] It is a form of collective effervescence in response to a crime.[141] The media shapes societal values. Just as the mass media mobilised the crowds during the

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[127] Katheryn Russell-Brown, "Critical Black Protectionism," 382.
[128] Elliot-Cooper, "The Struggle That Cannot Be Named," 2445.
[129] Goddard, "BlackLivesMatter,“ 76.
[130] Tim Newburn et al, "The Biggest Gang? Police and People in the 2011 England Riots," *Policing and Society* 28, no. 2 (2018): 213.
[131] Newburn et al., "The Biggest Gang?", 210.
[132] Newburn et al., 207.
[133] Newburn et al., 214.
[134] Wallwork, *Durkheim,* 49.
[135] Newburn et al., "The Biggest Gang?", 218.
[136] Giddens, *Emile Durkheim,* 230.
[137] Nick Hopkins et al, "Explaining Effervescence: Investigating the Relationship Between Shared Social Identity and Positive Experience in Crowds," *Cognition and Emotion* 30, no. 1 (2016): 20.
[138] Cotterrell, *Emile Durkheim,* 190.
[139] Wallwork, *Durkheim,* 168.
[140] David Garland, "On the Concept of Moral Panic," *Crime and Media Culture* 4, no. 1 (2008): 10.
[141] Thompson, *Emile Durkheim,* 1 and 80.

Dreyfus Affair,[142] the media influenced society, law, and order during the riots as harsher policing occurred following a public outcry.[143] The media preps the public for accountability, participating in the criminalisation process.[144] Politicians described those involved in the riots as being a "vicious immoral minority."[145] The criminalisation of the rioters resulted in a harsh state response.[146] 24-hour courts were held to distribute sentences alongside pre-emptive policing.[147] This policing reaction led to the infamous use of stop and search,[148] indicating that the reaction was multi-layered as it enabled further racial bias in policing.[149]

The description of the riot as acts committed by a "criminal minority" belittled the cry of discontent.[150] Although explanations for the riots were based on welfare inefficiencies, welfare beneficiaries were demonised by the Prime Minister, who suggested throwing rioters out of their homes.[151] The responses by the media, police, and politicians did not address inequality, leading to the question of whose solidarity was being constructed.[152] The delegitimisation and marginalisation of the protestors and rioters contradicts any aim to absolve inequality. This is embedded in the tension founded in contemporary neo-liberal market society, which claims to eradicate class, but actually silences concerns and distributes wealth to the elite few.[153]

A Durkheimian reading of the described event would deem the failure to acknowledge the underlying inequalities behind the anomie-producing behaviour as evidence of a moral crisis expressed through the rise in crime. The state's responses were segmentary, as they did not absolve inequalities. This segmented solidarity included both fiscal inequalities and an

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[142] Torres, "Durkheim's Concealed," 94.

[143] Hall, *Policing the Crisis,* 221.

[144] Patrick Williams and Becky Clarke, "Contesting the Single Story: Collective Punishment, Myth-making and Racialised Criminalisation", in *Media, Crime and Racism*, eds. Monish Bhatia, Scott Poynting and Waqas Tufail (London: Palgrave, 2018), 318.

[145] Goddard, "BlackLivesMatter", 78.

[146] Tim Newburn, "The 2011 England Riots in Recent Historical Perspective," *The British Journal of Criminology* 55, no. 1 (2015): 57.

[147] Ryan Erfani-Ghettani, "Racism, the Press and Black Deaths in Police Custody in the United Kingdom," in *Media, Crime and Racism*, eds. Monish Bhatia, Scott Poynting and Waqas Tufail (London: Palgrave, 2018), 269.

[148] Newburn et al., "The Biggest Gang?," 216.

[149] Newburn et al., 216.

[150] Erfani-Ghettani, "Racism, the Press and Black Deaths," 265.

[151] Reeves and de Vries, "Does Media Coverage Influence," 285.

[152] Reeves and de Vries, "Does Media Coverage Influence," 302.

[153] Elliot-Cooper, "The Struggle That Cannot Be Named," 2450.

exclusion of Black people within the sacrality of the individual. In an optimistic Durkheimian perspective, this segmentation could be seen as a transitional period. Conversely, it is the sign of a disintegrating solidarity that aligns with "the egotistical nature of Spencer's economics"[154] and assures white supremacy. The punishment and crime-based responses to the 2011 riots not only indicate a rejection of Durkheim's ideas to ensure solidarity, but also suggest a continuation of a hierarchical society that evokes moral stagnation. In order to remove the hierarchical solidarity, the reduction of inequalities is central. Race has a unique status in the role of inequalities[155] which places addressing the racist policing, including the criminalisation process, at the core. The recognition of fiscal inequalities and the inclusion of Blackness within the sacralisation of the individual must be prioritised.

5. Black Lives Matter

In contrast to the 2011 Tottenham riots, the recent BLM protests have shifted crime and punishment practices. These global protests have the ability to be "creative epoch,"[156] allowing a moral evolution that represents the collective conscience forming a new religion (secular, of course). BLM was chosen for this essay because the police are currently at the centre of the issue.

The BLM protest movement began in 2012 in response to the killing of Trayvon Martin in Florida by George Zimmerman, who was later acquitted.[157] In 2014, after the death of Michael Brown in Missouri,[158] the hashtag #BlackLivesMatter was created to produce a "rallying cry for ALL Black lives striving for Liberation."[159] The recent tragic events of the murder of George Floyd on the 25th of May 2020 in Minneapolis by police officer Derek Chauvin and his fellow onlooking officers shocked the world.[160] Floyd's neck was knelt on for nearly nine minutes in response to his potential possession of a counterfeit $20. He died on the scene. The

[154] Lukes, "Durkheim's Individualism," 20.

[155] Allen and Chung, "Your Blues Ain't Like My Blues," 796.

[156] Giddens, *Emile Durkheim,* 231.

[157] Nikita Carney, "All Lives Matter, but so Does Race: Black Lives Matter and the Evolving Role of Social Media," *Humanity and Society* 40*,* no. 2 (2016): 181.

[158] Russell-Brown, "Critical Black Protectionism," 401.

[159] Carney, "All Lives Matter," 181.

[160] Rick Muir, *Out Of The Darkness: Policing And The Death Of George Floyd*, (London: Police Foundation, 2020).

video of his violent death was widely circulated on social media. This video was reminiscent of Eric Garner's (amongst others') cry of "I can't breathe," as Floyd called out for his mother. BLM symbolises the extent of the loss of Black lives at the hands of the police.[161] Thousands of people have taken to the streets in "collective action against racial injustice."[162] The majority of the protests consist of peaceful demonstrations, marches, kneeling, and rallies, and contrast starkly to the 2011 Tottenham riots.

Collective effervescence's power to shape society remains true in the case of George Floyd. His death has been the first to result in an officer being charged with murder.[163] Great social upheaval creates an effervescence that produces revolutionary epochs.[164] The outcry and demand for accountability will have to be acknowledged if the law is to represent the conscience collective.[165] Durkheim termed direct action, being that which is publicly visible, "the most forceful means of legitimate communication by the regulated to the regulators."[166] Since the police systematically fail to acknowledge the shift to Black sacredness, BLM is symbolic of those who need to partake in direct action to attain equality and equity.[167] BLM expands the cult of the individual to include Black people by expressing the "horror" of a killing.[168] BLM echoes the "linked fate" between the self and the group evident in Black Protectionism.[169] Durkheim believed an emotional reaction would create social solidarity.[170] In fact, the disgust, anger, and lamentation surrounding George Floyd's death created international solidarity. Chauvin's blatant disregard for the life of a Black individual was a threat that demanded a collective response. BLM protests embody the piacular ritual on a magnified scale compared to the 2011 riots, representing the "internal cry of the sacred."[171]

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[161] Long, *Perpetual Suspects,* 219.

[162] Hema P. Selvanathan et al, "Whites for Racial Justice: How Contact with Black Americans Predicts Support for Collective Action Among White Americans," *Group Processes and Intergroup Relations* 21, (no. 6 (2017): 893.

[163] Russell-Brown, "Critical Black Protectionism," 409.

[164] Giddens, *Emile Durkheim,* 231.

[165] Cotterrell, *Emile Durkheim,* 176.

[166] Cotterrell, 193-194

[167] Cotterrell, 193.

[168] Lukes, "Durkheim's Individualism", 22.

[169] Russell-Brown, "Critical Black Protectionism," 369.

[170] Lukes, *Emile Durkheim,* 163.

[171] Giddens, *Emile Durkheim,* 234.

As discussed above, mainstream media constructs a powerful collective effervescence[172] by constructing "good" or "bad victims."[173] The partisan reporting in American news polarised attitudes towards BLM.[174] Reporters focused on brutal confrontations rather than actual events: peaceful rallies and protests.[175] This connected BLM to radical political ideology, dismissing state-supported systematic racism.[176] Transformed into a political notion, BLM's demand for equal treatment for Black individuals risks being ignored. The use of social media counteracts such risk by redirecting the attention onto the police's actions. The use of imagery, including that of Black men protecting police officers,[177] contradicts the mainstream media. Furthermore, distributing images and recordings creates accountability. The media during the 2011 riots shaped public perspectives into a condemning effervescence. In contrast, BLM replaces traditional media with a platform that enables discussion.[178] Specifically, social media supports a transnational conversation of the oppressive systems[179] that do not achieve equal opportunity and do not uphold the sacredness of the individual. As such, a solidarity that gives voice to the experience of those often undermined is communicated across the globe.[180]

However, this solidarity requires societal re-construction. Solidarity can be slippery.[181] It holds colonial notions, requiring the colonised to become "white."[182] Solidarity can become exclusive through only including a proportion of society that fits norms, e.g., those that pass as white.[183] A form of exclusive solidarity was produced in the responses to the 2011 riots, where those not impacted or involved united in condemnation by removing the voice of those who

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[172] Thompson, *Emile Durkheim,* 1 and 80.

[173] Russell-Brown, "Critical Black Protectionism," 403.

[174] Danielle Kilgo and Rachel R. Mourao, "Media Effects and Marginalized Ideas: Relationships Among Media Consumption and Support for Black Lives Matter," *International Journal of Communication* 13, (2019): 4291.

[175] Kilgo and Mourao, "Media Effects," 4290.

[176] Erfani-Ghettani, "Racism, the Press and Black Deaths," 261.

[177] Gillian Bolsover, "Black Lives Matter Discourse on US Social Media During COVID: Polarised Positions Enacted in a New Event'," *Centre for Democratic Engagement* (2020): 7.

[178] Carney, "All Lives Matter, but so Does Race," 193.

[179] Carney, 196.

[180] Richard Sparks, "What Are We Going to Do Now? Criminology and Democratic Politics All Over Again," in *Criminology and Democratic Politics,* eds. Tom Daems and Stefaan Pleysier (London: Routledge, 2021),13.

[181] Roediger, "Making Solidarity Uneasy," 225.

[182] Roediger, 234.

[183] Allyson Hobbs, *A Chosen Exile: a History of Racial Passing in American Life* (London: Harvard University Press, 2016).

were involved. Social media in BLM has helped re-construct solidarity, avoiding its exclusive potential. More than 65% of American adults, over two billion people worldwide, use social media every day.[184] It can "scale up"[185] a movement and mobilise action[186] to create a new public sphere.[187] The hashtag removed figurehead leadership, creating globalised protests.[188] This international response indicates the scale of the impacted collective effervescence. Social media has reformed solidarity, challenging the colonial narrative through the notion of allyship.[189] Allyship as a form of solidarity resolves issues of Durkheim's solidarity being too homogeneous.[190] It enables white individuals to become allies to BLM through recognising their white privilege and fighting the reproduction of power dynamics.[191]

The cult of the individual currently conveyed by the police enables continuous violations against Black individuals. BLM indicates a shift away from the "God of the past" to a new inclusive God,[192] an all-inclusive cult of the individual. The collective conscience contains an essential ability "to renew a system in a process of crisis."[193] The state's decision to prosecute Chauvin aligns with the demands and expectations of the international solidarity. Morality must be "flexible to change in proportion and to the degree which is necessary."[194] The police, who embody values and beliefs, must change accordingly. The solidarity presented by BLM offers an opportunity to address the inequalities of society, but only if communication, deconstruction, and reconstruction occurs.

[184] Jonathan M. Cox, "The Source of a Movement: Making the Case for Social Media as an Informational Source Using Black Lives Matter," *Ethnic and Racial Studies* 40, no.11 (2017): 1847.
[185] Marcia Mundt, Karen Ross and Charla M Burnett, "Scaling Social Movements Through Social Media: The Case of Black Lives Matter," *Social Media and Society* (2018): 1.
[186] Kilgo and Mourao, "Media Effects," 4289.
[187] Carney, "All Lives Matter, but so Does Race," 184.
[188] Mundt et al., "Scaling Social Movements," 4.
[189] Clark, "White Folks' Work," 520.
[190] McNeill and Dawson, "Social Solidarity," 903.
[191] Clark, "White Folks' Work," 520.
[192] Bierstedt, *Emile Durkheim,* 222.
[193] Torres, "Durkheim's Concealed," 110.
[194] Giddens, *Emile Durkheim,* 112.

6. The Demand for a Shift

Durkheim perceives justice not as an ideal, but as a function.[195] It conveys the relevant societies' solidarity and moral values.[196] If the current societal order does not enable equality, then it needs to be eradicated and replaced with a new one.[197] BLM asks allies to challenge the racism within their communities,[198] interrogating the sometimes subtle ways in which structural racism operates.[199] White individuals have power in society, holding an important role in advancing efforts towards social change.[200] There is a need to recognise this power to transfer these benefits to subjugated groups, of which education to promote tolerance, inclusivity, and equality "is one method."[201] If the demand to sacralise the Black individual evident within BLM and as an undercurrent of the 2011 riots is to be met, then allyship must go beyond social media and protests to transformative social change.

Durkheim emphasises the role of schools in socialisation, providing a basis for societal morals.[202] Since education teaches the solidarity of the given society, it must include the cult of the individual. In 1938, James Cone created a Black Theology in order to reclaim the correlation between Black individuals, Christ, and God.[203] Although this focuses on Christian theology, it is an example of the need to reframe belief systems in alignment with inclusionary teachings. Copeland took Cone's Black Theology further by framing the eucharist as a ritual to "reclaiming sacred Black bodies," drawing parallels between the cross and the lynching tree.[204] These reconstructions of Christian theology based on Black experience indicates the need to re-construct exclusionary practices and beliefs. They envisage feasts and ceremonies

[195] Herzog, "Durkheim on Social Justice," 117.
[196] Maruna, "Reentry as a Rite," 6.
[197] Cotterrell, *Emile Durkheim,* 183.
[198] Lee et al., "Asians for Black Lives," 412.
[199] Elliot-Cooper, "The Struggle That Cannot be Named," 2459.
[200] Selvanathan, et al., "Whites for Racial Justice," 906.
[201] Clark, "White Folks' Work," 530.
[202] Karen Glover, "Identifying Racialized Knowledge Through a Critical Race Studies Lens: Theory and Principles for the Criminology Textbook Realm," *Contemporary Justice Review* 22, no. 4 (2019): 374.
[203] James H. Cone, *A Black Theology of Liberation* (New York: Orbis Books, 1968), 73.
[204] M. Shawn Copeland, *Enfleshing Freedom: Body, Race and Being* (Minneapolis: Fortress Press, 2010), 107-128.

conducive to social reintegration,[205] formulating "realistic utopias" to remake and reimagine institutional arrangements.[206]

Democracy is necessary for these ideals to produce a shift, both on a social level and at the state level.[207] For Durkheim, limitations in state communication are handled by the secondary agencies.[208] The police represent the direct enactment of communication. However, Durkheim includes an alternative group of communicators: the intellectuals, who ensure the cult of the individual is represented in societal procedures.[209] This allocation outraged Brunetiere, who responded to the Dreyfus Affair by accusing intellectuals of forming an individualism which leads to anarchy.[210] Durkheim corrected Brunetiere by explaining the cult of the individual and the role of the intellectual.[211] He argued that the role of critiquing society is central to avoid anomie or moral stagnation.[212]

The 2011 Tottenham riots and on-going BLM protest movement question morality held by white privileged individuals. The death of George Floyd and the "racialisation of punishment and crime control"[213] evident in the 2011 riots exposed the "absurdity of the present order."[214] This essay has emphasised that crime control is increasingly under the influence of mass media, which constructs "popular emotion."[215] It is here that this essay points towards the role of the democratic under-labourer[216] (interchangeable here with the civic criminologist).[217] To reconfigure the sacred individual, responding to the demand of collective effervescence in order to reduce anomie, Durkheim's need for intellectuals to critique procedural inequalities[218]

[205] Richman, *Sacred Revolutions,* 57.

[206] Ian Loader and Richard Sparks, "Criminology's Public Roles': A Drama in Six Acts," in *What is Criminology,* eds. Mary Bosworth and Carolyn Hoyle (Oxford: Oxford University Press, 2011), 22.

[207] Cotterrell, *Emile Durkheim,* 160.

[208] Lukes, *Emile Durkheim,* 269.

[209] Lukes, "Durkheim's Individualism."

[210] Lukes, "Durkheim's Individualism."

[211] Lukes, "Durkheim's Individualism."

[212] Lehmann, "The Question of Caste," 583.

[213] Sparks, "What are we Going to do Now?," 3.

[214] Lesley McAra, "Can Criminologists Change the World? Critical Reflections on the Politics, Performance and Effects of Criminal Justice," *British Journal of Criminology* 57, no. 4, (2017): 768.

[215] Loader and Sparks, "Criminology's Public Roles," 17.

[216] Loader and Sparks, "Criminology's Public Roles," 20.

[217] Sparks, "What are we Going to do Now?," 282.

[218] Lehmann, "The Question of Caste," 583.

must be implemented. This aligns with Loader and Sparks' democratic under-labourer, who must critique pre-existing norms to create innovative new approaches.[219] Criminologists must examine their own involvement in forwarding racial discourse.[220] The colour-blind racism detailed by Bonilla-Silva[221] enables the silencing of race, even in co-existence of contradictory data.[222] Criminology's use of race as a variable misunderstands race as a biological phenomenon rather than recognising it as an ideological one.[223] Glover expresses how this enables the criminalisation of Black individuals,[224] producing the criminalblackman.[225] Taking Black Theology as an example, criminology must reconsider approaches to crime and punishment to dismantle racist tendencies. Civic criminologists who create relationships with "communities of interest"[226] could be exemplars of the communication Durkheim stipulates for democracy. This will allow a "deeper democratization" to address predicaments,[227] recognising voices and "re-legitimising institutions"[228] that have lost respect.

Black victim experience can "excavate racist processes."[229] Interviews with 2011 riot participants by Newburn[230] were at first dismissed as a vindicatory piece of work produced by mob apologists.[231] This indicated that work is only praised if it fits elite political agenda,[232] replicating existing values. There is an urgency for democratic under-labourers to challenge and interrogate current policies and practices. Otherwise, as Durkheim feared, the segmentary society will remain,[233] and the monstrous subordination Black people still face[234] will not be reduced. In BLM focused research, regular interaction cross-demographics influences

[219] Loader and Sparks, "Criminology's Public Roles," 22.
[220] Glover, "Identifying Racialized Knowledge," 371.
[221] Eduardo Bonilla-Silva, *Racism Without Racists: Color-blind Racism and the Persistence of Racial Inequality in the United States,* 3rd ed. (New York: Rowman and Littlefield Publishers, 2010).
[222] Russell-Brown, "Critical Black Protectionism," 382.
[223] Glover, "Identifying Racialized Knowledge," 373.
[224] Glover, "Identifying Racialized Knowledge."
[225] Katheryn Russell-Brown, *The Color of Crime*, 2nd ed. (New York: New York University Press, 2009).
[226] Sparks, "What are we Going to do Now?," 10.
[227] Sparks, "What are we Going to do Now?," 15.
[228] Sparks, "What are we Going to do Now?," 15.
[229] Long, *Perpetual Suspects,* 208.
[230] Newburn et al., "The Biggest Gang?," 209.
[231] Tim Newburn, "Counterblast: Young People and the August 2011 Riots," *The Howard Journal* 51, no. 3, (2012): 334.
[232] McAra, "Can Criminologists," 982.
[233] McNeill, and Dawson, "Social Solidarity," 895.
[234] Russell-Brown, "Critical Black Protectionism," 370.

relations.[235] There is a positive correlation of peaceful interactions between ethnic groups and participation in BLM protests.[236] Durkheim indicated that a growth in society that produced regular interaction would enable the recognition of the higher common collective individual.[237] This knowledge provides pragmatic insights into reconstructing solidarity. The existence of racialised areas[238] needs to be dismantled if the cult of the individual is to include Black people. The requisite for better community relations between Black communities and the police[239] should be prioritised in crime control and punishment policies. Loader and Sparks' democratic under-labourer, who thinks of possible futures[240] offering "alternative ways of thinking about and responding to crime,"[241] should undertake such tasks in response to the exposed racism in institutions.

7. Concluding Remarks

The value of Durkheim's ideas to address contemporary problems in crime and punishment policies and practices is significant, as his concepts illuminate embedded inequalities. A neo-Durkheimian influenced perspective includes and prioritises racial inequalities.

Through applying Durkheim's concepts, this essay has shown that the 2011 Tottenham riots initially conveyed the problematic exclusion of Black individuals from sacralisation but went on to express the economic disparities present within the current neo-liberal society. The political, media, and police responses to the riots did not address the anomie produced by inequality or the threat to the sacred individual. Rather, the riots were perceived as a crime that offended the norm. Alternatively, BLM's use of social media focuses solely on the exclusionary sacrality enacted by the police. BLM questions the racially disproportionate actions of the police.[242] A neo-Durkheimian study of the events reveal a collective effervescence that could be determining moments in social development.

[235] Selvanathan, et al., "Whites for Racial Justice," 894.
[236] Selvanathan, et al., "Whites for Racial Justice," 895.
[237] Giddens, *Emile Durkheim,* 184.
[238] Elliot-Cooper, "The Struggle that Cannot be Named," 2449.
[239] Long, *Perpetual Suspects,* 217.
[240] Loader and Sparks, "Criminology's Public Roles," 29.
[241] Loader and Sparks, "Criminology's Public Roles," 22.
[242] Russell-Brown, "Critical Black Protectionism," 379.

Although this essay does not provide solutions to the evidently overwhelming problem of institutionalised racism, it demonstrates the importance of Durkheim's ideas when considering societal solidarity. It has illuminated the power of the police in communicating morality, implying that the police are a good starting point in reconstructing solidarity. "De-fund the police"[243] could be interpreted as an opportunity to address institutional racism by building community relations, thereby embodying the collective effervescence created by these events, of which the ultimate expression is treating all individuals as sacred,[244] regardless of race.

Durkheim's emphasis on democracy with intellectuals informing legislators of social needs[245] is also of value. This essay assigned the role of Durkheim's intellectuals to the democratic under-labourer. The criminologist must align crime and punishment policies to the core values of society, expanding the cult of the individual to be inclusive of Black people. The criminologist must remember the radical notion of critiquing social structures to better society's cohesion.[246] Failure to do so will result in anomie sustaining the criminogenic hierarchical state.[247] Controversy must not be cowered from. This is how moral stagnation can be avoided and crime and punishment policies attuned to the undercurrents of the riots and the demands of BLM can be produced.

