

UNIVERSITY OF WATERLOO GRADUATE JOURNAL OF POLITICAL SCIENCE

# Inquiry & Insight

Politics of Change: Shifting Democratic Priorities in the 21st  
Century

**Volume 8 Issue 1**

**© University of Waterloo, Waterloo, Ontario, Canada, 2016**

## **Inquiry & Insight | Politics of Change: Shifting Democratic Priorities in the 21st Century**

On behalf of the Political Science Graduate Students Conference and Journal Committee at the University of Waterloo, we are pleased to introduce the ninth volume of *Inquiry & Insight*. Over the years, this journal has strived to provide students with a platform to discuss current and relevant issues impacting our world. In fact, just this past year we have experienced considerable change, both domestically and internationally. These transformations have impacted us in many, and sometimes unexpected, ways. Thus, we were inspired to capture the spirit of this year and embody these changes in the theme “*Politics of Change: Shifting Democratic Priorities in the 21<sup>st</sup> Century*” for this year’s graduate conference and journal. Many of the articles enclosed in this journal provide a unique perspective on shifting priorities within and between democracies as they struggle to adapt to both internal and external pressures. As well, these articles illustrate the range and scope of how priorities are developing not just in Canada, but also in many other democracies abroad.

Continuing on the themes of the conference earlier this year, Each of the articles that were selected fell into three distinct categories, the first of which was security and democracy. It was here that Jonathan Viger provided in-depth research into democracy’s contradictions with the global liberal hegemony. Domestically, Marguerite Marlin analyzed the evolving methods of creating petitions. Finally, emerging democracies are explored through the work of Harrison Ellis, Darren Jahn, and Sivuouch Ou. Ellis studied the management of Philippine migration, while Jahn assessed various aspects of Ukrainian domestic policy with regard to state failure, and finally, Ou focused on state building in Cambodia.

We would like to congratulate and thank all the presenters and authors that participated in both this year’s conference and journal. Additionally, we would like to express our gratitude to the conference committee and abstract review board who spent many hours collecting, reading, and sorting through abstracts. Finally, we would be remiss if we did not also thank the discussants that were a part of the conference. Dr. Andrew Cooper, Dr. Anna Esselment, and Dr. Miriam Mufti provided the participants with valuable feedback that went into improving the papers included in this edition. As well, we would like to extend our gratitude to Dr. Joseph Wong, who was our excellent and incredibly insightful keynote speaker.

We hope you enjoy the research and variety of arguments that have been put forth in this edition of *Inquiry and Insight*.

Sincerely,

The Political Science Graduate Conference and Journal Committee

**Abstract review board:**

Olivia Auston  
Rachel Beals  
Gwen Bergman  
Chelsea Desrochers  
Kathleen Fryer  
Lema Ijtemaye  
Reshem Khan  
Monica Lee

**Editors:**

Olivia Auston  
Rachel Beals  
Kathleen Fryer

**Faculty coordinator:**

Dr. Anna Drake

## Contents

Philippine Migration Management: .....	5
E-Petitions and non-governmental influence on Canada's parliament: Prospects for e-44 .....	35
Ukrainian Domestic Policy: A Case Study In State Failure .....	48
Statebuilding in Cambodia: Contradiction between Rule of Law and State Capacity to Maintain Peace and Stability?.....	87
Democracy and the Contradictions of Global Liberal Hegemony in the Middle East: The 'Arab Uprisings' and Beyond. ....	106

# **Philippine Migration Management:**

*The Intersections of Top-Down & Bottom-up Governance*

**For Submission to Inquiry & Insight:**

The University of Waterloo Graduate Student Journal of Political Science

Harrison Ellis

December 10, 2015

IP604: Policy, Politics & Globalization

Wilfrid Laurier University

Dr. Paul Freston

Balsillie School of International Affairs

### **Abstract:**

The current state of migration management in the Philippines is composed of an extensive bureaucracy dedicated to facilitating circular migration flows in exchange for remittances, combined with broad legal protections. This system results from conflicting processes of governance from above and below. “Top-down” governance refers to the decisions made at the state level imposed in a downward fashion. In contrast, “bottom-up” refers to the organizing of civil society groups and migrants themselves who transmit knowledge from the grassroots level upward. The regulations and departments that manage the movement for people in exchange for remittances emerge from top-down governance processes, while the regulations to protect migrant workers are formed and continuously monitored through bottom-up governance, taking the form of civil society’s organizing, action oriented research, or policy advocacy. Philippine top-down migration management stems from the Spanish colonial period, to the establishment of labour export policies under authoritarian rule by President Ferdinand Marcos in the 1970s, who solidified the export of migrant bodies as a means of economic development. This system is facilitated by an extensive transnational bureaucracy that spans transnationally. Governance from above has been countered by grassroots organizations, whose efforts helped bring about the 1995 Magna Carta for Migrant Workers, and hold the Philippine state accountable for its international commitments under the UN Migrant Workers Convention. Scholars refer to these transnational movements as counter-hegemonic, as their approaches are rights-based, prioritizing the rights and welfare of migrant workers over the state.

## Introduction

The Philippines is widely recognized as a model for migration-management and migration governance.<sup>1</sup> Every year, over one million Filipino migrant workers leave the country on temporary labour contracts in industrialized countries, namely the oil producing Gulf states.<sup>2</sup> The workers send home a share of their wages to their families, referred to as remittances, which comprises 10% of the GDP in the Philippines.<sup>3</sup> While ideas and norms also flow transnationally as social remittances, it is monetary remittances that bolster financial reserves and keep entire economies afloat, upon which the governments of migrant origin countries are dependent.<sup>4</sup> The Philippine government has established an elaborate bureaucracy that facilitates the flow of migrant workers out of the country in exchange for remittances, because they serve as a fundamental component of its economy. The overseeing agencies include the Philippine Overseas Employment Agency (POEA), the Overseas Workers Welfare Association (OWWA), and the Department of Labour and Employment (DOLE).<sup>5</sup> The Philippines also has a relatively robust legal framework of rights protections in place, which include the Migrant Workers Act of 1995 (RA 8042) and its 2010 amendment, RA 10022.<sup>6</sup> Additionally, the country has ratified a number of international conventions that provide frameworks for ensuring the safety and welfare of its overseas nationals, including the UN Migrant Workers Convention on the Rights of All Members of their Families, and in 2012 the country ratified ILO Convention C189: Decent Work for Domestic Workers. While

---

<sup>1</sup> Nicole Constable, "Migrant Workers and the Many States of Protest in Hong Kong," *Critical Asian Studies* 41, no. 1 (2009).

<sup>2</sup> *Centre for Migrant Advocacy (CMA)*, "Philippine NGOs-Trade Unions Submission of Information," (2014): <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>

<sup>3</sup> Jenna Hennebry, Jenna Holiday, & Mohammad Monirizzuman. "At What Cost? Women Migrant Workers, Remittances, and Development." *UN Women* (forthcoming), 89.

<sup>4</sup> Jenna Hennebry, Jenna Holiday, & Mohammad Monirizzuman. "At What Cost? (forthcoming).

<sup>5</sup> Jean Encinas-Franco, "Gender, Migration and Development in the Philippines – a Policy Paper," *UN Women*, (2015), 7.

<sup>6</sup> Encinas-Franco, *Gender, Migration and Development*, 9.

appearing expansive and robust on paper, the Philippine migration governance system struggles with implementation.

This paper will argue that, despite having an elaborate transnational bureaucracy, the Philippine migration management system struggles to adequately protect workers from rights violations. However, the work and organizing of civil society groups pressures the government to be more proactive in shifting to a rights-based approach. Borrowing the concepts used by Nicola Piper, scholar of migration and civil society movements, I use the language of “top-down” governance in reference to decisions made at the state level imposed in a downward fashion. In contrast, Piper defines “governance from below” as the organizing of civil society groups, migrants, and Philippine citizens themselves, to transmit demands and analysis from the grassroots level upward.<sup>7</sup> The regulations and departments that manage the movement for people in exchange for remittances result from top-down governance, while the regulations to protect migrant workers are formed and continuously monitored through bottom-up governance, either through civil society’s protests and organizing, or through policy advocacy or monitoring and assessment.

Drawing on the work of Robyn Rodriguez, part one of this paper explains how labour export from the Philippines originates by way of the Spanish and American colonial imposition of a social framework for a migration oriented culture. Part two outlines how successive presidents of the post-independence era continued, expanded, and perfected the top-down legacy of labour export. Section three demonstrates the influence of civil society organizing in the creation the key legal frameworks in the Philippines used to protect migrant workers. Section four explores the ‘remittances for development’ paradigm, particularly the ways in which labour export policies became solidified as a development strategy under the dictatorship of President Ferdinand Marcos, a critical juncture from which the current agencies facilitating migration from the Philippines have evolved. Section five explains how social movements in the form of organizing and policy advocacy have countered these top-down migration management regimes from the outset. This counter-hegemonic resistance can be seen in the overthrow of President Marcos, the mass-protests that led to the passing of RA 8042, also known as the “Magna Carta for Migrant Workers,” as well as

---

<sup>7</sup> Nicola Piper, “Democratizing Migration from the Bottom Up: The Rise of the Global Migrants Rights Movement,” *Globalizations* 12, no. 5 (2015), 789.



contemporary social movements that have resulted in policy changes at the state level. The Philippines has a well-established civil society, and the participation of NGOs in policymaking is enshrined within 1987 Constitution and Section 37 of RA 8042.<sup>8</sup> Current bottom-up governance can be examined by contrasting two Philippine organizations that take different approaches, the militant Migrante International, and the more policy-oriented Centre for Migrant Advocacy.

The sixth and final section of this paper discusses the connections between the Centre for Migrant Advocacy (CMA) to a counter-hegemonic transnational movement of migrant rights organizations. This movement, originating from the grassroots, mirrors the state-centric global migration management, working in solidarity to connect the voices of migrant workers from the Philippines with those in all regions of the globe to push for alternative modes of migration governance.

### **Section One. The Colonial Roots of Philippine Outward Labour Migration**

Manila was an epicenter for pre-departure and outward migration during both the Spanish and American colonial periods, from 1521-1898 and 1898-1946, respectively. Under American occupation, Filipinos would depart from Manila for other settlements such as Honolulu, San Francisco, and Seattle.<sup>9</sup> While the colonial imposition represented the initial formation of a top-down labour export regime, colonization of the Philippines was coupled with fierce resistance. The Americans faced onerous challenges in their efforts to colonize the Filipino people. During the Filipino-American war, from 1898-1902, the Filipino forces engaged in guerilla warfare, and the conflict became known among some scholars as “America’s first Vietnam.”<sup>10</sup>

---

<sup>8</sup> *Asia Development Bank*. “Civil Society Brief: Philippines,” (2013) 2:  
<http://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>

<sup>9</sup> Robyn Rodriguez, *Migrants for Export: How the Philippine State Brokers Labour to the World*, (Minneapolis: University of Minnesota Press, 2010), 1.

<sup>10</sup> Rodriguez, *Migrants for Export*, 5.

Under American rule, the Philippine Islands became a cheap source of labour for the United States. The expendable labour of Filipino workers was an instrumental component in meeting the economic development agenda of the United States.<sup>11</sup> Shortly after the Filipino-American war, American occupation adopted a more civilian-oriented tone. According to Rodriguez, military garrisons were exchanged for schools and Filipinos were educated in English and socialized with American standards and norms.<sup>12</sup> One particular influence was the establishment of public health and nursing schools.<sup>13</sup> By the 1920s and 1930s, American nursing education programs were implemented in the Philippines, which set the institutional and cultural foundations for Filipino migration to the United States. Filipina nurses began to enter the United States through the U.S. Exchange Visitor Program in 1948.<sup>14</sup>

President Marcos declared Martial Law in 1972, which represented the beginning of modern export oriented industrialization in the form of labour export programs.<sup>15</sup> Marcos institutionalized labour export through the Presidential Decree 442, which created three government departments: the Overseas Employment Development Board (OEDB), the Bureau of Employment Services (OBS), and the National Seamen Board (NSB). These departments were responsible for developing, promoting, and managing labour export programs and have parallels to the current overseas labour departments.<sup>16</sup> In 1982, Marcos authorized through Executive Order 857 that 50-70% of the wages of OFWs must be remitted to the Philippines through the banking system. Workers who failed to remit their wages would be subject to negative consequences.<sup>17</sup> The rationale for workers to send remittances home was to help the country repay its balance of

---

<sup>11</sup> Megha Amrith. 'They Think we are just Caregivers': Ambivalence of Care in the Lives of Filipino Medical Workers in Singapore." *The Asia-Pacific Journal of Anthropology* 11 no. 3 (2010), 410 – 427.

<sup>12</sup> Rodriguez, *Migrants for Export*, 10.

<sup>13</sup> Amrith, "They think we are just caregivers," 413.

<sup>14</sup> Rodriguez, *Migrants for Export*, 6.

<sup>15</sup> Ibid., 11.

<sup>16</sup> Dinita Setyawati, "Assets or Commodities? Comparing Regulations of Placement Protection of Migrant Workers in Indonesia and the Philippines," *Journal of South-East Asian Studies* 6 no. 2 (2013), 270.

<sup>17</sup> Nicola Piper & Jenina Joy Chavez, "The Reluctant Leader: The Philippine Journey from Labour Export to Championing a Rights-Based Approach to Overseas Employment." *Asian Leadership in Policy and Governance*. (2015), 317.

payments deficit, which was a result of IMF loans and structural adjustment programs (SAPs).<sup>18</sup> Thus, the strategy of encouraging overseas Filipinos and diaspora to send wages home was meant to be a temporary measure to alleviate economic crisis. However, this temporary policy became the backbone of the country's economic development strategy.<sup>19</sup>

The use of remittances for development has been widely critiqued by activists throughout the country and internationally. This resistance to the state-led development grew from the activist communities and networks that worked to overthrow President Marcos, who initiated the current migration management system that is seen today. The social mobilizations that defeated President Marcos had linkages to contemporary bottom-up governance processes. President Marcos was ousted in 1986 through the 'People's Power Revolution.' There was disagreement among scholars as to what extent the revolution was a grassroots process. It can generally be agreed upon that a coalition of elites in the business community, the Catholic Church, as well as mobilized grassroots organizations contributed to the downfall of President Marcos.<sup>20</sup> The protests, which took place largely along the Epifanio de los Santos Avenue (EDSA) from February 22-25, involved over two million civilian protestors, in addition to various political, military, and religious groups and leaders such as the Archbishops of Manila and Cebu. Despite the downfall of Marcos, labour export policies were deeply institutionalized, and proceeding Presidents Aquino and Ramos continued to promote both neoliberal economic policies and outward labour migration.<sup>21</sup>

## **Section Two. Managing Migration from the Philippines**

---

<sup>18</sup> Nicola Piper, "Revisiting the Migration-Development Nexus from a Rights Perspective," *Journal of Human Rights* 7 no. 3 (2008), 284.

<sup>19</sup> *Centre for Migrant Advocacy (CMA)*. "Statement of the Centre for Migrant Advocacy to the NGO Meeting of the UN Committee on the Migrant Workers Convention." (2008): <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>

<sup>20</sup> Yuki Fukuoka, "Who Brought Down the Dictator? A Critical Reassessment of so-called 'People Power' Revolutions in the Philippines and Indonesia," *The Pacific Review* 28 no. 3 (2015), 412.

<sup>21</sup> Setyawati, "Assets or Commodities," 270.

The 1974 Labour Code in the Philippines created the Overseas Employment Development Board (OEDB) to formalize the outward movement of Filipino migrant workers.<sup>22</sup> The OEDB began promoting Filipinos to prospective host countries, recruited migrant workers from local communities, and identified positions for employment.<sup>23</sup> The OEDB also decreased the cost of migration by reducing travel taxes and consolidating steps for obtaining travel documents. In 1982, the OEDB was merged with two other labour oriented bodies, the National Seamen Board and the Bureau of Employment Services, to create the Philippine Overseas Employment Administration (POEA).<sup>24</sup>

The POEA continues to play an instrumental role in identifying and promoting international demand for Filipino migrant labour, such as obtaining data on overseas labour markets.<sup>25</sup> The POEA is a truly transnational governance body, with marketing branches throughout the world, for the purpose of identifying labour markets for export. In addition, the department has liaison officers in each Philippine consulate and embassy.<sup>26</sup> Complementing its labour market research, the state, often in partnership with the non-profit sector, administers training programs to equip prospective migrants with the skills to comply with visa categories of receiving countries. Courses are implemented in English, as is Philippine public education generally, which acts as a key component in the demand for Filipino migrant workers.<sup>27</sup>

Having ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and its General Recommendation 26 on Women Migrant workers, the Philippine government is obligated to provide affordable pre-departure orientations (PDOs) for prospective

---

<sup>22</sup> Neil Ruiz, "Managing Migration: Lessons from the Philippines," *World Bank* (2008), 1: [http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MD\\_Brief6.pdf](http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MD_Brief6.pdf)

<sup>23</sup> Setyawati, "Assets or Commodities, 270.

<sup>24</sup> Ibid.

<sup>25</sup> Maruja Asis & Stella Go. "An Assessment of the Philippine Overseas Employment Agency (POEA) Agency Performance Awards." *Scalabrini Migration Centre*, (2014), 12.

<sup>26</sup> Rodriguez, *Migrants for Export*, 15.

<sup>27</sup> Rodriguez, *Migrants for Export*, 32.

migrants.<sup>28</sup> Republic Act No. 9710 mandates that the POEA provide compressive seminars on topics such as avoiding illegal recruitment. The POEA also conducts pre-employment orientations (PEOs), which are optional and are carried out during job fairs, media, and schools throughout the country.<sup>29</sup> Similar to the PDOs, the PEOs typically inform job seekers on overseas labour conditions, and other challenges related to working abroad. PDOs are commonly carried out by the Overseas Workers Welfare Association (OWWA) in the National Capital Region, and provide information on recent policy changes in top destination countries, international public health concerns, and so-called “do’s and don’ts” which are intended to empower migrants to make safe decisions.<sup>30</sup> Domestic workers have a specialized pre-departure training, which last three days and involves language training, cultural adaptation, and stress management.<sup>31</sup> Pre-departure orientations are subject to criticism by radical activists groups such as Migrante International, who claim that pre-departure orientations for migrant workers act as a fig leaf for government revenue generating purposes, instead of benefiting migrants.<sup>32</sup> Other more policy oriented NGOs and scholars highlight the financial burden that pre-departure programs place on migrants, as those from outside of Metro Manila must finance their travel and stay in the city, which increases their debt levels upon leaving the country and further exacerbates their already precarious position.<sup>33</sup>

The POEA has four main functions, including industry regulation, employment facilitation, and worker protection. With respect to regulating the migration industry, the POEA grants permits to private recruitment agencies, receives complaints against recruitment agencies, implements incentives and penalties for recruiters, assesses overseas job advertisements, and supervises the

---

<sup>28</sup> Jenna Hennebry et al. “Women Working World Wide: A Situational Analysis of Women Migrant Workers.” *UN Women*, 74.

<sup>29</sup> Asis & Go. “An Assessment of the POEA,” 12.

<sup>30</sup> Overseas Workers Welfare Association. “Programs and Services.” (2016).  
<http://www.owwa.gov.ph/?q=content/pdos-advisories>

<sup>31</sup> Jean Encinas-Franco, “A Situational Analysis of Filipino Women Migrant Workers.” *UN Women* (2015), 28.

<sup>32</sup> *Migrante International*. “Initial Statement of Migrante International to the United Nations Committee on Migrant Workers,” (2008),  
[http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Migrante\\_Int\\_Philippines\\_10.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Migrante_Int_Philippines_10.pdf)

<sup>33</sup> Jean Encinas-Franco, “Gender, Migration and Development,” 8.

government's initiatives that aim to tackle illegal recruitment.<sup>34</sup> The agency facilitates migration through publishing job advertisements and employer contact details on its website, and monitors the agency's status.<sup>35</sup>

The POEA has a list of 125 countries it deems amenable with Philippine labour laws, as well as a list of 41 countries that are non-compliant. There are periodic bars and bans on countries not deemed compliant with regulations, such as Kuwait and other GCC nations.<sup>36</sup> These bans, which reflect either perceived or real dangers of destination countries, are usually not followed because working abroad offers opportunities of higher wages. Further, migrant origin countries like the Philippines have few decent work opportunities, particularly in rural areas. Migrants will seek work abroad irrespective of danger or bans due to the countries' high poverty rates, which are linked to the processes of colonization, corrupt governance, and unequal consequences of globalization.<sup>37</sup>

### **Section Three. Protecting Overseas Filipino Workers**

The OWWA is the agency that aims to ensure the wellbeing of Overseas Filipino Workers (OFWs) and their families. The agency has its historical basis in the 1977 Welfare and Training Fund for Overseas Workers, legislated under President Ferdinand Marcos. Between 1977 and 1994, the training fund underwent a series of amendments and reorganizations between 1977 and 1994. The organization now has its legal basis in the 1995 Republic Act, under several sections including Section 15, Repatriation for Workers and Section 24, Legal Assistant for Migrant Workers Affairs.

---

<sup>34</sup> Philippine Overseas Employment Agency (POEA). "About POEA." (2015).

<http://www.poea.gov.ph/about/aboutus.html>

<sup>35</sup> Neil Ruiz, "Managing Migration," 1.

<sup>36</sup> Graziano Battistella, "Multi-Level Approach in the Governance of Labour Migration," *Asian Journal of Social Science* 40 (2012), 420.

<sup>37</sup> Juanita Elias, "The Global Governance of Labour" in *Governing the World? Cases in Global Governance*, ed., Sophie Harman & David Williams (Routledge, 2013).

The Migrant Workers and Overseas Filipinos Act of 1995, also known as either RA 8042 or the ‘Magna Carta for Oversea Filipino Workers,’ was passed in response to an incident involving an OFW in Singapore.<sup>38</sup> Flor Contemplacion, a Filipina domestic worker living in Singapore, was accused and convicted for murdering the child of her employer. She was reportedly drugged and administered electric shocks by authorities, and was coerced into confessing without a lawyer, and subsequently put to death.<sup>39</sup>

The incident elicited mass protests across the Philippines, which were reported to have rivaled the very protests that ousted the Marcos dictatorship. In response, President Ramos expedited the completion RA 8042. This passage of RA 8042 marked a tipping point in Philippine migration governance, where the economic benefits of migration were de-emphasized in favour of rights, welfare, and protections.<sup>40</sup> In 2003, the Act was expanded to include provision of overseas voting and dual citizenship.<sup>41</sup> In 2010, President Nonoy Aquino amended the Act to bolster the regulatory power of the POEA. RA 10022 introduced further amendments to tighten protection provisions, in part by strengthening rescue and repatriation programs, expanding the definition of illegal recruitment, and establishing higher penalties for illegal recruiters.<sup>42</sup>

Dinita Setyawati noted that NGOs played a significant role in advocating for governments to uphold the rights of Filipino migrant workers, and in bringing about the amendments to RA 8042 that increased the welfare of overseas Filipino workers.<sup>43</sup> Civil society has been addressing the protection gaps in the legislation. Wahyu Susilo of Migrant Care was concerned that RA 8042 does

---

<sup>38</sup> Setyawati, “Assets or Commodities,” 271.

<sup>39</sup> Anne-Marie Hilsdon, “What the Papers Say,” *Violence Against Women* 9 no. 6 (2003) 700.

<sup>40</sup> Setyawati, “Assets or Commodities,” 271.

<sup>41</sup> Neil Ruiz, “Managing Migration,” 3.

<sup>42</sup> Centre for Migrant Advocacy (CMA), “NGO Meeting of the UN Committee on the Migrant Workers Convention,” (2008) 6, <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>

<sup>43</sup> Setyawati, “Assets or Commodities,” 272.

not contain adequate protection mechanisms.<sup>44</sup> In addition, the Philippines has 67 embassies, 23 consulates, four permanent missions, and 37 Labour Overseas Offices that support Filipinos who are working abroad. Despite these bodies, civil society has reported numerous rights violations such as nonpayment of wages, physical, mental and sexual abuse, confinement to the home and workplace, and lack of legal representation.<sup>45</sup>

The Philippine government is attempting to address these rights violations through the formation of bilateral agreements with labour receiving states, which have traditionally served the purpose of facilitating outward migration with a minimal mention of rights. However, recent bilateral agreements have promise. Bilateral agreements with Saudi Arabia, Lebanon and Jordan on domestic work mandate that employers establish a bank account through which payments must be processed, which would ideally track whether the correct wages have been paid, as stipulated by the employment contract.<sup>46</sup> The memorandum of understanding (MOU) between the Philippines and Jordan provides a standard employment contract, requires the employer to provide health insurance, weekly rest, and a maximum eight hour work day.<sup>47</sup>

#### **Section Four. Remittances for Development: Top-Down Governance**

In spite of existing protection measures, the ability of the Philippines and other origin countries to protect their citizens overseas is limited, largely due to the inherent economic power imbalances between migrant sending and receiving states.<sup>48</sup> As a remittance receiving country, the Philippines is dependent on the labour market and migration policies of destination countries, and continues to broker the labour of Filipinos to sustain itself economically.<sup>49</sup> Indeed, the government

---

<sup>44</sup> Setyawati, "Assets or Commodities," 272.

<sup>45</sup> *Centre for Migrant Advocacy (CMA)*, "NGO Meeting of the UN Committee on the Migrant Workers Convention," (2008), 16.

<sup>46</sup> Jean Encinas Franco, "Filipino Women in International Migration," UN Women (2015), 71.

<sup>47</sup> Encinas-Franco, "Filipino Women in International Migration," 72.

<sup>48</sup> Elias, "The Global Governance of Labour" 108.

<sup>49</sup> Nicola Piper. "Revisiting the Migration-Development Nexus from a Rights Perspective." *Journal of Human Rights* 7 no. 3 (2008) 285.



continually supports outward labour migration and depends on overseas remittances, totaling over 113 billion USD for both micro and macroeconomic benefits.<sup>50</sup> Approximately 60% of these remittances satisfy consumption needs of families, and the remainder goes to the government in order to finance its national debt. In order to ensure the flow of remittances, the POEA maintains surveillance on migrants and overseas workers, to ensure that they are sending home money, acting consistently with the government's mandate. An official from the POEA states:

"We're trying to develop a family tracking system of the OFWs, so that we can in partnership with the local government authorities and the churches and the NGOs, we can reach the families and guide them on financial discipline, frugality and entrepreneurship. We have to do that."<sup>51</sup>

Labour migration from the Philippines is managed through a top-down state machinery that involves activities ranging from monitoring the global economy in order to identify emerging markets to exporting Filipino workers.<sup>52</sup> Temporary labour migration is enabled through recruitment agencies that carry out their activities at the intersections between overseas employers, governments, and Filipino workers.<sup>53</sup> The POEA is mandated to regulate the recruitment industry, and lists nearly 2600 agencies on its website, even though a significant number of these listed agencies have cancelled licenses due to unlawful activities ranging from false advertising and charging illegally high fees to migrants.<sup>54</sup>

The Philippine government has promised to vigorously regulate the activities of recruitment agencies, but unlicensed agencies continue to operate illegal and harmful practices

---

<sup>50</sup> Denise Spitzer & Nicola Piper. "Retrenched and Returned: Filipino Migrant Workers During Times of Crisis." *Sociology* 48 no. 5 (2014) 1013.

<sup>51</sup> Ibid.

<sup>52</sup> Rodriguez, *Migrants for Export*, 15.

<sup>53</sup> Battistella, "Governance of Labour Migration," 420.

<sup>54</sup> Denise Spitzer & Nicola Piper, "Retrenched and Returned: Filipino Migrant Workers During Times of Crisis," *Sociology* 48 no. 5 (2014) 1014.

without recourse.<sup>55</sup> While recruiters can charge up to one month's wages for their services, interviews with government representatives and migrant workers themselves reveal that overcharging is frequent. The fees for recruitment should be no more than one month's wage for the position that is advertised, but they are often much higher.<sup>56</sup> Recruiters also send migrants abroad using visitors visas, thereby blurring the distinction between undocumented and documented migration, and placing migrant workers in a more vulnerable position.<sup>57</sup>

As a mechanism to prepare prospective migrant workers for their overseas placements, the Philippine government has a mandatory pre-departure process.<sup>58</sup> Before departing, prospective migrant workers must attend orientation seminars. The sessions are organized by NGOs that partner with the OWWA. Participants learn about their destination country, including its customs and laws, financial management, as well as consular services available if issues arise. The financial management seminars focus on ensuring that migrants can utilize banks to send remittances back to the Philippines.<sup>59</sup> The OWWA is also funded from financial contributions of employers, as well as fees from migrant workers. The OWWA is criticized for having a lack of transparency in its administration; and civil society groups note that there is a lack of clarity on the institution, particularly on whether it is truly a government organization or not.<sup>60</sup>

While employers are required to pay costs for travel, visas and processing fees by both OWWA and POEA, overseas Filipino Workers (OFWs) still face exorbitant costs in order to obtain employment abroad.<sup>61</sup> The pre-departure process often involves traveling to Manila for visas, orientation, and medical tests. Certain receiving countries and sectors also require that migrants complete training courses in preparation for their work. These steps require extra time spent in liminality, between their home and their destination, and require additional costs. In order to meet the financial burden, migrants often borrow from multiple sources, including friends and family

---

<sup>55</sup> Battistella, "Governance of Labour Migration," 440.

<sup>56</sup> Asis & Go, "An Assessment of the POEA," 21.

<sup>57</sup> Spitzer & Piper, *Retrenched and Returned*, 1014.

<sup>58</sup> Ibid.

<sup>59</sup> Neil Ruiz, "Managing Migration," 1.

<sup>60</sup> Battistella, "Governance of Labour Migration," 427.

<sup>61</sup> Spitzer & Piper, "Retrenched and Returned," 1014.

members, creditors, and even loan sharks.<sup>62</sup> In rural communities, it is common for multiple families to pool their resources to send one migrant worker abroad, who is expected to send back remittances to be shared collectively.<sup>63</sup>

In order to support the flow of remittances to the Philippines, the government has established an expansive transnational bureaucracy.<sup>64</sup> The numerous extraterritorial posts of the POEA serve the purpose of identifying markets to export Philippine labour, and ensuring the continuous flow of remittances to the country as a means to sustain economic growth.<sup>65</sup> This system resulted from centuries of top down governance stemming from colonial rule, martial law, and is sustained by the contemporary democratic regimes. However, this transnational top down bureaucracy is mirrored by transnational civil society movements, who harness the processes of globalization to advocate for the rights of migrant workers. Migrant civil society groups take a variety of forms. Some are more radical, such as Migrante International, a self-described “militant” migrant organization. Others take a more cooperative policy oriented approach, such as the Centre for Migrant Advocacy (CMA), a grassroots organization located in Quezon City. The CMA works at the national level and co-ordinates with Migrant Forum Asia (MFA), the largest network of grassroots migrant organizations in the Asia-Pacific region.<sup>66</sup>

## **Section Five. Civil Society Organizing: Migration Governance from Below**

### *Migrante International*

Migrant labour is commonly viewed as passive, flexible, and expendable.<sup>67</sup> However, migrant workers continually demonstrate an ability to organize and strike by way of their own

---

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Rodriguez, *Migrants for Export*, 24.

<sup>65</sup> Ibid., 14.

<sup>66</sup> Piper, “Democratizing Migration,” 797.

