

Burgmann Journal

R E S E A R C H D E B A T E O P I N I O N

I S S U E I I I , 2 0 1 4

Burgmann Journal is an interdisciplinary, peer-reviewed publication of collected works of research, debate and opinion from residents and alumni of Burgmann College designed to engage and stimulate the wider community.



BURGMANN COLLEGE

Affiliated with The Australian National University

Capture our imagination

EH BURGMANN 1944



Published by ANU eView
The Australian National University
Canberra ACT 0200, Australia
email: anuepress@anu.edu.au
This title is also available online at <http://eview.anu.edu.au>

ISSN 2201-3881 (Print)
ISSN 2201-3903 (Online)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior permission of the publisher.

Opinions published in the Burgmann Journal do not necessarily represent those of The Australian National University, Burgmann College, or the Editors.

Front cover by Burgmann alumnus Tan Haur. According to Tan, this artwork was inspired by 'his recent life experiences, travel, people, nature, the continually shifting world and the excitement of humanity.'

Printed by Griffin Press

This edition © 2014 ANU eView

Editorial Team:

Patrick Carvalho
Editor-in-Chief

Ella Relf
Editor

Tom Baily
Editor

Alex Bridges
Editor

Janelle San Juan
Editor

Associate Editors:

Vincent Margerin

Andrew Young

Academic Referees:

Dr Zuleika Arashiro

Lecturer
School of Politics and International Relations
College of Arts and Social Sciences
The Australian National University

Prof Rachel Bloul

School of Sociology
College of Arts and Social Sciences
The Australian National University

Dr Kevin Boreham

Lecturer
College of Law
The Australian National University

Dr Douglas Craig

Reader in History and Head
School of History
College of Arts and Social Sciences
The Australian National University

Dr Massimo Fichera

Post-Doctoral Fellow
Faculty of Law
University of Helsinki

Mr Joshua Soo

Associate Lecturer
College of Business and Economics
The Australian National University

Prof Miranda Stewart

Director
Tax and Transfer Policy Institute
Crawford School of Public Policy
The Australian National University

Dr Carolyn Strange

Graduate Director and Senior Fellow
School of History
College of Arts and Social Sciences
The Australian National University

Mr Tom Westland

Researcher
East Asian Bureau of Economic Research
Crawford School of Public Policy
The Australian National University

Authors:

Gerry Antioch spent an enjoyable year in Burgmann College's Homer wing where he met the mother of his three children. He obtained a Master's degree in Economics in 1993 from The Australian National University and joined the Treasury in 1997. His senior roles include General Manager of Tax System Division, Bureau member of the OECD's Committee of Fiscal Affairs (2013–2014), Minister-Counsellor (Economic) in Australia's Permanent Delegation to the OECD (2006–2009), Vice-chairman of the OECD's Economic and Development Review Committee (2007–2009), General Manager of the Foreign Investment and Trade Policy Division and Executive Member of the Foreign Investment Review Board, member of the OECD's Investment Committee (2005–2006), and Secretary of the Board of Taxation. He has published in Treasury's house journal *Economic Roundup*, and in *Applied Economic Letters* and *Australian Tax Forum*.

Alix Biggs is a second year Bachelor of Philosophy (Honours) student at The Australian National University, majoring in History with a particular interest in twentieth century post-conflict societies. She graduated from Canberra Girls Grammar School in 2012. Alix has been a resident of Burgmann College since 2013 and is the ongoing recipient of a C.A.S. Hawker Scholarship.

Jessica Elliott is currently a second year Bachelor of Arts, Bachelor of Laws student at The Australian National University. She is completing a major in Human Rights and a minor in International Relations. Jessica is particularly interested in women's rights and hopes to pursue a career in international human rights or development with a gendered-focus. This is Jessica's first year at Burgmann College.