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[243] Sparks, "What are we Going to do Now?," 8.
[244] Lukes, "Durkheim's Individualism," 14.
[245] Cotterrell, *Emile Durkheim,* 176.
[246] Wallwork, *Durkheim,* 171.
[247] Messner et al., "Institutions, Anomie and Violent Crime," 170.

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Never Again: A Legal Chimera?

Assessing the Prophylactic Dimension of Article 3 of the Genocide Convention

Christopher Hale

LLM in Human Rights, University of Edinburgh (2019-2020)

Abstract

This article examines the scope of the duty that arises from Article 1 of the Genocide Convention[1] (hereinafter, the Convention) that imposes on States the dual obligation to prevent and punish genocide as an international crime. The analysis will focus on the legal problems arising from the punishable acts of Article 3 which asserts a prophylactic framework regarding the crime of genocide. This article argues that Article 3 is fundamental to the obligation to prevent as well as punish since the prohibited acts are inchoate (meaning incomplete). If an act of genocide is legally conceived as incomplete, it can, in theory, be repressed in the spirit of the Convention.

Keywords: the Genocide Convention, inchoate crimes, dolus specialis, incitement, International Criminal Tribunal for Rwanda

[1] "Convention on the Prevention and Punishment of the Crime of Genocide," open for signature December 9, 1948, registration no. A/RES/3/260, http://un-documents.net/a3r260.htm.

1. Introduction

Scholars have characterised the Genocide Convention as "terse" or "laconic."[2] The Convention asserts the contours of the crime of genocide in Articles 2 and 3. First, the Convention defines the scope of genocide as concerning human groups, rather than individuals, attacked on the grounds of identity: thus, genocide is "the denial of the right of existence of entire human groups."[3] The purpose of the Convention can therefore be defined as preventing the destruction of groups rather than individuals. Second, the crime of genocide comprises the conduct element (*actus reus)*, meaning acts of genocide, and a mental dimension (*mens rea)* of specific intent (*dolus specialis*) to destroy such groups "in whole or in part." Even the most egregious acts of mass slaughter of non-combatants are not legally genocide if the perpetrators cannot be proven to possess the special or ulterior intent of the crime. The group as target and the special intent of the perpetrator(s) are the foundational principles of the duty to prevent and punish under Article 1 of the Convention.[4]

Two important points arise from the legal definition of genocide in the Convention. First, Raphael Lemkin, who coined the neologism, conceived special intent as the *ultimo ratio* of genocide to develop a legal means to criminalise emerging patterns of discriminatory violence that might be suppressed before large scale loss of life occurs.[5] The requirement to establish special intent to destroy a protected group distinguishes genocide from other egregious international crimes against humanity, which are not yet codified in an international convention.[6] In customary international law, a "crime against humanity" is perpetrated against civilian populations rather than groups "as such" and is regarded as an international crime if

[2] William A. Schabas, "Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crimes of Crimes," *Genocide Studies and Prevention* 2, no. 2 (2007): 101-102.

[3] United Nations General Assembly, "The Crime of Genocide," GA/Res 96 (1), December 11, 1946, https://undocs.org/en/A/RES/96(I).

[4] The definitions in Article 2 of the Convention are reproduced verbatim in the statutes of the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC) and can thus be considered international customary law.

[5] Katherine Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach," *Genocide Studies and Prevention: An International Journal* 5, no. 3 (2010).

[6] United Nations General Assembly, "Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries," A/74/10, 2019, https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf.

the attack is widespread and/or systemic.[7] However, proving the essential mental element of alleged acts of genocide or complicity in genocide is a formidable obstacle in practice.[8] Second, by making special intent definitive of the crime, the Convention implies a temporal dimension: it was intended to suppress the *future* enactment of the special intent to commit genocide. Nevertheless, special intent alone is insufficient to merit preventive action or punishment: Instead, the preventive capacity of the Convention is articulated in Article 3 which sets out inchoate but nonetheless punishable acts.

2. The Significance of Article 3

Schabas observes that the "other acts" of genocide articulated in Article 3 (b), (c), (d), and (e) might be regarded as "lesser crimes" that do not bear the same stigmatising capacity as Article 3 (a), GENOCIDE.[9] This distinction captures one of the core problems of the Convention, which is intended to both punish perpetrators of genocide and prevent the consummation of the crime. The purpose of the Convention, expressed in the Preamble, requires conceiving genocide in two dimensions, encompassing simultaneously the completed act, the destruction of the group, and acts taken to effectuate the act. The legal bridge that binds these dimensions is the concept of the inchoate or incomplete crime. In standard texts, such crimes are defined as follows:

> A person does not break the criminal law simply by having evil thoughts. Where, however, a person takes steps towards effecting that plan to commit a substantive offence which is more than merely preparatory, he may in the process commit one of the inchoate crimes of attempt, conspiracy, or encouraging or assisting the commission of an offence.[10]

The prosecution of individuals for committing such inchoate crimes can therefore be regarded as preventive. It can be inferred from the Convention that the drafters conceived the

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[7] Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2019), 37.

[8] Stahn, *A Critical Introduction to International Criminal Law,* 52.

[9] William Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000), 307.

[10] Michael John Allen and Ian Edwards, "Inchoate offences," in *Criminal Law* (Oxford: Oxford University Press, 2019).

crime of genocide as sequential and escalatory. This is evident in Article 3 which asserts the prophylactic value of inchoate or incomplete punishable acts of genocide, such as incitement and conspiracy, which affirm the grave risk of consummation of the specific genocidal intent. The accumulative nature of genocide means that upstream acts can be captured along a distinct spectrum of criminal liability. Furthermore, the Convention insists that perpetrators of the international crime of genocide must be shown to harbour the specific intent "to destroy in whole or in part." The distinct mental dimension of the crime acts as a legal "control" that applies to, for example, propagandistic incitements calling for the destruction of a group and acts of mass killing. The mental dimension of the crime, the specific intent to "destroy in whole or in part" implies that the "other acts" asserted in Article 3 can be conceived as "preparatory" and thus punishable upstream of the completed act, Article 3 (a).[11] To sum up, the assertion that the acts set out in Article 3 are "lesser crimes" is technically correct under common law. Under the terms of the Genocide Convention, the stigmatising capacity of such acts is enforced by the special intent of the perpetrator: Stigma is captured by the special intent that characterises all punishable acts of genocide. The purpose that frames the criminalisation of such preparative acts is the possibility to suppress them, encapsulating the preventive capacity of the Convention.

George Fletcher makes an important observation that the definitions of genocide in Article 2 can also be regarded as inchoate, as the use of the future tense demonstrates: "Deliberately inflicting on the group conditions of life *calculated to bring about* its physical destruction…" "imposing measures *intended to prevent* births within the group."[12] As will be expanded upon in this paper, both Article 2 and 3 imply a temporal or sequential dimension to the crime of genocide which girds the Convention in a preventive armoury, if special intent can be proven and therefore the grave risk to the group established. The significance of Article 3 regarding

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[11] William Schabas, "Genocide and Crimes against Humanity: Clarifying the Relationship," in *The Genocide Convention: The Legacy of 60 Years*, eds. Harmen van der Wilt, Jeroen Vervliet, Goran Sluiter and Johannes Houwtink ten Cate (Koninklijke Brill, 2012), 3-14.

[12] Ruti Teitel, Roy Lee, William K. Lietzau et al., "The International Criminal Court: Contemporary Perspectives and Prospects for Ratification," *New York Law School Journal of Human Rights* 16, no. 2, (Spring 2000): 526-528.

the scope of the duty to not only punish but prevent genocide under the Convention will be addressed in the following section.

3. The Scope of the Duty to Prevent Genocide under Article 3

3.1. Inchoate Crimes

Schabas asserts that "while the final Convention has much to say about the punishment of genocide, there is little to suggest what prevention of genocide really means."[13] Under the Convention, the scope of prevention is implicit in Articles 3 and 8 which, first, define the punishable acts of genocide and, secondly, the actions that States might take to suppress such acts. Article 3 (a) asserts genocide as a punishable act, but the other acts of genocide[14] acquire their significance apropos prevention as "inchoate" or incomplete infractions: *infraction formelle* under civil law, meaning punishable as such. The gravity of such inchoate acts derives from the high risk of *future violations,* even if the principal offence, namely genocide, never takes place.[15] This follows from the legal requirement that perpetrators of the inchoate acts of Article 3 harbour the special intent to destroy in whole or in part a protected group.

It follows that Article 3 implies that genocide can be conceived in teleological terms as a "system" of acts, each one of which is *punishable* and thus the object of lawful preventive action. Schabas is thus right to argue that the convention is vocal on punishment, but he is wrong to conclude that it remains silent on prevention: The punishment – of the other acts of genocide – *constitutes prevention*. The gravity of the international crime of genocide, asserted in the language of the Convention chapeau – or preface to the treaty – affirms the obligation of States to apply the duty to prevent any of the illegal acts committed "upstream" of the completed act of genocide.

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[13] William Schabas, *Genocide in International Law: The Crime of Crimes,* 2nd ed. (Cambridge: Cambridge University Press, 2009), 81.

[14] Article 3: The following acts shall be punishable:
(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.
These are referred to punishable acts in Articles 4, 5, 6, 7, 8 and 9.

[15] William Schabas, "Other Acts of Genocide," in *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 308.

Nevertheless, Article 3 has provoked complex and, in some cases, unresolved legal argument. The legal problem of the "other acts" asserted in Article 3 can be broadly summed up as follows. First, preventive intervention in the territory of another State upstream of the completed act of genocide risks provoking dispute under international law. The sanctity of state sovereignty under international law has been challenged by the notion of the "Responsibility to Protect" (R2P), which arguably captures the duty to prevent under the Convention.[16] However, the principle of non-intervention is foundational in international law and remains a potent constraint on States that might resolve to respond to atrocities of any kind taking place in the territory of other states.[17] The Commentary to Article 54, paragraph 6, of the Responsibility of States for Internationally Wrongful Acts (ARISWA) succinctly asserts that "there is no clearly recognised entitlement of States… to take countermeasures in the collective interest."[18] It follows that fulfilling the obligation to prevent the punishable "other acts" of genocide asserted in Article 3 (b), (c), (d), and (e) hazards imposing significant strain on the tolerance of the international community for a preventive intervention, for example regarding the activities of radio or television stations allegedly broadcasting "direct and public incitement." Propaganda was recognised in the case law of the International Criminal Tribunal for the Former Yugoslavia (ICTY)[19] and the International Criminal Tribunal for Rwanda (ICTR) as a means to facilitate crimes against humanity and, in certain cases, genocide.[20] Nevertheless, it is difficult to envision a State tolerating suppression of its media by other States on the grounds that they might be engaging in direct and public incitement to genocide. The further upstream the duty to prevent is activated, the greater the risk that an interventionist

[16] Andreas S. Kolb, *The UN Security Council Members' Responsibility to Protect: A Legal Analysis* (Berlin: Springer, 2018).

[17] André Nollkaemper, "'Failure to Protect' in International Law," in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller (Oxford: Oxford University Press, 2015), 6-8.

[18] "Responsibility of States for Internationally Wrongful Acts," open for signature December 12, 2001, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf .

[19] *Prosecutor v. Radoslav Brđanin (Trial Judgement)*, IT-99-36-T(2004), 34, https://www.icty.org/x/cases/brdanin/tjug/en/brd-tj040901e.pdf.

[20] *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Judgement and Sentence)*, ICTR-99-52-T (2003), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-99-52/trial-judgements/en/031203.pdf; Gregory S. Gordon, "'A War of Media, Words, Newspapers, and Radio Stations': The ICTR Media Trial Verdict and a New Chapter in the International Law of Hate Speech," *Virginia Journal of International Law* 45, no. 1 (2004); Diane F. Orentlicher, "Criminalizing Hate Speech in the Crucible of Trial: Prosecutor v. Nahimana," *New England Journal of International and Comparative Law* 12, no. 17 (2005).

State or organ of the United Nations may be accused of breaching the customary norm of State sovereignty.

Secondly, the terms of Article 3 (conspiracy, incitement, attempt and complicity) are enigmatic and contentious terms. The efficacy of Article 3 to define the scope of legal prophylaxis rests significantly on the inchoate and thus preparative nature of the criminal acts that are punishable in the absence of overt action. Nevertheless, some jurists and scholars have argued that Article 3 challenges political and social rights to free association and expression, while weakening the core concept of individual liability through collective indictments.[21] These problems will be examined below, first under Article 3 (b), CONSPIRACY and second under Article 3 (c), DIRECT AND PUBLIC INCITEMENT.

3.2. Conspiracy

Under the Convention, the crime of genocide does not *expressis verbis* require multiple perpetrators to conceive a plan to destroy a protected group. In theory, it is possible for genocide to be committed by a single individual (lone génocidaire),[22] possessing the required intent and means: Article 4 refers to the punishment of "constitutionally responsible rulers, public officials or private individuals…" The systemic nature of the crime defined as "destruction in whole or in part" of a group makes the existence of a conspiracy, as a possible precondition of enactment, a reasonable inference regarding the nature of the crime.[23] By asserting conspiracy as a punishable, inchoate act, the Convention provides a powerful tool of accountability, and thus prevention, since it reflects the gravity of risk that is concomitant with a joint enterprise. Nevertheless, several legal problems arise from the application of conspiracy in indictments for genocide.[24]

[21] Orentlicher, "Criminalizing Hate Speech."

[22] William A. Schabas, "Darfur and the Odious Scourge: The Commission of Inquiry's Findings on Genocide," *Leiden Journal of International Law* 18, no. 4 (2005), 877, insists, however, that genocide has consistently been committed by states or *state like* collective entities (non-state actors) and that the "*lone genocidaire*" is a "sophomoric *hypothèse d'école.*"

[23] Claus Kreß, "The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber's Decision in the Al Bashir Case," *Journal of International Criminal Justice* 7, no. 2 (2009): 297-306, doi:10.1093/jicj/mqp031.

[24] Mohamed C. Othman, "Conspiracy to Commit Genocide," in *Accountability for International Humanitarian Law Violations: The Case of Rwanda and East Timor* (Berlin: Springer, 2005)197-205, https://doi.org/10.1007/3-540-28885-6_6.

The first problem concerns how the crime of conspiracy is understood. In common law, a conspiracy is committed when two or more persons come to an agreement to commit a criminal act: The agreement is the statutory crime.[25] It is immaterial whether the "substantive" crime that the defendants conspired to commit is carried out. However, in many civil law systems, conspiracy can only be punished if the substantive crime is committed.[26] Agreement is not punishable; an overt criminal act is required. Conspiracy is, by and large, alien to civil law.[27] In common law, overt acts following an agreement are distinct criminal offences.[28] These fundamentally different legal concepts have produced inconsistencies in the fora of international criminal law.

Although Article 3 (b), CONSPIRACY was understood in common law terms by the drafters of the 1948 Convention,[29] the International Law Commission and the drafters of the Rome Statute did not conceive conspiracy as an inchoate crime. According to these sources, the substantive offence, in short, must be committed. It is thus a form of *complicity*. The consequences of this approach are twofold: First, the International Criminal Court cannot prosecute conspiracy to commit genocide, and second, in national State legislations under the continental tradition, there is no provision for prosecutions under the Convention Article 3 (b).[30] Since prosecuting conspiracy as an inchoate offence may provide a significant preventive mechanism under the Convention, this is a troubling omission. Notwithstanding, there have been a number of indictments of conspiracy to commit genocide before the ICTR which

[25] Criminal Law Act 1967 s 1; see also R. v. Aspinall (1876) Q.B.D., "…the crime of conspiracy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at some future time, certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement."

[26] A useful overview of conspiracy under Civil Law systems is Wienczyslaw J. Wagner, "Conspiracy in Civil Law Countries," Journal of Criminal Law, Criminology & Political Science 42, no. 2 (1951): 171-183.

[27] Aaron Fichtelberg, "Conspiracy and International Criminal Justice," *Criminal Law Forum*, 17, no. 2 (2006): 149-176, 151.

[28] Wagner, "Conspiracy in Civil Law Countries, Journal of Criminal Law and Criminology," 171.

[29] Othman, "Conspiracy to Commit Genocide."

[30] See William Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 315-316 referring to Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July, 1996, p.25; "Rome Statute of the International Criminal Court," open for signature in July 1, 2002, https://www.icc-cpi.int/nr/rdonlyres/add16852-aee9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf, Article 6.

provide important clarifications of Article 3 (b) of the Genocide Convention.[31] Since the ICTR case law demonstrates the most concerted use of conspiracy to commit genocide, the record of its proceedings provides significant and, in some cases, contentious case law.[32]

Taking the case of *Prosecutor v Musema*, the Trial Chamber recognised conspiracy to commit genocide as an inchoate offence and thus punishable "even if it fails to produce a result."[33] It must be proved that the alleged conspirators reached agreement, as required in common law: Negotiation to commit a crime is insufficient. The alleged conspirators must, furthermore, share the special intent to commit genocide. Conspiracy is thus a "double intent" crime, meaning that there is an intention to agree and an intention to commit the offence.

The contours of conspiracy as a common law crime have two principal objectives pertinent to genocide. Conspiracy recognises, firstly, the grave risks inherent in preparatory acts such as an agreement that manifests the special intent of genocide, and, secondly, that a joint agreement by a number of parties is more likely to achieve a harmful result by means of concerted action. Thus, a concerted agreement is a graver risk to a protected group. Notwithstanding the prophylactic dimension of the criminalisation of conspiracy in genocide cases, the crime represents a legal paradox since, as Goldstein noted, "conspiracy impinges on the act requirement." In other words, it can be conceptualised as lacking the *actus reus*. Unlike Article

[31] *Prosecutor v. Musema*, ICTR-96-13-T (2000), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-13/appeals-chamber-judgements/en/011116.pdf, 70; *Prosecutor v. Kajelijeli*, ICTR-98-44A-T (2003), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-98-44a/trial-judgements/en/031201.pdf, 175; *Prosecutor v. Nahimana et al.,*ICTR-99-52-T (2003), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-99-52/trial-judgements/en/031203.pdf, 345; *Prosecutor v. Seromba*, ICTR-2001-66-I (2006), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-01-66/trial-judgements/en/061213.pdf, 90; *Prosecutor v. Bikindi,* ICTR-2001-72-T (2007), http://www.worldcourts.com/ictr/eng/decisions/2007.06.26_Prosecutor_v_Bikindi_2.htm, 5-6; *Prosecutor v. Ndindiliyimana et al.* (Case No. ICTR-00-56-T), Decision on Defence Motions Pursuant to Rule 98bis, 29 March 2007, https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-00-56/appeals-chamber-judgements/en/140211.pdf accessed 25/9/2021, 6; *Nahimana et al. v. Prosecutor*,ICTR-99-52-A (2007), 351. These indictments for conspiracy to commit genocide were pursued under the authority of Article 2(3)(b) of the Statute of the International Tribunal for Rwanda, equivalent to Article 3(b) of the Genocide Convention.

[32] The ICTY indicted individuals for conspiracy to commit genocide as part of a joint criminal enterprise (JCE) in Popović et al, IT-05-88-A, 2010.

[33] *Prosecutor v Musema*, ICTR-96-13-T (2000), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-13/trial-judgements/en/000127.pdf.

3 (d), ATTEMPT, prosecutors are not obligated to look beyond proof of agreement to preparatory action or "commencement of consummation."[34]

Indictment for conspiracy thus activates legal risks long recognised in liberal democracies founded on common law. The prosecution of conspiracy can pose a threat to rights to freedom of association and to free speech, and is thus open to exploitation to repress controversial opinions or political organisations.[35] The increased possibility of abuse derives from the fact that it is not required in a conspiracy indictment to prove the charge of conspiracy by means of a formal agreement, such as a written contract: The criminal agreement may be tacit and thus inferred from words or conduct. In conspiracy trials under common law, hearsay evidence can be admissible, with certain restrictions.[36] Since conspiracy is, by definition, secretive, the prosecutor may rely on deduction and inference derived from evidence of such acts as meetings and gatherings, speeches and directives that can be taken to prove a shared agreement to commit a crime. Conspiracy has indeed been characterised as "the prosecutor's darling."[37] Nevertheless, hypothetical abuse of legal procedure is not identical to a normative critique of the contours of the crime. The foundational principle of any legal system is to protect the innocent and prosecute the guilty: The prophylactic value of Article 3 (b) remains intact if international criminal fora demonstrate respect for the fundamental legal rights of the accused.

Two further problems can be discerned in the case law of the ICTR. The first problem was implied by the ICTR Office of the Prosecutor, that concluded the Rwandan genocide was a single, interconnected crime and that its generalised and methodical nature "gave rise to the inference of coordination, hence conspiracy to destroy, in whole or in part, the Tutsi, as such."[38] The attendant legal problem that follows from the "joint agreement" definition of conspiracy

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[34] Abraham S. Goldstein, "Conspiracy to Defraud the United States," *The Yale Law Journal* 68, no. 3 (1959): 406.

[35] See for example Phillip E. Johnson, "The Unnecessary Crime of Conspiracy," *California Law Review* 61, no. 5 (1973): 1137, referenced in Fichtelberg, "Conspiracy and International Criminal Justice," 157-165.

[36] See Norman M. Garlandand Donald E. Snow, "The Co-Conspirators Exception to the Hearsay Rule: Procedural Implementation and Confrontation Clause Requirements," *Journal of Criminal Law, Criminology and Police Science* 63, no. 1 (1972).

[37] Andrew Ashworth, *Principles of Criminal Law* (Oxford: Oxford University Press, 2003), 449-460; S. A. Klein, "Conspiracy: The Prosecutor's Darling," *Brooklyn Law Review* XXIV, no. 1: 1-11.

[38] United Nations General Assembly Security Council, "Annual Report of the ICTR to the U.N. General Assembly," A/55/435-S/2000/927, October 2, 2000, https://undocs.org/pdf?symbol=en/S/2000/927, 19.

is that prosecutors may resort to ambitious joinder trials which risk conflating by association accused individuals with different levels of liability, and thus compromising the legal requirement to prove individual responsibility. This became apparent with the filing of the so called "Big" or "Global" indictment against Theoneste Bagosora and no less than 28 others in 1998.[39] Ng'arua notes that in *Bagosora* "the indictment tended to include sweeping statements as to the mode of participation of the accused, and the circumstances surrounding the commission of the crimes."[40] "Sweeping statements" implies that the prosecution failed to respect the individual contribution of alleged conspirators to the joint enterprise. It follows from this critique that in any joinder trial, the Trial Chamber is obligated to balance the joint identity of the crime as an agreement made by two or more individuals with the rights of indicted individuals. It is instructive that in the case of *Bagosora*, the indictment of Bagosora and 28 others was modified to Bagosora and *three* others; while other individuals charged were "re-grouped into thematic titles" that reflected different positions and roles.[41] In short, by refining the scope of the indictment, the ICTR Trial Chambers "learnt" how to respect individual rights in "collective" conspiracy indictments.