<sup>67</sup> Elias, “The Global Governance of Labour” 105.

agency. The POEA's transnational bureaucracy is mirrored by both bottom-up national and global organizing among migrant grassroots organizations as well as migrants themselves. In 2004, Philippine President Gloria Macapagal Arroyo signed a bilateral agreement with the U.S. government that involved sending Filipino migrant workers to Iraq, to work in sectors in demand for migrant labour, due to U.S. occupation.<sup>68</sup> Angelo de la Cruz, a Filipino migrant, was based in Iraq and worked as a truck driver. He was kidnapped by an extremist group and held hostage under threat of beheading, with his kidnappers demanding that Philippine workers and soldiers leave Iraq. Migrante International mobilized within the Philippines and beyond, and its member organizations held rallies at Philippine embassies and consulates. Activists framed de la Cruz's kidnapping as a result of the Philippine government's labour export policies and its support for U.S. imperialist expansion into Iraq.<sup>69</sup> The protests convinced the Philippine government to withdraw its migrant workers from the U.S. occupation. Resulting from the protests, the government authorized the removal of Filipino soldiers and migrant workers from the country, and de la Cruz was released from her kidnappers.<sup>70</sup>

The response to de la Cruz's kidnapping in Iraq and Flor Contemplacion's execution in Singapore illustrates the ability of migrant communities to engage with the Philippine state in governance and advocacy contexts.<sup>71</sup> Rodriguez credits Migrante International for organizing the protests in response to Contemplacion's execution that put pressure on the government to enact RA 8042. As noted previously, RA 8042 contains numerous protections for Filipinos working overseas, and enshrines the Philippine government's duty to intervene in protection of its nationals who are experiencing rights violations while working outside the country.<sup>72</sup>

While host countries deny rights to migrant workers, civil society and migrants themselves call upon the Philippine government to intervene on their behalf. Workers and organizations

---

<sup>68</sup> Rodriguez, *Migrants for Export*, 147.

<sup>69</sup> Rodriguez, *Migrants for Export*, 148.

<sup>70</sup> Ibid.

<sup>71</sup> Migrante International. "Statement on the 20<sup>th</sup> Death Anniversary of Flor Contemplacion" (2015), <http://migranteinternational.org/2015/03/17/statement-on-the-20th-death-anniversary-of-flor-contemplacion-ofws-worse-off-than-ever-call-for-aquinos-removal-from-office/>

<sup>72</sup> Rodriguez, *Migrants for Export*, 149.

demand that embassies and consulates enhance service provision, thereby extending the rights provided by the Philippine state into extraterritorial spaces.<sup>73</sup> In this context, Rodriguez states: “[citizenship] is not conferred by states or international institutions... it is not ‘top down’ rather the assertions of transnational citizenship have come from the ‘bottom up.’”<sup>74</sup> Further, Rodriguez states that Migrante’s organizing can be seen as a counter-hegemonic (trans)nationalism. The language of “counter hegemony” is used because linkages are formed to the homeland in ways that are alternative to mainstream political parties or statist institutions.<sup>75</sup>

Migrante is one of numerous civil society groups in the Philippines that organize transnationally. Through civil society organizations, Filipino migrant domestic workers are able to assert their own rights, and have their work be formally recognized as work.<sup>76</sup> Migrant domestic work often falls outside of the regulatory frameworks of labour receiving states, and migrant domestic workers have the ability to join grassroots organizations and labour unions in order to have their voices heard at national and international levels.<sup>77</sup> Civil society represents the conduit that transfers the voices from the grassroots level to the policy level, influencing shifts in governance. Civil society also plays a capacity building role, and organizations often run training programs and workshops for domestic workers on various topics such as methods for organizing, as well as relevant policies and regulations surrounding migration and domestic work.

Ultimately, Migrante International engages with the Philippine government, its consular services, and various intergovernmental processes by using confrontational methods of protest. While Migrante’s approach does influence policy change, such as the adoption of RA 8042 and the withdrawal of Philippine labour from U.S. occupied Iraq, Migrante’s engagement is less nuanced and cordial than other organizations.

---

<sup>73</sup> Rodriguez, *Migrants for Export*, 150.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., 152.

<sup>76</sup> Elias, “The Global Governance of Labour,” 110.

<sup>77</sup> Ibid., 108.

There are also Philippine-based migrant organizations, such as the Centre for Migrant Advocacy (CMA), and their regional affiliate Migrant Forum Asia (MFA) which prefer to build bridges with governments. These organizations advocate for the rights of migrant workers, the formalization of domestic work, and call for the Philippine government to intervene overseas to protect migrant workers. However, CMA and MFA engage in a more policy-oriented capacity. These organizations conduct participatory and action-oriented research with migrants for the purpose of making rights-based policy recommendations.

### *Centre for Migrant Advocacy*

Migrant rights organizations and migrant workers themselves work to inform publics about existing conventions and bilateral agreements on labour and social security.<sup>78</sup> They also use rights-based frameworks to advocate for the protection of migrant workers, identify the responsibilities of the Philippine government, and to strengthen policy implementation and monitoring processes.<sup>79</sup> To this end, the Centre for Migrant Advocacy (CMA) publishes policy papers identifying ways that the Philippine government can harmonize its migration policies and bilateral agreements with existing Core Labour Standards, as well as evaluations of existing aspects of the Philippine migration management system. As part of its grassroots approach to migration governance, the CMA conducts a surveys with OFWs, such as on the implementation of the Overseas Workers Welfare Association (OWWA) Charter, in order to determine whether its programs and services are effectively benefiting migrant populations.<sup>80</sup> The report notes that the OWWA is not achieving its mandate, and harming migrants by charging fees without providing meaningful protections or benefits, or effectively disseminating information about its existing programs.<sup>81</sup> The OWWA provides a variety of services in theory, but is not adequately funded, aside from a USD 25 membership fee that it charges migrant workers.<sup>82</sup> Finally, the report mentions that the OWWA

---

<sup>78</sup> Ibid., 110.

<sup>79</sup> Centre for Migrant Advocacy (CMA). "Policy Monitor on the OWWA Charter." (2011), 12, <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>

<sup>80</sup> Ibid., 17.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid., 21.

board does not represent or consult migrant workers when determining benefits, services, and operations.<sup>83</sup>

The OWWA policy monitoring report is only one case of civil society's migration governance from below. Methodologically, this report involves an online survey with 400 oversea Filipino workers (OFWs), in which questions generally explored the extent to which OFWs were aware of or were benefiting from OWWA's services.<sup>84</sup> Through this survey and publication, the CMA is working to hold OWWA accountable to its mandate, and to migrant workers as both stakeholders and rights bearers. By way of community-based research, the CMA is directly involving OFWS in the policy-advocacy and data-gathering process, with the purpose of making their concerns heard, and building the capacity of OWWA to uphold the welfare of migrant workers.

The bottom-up governance of Philippine civil society can also be seen in their submissions to the UN Committee on Migrant Workers, in assessing the government's implementation of the UN Migrant Workers Convention. As mentioned previously, the Philippines ratified the Migrant Workers Convention in 1995.<sup>85</sup> As part of the reporting requirements under the Convention, every five years the government must submit a report detailing its progress in harmonizing its legal frameworks with the convention.<sup>86</sup> As part of this process, the government must submit a State report in response to a List of Issues Prior to Reporting (LOIPR). Stakeholders in civil society can then submit their own reports and evaluations of the Philippine' states' implementation and compliance with the Migrant Workers Convention.<sup>87</sup>

---

<sup>83</sup> Ibid., 21.

<sup>84</sup> Strikingly, 83.5% of respondents did not know that their employer was required to pay the workers' membership fee (CMA 2011: 12). Furthermore, 93% of respondents that didn't benefit from an OWWA program reported that this was due to a lack of awareness of understanding of bureaucratic procedures (p. 13).

<sup>85</sup> OHCHR. "Ratification Status for CMW." (n.d.).

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CMW&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CMW&Lang=en)

<sup>86</sup> OHCHR. "Committee on Migrant Workers: Monitoring the Protection of Rights of all Migrant Workers and Members of their Families." (2016).

<http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx>

<sup>87</sup> Centre for Migrant Advocacy (CMA). "Submission to the UN Committee on Migrant Workers," (2012) 4, <https://centerformigrantadvocacy.files.wordpress.com/2014/04/cma-philippines-cmw16.pdf>

Both the Centre for Migrant Advocacy (CMA) and Migrante International submit statements to the NGO meeting of the UN Committee on the Migrant Workers Convention, in both 2008 and 2014. The different approaches between policy-oriented organizations such as CMA and radical organizers like Migrante International can be seen in their contrasting submissions to the ‘2014 Periodic Report of the Philippines on the Implementation of the Migrant Workers Convention.’ The language used by Migrante is more antagonistic and less technical, while the submission by CMA is more nuanced, empirical, and solutions-based. When assessing the Philippine government’s progress on regulating the labour recruitment industry and preventing recruiters from charging excessive fees, Migrante states:

“there seems to be no monitoring of recruitment agencies, blacklisted or suspending for violations, [recruiters] merely change names and are able to operate again. There have also been many reports that POEA officials... are in the pockets of large recruitment agencies or actually even are the hidden owners of some recruitment agencies.”<sup>88</sup>

In contrast, CMA cited empirical research in their critiques of migration management, as seen in a 2011 survey on the implementation of the Household Service Workers (HSW) Policy Reform with domestic workers in Hong Kong. The HSW Policy aimed to set the minimum deployment age for domestic workers at 23, and stipulates a monthly minimum wage of USD 400.<sup>89</sup> The survey found that 14 percent of respondents were forced by their agencies to accept payment below this amount.<sup>90</sup> The CMA complemented this empirical evidence of the policy problem with practical recommendations. Migrante International’s submission, on the other hand, does not include any policy recommendations. The CMA’s recommendations include calls for government to: review and enhance the stringency of licensing mechanisms, conduct random assessments of recruitment

---

<sup>88</sup> Migrante International, “Initial Statement of Migrante International to the United Nations Committee on Migrant Workers,” (2014), 8.

<sup>89</sup> *Centre for Migrant Advocacy (CMA)*. “Submission to the UN Committee on Migrant Workers,” (2012), 15, <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>

<sup>90</sup> *Ibid.*



agencies, simplify and streamline recruiting procedures to eliminate middle-men that can overcharge migrants, and to increase the accuracy of recruiter blacklists.<sup>91</sup>

Ultimately, both of these organizations contribute to grassroots migration governance in different ways. Migrante's language and approach is more explicitly normative, less practical, and their analysis of current migration and labour regulations is less vigorous. That being said, their community organizing and awareness raising capacities do lead to the Philippine government taking action, such as the passage of RA 8042 and the repatriation of Filipino migrant workers from Iraq, as discussed by Rodriguez (2010). The Centre for Migrant Advocacy's work still constitutes bottom-up governance, as their work is based on participatory and action-oriented research with migrant workers, which informs strategic position papers, policy briefs, and program assessment reports to the end of shaping labour migration policy in the Philippines.

## **Section 6. Transnational Governance from Below: the Philippines & Beyond**

Given the cross-border nature of labour migration, and the international scope of the Philippine migration management agencies, a discussion of the transnational extensions and implications of this governance is vital. Khalid Koser's work on International Migration and Global Governance (2010) discusses the emerging systems of migration governance, and the ways in which states cooperate across borders to manage migration more effectively.<sup>92</sup> According to Koser, there is no single intergovernmental organization that is mandated to govern migration. There is, however, a consortium of intergovernmental organizations that cooperate to promote international instruments, norms, and coordinated approaches to governing migration, which make up the Global Migration Group on International Migration.<sup>93</sup> Koser mentions that civil society has been actively

---

<sup>91</sup> Ibid., 16.

<sup>92</sup> Khalid Koser. "Refugees and Migration." In *International Organization and Global Governance*. Thomas G. Weiss & Roden Wilkinson, eds. (London: Routledge, 2014), 674.

<sup>93</sup> The Global Migrations Group (GMG) consists of UN Women, the World Bank, the ILO, UNHCR, UNESCO, UNDP, the IOM, the OHCHR, as well as other intergovernmental and UN-affiliated agencies whose work intersects with international migration (GMG 2015).

engaging with these systems. He notes that NGOs fill the gaps in global governance by lobbying for the rights of migrants, and monitoring and reporting on the conditions of migrant workers.<sup>94</sup>

Nicola Piper uses Margaret Keck and Kathyrk Sikkink's "vertical boomerang" model, a metaphor for how NGOs cooperate with organizations outside the state to advocate for changes at their respective national levels.<sup>95</sup> The CMA and MFA actively use the UN Migrant Workers Convention (MWC) to push for policy reform at the national level. While Koser notes that the convention is not widely ratified or implemented, the Philippines and Indonesia are the only ASEAN countries to have ratified the convention.<sup>96</sup> Indeed, the Philippines has either signed or ratified most international conventions that relate to migration, which also include C-97 (Migration for Employment), C - 143 (Migrant Workers, Supplementary Provisions); as well as ILO Conventions on social security such as C -19 (Equality of Treatment, Accident Compensation), and C-11 (Equality of Treatment and Social Security).<sup>97</sup> These conventions have also translated into legislation at the national level, with the Migrant Workers Act and the Domestic Workers Act as notable examples.<sup>98</sup> As the Philippines has ratified the MWC, organizations like CMA, MFA, and Migrante International coordinate with global migrant civil society groups to target the international migration regimes mentioned by Koser, in order to hold state parties accountable to the Convention.

The advocacy of CMA in the Philippines not only shapes bottom-up governance within the state, but feeds into the grassroots process of global migration governance. Nicola Piper states that the global migrant rights movement builds on organizing at the grassroots level and forms transnational campaigns that engage with international institutions to raise labour standards for

---

<sup>94</sup> Khalid Koser. "Refugees and Migration." 674.

<sup>95</sup> Stefan Rother & Nicola Piper, Alternative Regionalism from Below: Democratizing ASEAN's Migration Governance, *International Migration*, 53 no. 3 (2015), 14.

<sup>96</sup> Koser, "Refugees and Migration," 673.

<sup>97</sup> Jenina Joy Chavez & Nicola Piper. "The Reluctant Leader: the Philippine Journey from Labour Export to Championing a Rights-Based Approach to Overseas Employment." *Asian Leadership in Policy and Governance* 27, (2015), 321.

<sup>98</sup> Jenina Joy Chavez & Nicola Piper. "The Reluctant Leader," 321.

migrant workers globally.<sup>99</sup> The transnational migrants rights movement promotes a rights-based approach, rising up against the dominant frameworks that focus strictly on the benefits of remittances for migrant origin states.<sup>100</sup> Therefore, this global movement works to reshape top-down governance, such as the processes that emerged during the colonial imposition in the Philippines and were solidified by President Marcos' decree 442 on labour export.<sup>101</sup> Thus, the migrant rights movement in the Philippines must be seen as a national component of a global network of activists shaping the course of migration from the ground upward. In contrast, the labour export programs and the migration bureaucracy of the Philippine state are a national component of a global migration-development nexus, which seeks to maximize the development benefits of remittances.

This migration-development nexus is composed of industrialized countries with service-based economies and highly educated populations, who prefer not to work in sectors that are deemed as dirty, dangerous and demeaning.<sup>102</sup> Countries in the global North import cheap, flexible, and temporary labour to fill employment gaps when needed, and developing countries such as the Philippines seek to alleviate unemployment rates and increase their global competitiveness by exporting labour in exchange for remittances.<sup>103</sup> International organizations such as the World Bank, the IMF, and the Global Coalition on International Migration, promote the development benefits of remittances for states.<sup>104</sup> Several intergovernmental processes manage the migration-development nexus, including the ILO's labour conferences in 2004, 2010, and 2011, the UN High Level Dialogue on Migration and Development (UNHLD), and the Global Forum on Migration and Development (GFMD). These top-down international state-led initiatives attract the attention of academics and activists alike, who seek to shape the dialogue from a more remittances-led process to a rights-based approach.<sup>105</sup> In short, organizations such as CMA and MFA argue that these

---

<sup>99</sup> Piper, "Democratizing Migration," 789.

<sup>100</sup> Ibid.

<sup>101</sup> Dinita Setyawati, "Assets or Commodities?," 270.

<sup>102</sup> Khalid Koser. (2010). *Introduction: International Migration and Global Governance*. Global Governance, 16 no. 3 (2010), 308.

<sup>103</sup> Elias, "The Global Governance of Labour" 111.

<sup>104</sup> World Bank. "Global Economic Prospects: Economic Implications of Remittances and Migration." (2006). Washington, DC.

<sup>105</sup> Piper, "Democratizing Migration," 789.

dialogues focus excessively on harnessing remittances for economic development, and the rights of migrant workers fall to the margins.<sup>106</sup>

Responding to the structural vulnerabilities of migrant workers, organizations from the Philippines and around the world to join in solidarity and provide alternative policy solutions.<sup>107</sup> The critiques and alternatives represent an alternative to the dominant government-led discourse, and aim to address the lack of decent work opportunities in origin countries that drive people to become migrant workers.<sup>108</sup> Migrant Forum Asia makes up the Asia-Pacific component of a global network of migrants rights organizations, the Global Coalition for Migration (GCM). The GCM organizes the People's Global Action on Migration, Development and Human Rights (PGA), the side-event to the state-led Global Forum on Migration and Development (GFMD). The PGA is intended to be a people's process, where knowledge is shared among activists after it has been created in a bottom-up, grassroots manner.<sup>109</sup> The PGA is composed of regional networks of migrant rights organizations, trade unions, women's groups, peasants organizations, faith-based groups, and academics.<sup>110</sup>

As emphasized, the Philippines is an active member in numerous intergovernmental dialogues and treaty processes such as the Convention on the Elimination of Discrimination Against Women (CEDAW), the UN Migrant Workers Convention, International Labour Organization (ILO) Convention 189, and the Global Forum on Migration and Development (GFMD).<sup>111</sup> The Philippine government, due to pressure from civil society, is now influencing a shift toward rights-based discussions within the ASEAN community, widening agendas beyond economic policy and traditional state-centric perspectives of security. These changes have in turn led to increased civil society involvement within ASEAN from other countries, including Indonesia.<sup>112</sup> During these processes, lobbyists from the Philippines share knowledge with their government representative,

---

<sup>106</sup> Ibid., 791.

<sup>107</sup> Ibid., 792.

<sup>108</sup> Ibid., 793.

<sup>109</sup> Ibid., 796.

<sup>110</sup> Ibid.

<sup>111</sup> Encinas-Franco, *Gender, Migration and Development*, 9.

<sup>112</sup> Chavez & Piper, "The Reluctant Leader," 331.

by way of problematizing aspects of labour migration and proposing solutions to the immediate vulnerabilities faced by Filipino migrant workers. After engaging in dialogue with activists at the international level, the Philippine national representative takes the recommendations from civil society into consideration when forming migration policy within the state. Due to the activism of NGOs, the Philippines has signed 55 bilateral agreements and MOUs with labour receiving countries, as well as 12 portable social security agreements. At the Abu Dhabi Dialogue, a forum in which states in Asia discuss policy challenges and best practices related to mobility, the Philippines has actively led discussions on moving towards rights-based governance of migration. Nicola Piper argues that the Philippines has slowly evolved from being a labour brokerage state, and even becoming a 'reluctant' leader in promoting rights-based approaches to migration governance.<sup>113</sup> This shift is taking place due to the organizing and bottom-up governance of civil society.<sup>114</sup> Although significant challenges remain in protecting the rights of migrants, and the Philippine government continues to be reliant on the remittances sent from overseas Filipino workers, with immense social costs related to the separation of families. Further, organizations are continually constrained by funding shortages,<sup>115</sup> and the divide between grassroots organizers and policy oriented NGOs remains an unshakable aspect of governance from below.

## **Conclusion**

This paper attempts to explain that the current migration management system in the Philippines results from both top-down and bottom-up forms of governance. The top-down component is composed of the Philippine state, and its priorities of exporting labour in order to benefit economically from the sending of remittances, a system with its roots in the colonial era. The bottom-up component is composed largely of civil society groups who have shaped migration governance by organizing rallies, conducting policy assessments, action-based research with migrant workers, and by publishing policy briefs with policy oriented recommendations directed towards government agencies. The interaction of these state and non-state actors from above and below culminates in an impressive series of bilateral labour agreements, and national legislation in

---

<sup>113</sup> Chavez & Piper, "The Reluctant Leader," 338.

<sup>114</sup> Chavez & Piper, "The Reluctant Leader," 308.

<sup>115</sup> Chavez & Piper, "The Reluctant Leader," 337.

place that aims to prevent the exploitation of overseas Filipino workers. The capacity for consistent implementation remains limited, and ensuring a constant flow of remittances to bolster national reserves continues to be the dominant discourse at the state-level within the Philippines and across labour sending states.

Both the top-down and bottom-up migration governance extends beyond the Philippines, and mirror each other by governing in a transnational fashion. The Philippine migration bureaucracy is global, as its agencies have branches in each of its embassies and consulates overseas. However, Philippine civil society counters this transnational migration management with its own global reach, by connecting with regional and global advocacy groups to shape the course of migration governance on the nation, regional, and international level.

## Bibliography

- Amrith, Megha. "They Think we are just Caregivers': Ambivalence of Care in the Lives of Filipino Medical Workers in Singapore." *The Asia-Pacific Journal of Anthropology*, 11 no. 3 (2010): 410 – 427.
- Asia Development Bank. "Civil Society Brief: Philippines." 2013:  
<http://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>
- Barber, Pauline. "'Grateful' Subjects: Class and Capital at the Border in Philippine-Canada Migration." *Dialect Anthropol* 37, (2013): 383 – 400.
- Battistella, Graziano. "Multi-Level Approach in the Governance of Labour Migration." *Asian Journal of Social Science* 40, (2012): 419 – 446.
- Centre for Migrant Advocacy (CMA). (2011). "Policy Monitor on the OWWA Charter," (2011):  
<http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>
- Centre for Migrant Advocacy (CMA). "Philippine NGOs-Trade Unions Submission of Information." (2014): <http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>
- Centre for Migrant Advocacy (CMA). "Statement of the Centre for Migrant Advocacy to the NGO Meeting of the UN Committee on the Migrant Workers Convention." (2008):  
<http://centerformigrantadvocacy.com/un-migrant-workers-convention-2/>
- Chanves, Jenna & Nicola Piper. "The Reluctant Leader: the Philippine Journal from Labour Export to Championing a Rights-Based Approach to Overseas Employment" in *Asian Leadership in Policy and Governance* (2015): 305 – 344.
- Constable, Nicole. "Migrant Workers and the Many States of Protest in Hong Kong." *Critical Asian Studies* 41, no. 1 (2009): 143 – 164.
- Elias, Juanita. "The Global Governance of Labour" in *Governing the World? Cases in Global Governance*. Sophie Harman & David Williams, eds. London: Routledge, 2013.

Encinas-Franco, Jean. "Gender, Migration and Development in the Philippines – a Policy Paper." *UN Women*. 2015.

Fukuoka, Yuki. "Who Brought Down the Dictator? A Critical Reassessment of so-called 'People Power' Revolutions in the Philippines and Indonesia." *The Pacific Review* 28, no. 3 (2015): 411 – 433.

Hilsdon, Anne-Marie. "What the Papers Say." *Violence Against Women* 9 no. 6 (2003): 698 – 722.

Jenna Hennebry, Jenna Holiday, & Mohammad Monirizzuman. "At What Cost? Women Migrant Workers, Remittances, and Development." *UN Women* (forthcoming), 89.

Koser, Khalid. "Introduction: International Migration and Global Governance." *Global Governance* 16 no. 3 (2010): 301-315.

Koser, Khalid. "Refugees and Migration." In *International Organization and Global Governance*. Thomas G. Weiss & Roden Wilkinson, eds. London: Routledge, 2014.

Migrante International. "Statement on the 20<sup>th</sup> Death Anniversary of Flor Contemplacion" (March 17, 2015): <http://migranteinternational.org/2015/03/17/statement-on-the-20th-death-anniversary-of-flor-contemplacion-ofws-worse-off-than-ever-call-for-aquinos-removal-from-office/>

Migrante International. "Initial Statement of Migrante International to the United Nations Committee on Migrant Workers." (2014).

Migrante International. "Initial Statement of Migrante International to the United Nations Committee on Migrant Workers." (2008). Retrieved from [http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Migrante\\_Int\\_Philippines\\_10.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Migrante_Int_Philippines_10.pdf)

OWWA. "History." 2015: <http://www.owwa.gov.ph/?q=content/owwa>



Philippine Overseas Employment Agency (POEA). "About POEA." 2015:  
<http://www.poea.gov.ph/about/aboutus.html>

Piper, Nicola. "Democratizing Migration from the Bottom Up: The Rise of the Global Migrants Rights Movement." *Globalizations* 12, no. 5 (2015): 788 – 802.

Piper, Nicola. "Revisiting the Migration-Development Nexus from a Rights Perspective." *Journal of Human Rights* 7, no. 3 (2008): 282 – 298.

Rother, Sefan & Nicola Piper. Alternative regionalism from below: Democratizing ASEAN's migration governance. *International Migration*, 53 no. 3 (2015): 36-49.

Rodriguez, M. Robyn. & Helen Schwenken. "Becoming a Migrant at Home: Subjectivation Process in Migrant –Sending Countries Prior to Departure." *Population, Space, and Place* 19, (2013): 375 – 388.

Rodriguez, Robyn. *Migrants for Export: How the Philippine State Brokers Labour to the World*. Minneapolis: University of Minnesota Press, 2013.

Ruiz, Neil. (2008). "Managing Migration: Lessons from the Philippines." *World Bank* (2013):[http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MD\\_Brief6.pdf](http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MD_Brief6.pdf)

Setyawati, Dinita. "Assets or Commodities? Comparing Regulations of Placement Protection of Migrant Workers in Indonesia and the Philippines." *Journal of South-East Asian Studies* 6, no.2 (2013): 264 – 280.

Spitzer, Denise. & Nicola Piper. (2014). "Retrenched and Returned: Filipino Migrant Workers During Times of Crisis." *Sociology* 48, no. 5 (2014): 1007 – 1023.

Tyner, A. James A. (1999). "The Global Context of Gendered Labor Migration from the Philippines to the United States." *American Behavioral Scientist* 42, no. 4 (1999): 671 – 689.

*World Bank*. "Global Economic Prospects: Economic Implications of Remittances and Migration." (2006). Washington, DC.



# E-Petitions and non-governmental influence on Canada's parliament: Prospects for e-44

Marguerite Marlin  
PhD Candidate in Political Science, McMaster University

## Abstract

After a long campaign to bring the Parliament of Canada's petition process in line with 21<sup>st</sup> century communications, the government implemented MP Kennedy Stewart's motion to accept electronic petitions in March 2015. The motion passed by a marginal vote of 142-140, and the House of Commons Committee on Procedure and House Affairs (PROC) was tasked with studying and devising an e-petitions system in Canada. This paper looks at the predecessors of the Canadian version of e-petitions in Scotland, the UK, U.S., Queensland (Australia) and other jurisdictions and evaluates some key merits and pitfalls of each that have either been adopted or specifically been rejected by the Canadian system. The author's now-closed e-petition to "ban formal or informal reprisals for MP voting behaviour on matters which do not pertain to questions of confidence – such as private members' bills" and "establish an ombudsman's office for the federal parliament" (e-44)<sup>116</sup> is also presented as a case study which shows some opportunities for society-state influence presented by the new e-petitions system. The extent of difference between regular petitions and e-petitions in terms of exposure and mobilization, discussion, parliamentary and government response is presented, and the question of whether we should be excited about e-petitions as citizens seeking to maximize our influence on government is tentatively answered in the affirmative.

## Introduction

---

<sup>116</sup> This e-petition was featured in Kady O' Malley (2016) "E-Petition watch: Do we need a federal parliamentary ombudsman?" *The Ottawa Citizen* Jan. 14, 2016, page A5. (Article also available online at <http://ottawacitizen.com/storyline/kady-e-petition-watch-do-we-need-a-federal-parliamentary-ombudsman>)

Petitions have had a significant role in state-society relations for centuries – whether informal petitions to the Tsar in the Russian feudal system seeking specific redresses against serf lords or watershed petitions such as the 1891 women’s suffrage petition in Victoria, Australia that received 30,000 signatures and led to Australia being the first country to allow women to serve in Parliament in 1901 (Parliament of Victoria, 2010). As 21<sup>st</sup>-century communications have transformed almost every other conceivable aspect of state-society relations, so too have petitions instrumentalized online media and communications in official capacities. As the Parliament of Canada is the latest government to introduce a regime for e-petitions on the House of Commons website, this paper provides a partial response to questions surrounding what (if any) new potential this new platform for petitions brings.

Literature on e-petitions<sup>117</sup> regimes shows that those which have been in place for a longer period of time than their Canadian counterpart have not brought the kind of advantages that are sometimes assumed to accompany greater online accessibility. For example, Linder and Reihm (2009) have found that in no cases have e-petitions significantly broadened public participation beyond demographics that are already known to be the most engaged on civic issues, and they even suggest that e-petitions are a top choice for implementation of e-democracy initiatives because they are seen as safer than other e-democracy alternatives (p. 8-10). However, these same writers have also observed that e-petitions have nevertheless received a greater response from governments and the media than their offline counterparts – an assertion that is supported in later research by Panagiotopoulos and Elliman (2012). While the reasons for more dynamic reception from government is specifically suggested to be the “enhanced procedural transparency” of the e-petitions system (9), a more general hypothesis is that the higher visibility of publicly-available e-petitions renders them easier to report on and makes legislatures and/or governments feel a greater sense of accountability to them.

Building up to an argument on this topic, the first section of this paper discussion of some of the merits and pitfalls of the different e-petitions systems that have been implemented since the year 2000 up until the introduction of Canada’s e-petition system in late 2015. The paper then turns

---

<sup>117</sup> The phenomenon of e-petitions generally refers to initiatives to adapt official state processes for hearing and responding to petitions from the public that in some way have been facilitated by the Internet. This paper is specifically focused on formal e-petitions administered through state parliament or government online infrastructure that can be read and signed using that platform. Therefore, petitions that are administered online by NGOs with the intent of influencing political decisions – but are not done through the parliamentary website – are not considered, nor are petitions with signatures collected offline but submitted electronically.

to a case study – e-44, an e-petition I initiated just after the launch of Canada’s e-petition system – which is used to gauge whether or not the Canadian experience reflects the literature on the results of these systems in other jurisdictions. E-44 was presented as a suitable case study because it proposes a serious/practical, non-partisan and innovative solution to the enduring problem of overly-strong party discipline in Canada. It was proposed in the petition that this be done through the appointing of a Parliamentary Ombudsman and mandating of free votes on issues unrelated to confidence matters in the legislature.

The case study reflects a high level of initial media interest in e-petitions rather than offline petitions. It is also found that the check of MP sponsorship requirements for e-petitions in the Canadian system has successfully acted as a check on more frivolous petitions. Still, there is a selective omission by media of overly partisan petitions that attempt to usurp more compelling forms of democratic expression in Canada such as elections.

Certainly, whether or not ministerial responses will be more substantial for e-petitions than for their offline counterparts in Canada is an interesting question indeed. This is as of yet an untested prospect in the Canadian system at the time of writing. Thus, this paper describes a case study in progress that will perhaps have even more substantial bearing on our understanding of how e-petitions has impacted or failed to impact the dynamics of society-state influence in the country.