Jessica Van Lieven has been a resident of Burgmann College since 2011, and is currently undertaking a combined degree in Laws and Arts at ANU, majoring in French Language and Culture and minoring in International Relations. Jessica is a columnist for the Monsoon Project, supported by the College of Asia and the Pacific, and has recently become interested in issues of development, particularly in emerging countries such as Sri Lanka and Myanmar. She one day hopes to use her legal training and language skills as a translator/policy advisor/international lawyer in the UN.

Tristan McCall is a third year Bachelor of Law and Bachelor of International Relations student at The Australian National University. He is currently minoring in International Security and History, and hopes to work in national security upon graduating. Tristan has been a Burgmann resident since 2012 and is originally from Melbourne.

Stuart Mooney is completing a Masters in International and Comparative Law specializing in public international law at the University of Helsinki. He has worked previously as a Legal Specialist in the International Law Branch at the Australian Department of Foreign Affairs and Trade, and as Second Secretary and Consul in the Australian High Commission, Nigeria. Stuart was awarded an All Regions Scholarship to Burgmann College in 2000, continued as a resident during 2001, and returned in 2003/2004 as a Summer Research Scholar in the Research School of Social Sciences.

Camilla Pondel has been a resident at Burgmann College for three years, since commencing university in 2012. She moved to Canberra from Melbourne to study a Bachelor of Laws and Bachelor of Music, and expects to graduate in 2016. Camilla visited Maastrich University in the Netherlands in January 2014 to participate in the university's International Environmental Law program. Following her graduation, Camilla hopes to practise law, both in Australia and overseas.

Scott Stephenson has been a resident of Burgmann College since 2013. He is currently undertaking a PhD in political history at ANU, investigating power and organisation within the New South Wales Labor Party. In addition to politics, he is also passionate about cultural history and animal welfare. Scott holds a Bachelor of Arts (First Class Honours) and a Bachelor of Laws from ANU. His most recent publication appeared last year in *Labour History* and he has an article forthcoming in the *Australian Journal of Political Science*.

William Albert Stoltz resides at Burgmann College while studying at the ANU National Security College. In addition to being a member of the Australian Republican Movement, Stoltz helped found the University of Melbourne Republic Club while completing his studies there. He is an avid scholar of Australian defence policy and Indo-Pacific strategic affairs, and a passionate enthusiast of Australian history.

Keely Van Order studies psychology with an interest in perception and synaesthesia. She has a BA in International Development Studies from McGill University and a Masters of Visual Art from ANU. Currently, Keely teaches language and arts-based courses in the A.C.T. where she also exhibits as a graphic artist. Since immigrating to Australia, she has been an active member and supporter of Oxfam and other social justice initiatives. She joined the Burgmann community this year as a Residential Adviser.

Tan Haur was the Artist-in-Residence at Burgmann College from 2006 to 2007. He is an MA graduate (Distinction) of The Australian National University majored in digital imaging, alternative photographic processes and ink painting. As a pioneer of the local and regional Digital Art Community, Tan has been actively involved in many of the global digital art activities and research projects. He has received the 1st prize award in the France + Singapore Photographic Arts Competition 2012 organized by Alliance Française de Singapour and co-presented by the Embassy of France in Singapore.

Foreword:

As an alumna of Burgmann College I am very proud to introduce to you the third issue of collected scholarly and creative works from Burgmann residents and alumni.

In this edition a richly fascinating trove of idea and argument awaits the reader. Bold, distinctive and diverse, these works offer stimulating reading, sometimes provocative, sometimes contemplative. The authors represent a spectrum of academic disciplines and perspectives. Some are current residents and others are former residents. There are philosophers, legal scholars, historians, economists, artists and writers: for all of them the uniting context is a period of life spent as part of the Burgmann College community.

In an era of abbreviated communications, of packaged and pre-fabricated thought, this collection shines. The articles are singular, and time is taken by the authors to consider and examine between them a wide variety of subjects. Ideas burst from the pages, a feast for the mind.