The second problem that arises from the application of conspiracy in indictments for genocide is that the *preparatory* crime in ICTR case law, the punishable act of conspiracy, is inferred from the criminal *acts* of the alleged conspirators, acting together, thus making indictment for an inchoate act contingent on overt actions which follow a criminal agreement. The ICTR treated conspiracy as a distinct crime, but there is a risk of tautology in proving conspiracy through the completed overt actions of genocide. This may be a legitimate prosecution strategy but raises the question of how Article 3 (b) might be instrumentalised in a *preventive* prosecution, when no overt action has taken place, following agreement.

[39] *Prosecutor v T. Bagosora and 28 Others*, ICTR-98-37-1 (1998), http://www.haguejusticeportal.net/Docs/Court%20Documents/ICTR/Bagosora_Judgment.pdf.

[40] Paul Ng'arua, "Specificity of Indictments in ICTR Genocide Trials," in *The Criminal Law of Genocide: International, Comparative, and Contextual aspects,* ed. Paul Behrens and Ralph Henham (London: Routledge, 2007), https://doi.org/10.4324/9781315615127, 177.

[41] Ng'arua, "Specificity of Indictments," 177.

Resolving this question requires asserting the dual obligation to prevent and punish under the Convention. The solution requires that future suits seeking to prevent genocide under Article 3 (b) recognize the contours of conspiracy as an inchoate crime asserted in the case law of ICTR prosecutions for (a) conspiracy and (b) commission of genocide. For example, in *Niyitegaka*, the judgement recognised evidence of meetings held by the accused Minister of Information and others to plan killing Tutsi and to distribute weapons. At the meetings, the minister proposed a plan for attacks on the following day and appointed individuals to lead the attacks. At further meetings, the Minister urged others to ensure that all Tutsi would be killed.[42] The ICTR case law in indictments for conspiracy offers significant clarification on the legal contours of conspiracy, thus validating the legal prosecution of preparatory actions.

Furthermore, from the perspective of the duty to *prevent* under the Convention, the probative challenge of proving conspiracy when genocide has not occurred warrants a lower burden of inferred and deductive proof. This argument is founded first on the legal identity of conspiracy in common law as a recognition of the greater risk of a joint enterprise and, secondly, on the preventive spirit of the Convention asserted in Article 1.

To conclude, the risk of illiberal prosecutions must be balanced against the preventive efficacy of conspiracy as an inchoate crime. Criminal prosecutions of atrocity crimes carry a heavy burden of stigmatisation. Proceedings are subject to unusual levels both of scrutiny and appeal. It is reasonable to assert that the rights of individuals accused of participating in a conspiracy under Article 3 (b) will be protected by international standards of justice, notably the presumption of innocence, fairness and due process.[43]

3.3. Direct and Public Incitement

The drafters of the Convention recognised that prejudicial rhetoric targeting religious, ethnic or national groups might have a role in the preparation of acts of genocide. The final draft, however, drew a conceptual and legal line between rhetoric expressing hatred of certain

[42] *Prosecutor v E. Niyitegaka*, ICTR-96-14 (2004), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-14/appeals-chamber-judgements/en/040709.pdf.

[43] Othman, "Conspiracy to Commit Genocide," 207.

groups, however pernicious, and the punishable act of "direct and public incitement."[44] Nevertheless, indictments under Article 3 (c) have triggered legal controversy. The fundamental reason is that criminalising incitement as an inchoate crime, without requiring proof of result, might be regarded as a "pretext to interfere with freedom of expression."[45] In brief, discriminatory rhetoric directed at certain groups might be permissible under the human right to free expression embodied in several international treaties.[46] The United States strongly resisted making incitement an inchoate crime under the Convention since, it was argued that the act might make "any newspaper article criticising a political group" a preparatory act of genocide.[47] Therefore the drafters of the Convention sought to constrain the scope of the act as "direct and public" – but provided no substantive guidance regarding the precise meaning of these words. The legal difficulties implicit in Article 3 (c) have stubbornly resisted resolution, as demonstrated in the jurisprudence of the ICTR, which indicted a number of individuals on the charge of direct and public incitement.[48]

A significant difficulty is apparent in the *Akayesu* Judgement in which the Trial Chamber debated whether a distinction should be made between inchoate incitement, where the act is unsuccessful, and incitement to take part in criminal acts, when genocide takes place as a consequence of the act of incitement.[49] In *Akayesu*, "successful incitement" was a matter of fact since the accused made an inflammatory speech to a large crowd that included members of the *Interahamwe* militia who subsequently carried out mass killings.[50] Arguably, in *Akayesu*

[44] Diane F. Orentlicher, "Criminalizing Hate Speech in the Crucible of Trial: *Prosecutor v. Nahimana*," *American University International Law Review* 21, no. 4 (2006): 569.

[45] Cited in William Schabas, *Genocide in International Law: the Crime of Crimes* (Cambridge, 2000), 269 referring to UN Doc. A/C.6/SR.84 (Fitzmaurice, United Kingdom)

[46] "Universal Declaration of Human Rights," proclaimed in December 10, 1948, https://www.un.org/sites/un2.un.org/files/udhr.pdf, Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

[47] William A. Schabas, "Hate Speech in Rwanda: The Road to Genocide," *McGill Law Journal* 46, no. 1 (2000): 321.

[48] Indictments for the direct and public incitement of genocide before the ICTR were pursued under the authority of Article 2(3)(c) of the Statute of the International Tribunal for Rwanda, equivalent to Article 3(c) of the Genocide Convention.

[49] *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4 (1998), https://unictr.irmct.org/en/cases/ictr-96-4.

[50] *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4 (1998), "The Chamber is of the opinion that there is a causal relationship between Akayesu's speeches at the gathering of 19 April 1994 and the ensuing widespread massacres of Tutsi in Taba." [...] "From the foregoing, the Chamber is satisfied beyond a reasonable

"successful incitement" was also a form of complicity and/or abetting.[51] Nevertheless, the Trial Chamber affirmed that it was "satisfied beyond a reasonable doubt that, by the above-mentioned speeches made in public and in a public place, Akayesu had the intent to directly create a particular state of mind in his audience necessary to lead to the destruction of the Tutsi group, as such."[52] The significance of the Trial Chamber's judgement is that it affirmed that by *making the speeches,* Akayesu had committed the punishable act of direct and public incitement to genocide. The egregious consequences of his act were not irrelevant but not required to secure a conviction under the Tribunal's equivalent to Article 3 (c).

Another legal problem that the Tribunal confronted was asserting incitement as a punishable crime under the Convention distinct from free expression of opinion protected by other human rights instruments. The "Media Case" concerned the editors of *Radio Télévision Libre des Milles Collines* (RTLM) and the newspaper *Kangura*: vehicles of Hutu propaganda hostile to Tutsis before and during the outbreak of genocide in Rwanda.[53] The accused editors Jean-Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngeze were convicted by the ICTR of, among other offences, incitement to genocide. In this case, the Trial Chamber recognised that hate speech, provocative statements and even advocating for violence are not sufficient for a conviction under the Tribunal's equivalent to Article 3 (c).[54] The Judgement states for example:

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doubt that, by the above-mentioned speeches made in public and in a public place, Akayesu had the intent to directly create a particular state of mind in his audience necessary to lead to the destruction of the Tutsi group, as such. Accordingly, the Chamber finds that the said acts constitute the crime of direct and public incitement to commit genocide, as defined above," paragraphs 673 (vii) and 674.

[51] Schabas, "Hate Speech in Rwanda," 157.

[52] *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4 (1998).

[53] See for example, Jean-Marie Biju-Duval, "'Hate Media' - Crimes Against Humanity and Genocide: Opportunities Missed by the International Criminal Tribunal for Rwanda," in *The Media and the Rwanda Genocide*, ed. Allan Thompson (London: Pluto Press, 2007), 343; Gabriele Della Morte, "De-Mediatizing the Media Case: Elements of a Critical Approach," *Journal of International Criminal Justice* 3, no. 4 (2005): 1024-25, doi:10.1093/jicj/mqi064; Gregory S. Gordon, "'A War of Media, Words, Newspapers, and Radio Stations': The ICTR Media Trial Verdict and a New Chapter in the International Law of Hate Speech," *Virginia Journal of International Law* 45, no. 1 (2004): 139; Orentlicher, "Criminalizing Hate Speech in the Crucible of Trial: Prosecutor v. Nahimana," 17; Wibke K. Timmermann, "The Relationship Between Hate Propaganda and Incitement to Genocide: A New Trend in International Law Towards Criminalization of Hate Propaganda?," *Leiden Journal of International Law* 18, no. 2 (2005): 257; Alexander Zahar, "The ICTR's 'Media' Judgment and the Reinvention of Direct and Public Incitement to Commit Genocide," *Criminal Law Forum* 16, no. 1 (2005): 33.

[54] *The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T.

> The Chamber notes that not all of the writings published in *Kangura* and highlighted by the Prosecution constitute direct incitement. *A Cockroach Cannot Give Birth to a Butterfly*, for example, is an article brimming with ethnic hatred but did not call on readers to take action against the Tutsi population.[55]

The distinction was encapsulated by Learned Hand as between "keys to persuasion" and "triggers to action."[56] How then did the Trial Chamber in the "Media Case" distinguish free expression from incitement as a punishable act? The following extract from the Judgement provides an answer:

> RTLM broadcasting was a drumbeat calling on listeners to take action against the enemy and enemy accomplices, equated with the Tutsi population. The phrase 'heating up heads' captures the process of incitement systematically engaged in by RTLM, which after 6 April 1994 was also known as 'Radio Machete'. The nature of radio transmission made RTLM particularly dangerous and harmful, as did the breadth of its reach.[57]

Thus, the Trial Chamber defined "direct and public" as the synthesis of discriminatory rhetoric with calls to act addressed to listeners with a capacity to inflict harm. To sum up, "direct" means that the criminality of the act is embodied, not in offensive opinion as such but in the appeal to commit the crime of genocide, even if euphemistic language is used to this end, such as "get to work," a phrase which was understood by the listeners as an instruction to kill members of the targeted group. "Public" refers to the space or medium of utterance, such as a radio broadcast or megaphone used in a public space. Furthermore, the incitement or criminal

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[55] *The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, 344.

[56] Masses Publhising Co. v. Patten, 244 F. 535, 541 (S.D.N.Y. 1917) (Hand, J.), quoted in Catharine A. MacKinnon, "International Criminal Tribunal for Rwanda judgment on media incitements to persecution or to commit genocide," *The American Journal of International Law* 103, no. 1 (2009): 101.

[57] *The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, 342-343.

utterance must be understood by the "receiver" as "directly provoking the perpetrator(s) to commit genocide."[58]

Nevertheless, convictions for incitement to genocide are likely to remain tricky in future suits. Certain aspects of the Trial Chamber Judgement in *Prosecutor v Nahimana et al* were challenged by the Appeals Chamber, which reduced the defendants' sentences and issued a rebuke to the trial court.[59] Some convictions were set aside on grounds of timing because the inciting act had taken place before the 1st of January 1994, the ICTR's jurisdictional starting point, or the critical date of the 6th of April, when the killings began. In short, the relationship between the incitement and the completed act was excessively attenuated. Liability was thus time-limited: "the longer the lapse of time between a broadcast and the killing of a person, the greater the possibility that other events might be the real cause of such killing…"[60] In its analysis of Hassan Ngeze's incendiary writings in *Kangura*, for example, published in the early months of 1994, the Appeals Chamber argued that it could not find "beyond reasonable doubt" that the publications contributed to the "commission of acts of genocide *between April and July 1994*." [61]

Does this mean that the indictment of an inchoate punishable act requires a result to occur within a certain temporal parameter? Liability is incurred by the closeness of temporal relationship of incitement to action/completion. The question raised is whether incitement be defined: (a) as a species of criminal rhetoric that calls for action with the specific intent of commissioning genocide, or (b) can the criminality of rhetorical acts only be clarified by the timing of subsequent illegal acts? The second interpretation (b) clearly weakens the *preventive* capacity of Article 3 (c).

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[58] *Prosecutor v. Muvunyi*, ICTR-2000-55A-T (2006), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-00-55/trial-judgements/en/060912.pdf, 126.

[59] Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v The Prosecutor, ICTR-99-52-A (2007), https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-99-52/appeals-chamber-judgements/en/071128.pdf.

[60] Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v The Prosecutor, ICTR-99-52-A (2007), 162.

[61] Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v The Prosecutor, ICTR-99-52-A (2007), 164-165.

A significant legal precedent cited by the Trial Chamber in *Nahimana* is the *Streicher* case at the International Military Tribunal (hereafter IMT), convened after the Second World War in Nuremberg.[62] Julius Streicher, editor of *Der Stürmer*, was not convicted under the Convention, which was not yet part of international law, but the Trial Chamber in *Nahamina* mistakenly cited the verdict of the IMT that Streicher's conviction was for antisemitic writings that "significantly predated the extermination of the Jews in the 1940s."[63] Although the IMT referred to Streicher's pre-war activities advocating for the extinction of the Jewish people, the IMT convicted him of "persecution" on the grounds of his *continued* advocacy of extermination at a time when the accused knew such practices were taking place. Temporal jurisdiction was thus critical to the *Streicher* case and the ICTR Trial Chamber misunderstood the grounds for conviction.

The Trial Chamber's error, however, strikes at the core of the legal problem regarding Article 3 (c). Historians recognise that the impact of hate propaganda over an indefinite period may trigger genocidal violence at an unforeseen future moment.[64] Since common law does not require incitement to have a result to be indictable as a punishable act, it is hard to understand why temporal contiguity should, as the Appeals Chamber argued, be legally dispositive. Schabas argues:

> Genocide is prepared with propaganda, a bombardment of lies and hatred directed against the targeted group and aimed at preparing the "willing executioners" for the atrocious tasks they will be asked to perform. Here, then, lies the key to preventing genocide.[65]

The implication is that the "bombardment" need not be time limited: preparation ("heating up heads") may occur over months or even years. The Convention does not *exclude* hate speech on condition that it fulfils the criteria of being direct and public: The inciting rhetoric is not

[62] "The Avalon Project: Judgement: Streicher," Yale Law School, accessed August 12, 2020, https://avalon.law.yale.edu/imt/judstrei.asp.

[63] *Prosecutor v.* Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze, ICTR 99-52-T, 351.

[64] David Yanagizawa-Drott, "Propaganda and Conflict: Evidence from the Rwandan Genocide," *The Quarterly Journal of Economics* 129, no. 4 (2014): 1947-1994, https://doi-org.ezproxy.is.ed.ac.uk/10.1093/qje/qju020.

[65] Schabas, "Hate speech in Rwanda."

merely hate filled opinion but an articulation of specific intent to destroy a protected group in the form of a call to action. By recognising that *Kangura* had, throughout the period between publishing its first edition in May 1990 and the genocidal events of 1994, committed incitement, the Trial Chamber offers a cogent precedent for acting at an early stage against discriminatory rhetoric uttered by individuals evidently harbouring genocidal intent.

The solution to the legal difficulty of distinguishing between free expression of hateful utterance and the crime of direct and public incitement must therefore rest on establishing a gauge of *possible consequences*: in short, the gravity of foreseeable future acts. The test framework must be applicable to establish liability when a genocide does not occur. Susan Benesch has proposed a compelling test framework that respects both the spirit and intent of the Convention and historical analyses of actual genocides.[66] Benesch proposes interrogating the facts of the allegation of incitement as follows:

1. *Was the speech understood by its audience as a call to genocide?* For example, a propagandist may not urge his listeners to "go and kill Tutsis" but might use a euphemism like "go to work" which becomes significant when it is recalled that the instrument of mass killing was the machete, a work tool. Such coded phrases may change over time and so the dispositive point is the broadly understood meaning of a term or phrase at the moment of utterance.
2. *Did the speaker have the capacity to influence his or her audience and did the audience possess the means to commit genocide?* It should be added here that the speaker should be aware that the audience has this capacity.
3. *Had the targeted group suffered recent violence?* This question is addressed to the specific vulnerability of the targeted group and whether it was customary to use violence against members of the group.
4. *Was the "marketplace of ideas" still functioning?* This may prove to be a difficult matter to resolve but refers to the possibility that in a situation where there is a risk of genocide, a

[66] Susan Benesch, "Vile Crime in Inalienable Right: Defining Incitement to Genocide," *Virginia Journal of International Law* 48, no. 3 (2008): 351-525.

monoculture of ideas significantly focused on tainting the targeted group raises the likelihood of a genocide.

5. *Did the speaker dehumanise the group and justify killing?*
6. *Had the audience received similar messages?* Historical studies of genocides consistently note that targeted groups are denied humanity and that the message is reinforced by repetition.[67]

The proposed framework, which has not yet been tested in case law, has the capacity to resolve many of the legal problems raised by Article 3 (c). Applied holistically rather than piecemeal, an interrogative approach to the facts of the indictment would clarify whether or not the acts of the accused could be legitimately interpreted as merely rhetorical or preparatory.

4. Conclusion

Like any treaty, the Genocide Convention is a living instrument. The international tribunals for the former Yugoslavia and Rwanda have provided substantial jurisprudence that can be regarded as addressing some of the lacunae in the Convention. These developments of the Convention, however, struggle to resolve some of the more intractable issues regarding the duty to prevent and punish Genocide, as set out in Article 1. The deeper issue is whether the Convention is regarded *primarily* as an instrument of prevention or retrospective punishment. Both approaches are legitimated by Article 1, but the scope of the duty articulated in Article 3 is problematic. It is perhaps inevitable that international case law that refines and interprets the Convention has been restricted to retrospective legal processes initiated when the criminal act of genocide has been consummated. Hitherto, the practice of international criminal law has provided little guidance regarding the repression of upstream punishable acts. Nevertheless, if the spirit of the Convention is to prevent as well as punish, the inchoate crimes of Article 3 remain foundational to its efficacy and require further testing in practice.

[67] There is a substantial literature on the impact of propaganda on genocides, see for example Yanagizawa-Drott, "Propaganda and Conflict: Evidence from the Rwandan Genocide."

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The Role of the UN International Drug Control Conventions in Facilitating Law Enforcement Cooperation in the Policing of Transnational Drug Trafficking

Scarlet Robertson

PhD student in Criminology, University of Stirling

Abstract

Transnational policing is an increasingly important issue in today's globalised world. Transnational crime is an expanding industry and when crime crosses borders, cooperation between states is key. Arguably, this is most important in illegal drug trafficking, a crime of high concern to many states which almost always involves multiple countries. To this end, the UN Drug Control Conventions, introduced to tackle drug trafficking across the world, contain a number of provisions regarding law enforcement cooperation. This piece, by examining legal instruments and existing literature, will explore the role of the conventions regarding cooperation in policing the transnational trafficking of illicit drugs with a particular focus on the US, a major player in the field. Law enforcement cooperation between states existed for many years without international law obligations, however, it was often plagued by political and cultural differences and suffered when international relations were tense. By implementing obligations within the UN conventions, existing practices were codified into international law, meaning that cooperation should be a smoother, and legally-backed, process regardless of the political situation. This piece argues that, although the UN International Drug Control Conventions may not have added completely novel principles or practices to transnational law enforcement, they remain an important tool in facilitating transnational police cooperation and have made a valuable contribution to jurisprudence on the subject.

Keywords: drug trafficking, transnational policing, police cooperation, law enforcement, international law

1. Introduction

When crime crosses borders, cooperation between states in law enforcement is key in tackling it. Global policing has been expanding with the increased globalisation of crime. Police cooperation can be found at the national, regional and international levels.[1] Although transnational policing interacts with a large range of issues, drug control has dominated research on the subject,[2] and the policing of the global drug market has been described as "the paradigm example" of transnational law enforcement.[3] The prohibition and restriction of the transport and importation of narcotics has been a concern for countries across the world.

Three treaties make up the major jurisprudence on transnational drug crime. These include: The Single Convention on Narcotic Drugs 1961 (hereinafter referred to as the 1961 Convention), The Convention on Psychotropic Substances 1971 (herein after referred to as the 1971 Convention), and The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (hereinafter referred to as the 1988 Convention). Together, they are known as the United Nations' (UN) International Drug Control Conventions and they aim to create a standard international regime for tackling the illicit drugs trade. Alongside mechanisms for criminalisation, punishment, and other methods of suppression, the conventions include mechanisms for transnational law enforcement cooperation.

This article explores the extent to which these mechanisms have played a part in enhancing transnational law enforcement cooperation. Particular focus is placed on cooperation in the policing of the trafficking of drugs from the perspective of the United States of America (US), one of the major players in the suppression of drug trafficking. This piece focuses on analysing the mechanisms for operational policing cooperation, rather than the mechanisms for mutual legal assistance, which is beyond the scope of this piece.

This article seeks to investigate the question "what have the UN Drug Control Conventions added to the mechanisms for law enforcement cooperation used in the policing of

[1] John R. Cencich, "Policing: Transnational," in *Encyclopedia of Transnational Crime & Justice,* ed. Margaret E. Beare (Thousand Oaks, CA: Sage Publications, 2012), 318.

[2] James Sheptycki, *In Search of Transnational Policing: Towards a Sociology of Global Policing* (Aldershot: Ashgate, 2002), 92.

[3] James Sheptycki, "The 'Drug War': Learning from the Paradigm Example of Transnational Policing," in *Issues in Transnational Policing*, ed. James Sheptycki (Abingdon, Oxfordshire: Routledge, 2000), 21.

transnational drug trafficking?" To do this, an analytical discussion and comparison of the convention provisions is undertaken, followed by a review of historic and current practices. First, the article discusses the meaning and origins of law enforcement cooperation in combatting drug trafficking. Second, the drug control conventions and the cooperation mechanisms in them are examined. This is followed by a look at other means, outside of the conventions, that are currently used for transnational cooperation, including international police organisations such as Interpol. Finally, the article will conclude with a discussion on the role of the drug control conventions in transnational police cooperation and how they have added to existing practices. This piece ultimately argues that, although the UN International Drug Control Conventions may not have added completely novel principles or practices to transnational law enforcement, they remain an important tool in facilitating transnational police cooperation and have made a valuable contribution to jurisprudence on the subject.

2. What is Transnational Law Enforcement Cooperation?

The idea of cooperation between law enforcement agencies has grown in importance with the rise of transnational crime. Though police have increased tools to pursue transnational criminals, transnational crime is still widely prevalent.[4] Law enforcement cooperation between states has developed an important role in transnational criminal law[5] and various forms of cooperation are encouraged.[6] When crime crosses borders, to successfully tackle it, so must law enforcement.

Jurisdiction cannot be exercised by a state outside its territory unless permitted by a rule derived from international customs or from a convention.[7] This potentially limits or hinders law enforcement action and investigations. Given the near universal respect for territorial jurisdiction,[8] law enforcement activity against transnational crime (where part of the offence occurs elsewhere, or witnesses and/or evidence is in another state) requires international

[4] Saskia Hufnagel and Carole McCartney, "Police Cooperation against Transnational Criminals," in *Routledge Handbook of Transnational Criminal Law*, ed. Neil Boister and Robert J. Currie (London: Routledge, 2014), 118.