### **States’ experiences with E-Petitions: 2000-present**

Scotland was the first elected parliament to implement the e-petitions system in 2000, and many other parliaments followed in subsequent years; for example, the German Bundestag adopted its version in 2005, the U.S. “We the People” online petition system was initiated in 2011 and – at the sub-state level – the Queensland parliament in Australia implemented e-petitions in 2002. The UK’s implementation of its e-petition system in 2006 (with a reformed system introduced in 2011) is a unique case, because it was initiated in the Prime Minister’s Office instead of parliament. Currently, e-petitions in the UK are administered through the general government website. With its own regime for e-petitions approved in 2015, Canada is a later adopter of this system but may have been able to learn from some of the experiences of other parliaments and governments with e-petitions.

In order to have traditional petitions presented in Westminster systems, an MP must sponsor the petition for it to be read in the House; this has not changed under the e-petitions

system where it is parliament that is being petitioned as in the case of Queensland and now Canada. However, there is a slight change from offline to online in that the MP's sponsorship is required before it is made public. For traditional petitions, signatures can be gathered before MP sponsorship is achieved, but perhaps this would also be required for traditional petitions if it were feasible to enforce.

In the UK's government-centric model there are standards for the admission of e-petitions, but an MP need not sponsor the petition for it to be read or even debated in the House. This leaves the system vulnerable to situations where it is difficult to argue that a frivolous petition is inadmissible on grounds that the content of the petition is clearly "nonsensical, or a joke" (UK Government and Parliament, 2016a) but where discerning MPs would sense that the intent is more sensationalistic than practical. A key example of this is the e-petition "Block Donald J Trump from UK Entry" which as of February 29, 2016 garnered 580,340 signatures – well over the 100,000-signature threshold necessary to initialize a debate in the House on the subject. This runs parallel to the experience in the U.S. "We the People" petition site, where a petition to deport news TV personality Piers Morgan was the subject of a similar controversy in 2012 after being signed by over 48,000 people (Reuters, 2012).

Further, it is difficult to imagine that the capacity of MPs would be sufficient to have approved the sheer number of petitions that currently exist in the UK parliament – at 6,861 active petitions (Petitions – All Petitions, UK Government and Parliament, 2016b).

All of this current activity supports observations by Panagiotopoulos and Elliman (2012) on the UK's experience with e-petitions: that this system is unique among its counterparts in terms of the addition of the online component ushering in a far greater number of petitions and signatories than under the traditional system. Unsurprisingly, they also note that this has drawn criticism from many observers from both inside and outside government based on the feeling that "in some cases the website was used more to provoke the government than to achieve genuine participation" (90).

However, this account of the UK experience also can lead one to the conclusion that the UK system is in some way the victim of its own success. Very soon after the system was adopted, they note that a petition called "scrap the planned vehicle tracking and road pricing policy" gained 1,811,424 signatories. With this number of signatories, the petition was covered extensively in the media and the government was compelled first to debate it extensively in Parliament and ultimately scrap the legislation that had drawn the ire of petitioners (Panagiotopoulos and Elliman, 2012: 84-

85). This kind of early success achieved by non-state individuals with no need of any more resources than a laptop, knowledge of the system and an opinion surely accounts for some of the overload problems that now plague e-petitions in the UK parliament.

It was thus with the explicit intent to avoid systemic overload and high-profile incidences of frivolous petitioning that Canada sought to keep the check of MP sponsorship in its e-petition system.<sup>118</sup> As a result, the path that Canada chose for e-petitions more closely mirrors Queensland's example, whereby e-petitions require approval from a MP prior to being made public (Lindner and Rheim, 2009: 5). In neither case is there any automatic debate on any issue when it is presented in the House as a petition and is signed by a requisite number of people, unlike the German, Scottish and UK e-petitions systems.

### **E-Petitions in Canada**

Canada's experience with e-petitions at the federal level is very new. On October 28, 2013, South Burnaby MP Kennedy Stewart (NDP) initiated a long campaign to deliver an electronic format of the Parliament of Canada's petition process. Mr. Stewart introduced a motion calling for the House Committee on Procedure and House Affairs (PROC) to examine the issue of e-petitions and provide some recommendations. It is worth noting that some of the conditions outlined for PROC to consider in the original motion put forward by Stewart did not end up making it into the system in place today. For example, the motion called for PROC to consider "the possibility [for the petition] to trigger a debate in the House of Commons outside of current sitting hours when a certain threshold of signatures is reached" (House of Commons Hansard No. 009, 2013) in contrast to the current system where there is no clear channel for the petition to trigger a debate – regardless of the number of signatures reached. In addition, the original motion supposed that the petition would need sponsorship from 5 MPs instead of one.

In order to garner support for this motion, Mr. Stewart took pains to frame the issue as a non-partisan one – citing supporting comments on e-petitions from former Reform Party Leader Preston Manning and former NDP Leader Ed Broadbent and making use of polls showing a high

---

<sup>118</sup> Direct references to the UK's experiences with its e-petitions system, the desire to avoid those pitfalls and the requirement of MP sponsorship as a means to this end can be found in the parliamentary debate on the e-petitions motion in Canada's House of Commons on Oct. 28, 2013 (House of Commons Hansard No. 009, 2013).

level of support amongst Canadians. Despite this, some Conservatives declared that they would not support the motion based on its predisposition to implementing e-petitions – something which they argued should be left open to the discretion of the committee. In addition, these members cited concerns about attracting “frivolous” petitions as in the case of the UK government (House of Commons Hansard No. 009, 2013). From the beginning, the suggestion of requiring MP sponsorship was conceived as a check on the potential for frivolous petitions. These arguments dominated the legislature’s discussion on e-petitions from the time that this motion was passed until March 2015; the motion carried in the House by a marginal vote of 142-140 (CBC News, 2015).

What precipitated from the PROC study the motion initiated is the e-petitions system launched in late 2015 on the House of Commons website. In the current system there is no number of signatures that will immediately spark a parliamentary debate; because of this, the stakes are lower in terms of requiring a minimum number of signatures. E-petitions in Canada only require 500 signatures to prompt a response from government (Parliament of Canada, 2016a). This is more than the mere 25 signatures required for regular petitions (Parliament of Canada, 2016b) but is much less than the 100,000 threshold provided by the UK and the U.S. governments. After the sponsorship of a MP is secured by the petitioner, the Member passes this by Clerk of Petitions to ensure that it meets all standards. In both traditional and e-petitions, the Government is compelled to respond within 45 days. If the government does not respond, the matter is then referred to a standing committee of the sponsoring MP’s choice, to be discussed by the committee within five days. In the case of prorogation, the government must table the response to that petition in the session after parliament resumes; however, if Parliament is dissolved under normal circumstances the government is absolved of its duty to respond to the petition (Parliament of Canada, 2016a; 2016b).

There are other more subtle changes to the petition system from offline to online in Canada; for example, the signature-gathering time for e-petitions is definite, unlike regular petitions. Indeed, the 120-day limit is shorter than the maximum of six months observed in many other jurisdictions. Unfortunately, some the elements of e-petitions that offer advantages are also barred from being leveraged in the Canadian system. For example, in Canada, appendices and links to websites are not permitted to be affixed to e-petitions as in the case of Scotland. There have also be online discussion fora available in the case of Scotland, Norway, and Germany’s e-petition system, but Westminster systems have not followed this (Lindner and Reihm, 2009).



Thus far, Canada's experience with e-petitions has certainly been less overwhelming than in the UK. There are currently 35 e-petitions active on the Parliament of Canada's website; some of the most popular petitions are intent on reversing matters of policy that have already been part of the most recent election campaign. These petitions are unlikely to be successful despite their high level of buy-in. For example, despite the success of one policy-reversal petition in the UK described above, I would hypothesize that Conservative MP Peter Kent's petition to the finance minister "to leave the Tax Free Savings Account (TFSA) limit at \$10,000 annually" (Parliament of Canada, 2015) is unlikely to convince the Liberals to reverse course on this issue in the upcoming Budget 2016.

#### E-44

When I decided to put forward my own e-petition after the launch of this system in Canada, I found the process to be fairly straightforward: After entering in the petition onto the site, I had to collect five online signatures – at which point I chose a MP to request sponsorship of the petition. I emailed my first choice personally at first, got a reply that he was too overwhelmed and then sent a request to my second choice: Green Party Leader Elizabeth May. This was approved after a few weeks, and the petition was published on the site on Jan. 12, 2016. The petition read:

Whereas:

parliamentary practices relating to parliamentary discipline are known to limit legislators' voting behaviour on a much wider array of issues than in other Westminster parliaments such as the Parliament of the UK;

the denial of travel requests or refusal of membership on desired parliamentary committees are tactics which former MPs have attested are used by party whips to compel voting behaviour on all manner of questions – including "free votes"; and

parliamentary experts have long called for the establishment of a federal parliamentary ombudsman.

We, the undersigned, residents of Canada, request (or call upon) the Government of Canada to:

1. ban formal or informal reprisals for MP voting behaviour on matters which do not pertain to questions of confidence – such as private members' bills; and
2. establish an ombudsman's office for the federal parliament, or similar office for the purpose of receiving Members' complaints of inappropriate reprisals in accordance with 1. Senators shall also have access to this office for the purposes of reporting incidences of undue partisan coercion in the Senate.

(Parliament of Canada, 2016c).

I posted this petition on my most oft-visited online networks, along with some explanation of concepts such as party discipline and questions of confidence. It received modest traction in its first day as a public petition, with 42 signatories. However, the media response was immediate: within the next two days, an article was published in both the print and online versions of *The Ottawa Citizen* that featured this petition. The online version even listed the petition in full and contained the question “Do we need a federal parliamentary ombudsman?” in the headline (*The Ottawa Citizen*, 2016).

In the months following, there were numerous other examples of e-petitions receiving ample media coverage (see *Sault Star*, 2016; *Burnaby Now*, 2016; *The Globe and Mail*, 2016). As a point of comparison, past articles in the *Ottawa Citizen* on petitions have largely revolved around scandals – such as whether Catholic students were coerced into signing anti-abortion petitions in 2012 (*Ottawa Citizen*, 2012). Rarely have the petitions themselves been so clearly publicized by media – particularly with the full text of the petition provided. While the effect may be a temporary one based on the new introduction of the e-petitions system, there is also a possibility that the increased visibility of e-petitions will encourage more dynamic reporting on these issues in the media. As this research is in a state of progress, even nascent signs such as this that the dynamics of e-petitions might follow the increased stature of petitions in other jurisdictions are encouraging.

In light of earlier systemic comparisons between jurisdictions, in my experience with e-44 I would have preferred to have been able to have a discussion section on the webpage for the petition. The issue of party discipline is one which many Canadians have mixed feelings about, and offline I was asked by some of those who had seen the petition whether the moderation of party discipline would jeopardize the status of reproductive rights or same-sex marriage. I would have liked the opportunity to have been able to discuss this online, because it has long been my position that the Charter has been far more instrumental than legislators have ever been in gaining such rights. Whether in the case of *M. v. H.* (which contested the legal definition of spouse in provincial laws to be a person of the opposite-sex) or the reproductive rights case of *R. v. Morgentaler* in which the Charter was leveraged to create a national dialogue (Smith, 2002), the courts have always been ahead of Parliament when it comes to issues of rights. Indeed, the Alberta government’s attempt in 2000 to invoke the notwithstanding clause to overturn the definition of marriage is an example of where legislators are in the way of progressive issues. It also bears reminding that the

notwithstanding clause is only available for the provinces to contest the overturning of provincial statutes by the Charter – so most Charter interpretations will be done through the provincial courts (Kelly, 2005).

I would also have liked to have been given the opportunity to make the case for why an all-encompassing party discipline in Canada's system is damaging for our democracy. Where there is looser party discipline in a parliament, sites for non-governmental influence such as parliamentary committees become venues for compromises to be reached and temporary coalitions to be formed – providing more opportunities for committee witnesses to sway political brokering in a direction that will further their own policy preferences. In a majoritarian party system with strong party discipline, committees lose this function and can even be detrimental to democracy, as they give the appearance of satisfying the democratic requirement of public consultation and input without providing substance. It is a dynamic that has been described by all manner of Canadian parliamentary scholars and observers (i.e. Docherty, 1997; Wearing, 1998; Malloy, 2003; Savoie, 2003; Smith, 2007; Samara Canada, 2013) and which I have achieved more success explaining to people in-person. The discussion that petitions generate offline is key, and thus a key area of improvement would be to seek to incorporate some of that discussion into the online experience. This also gives the advantage of being able to create very issue-based areas for meaningful discussion that might precipitate ideas and solutions beyond what is immediately being proposed in the petition.

## **Conclusion:**

At the outset, any enthusiasm for the introduction of e-petitions into legislatures and governments can seem misplaced. Beyond the failure to appeal to younger, more diverse or otherwise different demographics in terms of civic engagement, the Canadian system mandates a disadvantage in the form of a higher threshold for e-petitioners than traditional petitioners. At the same time, there is no advantage in terms of a certain number of signatories securing government debate. These are the shortcomings, and yet perhaps not all of them can decisively be categorized as such; the automatic inclusion of petitions in debates – as in the UK and US – only works well if the petitions are demonstrably practical. If not, MPs may find a way to discuss anything but the issue at hand during the allotted time for debate. Conversely, petitions that are well-crafted in a system where they necessarily elicit only a government response may in fact trigger a debate based on the

receptiveness to this prospect in the legislature. This is one aspect that will be very interesting to examine in the Canadian system as it progresses.

The most significant finding in the literature on this subject is that there is something about e-petitions that – when administered directly through legislature or state websites – seems to boost the profile of the initiatives in the media and in the eyes of government. In the case of e-44, media attention has indeed been easier to attract than with traditional petitions. Whether or not the experience of e-44 and other petitions in the current Canadian roster will also run parallel to cases in countries that adopted e-petitions earlier than Canada will certainly be a topic explored in an updated version of this research in progress. In the meantime, one of the largest challenges to the impact of e-petitions in the Canadian system is the inability for a petition site to serve as an agora for discussion on that topic – the kinds of discussions that might be expected to accompany offline petition-signing. For this, there may be creative solutions both within and outside government.

## Bibliography

*Burnaby Now*. August 25, 2016. "E-Petitions Are Gathering Steam" [Accessed August 25, 2016 at <http://www.burnabynow.com/news/e-petitions-are-gathering-steam-1.2331224>].

*Canadian Charter of Rights and Freedoms*, s 2, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

CBC News, 2015. "E-Petitions coming to the House after the next election." Kady O' Malley. March 11, 2015. (Accessed June 12, 2016 at <http://www.cbc.ca/news/politics/e-petitions-coming-to-the-house-after-the-next-election-1.2991010>).

Docherty, David C. (1997). *Mr. Smith Goes to Ottawa: Life In the House of Commons* Vancouver: UBC Press.

House of Commons Hansard No. 009. 2013. "Private Members' Business." Parliament of Canada: 41<sup>st</sup> Parliament, 2<sup>nd</sup> Session. Monday, Oct. 28. 2013. Full document available at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6270979&Language=E&Mode=1>.

Kelly, James, *Governing with the Charter: Legislative and Judicial Activism and the Framers' Intent* (Vancouver: UBC Press, 2005).

Lindner, Ralf and Ulrich Riehm. 2009. "Electronic Petitions and Institutional Modernization. International Parliamentary E-Petition Systems in Comparative Perspective." *eJournal of eDemocracy & Open Government*. Volume 1, Issue 1, pp. 1 - 11

Malloy, Jonathan "High discipline, low cohesion? The uncertain patterns of Canadian parliamentary groups" *The Journal of Legislative Studies* December 2003, Volume 9 (Issue4) p.116-129.

*Ottawa Citizen*, April 26, 2012. "Student petition signatures 'coerced,' secular group says." Charles Lewis. p. A5 (News), April 16, 2012.

*Ottawa Citizen*, 2016. "E-Petition watch: Do we need a federal parliamentary ombudsman?" Kady O' Malley. Jan. 14, 2016, page A5. (Article also available online at <http://ottawacitizen.com/storyline/kady-e-petition-watch-do-we-need-a-federal-parliamentary-ombudsman>).

Panagiotopoulos, Panagiotis and Tony Elliman. 2012. "Online Engagement from the Grassroots: Reflecting on over a Decade of ePetitioning Experience in Europe and the UK". In Yannis Charalabidis and Sotirios Koussouris (Eds.) *Empowering Open and Collaborative Governance: Technologies and Methods for Online Citizen Engagement in Public Policy Making*. Berlin: Springer Berlin Heidelberg. pp 79-94.

Parliament of Canada. 2015. "e-3 (Tax System)." Published Dec. 7, 2015. (Accessed Jan. 18, 2016 at

<https://petitions.parl.gc.ca/en/Petition/Details?Petition=e-3>).

Parliament of Canada. 2016a. "Electronic Petitions – Guide for Members of Parliament ('Sponsors')." (Accessed Feb. 22, 2016 from <https://petitions.parl.gc.ca/en/Home/AboutContent?guide=PIGuideForMP>)

Parliament of Canada. 2016b. "Paper Petitions – Guide for the Public." (Accessed Feb. 22, 2016 from <https://petitions.parl.gc.ca/en/Home/AboutContent?guide=PIPaperGuide>).

Parliament of Canada. 2016c. "e-44 (Parliament of Canada)." Published January 12, 2016 at <https://petitions.parl.gc.ca/en/Petition/Details?Petition=e-3> (Accessed multiple times since publishing date, last on Feb. 29, 2016).

Parliament of Victoria. 2010. "Women's Suffrage Petition." Published September 09, 2010 at <http://www.parliament.vic.gov.au/about/the-history-of-parliament/womens-suffrage-petition>.

Reuters, 2012. "Thousands sign U.S. petition to deport Piers Morgan over gun comments." Eric Kelsey and Piya Sinha-Roy. Dec. 24, 2012. (Retrieved Feb. 27, 2016 from <http://www.reuters.com/article/entertainment-us-piersmorgan-petition-idUSBRE8BN0M920121224>).

Samara Canada (2013). "It's My Party: Parliamentary Dysfunction Reconsidered" The MP Exit Interview Reports #3. Retrieved from: <http://www2.samaracanada.com/downloads/ItsMyParty.pdf>.

Savoie, Donald J., *Breaking the Bargain: Public Servants, Ministers and Parliament* (Toronto: University of Toronto Press, 2003).

*Sault Star*. July 25, 2016. "Curling E-Petition Gaining Momentum." [Accessed August 25, 2016 at <http://www.saultstar.com/2016/07/25/curling-e-petition-gaining-momentum>].

Smith, David E. (2007). *The People's House of Commons: Theories of Democracy in Contention* Toronto: Toronto University Press.

Smith, Miriam (2002) "Ghosts of the Judicial Committee of the Privy Council: Group Politics and Charter Litigation in Canadian Political Science," *Canadian Journal of Political Science*, Vol. 35:1 (2002), pp. 3-29.

*The Globe and Mail*. August 9, 2016. "Medical Marijuana Growers Push for Cannabis Oil Coverage for Veterans." [Accessed August 25, 2016 at <http://www.theglobeandmail.com/news/british-columbia/medical-marijuana-growers-push-for-cannabis-oil-coverage-for-veterans/article31338829/>].

UK Government and Parliament. 2016a. "Standards for Petitions." (Accessed Feb. 25, 2016 from <https://petition.parliament.uk/help>).

UK Government and Parliament. 2016b. "Petitions – All Petitions." (Accessed Feb. 25. 2016 from <https://petition.parliament.uk/petitions>).

Wearing, Joseph (1998). "Guns, Gays, and Gadflies: Party Dissent in the House of Commons under Mulroney and Chrétien," paper presented at the Annual Meeting of the Canadian Political Science Association, (Ottawa, June 1998).

# Ukrainian Domestic Policy: A Case Study In State Failure

By Darren Jahn

The creation of a Ukrainian independent state in 1991 was a momentous occasion, but one fraught with problems. Under Czarist and Soviet influence, sections of Ukraine had been subjected to a process of Russification that resulted in a significant portion of ethnic Russians living on Ukrainian sovereign territory. After the collapse of the U.S.S.R. in 1991, the Kyiv government<sup>119</sup> had a free hand to implement its own policies in Ukraine; however, over time as policy based on communist ideology fell out of favour, nationalistic ideologies that would come to shape the future course of Ukrainian domestic policy entered into the political arena. This paper will show that the roots of Ukrainian state failure can be traced to pro-Ukrainian policies and the counterbalancing force of pro-Russian political sentiment that grew out of Kyiv's post-independence state-building programme.

Despite efforts to look for warning signs of state failure, Ukraine's exclusionary domestic policies were largely overlooked as a cause for international concern. As quoted from *The State Failure Project: Early Warning Research for U.S. Foreign Policy Planning* (1998):

The international consequences of state failures are profound. Failed states often threaten regional security and require major inputs of humanitarian assistance. And they pose long-term and costly challenges of rebuilding shattered governments and societies. A vital policy question is whether failures can be diagnosed far enough in advance to facilitate effective international efforts at prevention or peaceful transformation.

While the international community has identified the costs that failed states pose, it was either unable to identify the misuse of democratic processes by Ukrainian politicians and the flawed

---

<sup>119</sup> The Kyiv government is referred to a 'Kyiv' throughout the paper.



domestic policies that were borne out of this fledgling democracy as a factor that could contribute to state failure,<sup>120</sup> or else the international community was unwilling/unable to apply sufficient pressure to persuade Kyiv to abandon domestic policies that put the country's stability at risk.

Recent events have shown that Kyiv's policies have divided the Ukrainian population and that the central government is not strong enough to enforce its policies in all territory under its administration. Consequently, continuing to pursue the same political agenda and maintaining present administrative boundaries are incompatible - one must fail in order for the other to succeed. It is this dilemma that captures the essence of Ukraine's state failure. Instead of devolving power, promoting bilingualism, and implementing legal recognition of ethnic Russians as a distinct society within Ukraine, Kyiv did just the opposite, setting Ukraine on a course of foreseeable failure. An analysis of domestic policies and political attitudes that led to the 2014 annexation of Crimea and the violent separatist movement in Eastern Ukraine shows how these events are a release of pressure that has been building in Ukraine since independence in 1991 and how this pressure was caused by the Ukrainian domestic policies under examination. Examples are drawn from various points between 1991 and 2014. The analysis will begin by focusing on Ukraine's political 'identity crisis' before delving into an historical overview of modern Ukraine. It will then examine key policy failures in education, language, political economy, and regional autonomy that underpin the current crisis. The paper will conclude by looking at Ukrainian state failure from an international perspective and consider possible courses of action for resolution.

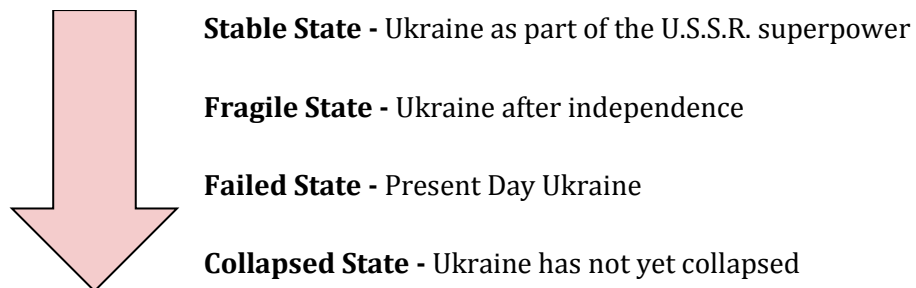
The author posits that the Ukrainian 'nation' and the modern 'Ukrainian state' are in fact different social constructs<sup>121</sup> that the Kyiv government has failed to integrate and that this notion is key to this thesis. Before discussing this idea within the context of state failure, it is worth addressing the generally accepted notion of what a failed state 'is' and how it is defined. Since there is no clear, accepted definition of state failure per se, it is important to delineate between 'failure' and 'collapse' to understand the approach taken and to justify the position that Ukraine is a failed state. The

---

<sup>120</sup> This possibility seems unlikely, given the volume of academic literature, institutional research, and recommendations from international bodies that has been published on this topic since Ukraine's independence.

<sup>121</sup> See McNeely (1995, Chapter 1) for an overview of the social construction of modern nations states. McNeely notes that "...we must realize that the modern nation-state is, in fact, a social construction, an 'imagined community'" (6). Further to this, while not directly related to Russia's past or present involvement in Ukraine's sovereignty, Biersteker and Weber (1996) posit that "...the justifications given by states for the wars and interventions on which they embark is another way to observe some of the practices that construct and reconstruct sovereignty" (13). Thus, current events in Ukraine are part of an ongoing process of construction and reconstruction of the Ukrainian state.

following diagram illustrates the progressive steps that Ukraine has taken on its course of state failure.



This approach is similar to the framework used to construct the *Fragile States Index* (FSI),<sup>122</sup> which views state failure on a spectrum rather than as a black and white label. The FSI steers clear of the word 'failed' as a descriptor, instead using a gradual progression from 'Very Sustainable' to 'Very High Alert' allowing readers to apply the label of 'failure' themselves. The FSI ranks states based on a number of indicators<sup>123</sup> using a 'mixed methods' approach to ensure that inherent weaknesses, gaps, or biases in one source are checked by the others (FSI 2015). While there is logic to this approach, giving equal weight to all indicators is inconsistent with reality because in some contexts, certain issues can be far more problematic than others. Because of the FSI's methodology, countries such as China and Russia received lower rankings implying that they were more fragile than Ukraine in 2015, when in fact these countries are regional hegemons with significant influence. Thus, in regard to Ukraine's place on the FSI, the author posits that due to the objective weightings of the criteria used, even a state placed in the middle of the FSI can be a failed state.

Chomsky (2006) explores the notion that states can fail without a total collapse of political control. This idea is transposed to the current situation in Ukraine where the Kyiv government has

---

<sup>122</sup> The *Fragile State Index* (formerly the *Failed State Index*) is published annually by the *Fund For Peace*. Countries at the top of the index are in a state of political chaos, while those at the bottom are stable and have strong governing institutions. Where #1 is the most fragile, Ukraine ranked #84 out of 178 countries in 2015.

<sup>123</sup> The indicators are as follows: *Social Indicators*: Demographic Pressures, Refugees and IDPs, Group Grievance, Human Flight & Brain Drain; and, *Economic Indicators*: Uneven Economic Development, Poverty & Economic Decline; *Political and Military Indicators*: State Legitimacy, Public Services, Human Rights & Rule of Law, Security Apparatus, Factionalized Elites, External Intervention.

embarked on policies that it does not have the power to enforce. By blindly following a course of path dependency, Ukraine has come to exhibit some of the typical trappings of state failure, namely the loss of administrative authority over its own territory (i.e. Crimea and the Donbas), high inflation giving rise to a preference for foreign currency, poor delivery of political goods, and civil war (Rotberg 2003). The fact that Ukraine exhibits these ‘failed state’ characteristics makes the country a contender for the dubious title of ‘failed state’; however, a large portion of Ukraine’s population accepts the Ukrainian government’s leadership and for many, day to day life is unaffected by the war in Eastern Ukraine, giving much of the country the appearance of stability.<sup>124</sup> Although Kyiv’s policies have only resulted in a limited loss of political control in isolated regions in the south and east, the author rejects the notion of ‘partial failure’. The fact that Kyiv failed to effectively govern Ukraine’s population as a whole reflects on the country as a whole.

Upon independence, Kyiv had the opportunity to embrace its ethnic Russian population by developing an inclusive, bilingual Ukrainian identity, but instead, Ukraine’s unitary system allowed Kyiv to use its mandate to cultivate a Ukrainian identity at the expense of its ethnic Russian population. Politicians from Ukraine’s ‘new’ government, elected in 2014, began acknowledging the need to change flawed domestic policies that led to the current state of crisis. President Poroshenko pronounced that “[d]elay with reforms is fatal for us. At stake is the survival not just of the new government, but of Ukraine itself” (Economist 2014). The notion of identity is of particular interest in Ukraine because while Russians and Ukrainians may self-identify as distinct ethnicities, a common Soviet heritage blurs the cultural divide, causing something that could perhaps be described as a ‘national identity crisis’.

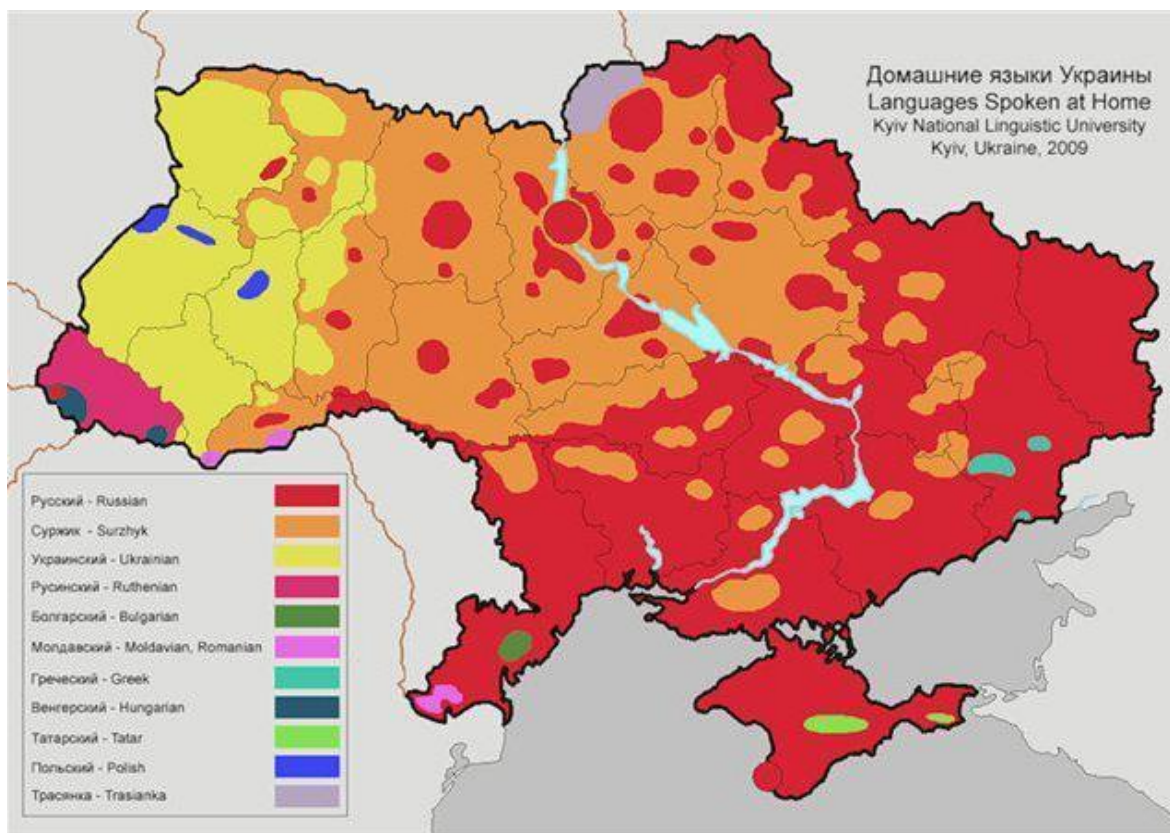
### *The Politics of Identity*

Since independence, Ukraine has sought to define its national identity, but it has been a difficult process. Ukraine is a multicultural country, as evidenced by the variety of languages spoken in the homes of its citizens, as depicted in the diagram below.