From my days as a resident at Burgmann College and throughout a lengthy continuing association, I have become accustomed to this calibre of endeavour from within the Burgmann community. To be part of the Burgmann community is indeed to be part of a culture where diversity of ideas and leadership in thought are embraced and celebrated. Intellectual adventurousness and academic engagement are hallmarks of the Burgmann experience, qualities that are passed on through generations of residents and promulgated to the wider world through the College alumni.

Testament to the maturity of academic leadership at Burgmann College is the collaboration in this journal by contributors from an array of disciplines, including residents at all stages of their studies, and alumni from across the years. With residents and alumni also working together as the editorial team, this third Burgmann Journal promises to make its mark as another great Burgmann achievement!

I commend it to you as absorbing and illuminating reading.

Bettina Söderbaum
Secretary
Burgmann College Council

Alumna 1977/78

Editorial:

It is with a great sense of achievement that we present the third issue of the Burgmann Journal. After three years in existence, the Burgmann Journal consolidates itself as a medium for many bright and inspiring voices in our beloved community. If I had to single out one word to define this year's issue, it would be *maturity*.

It all started back in 2012 as a bold and brave idea, wholeheartedly supported by Dr Emma-Kate Potter, the then Dean of the Postgraduate Village, and Dr Philip Dutton, the College's Principal. The objective was (and still is) to promote the research, debate and opinion of residents and alumni of Burgmann College, in order to engage and stimulate the wider community. And so was born this wonderful and rewarding project, of which I had the pleasure and joy to be part since its beginnings. After three years, it is safe to state the Burgmann Journal has been warmly welcomed by *burgies* as a constituent element of the College's rich tradition. Maturity has come: what started as a possibility is now a reality.

This publication is the fruit of the hard work, passion and trust of our editors, staff, board members, residents and alumni, who directly or indirectly contributed to the final product. In particular, I would like to mention the diligence and industriousness of our Associate Editors, Vincent Margerin and Andrew Young, who have been at the core of the project since its inception.

I will finish this message by inviting the reader to the enticing and rich content of this present issue. As stated in its seminal issue, the Burgmann Journal is an embodiment of the Burgmann College community. *Long live!*

Patrick Carvalho
Editor-in-Chief

Contents

Section I – Peer-Reviewed Articles

Tax Competitiveness Rankings

Gerry Antioch pp. 1–6

Denial, Memory, and the Armenian Genocide

Alix Biggs pp. 7–12

Female Genital Mutilation, Male Circumcision and Vaginoplasty

Jessica Elliott pp. 13–18

The Price is Rice: Micro-Irrigation and Development in Myanmar

Jessica Van Lieven pp. 19–22

Freedom, Democracy and Slavery

Tristan McCall pp. 23–28

Fragmentation and Dichotomy in Contemporary International Law

Stuart Mooney pp. 29–34

The Trianel Case

Camilla Pondel pp. 35–40

LSD and the American Counterculture

Scott Stephenson pp. 41–46

Section II – Opinion Pieces

A New Commonwealth for our New World

William Stoltz pp. 47–48

Section III – Artworks

Ēchō Țũ'nā

Keely Van Order pp. 49–52

Wonderland Art Series

Tan Haur pp. 53–55

Tax Competitiveness Rankings

Gerry Antioch¹

Tax systems reflect community preferences, institutional factors and global influences. Using a recent KPMG data set, I find that personal and capital tax bases appear to be inversely related among major G20 countries, as well as historically in Australia. Standard composite indicators of performance, including KPMG's tax competitiveness index, accord equal weight to constituent components. Whereas political economy influences might suggest otherwise. I construct a relative tax competitiveness index which suggests that when the data is allowed greater expression, Australia improves its tax competitiveness ranking. Australia also has greater tolerance for statutory labour costs perhaps reflecting its labour market institutions. Australia's high tax position is dominated only by Italy's higher capital tax and by France's higher labour tax costs.