[5] Philip B. Heyman, "Two Models of National Attitudes toward International Cooperation in Law Enforcement," *Harvard International Law Journal* 31, no. 1 (1990).

[6] Alice Hills, "The Possibility of Transnational Policing," *Policing & Society* 19, no. 3 (2009).

[7] France vs. Turkey, Series A – no. 10, PCIJ (1927), 18-19.

[8] Heyman, "Two Models," 99-.

cooperation. Drug trafficking provides a perfect example of a crime which may include multiple states and therefore highlights why cooperation is important. For example, an investigation or operation to intercept or stop drug trafficking may include source countries (where the drugs are grown and/or produced), transit countries (which the drugs are transported through), and destination countries (where the drugs end up on the market). Success in tackling transnational drug trafficking requires global cooperation. As the UN declares, drug trafficking needs to be countered in a "synchronised manner on multiple fronts."[9]

Hufnagel and McCartney suggest that the very minimum needed for successful policing of cross-border crime is an efficient system of information exchange.[10] Yet even this is not always straightforward. Transnational cooperation of any kind, including policing, can be hindered by issues created by conflicting sovereignties, political tensions, and differences between national agencies. It is also recognised that even between friendly states, law enforcement cooperation can be difficult.[11] Commentators such as Nadelmann point out that having established mechanisms for transnational law enforcement cooperation help to reduce challenges.[12] This may be especially true when these mechanisms are enshrined in law.

3. The Origins of Law Enforcement Cooperation on Drug Trafficking

Collaboration among different police forces is almost as old as modern policing itself.[13] Mechanisms for transnational law enforcement cooperation date back to the mid-19th century,[14] a time when many western states were modernising and professionalising their police services. Transnational crime, in various forms, has been prevalent throughout history, and the reach and capabilities of law enforcement networks to tackle it continue to expand.[15] During the earlier years of the Cold War, international cooperation slowed. Although international

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[9] United Nations, Department of Public Information. *Successful Fight Against Drug Trafficking, Transnational Organized Crime Requires Interlocking National, Regional, International Strategies, Third Committee Told (*New York: General Assembly, 2009), https://www.un.org/press/en/2009/gashc3948.doc.htm- .

[10] Hufnagel and McCartney, "Police Cooperation," 107-20.

[11] Heyman, "Two Models," 99-.

[12] Ethan Avram Nadelmann, *Cops Across Borders: The Internationalization of US Criminal Law Enforcement* (University Park, PA: Pennsylvania State University Press, 1993), 10.

[13] Benjamin Bowling and James W. E. Sheptycki, *Global Policing* (London: Sage Publications, 2011), 3.

[14] Nadia Gerspacher, "The History of International Police Cooperation: A 150-year Evolution in Trends and Approaches," *European Journal of Crime, Criminal Law and Criminal Justice* 9, no. 1-2 (2008): 169-84.

[15] Hufnagel and McCartney, "Police Cooperation," 120.

organisations such as Interpol continued to exist throughout this period, there were lower levels of participation from states[16] and very little inter-state law enforcement communications. However, during the 1970s, the rise of the illicit drug trade and other transnational crimes led many states to reengage with law enforcement cooperation.[17] Drug trafficking has been a major focus for many states when tackling transnational crime due to its prevalence and perception as highly harmful to both the state and its population.

According to Heymann, the origins of general law enforcement cooperation are European.[18] In terms of the development of transnational policing of drugs trafficking, however, the US has been a major driving force.[19] Drug prohibition was largely a product of campaigning from within the US.[20] Their large expansion in drug enforcement abroad was spurred by President Nixon declaring a "war on drugs."[21] This rhetoric has also made the country a strong player in the development of the international law on the suppression of transnational drug trafficking. It has been argued that the US has promoted its own criminal justice norms within the transnational field[22] and that the formulation of agreements, such as the 1988 Convention, have been based on distinctly American techniques.[23]

Hufnagel and McCartney suggest that much of the cooperation undertaken by police does not depend on legal instruments.[24] Prior to official legal mechanisms, in many nations it was often custom – in the sense of tradition and informal arrangements – to facilitate transnational law enforcement cooperation.[25] However, because compatibility issues (such as political tensions, cultural and legislative differences, and communication difficulties) had always plagued cooperation efforts, several treaties were created to ensure cooperation would run with fewer issues.[26] The 1988 Convention, in particular, makes a significant contribution

[16] Gerspacher, "The History of International Police," 169-84.
[17] Peter Andreas and Ethan Avram Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford: Oxford University Press, 2006), 126.
[18] Heyman, "Two Models," 99-.
[19] Andreas and Nadelmann, "Policing the Globe," 5.
[20] Sheptycki, *In Search of Transnational Policing*, 97.
[21] Andreas and Nadelmann, "Policing the Globe," 130.
[22] Nadelmann, *Cops Across Borders*, 470.
[23] Bowling and Sheptycki, *Global Policing*, 2.
[24] Hufnagel and McCartney, "Police Cooperation against Transnational Criminals," 120.
[25] Hufnagel and McCartney, "Police Cooperation against Transnational Criminals," 108.
[26] Gerspacher, "The History of International Police Cooperation."

to law enforcement cooperation in both legal and operational ways. It also represented a significant commitment by signatory states to strengthen cooperation mechanisms for drugs policing.[27]

4. Law Enforcement Cooperation Mechanisms in the UN Drug Control Conventions

The UN Drug Control Conventions contain provisions that obligate parties to facilitate different forms of transnational law enforcement cooperation. According to some commentators, many of these originated from mechanisms developed domestically in the US. Article 9(1) of the 1988 Convention consists of a general provision with an obligation on states to "cooperate closely with each other." This is followed by more details, including specific mechanisms in the subsequent subsections. Following is an overview of several instruments for law enforcement cooperation provided for in the conventions.

4.1. Information Sharing

A key part in tackling transnational crime is the sharing of information. The UN Drug Control Conventions provide a legal structure for the transferring of information between parties. The earlier conventions did not contain extensive measures. For example, the 1961 Convention only provides for the sharing of information to international narcotics control bodies, not to other states.[28] The 1988 Convention provides more detail. Going further than previous conventions, Article 9(1)(a) asserts that states must "establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences."[29] This is a somewhat broad obligation. Usually, international conventions leave the institutional arrangements for exchange of information to be worked out between the agencies. Regional agreements and conventions can be more prescriptive with this. The UN Drug Control Conventions only provide a fallback arrangement for information exchange. There are many barriers to the sharing of information including data protection concerns and the difficulties caused by the

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[27] David P. Steward, "Internationalizing the War on Drugs: The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," *Denver Journal of International Law and Policy* 18, no. 3 (May 2020): 387-404.

[28] *The International Drug Control Conventions 2013* (United Nations), art. 35(f).

[29] *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(a).

standards and cultures of different police forces. The UN conventions support the idea that national law determines what information can be shared and what confidentiality principles apply. As the UNODC notes in their legislative guide,[30] this can, however, cause problems when parties have inadequate privacy laws or when national laws require the disclosure of sensitive information to the defence in a prosecution.

There has been much discussion surrounding this issue in relation to the US and counter-terrorism, particularly in the context of EU-wide vs. individual state cooperation. In recent years, the US signed information sharing agreements with individual states in exchange for visa-free travel for their citizens.[31] The main problem with this is the concern that data sent under the agreements may not be protected to the same standard as under EU-wide arrangements.[32] Further concerns over data protection were heightened when it was revealed that the National Security Agency (NSA) was undertaking surveillance and information collecting operations without warrants, including in Europe.[33] This led to tensions between the US and the EU authorities, and put several joint counter-terrorism projects in jeopardy.[34] It also hindered further cooperation and restricted information sharing, having potentially damaging effects for current and future investigations.

4.2. Liaison Officers

One of the earliest methods of police cooperation was placing law enforcement agents in diplomatic missions abroad.[35] The FBI Legal Attaché programme (discussed below) was one of the first, but many countries followed and now have liaison officers in foreign states.[36] Article 9(1)(e) of the 1988 Convention provides for "the exchange of personnel and other

[30] United Nations, Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crimes and the Protocols Thereto* (New York: Headquarters, 2004).

[31] Marco Funk and Florian Trauner, "Transatlantic Counter-Terrorism Cooperation," *Alert* 15 (April 2016).

[32] Funk and Trauner, "Transnatlantic."

[33] Kristin Archick, *U.S.-EU Cooperation Against Terrorism* (Federation of American Scientists, 2013).

[34] After the NSA scandal, the European parliament even passed a (non-binding) resolution recommending suspending the TFTP agreement (2010/412/EU: Council Decision of 13 July 2010).

[35] Mathieu Deflem, "International Police Cooperation in North America," in *International Police Cooperation: A World Perspective*, ed. Daniel J. Koenig and Dilip K. Das (Lanham, MD: Lexington, 2001), 71.

[36] Neil Boister, *An Introduction to Transnational Criminal Law*, (Oxford: Oxford University Press, 2012), 166.

experts, including the posting of liaison officers."[37] Liaison officers have no policing powers within the host nation, they rely on the national agencies of that state to perform such functions in exchange for access to intelligence and expertise. Their role is primarily to gather intelligence and provide guidance, supporting both their host and home states. In 2012, there were more than 500 Drug Enforcement Agency (DEA) officers operating outside the US in drug-producing and transit states.[38] Despite facing some challenges, Nadelmann reported that they have been largely successful in supplying expertise and knowledge as well as gathering and contributing to intelligence. He credited this to officers ensuring that local policing, laws and practices were harmonised with their own, and effectively operating vicariously through host police agencies.[39] The inclusion of this practice in the 1988 Convention does not introduce liaison offers as a new concept, but it does codify into international law one of the oldest practices of transnational police cooperation.

4.3. Joint Investigation

Another method of extraterritorial policing is creating joint investigation teams with other states. The 1988 Convention introduced this method into transnational criminal law.[40] However, the convention makes an exception if such investigations are contrary to domestic law.[41] Indeed, according to Boister, for a large number of signatories, law reform would be necessary to make joint investigations legally possible.[42] This, coupled with the politics and sensitivity of cross-border policing, has meant that many states have not made use of such measures. Subsequent crime suppression treaties have moved further away from this mechanism. The actual role of foreign police in joint investigations is determined by the domestic laws of both states. For example, US domestic law prohibits law enforcement agents from making arrests in foreign states in narcotics control operations.[43] Joint investigation teams

[37] *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(e).

[38] Boister, *An Introduction*, 166.

[39] Nadelmann, *Cops Across Border.*

[40] *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(c).

[41] *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(c).

[42] Boister, *An Introduction*, 167.

[43] *Foreign Relations and Intercourse, U.S. Code 22 1946* (United States), § 2291(c)(1).

are only formed when a sending state has an interest in taking specific action in another state. Though this is rare and expensive. In practice, according to Boister, instead of joint investigations, states prefer to work only on the parts of the crime that take place within their own territory and investigate parallel to, rather than jointly with, agencies elsewhere.[44] Although this may be an example of politics and bilateral relationships being detrimental to cross-border investigations, the other international mechanisms for law enforcement cooperation in the treaties, particularly those dealing with information sharing, can come into play to avoid great losses of valuable intelligence or investigations.

4.4. Special Investigative Techniques

There are a number of "special investigative techniques" endorsed within the various drug conventions. These are mechanisms which allow for law enforcement officials to carry out certain activities which would otherwise be criminally punishable. Whilst The UN Convention against Transnational Organised Crime (a broader convention which provides the main international instrument in the fight against all types of transnational organised crime) contains mechanisms for undercover operations and surveillance,[45] the International Drug Control Conventions only provides a mechanism for controlled delivery.

Controlled delivery permits the delivery of drugs across borders to identify traffickers and collect evidence on wider supply chains and criminal activity, both for arrests and prosecutions. It was introduced by the US and, according to Boister, is one of the most controversial enforcement methods used in transnational law enforcement cooperation.[46] It was initially problematic in civil law countries where the strict principle of legality meant that contraband should be seized immediately.[47] However, the DEA introduced controlled delivery through local police agencies in other states and assured authorities that the courier would be arrested in the destination country and the drugs seized. The mechanism was put to wider audiences through the 1988 Convention. Article 11 obliges parties to use controlled deliveries

[44] Boister, *An Introduction*, 167.

[45] *Convention Against Transnational Organized Crime and the Protocols Thereto 2004* (United Nations), art. 20.

[46] Boister, *An Introduction*, 168.

[47] Boister, *An Introduction*, 168.

if their basic legal principles allow it, but only on a case-by-case basis and only by agreement between the parties.[48] If domestic law is not adapted to allow controlled deliveries, the mechanism can fail to meet its purposes and potentially lead to undetected cases. However, it is now a standard technique used in many countries and has resulted in a number of important detections.[49] Controlled delivery as a method for disrupting a range of transnational crimes has been promoted by major international organisations and policing agencies including the UNODC and EuroJust (who have produced a handbook to aid agencies wishing to utilise the technique in Europe).[50]

5. Other Mechanisms for Transnational Policing of Drug Trafficking in the US

5.1. National Efforts

The fight against transnational crime begins at the individual state level and many national police agencies take the lead in solving transnational crimes. In the US, law enforcement officers have been actively involved with international policing efforts.[51] For example, The New York City Police Department has a successful liaison programme with police officers in Europe, Asia, and Latin America. They work abroad to collect criminal intelligence connected to crimes within their city.[52]

The use of federal law enforcement agencies was one of the earliest tools the US deployed in the fight against transnational crime and mainly focused on drug related offences.[53] The Federal Bureau of Investigation (FBI)'s Legal Attaché (LEGAT) programme was one of the first official liaison officer programmes.[54] The DEA is well known for pursuing leads in foreign nations and working with agents in their host countries in areas of mutual concern, with

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[48] *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art. 11.

[49] See P. D. Cutting, "The Technique of Controlled Delivery as a Weapon in Dealing with Illicit Traffic in Narcotic Drugs and Psychotropic Substances," *Bulletin on Narcotics* 35, no. 4 (1983); and United Nations, Office on Drugs and Crime Viet Nam, *Promoting the Use of Controlled Deliveries for Wildlife Cases in Viet Nam* (Hải Phòng, Viet Nam: 2019), https://www.unodc.org/southeastasiaandpacific/en/vietnam/2019/04/wildlife-crime/story.html.

[50] See for example United Nations, Office on Drugs and Crime Viet Nam, *Promoting the Use of Controlled Deliveries for Wildlife Cases in Viet Nam* (Hải Phòng, Viet Nam: 2019); and European Union Agency for Criminal Justice Cooperation, "Controlled Deliveries."

[51] Cencich, "Policing: Transnational," 319.

[52] Cencich, "Policing: Transnational," 319.

[53] Andreas and Nadelmann, "Policing the Globe," 123.

[54] Andreas and Nadelmann, "Policing the Globe," 132.

a focus on drug trafficking. DEA agents have also sometimes taken a more operational role and made arrests when working overseas.[55] The US Customs Service have also, naturally, played a large role in policing transnational crime. For example, with regards to drug trafficking, since 2019, they have seized over 2.8 million pounds of drugs at the border.[56] These national agencies have all played an important part in combatting transnational drug trafficking. Although there may be some overlap, due to the remit of their work, each agency has a different mandate. Whether working together or separately, each agency can contribute information, intelligence, or evidence from different areas to help secure arrests, prosecutions, and disruption to the illegal drugs market as detailed in the examples above.

The US military is prohibited from participating in domestic law enforcement operations but is permitted to assist with law enforcement activities outside of the country. Members of the US armed forces are involved in a wide range of transnational law enforcement activities, particularly in combating drug trafficking. In this area, the military has helped with intercepting narcotics shipments and participated in specialist operations. For example, special operation teams, working with and supporting the DEA, were instrumental to the locating and capturing of drug lord Pablo Escobar by providing military personnel, equipment and operational expertise.[57]

5.2. Regional Agreements

Regional transnational policing efforts often happen in areas along borders. For example, at the US-Mexican border there are agreements for cooperation on immigration and customs issues as well as substantive crimes such as human smuggling and drug trafficking. Traditionally these links were kept largely informal, and ignored the concepts of sovereignty and international law, but political and cultural differences between states soured relationships.[58] In more recent times, due to geopolitics and social circumstances, relations with Mexican agents for manpower and intelligence, particularly on transnational crimes such as

[55] Cencich, "Policing: Transnational," 319.
[56] "Drug Seizure Statistics," United States Customs and Border Protection, last modified June 9, 2021, https://www.cbp.gov/newsroom/stats/drug-seizure-statistics.
[57] Cencich, "Policing: Transnational," 320.
[58] Andreas and Nadelmann, "Policing the Globe," 117.

gun and drug smuggling, is essential in the US. Many drugs destined for the US originate in, and are transported through, South and Central America. Often there are numerous countries involved, therefore multi-lateral, regional agreements are crucial. They can also provide a "middle ground" between international agreements or conventions and bilateral agreements as they allow for a more tailored approach with less compromises but provide a legal comeback backed up by other members, although not to the same extent as the bigger international conventions.

5.3. Bilateral Agreements

As previously mentioned, in the past, law enforcement cooperation was mainly facilitated through bilateral agreements and tradition between the US and individual states. This reflected the idea that crime and security issues was considered a matter to be dealt with by individual states. Despite largely positive attitudes towards international agreements, some critics doubt the usefulness of collaborating in this way, especially given the existing productive bilateral agreements.[59] These agreements are still preferred in certain matters.[60] The US has bilateral law enforcement cooperation treaties with a number of states, particularly within the EU and United Kingdom, with regards to law enforcement and terrorist offences. Bilateral agreements can often provide for more detailed and specific cooperation mechanisms between states. They also often lead to more robust agreements with a lesser level of compromise, as would be found in international agreements due to the fewer participants. However, much like the issues with customary or trust-based agreements, they can fall victim to increased politicisation and related problems. Although they are official mechanisms like the international treaties, they do not have the same backing, number of participants, or arbitration and enforcement options that are available within the International Drug Control Conventions.

[59] Archick, *U.S. - EU Cooperation Against Terrorism*.
[60] Funk and Trauner, "Transatlantic."

6. International Organisations – The Role of Interpol

Outside of playing a pivotal role in the creation of international legal regimes and utlising its own power internationally, the US is also heavily involved in a number of international organisations relating to policing and judiciary matters. In terms of operational police cooperation, the most important of these is The International Criminal Police Organisation, better known as Interpol. Although legal frameworks, including conventions and legislation, play an important part in their activities, the main purpose is practical cooperation, partnership working and collaboration to achieve their goals, backed by the power of multiple members coming together.

Interpol is not a law enforcement agency in itself – it does not have its own agents and cannot make arrests. Its primary aim is "to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights."[61] It provides administrative aid as well as communication and information sharing assistance to facilitate state-to-state law enforcement cooperation. Article 35 of the 1961 Convention recognises the role of international bodies such as Interpol and their part as intermediaries in police cooperation. It obliges parties to the treaty to "co-operate closely with each other and with the competent international organizations"[62] and "ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner." [63]

While Interpol deals with many forms of transnational crime, it is particularly interested in drug trafficking. The Interpol network of drug liaison officers account for a large part of their workforce. Interpol states that it has three main roles in combatting drug trafficking: training national law enforcement officers, analysing and monitoring intelligence and knowledge on drug trafficking, and operational support and coordination for investigations led by national or international organisations.[64] The organisation has had particular success, such

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[61] *Constitution of the International Criminal Police Organisation – INTERPOL 2017* (Argentina et al.), art.2(1).

[62] *The International Drug Control Conventions 2013* (United Nations), art.35(c).

[63] *The International Drug Control Conventions 2013* (United Nations), art35(d).

[64] "Our Role To Fight Drug Trafficking," INTERPOL, accessed June 26, 2021, https://www.interpol.int/Crimes/Drug-trafficking/Our-role-to-fight-drug-trafficking.

as with “Operation Lionfish – Asia Pacific” in 2017 where an Interpol team involving officers from several countries seized 360 million USD worth of drugs and led to over 300 arrests. The Deputy Director of the Chinese Ministry of Public Security’s Narcotics Control Bureau Department of Investigation and Guidance said that the operation “served as an important initiative for strengthening multilateral cross-border drug enforcement cooperation, providing effective channels of communication and enhancing mutual trust among law enforcement personnel.”[65]

Despite Interpol’s long history and many major successes, it has not escaped controversy. There have been concerns that red notices (the system whereby a state requests a notice for the arrest of a wanted person and Interpol relays it to all member countries) have been used for political reasons. A report conducted by NGO Fair Trials International, found that since the introduction of an electronic system in 2008, the use of red notices has risen and several countries were using the system against political activists.[66] A red notice, however, is not an international arrest warrant and Interpol cannot compel any country to arrest an individual. Compliance with a red notice is up to the discretion of the member countries and Interpol’s system does not allow for the monitoring of the quality of national-level information.[67] This means that the system is open to potential abuse.

Interpol has been recognised by the UN as an intergovernmental body, but it is not a “formal” police cooperation initiative because its constitution is not binding and its members are police forces, not states.[68] Interpol cannot compel or force states to take any action and, as mentioned above, does not have any powers of arrest. It depends on cooperation from its member countries. However, it is still a very useful tool in tackling transnational crime.[69] By including the provision in Article 2(1) of the 1961 Convention (as discussed previously), which

[65] “Drugs worth USD 360 million seized in INTERPOL-led Operation,” INTERPOL, last modified September 28, 2017, https://www.interpol.int/News-and-Events/News/2017/Drugs-worth-USD-360-million-seized-in-INTERPOL-led-operation.

[66] “Strengthening Respect for Human Rights, Strengthening Interpol,” Fair Trials International, last modified November 26, 2013, https://www.fairtrials.org/publication/strengthening-respect-human-rights-strengthening-interpol.

[67] *Constitution of the International Criminal Police Organisation – INTERPOL 2017* (Argentina et al.).

[68] Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 108.

[69] Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 108.

is binding on states, the procedure is made more formal. Therefore, the conventions have not only contributed to direct state-to-state cooperation but also between individual police forces across borders, via Interpol.

7. The Role of Law Enforcement Mechanisms in the UN Drug Control Conventions

It has been said that police cooperation depends more on trust than it does on legal frameworks, and the greater the trust between the states, the less formal the procedures need to be.[70] Although this may be true for cooperation in practice, legal mechanisms still play an important part. The drug control conventions are now a "centrepiece of transnational criminal law."[71] The illicit trafficking of drugs led to their creation,[72] and their primary aim is to create international standards for the control of drugs and the suppression of their illegal trafficking and use.[73] The conventions require states to criminalise certain acts pertaining to the production, supply, possession and trafficking of illicit drugs. The 1988 Convention, in particular, has been described as one of the most detailed and far-reaching instruments in transnational criminal law.[74] Law enforcement cooperation is not the main focus of the conventions, but they do include such provisions and have contributed to practice in this area.

The adoption of the conventions, particularly the 1988 Convention which contained many of the law enforcement cooperation mechanisms and harmonised enforcement action around the world, was a significant step in bringing successful law enforcement measures against transnational drug traffickers.[75] The conventions take existing mechanisms and apply them with a degree of specificity to the transnational drugs trade. The conventions also formalise these mechanisms. By ratifying the conventions, states are under obligation to cooperate using these mechanisms to the extent specified in the conventions.