## **Languages Spoken at Home In Ukraine**

---

<sup>124</sup>Based on the author’s visits to Ukraine since 2014, observation has lead him to believe that the war in Eastern Ukraine has had limited effect on people’s day to day lives.



Source: Kyiv National Linguistic University, 2009 <sup>125</sup>

The majority of Ukraine's population are Ukrainophones and Russophones. Based on the 2001 census, no other linguistic group in Ukraine comprises more than 0.06 percent of Ukraine's population. Within the Ukrainophone and Russophone majority, three notions tend to shape Ukrainian identity: Ukrainian nationalism, Russian ethnicity,<sup>126</sup> and a shared Soviet heritage. To this end, a history teacher from Karkiv noted the difference in the social reality of these different approaches to self-identification in post-1991 Ukraine:

When I start to teach the children I straightaway tell them that I am not guilty for the fact that we have different motherlands. I have the Soviet Union and they have

<sup>125</sup> *Surzhyk* is a Creole language. A mixture of Russian and Ukrainian words, used interchangeably.

<sup>126</sup> "Ethnicity and culture are related phenomena and bear no intrinsic connection to human biological variations or race" (Smedley and Smedley 2005, 17).

Ukraine. How we understand the world is different. But because we live in one country, we have to find a common language (Rodgers 2007, 515).

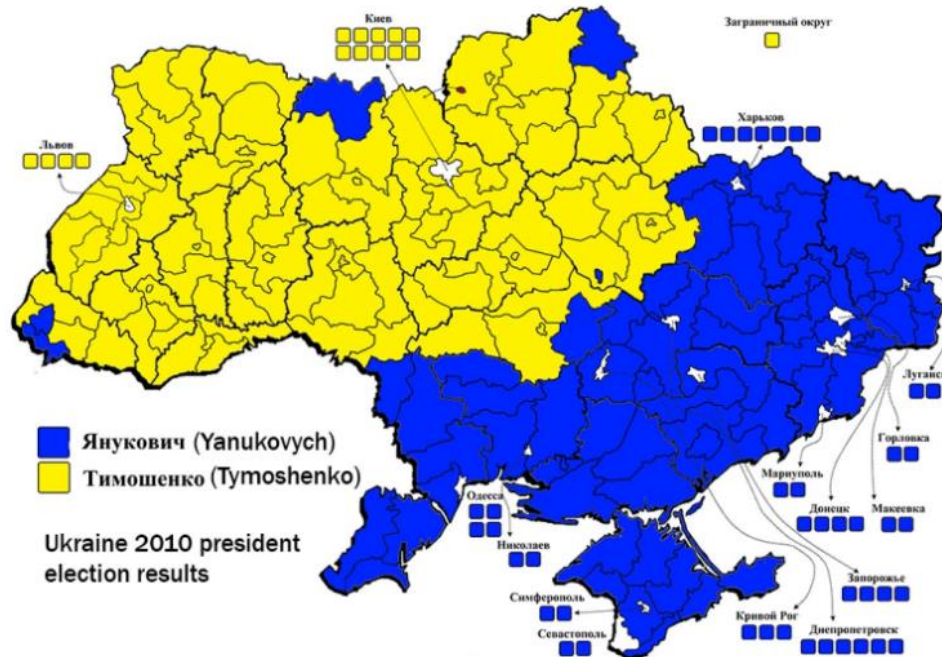
With these dominant identities entrenched in Ukraine at the time of independence, Kyiv's government was faced with the challenge of navigating Ukraine's "competing and coexisting linguistically reflected ideologies of globalization, national unity, nationalistic tendencies and local and regional fragmentation" (Bever, 2011, 1). The country has become politically divided based on linguistics where ethnic Russians and their elected representatives have come to favour strong links with Moscow and economic integration with Russia, while ethnic Ukrainians and their elected representatives sought to forge new alliances with the European Union and the West. These powers vied for influence in Ukraine and promoted political issues such as EU membership, pro/anti NATO stances, military bases on Ukrainian territory, subsidies on gas imports, and trade related issues. Successive Kyiv leaders dabbled in alliances with external powers such as the EU, United States, and Russia, but with limited commitment to any single power. The resulting alliances were temporary and weak. The tepid follow through - or violation of - commitments to the Ukrainian state by the U.S., United Kingdom, and Russian Federation in the 1994 Budapest Memorandum serves as an example of the weakness of Ukraine's allegiances.<sup>127</sup> Attempts to move forward these incompatible political goals forward became firmly entrenched as a defining feature of each side's identity. A map of Ukrainian election results in 2010 illustrates how the two dominant political identities closely follow Ukraine's linguistic divide.<sup>128</sup>

### **2010 Election Results Delineating 'Ukrainian' West and 'Russian' East**

---

<sup>127</sup> The U.S., U.K. and Russian Federation all pledged 'to refrain from economic coercion' and lobby the UN security council for assistance 'if Ukraine should become a victim of an act of aggression' (CFR 1994).

<sup>128</sup> The results of other Ukrainian elections have had similar outcomes.



Source: Fisher 2013<sup>129</sup>

In addition to Russophone and Ukrainophone identities, a common Soviet identity was present as well,<sup>130</sup> developed over the course of 69 years of Soviet administration. The collapse of the U.S.S.R. had propelled Ukraine into an era where contradictions in society reflected different social realities. Ukraine's cities were full of Soviet-era buildings. Works of art in the socialist realist style continued to promote socialism and commemorate the U.S.S.R.'s achievements in Kyiv's streets and subway system. Alongside these Soviet relics, Ukrainian language, culture and identity appeared high on the political agenda and monuments of historical Ukrainian figures were erected (often, but not always, in place of old Soviet images) promoting 'new' Ukrainian traditions.<sup>131</sup> Conversely, pro-Russians identified with the narratives and culture of the Russian Federation, while pro-communists sought a return to the old ways of the U.S.S.R. One teacher in Eastern Ukraine observed the political divide in her classroom as nationalistic undertones began appearing in her students' essays noted:

<sup>129</sup> Election results from other elections have had similar outcomes to the one in 2010.

<sup>130</sup> Much of the Soviet Union's legacy remains visible in Ukraine today. Old Soviet buildings and other icons are mixed in with modern ones almost everywhere.

<sup>131</sup> See Hobsbawm and Ranger "Inventing Traditions" *The Invention of Tradition* (2012, 1-14).

“[t]his is very dangerous... I am afraid that this process will go further” (Rodgers 2007, 515). It was in such a social reality that Kyiv set out implementing its flawed domestic policies, which are best understood within their historical context.<sup>132</sup>

### *Historical Context*

To understand how a state fails, it is essential to be familiar with the history of the region in order to interpret events within their historical context. Although Ukraine only recently gained its sovereignty, the Ukrainian nation has had a long relationship with Russia. The modern era of ‘East’ and ‘West’ Ukraine developed with the establishment of Odessa in 1794 as the administrative centre for the Russian colonial territory of ‘New Russia’,<sup>133</sup> which stretched from the Donbas region of Eastern Ukraine through to Odessa. Moscow had set about industrializing the area of New Russia and Russian policy not only encouraged industrialization in the area, but also migration. As a result, waves of Russian immigrants settled in the region over subsequent decades to work in the mines, factories, and ports - providing an external source of labour to accelerate the development of the region’s economy. Russian immigration to New Russia continued until the collapse of the U.S.S.R., steadily increasing the ethnic Russian population in the region over time, as illustrated below.

**Composition Ethnic Ukrainians and Russian Population in the Donbas**

	<b>1897</b>	<b>1926</b>	<b>1959</b>	<b>1989</b>
<b>Ukrainians</b>	379,000 (55.2%)	1,222,000 (60%)	3,784,000 (56.4%)	4,176,000 (51.1%)
<b>Russians</b>	180,000 (26.2%)	639,000 (31.4%)	2,551,000 (38%)	3,595,000 (44%)

---

<sup>132</sup> There are different historical narratives about what happened on the territory of present day Ukraine. The author does not intent to argue that one narrative is the ‘true version’ of factual history, only to show how accounts of past events laid the foundation for Ukraine’s present situation. See Wilson *The Donbas between Ukraine and Russia: The Use of History in Political Disputes* (1995).

<sup>133</sup> Donbas separatists have resurrected this name for their proposed independent state.

Source: Wilson (1995, 275)

Although Ukraine has historically had a colonial relationship with Russia, a Ukrainian state had been briefly established in 1917 that was recognized by the Provisional Government of St Petersburg as the authority of the would-be Ukrainian National Council; however, New Russia was specifically excluded from the area of its authority (Wilson 1995, 280). The territory of New Russia divided into two Soviet Socialist Republics (SSRs) - Krivoy Rog<sup>134</sup> SSR in the eastern part of present day Ukraine, and Odessa SSR in the southern part of Ukraine. These two newly formed SSRs did not retain their authority for long though and in 1921 they were integrated into the Ukrainian Soviet Socialist Republic as “a gift from Lenin” (Wilson 1995, 280). This political move granted Kyiv the power to administer New Russia, while Soviet leadership in Moscow retained political power over Kyiv. In this way, membership in the U.S.S.R. masked over any ethnic-nationalistic divisions in Ukraine and allowed Kyiv to administer New Russia.

Prior to the establishment of the U.S.S.R., the 1918-21 Kyiv governments sought to rally support for a united Ukrainian republic, promoting Ukrainian nationalism in the Donbas in their attempt to unite the country, but as Wilson (1995) explains:

The Donbas was the rock on which the Ukrainianization campaign of the 1920s floundered after its initial success in central Ukraine. In fact, the very need to Ukrainianize the Donbas, 'something that it is only necessary to do with 'foreigners', merely demonstrated the region's tenuous historical connections with Ukraine (280).

Donbas propaganda reminded its population that they were not 'Ukrainians'. A 1991 Donbas propaganda poster insinuated that the Ukrainian flag was first introduced in the Donbas region only in 1918 claiming that “its first appearance was on the bayonets of the German Haidamack [German

---

<sup>134</sup> Krivoy Rog (Кривой Рог) translates from Russian as “Crooked Horn”, alluding to the shape of the the territory where mineral deposits were discovered in Eastern Ukraine.



backed Ukrainian nationalist]<sup>135</sup> army that bloodily destroyed the Donetsk-Krivoi Rog republic which fought under the red flag.” (Wilson 1995, 281). Ultimately, the Ukrainian government in Kyiv was unsuccessful in its efforts to de-Russify Eastern Ukraine in the 1920s.

Stalin further augmented Ukrainian territory by adding land that had been annexed from Poland. Communist Poland and the U.S.S.R. collaborated on a forced migration that removed Belarusians, Poles and suspected Ukrainian nationalists from Western Ukraine, replacing them with Ukrainians from neighbouring Belarus and Poland in an attempt to create ethnic homogeneity in Western Ukraine (Snyder 2010, 331). The result was the creation of a concentrated population of ethnic Ukrainians in Western Ukraine that still exists today.

The final piece of territory to be integrated into the Ukrainian SSR was Crimea. The Crimean Autonomous SSR was established in October 1921 and was part of the Russian Federated Soviet Socialist Republic (Magocsi 2010, 6) until 1954 when Khrushchev made the unpopular decision<sup>136</sup> to integrate Crimea into the Ukrainian SSR in the same way Lenin had done with New Russia in 1921. For Khrushchev, there was no difference as to whether Crimea was a part of Ukraine or the Russian Federated Soviet Socialist Republic since Kyiv was under the political control of Moscow; he did not foresee the potential problems this would present should the U.S.S.R. collapse, giving the Kyiv government authority over Crimea.

In this way, Ukraine’s administrative borders were augmented throughout the 20th century and populations of Russians and Ukrainians were concentrated in the east and west. Upon gaining independence from Soviet governance in 1991, Kyiv’s government had a fresh start, yet politicians ignored the previous failure to garner support for the Ukrainian nation in the Donbas in the 1920’s and set in place policies to repeat the process a second time. The pro-Ukrainian policies that Kyiv enacted under the auspices of nation building positioned Ukrainians as a distinct society with Russia as Ukraine’s ‘other’. While such a shift in policy may have been well received by some Ukrainian citizens, Rodgers (2007) explains how ethnic Russians in Eastern Ukraine, reacted to the way that Russia was portrayed in this new narrative.

---

<sup>135</sup> The text in brackets was inserted by Wilson in his article and this inserted text was not on the poster.

<sup>136</sup> The decision was unpopular from the Russian perspective.

Contrary to the desires of the central state to portray Russia as Ukraine's 'other', [some Ukrainians were] explicitly stating that... the real other for 'Eastern Ukraine' is not Russia, but in fact 'Western Ukraine' (515).

Looking back at the failure to Ukrainianize the Donbas in the 1920's, one might question the political motivation for embarking on such a program again in 1991. Historically, these two periods have common features that made Ukrainianization the logical political platform for politicians. At both times, the emergence of Ukraine can be attributed not to the Ukrainian state becoming more powerful, but to Russian weakness; in 1918 Russia was embroiled in a civil war and in 1991 Russia was at the centre of the collapse of the U.S.S.R. In both cases, Ukrainian politicians rose up in the face of Russian weakness and sought out to garner as much support as possible as quickly as possible. Logically, politicians appealed to the largest constituency - Ukrainians - with a platform of Ukrainianization. Although the Donbas did have a marginal majority of Ukrainians in 1991, the ethnic Russians, who had immigrated to cities, had concentrated their population, thus, they were able to organize political resistance. The failure of Ukrainianization in the 1920's notwithstanding, politicians were again motivated to cast as wide a net as possible after 1991 in an attempt to garner support in the largest possible political base. Thus, the post-1991 'net' was cast in ignorance and again it included the Donbas because there was a Ukrainian majority living in the region.

By choosing to promote Ukrainian nationalism after 1991, Kyiv missed an opportunity to implement policies of inclusion. Aspects of post 1991 Ukrainian politics came to revolve around minimizing or maximizing the marginalization of the ethnic Russian population<sup>137</sup> living in Ukraine. Ukraine's governors (and perhaps Ukrainians themselves) were not sensitive to recent historical events. Independent Ukraine had retained administration over all the territories that had been added to the Ukrainian SSR and Khrushchev's unanticipated eventuality had finally come to pass - in 1991, Crimea and the Donbas, along with their ethnic Russians, were excluded from Moscow's control. Furthermore, no longer surrounded by SSR's and Soviet satellite states, Ukraine came to serve as a sort of 'buffer' between the EU and the recently formed Eurasian Economic Union. Rumford (2006) theorized on the nature of such buffers in the world today, noting that "borders have become so diffuse that whole countries can now be borderlands... once countries had borders, now they are borders" (156). Fittingly, 'Ukraine' translates to 'borderland' and the name "has come to serve as a

---

<sup>137</sup> And to a lesser extent, Russophone Ukrainians as well.

master trope of [Ukraine's] own history" (Richardson 2008, 8). An examination of post 1991 policies on education, language, political-economic orientation, and regional autonomy of oblasts<sup>138</sup> will show how through these policies Kyiv not only failed to acknowledge the social realities that existed in sovereign Ukraine, but also reinforced and exacerbated an existing historical divide.

### *Education*

The reforms in Ukrainian education that began in 1991 focused on two major policy changes. The 1989 *Law On Language* required Russian and Ukrainian languages both to be mandatory<sup>139</sup> (Verkhovna Rada 1989, Article 27); however, the 2012 legislation *On Principles of State Language Policy* modified this law so that Ukrainian and one regional or minority language were mandatory<sup>140</sup> (Verkhovna Rada 2012, Article 20-7). The net effect of this change was to preserve the place of Russian language in schools while relegating Russian language to the same status as other minority languages in Ukraine, such as Greek or Tatar. According to Ukraine's most recent census (2001), Russian was the mother tongue of 29.6 percent of Ukraine's population. The new 2012 language law demoted Russian language, the native language of a significant portion of Ukraine's population, to the status of a minority language in schools.

Another change in education was the interpretation of Ukrainian history. A new historical narrative came in the form of new history textbooks as part of a conscious effort to cultivate a new national identity. The new texts were widely used with little protest from the ethnic Russian population in Eastern and Southern Ukraine (Rogers 2007); however, teachers nevertheless experienced difficulties with the new social and political reality and how it was expressed in the new Ukrainian curriculum (Popson 2001). In 2006, Peter Rogers conducted a series of interviews with history teachers in Eastern Ukraine about the new historical narrative they were required to teach.<sup>141</sup> The teachers had mixed feelings about teaching a 'revised' version of their country's history, having grown up in the Soviet Union and living in ethnic Russian communities in Ukraine. Some teachers

---

<sup>138</sup> Ukrainian territory is divided into provinces called 'oblasts' under a unitary system.

<sup>139</sup> Article 27 "Studying in all secondary schools Ukrainian and Russian languages is mandatory."

<sup>140</sup> Article 20-7 "All general secondary schools provided teaching of the state language and one of the regional or minority languages."

<sup>141</sup> See Rogers *Compliance or Contradiction'? Teaching 'History' in the 'New' Ukraine. A View from Ukraine's Eastern Borderlands* (2007).

expressed concern about post 1991 textbooks because they were 'heavily politicized';<sup>142</sup> others felt it was a teacher's duty to 'educate the young to be proud of their country'.<sup>143</sup> The transition from the Soviet historical narrative to a Ukrainian historical narrative exemplifies a policy shift that favoured Ukrainian nationalist perspectives. Below are two teacher's comments published by Rodger's (2007).

In the Soviet books, the people strove towards communism from the first days of existence, in the days of feudalism and bourgeoisie-ism. But the main theme throughout the books was the aspiration to create communism. Now we can look at the Ukrainian books up to 1998. In these, Ukrainians who actually did not know as yet that they were Ukrainians were already thinking about how to create a Ukrainian state (508).

The interpretation in the textbooks places the Soviet Union and fascist Germany together, as both fighting against humanity. In my opinion, this is not a correct interpretation of the evidence. This should never happen. The Great Patriotic War [WWII] for Ukraine, Russia and Belarus, irrespective of changes in the textbooks, remains as the Great Patriotic War (512).

The teachers' opinions about politics, history, and Ukrainian-Russian interactions capture the essence of the issues presented not only in history classes, but also in Ukrainian society in general. Such a shift in educational policy put teachers into a position where they became "agents [of state

---

<sup>142</sup> "After Ukraine's independence was gained, the Soviet textbooks were abolished, yet there were no new textbooks and there was no real programme. Then textbooks appeared which were heavily politicised. We are not happy with these textbooks. As a result of all these things, I decided to write a history of Ukraine textbook myself, so as to provide an objective account of events" (Rodgers 2007, 507); ...I lived in the Soviet times, and saw myself how in reality these events took place. And now these events are narrated so as to be advantageous to certain politicians and this is wrong" (Rodgers 2007, 508).

<sup>143</sup> "We are building a state and it is necessary to start with people, with their self-identification. There won't be a state if we don't educate our young to be proud of their country and the fact that they are Ukrainians. Then they will do everything in their powers to develop their country"(Rodgers 2007, 505).

policy] who, interpret, mediate and transform policy or interfere, resist, and confound its aims” (Schweisfurth 2002, 10). The feelings expressed by the teachers exemplified the feelings of ethnic Russians in general who did not agree with the new narratives. While initially, ethnic Russians were effectively powerless to resist the reforms coming from Kyiv, when given the opportunity to actively resist in 2014, the ‘passive’ protest of Ukrainian teachers transformed into open rebellion against the Kyiv government.<sup>144</sup>

### *Language*

Ukraine’s citizens are ethnically diverse, representing more than 130 nationalities and ethnicities speaking a number of minority languages (Ukrainian Census, 2001). The ethnic groups composing more than 0.02 percent of Ukraine’s population in 2001 were as follows:

**Number and Composition of Population of Ukraine in 2001**

Ethnicity	Number of People	% of Population	
		In 1989	In 2001
Ukrainians	37,541,700	72.7	77.8
Russians	8,334,100	22.1	17.3
Belarusians	275,800	0.9	0.6
Moldavians	258,600	0.6	0.5
Crimean Tatars	248,200	0.0	0.5
Bulgarians	204,600	0.4	0.3
Hungarians	156,600	0.4	0.3

---

<sup>144</sup> This transformation was dependent on support from Russia.

Romanians	151,000	0.3	0.3
Poles	144,100	0.4	0.3
Jews	103,600	0.9	0.2
Armenians	99,900	0.1	0.2
Greeks	91,500	0.2	0.2
Tatars	73,300	0.2	0.2

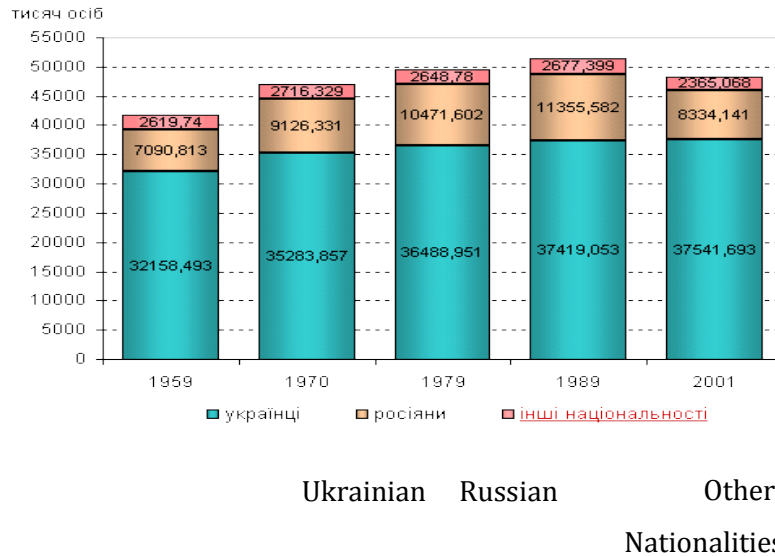
Source: Ukrainian Census, 2001

From this data we can see that except for ethnic Russians, all other minorities were less than one percent of Ukraine's population, the implication being that ethnic Russians are in a different category than Ukraine's other minority groups due to the significant size of their population. It is also evident that between 1989 and 2001, the percentage of ethnic Russians in Ukraine decreased by 4.8 percent. This percentage decrease is not due to the increased population size of other ethnic groups, such as the Crimean Tatars, who returned to Ukraine en masse upon Ukraine's independence. It has been argued that it is because of emigration that the Russian population in Ukraine declined by nearly 3 million people between 1989 and 2001.<sup>145</sup>

### **Population By Nationality According Population Census**

---

<sup>145</sup> "From the eastern part of the country (particularly from the less prospective Donets Basin), many young native Russian speakers have migrated to Russia, with the Moscow Metropolitan Region as the main target area" (Karácsonyi, Mezentssev, Pidgrusnyi, and Dövényi 2014, 33).



Source: Ukrainian Census, 2001

The issue of language is further skewed by the number of Ukrainians who speak Russian as their native language. While only 17.3 percent of the population were ethnic Russians in 2001, 29.6 percent of Ukrainian citizens identified themselves as native Russian speakers in the same year (Ukrainian Census, 2001) implying that a significant number of non-Russians used Russian as their native language.

The Soviet-era *Law on Language in the Ukrainian SSR* was in force until July 2012 when it was replaced with the *On Principles of State Language Policy* amid protests by citizens<sup>146</sup> and fistfights in sessions of Ukrainian parliament,<sup>147</sup> which only served to illustrate how controversial language issues had become in Ukraine. Indeed, a pro-Ukrainian language bias is evident in the highest levels of government<sup>148</sup> and is indicative of a shift from previous policy that endorsed Russian language on a relatively equal footing, as codified in the *Law On Language in the Ukrainian SSR*. Evidence of this shift in language policy can be seen in Ukraine's adoption of the *European Charter for Regional or*

<sup>146</sup> Clips of the protests can be found on YouTube e.g. *Rescue Ukrainian Language* (2015).

<sup>147</sup> See *Packing a Punch: Fist Fights the Norm in Ukraine's Parliament* (YouTube 2012).

<sup>148</sup> For example, a 1999 Constitutional Court of Ukraine decision on the use of the state language by state authorities reads: "State Ukrainian language, in our view, has brilliant prospects" (Verkhovna Rada 1999).

*Minority Languages* (Verkhovna Rada 2003), which contained the following passage that clearly illustrated the overarching goal of Kyiv's promotion of Ukrainian language:

...measures aimed at strengthening Ukrainian as the state language, its development and functioning in *all spheres of social life throughout the entire territory of Ukraine*<sup>149</sup> is not considered as impeding or endangering the preservation or development [of other] languages (ibid).

The writing on the wall was clear - Russian language in Ukraine was being phased out. When Ukraine signed the *European Charter for Regional or Minority Languages* in 1992, it had rejected the clause that stipulated that Ukraine must “flexibly tak[e] into account the needs and wishes and respecting the traditions and characteristics of those groups that are relevant languages” (Verkhovna Rada 1992). Subsequently, ratification of the charter was delayed by politicians who attempted to block it, and after eight more years of debate, the charter was rejected and declared unconstitutional by the Constitutional Court of Ukraine in July 2000 (Verkhovna Rada 2000). It was, however, finally ratified eleven years later in May 2003 (Verkhovna Rada 2003).

The examples of the *European Charter for Regional or Minority Languages* and the adoption of *On Principles of State Language Policy* serve to illustrate the context in which Russian language was being not only marginalized, but replaced by Ukrainian language. The results of this shift in language policy likely become more pronounced over time as a generational gap formed between the older generation who grew up speaking both Russian and Ukrainian during Soviet times and youth growing up surrounded by Ukrainian language and culture. Thus, for ethnic Russians who maintained Russian language in their regions, it is understandable that resistance to the trend of Ukrainianization grew stronger as the Ukrainian-Russian linguistic divide grew larger over time.

It is worth noting that language issues developed in tandem with economic issues in the Ukrainian political arena, which gave rise to ‘political pairings’. Politicians supporting pro-Russophone policies also supported economic integration with Russia in their platforms, while those supporting pro-Ukrainophone policies supported economic integration with the EU. This lined up

---

<sup>149</sup> Italics in this passage have been added for emphasis.



naturally from a geographical perspective as Western Ukraine sought to integrate with the EU with whom it shared its western border, and Eastern Ukraine desired integration with Russia with whom it shared its eastern border. Thus, linguistic preferences and economic alliances became intertwined in Ukrainian politics as politicians used these issues to rally support in their constituencies and develop solidarity around these two contrasting political positions.

As noted by Kuluk (2009) “language politics in Ukraine has primarily been determined by political actors' striving for power which causes them to compete with one another and attempt to influence their respective constituencies” (54). Such influence was visible in world media through the events of the ‘Orange Revolution’ (2004) and ‘Euromaidan’ (2014). Both prominent political demonstrations were organized in Kyiv, easily accessible to the media in Ukraine’s capital and strategically located far from the regions of ethnic Russian minorities in the south and east. These events are significant because the coverage they received allowed politicians to use them to crystalize the division of eastern and western Ukraine in the national psyche.

When pro-Ukrainian politicians exerted their influence in Kyiv by organizing the peaceful ‘Orange Revolution’ demonstration in 2004, pro-Russian politicians, led by Viktor Yanukovych, presidential candidate and leader of the Party of Regions, attempted to match them by organizing transport for pro-Russian demonstrators from Eastern Ukraine to come to Kyiv to put on their own demonstration. Despite these efforts, the pro-Russian protest was smaller and located away from Maidan Nezalezhnosti (Independence Square) in downtown Kyiv and the pro-Russian protest received limited media attention. Nonetheless, the widespread coverage of the Ukrainian nationalist demonstrations in Kyiv gave pro-Russian politicians sufficient material to use in their pro-Russian rhetoric after 2004. When pro-Ukrainians gathered once again to demonstrate in Kyiv in 2014 on the same favourable territory, Yanukovych, who by then was president of Ukraine, did not bother organizing transport for another futile pro-Russian demonstration. Instead he unleashed the Berkut, which is a special police force used for countering riots, on the demonstrators. The political jockeying over Ukraine’s linguistic and economic division had reached a new level and for the second time in ten years it was front and centre in the world media. The promotion of language based politics had driven a wedge between the two major linguistic groups in the country where before no such issue had existed in Soviet times and the division that was created was to be compounded by other factors that served to further deepen the divide.

## *Economic Considerations*

Economic integration with Russia has provided limited growth since Ukraine's independence, but economic integration with Russia comes with subsidies that provide economic support that is tangible and immediate, making it easy for politicians to push this economic platform forward. Subsidies from Russia, such as cutting the price of imported Russian gas by a third,<sup>150</sup> immediately puts more money in people's pockets. Ukrainian politicians can easily spin this to seem as though subsidies are the same thing as economic development because both subsidies and economic development redistribute wealth; however, Russian subsidies are just a quick fix and any real economic development that is to come from EU membership will be part of a slow process that will require major reform - it also seems as though it will be accompanied by Russian sanctions that cause economic harm. For politicians pushing the platform of Western style economic development, a long term EU vision is an easy sell, but enduring the long period of transition and poor relations with Russia makes the implementation of such a plan difficult. Generally, Russophones have preferred economic integration with Russia while Ukrainophones have sought to emulate the economic transformation that took place west of their borders.<sup>151</sup>

Ukraine's dilemma over the direction of its foreign economic policy has received much attention in the media,<sup>152</sup> but Ukraine's domestic economic policies, which usually receive less attention, are significant because there is a domestic divide of economic inequality that has contributed to Ukraine's civil and political unrest. The ethnic Russian majority in the eastern region of the country occupies an area that has been heavily industrialized and is responsible for much of Ukraine's economic output. Its sizable coal and iron ore deposits influenced Soviet economic planners to invest in shipping ports on the Azov Sea as well as steel mills and factories in Eastern Ukrainian cities, developing the region into an industrial centre.<sup>153</sup> In this way, Soviet planning resulted in an economic advantage for the Russian speaking majority that resided in Eastern Ukraine.

---

<sup>150</sup> See *Russia offers Ukraine Major Economic Assistance* (BBC 2013).

<sup>151</sup> For example, between 1991 and 2015, Hungary's GDP per capita went from USD\$3,333.9 to USD\$12,259.1, a 268 percent increase; Poland's GDP per capita went from USD\$1,698 to USD\$12,494.5, a 636 percent increase; Ukraine's GDP per capita increased from USD\$1,489.7 to USD\$2,115 - a 42 percent increase (World Bank 2016).

<sup>152</sup> Integration with the EU and Russia were widely covered by international media during the Orange Revolution (2004) and Euromaidan (2014).

<sup>153</sup> This refers to Eastern Ukraine as a whole, not to just the areas now occupied by separatists.

Although the Russophone population of Ukraine traditionally held an economic advantage over Ukrainophones, this economic edge deteriorated over time due to out-dated industrial structure in Eastern Ukraine and Kyiv's policy of demarginalizing the western part of the country, which, during Soviet times, had been a 'neglected border zone' (Karácsonyi et al. 2014, 33). The net effect of these processes has been a general evening out of economic resources in Ukraine as "the eastern regions... lost their absolute economic leadership" (ibid) and wealth was transferred to the Ukrainian speaking west and to more modern industrial areas in central Ukraine along the Dnieper river. The gradual process of this wealth transfer over time can be seen in the chart below.