"We all want to be the best at something. Trouble is, some people are only the best at being second best."

—Jarod Kintz, *Seriously delirious, but not at all serious*, 2012.

International tax competitiveness often takes centre stage in policy discussions. Official reports routinely compare statutory corporate tax rates among countries (e.g. Henry et al. [2010, Chart 5.1, p39]) as a way to highlight Australia's place among peer countries with the accompanying view that corporate tax settings must be competitive to attract and retain mobile capital.

International tax competitiveness analysis, however, needs to account for major aspects and imposts of the tax system, including compliance costs. The global firm KPMG recently contributed to this analysis in its benchmarking reports (KPMG [2012a] and KPMG [2012b]) with composite indices of competitiveness using fixed weights to expose the cost of doing business internationally.

Although convenient and widespread, the use of fixed weights in constructing a country's composite performance indicator treats constituent indicators in each country as having equal policy importance or reflecting uniform preferences. That is unlikely to be true.

In reality, public policy settings inevitably reflect relative political economy considerations and practical politics. In the tax domain, the central policy issue is how much to tax capital, labour, consumption (or saving) and property so as to do the least harm to economic activity and to maintain or promote a measure of income equality. Conventional reform proposals typically entail a switch in the

mixture of taxes, driving down the most harmful taxes and driving up less harmful taxes. Another type of tax reform is to reduce all taxes with greater reductions bearing on the more harmful. To be successful, reform proposals must pay careful regard to political economy issues. Otherwise even initial reform success could quickly unravel.

This paper has two aims. It seeks to expose the tax facts in the KPMG data set, and by computing the optimal weights for each country, it seeks to uncover underlying country preferences or tolerances for different income taxes.

KPMG's study of business location costs

In its extensive cross-country assessment of business location costs in 13 G20 countries and the Netherlands, KPMG [2012a] assesses tax policy settings as part of a range of cost factors. It finds (Table 5.1) that tax accounts for 10–18 per cent of overall costs for manufacturing operations and 3–14 per cent for non-manufacturing operations. In comparison, labour costs accounted for 40–57 per cent of overall costs for manufacturing operations and between 70–84 per cent for non-manufacturing operations.

In relation to tax costs, India, Canada, China, Mexico and Russia make up the top five 'most competitive' countries whereas Australia's tax regime ranks 10th with Japan, Italy and France bringing up the rear. Like other studies, KPMG [2012b] sums the effective tax burden on capital, labour and property taxes and constructs a normalised (at US = 100) composite index. As Figure 1 shows, Australia is 25 per cent costlier than the US whereas India is 50 per cent cheaper and France is 79 per cent costlier.

Figure 2 shows relative rankings by the two major

¹I am grateful to my Treasury colleague, Aaron Lester for constructing data in Figure 3. My thanks also go to Andrew Young, associate editor of this journal, and Miranda Stewart, Professor and Director of the Tax and Transfer Policy Institute, Crawford School of Public Policy, ANU for many helpful suggestions. This journal's Vincent Margerin greatly improved the appearance of the text and charts. Views in this paper are not necessarily those of the Australian Treasury.