The UN Drug Control Conventions have had to incorporate and adapt to the diversity of policing arrangements in different states. Most states struggle to coordinate their law

[70] Boister, *An Introduction*, 160.
[71] Boister, *An Introduction*, 50.
[72] Steward, "Internationalizing the War on Drugs."
[73] Martin Jelsma and Amira Armenta, "The UN Drug Control Conventions: A Primer" (Transnational Institute, 2015). https://www.tni.org/files/publication-downloads/primer_unconventions_24102015.pdf.
[74] Steward, "Internationalizing the War on Drugs."
[75] Steward, "Internationalizing the War on Drugs."

enforcement agencies with other states,[76] standardising[77] transnational crime, like any international matter, can be highly politicised. By creating obligations under the conventions this should, in theory, be minimalised, though this is not always the case in practice.

8. Conclusion

With the rise of transnational crime comes the rise in the importance of transnational law enforcement cooperation. Issues of jurisdiction and state sovereignty mean that national police forces cannot exercise their power in foreign states, therefore, to gather evidence or conduct investigations they need to work with other states. Transnational police cooperation has been around for a long time but in the latter half of the 20th century cooperation, specifically in policing the illicit drugs trade, became a stronger focus. Since then, law enforcement cooperation in the case of drug trafficking has been used as a prime example of transnational policing.

Together, the UN Drug Control Conventions aim to create an international regime for the suppression of the illegal drugs trade. As discussed throughout this article, they do this through many measures but also include several mechanisms for transnational law enforcement cooperation. Alongside a general provision obliging cooperation with agencies from other states there are also specific mechanisms for operational cooperation. These include information sharing, liaison officers, joint investigations, and controlled deliveries.

Prior to the introduction of the mechanisms in the conventions, police cooperation was achieved largely through customs and trust. There are also regional and bilateral agreements which can provide more details and specificity than international conventions. However, these can be plagued with implementation and application issues due to political differences or ill-will between different states. There is also an important role for international policing and judicial organisations such as Interpol. These organisations do not have powers as police agencies in themselves, but instead provide support to facilitate cooperation between the national police forces of member states.

[76] Boister, *An Introduction*, 160.
[77] Steward, "Internationalizing the War on Drugs."

Despite these other mechanisms, the UN Drug Control Conventions have still made a valuable contribution in the field of transnational law enforcement cooperation. They have helped to overcome some issues surrounding cooperation in practice. By including mechanisms for transnational police cooperation, the UN Drug Control Conventions globalised standards, and harmonised and enhanced practices which were already in place. The conventions provide a legal backing and include an enforceable obligation on signatory states who do not comply. The conventions may not have introduced anything completely new, but they have formalised some existing mechanisms and codified practice into international law. This is still a valuable contribution to transnational criminal jurisprudence.

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Femicide:

A Global Phenomenon Requiring an Intersectional Social Constructivist Approach

Sabrina Knap

MSc in International Relations, University of Edinburgh

Abstract

Femicide is a relatively new area of study that was first introduced in 1976. Since then, there has been a push by many scholars to develop the field further, despite some arguments made that femicide is not as important of an issue given the relatively low rates of female homicides compared to male homicides. This article reviews three levels of analysis — micro, meso, and macro — and discusses culture and class as two contributing factors to femicide, illustrating that femicide is a complex global phenomenon that requires a multilateral and intersectional approach to be better understood. It concludes that by understanding and deconstructing certain social and institutional structures, we will be better equipped to understand femicide as a phenomenon and create more effective systems and legislation for a safer global society.

Keywords: femicide, female victimisation, gender-based violence, patriarchal society, intersectionality

1. Introduction

Femicide is a term, first coined by Diana Russell in 1976 during the First International Tribunal on Crimes against Women to describe the killing of females by males because they are women.[1] While there is extensive research on the gender-neutral term homicide, which looks at motives, psychology, and other factors, few have taken a gendered perspective to specifically address the murder of women.[2] Russell's work started the formal conversation on female murders which has continued to progress over the past several decades. Caputi and Russell further developed the term femicide as "the misogynous killing of women by men motivated by hatred, contempt, pleasure, or a sense of ownership over women, rooted in historically unequal power relations between women and men."[3] Some scholars argue that femicide does not demand its own separate area of study, given the fact that men experience higher rates of homicide than women.[4] However, in a rejection of this position, the study of femicide seeks to bring attention to the various systematic and societal factors of patriarchy and oppression that lead to women's deaths.[5] Too often femicide is brushed aside as a cultural norm or a crime of passion, but there is not one single cause of femicide that we can point to.[6] A multilateral approach is necessary to adequately analyse the various socially constructed factors at play on different levels. This approach allows us to understand how and why women are murdered in order to ultimately assist in preventing it on a broader scale.

In this article, I first describe the three main levels of analysis that should be considered in femicide research – micro, meso, and macro – and cite examples of how each level uniquely contributes to the gender-biased murder of women. Secondly, I address two of the most

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[1] Magdalena Grzyb, Marceline Naudi, and Chaime Marcuello-Servós, "Femicide Definitions," in *Femicide across Europe: Theory, Research and Prevention* (Bristol: Policy Press Shorts Policy & Practice, 2018), 17-31.

[2] Nadera Shalhoub-Kevorkian, "Reexamining Femicide: Breaking the Silence and Crossing 'Scientific' Borders," *Signs: Journal of Women in Culture and Society* 28, no. 2 (2003): 581-608, https://doi.org/10.1086/342590.

[3] Jane Caputi and Diana E.H. Russell, "Femicide: Speaking the Unspeakable," *Ms.: The World of Women* 1, no. 2 (1990): 34.

[4] Heather Agnew, "Reframing 'Femicide': Making Room for the Balloon Effect of Drug War Violence in Studying Female Homicides in Mexico and Central America," *Territory, Politics, Governance* 3, no. 4 (2015): 428-445, https://doi.org/10.1080/21622671.2015.1064826.

[5] Consuelo Corradi et al., "Theories of Femicide and Their Significance for Social Research," *Current Sociology* 64, no. 7 (2016): 975-995, https://doi.org/10.1177/0011392115622256.

[6] Karen Stout, "Intimate Femicide: An Ecological Analysis," *The Journal of Sociology & Social Welfare* 19, no. 3 (1992): 29-50.

relevant factors that should be examined to understand femicide – culture and class – in order to create effective preventative measures and begin to chip away at the patriarchal structure that harms women in these contexts. I conclude with a discussion on how the social construction of society has played the primary role in why femicide is an issue, offering suggestions to reconstruct systems and norms in place to make life safer for women around the world.

2. Levels of Analysis

An ecological framework is essential when approaching the study of femicide, as there is no single factor to explain the phenomenon. There are countless personal, communal, and societal aspects at play that contribute to femicide and violence against women generally. In analysing the various actors, both individual and systematic, scholars can begin to deconstruct the influences that lead to femicide in varied contexts. As Shalhoub-Kevorkian maintains, we need to "analyze both the macrocontext and process of social transformation and the microcontext of local cultural specificities."[7] Many of these aspects are interconnected at different levels and perpetuate social and cultural norms that can prove to be dangerous to women.

2.1. Micro

The micro level of analysis is primarily concerned with the "individuals' psychological organisation, psychosocial habits and interactions," as well as the close relationships in a victim's life.[8] This framework looks at the demographics of the victim such as age, race, and the victim/offender relationship, especially as it relates to the family, given the fact that interpersonal homicide is one of the leading causes of femicide globally. In a 2019 study, it was reported that 58% of the 87,000 women intentionally killed in 2017 were murdered at the hands of an intimate partner or other family member.[9] Although women only represent 19% of total homicides, they represent 64% of family-related homicides and 82% of intimate partner

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[7] Shalhoub-Kevorkian, "Reexamining Femicide," 602.

[8] Christiana Kouta et al., "Understanding and Preventing Femicide Using a Cultural and Ecological Approach," in *Femicide across Europe: Theory, Research and Prevention*, ed. Shalva Weil and Consuel Corradi (Bristol: Policy Press Shorts Policy & Practice, 2018), 53-69, 59-60.

[9] UNODC, "Gender-Related Killing of Women and Girls," *Global Study on Homicide 2019*, 2019.

homicides.[10] The micro level analysis looks through personal and familial lenses to explain individualised femicides.

While each murder has different contextual circumstances, at the micro level we can begin to assess the factors contributing to the different types of femicide, such as sex-selective abortion, female infanticide, and homicide. For example, in many East and South Asian countries such as China and India, there is an implicit preference for male children.[11] Daughters are often seen as an economic burden with little value in comparison to sons, especially to poorer families, which often leads to sex-selective abortions and female infanticides.[12] Although we are unable to definitively determine the rate of sex-selective abortions and female infanticides due to their nature, we can see patterns by examining the sex ratio of populations in countries where these practices are common, as male birth rates are significantly skewed compared to global averages and an estimated "1.5 million girls go missing at birth" every year.[13] Further discussion on class implication in these cases is to follow.

In cases of interpersonal violence leading to femicide, there are several elements that can overlap for both familial and romantic relationships, such as poverty or overt misogyny that can take the form of emotional or economic abuse. Although various types of abuse can be identified, physical abuse is one of the most prevalent themes present in these cases and is often recognised and even noted before the femicide occurs.[14] While interpersonal homicides can often be characterised as "crimes of passion,"[15] there are, in fact, many warning signs and contributing characteristics to these murders, suggesting that patterns can be identified earlier

[10] UNODC, "Gender-Related Killing of Women and Girls."

[11] Rosemary Barberet, *Women, Crime and Criminal Justice: a Global Enquiry* (London: Routledge, 2014).

[12] Barberet, *Women, Crime and Criminal Justice*; Kouta et al., "Understanding and Preventing Femicide Using a Cultural and Ecological Approach."

[13] Asian Centre for Human Rights, "Female Infanticide Worldwide: The Case for Action by the UN Human Rights Council," 2016, 2.

[14] Anna C. Baldry and Maria J. Magalhães, "Prevention of Femicide," in *Femicide across Europe: Theory, Research and Prevention,* ed. Shalva Weil and Consuelo Corradi (Bristol: Policy Press Shorts Policy & Practice, 2018), 71-92; Jacquelyn C. Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study." in *Domestic Violence*, ed. Mangai Natarajan (London: Routledge, 2007), 135-43.

[15] Crime of passion is in reference to a crime that is committed in the "heat of passion" in response to a provocation, as opposed to one that was premeditated or deliberate, according to "Crime of Passion," Legal Information Institute, Cornell Law School, accessed April 1, 2021, https://www.law.cornell.edu/wex/crime_of_passion.

on. Looking at the personal elements of femicide therefore enables researchers to understand the nuanced dynamics contributing to the phenomenon and could ultimately help implement prevention strategies.

2.2. Meso

The meso level of analysis explores the community influence, examining settings such as the neighbourhood, workplace, or schools to illuminate some of the localised pressures and systems that contribute to femicide. At the meso level, there is often a perpetuation of oppressive standards, stereotypes, and a general disregard for female life, facilitating a culture in which female murders are under-investigated and/or ignored.[16] The complex relationship between the public and private sphere is one of the most vital aspects in understanding femicide at the meso level. As will be demonstrated, in communities that condone or even encourage femicide in cases such as the murder of sex workers and honour killings, oppressive standards are routinely put on women in the public sphere that have consequences in the so-called private sphere.

One example of a meso level influence on femicide can be seen through the characterisation of sex workers. The rate of femicide against sex workers is relatively high around the world but is especially prevalent in many Western and Latin American countries, such as the United States and Mexico. Female sex workers are often disregarded as humans being worthy of life, given their line of work.[17] They are considered "public women" who work outside the home and spend time in "typically deemed male spaces," and may therefore be reasoned as objects for men to do with as they please.[18] There is some evidence to suggest this idea can also extend to women who are more independent, whether that be financially with a stable job or in their behaviours more generally such as frequenting bars, in strong patriarchal societies.[19] For example, in some regions in Mexico, femicides are often under-investigated as police insist

[16] Agnew, "Reframing 'Femicide.'"; Michaela Rogers, "Transphobic 'Honour'-Based Abuse: A Conceptual Tool," *Sociology* 51, no. 2 (2016): 225-240, https://doi.org/10.1177/0038038515622907; Lorena P.A. Sosa, "Inter-American Case Law on Femicide," *Netherlands Quarterly of Human Rights* 35, no. 2 (2017): 85-103, https://doi.org/10.1177/0924051917708382.

[17] Jane Caputi, *The Age of Sex Crime* (London: Women's Press, 1987).

[18] Agnew, "Reframing 'Femicide,'" 431.

[19] Agnew, "Reframing 'Femicide.'"

that these women were "probably prostitutes," asking family members questions about the woman's drinking or dating behaviours, insinuating "they probably had it coming."[20] By maintaining this narrative, police investigations often leave families without answers about the seemingly random murders of the women in their family.

Another example of the meso level influence on femicide can be understood through honour killings, which are predominantly observed in South Asian and Middle Eastern countries. Honour killings are the ritual murders of family members for bringing perceived "shame" to the family and disproportionally affect women as men are the ones who typically define the terms of "honour" in such communities.[21] In cases of "dishonourable" acts, such as disobedience, seeking divorce, or adultery, public pressure builds on families in various ways, such as through the loss of business or general ostracisation, to the point that family members may take drastic measures, often resulting in murder, in order to restore honour to the family's name.[22] Further discussion on the cultural implication of honour killings is to follow.

In both of these examples, there is a broad notion that violence against women is a private matter, to be handled quietly or by the family, rather than an issue of gender security or femicide.[23]

2.3. Macro

The macro level of analysis looks more generally at the established structures and institutions in place that often contribute to the micro and meso level factors, such as the economic, social, educational, legal, and political systems of a society.[24] By examining aspects such as gender equality in the context of legal, economic, and political policies, scholars can

[20] Agnew, "Reframing 'Femicide.'"; Melissa W. Wright, "The Dialectics of Still Life: Murder, Women, and Maquiladoras," *Public Culture* 11, no. 3 (1999): 453-473, https://doi.org/10.1215/08992363-11-3-453 ; Melissa W. Wright, "A Manifesto against Femicide," *Antipode* 33, no. 3 (2001): 550-566, https://doi.org/10.1111/1467-8330.00198.

[21] Shalhoub-Kevorkian, "Reexamining Femicide."

[22] Veena Meetoo and Heidi Safia Mirza, "'There Is Nothing 'Honourable' about Hounor Killings': Gender, Violence and the Limits of Multiculturalism," in *Honour, Violence, Women and Islam*, ed. Mohammad Mazher Idriss and Tahir Abbas (Abingdon: Routledge Taylor & Francis Group, 2011), 42-66; Shalhoub-Kevorkian, "Reexamining Femicide."

[23] Dandara Oliveira Paula, "Human Rights and Violence Against Women: Campo Algodonero Case," *Revista Estudos Feministas* 26, no. 3 (2018): 1-9, https://doi.org/10.1590/1806-9584-2018v26n358582.

[24] Stout, "Intimate Femicide."

consider the various barriers to enter society that women face, which can ultimately put them at higher risk of femicide. The macro level analysis should include both the national and international perspective for a holistic view of society. While the national analysis can provide greater insight to a specific state's systems, it is equally important to analyse how international bodies influence or maintain these systems – for better or worse.

According to UN Women, women make up more than two-thirds of the world's 796 million illiterate people, are routinely paid less than their male counterparts, and, in many parts of the world, are unable to access adequate medical, legal, or financial support.[25] Systems that inherently discriminate against women on such large scales ultimately leave them in vulnerable positions. Without proper education, women are less likely to obtain decent work; without decent work, women either become dependent on a male provider or engage in illicit markets to make ends meet.[26] In largely patriarchal societies, women in situations of abuse or neglect are often unable to access different services, either for fear of retribution or a general lack of support from the systems in place. As a consequence, such women are left in the hands of their abuser, which has the potential to escalate to death.[27] Examining the broader systems and institutions in place therefore not only brings the larger picture into view but can also contribute to understanding the micro and meso levels.

3. Factors at Play

Femicide is a complex social phenomenon that requires careful consideration of compounding factors. While gender is obviously the key component in the study of femicide, how gender interacts with other factors within various contexts needs to be better understood. Throughout all three levels of analysis, two key factors emerge as powerful influences on femicide: culture and class. While both aspects vary in how they manifest themselves, their

[25] UN Women, "Facts & Figures," Commission on the Status of Women, 2012, accessed April 1, 2021, https://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures.

[26] Scott Cunningham and Todd D. Kendall, "Prostitution, Hours, Job Amenities and Education," *Review of Economics of the Household* 15, no. 4 (August 2017): 1055-1080, https://doi.org/10.1007/s11150-017-9360-6; Tammy L. Anderson and Philip R. Kavanaugh, "Women's Evolving Roles in Drug Trafficking in the United States," *Contemporary Drug Problems* 44, no. 4 (2017): 339-355, https://doi.org/10.1177/0091450917735111.

[27] Andrés Del Río, "#NiUnaMenos: against Femicide in Latin America," OpenDemocracy, published November 7, 2016, https://www.opendemocracy.net/en/democraciaabierta/niunamenos-against-femicide-in-latin-america/.

similarities and differences can be instrumental in further developing research. As Shalhoub-Kevorkian writes, “not all women face the same destinies, nor do victims share the same socioeconomic or cultural backgrounds – all voices are partial, multiple, and contradictory. There is no totality of voices, or a totality of culture.”[28] In this section, I revisit several previously mentioned examples that frequently arise in cases of femicide, however doing so by analysing the topics from a cultural and class perspective in order to highlight the holistic and intersectional approach needed to adequately explain femicide.

3.1. Culture

As Shalhoub-Kevorkian writes, “[c]ulture is perceived by many as a powerful lens for scrutinizing society and for expanding our understanding of human thoughts and actions.”[29] Culture can refer to the religion, customs, ideas, or social behaviours of a particular society. Using culture as an analytical tool to study different regions can help scholars decipher the dynamics that maintain and reproduce oppressive and abusive behaviours towards women that in turn lead to femicide. As noted above, many use the defence of cultural norms to avoid responsibility for their actions and use it “as an excuse for patriarchal structural conditions.”[30] While culture differs around the world, here I specifically discuss honour killings and machismo to illustrate how certain societies use culture to maintain and justify pervasive rates of femicide.

3.1.1. Honour killing

Honour killings involve extreme acts of violence, usually against a woman, when an “honour code is believed to have been broken and perceived shame is brought upon the family.”[31] As previously noted, honour killings disproportionally affect women, given the fact that men are traditionally the creators and arbitrators of what defines honour in a community or society. Though it is difficult to capture the full extent of this phenomenon, it is estimated

[28] Shalhoub-Kevorkian, “Reexamining Femicide,” 587.
[29] Shalhoub-Kevorkian, “Reexamining Femicide,” 592.
[30] Barberet, *Women, Crime and Criminal Justice*, 97; Shalhoub-Kevorkian, “Reexamining Femicide.”
[31] Meetoo and Mirza, “‘There Is Nothing 'Honourable' about Hounor Killings,’” 42.

that between 5,000-20,000 girls and women are victims of honour killing annually worldwide.[32] "Dishonourable" acts used to justify honour killings can include circumstances such as adultery, homosexuality, insufficient dowries, divorce, or refusal to marry.[33] Women can even carry the burden for the shame of male violations, such as in cases of physical or sexual assault. In these cases, additional blame can be put on women for getting pregnant after rape or incest, for being in a public space, or for "tempting" the perpetrator.[34]

While honour killings are more commonly observed in South Asian and Middle Eastern countries, often stereotyped to be found in Muslim communities, they cut across nearly all ethnic, class, and religious lines.[35] Honour killings have been recorded around the world and have religious connections to Druze, Christians, and some Jewish groups as well.[36] As Shalhoub-Kevorkian explains, "[l]ooking at femicide as a cultural traditional practice that occurs only in the 'Orient' empowers the existing patriarchal mechanisms and strategies and helps maintain such criminal behaviour as 'normal'."[37] Western countries that try honour cases of femicide have a history of granting leniency, in the form of reduced sentences or crimes, for fear of seeming culturally insensitive.[38] However, doing so maintains and affirms harmful behaviours towards women. Ultimately, "[h]onour-based crimes must be recognized for what they are: crimes against women that are the products of societies structured along explicitly patriarchal lines."[39]

3.1.2. Machismo

Machismo is a term that denotes the "traditional, sexist, patriarchal ideology expressed through gender roles that exist for the purpose of perpetuating the privileges held by one group

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[32] Tanya D'Lima, Jennifer Solotaroff, and Rohini Prabha Pande, "For the Sake of Family and Tradition: Honour Killings in India and Pakistan," *ANTYAJAA: Indian Journal of Women and Social Change* 5, no. 1 (June 2020): 22–39, https://doi.org/10.1177/2455632719880852.

[33] Barberet, *Women, Crime and Criminal Justice*; Janice Joseph, "Victims of Femicide in Latin America: Legal and Criminal Justice Responses," *Temida* 20, no. 1 (2017): 3-21, https://doi.org/10.2298/TEM1701003J; Kouta et al., "Understanding and Preventing Femicide."

[34] Meetoo and Mirza, "'There Is Nothing 'Honourable' about Hounor Killings.'"

[35] Aisha K. Gill, "Reconfiguring 'Honour'-Based Violence as a Form of Gendered Violence," in *Honour, Violence, Women and Islam*, ed. Mohammad Mazher Idriss and Tahir Abbas (Abingdon: Routledge Taylor & Francis Group, 2011), 218-231.

[36] Gill, "Reconfiguring 'Honour'."

[37] Shalhoub-Kevorkian, "Reexamining Femicide," 590.

[38] Gill, "Reconfiguring 'Honour'."

[39] Gill, "Reconfiguring 'Honour,'" 227.

(males) and the subjugation, oppression, and marginalization of another group (females)."[40] The term is commonly associated with Latino culture to describe the hypermasculine and aggressive stereotype of what being a "man" means in Latin America. Machismo preserves traditional gender roles and encourages the belief that women are not worthy of respect. As Del Rio explains, "[i]t counters the recognition of women as equals, regarding ability and rights. Women are considered objects, bodies that become property of men who don't understand the world outside of this machista way of thinking."[41]

Machismo within Latin America is compounded by the heavy influence of gangs and organised crime in the region. Different gang territories are equally dangerous for women. Within their own communities, women are at high risk of gang rape and murder, both of which have been documented as initiation practices.[42] Within rival gangs' territories, women are at risk of vengeance killings or murder to serve as a warning sign to her local community's gang.[43] As Paterson explains, "[s]uch murders can be used to show which gang has the most power. The one that does the most brutal things has the most power – all the more so if nothing happens to them as a result."[44] In addition to gangs and organised crime, women are often victims at the hands of the military and police as well. Throughout many countries in the region, such as Mexico and Guatemala, the military and police are hyper-militarised in efforts to combat the "war on drugs." However, this largely unchecked power adds to violence against women and cases of femicide, as officials often perceive themselves as above the law.[45] As machismo manifests itself in a myriad of ways, such as female objectification, physical abuse, or rape, it is not unfounded to make the potential link between it and femicide. Out of the top 25 states with the highest rates of femicide globally, 14 are in Latin America and the Caribbean, suggesting that machismo could be a strong relative factor.[46]

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[40] Andrés Consoli and Ana R. Morales, "Machismo," in *The SAGE Encyclopedia of Abnormal and Clinical Psychology*, ed. Amy Wenzel (Los Angeles, CA: SAGE reference, 2017), 1992.