### Correlation Between Average Incomes and Native Tongue of Ukraine's Population

Denomination	2000	2002	2003	2005	2006	2007	2008	2009	2010	2011	2012
Ukrainian speakers	-0.39	-0.39	-0.38	-0.35	-0.35	-0.34	-0.32	-0.30	-0.30	-0.29	-0.29
Russian speakers	0.48	0.47	0.46	0.43	0.42	0.42	0.39	0.38	0.37	0.37	0.37

Source: Karácsonyi, Mezentsev, Pidgrusnyi, and Dövényi, 2014

Under Soviet administration, ethnic Russians had benefitted economically from Moscow's investment in the areas in which they lived, while ethnic Ukrainians in the west were marginalized. Then with independence, Kyiv brought ethnic Ukrainians back into the economic fold. The fact that Ukraine is ethnically divided has come to complicate any transfers of wealth between these two ethnic groups in post 1991 democratic Ukraine. As long as these groups perceive that they are at odds with one another, each group is likely to view the other side's gains as their own loss. Such an outlook is indicative of the government's failure to unite the people living in Ukraine so that they feel a sense of collective unity and the result is that each group justifiably views economic differences through a politically biased lens.

Further to the geographical-linguistic economic differences that exist across regions, heightened economic inequality between rich and poor is prevalent due to an unequal distribution of wealth in the country. Credit Suisse's annual report on global wealth highlights the inequality between rich and poor without looking at ethnicity. In their 2015 study, Credit Suisse found that Ukraine ranked in second place with highly pronounced wealth inequality and a gini of 91.6

percent.<sup>154</sup> The following chart shows how Ukraine fared in 2015 compared to four other selected countries.

**Selected Countries from Credit Suisse Global Wealth Databook**

	Mean wealth per adult in USD	Median wealth per adult in USD	Distribution of adults (%) by wealth range (USD)				Credit Suisse Gini
			under \$10,000	\$10,000 - \$100,000	\$100,000 - \$1 million	over \$1 million	
<b>Russia</b>	\$11,726	\$1,388	91.4%	7.7%	0.8%	0.1%	91.2%
<b>South Africa</b>	\$21,402	\$3,379	72.7%	24.3%	2.9%	0.2%	84.0%
<b>Switzerland</b>	\$567,122	\$107,583	1.7%	47.2%	40.3%	10.8%	80.3%
<b>Ukraine</b>	\$1,437	\$166	99.0%	0.9%	0.1%	0.0%	91.6%
<b>U.S.</b>	\$352,996	\$49,787	28.1%	32.9%	32.6%	6.4%	85.0%

Source: Credit Suisse, 2015

Since Ukraine began moving away from a planned economy in 1991, its economic transformation has been accompanied by growing social inequalities (Karácsonyi et al. 2014). Such inequality has been harmful to both ethnic Ukrainians and ethnic Russians. A widening gap between

<sup>154</sup> The Seychelles ranked #1. Based on the facts that the ginis are all above 50, the usual threshold for high inequality, it seems that Credit Suisse uses its own methods to calculate gini scores.

rich and poor has been shown to have a detrimental effect on overall economic growth by generating an increasing number of missed opportunities for those at the bottom of the economic spectrum (OECD 2014). Inequality reduces access to items such as education and health care, lessening a country's ability to progress economically and generate wealth. Furthermore, OECD research highlights other issues associated with economic inequality, including credit market imperfections, political instability, and social unrest, noting that growing inequality has the potential to reach a 'tipping point'.<sup>155</sup>

Wilkinson and Pickett (2010) postulated that economic inequality in a divided society has been linked to escalated violence and a weaker society in general. This is further supported by research by Alesina and La Ferrara (2015) who found that income inequality reduces civic participation and erodes social capital, concluding that division in society can exacerbate the effects of economic inequality.<sup>156</sup> Given these findings, it has indeed been unwise for Kyiv to pursue policies that marginalize ethnic groups within the context of growing economic inequality because the two together serve to magnify the risk of political and social unrest.

Although it is possible to view economic differences between ethnic Russians and ethnic Ukrainians as two separate groups playing a zero sum game, it seems more appropriate to view the Ukrainian population as a whole to see that limited economic freedom<sup>157</sup> and a poor business climate have had negative effects for both ethnic groups. From this perspective, ethnically based 'othering' simply provides a convenient scapegoat for economic problems that are, in fact, mutual. Countrywide economic problems such as lacklustre GDP,<sup>158</sup> inflation, and a dysfunctional economy indeed affect *all* elements of society.<sup>159</sup> While it may be convenient to blame a political opponent's reforms for a poorly performing economy, this just hides the fact that the real problem is the poor delivery of political goods due to corrupt government institutions and civil servants. Indeed,

---

<sup>155</sup> The report contains a comprehensive literature review on theories and research on the effects of inequality.

<sup>156</sup> Their research focuses on racially divided societies, but translates to divisions of societies in general, where 'othering' takes place.

<sup>157</sup> According to the Heritage Foundation's *2015 Index of Economic Freedom*, 'economic freedom' empowers people to work, produce, consume, own, trade, and invest according to their personal choices. Ukraine achieved a low ranking on the index ranking 162nd out of 178 countries in a tie with Burma

<sup>158</sup> Ukraine's GDP per capita in 2015 was USD\$2,115, even lower than it was in 2009 following the global economic crisis. For comparison, the U.S. GDP per capita is USD\$55,836 (World Bank 2016).

<sup>159</sup> Excluding Ukraine's oligarchs, who have the power to manipulate circumstances for their personal gain.

conducting business in Ukraine has been exceptionally difficult. Some hindrances to economic progress that promote economic inequality are excessive tax burden and corrupt tax officials (Johnson, Kaufmann and Zoido-Lobaton 1998), property rights that are consistently below the world average (Heritage Foundation 2016), and excessive corruption that hinder reform efforts (Tridico and Zhak 2016; Chornokondratenko and Williams 2016). Johnson *et al* (1998) examined various empirical data to determine how such a state of affairs affects a country's underground economy. Not surprisingly, their research showed that almost 50 percent of Ukraine's GDP took place in its underground economy in 1995.

The fact that so many Ukrainians conduct their business illegally without the protection from courts, police, or other government institutions, supports the argument that Ukrainian politicians have failed to implement policies that deliver quality political goods to Ukrainian citizens. Indeed, the economy in Ukraine has suffered and many Ukrainians have given up on the hope of political reform and 'voted with their feet' by leaving to find work in other countries.<sup>160</sup> Generally speaking, it must be noted that even as the Russophones former economic advantage is evened out, the Russian-Ukrainian divide is of minor significance because politicians have created such a poor business climate for all ethnic groups, making the economic situation in Ukraine equally bad for all Ukrainian citizens.

Policy promoting a linguistic-ethnic divide, as discussed in the previous sections, has exacerbated the effects of rising economic inequality in Ukraine. The author posits that economic inequality was one contributing factor that helped push the rising tensions to their tipping point, resulting in social and political unrest. This can be attributed to the success that Ukrainian politicians have experienced when tying language rights to economic policy and failing to deal with the real underlying economic problems. By failing to promote economic freedom and equality in Ukraine, politicians have indeed manipulated their constituencies for their own gain. Such manipulative political behaviour has stoked tensions between Ukraine's ethnic Russians and ethnic Ukrainians and has been a key factor in the division between Ukraine's east and west regions.

The use of rhetoric in political debate over international domestic policy is simply a tactic used to dodge the real issue - the cause of Ukraine's weak economy can be attributed to domestic

---

<sup>160</sup> "With \$9.3 billion, Ukraine remains the largest recipient of remittances in the region in 2013, followed by Tajikistan with \$4.1 billion, and Romania with \$3.6 billion" (World Bank 2013).

corruption and the lack of quality political goods.<sup>161</sup> When asked about the progress that has been made in reforming corruption since Euromaidan (2014), former First Deputy Interior Minister Eka Zguladze noted that our “...islands of success will drown in the ocean of corruption, nihilism, [and] bureaucracy, if we do not build bridges between them, creating a continent.” (Chornokondratenko, and Williams 2016). The difference between domestic policies and foreign economic policies have been twisted around by politicians as to the effect they will have on improving Ukraine’s economy. Indeed, domestic policy issues are easily brushed aside by those who conflate domestic policy with the debate over foreign policy or ethnic division. In short, focusing on Ukrainian-Russian ethnic issues has been used as a tactic to sidestep domestic problems and delay reforms that would benefit both ethnic groups.

### *Regional Autonomy*

Ukraine’s constitution defines the country as a unitary state. Its territory is divided into 24 oblasts (provinces) that have limited responsibility to collect taxes, yet are responsible for social spending on ‘big ticket’ items such as special hospitals, education, and water supply (IMF 1999). Taxation rates for main sources of revenue such as income tax, vehicle tax, and land tax, are set and collected by the central government in Kyiv, leaving provincial governments with the authority to collect 16 small ‘nuisance taxes [sic]’ (ibid, 37) that have made up as little as 2 percent of regional budgets. Regional budgets have been reliant on non-transparent, annually negotiated transfers from Kyiv - a state of affairs that is bound to be fraught with problems given the existing ethnic divisions in the country. Reductions in amounts from previous years, or delivery of less revenue than was promised, as was the case in 1998 when the annual transfers to regional governments were reduced by 50 percent (ibid, 14) are bound to be interpreted as showing preference to one ethnic group over another regardless of the rationale behind the decision.

Ukraine’s unitary system, coupled with a past history of unreliable, non-transparent annual transfers, has given regional governments little authority to be proactive in funding their budgets and has left them reliant on the Kyiv central government. Given that the central government has

---

<sup>161</sup> One of the most visible reforms has been the police officers were sacked en masse across the country after Euromaidan and replaced with newly trained officers who are very well received by Ukrainians. Their popularity stems not from their uniforms, body cameras and tablets, but the fact they do not demand bribes (Chornokondratenko and Williams 2016).

implemented pro-Ukrainian reform in education and language, ethnic Ukrainian regions are likely to support such an arrangement while ethnic Russian regions have a reason to perceive a lack of autonomy as an extension of pro-ethnic-Ukrainian policy. This makes the distribution of centralized tax collection, distributed via Kyiv to the oblasts, a contentious political issue. Consider that in 1995, the industrialized Donbas occupied 9 percent of Ukrainian territory, had 17 percent of Ukraine's population, and produced 21 percent of the country's taxable economic output (Wilson 1995). Due to Russian-Ukrainian ethnicity issues, the knowledge that tax revenues from ethnic Russian regions goes to Kyiv and could be used to fund transfers to poorer ethnic-Ukrainian regions in the west undoubtedly provokes tension. In this way, regional governments, especially those in ethnic Russian regions with proportionally greater economic production, have a motive to tolerate local informal economies as long as doing so keeps currency that would otherwise wind up as tax revenue sent to Kyiv in their local region. Thus, interests of the central government and provincial governments are poorly aligned and promote the development of informal economies as a way of influencing wealth distribution.<sup>162</sup>

By opting for a unitary state model, Ukraine has polarized its citizens. The following passage summarizes the debate on the model of governance in the year 2000, nine years after Ukraine's independence:

In general, Ukrainian national democrats, centrists, and nationalists supported the maintenance of a unitary state with limited local autonomy, particularly in the political realm... [while] the center-left, Communists, Socialists, some liberals, and regional elites in southern and eastern Ukraine tended to favor a federal system with more pronounced regional autonomy, especially in the economic arena (Bugajski 2000, 168).

Thus, it is possible to trace the path of today's separatist movement in Eastern Ukraine back to political debates fourteen years before the breakout of armed conflict in the Donbas. It is also possible to see how limited regional autonomy in Ukraine developed into a separatist movement where ethnic Russians were a majority and where the region produced a greater share of economic

---

<sup>162</sup> The IMF (1999) acknowledges that estimates of the size of Ukraine's underground economy range from 20-80 percent of GDP, thus that a significant amount of business in Ukraine generates no taxable revenue whatsoever for Kyiv.



output. It was no surprise that separatists, supported by Russia, took advantage of a brief window of opportunity when no president was in office to sign military orders to annex Crimea and instigate a rebellion in the east. By following the model of a unitary state, limited regional autonomy has encouraged separatism by marginalizing entire regions that have been demanding greater autonomy from Kyiv for years. Their successful rebellion has upped the ante for the degree of autonomy they demand. While their demands had previously focused on arrangements that resulted in more autonomy from Kyiv, their rebellion has placed options on the table that were previously unavailable to them. Now, the rebellion in the Donbas has placed the establishment of a separatist state and the possibility of a merger with Russia on the table as well.

### *Synthesis*

The policies discussed above have created civil unrest and political strife in Ukraine, but the country has not slipped into the chaos of collapse as seen in countries such as Sudan, Syria or Afghanistan. Nevertheless, Kyiv maintains its unitary power, Russian language and culture remain marginalized, armed conflict continues in the eastern part of the country, Russia has tightened its grip on the annexed Crimean peninsula, and a financial crisis has resulted in an IMF bailout package, structural adjustments, and the devaluation of the hryvnia.<sup>163</sup> The most accurate appraisal of the situation seems to be that Ukraine is a failed state because these issues are the result of a poorly conceived policy paradigm<sup>164</sup> that will need to be re-thought and shifted before the country can move forward.

This paper has provided examples of how the Russian population in Ukraine has been exposed to a similar process of assimilation into Ukrainian culture that Ukrainians were exposed to under Soviet rule, showing that Ukrainian “policy responds less directly to social and economic conditions than it does to the consequences of past policy” (Hall 1993, 277) - in this case, post 1991 policy has been a reaction to the effects of Russian assimilation in Ukraine. An alternative policy path for Ukraine would have been the creation of an inclusive society upon independence, but this opportunity was missed. While in Soviet times, “Russification... proceeded through limiting access to Ukrainian schools, mass media and culture,” (Wilson 1995) independence has brought about a

---

<sup>163</sup> The hryvnia is Ukraine’s state currency. Between 2004 and 2015 Ukraine’s currency has devalued from 6 Hryvnias to 1 US dollar to 24 Hryvnias to 1 US dollar (xe.com).

<sup>164</sup> See Hall (1993).

reversal of policy and Kyiv has been governing the way in which it was governed in the past, turning processes of Russification into policies of Ukrainianization. The tyranny of the majority has implemented a reversal of policy through pluralism and it shows a remarkable lack of social learning from past experience.

The net effect of the policies enacted by the Ukrainian central government seem to have been an attempt to counterbalance social policies enacted under Soviet rule in the hope that it would be possible to reverse their effects, but was undertaken with little consideration of adverse reactions from ethnic-Russian citizens in the past, potential responses from Russia, and how policies of ethnic marginalization have played out in other countries in modern history. Instead of assimilation, transnationalism has proven to be a more modern approach to policymaking that allows members of society to maintain social, cultural, political and economic linkages to their home country when residing away from the country they identify with (Hagan 2006). Transnationalism is a contemporary approach that respects cultural minorities' right to maintain dual identities that they themselves determine vis-a-vis their resident state and their own cultural/ethnic/racial roots.

In addition to a paradigm shift of policy in the years after 1991, there was also a paradigm shift of culture as new traditions came into the fold when the U.S.S.R.'s traditions (or at least some of them) became obsolete. Hobsbawm and Ranger's *The Invention of Tradition* (2012) is relevant to understanding the post-independence Ukrainian experience from a historical perspective. They posit that culture is in a perpetual state of flux and that by introducing newly 'invented traditions', societies move to cultural balance points where there is a general agreement on what culture 'is' in society. This framework for understanding and interpreting the relationship between culture and politics in Ukraine invites us to view cultural balance points in Ukraine's contemporary history through the lenses of eras of political control i.e. Russian Czars, the 1917-21 Kyiv-based government, the U.S.S.R. Moscow-based government, and the post-1991 Kyiv-based sovereign government. In each of these eras, Ukraine's governors have changed and ideologies have come and gone. Throughout these transitions, historical narratives have adapted to fit current political realities and culture, which, in line with Hobsbawm and Ranger's framework of thinking, have indeed been in a constant state of flux.

Ukraine's most recent 'invented traditions' can be found in the four policies considered previously - historical narratives in education, Russian language as a minority language, economic development of Ukraine's 'free' market, and Kyiv as a unitary centre of power - exemplify new political traditions that would have been unthinkable only a generation ago. Upon independence in

1991, the Kyiv government attempted to give the drastic changes in Ukrainian society 'sanctions of precedent' by adopting new historical narratives but 'social continuity' was overlooked in the process.<sup>165</sup> In this way, the desired cultural changes failed to take root as intended. It is clear that Kyiv has not struck a cultural balance between its two dominant populations. Kyiv's policies, while perhaps intended to unite the people of Ukraine, have had much the opposite effect and have brought Ukraine to a state of crisis with symptoms of state failure. Since 1991, the country has failed to reach a cultural balance point and its efforts to define itself as Russia's other will not work as long as a significant part of Ukraine's population self-identifies as Russian.

Kyiv has failed in its attempt to reach a cultural balance point and now must resolve issues created by its domestic policies; however, such matters are by no means unique to Ukraine. How then, have these problems cause such social and political strife in Ukraine while having a lesser impact on other countries? The answer lies in the idea presented earlier in this essay that in certain contexts, certain problems, or combinations of problems, have a bigger impact. While other countries are able to circumvent crises while managing with these issues, Ukraine's current situation does not permit its governors the same luxury. Ukraine's regional hegemon - the Russian Federation - was able to use the weakness that Kyiv had cultivated through its domestic policy to further its own political aims.

Presently, Kyiv is presented with three options. It must either shift to a new policy paradigm, redraw its borders in Eastern Ukraine, or else accept the possibility of an ongoing border dispute in Eastern Ukraine. Since Moscow has undertaken a policy of assistance for unrecognized pro-Russian breakaway states,<sup>166</sup> it seems that separatists in the Donbas can expect ongoing Russian support. Simply put, Kyiv is not powerful enough to tussle with Moscow over the right to enforce policies that are unpopular with Ukraine's ethnic Russians, and considering that Ukraine has its sights set on EU economic integration, Ukraine is under some pressure to resolve its domestic issues and implement the necessary reforms to achieve economic and social stability before it can strengthen economic ties with the west. Resolving the dispute in the east will be a prerequisite if Kyiv is to be successful in its efforts to court the EU as its new patron.

While rolling back the current policy paradigm is a possibility, for Ukrainians who endorse Kyiv's post 1991 policies, this would appear as though Kyiv has acquiesced to Moscow and any

---

<sup>165</sup> These terms are borrowed from Hobswam and Ranger (2012).

<sup>166</sup> I.e. Transnistria, Abkhazia and South Ossetia.

perceived Ukrainian nationalist progress will be lost. Conversely, pressing forward with Kyiv's post 1991 policies means overcoming the opposition either militarily or culturally if Kyiv is to continue to exercise its unitary power. Thus, Kyiv cannot press forward, nor move backward. Given Kyiv's efforts to break away from Russia and develop relations with the EU, Kyiv must accept that it has alienated its ethnic-Russians in the east and begin negotiating a devolution of power that allows for political self-determination for oblasts seeking greater autonomy. Indeed, Kyiv will have to give up control over some of its former administrative remit in the process.<sup>167</sup> Other countries in the region have recently dealt with ethnic divisions, separatist movements, and disputes with Russia and they can serve as models for achieving greater stability in Ukraine. A comparison using the *Fragile State Index* makes such an analysis possible.<sup>168</sup> Ukraine's dilemma can be contrasted against the Belarusian government's pro-Russian position, Georgia's experience with pro-Russian Abkhazia and South Ossetia, and the ethnic tensions and subsequent fragmentation of Yugoslavia.

Simply acquiescing to Russia as Belarus has done is one possible course of action. Hancock (2006) goes so far as to suggest that Belarusian cooperation with Russia has reached such a level that Belarus has sacrificed part of its sovereignty to Russia. But following Belarus' lead runs counter to Kyiv's present pro-EU position, making this option unrealistic for Ukraine. Another possible path that Kyiv could take with the separatists in the Donbas is to prolong the dispute and promote reunification as Georgia did with South Ossetia and Abkhazia; however, Russia has remained firm in protecting pro-Russian breakaway territories, making a prolonged dispute a real possibility. When Georgia took action to reclaim these territories, Medvedev, the president of the Russian Federation at the time, noted that Russia was able to 'coerce Georgia to peace',<sup>169</sup> bringing an end to aggressions and obliging the Georgian government to abandon their efforts to control South Ossetia and Abkhazia. How have these courses of action affected stability in Belarus and Georgia? The 2015

---

<sup>167</sup> Indeed, Crimea has already been annexed and the Russian Federation has taken over administration of the peninsula.

<sup>168</sup> Note that the higher score, the weaker the state. Consider that Ukraine currently ranks as the 84th most fragile state in the 2015 *Fragile State Index* with a score of 76.3.

<sup>169</sup> See *Russia Resurgent? Moscow's Campaign to 'coerce Georgia to Peace'* Allison (2008).

*Fragile State Index* identifies Belarus as slightly more stable<sup>170</sup> than Ukraine, and while Georgia is even less stable<sup>171</sup> than Ukraine.<sup>172</sup>

The improved stability in newly formed states following the breakup of Yugoslavia perhaps offers the most promising option. The scores from the *Fragile States Index* can be used to determine long-term trends in stability of these former Yugoslavian countries over the past decade. They are listed here, with Ukraine included for comparison.

#### **Fragile States Index - Decade Trends 2006-2015**

<b>Country</b>	<b>2015</b>	<b>2006</b>	<b>Improvement In Stability</b>
Ukraine	76.3	72.9	Declined by 3.4 points
Croatia	51.0	61.9	Improved by 10.9 points
Bosnia & Herzegovina	77.4	88.5	Improved by 11.1 points
Macedonia	64.5	75.1	Improved by 10.6 points
Serbia <sup>173</sup>	73.8	81.1	Improved by 7.3 points
Slovenia	31.6	36.8	Improved by 5.2 points

Source: Fund for Peace 2006-2015

---

<sup>170</sup> Belarus was 0.7 points ahead of Ukraine with a score of 75.6 making it the 87th most fragile state.

<sup>171</sup> Georgia was 3 points behind Ukraine with a score of 79.3 making it the 70th most fragile state. The country improved by 3.5 points over its 2014 score.

<sup>172</sup> For reference, Russia itself ranks as an even more fragile state than Georgia, Belarus, and Ukraine, with a score of 80.0 in the category of 'High Warning' ranking as the 65th most fragile state. While Russia was able to subdue its own separatist movement in Chechnya, this only serves to illustrate that subduing separatists neither solves underlying problems nor bring about stability. Such conflicts are symptoms of larger problems that politicians cannot make 'go away' using force. Although Chechnya is "firmly under the control of its Russian-appointed leader", low level guerrilla attacks still continue (BBC 2015).

<sup>173</sup> The score has been calculated from 2007 due to Serbia not being an independent country in 2006.

Based on the experience of other states in the region, acquiescing to Russia and allowing the Donbas to become an autonomous region are both viable options, but formal fragmentation into a separate state seems to promise the greatest amount of stability for Ukrainians in the future. Therefore, Ukraine must come to terms with its Soviet past, recognize its policy failures, and look forward to a version of the future that is different than the one it has been striving to achieve. The annexation of Crimea and the armed conflict with separatists in the East are the result of Ukrainian domestic policy that failed to take into account the interests of all citizens of Ukraine. It is important to recognize that the international community needs to be vigilant in identifying such discriminatory domestic policies and provide guidance based on social learning from past cases when such policies are identified in order to prevent state failure, or worse, complete collapse. The international community must share the benefits of past social learning through its global institutions and apply pressure to bring about paradigm shifts in domestic policy - without waiting for states to experience a crisis first.

This paper has explored how the social constructs of the Ukrainian nation-state and the Ukrainian state are, in fact, incompatible. This idea is congruent with the fate of Yugoslavia, which is an example of state failure, but also an example of success, as the breakup laid the foundation for several smaller, more stable countries. The failure of Yugoslavia provides an example of social learning that can be applied in Ukraine, which has the potential to minimize turmoil and the severity of crisis. Indeed, the international community's claim that failed states are costly to remedy must be backed by action. When the international community fails to intervene in time to guide domestic policy to prevent state failure, one must conclude that the benefits of inaction in the short-term outweigh the costs of rebuilding a state in the future. In this light, inaction seems short-sighted. What is the purpose of social learning if not to benefit from past experience, knowing that allowing a state to fail will incur the greater expense in the future?

### *Conclusion*

Hobsbawm and Ranger's (2012) ideas support the notion that Ukrainian policy is based on present perception of past customs and ideas that play out as an ongoing 'balance of forces'. From a broad historical perspective, the 'balance of forces' in Ukraine have been in a perpetual state of flux and Ukraine has indeed been, and still is, a democracy in transition; thus, reforming the four policies

discussed in this paper has the potential to create a stable rebalancing; one based on modern social learning that takes broad historical perspectives into account. Education will need to be reformed to reflect the importance of evaluating the perspectives of those purporting the different historical narratives that are part of Ukraine's history. As Ukrainian Prime Minister Arseniy Yatsenyuk points out: "...in foreign educational system[s] it is essential to think. And unless we switch to this function, we won't be able to achieve real progress." (Ukrainian Government 2015). Language policy should focus on inclusion by granting ethnic Russians culturally specific minority group rights<sup>174</sup> rather than general minority rights. Additionally, Ukrainian politicians must use their positions to elicit positive change in economic and political spheres. Finally, issues of regional autonomy must be addressed and a mechanism for a devolution of power to create a new autonomous territory or a federated system must be implemented, as many other states have done with successful outcomes.<sup>175</sup>

Recent interventions in Ukraine are not simply isolated events or the undertaking of any single politician but are in fact the culmination of several themes that have been developing over many years, involving successive legislatures. Although current problems in Ukraine seem as though they could be attributed to external actors, this paper has laid out how, in fact, this is not the case. The Ukrainian government itself laid the foundation for its current problems through its own domestic policy as politicians used democratic processes<sup>176</sup> to advance their own interests and gain political power. The resulting internal strife simply allowed external forces to take advantage of political and social unrest that originated in Kyiv. The recent developments in Ukraine and the acute need for change highlights the fact that Ukraine is a country in transition and indeed, reforms and compromises must be made in order to establish stability in the region. It is important that Ukraine's domestic policy be examined so that we can understand how domestic policy is a contributing factor of state failure. This will allow Ukraine's experience to serve as an opportunity for social learning

---

<sup>174</sup> Kesler and Bloemraad (2010, 324) propose this idea for immigrants in general, not ethnic Russian in Ukraine in particular.

<sup>175</sup> "...most states have in recent years undertaken significant additional devolution from national to subnational spheres. The many examples include decentralization by the 74th amendment to the Indian Constitution in 1996, the construction of Flemish and Walloon governments in Belgium by the constitutional revision of 1980, power transfers from the centre to the provinces in Argentina, increased autonomy for the Government of Quebec within Canada, and greater competences for the districts in Uganda" (Scholte 2005, 203).

<sup>176</sup> The notion of real democracy in Ukraine is debatable. For example, just before the Orange Revolution in 2004, Viktor Yanukovich's election victory was overturned due to claims of widespread irregularities and election fraud.

and perhaps identify potential risks that will serve to prevent similar cases of state failure in the future.



## Bibliography

- Alesina, Alberto, and Eliana La Ferrara. "Ethnic Diversity and Economic Performance." *Journal of Economic Literature* 43.3 (2004): 762-800. *Dash.harvard.edu*. Harvard. 22 Nov. 2015. <[https://dash.harvard.edu/bitstream/handle/1/4553005/alesinassrn\\_ethnicdiversity.pdf?sequence=2&origin=publication\\_detail](https://dash.harvard.edu/bitstream/handle/1/4553005/alesinassrn_ethnicdiversity.pdf?sequence=2&origin=publication_detail)>.
- Allison, Roy. "Russia Resurgent? Moscow's Campaign to 'coerce Georgia to Peace'." *International Affairs* 84.6 (2008): 1145-171.
- Bever, Olga. *Multilingualism and Language Policy in Post-Soviet Ukraine: English, Ukrainian and Russian in Linguistic Landscapes*. Rep. Washington DC: Irex, 2011.
- Biersteker, Thomas J., and Cynthia Weber. "The Social Construction of State Sovereignty." *State Sovereignty as Social Construct*. Cambridge: Cambridge UP, 1996. 1-21.
- "Budapest Memorandums on Security Assurances, 1994." December 05, 1994. Accessed July 14, 2016. <http://www.cfr.org/nonproliferation-arms-control-and-disarmament/budapest-memorandums-security-assurances-1994/p32484>.
- Bugajski, Janusz. "Ethnic Relations and Regional Problems in Independent Ukraine." *Ukraine: The Search for a National Identity*. By Sharon L. Wolchik and Volodymyr Zviglyanich. Lanham, MD: Rowman & Littlefield, 2000. 165-81.
- "Chechnya Profile." *BBC News*. BBC, 18 Aug. 2015. 21 Nov. 2015. <<http://www.bbc.co.uk/news/world-europe-18188085>>.
- Chomsky, Noam. *Failed States: The Abuse of Power and the Assault on Democracy*. New York: Metropolitan/Henry Holt, 2006.
- Chornokondratenko, Margaryta, and Matthias Williams. "New Police Force Finds Old Habits Die Hard in Ukraine." Reuters. May 17, 2016. Accessed July 29, 2016. <http://www.reuters.com/article/us-ukraine-crisis-police-idUSKCN0Y80WN>.
- Cingano, Federico. Trends in Income Inequality and Its Impact on Economic Growth. Working paper

- no. 163. 2014. <http://dx.doi.org/10.1787/5jxrjncwxv6j-en>.
- Council of Europe. *European Charter for Regional or Minority Languages*. Ukrainian Government, 2 Nov. 1992. 12 Nov. 2015. <[http://zakon5.rada.gov.ua/laws/show/994\\_014](http://zakon5.rada.gov.ua/laws/show/994_014)>.
- "Country Rankings." : *World & Global Economy Rankings on Economic Freedom*. The Heritage Foundation, n.d. 14 Nov. 2015. <<http://www.heritage.org/index/ranking>>.
- "Good Voters, Not Such Good Guys." *The Economist*. The Economist Newspaper, 01 Nov. 2014. 16 Oct. 2015.
- "Government Portal :: PM: A Law on Education - a Larger Autonomy for Headmaster and a Contract for Teacher." *Government Portal :: PM: A Law on Education - a Larger Autonomy for Headmaster and a Contract for Teacher*. 15 Oct. 2015.
- Esty, Daniel C., Jack Goldstone, Ted Robert Gurr, Barbara Harff, Pamela T. Surko, Alan N. Unger, and Robert Chen. "The State Failure Project: Early Warning Research for U.S. Foreign Policy Planning." *The State Failure Project*. Purdue University, Feb. 1998. 16 Nov. 2015. <[http://www.comm.ucsb.edu/faculty/mstohl/failed\\_states/1998/papers/gurr.html](http://www.comm.ucsb.edu/faculty/mstohl/failed_states/1998/papers/gurr.html)>.
- Fisher, Max. "This One Map Helps Explain Ukraine's Protests." December 9, 2013. Accessed July 16, 2016. <https://www.washingtonpost.com/news/worldviews/wp/2013/12/09/this-one-map-helps-explain-ukraines-protests/>.
- "GDP Per Capita." World Bank Indicators. Accessed July 17, 2016.
- Hagan, Jacqueline. "Negotiating Social Membership in the Contemporary World." *Social Forces* 85.2 (2006): 631-42.
- Hall, Peter A. "Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain." *Comparative Politics* 25, no. 3 (1993): 275-96.
- Hancock, Kathleen J. "The Semi-Sovereign State: Belarus and the Russian Neo-Empire." *Foreign Policy Analysis* 2.2 (2006): 117-36.
- Hobsbawm, Eric, and Terence Ranger, eds. *The invention of tradition*. Cambridge University Press, 2012.
- Heclo, Hugh, *Modern Social Politics in Britain and Sweden* (New Haven: Yale University Press, 1974).