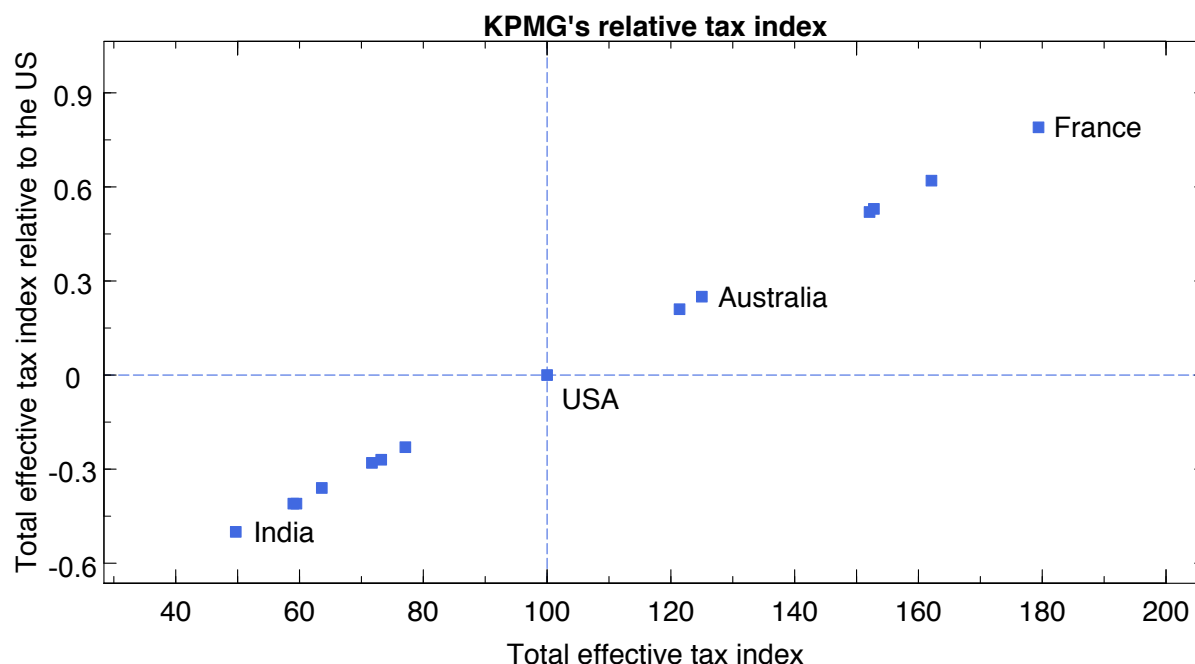


Figure 1: Distribution of relative tax cost [KPMG, 2012b, Appendix A: Detailed Results, and authors calculation].

sources of cost, statutory labour costs² and capital tax cost. Here Australia's high tax position is dominated only by Italy (capital tax) and by France (labour cost).

Unexplored by the KPMG study is a striking pattern for both high cost (i.e. those above the red line) and low cost countries: a tradeoff appears to exist between labour costs and capital taxes! In the high cost group, at one extreme Brazil has very high capital taxes with a moderate level of labour costs and at the other extreme France has moderate capital taxes but very high labour costs. Notably Canada³, the Netherlands and the UK are among the set of seven low tax cost countries. And although these low tax countries are tightly bunched, a (negative) correlation of labour costs and capital taxes is still discernible. That is, the countries with lower capital taxes have higher labour costs.

The negative cross-country relationship as suggested by the KPMG data is consistent with Australian data over the period 1974–2013

(Figure 3)⁴. This historical pattern is particularly relevant for current times, as growth in company tax revenue flattens while personal income tax revenue rises mainly on account of bracket creep and temporary personal income tax levies. Evidently in the first half of the naughties company tax revenue swelled, mainly from the resources boom, followed by a fall in personal tax revenue from 2007, owing to tax cuts. It is striking that the period since 2007 appears to re-establish the longer-term negative pattern.

Two related factors could account for the generally negative relationship between labour costs and capital tax. In their novel contribution to corporate income tax incidence, Felix and Hines [2009] investigate whether corporate tax influences union wage premiums⁵. Their empirical analysis compares the effects of taxation on unionised and non-unionised workers to uncover how tax burdens are shared within the workforce. They find that US states with strong union power (i.e. those without 'right to work' laws) tend to command higher union wage premiums, when corporate tax

²Statutory labour costs include "employer portion of required pension, unemployment, medical plan, workplace injury insurance or other similar plan and tax payments" [KPMG, 2012b, p7].