[41] Del Río, "#NiUnaMenos: against Femicide in Latin America."

[42] Agnew, "Reframing 'Femicide.'"

[43] Agnew, "Reframing 'Femicide.'"

[44] Kent Paterson, "Femicide on the Rise in Latin America," (Washington: Inter-Hemispheric Resource Center Press, 2006), https://www-proquest-com.ezproxy.is.ed.ac.uk/reports/femicide-on-rise-latin-america/docview/209951286/se-2?accountid=10673.

[45] Agnew, "Reframing 'Femicide.'"

[46] Del Río, "#NiUnaMenos: against Femicide in Latin America."

3.1.3. Gender Stereotyping

Honour killings and machismo both demonstrate how culture can influence individual and community behaviour. Similarly, they both draw on broader gender stereotypes from both the masculine and feminine perspective – where men are superior and powerful, and women are weak or dehumanised as objects – in order to justify violent cultures. Culture is a socialised phenomenon that is reproduced "by various agencies, social actors and institutional settings."[47] Tactics such as slut-shaming and victim blaming are far more common in cases of femicide than male homicide, and regularly devalue the life and worth of women.[48] Although culture is varied around the world, using it as a justification to perpetuate gender stereotypes or "cultural norms" that can have deadly effects is extremely dangerous.

3.2. Class

Social class is another important factor to consider when studying femicide, both in relation to the victims and perpetrators. Poorer populations tend to see higher rates of femicide and less productive investigations that produce convictions.[49] Factors typically associated with lower social classes include unemployment or unstable work, low-wages, and dependency (either on the state or another person). In some developing countries, women are devalued as workers and are therefore more cost-effective for low-skilled labour, often out-pricing men for jobs.[50] Men can feel threatened by a rapid social change and the breakdown of traditional gender roles by the loss of wages to women and act violently in retaliation.[51] Furthermore, unemployment can leave men with idle time that, in some cases, builds up frustration or leads to substance abuse. A study conducted in the United States determined that the strongest risk factors for intimate personal femicide was the abuser's lack of employment, illicit drug use, and access to firearms.[52] Given this lack of steady or well-paying work, femicide is often more expressly linked to lower economic classes.

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[47] Baldry and Magalhães, "Prevention of Femicide," 84.

[48] Rae Taylor, "Slain and Slandered: A Content Analysis of the Portrayal of Femicide in Crime News," *Homicide Studies* 13, no. 1 (February 2009): 21–49, https://doi.org/10.1177/1088767908326679.

[49] Joseph, "Victims of Femicide in Latin America: Legal and Criminal Justice Responses."; Matthias Nowak, "Femicide: A Global Problem," *Small Arms Survey*, 2012; Sosa, "Inter-American Case Law on Femicide."

[50] Agnew, "Reframing 'Femicide.'"

[51] Stout, "Intimate Femicide: An Ecological Analysis."

[52] Campbell et al., "Risk Factors for Femicide in Abusive Relationships."

In addition to retaliatory- or resentment-based femicide, there is a similar trend of young and poor women being targeted in Latin America due to the impunity many gang members enjoy and the "authorities' strong tendency to gender stereotyp[e]."[53] As cited above, the patriarchal idea of "public women" generally goes hand-in-hand with victim blaming. If a woman's body is found in a poor area of town, it is regularly assumed that she was either a prostitute or drug addict and the violence is therefore considered justified.[54] Police and government officials frequently disregard these cases and avoid putting in the time or resources to investigate and prosecute perpetrators, given the low status of poor women.[55]

Another example of class playing a noticeable role in femicide is in the cases of sex-selective abortions and female infanticide. These cases are traditionally seen in poorer patriarchal societies where women are deemed an economic burden given their lack of employment opportunities later in life and the costs incurred from dowries.[56] Even as children, young girls are at risk of femicide from an escalation of abuse due to the previously outlined class factors. As noted above, abuse is a common underlying theme in cases of familial femicide. A joint study between the Office of the High Commissioner for Human Rights, UNICEF, and WHO reported that "stopping violence against children requires not only sanctioning perpetrators, but also transformation of the "mindset" of societies and the underlying economic and social conditions that allow violence against children to thrive."[57] Addressing abuse could in turn prove to be a powerful tool in addressing femicide.

However, class is not a fixed factor that can alone determine at-risk women, as there are many cases of middle- and upper-class women being victims of femicide as well. Understanding the role class plays in those contexts is still relatively underdeveloped compared to research on lower-class femicides and warrants further investigation, especially considering

[53] Sosa, "Inter-American Case Law on Femicide," 95; Paterson, "Femicide on the Rise in Latin America."

[54] Agnew, "Reframing 'Femicide'"; Sosa, "Inter-American Case Law on Femicide."

[55] Agnew, "Reframing 'Femicide.'"

[56] Barberet, *Women, Crime and Criminal Justice: a Global Enquiry*.

[57] Barberet, *Women, Crime and Criminal Justice: a Global Enquiry*, 82.

the difference in public framing of those narratives.[58] Although lower-class femicide is seemingly more common, it is nonetheless imperative to analyse class generally within the context of femicide in order to create effective legislation and implement social services to serve women in different situations.

4. Other Factors

Though culture and class are two of the most prominent factors to examine when studying femicide, they are not the only two that should be considered, nor should they be considered independently. There is a myriad of factors that contribute to the explanation of femicide in various contexts and add to the risk women face. As Sosa notes, "[i]ntersectionality addresses the layered nature of oppression and the complexity of inequality, leaving traditional one-dimensional understanding behind."[59] Within each factor are even more considerations to be taken. For example, we can look at sexual or gender identity, race, immigration/refugee status, or colonialism, all of which are common factors relevant to femicide as well. Each of these elements can be analysed alone or within the context of culture or class, and, similarly, can be observed within the various levels of analysis. Given that intersectionality creates different lived experiences, it is important to understand the nuances that arise from the cross section of different factors. Femicide is still a relatively new area of research and there remain gaps in how we approach the phenomenon. Examining assorted factors through different lenses has the potential to uncover elements we may not have even considered yet.

5. Conclusion

The murder of women is a pervasive problem that, in a majority of cases, stems from the patriarchal constructions of society. Femicide is "part of a sociopolitical and economic legacy that reflects a hidden machinery of oppression" that has been maintained by generations to the point that it is seen almost as human nature.[60] In order to understand the make-up of societies where femicide is distinctly prevalent, scholars and legislators must deconstruct the

[58] Lane Kirkland Gillespie, Tara N. Richards, Eugena M. Givens, and M. Dwayne Smith. "Framing Deadly Domestic Violence: Why the Media's Spin Matters in Newspaper Coverage of Femicide," *Violence Against Women* 19, no. 2 (February 2013): 222–45, https://doi.org/10.1177/1077801213476457.

[59] Sosa, "Inter-American Case Law on Femicide," 87.

[60] Shalhoub-Kevorkian, "Reexamining Femicide," 582.

systems and institutions in place that perpetuate violence against women and identify the weak spots to support the reconstruction of a safer society. Rather than taking a bottom-up approach, issues within existing systems must be identified and changed first to create targeted social services and implement the legal and economic sanctions needed to support and protect women in different circumstances. This is no easy feat, but it will be easier to change cultural and societal attitudes if the broader national and international institutions in place provide for a more equitable society rather than perpetuate the current patriarchal norm.

Femicide is a complex issue that requires analysis at multiple levels, with the consideration of multiple factors. Integrating this analysis allows for a more comprehensive look at the risks and causes of femicide, as factors feed in across the different levels in different ways. Understanding the intersection of various elements and dismantling certain socialisation processes can ultimately aid in creating effective legislation, and in providing valuable physical and logistical support to women around the world. While there have been modest efforts made by some legislative and legal bodies to address femicide around the world — for example, the recognition of femicide as a legal term, and the work undertaken by the UN Committee on the Elimination of All Forms of Discrimination against Women — many declarations, laws, and court judgements emphasise non-discrimination based on one factor, making no reference to multiple or intersecting forms of discrimination.[61] It is therefore imperative to understand the complexity and nuances of femicide to effectively explain and subsequently address these diverse factors.

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[61] Sosa, "Inter-American Case Law on Femicide."

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Change for the Better, or More of the Same?

Analysing the Lithium-Ion Battery Market Through a Green Criminological Lens

Robyn Lawrence

MSc in Transnational Crime, Justice, and Security, University of Glasgow

Abstract

This article analyses the lithium-ion Battery through a green criminological lens. It explores green criminological reasoning, particularly the framework of "ecocide," in order to frame the renewables market as an area of emergent concern for criminologists. Two case studies are analysed in pursuit of this goal: the case of coltan Mining in the Democratic Republic of the Congo; and the case of lithium extraction in the "lithium triangle" nations of Argentina, Bolivia, and Chile. This article initially examines the issue of coltan mining through a mainstream criminological lens, before moving to explore the issues from a green criminological perspective. In doing so, the advantages of the green criminological model are highlighted, and it is demonstrated that the contemporary renewables market is an area of criminological interest.

Keywords: green criminology, corporate harm, renewable energy, neocolonialism, global supply chains

1. Introduction

As the effects of global warming become an everyday reality for much of the worlds' population, the imperative for a transition away from fossil fuels becomes ever clearer. Renewable energies are poised to take over from fossil fuel as the primary source of energy, and will undoubtedly present new challenges for the global community. Many renewable power solutions to the energy crisis require lithium-ion batteries,[1] and the rising demand for these technologies in turn necessitates large-scale extraction of the primary resources needed to create the batteries: cobalt-tantalum (coltan) and lithium. Global demand for these minerals is thus set to soar within the next decade, with demand for lithium set to triple by 2025,[2] and a projected 30-fold increase in demand for coltan.[3]

The bulk of the world's supply of coltan lies with the Democratic Republic of the Congo (DRC),[4] a mineral-rich region which has long been riven by conflict and resource exploitation. The majority of the world's lithium deposits are located in the southern Andean nations of Argentina, Bolivia, and Chile, primarily amidst Indigenous territory.[5] The growth of markets for these minerals have serious ramifications for the countries at hand, as extraction operations fuel conflict and environmental degradation in the regions.

Green criminology is a theoretical perspective that has gained traction in recent years which seeks to broaden the scope of criminological inquiry to explore harms against the environment.[6] The perspective adopts a harm-focussed approach to its study of environmental issues, suggesting that "crime" is an inappropriate framing for problems of this sort, as many of the most harmful ecological practices are non-criminal or legal.[7] I engage with the green criminological concept of "ecocide" – a theory which explores the connections between

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[1] Jennapher Lunde Seefeldt, "Lessons from the Lithium Triangle: Considering Policy Explanations for the Variation in Lithium Industry Development in the 'Lithium Triangle' Countries of Chile, Argentina, and Bolivia," *Politics Policy*, no. 48 (2020): 729.

[2] Seefeldt, "Lessons from the Lithium Triangle," 729.

[3] Patricia Alves Dias, Darina Blagoeva, Claudiu Pavel, and Nikolaos Arvanitidis, "Cobalt: Demand-Supply Balances in the Transition to Electric Mobility," *Publications Office of the European Union*, (2018): 34.

[4] Dias, Blagoeva, Pavel and Arvanitidis, 35.

[5] Seefeldt, "Lessons from the Lithium Triangle," 729-734.

[6] Nigel South, "Green Criminology: Reflections, Connections, Horizons," *Journal for Crime, Justice and Social Democracy* 3 (2014): 6.

[7] South, 8-10.

environmental degradation and the destruction of culture.[8] Potential objections to the theory are considered and incorporated into my analysis. In doing so, I establish a theoretical framework by which we can understand and critique the harms of the resource extraction industry in renewables.

To elucidate the strengths and potential applications of these concepts, this article utilises two case studies. It begins by focusing on the extraction of coltan in the DRC, initially focusing on conventionally criminal harms, before broadening the analysis to explore the relevance of green criminology to the case. This article focuses on the supply side of the industry, in order to elucidate the significant harms, criminal and non-criminal, that occur within source countries as a result of these industries. It argues here that the scope of ecological harm, including ecocide, justifies the topic as a site of criminological inquiry, even though the harms are not strictly criminal. This article next applies this conclusion to the case of lithium-mining in the so-called "lithium triangle" countries of Argentina, Bolivia, and Chile, arguing that these cases equally merit criminological attention. Finally, it offers a framework by which "criminologically relevant" and "non-criminologically relevant" instances of resource extraction might be delineated.

2. Green Criminology

Green criminology is a criminological perspective that argues that criminological focus ought to include ecological issues, from the localised effects on individual environmental incidents to larger-scale problems such as climate change.[9] The perspective is predominantly articulated as a harms-based approach to the criminological discipline, meaning that it regards "harm," as opposed to "crime" as the appropriate ambit of criminological investigation. "Crime," from this perspective, is seen as a socially and politically constructed concept lacking ontological reality, and thus arbitrary as a category of interest.[10]

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[8] Martin Crook, Damien Short and Nigel South, "Ecocide, Genocide, Capitalism, and Colonialism: Consequences for Indigenous Peoples and Glocal Ecosystems Environments," *Theoretical Criminology* no. 22 (2018).

[9] South, "Green Criminology," 6.

[10] Lynne Copson, "Beyond 'Criminology' vs. 'Zemiology': Reconciling Crime with Social Harm," in *Zemiology: Critical Criminological Perspectives*, eds. Avi Boukli and Justin Kotzé (Basingstoke: Palgrave MacMillan, 2018), 36.

Green criminology adopts a global analytical framework, recognising the interdependence of human and ecological systems across borders. The issues with which it concerns itself are global in scope, and focus on global actors such as corporations and states as primary perpetrators of harm. This is because the effects of ecological collapse caused by environmental degradation have global implications, from food scarcity to population displacement.[11] Purported solutions to ecological problems are increasingly international in scope, with existing and proposed environmental targets and regulations coordinated by international bodies.[12] Scheper-Hughes notes that, in illicit as well as licit economies, resources and capital typically flow from the Global South to the Global North,[13] to which extractive industries are no exception.[14] This is articulated by the "resource curse" phenomenon, wherein resource rich countries are often kept poor by their overreliance on exploitative extractive industries.[15] Environmental damage is disproportionately created by the Global North, and disproportionately suffered in the Global South, throughout which countries and communities have had their resources forcibly or otherwise exploitatively depleted, damaging their ability to adequately prepare for climate-related harm.[16]

South thus writes of the need for green criminology to establish a robust theory of "environmental victimology."[17] Brown suggests that, in formulating such a theory, criminologists ought to identify harms from scientific data as opposed to existing

[11] South, "Green Criminology," 14.
[12] South, 14.
[13] For the purposes of this article, the terms "Global North" and "Global South" shall be utilised to group countries along socio-economic and political lines, as opposed to related terms such as "developed/developing country." This is because the term captures the relations of dominance that exist between "Northern" nations over "Southern" nations more aptly than alternative terms. There are a few drawbacks to the terms. These include definitional imprecisions such as the implication that development is homogenous amongst nation states, and overgeneralisations about the material conditions in each "pole." In reality, there are "Norths" within the Global South and "Souths" within the Global North, and significant diversity in the socio-economic conditions of countries within either side of the dichotomy. Whilst the terms serve as effective shorthand for general dynamics which exist between regions, they are of most analytical use whilst these shortcomings are borne in mind.
[14] Nancy Scheper-Hughes, "Rotten Trade: Millennial Capitalism, Human Values and Global Justice in Organs Trafficking," *Journal of Human Rights* 2, no. 2 (2003): 199-200.
[15] Jeffrey D.Sachs and Andrew Warner, "Natural Resource Abundance and Economic Growth," *NBER Working Paper* no. 5398 (1995): 2.
[16] South, "Green Criminology," 13.
[17] South, 13.

environmental regulations, owing to the influence exerted over the latter by corporations.[18] As previously stated, those in the Global South are at greater risk of environmental victimisation, but within the Global North, racial minorities are at disproportionate risk of the same.[19] It is thus necessary for green criminologists to put the most vulnerable at the centre of their investigations, whilst noting that environmental damage can have significant implications for those who might traditionally be thought of as less vulnerable.[20]

2.1. Ecocide

"Ecocide" is a conceptual tool which explains the interdependency of the harms of genocide and environmental harm.[21] Criminological theorising has tended to neglect the relationship between harms against the environment and harms against dispossessed populations,[22] owing in part to the discipline's focus on the Global North.[23] Advocates of the theory note that Indigenous scholars and activists have advanced similar concepts to that of ecocide, and of genocide, in the past, but that their knowledges have not been given due credence within the social sciences.[24] The theory serves as an attempt to reconcile Indigenous knowledges with the mainstream criminological canon. Despite enjoying limited debate at the level of international jurisprudence, and adoption into the legal frameworks of certain countries,[25] no international law exists which names ecocide as a crime during peacetime.[26]

"Ecocide" is defined by Higgins as the "extensive damage to, destruction of or loss of ecosystem(s) [...] to such an extent that peaceful enjoyment by the inhabitants of that territory

[18] Phil Brown, *Toxic Exposures: Contested Illnesses and the Environmental Health Movement*, (New York: Columbia University Press, 2007), 2.

[19] Michael Lynch and Paul Stretesky, "Corporate Environmental Violence and Racism," *Crime, Law and Social Change* 30, no. 2 (1999): 163.

[20] Matthew Hall, *Victims of Environmental Harm: Rights, Recognition and Redress under National and International Law* (London: Routledge, 2013), X.

[21] Crook, Short and South, "Ecocide, Genocide, Capitalism, and Colonialism."

[22] Lynch and Stretesky, "Corporate Environmental Violence," 173-175.

[23] Kerry Carrington, Russell Hogg and Máximo Sozzo, "Southern Criminology," *British Journal of Criminology* 56, no. 1 (2016): 1-20.

[24] Crook, Short and South, "Ecocide, Genocide, Capitalism, and Colonialism," 300.

[25] Gwendolyn J. Gordon, "Environmental Personhood," *Columbia Journal of Environmental Law* 43, no. 1 (2019): 50–91. In Ecuador and Bolivia, nature, or *Pachamama* in the Quechua and Aymara languages of the indigenous people of the regions, has constitutionally protected legal status.

[26] Polly Higgins, Damien Short and Nigel South, "Protecting the Planet: A Proposal for a Law of Ecocide," *Special Issue of Crime, Law, and Social Change* 59, no. 3 (2013): 259. Significant and long-term damage to the natural environment during a war context is nonetheless defined as a "war crime" under the Rome Statute of the ICC.

has been severely diminished."[27] This is further divided into two types of ecocide: "ascertainable" ecocide, whereby causation of environmental degradation is simply attributed to the actions of individuals or collectives; and "non-ascertainable" ecocide, cases whereby catastrophic events occur with no clear causal attribution, but which are generally attributable to, or worsened by, human action.[28] The former concerns environmental harms which are localised and directly attributable to human action, such as the pollution of a water source by a corporation, whereas the latter describes the effects and harms of anthropogenic climate change.

A key facet of the concept of ecocide is its relationship with genocide. Weinstock notes that Indigenous communities have historically utilised and linked the concepts in their activism, quoting a Mapuche activist as claiming that extractivist capitalism, which had led to the impoverishment of their communities and desertification of their land, was a "planned assassination."[29] Indigenous people are typically at heightened risk of the harms of ecocide, as people who are more likely to be ecologically embedded within their particular territories.[30] Scholars of genocide note that the term can be deployed reductively within social scientific analysis, obscuring the nature and extent of its harms.[31] As opposed to understanding genocide purely in terms of mass-extermination à la the Armenian Genocide or the Holocaust, Van Kreiken suggests a more expansive reading which views culture as the animating concept.[32] According to Lemkin, the jurist behind the concept of "genocide," social collectives have essential foundations based in biological, cultural, political, and economic relations which are mutually constituted.[33] For Lemkin, an attack on any of these elements could lead to the

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[27] Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (London: Zed Books, 2016), 63.

[28] Short, 64.

[29] Quoted in Ana Weinstock, "A Decade of Social and Environmental Mobilisation against Mega-Mining in Chubut," in *Environmental Crime in Latin America: The Theft of Nature and the Poisoning of the Land*, eds. David R. Goyes, Hanneke Mol and Avi Brisman (London: Palgrave, 2017), 147-148.

[30] Crook, Short and South, "Ecocide, Genocide, Capitalism, and Colonialism," 305.

[31] Martin Shaw, *What Is Genocide?* (Cambridge: Polity, 2007), 48.

[32] Robert van Kreiken, "Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation," *Oceania* 75, no. 2 (2004): 125–51.

[33] Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC.: Carnegie Endowment for International Peace Division of International Law, 1944).

disintegration of the social relations of the group as a whole, constituting genocide. For many Indigenous groups, spatial embeddedness and relation to wider ecosystems can be construed as a key element of culture, implying that environmental degradation has genocidal implications for the groups.[34]

The exploitation of land and resources, and the subordination or dispossession of the peoples who occupy it, has economic and political roots in European settler colonialism. Early European migration to North America, for instance, had significant detrimental effects on both the Indigenous peoples of the region and the broader ecosystems in which the latter group had lived. For instance, the hunting to exhaustion of the Tatanka (the Lakota term for what is in English referred to as the "Bison") for European profit engineered the disruption of the cultural practices of the Lakota tribes whose lives and livelihoods depended on the animal.[35] The concept of ecocide recognises that the crisis of climate change is not a crisis of external "environment," but rather a crisis in the relation between man-made politico-economic systems and nature, wherein the exploitation of natural resources required by the conditions of production of modern capitalism are driving the destruction of the ecosystems that support organised life on Earth.[36] Agnew frames everyday participation in this process via consumerism as "everyday ecocide."[37] Resources on Earth are finite, but the logic of growth-driven capitalism requires an impossible model of endless growth, which in turn drives humanity to an unsustainable mode of life.[38] A robust green criminological perspective is thus rooted in a critical examination of the conditions of modern capitalism.

2.2. Critiquing and Refining Green Criminology

A potential criticism of green criminological theory is of its potential to be deployed in a "green imperialistic" manner. "Green imperialism" refers to the shifting of responsibility for the mitigation of climate collapse on to the Global South, and particularly ecologically

[34] Mohammed Abed, "Clarifying the Concept of Genocide," *Metaphilosophy* 37, no. 3–4 (2006): 326.

[35] Brittany Lombardo, *Product of the Past: The Struggle Between the Lakota Sioux Nation and the United States Government* (Salve Regina University, 2014), 3.

[36] Kovel in Short, "Redefining Genocide," 62.