"Index of Economic Freedom." Index of Economic Freedom. Accessed July 30, 2016.

<http://www.heritage.org/index/visualize>.

Johnson, Simon, Daniel Kaufmann, and Pablo Zoido-Lobaton. "Regulatory discretion and the unofficial economy." *The American Economic Review* 88, no. 2 (1998): 387-392.

Karácsonyi, Dávid, Kostyantyn Mezentsev, Grygorii Pidgrusnyi, and Zoltán Dövényi. "From Global Economic Crisis to Armed Crisis: Changing Regional Inequalities in Ukraine." *Regional Statistics Reg. Stat.* 4.2 (2014): 18-39.

Kesler, Christel, and Irene Bloemraad. "Does Immigration Erode Social Capital? The Conditional Effects of Immigration-Generated Diversity on Trust, Membership, and Participation across 19 Countries, 1981–2000." *Can J Pol Sci Canadian Journal of Political Science* 43.02 (2010): 319-47.

Kulyk, Volodymyr. "Language Policies and Language Attitudes in Post-Orange Ukraine." In *Language Policy and Language Situation in Ukraine: Analysis and Recommendations*, edited by Juliane Besters-Dilger, 15-55. Frankfurt: Peter Lang, 2009.

*Languages Spoken At Home*. Publication. Kyiv: Kyiv National Linguistic University, 2009.

Magocsi, Paul R. *A History of Ukraine: The Land and Its Peoples*. Toronto: U of Toronto, 2010.

McNeely, Connie L. *Constructing the Nation-state: International Organization and Prescriptive Action*. Westport, CT: Greenwood, 1995.

Messner, J. J., Nate Haken, Patricia Taft, Hannah Blyth, Kendall Lawrence, Sebastian Pavlou Graham, and Felipe Umaña. *Fragile States Index*. Rep. Washington DC: Fund For Peace, 2015.

"Migration and Remittance Flows in Europe and Central Asia: Recent Trends and Outlook, 2013-2016." *Worldbank.org*. World Bank, 2 Oct. 2013. 14 Dec. 2015.

"National Anthems (Field Listing)." *The World Factbook*. Central Intelligence Agency, n.d. 23 Nov. 2015. <<https://www.cia.gov/library/publications/the-world-factbook/fields/2218.html#159>>.

"On Languages in the Ukrainian SSR." *Про мови в Українській РСР*. Supreme Council of the U.S.S.R., 28 Oct. 1989. 12 Nov. 2015. <<http://zakon5.rada.gov.ua/laws/show/8312-11>>.

- "Packing a Punch: Fist Fights the Norm in Ukraine's Parliament." *YouTube*. YouTube, 8 July 2012. 12 Nov. 2015. <[https://www.youtube.com/watch?v=emKIlv2\\_cNI](https://www.youtube.com/watch?v=emKIlv2_cNI)>.
- "Personal Remittances, Received (current US\$)." *Http://data.worldbank.org*. World Bank, n.d. 14 Nov. 2015.  
<[http://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT/countries?order=wbapi\\_data\\_value\\_2013+wbapi\\_data\\_value&sort=asc](http://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT/countries?order=wbapi_data_value_2013+wbapi_data_value&sort=asc)>.
- Richardson, Tanya. *Kaleidoscopic Odessa: History and Place in Contemporary Ukraine*. Toronto: U of Toronto, 2008.
- Rodgers, Peter W. "'Compliance or Contradiction'? Teaching 'History' in the 'New' Ukraine. A View from Ukraine's Eastern Borderlands." *Europe-Asia Studies* 59.3 (2007): 503-19.
- "Rescue Ukrainian Language." *YouTube*. YouTube, 21 May 21. 12 Nov. 2015.  
<<https://www.youtube.com/watch?v=VrzdsndKTOc>>.
- Rotberg, Robert I. "Failed States, Collapsed States, Weak States: Causes and Indicators." In *State Failure and State Weakness in a Time of Terror*, edited by Robert I. Rotberg, 1-25. Washington, D.C.: Brookings Institution Press, 2003.
- Rumford, Chris. "Theorizing Borders." *European Journal of Social Theory* 9.2 (2006): 155-69.
- Scholte, Jan Aart. *Globalization: A Critical Introduction*. New York: Palgrave Macmillan, 2005.
- Staff Country Reports - Ukraine: Recent Economic Developments*. Rep. no. 99/42. N.p.: International Monetary Fund, 1999.
- Smedley, Audrey, and Brian D. Smedley. "Race as Biology Is Fiction, Racism as a Social Problem Is Real: Anthropological and Historical Perspectives on the Social Construction of Race." *American Psychologist* 60.1 (2005): 16-26.
- Smith, Michael G., and Moreen Dee. *Peacekeeping in East Timor: The Path to Independence*. Boulder, CO: Lynne Rienner, 2003.
- Snyder, Timothy. *Bloodlands: Europe between Hitler and Stalin*. New York: Basic Books, 2010.
- Stern, David. "Russia Offers Ukraine Major Economic Assistance." BBC News. December 17, 2013. Accessed July 30, 2016. <http://www.bbc.co.uk/news/world-europe-25411118>.

Stierli, Markus. *Global Wealth Databook 2015*. Publication. Credit Suisse, Oct. 2015. 15 Nov. 2015.  
<<http://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=C26E3824-E868-56E0-CCA04D4BB9B9ADD5>>.

Tridico, Pasquale, and Iryna Zhak. "The Second Ukrainian Transition: From Oligarch Economy to a Sustainable Development Model." *Challenge* (2016): 1-24.

Constitutional Court of Ukraine. *The Decision of the Constitutional Court of Ukraine in Case of Constitutional Submission of 54 People's Deputies of Ukraine regarding the Conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Ratification of the European Charter for Regional or Minority Languages, 1992" (case of the Ratification of the Charter on Languages, in 1992)*. Ukrainian Government, 12 July 2000. 12 Nov. 2015.  
<<http://zakon5.rada.gov.ua/laws/show/v009p710-00>>.

Ukraine. State Statistics Committee of Ukraine. *All Ukrainian Population Census 2001*. Ukrainian Government, 2001. 12 Nov. 2015.  
<<http://2001.ukrcensus.gov.ua/eng/results/general/language/>>.

Ukraine. Supreme Council of Ukraine. *Rada.gov.ua*. Ukrainian Government, 15 May 2003. 12 Nov. 2015. <<http://zakon5.rada.gov.ua/laws/show/802-15>>.

Ukraine. Supreme Council of the U.S.S.R. *On Languages in the Ukrainian SSR*. Ukrainian Government, 28 Oct. 1989. 12 Nov. 2015. <<http://zakon5.rada.gov.ua/laws/show/8312-11>>.

Ukraine. Verkhovna Rada. *On Principles of State Language Policy*. Ukrainian Government, 3 July 12. 12 Nov. 2015. <<http://zakon5.rada.gov.ua/laws/show/5029-17>>.

Wilkinson, Richard G., and Kate Pickett. *The Spirit Level: Why Greater Equality Makes Societies Stronger*. New York: Bloomsbury Press, 2010.

Wilson, A. "The Donbas between Ukraine and Russia: The Use of History in Political Disputes." *Journal of Contemporary History* 30.2 (1995): 265-89.

"XE Currency Charts (USD/UAH)." *XE.com*. 21 Nov. 2015.  
<<http://www.xe.com/currencycharts/?from=USD&to=UAH&view=5Y>>.



# Statebuilding in Cambodia: Contradiction between Rule of Law and State Capacity to Maintain Peace and Stability?

*Sivhuoch Ou, research fellow (on leave), Cambodia Development Resource Institute and doctoral candidate of Political Science (International Development Studies), the University of Guelph, Ontario, Canada.*

## Abstract

*Statebuilding, referring to the efforts of international actors made to establish effective and legitimate institutions in the global south, has become an emerging paradigm since the early 2000s. Since then, dozens of statebuilding missions have been carried in various parts of Africa, Asia and even Europe. However, the statebuilding industry has produced little documented success and remains full of dilemmas. A major contradiction is how the outsiders have designed and implemented conflicting agendas and thus the objectives are arguably not attainable. Often statebuilders simultaneously promote Neo-Weberian state capacity by enhancing state autonomy and centralizing power, and democratization, particularly rule of law, intended to constrain the state through promoting checks and balances. The two concepts clash in post conflict settings. Using the case of Cambodia, the paper empirically finds and echoes such crucial tension. It argues that the external interveners' emphasis and approach to strengthen rule of law disturbs the state capacity being enhanced in parallel to sustain peace and stability. In other words, the hard earned peace and stability in the context of Cambodia, whether it is negative or virtual peace in the sense that the peace is unlikely to sustain without institutions underpinning it, would be threatened if the institution of rule of law were simultaneously imposed and consequently followed by the local actors to the level the local capacity is unable to accommodate. Methodologically, it showcases three empirical elements of how peace and stability have been obtained via 1) a large size of civil servants, 2) stable elite political settlement, and 3) unbalanced power among the executive, judiciary and legislature branches.*

## Introduction

Statebuilding, defined as “actions undertaken by international or national actors to establish, reform, or strengthen the institutions of the state and their relation to society” (Call 2008, 5), has become a top priority in international development from around 2000s. At the time, it was assumed that weak states were easily (re)-constructed as long as they accepted to implement the ideas of the international community in building liberal state institutions (Chandler 2013). That has not been the case (Chandler 2013, Richmond 2014). The statebuilding industry, over the past 15 years, has

produced little documented success (Fritz and Menocal 2007) and remains full of dilemmas – statebuilding is “an inherently contradiction-filled enterprise” (Paris and Sisk 2009b, 13).

Fundamental contradictions that are relevant to this paper include, inter alia, the following. A critical tension is the encounter between the international statebuilding forces and the local dynamics (such as historical forces, identity, culture and tradition) have produced states whose characters are heavily contextually contingent (Richmond 2014). Richmond discovers that the statebuilding efforts are much less powerful than initially assumed and that the local contexts are more deterministic in crafting the state emergence following statebuilding intervention.

Another major contradiction is raised by Roland Paris (2004) who criticizes that often statebuilders’ attempt to impose institutionalization and liberalization simultaneously is highly problematic in post war states. He argues that liberalization both in the forms of democratization and marketization requires institutions in place. Without institutions, Paris warns that the states are incapable of resolving varied and numerous conflicts arising from the liberalization process and therefore violence would relapse. Therefore, he proposes the model of Institutionalization Before Liberalization (IBL), theorizing that institutions need to be nurtured prior to the liberalization phase.

Others criticize that statebuilders lack workable statebuilding models and hence they have produced a contradictory approach of states in post conflict settings (Hameiri 2013). For instance, neoliberal and neo-Weberian models are imposed at the same time in most post conflict arenas (Hameiri 2013). Promoting a neoliberal state means establishing a small state with a minimal role in the market and the society. In contrast, a neo-Weberian state has a much bigger and stronger role in the society; it has autonomy in formulating and pursuing goals transcending the interests of social groups, classes or the society at large and sometimes in opposition of powerful social groups (Hameiri 2013). Reconciling and building, at the same time, both forms of state with starkly different conceptual foundations is problematic.

Likewise, scholars have noted another form of tension - how building states (strengthening the state capacity means promoting state autonomy and centralization of power) clashes with democratization which is intended to constrain the state through, for instance, promoting checks and balances (Menocal 2013, Fukuyama 2014a, b). Framed differently, statebuilders envision to build (more) capable and effective states; however, at the same time they aim, under the notion of democratic structures and democratization, to establish the state that is under check as well (Fritz and Menocal 2007).



This paper's investigation falls into the scope of the last contradiction above. It examines the implications of outsiders' attempt to foster peace and stability in post conflict societies (as an element of neo-Weberian state capacity) and rule of law (as an element of democratization) simultaneously, using the case of Cambodia. It argues that the external interveners' emphasis and approach to strengthen rule of law disturbs the peace process being promoted in parallel. In other words, it makes the argument the hard earned peace in the context of Cambodia, whether it is negative peace or virtual peace in the sense that the peace is unlikely to sustain without institutions underpinning it (Richmond and Franks 2007), would be threatened if the institution of rule of law were concurrently imposed. The area has gained little attention insofar but it is significant and relevant in both academic and policy terms. Academically it pursues to contribute to statebuilding literature, empirically illustrating another stream of contradiction related to how promoting rule of law operates in severe tension with a local state capacity to restore and maintain peace and stability. Policy wide, it follows that rule of law should be lodged sequentially – peace and stability should be given the priority over rule of law.

The paper is structured as follows. First, it presents statebuilding literature and the notion of rule of law as well as state capacity to maintain peace and stability. Second, it briefly introduces statebuilding literature on Cambodia. Finally, it will show three empirical elements of how peace is obtained via a large size of civil servants, stable elite political settlement, and unbalanced power among the executive, judiciary and legislature.

### **Literature on Statebuilding, Conceptual Clarification<sup>177</sup> and Framework**

---

<sup>177</sup> Neo-patrimonialism is an extended form of patrimonialism. Weber (1978 [1968]) distinguishes patrimonial and modern states – a patrimonial political authority and legitimacy rests on what he calls traditional and charismatic authority while a modern state's authority is based on legal rationalism. Fukuyama (2014b) further simplifies Weber's conceptual distinction between patrimonial and modern states. A patrimonial state represents an extension of the ruler's household, in which the polity is considered nothing more than personal property, and in which the apparatus of the state is recruited impersonally from the household (Weber 1978 [1968]). In contrast, a modern state is *impersonal*, in which people's statuses are determined not by their relationship to the ruler but by the notion of citizenship (Weber 1978 [1968]). In a patrimonial state, there is no boundary between a public and a private sphere; on the contrary, in a modern state the public is clearly separated from the private one (Weber 1978 [1968]). No contemporary states are patrimonial but emerge in some forms of neo-patrimonialism, the term first used by (Eisenstadt 1973). Bratton and van de Walle (1997) argue that a neo-patrimonial state pretends to be modern and impersonal; however, they are not but are characterized by the co-existence of the informal patrimonial practices and the formal legal rational institutions.

Elite are defined as a group of individuals in a specific society and policy “who are in position to view themselves...as chosen, either by others or nature, to govern” (Scruton 1982, 143). The elite gain their privilege through a variety of factors, a number of which confer legitimacy on

Statebuilding<sup>178</sup> fundamentally stresses the role of international actors in establishing effective and legitimate institutions that are crucial for societal functioning (McMahon and Western 2012, Paris and Sisk 2009a). From approximately the early 2000s, two phenomena have triggered scholars to turn to emphasizing statebuilding. The first is the consensus following the 9/11 attack that failed or broken states disturbed global security and thus should not be 'allowed' (Richmond 2002). Explicitly failed-states are understood to be not only political problems internal to each respective society per se but also a global issue that demands global attention and efforts to (re)-construct those states so as to contribute to global security. The second is the growing realization that statebuilding undergirds peacebuilding - peacebuilding would fail unless state institutions are built and functioning (Paris 2004).

On the academic side, in 2004, a group of scholars were producing five major works (three books and two articles)<sup>179</sup>, all coincidentally agreed on the same thing that the strengthening of state

---

elite; however, they could obtain it through violence and domination such as a coup (Roberts 2009).

<sup>178</sup> It is worth noting that liberal peacebuilding precedes and encompasses statebuilding – it was observed and argued that peacebuilding did not work on its own and later statebuilding was considered a key underpinning element contributing to sustainable peace (Paris and Sisk 2009b). According to different accounts, particularly those by Richmond and Newman (2009) and Paris and Sisk (2009b), liberal peacebuilding project, has undergone three significant phases of evolution.

The first generation peacekeeping marked the United Nations' strategic assistance (during the Cold War) to facilitate and monitor ceasefires among countries in unstable situations. This phase ended with the end of the Cold War.

The second generation peacebuilding, occurring in the Post-Cold War period, moved with a multidimensional approach. External interventions did not just cope with instability between states but attempt to build peace inside and among states, primarily through enforcing different states to adopt liberal democracy and market economies, under the rubric of the 'Washington consensus'.

By late 1990s and early 2000s, the third generation peacebuilding, while embracing some core elements of the second phase, has adopted a more holistic approach and agenda. The cornerstones of this third generation species of peacebuilding are both statebuilding and development ambitions.

<sup>179</sup> Those include Fukuyama (2004); Paris (2004); Chesterman (2004); Krasner (2004) and Fearon and Laitin (2004).

institutions was foundational for states' successful transition from war to peace. After these five pieces of the work were published, other scholarships and policy documents of major international organizations (such as the United Nations [UN] and the Organisation for Economic Co-operation and Development [OECD] at large) have echoed the important idea of statebuilding in peacebuilding scholarship (Paris and Sisk 2009b).

Components of statebuilding which are now generally recognized include massive "trusteeship", a large scale and wide-ranging mandate with political authority and local and international consent, elections and constitutional construction (Junne and Verkoren 2005); these elements are anchored by democracy and capitalism<sup>180</sup> (Roberts 2009). The statebuilding efforts are assumed to build the modern state, equipped with the following core capacities: a capacity to monopolize means of violence; bureaucratic and financial management; rule of law; provision of infrastructure and public services; market formation; management of various state's resources (physical, human and environmental); and the conduct of foreign policy (Ghani, Clare, and Michael 2005, 6, Richmond 2014).

Over the last 15 years or so, the conceptualization of statebuilding itself has evolved, responding to the various criticisms listed in the introduction and beyond; statebuilding is no longer considered purely a technical process, as understood at its birth, but as an inherently political one as well (Menocal 2013). It has also moved from building just the capacity of the state (security and financial management) to focusing on the state society negotiation and building legitimate states, now considered central to effective and peaceful states (Menocal 2013). However, despite efforts put to improve the process, until recently, for a number of prominent scholars in the field, knowledge about complex international engagement to build states remains nascent (Chandler and Sisk 2013). Therefore, whatever statebuilding strategies deployed (to use foreign aid to support fledgling regimes or to fund civil society to reconstruct state society linkages), "are either woefully inadequate or downright harmful" (Chandler and Sisk 2013, xx). The status of the statebuilding "experiment" and its direction are unclear (Paris and Sisk 2009b). For instance, Paris and Sisk (2009b) have noted a range of opinions on the predicament. Paris and Sisk have observed that while a few endorse the status quo of statebuilding, others propose the opposite model, suggesting that in the context of

---

<sup>180</sup> The idea is democracy may not be conceived as the "end of history" but many would view it in terms of "progress" (Roberts 2009). Also embedded is the idea that whatever pattern of political organization precedes statebuilding, the embracement of democracy and capitalism would benefit the majority in the long run (Jeong 2005, 83-86).

Africa, for instance, states should be allowed to fail and re-emerge endogenously without external interventions.

One way of explaining why statebuilding faces extreme challenges in realizing its goal is critically illustrated by Francis Fukuyama (2014a). According to Fukuyama, statebuilding is too highly ambitious and forceful to be practical for states under intervention to adopt, which this article resonates. He elaborates that statebuilding attempts to construct a democratic, modern and uncorrupt state, with which there is a clear dividing line between the public and the private spheres; however, in many (post) conflict societies, the dividing line is severely eroded (Fukuyama 2014a). In such contexts, there is a large gap between the current neo-patrimonial state level and the modern state one (Fukuyama 2014a). Hence when such statebuilding programs as election arrangement, rule of law, and legal institutional building are set up and implemented to build institutions to constrain the state when it is not ready, it is problematic and unrealistic to be achieved (Fukuyama 2014a). Fukuyama stresses that statebuilders have not cared enough about the painful, hard and similar transition that even the United States of America just experienced in the early 19<sup>th</sup> century<sup>181</sup> (Fukuyama 2014a). Others echo and emphasize that historically statebuilding is a lengthy process, especially in Europe, which involves centuries of evolution and adaptation (Egnell and Halden 2013, Chandler and Sisk 2013, Lee 1988, Tilly 1985) prior to the emergence of modern state system in the 19<sup>th</sup> century.

Francis Fukuyama (2014b) further recalls that across the world's regions, institutions emerged in three distinct sequences. For the first group consisting of China, Japan, and Korea, not just the state but the modern one came into being very early (for the case of China, it was at the Qin unification back in the third century BC); however, rule of law did not coalesce until the end of the nineteenth century (Fukuyama 2014b). To the contrary, for the second group of Europe and India, the rule of law appeared earlier in either the form of Catholic Church or Brahmin Priest class; the two had higher legitimacy than the secular group (Fukuyama 2014b). For instance, in Western Europe, the modern state did not emerge until the sixteenth century and such a modern state system was rising against the entrenched law that constrained the state's absolutist use of power (Fukuyama 2014b). In India, strong social forces and law have been powerful and consequentially have prevented the emergence of a modern state until now (Fukuyama 2014b). For the third group of sub-

---

<sup>181</sup> According to Fukuyama (2014), the United States of America practiced the patronage or the spoiled system in the early 19<sup>th</sup> century. For example, in the 1828 election, John Quincy Adams, the 6<sup>th</sup> US president, was using patronage politics to win the election.

Saharan Africa, different from the two types above, the modern state did not exist prior to colonization and the traditional rules were further damaged by the colonial master; hence, at the time of their departure, those African countries are left with the tasks to the strengthen the rule of law and in the context of weak states at the same time (Fukuyama 2014b).

This section illuminates how rule of law conceptually contradicts with the state capacity to maintain peace and stability. Before doing that it is important to define rule of law, which this paper refers to

“...a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (DAC 2007, 114).

These principles restrict the use of force, referring to a particular type of political authority (e.g., ‘separation of powers’), to popular political participation, to the state’s accountability to the citizens, and to the supremacy of law. Rule of law as such represents a model of how state and society function and interact.

As some scholars pointed out above statebuilders envision achieving all the good things together. Here, two key pillars are emphasized: rule of law and state capacity to maintain peace and stability. Rule of law ensures checks and balances, limited state, and dispersal state authority. In contrast, state capacity to attain peace and stability requires the centralization of state power, more along the Skocpol (1985)’s notion of *Bringing the State Back In (BSBI)* as she puts it:

“States conceived as organizations claiming control over territories and people may formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes, or society. This is what is usually meant by “state autonomy” ... Pursuing matters further, one may then explore the “capacities” of states to implement official goals, especially over the actual or potential opposition of powerful social groups or in the face of recalcitrant economic circumstances” (Skocpol 1985, 9).

State capacity, conceptualized in this paper along the line of Skocpol's state autonomy, reflects more in terms of how the state is able to exercise its autonomy by not following the commands of donors but holding, as illustrated below, 1) the number of civil servants bloated and not effective as desired by the international community, 2) the state apparatus intact and not fragmented through compromised settlement among prominent political and business elite, and 3) the authority concentrated in the hand of the executive and not much in the hand of the legislature and judiciary. All has guaranteed peace and stability in a country severely damaged by genocide and decades of civil wars and conflicts. It will be proved that such a kind of state capacity compromises the idea of rule of law whose aims are against what have happened in the three empirical cases.

### **Statebuilding in Cambodia in Brief**

Cambodia exemplifies an extremely shattered and traumatized society (Bit 1991, Chandler 2008, Öjendal 2003). Varied factors have led to the profound deterioration of Cambodian society: 1) the external violence of the Cold War and its spillover effects such as Vietnam War in late 1960s and early 1970s and 2) the internal wars and conflicts, especially staged by the Khmer Rouge in the late 1970s that threatened the very existence of Cambodia as a nation and social fabric (Bit 1991, Chandler 2008, Öjendal 2003). Following the Khmer Rouge collapse, it suffered from the international isolation for another decade between 1979 and 1989 (Mysliwiec 1988). The United Nations Transitional Authority in Cambodia (UNTAC)'s statebuilding mission was undertaken between February 1992 and September 1993. The Paris Peace Agreement (PPA) was signed in October 1992, followed by the general election in 1993. Until these days it remains the largest intervention (in military, political and logistical terms) in the UN's history (Mysliwiec 1988).

The statebuilding efforts, by the international community, in Cambodia since the early 1990s have attracted varied criticisms as other missions conducted elsewhere have. Two decades following the UN's statebuilding intervention, the statebuilding outcome in Cambodia is generally viewed negative, in similar ways as other externally driven missions are assessed (Roberts 2009). David Roberts (2008, 2009) describes the statebuilding outcome in Cambodia as 'superficial', equating democratic institutions such as the rule of law and power separation as *buildings* or *political husks* while the informal system of patronage remains fully intact and functioning. Further while national elections are held reasonably successful, they have not achieved what the statebuilders had wanted (Richmond and Franks 2007, Richmond 2014). Elections have made possible for authoritarian governance and its corrupt elite to rule, which has produced little of the expected social contract in which the society has more control over the state (Richmond and Franks 2007, Richmond 2014).

Another account makes the analogy that Cambodia “... has moved toward rule *by* law rather than rule *of* law, meaning “for my friends, everything; for my enemies, the law.” (Un 2012, 202 emphasis in the original).

Despite its notable shortcomings, the statebuilding efforts in this country have produced undeniable achievements. Out of a set of aforementioned modern state capacities which state builders envision to (re)construct, two include the legitimate capacity to monopolize means of violence (which is key to establish order and stability) and rule of law (Ghani, Clare, and Michael 2005, 6). It is shown below that there is consensus that Cambodia has performed poorly in terms of rule of law. However, at the same time, the peace and stability have profoundly improved.

## **Empirical Reflection**

### *Big Size of Civil Service*<sup>182</sup>

This section will demonstrate that Cambodia’s weak and bloated civil service, which has intentionally maintained as such by the Cambodian political elites, has produced the inherent effects in maintaining peace and stability as a fundamental element of Neo-Weberian state capacity. The argument follows that if the Cambodian elites strictly implemented the idea of rule of law as enforced by the international community, peace and stability could have been disturbed. Rule of law, as noted above, eventually strives for the state’s accountability to the citizens. In this context, the state would be required to reform the civil service as quickly as possible so that its number is reduced, meritocracy enhanced, efficient and effective services promoted, and the civil servants’ pay increased. All these reflect the aspirations of the citizens, which the state is supposed to be accountable to in a rule of law. However, in such an unstable context like Cambodia, in which the civil conflict only ended in 1998, a hasty civil service reform following the notion of rule of law would destroy the base of peace and stability.

Cambodian civil service is weak and from the early 1990s, various donors including the United Nations Development Programme (UNDP) have been supportive in reforming this area; however, civil service reform has not materialized despite mounting donors’ pressure of the last two decades or so (Nunberg and Taliercio 2012, Slocomb 2010, Eng and Craig 2009). The current bureaucratic staffing, capacity and incentives originated in 1979 and throughout 1980s and 1990s

---

<sup>182</sup> This section is the revision of a portion from an unpublished study titled *Scoping the Cambodian State Capacity in the Transforming Economy* (Ou, Lun, and Kim 2013) that the author wrote with CDRI colleagues, Pide Lun and Sedara Kim, with the initial contribution from Sothy Khieng, Chandarany Ouch, Sokty Chhe during the inception phase.

within the context of highly political and economic contests. Cambodia was left with a few educated people after the fall of the Khmer Rouge, so those recruited to the state apparatus often had little education (Gottesman 2004). These people have been in the state apparatus and have never been fired because of work ineffectiveness related reasons<sup>183</sup>. The only visible action taken by the government is to identify and remove the irregular or 'ghosts' civil servants. For instance, over 9,000 irregular civil servants were removed from the payroll after the 2001 civil servant census (MOP 2001). Besides this action, the most regular civil servants entering the state apparatus before the entrance exam system was introduced and enforced in 1994 remain employed, some of which have already entered high and important positions. The inherent lack of officials' competencies to serve the state and its citizens has not been much addressed.

By 2008, the average civil service salary ranged between USD 80 and USD 90 per month, which is below a living wage (Nunberg and Taliencio 2012). Furthermore, increasing number of civil servants from 147,000 to 175,000 between 1996 and 2007 has added pressure to the wage bill (Nunberg and Taliencio 2012). Besides, promotion and recruitment, especially for lucrative positions, are kept for family members and friends, which illustrates that the process does not operate based on impersonal institutions (through which meritocracy in recruitment, appointment and promotion are adopted) but based on patronage (Eng and Craig 2009).

While poor civil service has attracted varied criticisms, and contains various shortcomings per se, a quick transition toward strengthening it would be unrealistic. That is because Cambodia has experienced a genocide and several decades of war that severely damaged state institutions (Chandler 1998). That perspective is confirmed by the government, for instance, a senior official in charge of civil service argue that for the reason of stability, the government has pursued the policy of keeping officials until they reach retirement age.

The government cannot afford to downsize the number of government officials. Do not mention it. The only practical solution is to wait until they get retired themselves (Interview, June 02, 2011, Phnom Penh).

For a similar stability reason, the increasing number of civil servants has not been downsized. The number particularly almost doubled<sup>184</sup> in 1998, when the administrators of the Khmer Rouge

---

<sup>183</sup>That does not mean state officials have not been fired at all; they are occasionally fired for different sorts of reasons rather than the lack of capacity.

<sup>184</sup> Interview, June 02, 2011, Phnom Penh.



faction were fully integrated. The government has ended up paying a lot of unnecessary resources to keep all the civil servants afloat for the sake of stability, following the Prime Minister's win-win policy. The view is echoed that,

There are contradicting views on the number of civil servants in Cambodia. While donors wish to see a downsizing civil servant number to ensure efficiency and effectiveness, the government sees the embracement as the strategy for national reconciliation, harmony and stability, without which any development strategy and implementation would be stalled (Interview, March 22, 2011, Phnom Penh).

Even some external observers agree that the logic of keeping big civil service as a strategy to "preserve peace and stability...was compelling" for a country that experienced the horrors of the Khmer Rouge (Nunberg and Taliercio 2012, 1975).

Several reasons explain how and why such a weak civil service helps maintain peace and stability. For one, the former Khmer Rouge soldiers and administrators, the number of whom almost equaled that of the State of Cambodia's administration in 1998, would still carry guns and cause instability if they were not given government jobs<sup>185</sup>. For two, if the number of civil servants were reduced significantly over a short time span, those without jobs would join the opposition thus pose serious political confrontation with the ruling party (Gottesman 2004). Instability would prevail. In contrast, for three, the civil servants who are kept in the civil service assist in maintaining the state apparatus stability because they are inside the system and are better managed than they are out of the system.

### *The Elite Settlement*

State transition and building begin with political settlement and are heavily influenced by the ways elite act (Salmon and Anderson 2013). That is to say the elite inherently agree to, oppose or subvert the state building efforts and any effort needs to involve the elite and the new form of state need to progress in ways that benefit them in some ways (Salmon and Anderson 2013, Zaum 2013). It is further argued that in weak states, stability and order are not offered by impersonal state institutions but from the inclusive buy in of the elite into a neo-patrimonial pattern of governance (Zaum 2013). Cambodia is a part of the deal. Charles Call (2012) also warns that instability would

---

<sup>185</sup> That sentiment is reflected in various interviews the author conducted in 2009. Further the Khmer Rouge agreed to stop fighting fundamentally because the State of Cambodia promised to secure previous employment for their faction's members.

occur if potential organized groups are excluded from the statebuilding pact. In the exemplar cases of Timor Leste and South Sudan, the UN's liberal peace interventions experienced political push back because the elite were not satisfied with the inequitable political bargain (Zaum 2013).