³However, as Chen and Mintz [2013] indicate with alarm, Canada has since increased in its capital taxes, signifying a concerning reversal of Canada's recent tax reforms. Even so, US companies are moving to Canada. For example, by purchasing Canadian fast-food chain Tim Hortons, Burger King will relocate its corporate residence to Canada to reduce the high US corporate tax rate on its worldwide profits [Kehoe, 2014].

⁴The Australian data comprises corporate tax revenue and income tax revenue as a proportion of total tax revenue. And strictly speaking, personal income tax revenue reflects income from labour as well as from capital. However, if capital returns received by individuals are positively correlated with corporate income, this distinction would not be significant. The correlation coefficient for the 1974–2013 period is -0.6.

⁵The wage premium measures the extent to which union wages exceed wages of comparable non-unionised workers reflecting a combination of employer profitability and the ability of unions to share in those profits.

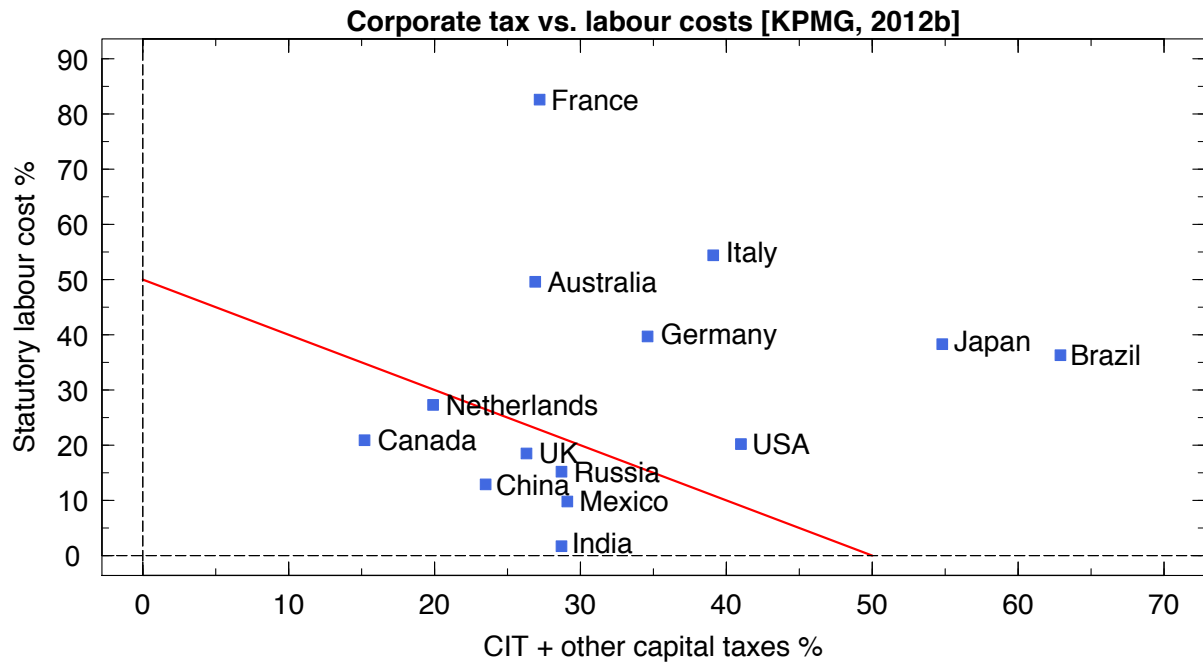


Figure 2: A negative relationship between labour costs and capital taxes [KPMG, 2012b, Appendix A: Detailed Results, and author's calculation].