[37] Robert Agnew, "The Ordinary Acts That Contribute to Ecocide: A Criminological Analysis," in *The Routledge International Handbook of Green Criminology*, eds. Nigel South and Avi Brisman (London: Routledge, 2013), 58–72.

[38] Short, "Redefining Genocide," 188.

embedded Indigenous communities.[39] The argument stipulates that Global North environmental action, from the state level to the grassroots, places disproportionate burdens on Global South economies and communities as a result of their ecological positions. Lizzaralde suggests that the idea of Indigenous communities remaining ecologically embedded is rooted in a dehumanising idea of indigeneity, a modern development of the "noble savage" trope.[40] Whilst it is true that Indigenous peoples have retained a deeper connection to their lands and ways of life, and have tended to live in greater concert with the wider ecosystem as a result, this does not mean that we should expect that this will go unchanged forever.[41] "Culture" is not a static set of values, but rather constantly in flux; and Indigenous cultures are influenced by wider factors such as climate collapse, capitalism, and the desire to lead more comfortable lives.[42]

This has two primary implications for green criminology. The first is that knowledge and perspectives originating from Indigenous communities and those in the Global South must be placed at the forefront of criminological understanding of the relevant topics. This will prevent the discipline from reifying stereotypes in its analysis, and obscuring the material interest of relevant groups in favour of an imagined conception of their interests. Heeding these perspectives will also allow green criminologists to identify harms that might have been otherwise overlooked, and treat them with the severity they warrant. The second major implication is that the discipline must maintain a robust and critical understanding of the power relations between the Global North and Global South, and of the stratification of power within societies in these regions. That is to say that the discipline ought to focus on how international systems of capitalism and neo-colonial exploitation shape the actions of comparatively weaker nations and groups, as opposed to locating its focus solely on the actions of comparatively weaker states and those within them. In doing so, the discipline can avoid recreating, or advocating, the entrenchment of harmful power relations under the status quo.

[39] Manuel Lizzaralde, "Green Imperialism: Indigenous People and Conservation of Natural Environments," in *Our Backyard: A Quest for Environmental Justice*, eds. Diana Whitelaw and Gerald Visgilio (Oxford: Rowman and Littlefield, 2003), 39.

[40] Lizzaralde, 39.

[41] Lizzaralde, 40.

[42] Lizzaralde, 40.

3. The Global Renewables Sector – A Case Study

This section explores the sourcing of resources for the global market in lithium-ion batteries as a case study for the theoretical perspectives outlined above. I focus here on two primary resources which are involved in the supply chain from lithium-ion batteries and two contexts from which they are, respectively, sourced. These are cobalt, from coltan mines in the DRC, and lithium, from the so-called "lithium triangle" nations of Argentina, Bolivia, and Chile. I engage with coltan mining in the DRC as a topic of consideration for mainstream criminological approaches, before exploring the case through a green criminological lens. I show that the scope and scale of the environmental harms that occur as a result of coltan mining warrant criminological attention. I subsequently apply this conclusion to lithium mining in the "lithium triangle," arguing that this supply chain ought to be scrutinised via criminological theorising and providing a framework under which to do so.

3.1. Coltan Mining in the Democratic Republic of the Congo

Coltan contains cobalt, a key component of the transistors within lithium-ion batteries. The DRC accounted for approximately 50% of cobalt production worldwide in 2018.[43] This section explores the coltan mining sector within the DRC through a criminological lens. First outlining how the topic fits within a mainstream criminological focus, and secondly by exploring the topic through a green criminological lens. I argue that we ought to adopt the latter perspective when engaging with the topic, as failing to do so obscures some of the greatest potential harms from criminological enquiry.

Two primary aspects of coltan mining in the DRC are of traditional criminological interest: the ownership of mines by illicit organisations; and the use of exploitative and informal labour in mines. The DRC has been affected by violent conflict for much of its short history, being the site of the most deadly conflict since World War Two in the form of the second Congo War, and suffering contemporarily from significant militia conflict.[44] Eichstaedt notes that the opportunities for economic gain afforded by coltan were a proximate cause of the conflicts that

[43] Patricia Alves Dias, Darina Blagoeva, Claudiu Pavel and Nikolaos Arvanitidis, *Cobalt: Demand-Supply Balances in the Transition to Electric Mobility* (Luxembourg: Publications Office of the European Union, 2018), 35.

[44] Peter Eichstaedt, *Consuming the Congo: War and Conflict Minerals in the World's Deadliest Place* (Chicago: Chicago Review Press, 2011), 113.

ultimately became the first and second Congo wars.[45] Moreover, contemporary conflict within the DRC is both motivated and sustained by access to mining operations. Motivated insofar as militias instigate conflict for control of the mines, which provide a valuable source of revenue, and sustained insofar as access to the mines provides militias with the ability to continue fighting for longer periods.[46] This has three major implications for criminology. Firstly, international demand for coltan directly funds criminal organisations, by virtue of the limited supply of the mineral and inadequate source verification.[47] Secondly, this process further entrenches conflict and instability within the DRC, and deprives its government of revenue from these extractive operations. Thirdly, it creates a reliance on exploitative forms of labour within mines – thought to affect 30% of annual coltan supply[48] – which are disproportionately likely to expose workers to risks and hazards, without sufficient remuneration.

The above elements of the coltan extraction process involve elements which clearly contravene criminal law. Utilising green criminological theories we can broaden our investigation to examine non-criminal elements of the process which are nonetheless harmful. The environmental damage caused by coltan mining, for instance, is not clearly an issue of criminal law, but engenders significant harm for those affected. The Congo rainforest is particularly important as a carbon sink and a site of biodiversity, functions which are both significantly undermined by the deforestation caused as a result of coltan mining.[49] In this way mining operations threaten the wider environment, with global repercussions.

Despite these global implications, the most immediate harms are borne by the local populations. Those working in the informal mining economy are exposed to particulate matter as a result of insufficient health and safety procedures within mines, and resultantly suffer

[45] Eichstaedt, 112.

[46] Justin M. Conrad, Kevin T. Greene, James I. Walsh and Beth E. Whitaker, "Rebel Natural Resource Exploitation and Conflict Duration," *Journal of Conflict Resolution* 63, no. 3 (2018): 596.

[47] Henry Sanderson, "Congo, Child Labour and Your Electric Car," *Financial Times*, July 7, 2019, https://www.ft.com/content/c6909812-9ce4-11e9-9c06-a4640c9feebb.

[48] Sanderson.

[49] Julie Loisel, Angela V. Gallego-Sala and Matt J. Amesbury, "Expert Assessment of Future Vulnerability of the Global Peatland Carbon Sink," *Nature Climate Change*, no. 11 (2021): 70–77.

higher rates of respiratory dysfunction.[50] Additionally, water sources in communities surrounding mining operations are likely to be contaminated by heavy metals, rendering them undrinkable, such as in the Edege-Mbeki mining district.[51] The traditional lands of the Mbuti, Baka, and Batwa tribes are significantly threatened by the encroachment of industrial operations and deforestation. These Indigenous groups are traditionally nomadic, but have increasingly been forced to abandon their traditional ways of life as land enclosure limits their movement.[52] This has created an untenable position for these communities, placing many into extreme poverty, and even bonded labour.[53] Higgins would suggest that the treatment of these Indigenous peoples constitutes ascertainable ecocide, as their lands and culture are stripped away.[54] This can be seen as an extension of the imperialistic power relations between the region and European powers historically. Extractive capitalism and resource exploitation fueled the colonial domination of the Congo, and the modern demand for resources drives its continued exploitation and the destruction of its ecological systems.

Green criminological theorising suggests that we view these strictly non-criminal harms as a matter of criminological interest, equal to those harms which have been traditionally deemed criminal. This is a position justified by two primary considerations: the arbitrariness behind the delineation of “crimes” from “harms” by states; and the significance of the harms occasioned by non-criminal actions. In the case of environmental damages, capitalist states have vested interests in situating environmental harm outside the remit of crime as they are reliant upon resource exploitation to grow their economies. “Crime” in this instance, is not an appropriate analytical concept for guiding our analytical focus and perspective. On the other hand, the harm caused by environmental damage is significant, both to those whom it directly affects, and those whom it affects more distantly.

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[50] Ngombe Leon-Kabamba, Nlandu R. Ngatu, Sakatolo J.B. Kakomaet al., “Respiratory Health of Dust-Exposed Congolese Coltan Miners,” *International Archives of Occupational and Environmental Health* 91 (2018): 859.

[51] Mohammed E. Isah, Nuhu A. Abdulmumin and Paul D. Elaoyi, “Effects of Columbite/Tantalite (COLTAN) Mining Activities on Water Quality in Edege-Mbeki Mining District of Nasarawa State, North Central Nigeria,” *Bulletin of the National Resource Centre* 43, no. 179 (2019): 4-6.

[52] “Republic of Congo,” *IWGIA*, October 31, 2011. https://www.iwgia.org/en/republic-of-congo.

[53] IWGIA.

[54] Short, “Redefining Genocide.”

3.2. Lithium Mining in the "Lithium Triangle"

This section engages with a second supply chain of importance to the global renewables market: lithium mining in the so-called "lithium triangle" nations of Argentina, Bolivia, and Chile. These nations contain, cumulatively, approximately 47 million metric tonnes of lithium, the bulk of the world supply.[55] Each country has a substantially different legal-regulatory environment surrounding the mining of lithium, and has developed their capacities to differing extents. The lithium deposits are primarily located in the countries' salt flats, which are disproportionately areas of Indigenous settlement.[56] This section explores the extraction of lithium in this region through a green criminological lens, arguing that although the harms explored are not explicitly illegal in the majority of cases, they ought to be understood as part of a broader system of harms which renders them as topics of criminological enquiry.

Utilising Higgins' framework, it is possible to understand the lithium extraction industry through the lens of ecocide.[57] The process of lithium extraction in the "lithium triangle" requires a significant portion of the water from the surrounding regions – 65% in the Salar de Atacama[58] - which has, or is likely to lead to, desertification of the surrounding regions. The deprivation of water from these communities is likely to have a significant deleterious effect on the groups' abilities to continue their ways of life, including traditional farming practices and ritual.[59] The result is likely to be that the potential of the region to support life will be significantly diminished, as per Higgins' definition of ecocide.[60] Some communities within the region have identified this process of environmental degradation with a concerted effort to remove their land rights, and destroy their belief systems. Given this, and as the causal chain is easily attributable to companies engaging in lithium mining operations, this process would be appropriately described as "ascertainable" ecocide.[61]

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[55] Seefeldt, "Lessons from the Lithium Triangle," 730.

[56] Seefeldt, 734.

[57] Short, "Redefining Genocide."

[58] "Developing Countries Pay Environmental Cost of Electric Car Batteries," *UNCTAD*, July 22, 2020, https://unctad.org/news/developing-countries-pay-environmental-cost-electric-car-batteries.

[59] Sally Babidge, and Paola Bolados, "Neoextractivism and Indigenous Water Ritual in Salar de Atacama, Chile," *Latin American Perspectives* 45, no. 5 (2018): 170–85.

[60] Short, "Redefining Genocide," 63.

[61] Short, 64.

The process of lithium extraction can be understood as an aspect of the capitalist "treadmill" of production,[62] wherein the drive for endless growth fuels the destruction of natural systems. Renewable energies which typically require lithium-ion batteries, are positioned as environmentally friendly alternatives to fossil fuels. They are not, however, a radical departure from growth-driven capitalist modes of production, in and of themselves. Personal electric vehicles, for instance, are a significant driver of demand for lithium-ion batteries, and are not so much a rejection of capitalist-consumerist modes of production so much as they represent an adaptation of these modes to a different paradigm.

3.3. Implications of the Case Studies for Green Criminology

Contemporary extractive industries in lithium and coltan have significant environmental, and ecocidal, ramifications. By virtue of this fact, it is appropriate that they should be considered as within the ambit of green criminology. Nonetheless, it is incumbent upon green criminologists to be reflexive in their suggestions of solutions to this problem. Green criminology has been critiqued for its focus on regulatory frameworks as a solution to the problems presented by environmental harm.[63] According to these critiques, a focus on regulatory systems can lead to the re-establishment of the logics of "crime" and "criminality" that the predominantly harms-based green criminological approach may otherwise eschew. If issues of environmental harm come to be defined in this way, the field runs the risk of legitimising some types of environmental harm via their exclusion from regulatory frameworks, whilst punishing other forms.[64] This is particularly problematic given Brown's observation that corporations exercise significant influence over regulatory processes.[65] A robust green criminological perspective must maintain a reflexively critical stance towards regulatory and criminal justice systems, in order to avoid reifying their assumptions and logics in its analyses.

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[62] Crook, Short, and South, "Ecocide, Genocide, Capitalism, and Colonialism," 307.

[63] Mark Halsey, "Against 'Green' Criminology," *The British Journal of Criminology*, 44, no. 6 (2004): 833–853.

[64] Halsey, 835-837.

[65] Brown, *Toxic Exposures*, 2.

It is particularly crucial that the needs and wishes of Indigenous peoples be foregrounded in such an analysis. For instance, many Indigenous groups in the Andean region are not opposed to lithium mining per se, and indeed many welcome it, though they reject the operations which are currently being carried out.[66] The Bolivian government under the current MAS ("Movement for Socialism") administration has announced its intentions to grow the nation's economy utilising their lithium reserves,[67] whilst commanding a vast base of support amongst Indigenous Bolivians.[68] Ignoring these facts would be to participate in "green imperialist" analysis which assumes a rigidity in Indigenous and Global South culture and values, and advocates against development opportunities for poor economies whilst inadequately problematising the processes of global capitalism. This is to say nothing of the necessity of developing sustainable alternatives to fossil fuels, which pose a wide-reaching environmental threat. A green criminological approach which focuses on regulatory frameworks is liable to produce a green imperialist system of environmental governance, in which countries of the Global South are denied development opportunities, whilst continuing to exist under the system of global capitalism.

It remains likely that regulatory systems will play a role in addressing environmental harm in the future, but it is imperative that criminologists are critical in their analysis of how these frameworks are deployed, and whose interests they serve. Industries that source the materials for renewable energy ought to be regarded as of criminological interest insofar as they cause significant harm to communities, especially where they do so without the informed consent of communities, sufficient remuneration, or reparation. However, a focus upon regulatory or legal practices, or frameworks such as Agnew's "everyday ecocide"[69] which individualise systemic issues, is ultimately misplaced. Green criminology must take the additional step of critiquing

[66] Eniko Horvath and Amanda R. Medina, "Indigenous People's Livelihoods at Risk in Scramble for Lithium, the New White Gold," *Reuters*, April 9, 2019, https://www.reutersevents.com/sustainability/indigenous-peoples-livelihoods-risk-scramble-lithium-new-white-gold.

[67] Javiera Barandiarán, "Lithium and Development Imaginaries in Chile, Argentina and Bolivia," *World Development* 113 (2019): 381.

[68] Nancy Postero, "Morales's MAS Government: Building Indigenous Popular Hegemony in Bolivia," *Latin American Perspectives* 37, no. 3 (2010): 23.

[69] Agnew, "The Ordinary Acts that Contribute to Ecocide."

the growth imperative of modern global capitalism, focusing on the root causes of the problem as opposed to tackling its symptoms. Such a focus would liberate the discipline from the false dichotomy of green imperialism on the one hand, and neocolonialism, environmental degradation and ecocide on the other.

4. Conclusion

The global market in renewables – typified by the lithium-ion battery market – ought to be subjected to criminological inquiry on the basis of the significant harms inherent to the resource extraction processes. This article has demonstrated, with reference to green criminological theory and the concept of "ecocide," that contemporary coltan extraction in the DRC and lithium extraction in the "lithium triangle" is of significant harm to the regions and their Indigenous populations. Drawing upon existing literature, this article has suggested a framework by which criminologists might approach extractive industry through a green criminological perspective. In doing so, it has addressed the limitations of a regulatory approach to issues of environmental harm and proposed that the discipline maintain a critical harm-based focus.

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Crime After Conflict:

Understanding the Causal Nexus of Crime and Conflict Through the Lens of Security, Development and Governance.

Jack Provan

LLM in European Law, University of Edinburgh

Abstract

Overwhelming statistical evidence shows a correlation between conflict and crime rates, both at a structural and individual level. This is assumed by many to mean that conflict is responsible for rises in crime. This article describes an alternative approach: that conflict is conducive to organised criminality, but does not necessarily cause it. By demonstrating examples from post-conflict societies, it is shown that the causal nexus of conflict and crime is actually security, development and governance. This effect is particularly pronounced where violent crime is concerned, but the inconsistent and often contextual nature of such crime renders any attempt to draw conclusions difficult. By framing peacebuilding efforts around conflict, and prioritising the neoliberal democratic model of the Global North as a cure to security and development shortcomings, crime is actually further enabled as the symptoms of criminality are not addressed. By returning the focus to security, development and governance, critical discussion may be able to cut through the noise and provide practical solutions to the crime epidemics characteristic of post-conflict environments.

Keywords: post-conflict states, crime rates, organised crime, crime and conflict, security, development, and governance

1. Introduction

Statistical evidence suggests a positive correlation between armed conflict and crime rates at a structural and individual level. This correlation is somewhat poorly understood, since official statistics are often hard to come by in conflict zones, and the spectrum of criminal activity is broad, which discourages generalisations.[1] This article aims to serve as a modest contribution to our understanding of this correlation. While the contention that conflict breeds crime has traditionally been a widely accepted one,[2] it is perhaps somewhat simplistic. This belief seems to be based on the phenomenon that crime rates universally rise in areas of conflict. But correlation does not prove causation. Starting with the claim that "[c]onflict… creates unique opportunities for criminality to flourish and amplifies the threat that criminal groups pose to security, development and governance,"[3] it is argued here that crime and conflict are both tied to negative changes in security, development and governance, both in a way which causes these issues, and in a way which is caused by them. In other words, both conflict and crime catalyse, and in turn are catalysed by negative changes to security, development and governance at state and regional levels. To assess the impact of war on crime, we benefit most from observing states that have had enough time to undergo these negative changes. For this reason, this paper draws its observations from post-conflict societies where the legacy impact on criminality can be observed.[4] Specifically, examples are drawn from Colombia, countries in West Africa, and the Middle East, although other states are briefly mentioned when relevant.

The nexus between crime and conflict is best demonstrated with reference to observable economic and violent crimes that are often prevalent in post-conflict states. Section 2 of this paper is dedicated to uncovering the factors behind these forms of crime in order to formulate a clear understanding of their true nature: They are consequences of eroded levels of security,

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[1] For a more robust discussion on the existence of this correlation and the role of reporting, see e.g. Ekaterina Stepanova, "Armed Conflict, Crime and Criminal Violence" in *SIPRI Yearbook 2010: Armaments, Disarmament and International Security* (Stockholm: Oxford University Press, 2010).

[2] Vesna Nikolić-Ristanović, "War and Crime in the Former Yugoslavia," in *The New European Criminology: Crime and Social Order in Europe*, ed. Vincenzo Ruggiero, Nigel South, and Ian Taylor (London: Routledge, 1998), 463-464.

[3] Jaremey McMullin, "Organised Criminal Groups and Conflict: The Nature and Consequences of Interdependence," *Civil Wars* 11, no. 1 (2009): 75, https://doi.org/10.1080/13698240802407066.

[4] It should be noted that post-conflict societies are hard to define. The existence of a formal ceasefire, a common metric, may oversimplify the boundaries of conflict given that conflict and violence are not as analogous as this definition would suggest.

development and governance. In Section 3, the inverse position is considered: whether such crime can have a negative impact on security, development and governance in post-conflict areas. At this point, the hunt for causality becomes cyclical. Conflict is therefore best viewed as the catalyst of the mutually destructive impact between crime and development. Finally, this article will consider the legacy of crime in post-conflict contexts and will criticise neoliberal approaches to peacebuilding intended to reduce crime through strengthening security, development and governance by showing that in some cases, these processes can have the opposite intended effect. Here, the Haitian experience is also considered as an outlier in terms of its effective response to conflict. Colombia and countries in the Middle East, in contrast, have been characterised by ongoing violence and many futile peacekeeping efforts.

2. Forms of Crime

The ongoing impact of war on crime is most transparent in the forms of crimes that are most prevalent in societies affected by conflict. These crimes come under two broad headings: organised economic crimes and violent crimes. While these categories are neither exhaustive nor mutually exclusive, this paper suggests that they are sufficient to demonstrate some of the key driving factors behind the prevalence of crime in post-conflict states.

2.1. Organised Economic Crime

Many commentators have noted that it is counterproductive to view organised crime in terms of the individuals and groups involved, preferring instead to treat organised crime as an economic activity.[5] Under the logic of illegal enterprise theory,[6] the supply of goods through shadow economies is a product of global demand, and the chaos of conflict provides favourable conditions for such activity. Viewed through this lens, organised economic crime is not borne out of conflict per se, but is instead a reaction to the increased demand for certain products which arises in conflict areas.

[5] See e.g. Andre Standing, "Rival Views of Organised Crime" (Institute for Security Studies, Monograph 77, 2003), 59, accessed February 11, 2021, https://issafrica.org/research/monographs/monograph-77-rival-views-of-organised-crime-andre-standing; Peter Gastrow, "Organised Crime in South Africa: An Assessment of its Nature and Origins" (Institute for Security Studies, Monograph No. 28, 1998), 9, accessed February 11, 2021, https://issafrica.org/research/monographs/monograph-28-organised-crime-in-south-africa-an-assessment-of-its-nature-and-origins-by-peter-gastrow.

[6] For the best-known work on illegal enterprise theory, see Peter Reuter, *Disorganized Crime: Economics of the Visible Hand* (Cambridge, MA: MIT Press, 1983).

In conflict zones, trafficking can include illicit products (such as arms and drugs) and non-illicit products (such as natural resources, money and medical supplies). Where trafficking involves illicit goods, emphasis is normally placed on the societal harm of the goods themselves, such as the use of trafficked arms in acts of violence,[7] or the impact of the drug trade on transit and destination states.[8] In this sense, trafficking illicit products has a more direct impact on security, development and governance. Bolton et al. note that the global trade of small arms and light weapons directly contributes to armed conflict and criminal violence, ultimately harming state development by exacerbating instability.[9] This has been observed in several conflict states such as Bosnia-Herzegovina, where it has been argued that illicit arms smuggling was instrumental in the outbreak and perpetuation of regional conflict.[10]

Trafficking is not limited to illicit substances. Unlawful trade can occur with natural resources and legal goods as much as drugs or guns. Of course, development, security and governance are not as easily threatened by timber and medical supplies in post-conflict zones. Yet, counterintuitively, the trafficking of non-illicit goods has still been closely linked to instability in many West African states, such as Côte d'Ivoire's cocoa trade and the prevailing regional conflict.[11] While profits raised through trafficking natural resources can be used to fund and perpetuate warfare,[12] the main ongoing impact in post-conflict scenarios relates to the wartime establishment of shadow economies, and the long-term prosperity of organised criminal groups. Conflict intensifies the pressure on manufacturing and supply chains, creating

[7] McMullin, "Organised Criminal Groups and Conflict," 94.

[8] United Nations Office on Drugs and Crime, "Drug Trafficking as a Security Threat in West Africa'" (Vienna: UN Office on Drugs and Crime, 2008), 48, accessed February 11, 2021, https://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf.