The case of Cambodia echoes the above observation. United National Transitional Authority in Cambodia (UNTAC) arranged the elections in 1993 only to meet severe resistance from the Cambodian People's Party (CPP), the strongest among the four factions at the time, which lost the election to the royalist group, Funcipec (the United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia). CPP received only 38 percent of the votes while Funcipec 44 percent. Based on the constitution, a two-thirds majority was required to create a government. Further, there was nothing in the constitution stipulating that Cambodia could accommodate a two prime minister government. However, CPP, which had been in power for more than a decade from 1979, *de facto* in charge of a large segment of public administration, the military, the police and local authority, resisted. Therefore Hun Sen was agreed to become the second Prime Minister, after Rannaridh, the first one. Further based on the election outcome and negotiation afterward, CPP had to agree to be a junior partner in the coalition government. However, CPP faction did not succumb to Funcipec's supremacy. The power struggle between the two parties grew in 1996 and resulted in the coup by CPP in 1997, in which Funcipec was toppled down. In six months, the situation was normalized (Chandler 1998). Elections held in 1998, 2003, 2008 and 2013 witnessed the victory of CPP.

Statebuilding over the past two decades or so has not resulted in impartial state institutions but a neo-patrimonial one that is fully intact and elitism and absolutism still dominate Cambodian politics (Roberts 2009). The power of CPP elite that has successfully resisted the external interventions led David Roberts to argue that the outcome of statebuilding that has actualized in Cambodia insofar "...could have been achieved without statebuilding and with only the removal of the international embargo..." (Roberts 2009, 166).

The above demonstrates how the elite have a crucial stake in statebuilding process. On the other hand the case of Cambodia also illuminates how the elite settlement, at the same time, has constituted and produced peace and stability. Two other related phenomena are illustrated here.

First is how CPP elite were able to convince the former Khmer Rouge elite to join the government. It could be recalled that the Khmer Rouge did not participate in the UN organized election in 1993. They did not accept the election outcome and chose to operate in isolation in Northwest Cambodia for several years, meaning Cambodia's civil war persisted. The settlement between the two elite groups was to allow those who had been in control in the territory such as

Pailin to continue to administer their former zone and to allow all former Khmer Rouge soldiers and officials at all levels to maintain their positions and get paid by the central government. Again because of the agreement, the Khmer Rouge agreed to disintegrate. Consequently, the number of civil servants was swollen and the wage bill rose significantly. However, that settlement has created a compromise that has sustained peace thus far. If Cambodia strictly followed rule of law by laying off those former troops and administrators or requiring to take civil service exams, reflecting the consensus of the overall population and the international donors who always required Cambodia to downsize civil servant number, the Khmer Rouge group would have not accepted the deal or if they did, they might still have still abandoned it afterwards. That would have ignited instability and violence again.

Second is the CPP managed to forge strong relationships with business elites, which has assisted in keeping peace and stability. During the war time in the 1980s, Cambodia was under the international economic embargo. CPP, the strongest and dominant faction<sup>186</sup> survived partly because of patronage and the alliances built with key economic elite such as Sok Kong, Mong Rithy and Teng Bunma (Gottesman 2004, Slocomb 2010, Hughes 2003). Starting from 1985 (when Cambodia began to privatize slowly), the inner circle of Hun Sen comprising those business elite, top politicians, key security generals who had been supporting CPP, have gradually benefited from the event Evan Gottesman (2004) calls 'selling the state'. Thereafter, in the wake of the UN's statebuilding intervention, when Cambodia started to fully clinch to neoliberal order, these elite have further and enormously enriched themselves through foreign land concessions, for instance, when the state was weak (Hutchison et al. 2014). To this end, the paper does not endorse elite enrichment constituting structural violence that has caused suffering, inequality, marginalization, various new pocket of poverty and vulnerability as some Non-Governmental Organizations (NGOs) have observed because people have lost their land and property, and inconclusive development outcomes (Springer 2015, 2010, Ou and Chheat 2015, Hughes 2003). However, it attempts to argue that if Cambodia fully followed the democratic principle of rule of law with which this kind of patronage and elite politics would not have been allowed, one would see a different Cambodia whereby stability would not have been secured for the very reasons that elite would not have been accepted the status quo.

### *The Division of Power*

The sixth 1993 Cambodian Constitution declares Cambodia a liberal democracy and stipulates that the Legislative, Executive, and Judicial branches of government shall be separate.

---

<sup>186</sup> Compared with the other three, Funcinpec, the Khmer Rouge, and the Khmer People's National Liberation Front [KPNLF]

Clearly embedded in the UN designed and inspired constitution is the notion that the smaller neoliberal state constrained by the system of checks and balances must be installed. Furthermore that state is engineered not to put heavy hand on the society, so that popular freedom and liberty would be guaranteed. However, such a division of power has never actualized in the last 20 years. The parliament (both the national assembly and the senate) and the judiciary have been weak and dominated by the executive.

On the one hand, donors would argue that without checks and balances, human rights, liberty and freedom of the people have not been secured as various scholars have noted above. On the other hand, Cambodia could be argued that a full-fledged rule of law could not be allowed to function.

Cambodia's context is similar to those in many African countries, as noted by Fukuyama earlier. The French's 90 years of colonial rule did not strengthen Cambodia's institutions and the Khmer Rouge genocide further deteriorated all forms of political and social institutions to the degree Cambodia had few teachers, medical doctors, and teachers in 1979 (Gottesman 2004). Wars protracted in Cambodia for close to another two decades; it was until 1998 when the Khmer Rouge disintegrated that Cambodia was at peace again after a relatively short peace time between the independence year of 1953 and 1970.

Given the weak legacy in terms of modern state and rule of law, Cambodia has had little capacity to lean on. In such a situation, one may assert that it is not rule of law, understood in the form of balance of power that contains state power, which should be prioritized as envisioned by the external statebuilders, but a potential Neo-Weberian state that is equipped with capability to ensure stability and order along the argument by Theda Skocpol (1985). In what follows, her argument details how the state strategizes ways to consolidate power. Hun Sen's statebuilding strategy following the departure of UNTAC in a sense echoes what Skocpol argues above as Andrew Cock (2010, 249, emphasis added) elaborates that Hun Sen's statebuilding agenda include, inter alia,

"...the consolidation of control over the security apparatus to build a political order dominated by the Cambodian People's Party, and to *prevent or contain political unrest* and the development of party infrastructure by opposition groupings...the channeling of foreign aid contributions into infrastructure projects such as road construction and plantation developments that have facilitated *access to and control* over the population of peripheral areas..."

Cock adds that Hun Sen further attempted to control civil society activism, to divert the revenues from oil and gas and other natural resources such as forest and even donors' money to increase the power of CPP and the executive, all deviate from the rule of law principle. However, after some two decades, the practice and manipulation of power have gained some acceptance that the Machiavellian tool has contributed to maintaining peace and stability (Biddulph 2014, Broadhurst, Bouhours, and Bouhours 2015). In the interview of a new book *Violence and the Civilising Process in Cambodia*, one of the authors, Thierry Bouhours, is quoted as arguing "Hun Sen has pacified Cambodia because he was well-organised and ruthless...This is the paradox of the formation of the state. It's a process we see over and over again everywhere. It's not because he's Hun Sen or the CPP. It's just the process." (Jackson 2015).

Moreover, Caroline Hughes (2009) argues that the political strategy Cambodian elite have adopted to challenge the imposed liberal state that includes rule of law proves effective in her comparative work between Cambodia and East Timore. Hughes stresses that donor conditionalities attached to the liberal statebuilding project delineates the state agency. She criticizes that the 'ideological attachment on the part of donors to rigid doctrinaire templates ... *cannot* work in a post-conflict state on the periphery of the global economy' (Hughes 2009, 8) and that the liberal project limits the state from building its sovereignty because the state is required and expected to function merely as 'an agent for transmitting and implementing global policies' (p. 13). Hughes found out that for the case of East Timor, where their leaders conformed to the donors' agenda, the outcome is the inability to put unruly domestic problems under control. In contrast, the Cambodian leadership successfully carved a sphere of discretionary of authority and autonomy by 'erecting and stabilizing a machine for the circulation of resources that could operate off the books, and which was, consequently, both opaque to donor scrutiny and highly effective in brokering accommodations with powerful groups politically' (Hughes 2009, 156).

This section has demonstrated that checks and balances, if enforced in such a context like Cambodia, would disturb peace and stability as it happened in East Timor. Without seriously enforcing the separation of power, Cambodia under CPP has maintained its control of the judiciary, the legislature, and varied prominent social forces including the opposition. Therefore, peace and stability have been maintained.

## **Conclusion**

Statebuilding as various scholars caution is a relatively new phenomenon or even a working experiment that contains fundamental tensions. This paper essentially demonstrates one particular

tension – the state capacity to maintain peace and stability and rule of law. It takes into consideration a crucial fact that Cambodia inherited neither rule of law nor a pattern of modern state that Western Europe, some states in East Asia, and India attained throughout their history. Hence, this article argues that a feasible sequence for a weak Cambodian state is to pursue stability and peace, despite its unstable condition, while rule of law which contradicts with the state's use of power for the public good could be a later priority.

It illustrates three empirical cases to support the main argument. First, the fact that Cambodian elite organically embraced the former foe elite, namely, the Khmer Rouge leaders and their staff, causing increasing government wage bill and a rather poor civil service quality, has contributed to peace and stability. If Cambodia, even temporarily, hastily adopts a lean civil service following the standard Weberian legal rational authority, stability would be disturbed, especially in the context of rising power of the opposition party and popular activism. Second, elite settlement, despite their inherent consequences of not achieving inclusive development, has triggered a stable power arrangement that has stabilized the polity. Third, it argues that balance of power, which is desired by the international community and common citizens at large, could not be enforced at least for now. In contrast, the state and its elite that have the capacity to resist the liberal statebuilding project and to accommodate or even curb local activism and discontent at this stage is necessary temporarily for order and stability to stand.

## References

- Biddulph, Robin. 2014. "Can elite corruption be a legitimate Machiavellian tool in an unruly world? The case of post-conflict Cambodia." *Third World Quarterly* no. 35 (5):872–887.
- Bit, Seanglim. 1991. *The Warrior Heritage: A Psychological Perspective of Cambodian Trauma*: Seanglim Bit 5210 Gorden Avenue El Cerrito, California 94530.
- Bratton, Michael, and Nicolas van de Walle. 1997. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.
- Broadhurst, Roderic, Thierry Bouhours, and Brigitte Bouhours. 2015. *Violence and the Civilising Process in Cambodia*: Cambridge University Press.
- Call, Charles T. 2008. "Ending Wars, Building States." In *Building States to Build Peace*, edited by Charles T. Call and Vanessa Wyeth. London: Lynne Rienner Publishers.
- Chandler, David. 1998. "The Burden of Cambodia's Past." In *Cambodia and the International Community*, edited by Frederick Z. Brown and David G. Timberman. Singapore: ISEAS.
- Chandler, David. 2008. *A History of Cambodia*. 4th Edition ed. Boulder, Colorado: Silkwood Books.
- Chandler, David. 2013. "International Statebuilding and the Ideology of Resilience." *Politics* no. 33 (4):276–286.
- Chandler, David, and Timothy D. Sisk. 2013. "Introduction." In *Routledge Handbook of International Statebuilding*. London and New York: Routledge.
- Chesterman, Simon. 2004. *You, The People: The United Nations, Transitional Administration, and State-Building*. New York: Oxford University Press.
- Cock, Andrew Robert. 2010. "External actors and the relative autonomy of the ruling elite in post-UNTAC Cambodia." *Journal of Southeast Asian Studies* no. 41 (2):241–265.
- DAC, OECD. 2007. The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice 2007. The Secretary-General of the OECD.
- Egnell, Robert, and Peter Halden. 2013. "Introduction: The need for new agenda in statebuilding " In *New agendas in statebuilding: hybridity, contingency and history*, edited by Robert Egnell and Peter Halden. London & New York: Routledge.
- Eisenstadt, Shmuel N. 1973. *Traditional Patrimonialism and Modern Neo-Patrimonialism*. London: Sage.
- Eng, Netra, and David Craig. 2009. Accountability and Human Resource Management in Decentralised Cambodia. In *CDRI Working Paper Series No. 40*. Phnom Penh: Cambodia Development Resource Institute.
- Fearon, James D., and David D. Laitin. 2004. "Neotrusteeship and the Problem of Weak States." *International Security* no. 28 (4):5–43.
- Fritz, Verena, and Alina Rocha Menocal. 2007. Understanding State-Building from a Political Economy Perspective: An Analytical and Conceptual Paper on Processes, Embedded Tensions and Lessons for International Engagement. Overseas Development Institute.
- Fukuyama, Francis. 2004. *State Building: Governance and World Order in the 21st Century*. Ithaca, NY: Cornell University Press.
- Fukuyama, Francis. 2014a. *Political order and political decay: from the industrial revolution to the globalization of democracy*. London: Profile Books.
- Fukuyama, Francis. 2014b. "States and democracy." *Democratization* no. 21 (7):1326–1340.
- Ghani, Ashraf, Lockhart Clare, and Carnahan Michael. 2005. Closing the sovereignty gap: an approach to state-building. In *ODI Working Papers*: ODI.
- Gottesman, Evan. 2004. *Cambodia after the Khmer Rouge: inside the politics of nation building*. New Haven: Yale University Press.

- Hameiri, Shahrar. 2013. "Regulatory Statebuilding and the Transformation of the State." In *Routledge Handbook of International Statebuilding*, edited by David Chandler and Timothy D. Sisk. London and New York: Routledge.
- Hughes, Caroline. 2003. *The Political Economy of Cambodia's Transition, 1991–2001*. London: Routledge.
- Hughes, Caroline. 2009. *Dependent Communities: Aid and Politics in Cambodia and East Timor*. New York: Cornell Southeast Asia Program.
- Hutchison, Jane, Wil Hout, Caroline Hughes, and Richard Robison. 2014. *Political Economy and the Aid Industry in Asia*. Hampshire & New York: Palgrave Macmillan.
- Jackson, Will. 2015. "A history of violence." *Phnom Penh Post*, 29 August 2015
- Jeong, Ho-Won. 2005. *Peacebuilding In Postconflict Societies: Strategy And Process*. Boulder: Lynne Rienner.
- Junne, Gerd, and Willemijn Verkoren, eds. 2005. *Postconflict Development: Meeting New Challenges*. Boulder: Lynne Rienner Publishers.
- Kleinfeld, Rachel. 2005. Competing Definitions of the Rule of Law: Implications for Practitioners. In *Carnegie Papers, Rule of Law Series*. Washington, DC: Carnegie Endowment for International Peace.
- Krasner, Stephen D. 2004. "Sharing Sovereignty: New Institutions for Collapsed and Failing States." *International Security* no. 29 (2):85–120.
- Lee, Su-hoon. 1988. *State-Building in the Contemporary Third World*. Boulder: Westview.
- McMahon, Patrice, and Jon Western. 2012. "Introduction: The supply side of statebuilding." In *The International Community and Statebuilding: Getting Its Act Together?*, edited by Patrice McMahon and Jon Western. London and New York: Routledge.
- Menocal, Alina Rocha. 2013. "Aid and Fragility: The challenges of building peaceful and effective states." In *Routledge Handbook of International Statebuilding*, edited by David Chandler and Timothy D. Sisk. London and New York: Routledge.
- MOP. 2001. Poverty Reduction Strategy Paper: Preparation Status Report. Phnom Penh: Ministry of Planning.
- Mysliwiec, Eva. 1988. *Punishing the Poor: The international isolation of Kampuchea*. Oxford: Oxfam.
- Nunberg, Barbara, and Robert R. Taliercio. 2012. "Sabotaging Civil Service Reform in Aid-Dependent Countries: Are Donors to Blame?" *World Development* no. 40 (10):1970–1981.
- Öjendal, Joakim. 2003. Ten Years of Reconstruction and Reconciliation - What it May Mean in Cambodia. In *Working Paper NO.6*. Goteborg: Goteborg University.
- Ou, Sivhuoch, and Sreang Chheat. 2015. Analysis of Cambodia's Preparedness for the Implementation of Sustainable Development Goals: Challenges, Opportunities and Financing. Phnom Penh: Cooperation Committee for Cambodia.
- Ou, Sivhuoch, Pide Lun, and Sedara Kim. 2013. Scoping the Cambodian State Capacity in the Transforming Economy. (Unpublished) Phnom Penh: Cambodia Development Resource Institute.
- Paris, Roland. 2004. *At War's End: Building Peace After Civil Conflict*. Cambridge: Cambridge University Press.
- Paris, Roland, and Timothy D. Sisk, eds. 2009a. *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*. London: Routledge.
- Paris, Roland, and Timothy D. Sisk. 2009b. "Introduction: understanding the contradictions of postwar statebuilding." In *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, edited by Roland Paris and Timothy D. Sisk. London: Routledge.
- Paris, Roland, and Timothy D. Sisk. 2007. Managing Contradictions: The Inherent Dilemmas of Postwar Statebuilding International Peace Academy. In *Research Partnership on Postwar Statebuilding*: International Peace Academy.



- Peou, Sorpong. 2014. "The Limits and Potential of Liberal Peacebuilding for Human Security." *Asian Journal of Peacebuilding* no. 2 (1):37-60.
- Richmond, Oliver P, and Edward Newman, eds. 2009. *New Perspectives on Liberal Peacebuilding*. Tokyo: United Nations University Press.
- Richmond, Oliver P. 2002. *Maintaining Order, Making Peace*. Basingstoke: Palgrave.
- Richmond, Oliver P. 2014. "Jekyll or Hyde: what is statebuilding creating? Evidence from the 'field'." *Cambridge Review of International Affairs* no. 27 (1).
- Richmond, Oliver P., and Jason Franks. 2007. "Liberal Hubris? Virtual Peace in Cambodia." *Security Dialogue* no. 38 (1):27-48
- Roberts, David. 2008. "Hybrid Politics and Indigenous Pluralities: Advanced Lessons in Statebuilding from Cambodia." *Journal of Intervention and Statebuilding* no. 2 (1):63-86.
- Roberts, David. 2009. "The Superficiality of Statebuilding in Cambodia: Patronage and Clientelism as Enduring Forms of Politics." In *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, edited by Roland Paris and Timothy D. Sisk. London: Routledge.
- Salmon, Jago, and Catherine Anderson. 2013. "Elites and Statebuilding " In *Routledge Handbook of International Statebuilding*, edited by David Chandler and Timothy D. Sisk. London and New York: Routledge.
- Scruton, Roger. 1982. *A Dictionary of Political Thought*. London: Macmillan.
- Skocpol, Theda. 1985. "Bringing the State Back In: Strategies of Analysis in Current Research." In *Bringing the State Back In*, edited by Peter B. Evans, Dietrich Rueschemeyer and Theda Skocpol, 3-37. Cambridge: Cambridge University Press.
- Slocumb, Margaret. 2010. *An Economic History of Cambodia in the Twentieth Century*. Singapore: NUS Press.
- Springer, Simon. 2010. *Cambodia's Neoliberal Order: Violence, authoritarianism, and the contestation of public space*. Edited by John Connel, Lily Kong and John Lea, *Routledge Pacific Rim geographies*. Oxon and New York: Routledge.
- Springer, Simon. 2015. *Violent Neoliberalism: Development, Discourse, and Dispossession in Cambodia*. London: Palgrave Macmillan.
- Tilly, Charles. 1985. "War Making and State Making as Organized Crime." In *In Bringing the State Back In. Cambridge*, edited by Peter B. Evans, Dietrich Rueschemeyer and Theda Skocpol, 169-191. Cambridge: Cambridge University Press.
- Un, Kheang. 2012. "Cambodia in 2011: A Thin Veneer of Change." *Asian Survey* no. 52 (1):202-209.
- Weber, Max. 1978 [1968]. *Economy and Society*. Berkely, CA: University of California Press.
- Zaum, Dominik. 2013. "Corruption and State-Building " In *Routledge Handbook of International Statebuilding*, edited by David Chandler and Timothy D. Sisk. London and New York: Routledge.

# **Democracy and the Contradictions of Global Liberal Hegemony in the Middle East: The 'Arab Uprisings' and Beyond.**

Jonathan Viger

**UW Political Science Conference**

Despite tactical changes, American foreign policy since the end of the Second World War has been formulated around a core objective: the construction of a global capitalist order based on a system of liberal nation-states. This insistence on the Wilsonian ideal of self-determination and sovereign rule has been used to distinguish the American led postwar order from the former European imperial order based on the maintenance of formal colonies.<sup>187</sup>

The first decade of the twentieth century has nonetheless witnessed a resurgence of the concepts of empire and imperialism. Developed by Marxist critiques of American foreign policy during the Cold War, the concept has been appropriated by mainstream theories of IR in order to highlight the benign – or even benevolent – nature of the post Cold War moment of unipolar American hegemony.<sup>188</sup>

In response to this appropriation, historical materialist theories of international relations (IR) have developed a number of concepts in order to understand this qualitative shift in the relations of capitalism at the international level: informal empire, new imperialism, or ‘free-trade’ imperialism.<sup>189</sup> Although these concepts highlight the increasing importance of economic relations in the reorganisation of social relations at the international level, they embrace the question of the reconfiguration of geopolitical relations around the stable reproduction of a world economy based on capitalist principles. The primary geopolitical challenge of the post-war international order has become the management of the reproduction and the expansion of global capitalist relations. This global expansion of capitalism is ‘geopolitically mediated’, meaning that it still needs to work through an international order marked by the persistence of territorially sovereign states.<sup>190</sup>

This paper locates the recent development in the Middle East, including the regional *intifada* (uprising) of 2011, within the broader historical framework of the development of global capitalism and the practices of ‘new imperialism’. As we will see, this project was built on two essential components deemed to be self-reinforcing: (1) the opening of economies to global capitalist networks of trade and finance and the expansion of free markets; (2) reforms towards a competitive political system and the building of democratic procedures and institutions. This paper argues that these twin foundations of the liberal hegemonic order have fostered contradictory results in the Middle East, laying bare the mechanisms of ‘new imperialism’ and the limits of capitalist hegemony at the periphery of global order. Throughout this discussion, we will refer to the Egyptian case in order to expose our argument. After having discussed the two aspects of liberal hegemony identified above, we will analyse their consequences on social and political developments of the pre-*intifada* period, focusing on the reorganisation of authoritarian regimes and on the rise of Islam as counterhegemony. The final section focuses on the events following the *intifada*, and the response of western powers to the democratic demands of the population.

---

<sup>187</sup> Anderson, Perry, "Imperium", *New Left Review* 81 (2013).

<sup>188</sup> Foster, John Bellamy, "The Rediscovery of Imperialism", *Monthly Review* 54 (2002).

<sup>189</sup> Panitch, Leo, and Sam Gindin, *The Making of Global Capitalism* (London: Verso Books, 2012); Mooers, Colin Peter, ed, *The New Imperialists: Ideologies of Empire* (Oxford: Oneworld, 2006); Kiely, Ray. *The New Political Economy of Development: Globalization, Imperialism, Hegemony*. (London: Palgrave Macmillan, 2007).

<sup>190</sup> Meiksins Wood, Ellen, *Empire of Capital* (London: Verso, 2003).

## The Empire of Capital: The Relations of Neoliberal Market Coercion

Even before the Second World War, the Middle East appeared on the radar of American foreign policy makers. The discovery in the region of the world's largest reserve of cheap and accessible hydrocarbons transformed the region into a foremost center of strategic concerns. But the 'first wave' of globalization in the region eventually failed as the post-independence pro-western regimes were toppled by nationalist movements challenging the integration of the region to the post-war global economic order. In this context, the initial objectives of the American postwar strategy took a backseat in favour of more pressing geopolitical and security concerns. To counter the tide of Arab nationalism, US policymakers focused on the shoring up of allies in the region, leading to the increase in economic and military assistance to the three pillars of pro-western support in the region: Saudi Arabia, pre-revolutionary Iran, and Israel.<sup>191</sup>

Despite this hiatus in the American post-war strategy, the gradual exhaustion of Arab nationalism as the expression of the 'third-way' in the region opened the door for a renewed attempt at the region's integration in the global capitalist order. The crisis of 'state capitalism' and 'Arab socialism' in the Middle East provided an opening for the mechanisms of 'informal empire'.

According to Ellen Wood, the development of capitalism represents a historically novel form of surplus extraction where appropriation takes the form of an economic relationship between independent agents mediated through the market. Exploitation becomes the result of the 'impersonal' forces of the market, leading to a retreat of the state from *direct* involvement in relations of appropriation. As historical-materialist scholars argue, the uniqueness of capitalism has direct consequences on the re-definition of the nature of empire: unlike earlier expressions of imperial power, which took the political form of colonial domination, capitalist subordination spreads through the social relations of the market. The expansionary drive is primarily 'social' – i.e. taking place through the export of capitalist relations of property and production – rather than territorial.<sup>192</sup>

In the case of Egypt, the wars of 1967 and 1973, the rise in oil prices, and the increase dependence on food aid and imports – primarily coming from the US – created an economic crisis combining increased debts and balance of payment deficits. It is at this moment that the structural power of globalized capital, expressed through the international financial institutions, manifested itself.<sup>193</sup> It is in great part through the conditionalities associated with International Monetary Fund (IMF) and World Bank loans that the project of reintegration of the Middle East into the world economy was achieved. These institutional reforms progressively put in place a legal framework that 'locked in' the conditions of capitalist accumulation under the discipline of the market.<sup>194</sup>

The (re)incorporation of Egypt in the global capitalist networks of trade and finance and the deepening of market relations were established through four key processes: (1) privatization; (2) labour market regulation; (3) liberalization of trade and investments; (4) transformation of the financial markets.

---

<sup>191</sup> Ehteshami, Anoushiravan, "Is the Middle East Democratizing?", *British Journal of Middle Eastern Studies* 26, no. 2 (1999), 199-201.

<sup>192</sup> Wood, *Empire of Capital*.

<sup>193</sup> The Gulf states, through the recycling of oil revenues, also played a crucial role in the development of finance in the region.

<sup>194</sup> Gill, Stephen, "New Constitutionalism, Democratisation and Global Political Economy", *Global Change, Peace & Security* 10, no. 1 (1998), 23-38.

The reduction of the size and scope of the public sector was a crucial first step in the deepening of market relations and the removal of obstacles to private investment. Thus, the central tenet of the structural adjustment programs of the 80's and 90's was the establishment of a legislative and institutional framework to oversee the liquidation of state assets. This process was of particular amplitude in Egypt, where the period from 1988 to 1999 saw a privatization receipt of US \$4,172 billion.<sup>195</sup> The privatization process was reinforced and widened to a larger range of sectors, so that this number nearly tripled between 2000 and 2008.<sup>196</sup> Privatization also took place in the service sector through the establishments of public-private partnerships, encouraging the outsourcing of utilities and services to private entrepreneurs.<sup>197</sup>

This liquidation of state assets was closely related to the liberalization of the labour market. First, the shift to foreign (private) investment and export led growth demanded that wages and social protection be reduced as much as possible. The cutting back of the state sector was a major part of this process since the better work conditions offered in this sector – which were part of the populist and redistributive nature of the 'socialist' regimes – contributed to rigidities and distortion in labour market incentives.<sup>198</sup> Second, the reduction of labour costs in public enterprises made them more attractive for potential private buyers.

These changes were made in combination with the re-opening of Middle Eastern economies to global trade and investment flows. According to the neoliberal discourse, the region had a comparative advantage in the global market because of its large supply of relatively cheap labour. This strategy notably led to the emergence of a number of special economic zones across the region, aimed at the attraction of foreign capital through special incentives, such as low corporate tax rates, cheap rental prices, and employment subsidies.<sup>199</sup> Opening of the economy was a crucial step in securing the transition 'from public, state-dominated to private, market oriented activities; and from protected, import-substitution to competitive, export-oriented activities'.<sup>200</sup>

The last dimension of the capitalist integration was the restructuring of financial markets, undertaken through a succession of 'standard' policies promoted by international financial institutions: (1) the removal of government controls or influence on credit allocation, lending policies and interest rates; (2) opening up of the banking sector to foreign competition and privatization of state-run banks; and (3) the introduction of a range of non-bank financial markets, such as stocks, mortgage, insurance, and bond markets.<sup>201</sup> The emergence of a liberalized financial infrastructure enabled a qualitative change in the nature of capital accumulation and the power of the capitalist class, enabling the concentration of capital across finance and industry.

## **The Emperor's New Clothes: Liberal Democracy and the Ideology of New Imperialism**

---

<sup>195</sup> Hanieh, Adam, *Lineages of Revolt: Issues of Contemporary Capitalism in the Middle East* (Chicago: Haymarket Books, 2013), 49.

<sup>196</sup> Ibid.

<sup>197</sup> Bogaert, Koenraad, "Contextualizing the Arab Revolts: The Politics Behind Three Decades of Neoliberalism in the Arab World", *Middle East Critique* 22, no. 3 (2013), 223.

<sup>198</sup> Hanieh, *Lineages of Revolt*, 53.

<sup>199</sup> Ibid., 57.

<sup>200</sup> Ibid., 56.

<sup>201</sup> Ibid., 60.

In order to understand the ideological and institutional reproduction of these new forms of imperial relations, one needs to ask a number of questions: 'How does one theorize and justify a non-colonial, non-territorial empire? How does one explain and defend exploitation of people and resources that requires no direct rule or territorial expansion, and where there is no need for personal rule or the seizure of property?'<sup>202</sup>

As noted earlier, the objective of the new imperialism is the unfettered access for capital in general – and U.S. capital in particular – to markets anywhere over the world. Contrary to theories of globalization, this does not entail the transformation of the formal territorial organization of the nation-state. Neither does this entail a seamless global economic integration and a flattening of differences. As Wood argues, capitalism benefits from the differentiated conditions created by uneven development, such as cheaper labour and resources. The expansion of capitalism simply entails the reproduction of a stable system of multiple states, providing the measure of order and stability that is required for unconstrained capitalist accumulation while guaranteeing the openness of borders to the movement of capital.<sup>203</sup>

But the upholding of formal territorial sovereignty is not sufficient to justify the new forms of imperial relations. Since new imperialism depends on the imposition and reproduction of capitalist market imperatives, it also requires a justification of this economic order. This is where the concept of liberal democracy enters our discussion.

Following the narrative of American foreign policy, the spread of market relations is to be accompanied by liberal political reforms, although the geopolitical environment of the Cold War moderated these objectives in favour of stability and communist deterrence. With the end of the Cold War, the [U.S.](#) looked to promote more actively – or impose, as in the case of Iraq – liberal democracy as a new framework in order to secure the long-term reproduction of market relations.<sup>204</sup> William Robinson has shown how democracy promotion has become a crucial part of the hegemonic project of the expansion of the capitalist world market.<sup>205</sup> This strategy was introduced in order to foster consent on the part of populations, and play a legitimating counterpart to the increasingly coercive nature of market relations. In other words, liberal democracy became the ideology [of](#) new imperialism.<sup>206</sup>

To be compatible with the expansion of capitalist market, democracy had to be emptied of social and economic content. The model of liberal democracy that was put forward was designed in order to insulate economic relations from the reach of popular/democratic politics. This was done through the narrowing of the 'public' sphere of the political, constricting it to electoral politics. In this way, a limited definition of formal political equality, including rights and liberties, equality before the law, and universal franchise, was made to coexist with the unequal social and economic relations of capitalism. As prominent liberal theorists of democracy argue, this liberal understanding of democracy is explicitly separated from a more substantive understanding of 'social and economic democracy': '[w]e use the term democracy [...] to signify a political system, *separate and apart from*

---

<sup>202</sup> Wood, Ellen Meiksins, "Democracy As Ideology of Empire", in Mooers, *The New Imperialism*, 15.

<sup>203</sup> Ibid., 14.

<sup>204</sup> Joya, Angela, "Theorizing Post-Cold War US Imperial Strategies in the Middle East: Integrating the Region into the Capitalist World Market", *YCISS Working Paper* 37 (2005), 9.

<sup>205</sup> Robinson, William I., *Promoting Polyarchy: Globalization, US intervention, and Hegemony*, (Cambridge: Cambridge University Press, 1996).

<sup>206</sup> Wood, "Democracy as Ideology of Empire", 15

*the economic and social system.* [...] Indeed, a distinctive aspect of our approach is to insist that issues of so-called economic and social democracy be *separated* from the question of governmental structure'.<sup>207</sup>

The result was what Robert Dahl famously defined as 'polyarchy': 'a system in which a small group actually rules and mass participation in decision-making is confined to leadership choice in elections carefully managed by competing elites'.<sup>208</sup> Contrary to the rigid nature of authoritarianism, 'polyarchy' promised a more stable and durable institutional environment for the unfolding of capitalist relations:

Polyarchy, while mediating inter-class relations, is also a more propitious institutional arrangement for the resolution of conflicts among dominant groups, encouraging the exercise of effective self-control in intra-group affairs. In its ideal-type function, polyarchy achieves intra-elite stability via compromise and accommodation. Under the fluid conditions of an integrated global society, polyarchic political structures are therefore seen as more disposed to diffusing the sharpest social tensions and to incorporating sufficient social bases with which to sustain stable environments.<sup>209</sup>

In the wake of the rise of the neoliberal consensus among core capitalist countries and international financial institutions, discussion of political reforms has evolved in symbiosis with that of economic liberalization. In this context, the official discourse has emphasized notions such as the 'rule of law', 'decentralization', 'good governance', 'separation of the legislative and executive', and so forth, aimed at guaranteeing greater transparency in economic affairs, thus reducing 'rent-seeking capabilities' and direct interference of regimes in the functioning of markets.<sup>210</sup>

This focus on issues of governance and democracy was introduced in order to ensure greater legitimacy for neoliberalism in the wake of resistance in the periphery. An 'organic' relation was presupposed between neoliberal market reforms and political liberalization. Underpinning this relation was the eventual growth of a civil society as a repository of democratic sentiments.<sup>211</sup> As Kees Van Der Pijl argues, '[t]his involved a move from political developmentalism [...] to a form of "democracy promotion" in which the West would aim to exert its influence predominantly through "civil society" and the economy. This of course presupposes open access and a liberalized economy, maintained both by the global institutions established by the [...] West'.<sup>212</sup>

## Neoliberalism and the Logic of Democracy Promotion

The United States's support for authoritarian regimes in the Middle East is well known. As suggested earlier, the end of the Cold War saw a gradual shift where the U.S. has sought to 'gradually facilitate

---

<sup>207</sup> Diamond, Larry J., Juan J. Linz, and Seymour M. Lipset, eds, *Democracy in Developing Countries*, (Boulder, CO: Lynne Rienner, 1989), p. xvi

<sup>208</sup> Dahl, Robert A., *Polyarchy: Participation and Opposition*, (New Haven: Yale University Press, 1971), 9.

<sup>209</sup> Robinson, *Promoting Polyarchy*, 635-636.

<sup>210</sup> Hanieh, Adam, "Egypt's 'Orderly Transition'? International Aid and the Rush to Structural Adjustment", in Haddad, Bassam, Rosie Bsheer, and Ziad Abu-Rish, eds, *The Dawn of the Arab Uprisings: End of an Old Order?*, (London: Pluto Press, 2012), 127.

<sup>211</sup> See : Diamond, Larry. "Why Are there No Arab Democracies?." *Journal of Democracy* 21, no. 1 (2010), 93-112.

<sup>212</sup> Van der Pijl, Kees, "Arab Revolts and Nation-State Crisis", *New Left Review* 70 (2011), 47.

the conditions for an eventual transfer of support away from authoritarian political systems to elite-based democracies'.<sup>213</sup> As noted above, this represented a shift to a more consensual approach, seeking to establish the stability and hegemony of capitalist social relations.

The record of the Clinton administration's democracy promotion is judged to have been largely superficial.<sup>214</sup> Although it is true that there was no direct attempt to pursue rapid democratization, especially in the Middle East, Clinton's strategy in the region needs to be understood in light of the 'organic' relation presupposed to exist between economic and political liberalization and the reorganization of democracy promotion along neoliberal lines. In this context, the Clinton administration's emphasis on liberal economic reforms, as well as his attempt to forge a solution to the Palestinian conflict, can be understood as a tacit support for political change.<sup>215</sup> This was the case in Egypt, as a USAID report claimed that 'substantial and pervasive economic policy reform [in Egypt] is a necessary and largely *sufficient* condition for continued social and political stability, as well as future total human development and *evolution to more democratic political processes*'.<sup>216</sup>

As noted above, democracy promotion was centered on the concept of 'civil society', which was seen as a repository for 'western' and 'democratic' sentiments. Renewed emphasis on the strengthening of civil society accompanied the rhetorical shift that marked the Bush Administration's response to the events of 9/11, which identified the 'democratic deficit' in the Middle East as *the* underlying cause of the attacks. As Joel Beinin argues, "'building civil society" [...] was embraced and funded by the United States Agency for International Development, the European Union (EU), the United Nations Development Programme, and private foundations as *the* strategy for democracy promotion in the Arab region and beyond'.<sup>217</sup>

This was first orchestrated through the development of regional policies such as the Middle East Partnership Initiatives and the Broader Middle East and North Africa Initiatives. The emergence of a network of western NGOs supported these official initiatives, and combined to provide funding, training, and technical assistance to reform-minded political leaders, parties, intellectuals, and other civil society organizations.<sup>218</sup> Again, these efforts were made to complement and support the neoliberal market reforms we have identified above.

## **Post-Populist Authoritarianism and the Contradictions of Liberal Hegemony**

Contrary to expectations, neoliberal economic reforms did not lead to the retreat of the state from the economy, nor did it lead to the rise of an independent civil society as a counterweight to authoritarian regimes. This can be explained first by highlighting a contradiction present at the very core of the relationship between neoliberalism and democracy: the fact that neoliberal institutional reforms – or what Gill refers to as 'new constitutionalism' – backed by the disciplinary power of

---

<sup>213</sup> Markakis, Dionysis, *US Democracy Promotion in the Middle East: The Pursuit of Hegemony*, (London: Routledge, 2015). 90.

<sup>214</sup> Carothers, Thomas, *The Clinton Record on Democracy Promotion* (Washington: Carnegie Endowment for International Peace, 2000).

<sup>215</sup> Ibid., 95.

<sup>216</sup> Quoted in Ibid., 117.

<sup>217</sup> Beinin, Joel, 'Civil Society, NGOs, and Egypt's 2011 Popular Uprising', *South Atlantic Quarterly* 113, no. 2 (2014), 396.

<sup>218</sup> Markakis, *US Democracy Promotion*, 125-127.



international financial institutions, 'locks-in' states into a global order that removes economic policy making from the reach of domestic politics.<sup>219</sup> Although the global capitalist order is based on the reproduction of *formal* state sovereignty, neoliberal globalization has impeded the sovereign decision-making capacities of peripheral states.

The second major contradiction touches on the role of the state. The hegemonic discourse around neoliberalism claims the retreat of the state from the economy, which is deemed in turn to leave space for the building of civil society, as a central component of the democratization process. This obscures the fact that neoliberalism is not simply an opening of domestic economies to the depoliticized order – i.e. the 'invisible hand' – of the market. The language of free market obscured the renewed role of the state in mediating economic relations: '[t]he role of the state was now to control the economy more indirectly through specific forms of market de- and re-regulation, the redistribution of resources among domestic and foreign economic elites (e.g., through privatizations), and through concessions and partnerships with the private sector'.<sup>220</sup>

In the hands of the peripheral ruling classes, neoliberal discourse became a *political* strategy in order to rebuild their power in the face of the impending crisis of the state-led development. The 'spoils' of privatization – i.e. the sale of state-owned enterprises below market value – were monopolized by the ruling regimes. Seizing in the process the choicest elements as their own private property, Presidential families used these new enhanced conditions of accumulation in order to re-orient patronage networks around a privileged group of 'crony' capitalists.<sup>221</sup>

Prior to the crisis of the 80's, nationalist regimes in the region built their popular legitimacy through a redistributive process, using state rents in order to fund a number of social programs, including the subsidies of basic goods. The introduction of neoliberal reforms marked a shift from this populist form of authoritarianism to a post-populist reconstitution of political regimes. As Hinnebusch argues, 'authoritarian power persisted but was now used, not to attack inequalities, as in the populist period, but to reconstruct and protect the new inequalities unleashed by the region's opening to the global economy'.<sup>222</sup>

In the context of the shift from *étatisme* to export-led economic growth, regimes became increasingly reliant on the 'revival' of the private sector and the reconstitution of a 'new bourgeoisie'.<sup>223</sup> Economic decision-making was further removed from public scrutiny and concentrated into fewer hands under the cover of 'technocracy'.<sup>224</sup> This led to a 'lopsided political liberalization', where a privileged group of members of the new bourgeoisie were given greater access to decision-making. This coincided with the increasing marginalization of populist organizations – unions and political parties – in the process of decision making: elections were manipulated in order to favour bourgeois parties supporting neoliberal reforms, while middle class opposition parties were tolerated only as pressure valves to contain discontent.<sup>225</sup>

---

<sup>219</sup> Gill, "New Constitutionalism".

<sup>220</sup> Bogaert, "Contextualizing the Arab Revolts", 223.

<sup>221</sup> Guazzone, Laura, and Daniela Pioppi, "Globalisation and the Restructuring of State Power in the Arab World." *The International Spectator* 42, no. 4 (2007), 515.

<sup>222</sup> Hinnebusch, Raymond, "Globalization, Democratization, and the Arab Uprising: The International Factor in MENA's Failed Democratization", *Democratization* 22, no. 2 (2015), 341.

<sup>223</sup> Haddad, Bassam, "Syria's State Bourgeoisie: An Organic Backbone for the Regime", *Middle East Critique* 21, no. 3 (2012), 231-257.

<sup>224</sup> Hanieh, *Lineages of Revolt*, 65-66.

<sup>225</sup> Hinnebusch, "Globalization", 342.

The main support base of the regime shifted from the 'revolutionary constituency' inherited from the nationalist era – including peasants, workers, and low-level state employees – to a 'new bourgeoisie', a class of crony capitalists coopted through the redistribution of the resources created by the increased capacities of private accumulation. The new social base underpinning the post-populist regimes were, contrary to the hegemonic discourse discussed in the previous section, incompatible with a move towards political liberalization. This was because the power of the new capitalist class was constituted through political means: its wealth and social status was not premised on its entrepreneurship and economic competitiveness, but largely on its preferential access to state power. Their primary accumulation strategy was rent seeking, i.e. 'politically created/expedited economic opportunities and income'.<sup>226</sup> Hence, this class reproduced itself on the basis of an exclusive access to state power, even a very limited understanding of democracy (i.e. polyarchy) would have threatened their economic power.

### **Popular Demobilization and the Rise of Islamic Counter-Hegemony**

The revival of capitalist conditions of accumulation, and the increased reliance on foreign investments as a development strategy, meant that the interests of investors had to take precedence over that of the public, which led to a reduction of labour rights, wages, and a contraction of populist welfare provisions. In the face of the outbreak of 'food riots' across the region, the imposition of neoliberal principles required the populist constituency to be demobilized. This led to the dismantling of the corporatist-populist institutions, such as the state controlled trade unions and parties, and the gradual waning of the nationalist ideology, which represented the main pillar of legitimacy for the state during the early years of the 'revolutionary' regimes.<sup>227</sup>

The abdication of the developmental and redistributive roles of the state opened the door for the private sector and religious charity networks. This made the regimes vulnerable to the rise of Islamic opposition 'that powerfully attracted the marginalized strata victimized by neo-liberal policies'.<sup>228</sup> It is important to note here that despite the populist nature of the nationalist regimes, these regimes were staunchly anti-communist. Their rise to power was paralleled by the suppression of independent working class movements and communist political parties.<sup>229</sup> In some cases, religious trends were even mobilized by ruling regimes in order to counter the resurgence of communist trends among students and workers.<sup>230</sup> In this context, there were no secular alternatives to represent the grievance of classes marginalized under neoliberalism.

This understanding of the rise of 'grassroot' Islam in the context of neoliberal reforms puts in question a number of assumptions about Islamic movements in the Middle East. The renewed popularity of civilizational analysis after the events of 9/11 has contributed to the re-articulation of orientalist tropes presenting Islam as a unitary, essentialized, and, more importantly, anti-modern

---

<sup>226</sup> Haddad, "Syria's State Bourgeoisie", 232.

<sup>227</sup> Guazzone and Pioppi, "Globalization", 513.

<sup>228</sup> Hinnebusch, "Globalization", 342.

<sup>229</sup> Halperin, Sandra, "The Post-Cold War Political Topography of the Middle East: Prospects for Democracy", *Third World Quarterly* 26, no. 7 (2005), 1135-1156.

<sup>230</sup> Kandil, Hazem, "Islamizing Egypt? Testing the Limits of Gramscian Counterhegemonic Strategies", *Theory and Society* 40, no. 1 (2011), 45.

force. An important part of this narrative is the incompatibility of 'Islam' with democracy, based on a supposedly transhistorical inseparability of religion and state.<sup>231</sup>

According to Mustapha Kamal Pasha, considering the latest resurgence of Islamist movements as a *constitutive* element of neoliberalism globalisation, and not simply as a reaction to its disciplinary nature, sheds a new analytical light in order to understand the nature of these movements.<sup>232</sup> The cultural divide brought by the deepening of globalization must not be understood at face value, as an opposition between Westernized moderates and religious militants, but as the expression of centers of privileges and a marginalized periphery fuelled by the uneven and unequal nature of capitalist development: 'Islamists are better recognized as repositories of subaltern sensibilities, not irrational opponents of modernity of modernization'.<sup>233</sup>

Rather than pitting Islamic movements against a liberal understanding of democracy, Islamists' calls for democratic participation need to be understood through their particular cognitive framework. Religious militancy does not represent a wholesale rejection of 'modernity', but a reaction against the particular form of neoliberal modernity imposed by the new imperial relations of market and financial globalization. This points toward a shift from an anti-modern and anti-globalization understanding to a Gramscian reading of religious resurgence as an expression of counter-hegemonic forces.<sup>234</sup>

Following Hazem Kandil's analysis of the al-Ikhwan (Muslim Brotherhood) movement in Egypt, the strategy of this group has many parallels with Gramsci's discussion of the concepts of 'war of position' and 'counterhegemony'. It was only in the 1980's, after decades of repression and imprisonment of its leaders, that al-Ikhwan was allowed limited public space by the Mubarak regime as a move to contain increasing Islamic militancy. Operating with very little space of manoeuvre against the repressive capacities of the state, Islamists embarked on a long-term counterhegemonic cultural strategy. In the context of neoliberal reforms, a key component of this strategy was the incorporation of subalterns into their alternative conception of the world.<sup>235</sup> The Islamist worldview was thus 'articulated, de-articulated, and reconstituted' in order to introduce conceptions of democracy, civil rights, citizenship, social justice, anti-imperialism, and feminism.<sup>236</sup> Contrary to essentialist approaches, elements of the Islamic tradition were selectively reinterpreted in order to broaden its political appeal, representing a similar process to what theorists of nationalism have called the 'invention of tradition'.<sup>237</sup>

These ideas were then spread through the mobilization of socialization structures. As Gramsci argues, '[t]he subaltern classes, by definition, are not unified and cannot unite until they are

---

<sup>231</sup> See : Huntington, Samuel P., "The Clash of Civilizations?", *Foreign Affairs* (1993), 22-49; Lewis, Bernard, *What Went Wrong?: The Clash Between Islam and Modernity in the Middle East* (London: Harper Collins, 2003).

<sup>232</sup> Pasha, Mustapha Kamal, "Predatory Globalization and Democracy in the Islamic world", *The Annals of the American Academy of Political and Social Science* 581, no. 1 (2002), 121-132.

<sup>233</sup> Ibid., 127.

<sup>234</sup> See : Butko, Thomas J., "Revelation or Revolution: A Gramscian Approach to the Rise of Political Islam", *British Journal of Middle Eastern Studies* 31, no. 1 (2004), 141-162; Bayat, Asef. *Making Islam Democratic: Social Movements and the Post-Islamist Turn*, (Stanford: Stanford University Press, 2007).

<sup>235</sup> Kandil, "Islamizing Egypt?"

<sup>236</sup> Ibid., 48.

<sup>237</sup> Ranger, Terence O., and Eric J. Hobsbawm, eds, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).

able to become a “State”.<sup>238</sup> This means that the objective of a counterhegemonic movement is to create an ‘alternative state’ either by creating parastatal institutions – political parties, schools, syndicates/unions, media, courts, welfare/charitable networks – or by taking over existing civil society/state institutions.<sup>239</sup> As Kandil shows in his study of Egypt, the counterhegemonic strategy of al-Ikhwan has worked through the gradual taking over of such institutions. The demobilization of the population by the regime allowed its re-mobilization by the Islamic discourse.<sup>240</sup>

In conclusion, the rise of Islamic movements in the context of neoliberal restructuring represents the closest there is today to Gramsci’s definition of counterhegemonic movements. This has important implications for the question of democracy and democracy promotion. The relative success of al-Ikhwan in the 2005 elections – winning the most seats by any opposition party since 1952 – confirmed the prospect that democratization would favour the coming to power of Islamists. This led to a sudden drop in the West’s enthusiasm for democratization. We will see in the next section how this had an important impact on the West’s assessment of the post-*intifada* developments in the region.

### **The Antinomies of Democracy Promotion in the Middle East: The Egyptian *Intifada* and Imperial Reactions.**

The outbreak of a region-wide *intifada* and the weakening and collapse of authoritarian states was accompanied with a strong mobilization of democratic sentiment across the region. This took analysts of the region by surprise, most of them having abandoned the short-term prospects of democracy in the region. With the rise of al-Ikhwan and its avatars throughout the region, a moderate Islamic version of democracy seemed to be on the verge of realising itself.<sup>241</sup>

However, a conservative counter-offensive – entangled in the wider geopolitical interests in the region – was in the making, with the Saudi’s financing of conservative Salafis in Egypt against both the secular democratic youth and al-Ikhwan. While the protest movements stalled, the national security establishments were recovering. This eventually culminated with the overthrow of President Morsi by the Egyptian Armed Forces and the taking over of their candidate Abdel Fattah al-Sisi. This announced the triumph of counter-revolutionary and anti-democratic forces. The democratic alternative lost most of its support: on the one hand, liberals abandoned a democratic road that would empower Islamists; on the other hand, Islamists’ support of democracy waned as the Egyptian scenario demonstrated that democratically elected Islamic movements would not be allowed to rule.<sup>242</sup>

#### *The Role of the West: From Democracy Promotion to ‘Orderly Transition’*

Soon after the outbreak of the *intifada*, long heard neoconservative voices from the former Bush Administration started clamouring that the events in the Middle East signified the success of decades

---

<sup>238</sup> Gramsci, Antonio, "Selections from the Prison Notebooks", ed. and trans. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971), 52.

<sup>239</sup> All of these institutions, associated with civil society, are part of Gramsci’s ‘extended’ definition of the State.

<sup>240</sup> Kandil, “Islamizing Egypt?”, 49-53.

<sup>241</sup> Hinnebusch, “Globalization”, 345.

<sup>242</sup> Ibid.

of western democracy promotion.<sup>243</sup> This is hard to believe since, as we have seen, the U.S.'s strategy of democracy promotion was never about a sudden overthrow of the regime, but a slow and stable process of economic liberalization that would eventually foster political reforms. Nor did the civil society institutions and western funded activists play a significant role in initiating the protest movements.<sup>244</sup>

It is safe to say that the events of 2011 caught western politicians and advisers by surprise. Nevertheless, the uprisings opened a window for democracy building in the region: '[w]estern democracy promotion was, for once, in sync with social movements in the region'.<sup>245</sup> We turn to the analysis of the response of western statesmen and institutions to this unprecedented conjuncture.

Shortly after the ousting of Hosni Mubarak in February 2011, and the U.S. supported taking over of a military transitional government, President Obama extended his support of the 'spirit of peaceful protest and perseverance' and stated that the U.S. would 'continue to be a friend and partner . . . ready to provide whatever assistance is necessary . . . to pursue a credible transition to a democracy'.<sup>246</sup> Echoed by other Western leaders, these commitments were backed by the promise of financial aid coming from a range of international institutions and governments united under the Deauville Partnership, an initiative launched at the May 2011 G8 Summit. US \$40 billion were promised in the forms of loans and assistance to what was defined as the 'Arab countries in transition'.<sup>247</sup>

This marked a discursive shift by Western governments and international financial institutions, with the recognition of the growing distrust on the part of both governments and populations in the region. Policies would now put much more emphasis on 'strengthening voice, transparency and consultation, and improving the living conditions of marginalized populations'.<sup>248</sup> Issues of social and economic inclusion were mentioned as key priorities of this new approach: 'development narrative has shifted from praise of the high levels of economic growth . . . to a focus on issues that directly impact people such as unemployment and public services, and a priority on improving governance and transparency'.<sup>249</sup> This represented a 'concerted effort to respond to the demands of the revolution and to include the voices of different stakeholders including civil society in its new development strategies'.<sup>250</sup>

But as the negotiation around financial support has shown, these rhetorical changes hide a continuity of the pre-revolution neoliberal policies. In Egypt, these negotiations have been stalled because further financial assistance was conditioned on the acceptance of a new IMF reform package. In this case, the broadly defined social aspirations of the revolution – economic inclusion and

---

<sup>243</sup> Quoted in Hanau Santini, Ruth, and Oz, Hassan, "Transatlantic Democracy Promotion and the Arab Spring", *The International Spectator* 47, no. 3 (2012), 66.

<sup>244</sup> Beinin, "Civil Society".

<sup>245</sup> Hinnebusch, "Globalization", 345.

<sup>246</sup> Quoted in Hanieh, Adam, "Shifting Priorities or Business as Usual? Continuity and Change in the post-2011 IMF and World Bank Engagement with Tunisia, Morocco and Egypt", *British Journal of Middle Eastern Studies* 42, no.1 (2015), 119.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid., 120.

<sup>249</sup> Bank Information Center, 'The World Bank Group and Tunisia', March 2013, <http://www.bicusa.org/wp-content/uploads/2013/04/The-World-Bank-Group-and-Tunisia-FINAL-May-10-2013.pdf>, 8.

<sup>250</sup> Ibid.

employment – have been mobilized in order to further policies of privatization and fiscal austerity.<sup>251</sup> This has gone directly against the popular aspirations, which have been calling for increased social provisions, tighter regulations on foreign investments and re-nationalization of liquidated state-enterprises.

In other words, Western involvement in the post-*intifada* period has worked in order to restrain the expression of democratic revolution within the bounds of an ‘orderly transition’ towards the furthering of the pre-revolution neoliberal drive. The financial aid packages, under the cover of ‘transition to democracy and freedom’, represented ‘a conscious attempt to consolidate and reinforce the power of Egypt’s dominant class in the face of the ongoing popular mobilizations’.<sup>252</sup>

This was done through a discursive reframing of the uprisings. Western statesmen and international financial institutions transformed the question of neoliberal reforms from the cause of the popular revolts to a solution to the economic grievances of the population: this was not a revolt against three decades of neoliberalization policies, but against an intrusive and corrupted state obstructing individual self-fulfillment through the market – in other words, a lack of ‘good governance’.<sup>253</sup> Discussing the case of Mohamed Bouazizi, the peddler merchant who set himself on fire and sparked the uprisings in Tunisia, the World Bank President had this to say:

The key point I have also been emphasizing and I emphasized in this speech is that it is not just a question of money. It is a question of policy...keep in mind, the late Mr. Bouazizi was basically driven to burn himself alive because he was harassed with red tape...one starting point is to quit harassing those people and let them have a chance to start some small businesses.<sup>254</sup>

This statement was directly aimed at countering the ongoing popular mobilizations and redefining the struggle as ‘pro-market’. The language of democratic transition is being refashioned inside the limits of the neoliberal drive towards the capitalist integration of the Middle East. At best, the success of this strategy will give way to a society taking the superficial appearance of liberal polyarchy, but remaining in essence an authoritarian neoliberal state ruled by an alliance of the military and business elite.

### **Conclusion: Uncovering Imperialism Behind Failed Hegemony**

In the end, the failures of Western Democracy promotion – and of liberal democracy in general – in the Middle East highlight the contradictions in the project of liberal hegemony and its limits when extended to the periphery of the capitalist world order. As I have shown, behind failed hegemony lurk the coercive mechanisms of ‘new imperialism’: markets and finance. The outbreak and aftermath of the Arab *intifada* has uncovered the reproduction of imperial relations behind the thin ideological veneer of liberal democracy, but while this has led to a discursive shift, the underlying principles have stayed the same. The recent decision of the U.S. administration to release the US \$1.3 billion in military aid to Egypt that it was holding since 2013 has confirmed, at least for the time being, the victory of neoliberal authoritarianism over democracy.

---

<sup>251</sup> Hanieh, “Shifting Priorities”, 131.

<sup>252</sup> Hanieh, “Egypt’s Orderly Transition?”, 131.

<sup>253</sup> Ibid., 128.

<sup>254</sup> Quoted in Ibid., 128.

## Works Cited

- Anderson, Perry, "Imperium", *New Left Review* 81 (2013), 4-111.
- Bank Information Center, 'The World Bank Group and Tunisia', March 2013, <http://www.bicusa.org/wp-content/uploads/2013/04/The-World-Bank-Group-and-Tunisia-FINAL-May-10-2013.pdf>.
- Bayat, Asef. *Making Islam Democratic: Social Movements and the Post-Islamist Turn*, (Stanford: Stanford University Press, 2007).
- Beinin, Joel, "Civil Society, NGOs, and Egypt's 2011 Popular Uprising", *South Atlantic Quarterly* 113, no. 2 (2014).
- Butko, Thomas J., "Revelation or Revolution: A Gramscian Approach to the Rise of Political Islam", *British Journal of Middle Eastern Studies* 31, no. 1 (2004), 141-162.
- Bogaert, Koenraad, "Contextualizing the Arab Revolts: The Politics Behind Three Decades of Neoliberalism in the Arab World", *Middle East Critique* 22, no. 3 (2013).
- Carothers, Thomas, *The Clinton Record on Democracy Promotion* (Washington: Carnegie Endowment for International Peace, 2000).
- Dahl, Robert A., *Polyarchy: Participation and Opposition*, (New Haven: Yale University Press, 1971).
- Diamond, Larry J., Juan J. Linz, and Seymour M. Lipset, eds, *Democracy in Developing Countries*, (Boulder, CO: Lynne Rienner, 1989).
- Diamond, Larry. "Why Are there No Arab Democracies?." *Journal of Democracy* 21, no. 1 (2010), 93-112.
- Ehteshami, Anoushiravan, "Is the Middle East Democratizing?", *British Journal of Middle Eastern Studies* 26, no. 2 (1999), 199-201.
- Foster, John Bellamy, "The Rediscovery of Imperialism", *Monthly Review* 54 (2002), 1-16.
- Guazzone, Laura, and Daniela Pioppi, "Globalisation and the Restructuring of State Power in the Arab World." *The International Spectator* 42, no. 4 (2007).
- Gill, Stephen, "New Constitutionalism, Democratisation and Global Political Economy", *Global Change, Peace & Security* 10, no. 1 (1998), 23-38.
- Gramsci, Antonio, "Selections from the Prison Notebooks", ed. and trans. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971).
- Haddad, Bassam, "Syria's State Bourgeoisie: An Organic Backbone for the Regime", *Middle East Critique* 21, no. 3 (2012), 231-257.
- Halperin, Sandra, "The Post-Cold War Political Topography of the Middle East: Prospects for Democracy", *Third World Quarterly* 26, no. 7 (2005), 1135-1156.
- Hanau Santini, Ruth, and Oz, Hassan, "Transatlantic Democracy Promotion and the Arab Spring", *The International Spectator* 47, no. 3 (2012), 65-82.
- Hanieh, Adam, *Lineages of Revolt: Issues of Contemporary Capitalism in the Middle East* (Chicago: Haymarket Books, 2013).
- Hanieh, Adam, "Egypt's 'Orderly Transition'? International Aid and the Rush to Structural Adjustment", in Haddad, Bassam, Rosie Bsheer, and Ziad Abu-Rish, eds, *The Dawn of the Arab Uprisings: End of an Old Order?*, (London: Pluto Press, 2012).
- Hanieh, Adam, "Shifting Priorities or Business as Usual? Continuity and Change in the post-2011 IMF and World Bank Engagement with Tunisia, Morocco and Egypt", *British Journal of Middle Eastern Studies* 42, no.1 (2015).
- Hinnebusch, Raymond, "Globalization, Democratization, and the Arab Uprising: The International Factor in MENA's Failed Democratization", *Democratization* 22, no. 2 (2015).

- Huntington, Samuel P., "The Clash of Civilizations?", *Foreign Affairs* (1993), 22-49.
- Joya, Angela, "Theorizing Post-Cold War US Imperial Strategies in the Middle East: Integrating the Region into the Capitalist World Market ", *YCISS Working Paper 37* (2005).
- Kandil, Hazem, "Islamizing Egypt? Testing the Limits of Gramscian Counterhegemonic Strategies", *Theory and Society* 40, no. 1 (2011).
- Kiely, Ray. *The New Political Economy of Development: Globalization, Imperialism, Hegemony*. London: Palgrave Macmillan, 2007.
- Lewis, Bernard, *What Went Wrong?: The Clash Between Islam and Modernity in the Middle East* (London: Harper Collins, 2003).
- Markakis, Dionysis, *US Democracy Promotion in the Middle East: The Pursuit of Hegemony*, (London: Routledge, 2015).
- Mooers, Colin Peter, ed, *The New Imperialists: Ideologies of Empire* (Oxford: Oneworld, 2006)
- Panitch, Leo, and Sam Gindin, *The Making of Global Capitalism* (London: Verso Books, 2012)
- Pasha, Mustapha Kamal, "Predatory Globalization and Democracy in the Islamic world", *The Annals of the American Academy of Political and Social Science* 581, no. 1 (2002), 121-132.
- Ranger, Terence O., and Eric J. Hobsbawm, eds, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).
- Robinson, William I., *Promoting Polyarchy: Globalization, US intervention, and Hegemony*, (Cambridge: Cambridge University Press, 1996).
- Van der Pijl, Kees, "Arab Revolts and Nation-State Crisis", *New Left Review* 70 (2011), 47.
- Wood, Ellen, *Empire of Capital* (London: Verso, 2003).
- Wood, Ellen, "Democracy As Ideology of Empire", in Colin Mooers, *The New Imperialism*, (Oxford: Oneworld, 2006).