[9] Matthew Bolton, Eiko Elize Sakamoto, and Hugh Griffiths, "Globalization and the Kalashnikov: Public-Private Networks in the Trafficking and Control of Small Arms," *Global Policy* 3, no. 3 (2012): 304-306, https://doi.org/10.1111/j.1758-5899.2011.00118.x.

[10] Sheelagh Brady, "Organised Crime in Bosnia and Herzegovina: A Silent War Fought by an Ambush of Toothless Tigers or a War Not Yet Fought?" (Sarajevo: Centre for Security Studies, 2012), 16, accessed February 11, 2021, https://www.occrp.org/documents/OC_in_BH_ENG.pdf.

[11] Global Witness, "Hot Chocolate: How Cocoa Fuelled the Conflict in Côte d'Ivoire" (Washington, D.C.: Global Witness, 2007), 9, accessed February 11, 2021, https://cdn.globalwitness.org/archive/files/pdfs/cotedivoire.pdf.

[12] Paul Collier and Anke Hoeffler, "On Economic Causes of Civil War," O*xford Economic Papers* 50, no. 4 (1998), https://doi.org/10.1093/oep/50.4.563.

demand for everyday substances. An apt example is the smuggling of medical equipment to besieged areas in Syria.[13]

The inseparable connection between organised criminal actors and shadow economic activities has prompted many scholars to conclude that organised criminal networks are primarily motivated by greed.[14] Certainly, this can be the case – a claim supported by the fact that conflict is one of the major push factors driving migrant smuggling into and within the European Union.[15] Often, however, the background of conflict highlights certain contours of criminal activity which suggest a different primary motivator. The direct correlation between conflict and criminal greed does not prove the mutual interdependence of the two. Indeed, countries rich in valuable natural resources can enjoy peace as well as experience war. Some diamond-producing countries have experienced recent conflict (such as Angola, Liberia and Sierra Leone) but several others have not (Australia and Canada, for example). In fact, while mining and smuggling natural resources can fuel and fund warfare, it can equally be used to consolidate state power. The difference between these possibilities comes down to who controls the resources, and how wealth is subsequently distributed.[16] Read in this context, the fight for control over natural resources often observed in contemporary civil wars (particularly in parts of Africa), while inextricably linked to conflict through the funding of insurgency groups, does not imply opportunistic criminal greed, but rather confirms the notion that wars are won with capital.[17]

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[13] Nasser Fardousi, Douedari Yasan, and Howard Natasha, "Healthcare Under Siege: A Qualitative Study of Health-worker Responses to Targeting and Besiegement in Syria," *BMJ Open* 9, no. 9 (2019): 1-12, https://doi.org/10.1136/bmjopen-2019-029651.

[14] Martin Bouchard and Carlo Morselli, "Opportunistic Structures of Organized Crime," in *The Oxford Handbook of Organized Crime*, ed. Letizia Paoli (New York: Oxford University Press, 2014).

[15] EUROPOL, "European Union Serious and Organised Crime Threat Assessment: Crime in the Age of Technology" (The Hague: European Police Office, 2017), 49, accessed February 11, 2021, https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017.

[16] Richard Snyder and Ravi Bhavnani, "Diamonds, Blood, and Taxes: A Revenue-Centered Framework for Explaining Political Order," *Journal of Conflict Resolution* 49, no. 4 (2005): 566-574, https://doi.org/10.1177/0022002705277796; McMullin, "Organised Criminal Groups and Conflict," 83.

[17] This helps to explain why Zimbabwe, which has previously resisted the implementation of international covenants, became willing to comply with the Kimberley Process for diamond certification, making it harder to illegally mine and smuggle diamonds. For more see Nathan Munier, "The One who Controls the Diamond Wears the Crown! The Politicization of the Kimberley Process in Zimbabwe," *Resources Policy* 47 (2016), https://doi.org/10.1016/j.resourpol.2016.02.001.

2.2. Violent Crime

While the use of violence in organised crime is usually rare,[18] there is evidence that in post-conflict situations, criminal violence (or the threat thereof) becomes more commonplace. Steenkamp theorises that this is because, in conflict, a culture of violence is normalised.[19] Camelo builds upon this groundwork to suggest that post-conflict environments are particularly politically sensitive, and that violence represents the residual aggression of conflict.[20] This theory is supported by the continued violence by dissident rebel groups as a form of residual conflict in Colombia,[21] and is one of the reasons that the "post-conflict period" can be so hard to define.

It is widely claimed by advocates of the "violent veterans" model that ex-combatants are responsible for the rise in violent crime rates in post-conflict environments.[22] Certainly, this argument has some statistical credibility as rates of homicide in post-war transitioning states tend to be highest in areas of combatant resettlement.[23] Common trends seem to indicate that the economic prospects of returning ex-combatants and the quality of reintegration assistance are key indicators of the likelihood of recidivism. It is claimed by Boyle[24] that ex-combatants are mobilised in two main ways: through dissatisfaction with the terms of peace, or through ineffective state enforcement of that peace. The former is particularly damaging since it amounts to a violent manifestation of the rejection of peace, and thereby a continuation of the conflict, albeit on a smaller scale. Either way, the existence of violent crime causes instability and harms security.

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[18] EUROPOL, "European Union Serious and Organised Crime Threat Assessment," 16.

[19] Chrissie Steenkamp, "The Legacy of War: Conceptualizing a 'Culture of Violence' to Explain Violence after Peace Accords," *The Round Table* 94, no. 379 (2005), https://doi.org/10.1080/00358530500082775.

[20] Heyder Alfonso Camelo, "Aportes para la comprensión de la violencia en periodos de post-conflictio/ Contributions for the Comprehension of Violence in Post-Conflict Times," *Ciudad Paz-Ando* 8, no. 1 (2015), https://doi.org/10.14483/udistrital.jour.cpaz.2015.1.a01.

[21] Manuela Nilsson and Lucía González Marín, "Violent Peace: Local Perceptions of Threat and Insecurity in Post-Conflict Colombia," *International Peacekeeping* 27, no. 2 (2020), https://doi.org/10.1080/13533312.2019.1677159.

[22] Dane Archer and Rosemary Gartner, "Violent Acts and Violent Times: A Comparative Approach to Postwar Homicide Rates," *American Sociological Review* 41, no. 6 (1976), https://doi.org/10.2307/2094796.

[23] Archer and Gartner, "Violent Acts and Violent Times." The reasons behind this correlation are highly debated due to the uniqueness of each situation. A full discussion on those reasons is beyond the scope of this paper. For an overview, see Oliver Kaplan and Enzo Nussio, "Explaining Recidivism of Ex-combatants in Colombia," *Journal of Conflict Resolution* 62, no. 1 (2018): 67-68, https://doi.org/10.1177/0022002716644326.

[24] Michael J. Boyle, *Violence after War: Explaining Instability in Post-Conflict States* (Baltimore: Johns Hopkins University Press, 2014), 75-90.

Robust statistical analysis is difficult in countries with histories of extensive contemporary conflict given that the adverse impact of conflict on governance often renders accurate statistics hard to find.[25] However, the common trends highlighted seem to indicate at least some level of consistency with the key drivers of economic crime – low levels of security coupled with economic necessity. For similar reasons, the underlying causes of post-conflict civilian violence also vary between states, and behavioural data analyses are often narrow and non-conclusive. Nussio and Howe argue[26] that regional increases in post-conflict violence in Colombia are the result of authority vacuums when conflict actors are abruptly removed from certain territories, although this theory is not settled.[27] The normalisation of violence in conflict is usually seen as one underlying cause of its continuation after the post-conflict transition.[28] Indeed, Deglow associates the length and brutality of the conflict in Northern Ireland with the insidious and lasting continuation of youth violence.[29] The effect of civilian violence on post-war development and security can be crippling. In other examples, civilian attacks can stem from ethnic tensions, reflecting the battle lines of conflict and blurring the line between criminal and political violence, as was the case in Kosovo.[30] Political violence, which reflects the spirit of recent conflict, directly aggravates peacebuilding efforts, keeping trust in public institutions (a necessary pre-requisite for national reconciliation) to a minimum.[31]

3. Effects of Crime on Security, Development and Governance

Conflict and organised crime share a common goal of eroding state power,[32] which is ultimately achieved by fostering distrust in public institutions. Post-conflict states are usually

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[25] United Nations Office on Drugs and Crime, "Global Study on Homicide 2013: Trends, Contexts, Data" (Vienna: UN Office on Drugs and Crime, 2013), 78, accessed February 11, 2021, https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

[26] Enzo Nussio and Kimberly Howe, "When Protection Collapses: Post-Demobilization Trajectories of Violence," *Terrorism and Political Violence* 28, no. 5 (2016), https://doi.org/10.1080/09546553.2014.955916.

[27] Luis Gabriel Salas Salazar, Jonas Wolff, and Fabián Eduardo Camelo, "Towards Violent Peace? Territorial Dynamics of Violence in Tumaco (Colombia) Before and After the Demobilisation of the FARC-EP," *Conflict, Security & Development* 19, no. 5 (2019), https://doi.org/10.1080/14678802.2019.1661594.

[28] Steenkamp, "The Legacy of War"; Amanda Browne et al., "Risk and Refuge: Adolescent Boys' Experiences of Violence in 'Post-Conflict' Colombia," *Journal of Interpersonal Violence* (2019): 17, https://doi.org/10.1177/0886260519867150.

[29] Annekatrin Deglow, "Localised Legacies of Civil War: Postwar Violent Crime in Northern Ireland," *Journal of Peace Research* 53, no. 6 (2016), https://doi.org/10.1177/0022343316659692.

[30] Boyle, *Violence after War*, 177.

[31] Eric Gordy, "Serbia after Djindjic: War Crimes, Organized Crime, and Trust in Public Institutions," *Problems of Post-Communism* 51, no. 3 (2004), https://doi.org/10.1080/10758216.2004.11052169.

[32] McMullin, "Organised Criminal Groups and Conflict," 85.

characterised by a dearth of public resources, which diminishes the capacity of the police to enforce the law. Furthermore, the rise of violent crime in post-conflict states spreads thin their ability to investigate criminal activity. When trust in public institutions is low, the risk of conflict or insurrection returning is high. In post-conflict Afghanistan, for example, executive and judicial authorities were perceived as corrupt, which made it relatively easy for the Taliban to assert control over many parts of the country.[33] Belligerents can also intentionally seek to cause such damage themselves. The frequent use of fake bombs known as "hoax devices" by violent dissident republicans[34] in Northern Ireland reveals an attempt to harm public trust in political authority as well as the legitimacy of the peace process.[35] Unlike real bombs, which have also frequently been used in Northern Ireland, hoax devices are simple instruments of fear and disruption, designed to attack post-conflict stability rather than human life.

According to McMullin, conflict enables crime "because of the inability of the state, due to attacks on its institutions and legitimacy, to counteract [criminality]."[36] Distrust in public institutions impedes effective governance and indicates instability, which is often used as a metric when determining state development.[37] This creates a spiralling problem for post-conflict states, where the negative effect of conflict can be exacerbated by a rise in organised criminality. The problem of drug trafficking through West Africa highlights this spiralling effect. Cocaine is transported from South America to Europe through West Africa, owing to the poor capacity of post-conflict states in this region to respond to organised criminal activity.[38] To compound this effect, those working for traffickers are often remunerated in cocaine, increasing the availability of drugs while simultaneously decreasing the availability

[33] John Braithwaite and Ali Wardak, "Crime and War in Afghanistan: Part 1: The Hobbesian Solution," *British Journal of Criminology* 53, no. 2 (2013), https://doi.org/10.1093/bjc/azs065.

[34] This term is used here owing to its widespread use by academic commentators. Politically these groups are usually referred to as "ultras" or "residual terrorists" since the term "dissident" risks valorising acts of indiscriminate murder. See John Horgan and John F. Morrison, "Here to Stay? The Rising Threat of Violent Dissident Republicanism in Northern Ireland," *Terrorism and Political Violence* 23, no. 4 (2011): 645, https://doi.org/10.1080/09546553.2011.594924.

[35] Sanjin Uležić, "'Doing a Number': Adaptation of Political Violence in the Aftermath of the Northern Irish Conflict," *Dynamics of Asymmetric Conflict* 11, no. 3 (2018), https://doi.org/10.1080/17467586.2018.1517942.

[36] McMullin, "Organised Criminal Groups and Conflict," 84.

[37] John A. Arthur and Otwin Marenin, "Explaining Crime in Developing Countries: The Need for a Case Study Approach," *Crime, Law and Social Change* 23 (1995): 193, https://doi.org/10.1007/BF01301636.

[38] UNODC, "Drug Trafficking as a Security Threat in West Africa," 35-49.

of capital, creating a trail of poverty and dependency.[39] This example suggests that organised drug trafficking is simultaneously a reaction to, and a cause of, poor development trends, which have been catalysed by recent conflict. It does not help that, as Castells theorises,[40] the Information Age has spurred a growing devaluation of the Global South as data capital gravitates to Northern metropolitan centres, which perpetuates the exclusion of underdeveloped countries from lucrative data markets. In turn, the rise in organised crime is a major reason for the drastic decrease in investment in the Global South.[41] This example demonstrates why fear of underdevelopment and poverty leading to conflict and organised crime has become the "focus of new security concerns."[42]

This phenomenon is not only tied to drug trafficking. Poor development and security are also frequently characterised by high levels of state corruption[43] and low levels of asset security and capital.[44] All of this might suggest that crime and conflict are intricately connected to one another through their mutual effects on development, security and governance. While some forms of crime are impacted more than others, the negative effect of conflict on these three factors might give rise to increases in all different sorts of criminal activity. The implication here should be that, when conflict ends, the cycle should be broken. The following section demonstrates why this may not always be the case.

4. Crime After Conflict: Post-War Criminal Legacies

Since crime thrives in conflict, it stands to reason that the end of conflict should herald the end of rising crime rates. Unfortunately, the experiences of many post-conflict states such as Colombia have proven this to not be the case. It might be more accurate to say that the adaptation of society and state authority during the transition from conflict to peacebuilding is

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[39] UNODC, 48.

[40] Manuel Castells, *End of Millennium, Vol. III of The Information Age: Economy, Society and Culture* (Oxford, UK: Blackwell, 1998), 161-165.

[41] United Nations Economic Commission on Africa, "Transforming Africa's Economies: Economic Report on Africa 2000" (Addis Ababa, Ethiopia: Economic Commission for Africa, 2001), accessed February 11, 2021, https://archive.uneca.org/sites/default/files/PublicationFiles/era2000.pdf.

[42] Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London and New York: Zed Books Ltd., 2014), 7.

[43] Agnesa Beka, "Some Criminogenic Factors Affecting the Appearance of Corruption in Kosovo," *Prizren Social Science Journal* 4, no. 2 (2020), https://doi.org/10.32936/pssj.v4i2.166.

[44] David Chandler, "The Security-Development Nexus and the Rise of 'Anti-Foreign Policy'," *Journal of International Relations and Development* 10, no. 4 (2007): 367, https://doi.org/10.1057/palgrave.jird.1800135.

mirrored by an adaptation of criminal activity, which also seeks to operate in the newly envisaged peace.[45] This means that effective peace-making efforts must be constructive in the sense that they must address the root causes of lingering criminality if they wish to avoid the crime and development spiral. The African Union adopted this approach to criminal justice reform by evaluating changes with reference to their ability to address economic imbalance, and their projected impact on vulnerable communities.[46] Similarly, Nicaragua enacted wide-reaching institutional reforms following its civil war, and now experiences significantly lower rates of violent crime than its neighbouring countries, which enacted no such reforms. This theory is supported by Rivera, although it is acknowledged here that the standalone facts are not conclusive in proving causality.[47]

It is important to understand the direct correlation between crime and conflict in light of other factors such as unresolved political issues or underlying social tensions. In other words, not all of the crime that arises in a post-conflict situation is necessarily a result of that conflict. The two may be influenced by other more insidious factors. State (in)security and instability – key drivers of conflict – are often prolonged into post-conflict periods, ensuring the continuation of criminal behaviour.[48] Here it may be useful to consider the examples of Iraq and Mexico. The latter, unlike the former, is a state with no recent history of conflict. Despite this, there are striking similarities between organised criminal activity and systemic security concerns in both countries. Williams notes that "in both countries, violence has increased enormously, kidnapping is rife, police are routinely assassinated, corruption is endemic, and criminal organisations are very powerful."[49] Both states suffer from similar problems with security and development, which manifest as similar forms of organised crime (both economic

[45] McMullin, "Organised Criminal Groups and Conflict," 91.

[46] African Union, "Second African Union Ministerial Conference on Drug Control, Annex A: African Common Position on Crime Prevention and Criminal Justice" (New York: United Nations, 2004), accessed February 11, 2021, https://www.unodc.org/art/docs/Annex%20A.pdf.

[47] Mauricio Rivera, "The Sources of Social Violence in Latin America: An Empirical Analysis of Homicide Rates, 1980-2010," *Journal of Peace Research* 53, no. 1 (2016): 92, https://doi.org/10.1177/0022343315598823.

[48] Sabine Kurtenbach and Angelika Rettberg, "Understanding the Relation Between War Economies and Post-war Crime," *Third World Thematics: A TWQ Journal* 3, no. 1 (2018), https://doi.org/10.1080/23802014.2018.1457454.

[49] Phil Williams, "Illicit Markets, Weak States and Violence: Iraq and Mexico," *Crime, Law and Social Change* 52, no. 3 (2009): 325, https://doi.org/10.1007/s10611-009-9194-0.

and violent). This heavily implies that the causal nexus between crime and conflict is hinged on security and development and is not purely correlative.

4.1. The Role of Peacebuilding

All too often peacebuilding frameworks are fashioned and implemented by Western, self-appointed champions of liberal democracy. Because of this, the conclusions envisaged by these frameworks have a tendency to skew liberal, democratic, and economically deregulated.[50] This is referred to here as the neoliberal approach to peacebuilding, which can be blind to the root causes of conflict and may itself be a contributing factor to criminal activity.[51] A well-known historical example is the representative democracy imposed on the German Empire by the Treaty of Versailles, which many believe ultimately triggered the rise of fascism 15 years later.[52] The implicit yet inescapable lesson is that the harm done to security, development and governance in post-conflict states could be exacerbated by indiscriminate peacekeeping efforts designed to bolster those very concepts.[53] In other words, crime and violence arise as a result of the inequality and societal imbalance created by the imposition of Western democratic and economic standards on countries to whom these standards are entirely foreign.[54] The failure to adequately address economic inequality pushes the poor and disenfranchised further into shadow economies, not out of greed but necessity. Put in these terms, it could be said that McMullin's "unique opportunities for criminality to flourish"[55] are not solely the result of conflict but may be the consequences of ineffective peacebuilding efforts in post-conflict scenarios.

This theory can be observed in practice. Following the US-led invasion of Iraq, neoliberal economic reforms imposed by the Coalition Provisional Authority included the

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[50] See e.g. Cedric de Coning and Charles T. Call, "Introduction: Why Examine Rising Powers' Role in Peacebuilding?," in *Rising Powers and Peacebuilding: Breaking the Mould?*, ed. Charles T. Call and Cedric de Coning (Cham, Switzerland: Palgrave Macmillan, 2017).

[51] Kirsten Howarth, "Connecting the Dots: Liberal Peace and Post-conflict Violence and Crime," *Progress in Development Studies* 14, no. 3 (2014), https://doi.org/10.1177/1464993414521336.

[52] For more see Mikkel Vedby Rasmussen, "The History of a Lesson: Versailles, Munich and the Social Construction of the Past," *Review of International Studies* 29, no. 4 (2003), https://doi.org/10.1017/S0260210503004996.

[53] Michael Pugh, "The Political Economy of Peacebuilding: A Critical Theory Perspective," *International Journal of Peace Studies* 10, no. 2 (2005).

[54] de Coning and Call, "Introduction".

[55] McMullin, "Organised Criminal Groups and Conflict," 75.

opening of unrestricted imports and taxation laws designed to attract global businesses to Iraq, which instead increased unemployment and instability in the country.[56] Coupled with a power vacuum immediately following the removal of the Hussein regime, such threats to development and security open the floodgates to organised criminality.[57]

For a time, post-conflict rebuilding efforts in Haiti demonstrated the effectiveness of prioritising security, development and governance. Until the earthquake in 2010, Haiti's demobilisation and reintegration programme, following its internal conflict, represented perhaps the best example of effective national peacebuilding. Following an initially ineffective peace settlement, the continued existence of organised criminal gangs severely hindered efforts to rebuild security and development. Only after re-strategizing and focusing on improving the legitimacy of the government did these wounds begin to heal.[58] This shows that it may not be enough to simply address belligerents in the peace-making process, but that bolstering security, development and governance could be the best way to ensure lasting peace. If the negotiation of peace fails to account for the root causes of crime, then agreements designed to restore security, development and governance may only end up harming them. Attacking the root causes of crime in the post-conflict peacebuilding process is instrumental to the restoration of security and development.

5. Conclusion

The positive correlation between crime and conflict is assumed by many to mean that conflict is responsible for the rise in crime. Indeed, there is evidence to support this claim – in migrant smuggling, for example, economic crimes are directly enabled under the backdrop of warfare. Illegal enterprise theory offers a different perspective. It portrays economic crime as resulting from a global demand that is streamlined but not enabled by conflict. The smuggling of cocaine through West Africa is one example which demonstrates this theory. On the other

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[56] Bassam Yousif, "Coalition Economic Policies in Iraq: Motivations and Outcomes," *Third World Quarterly* 27, no. 3 (2006): 496-498, https://doi.org/10.1080/01436590600587770.

[57] Shalmali Guttal, "The Politics of Post-war/post-Conflict Reconstruction," *Development and Change* 48, no. 3 (2005): 79, https://doi.org/10.1057/palgrave.development.1100169.

[58] International Crisis Group, "Haiti: Security and Reintegration of the State" (Policy Briefing, Latin America/Caribbean Briefing no. 12, 30 October 2006), 11, accessed February 11, 2021, https://d2071andvip0wj.cloudfront.net/b12-haiti-security-and-the-reintegration-of-the-state.pdf.

hand, violent crime may represent the most severe consequences of post-conflict security and development issues, but the inconsistent and incomplete crime statistics in many post-conflict societies render any attempt to draw conclusions difficult. Organised crime shares a common goal with insurgency: the erosion of state power. Put this way, the negative impact on security, development and governance observed in post-conflict societies is, at once, a causal factor and a symptom of organised crime. This suggests an alternative causal nexus between the two ideas: security, development and governance. Indeed, it is practically impossible to discuss crime and conflict without reference to these concepts. By framing peacebuilding efforts around conflict and prioritising the neoliberal democratic model of the Global North as a cure-all elixir to every strain on security and development in the South, crime is further enabled as its symptoms are not addressed. This helps to explain why peace agreements are often so ephemeral, and post-conflict crime rates so high. By returning the focus to security, development and governance, critical discussion may be able to cut through the noise and provide practical solutions to the crime epidemics characteristic of post-conflict environments.

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