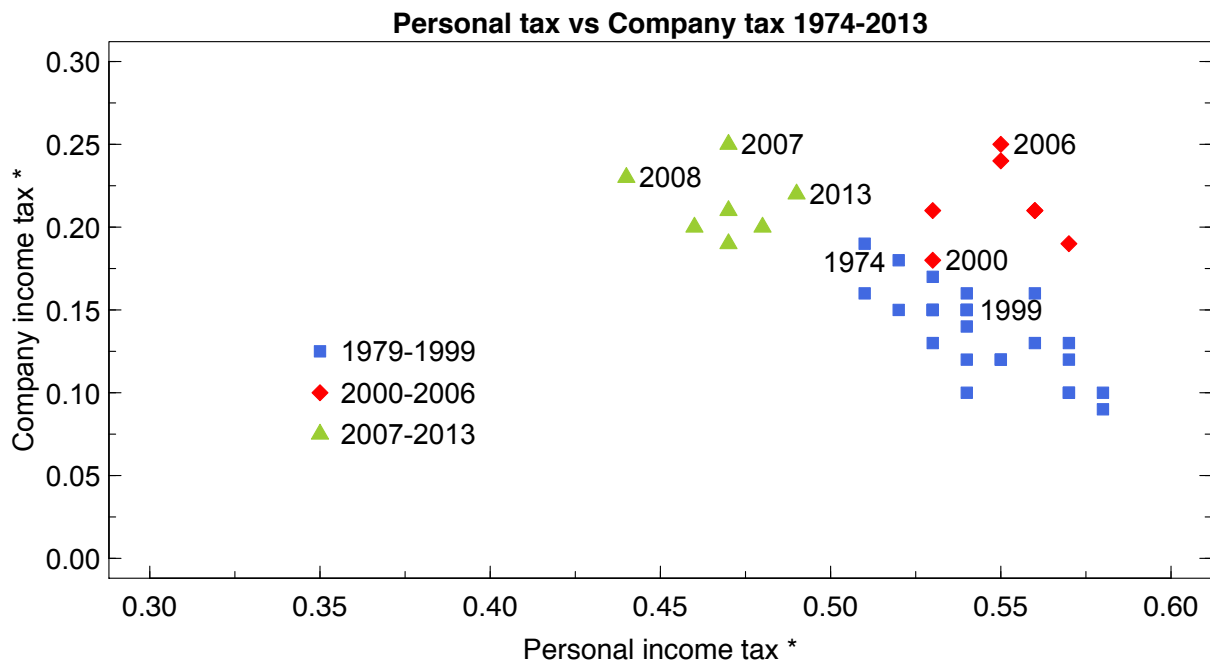


Figure 3: Historical relationship between company and personal tax [Department of Finance, 2014, and author's calculation]. (*Data given as proportion of Commonwealth tax revenue.)

rates are low. But since high corporate tax rates reduce firm profitability, it tempers unions' ability to appropriate after-tax resources, and that leads to lower union wage premiums. Figure 2 appears to support this explanation—wage costs are lower for countries with higher capital taxes.

At 18.1 per cent in 2011, Australia's trade union density is identical to Japan and Germany. To the extent that trade union density is a useful indicator of union power⁶, these three countries should have roughly similar labour costs, as is the case for Japan and Germany. But Australia's labour costs are 10 percentage points higher!

An explanation for Figure 3 may concern the mix of tax revenue. Felix and Hines do not explicitly include the government as a claimant on firm profits. Nevertheless, a progressive personal income tax schedule would siphon off as personal tax revenue a portion of the higher real wages arising from lighter capital taxes. Contrastingly, higher capital taxes would tend to depress real wages and erode the capacity to tax labour to produce a seesaw effect in the respective tax revenue categories. Moreover when the corporate tax rate is somewhat lower than the top marginal tax rate, tax planning, including by incorporation of businesses, would shift tax collections towards the company and other tax bases. While such 'fiscal externalities' among tax bases confound revenue forecasting they also change administrative and compliance costs.

Optimised weights as indicators of relative tax policy preference

As noted earlier, in constructing an overall indicator of tax competitiveness treating all taxes as equally preferred or equally tolerated is questionable because each country's choice of taxes reflects their own demographic, economic and institutional factors. Experts may opine as to why some countries rely more on corporate taxes than other countries but such opinions tend to be idiosyncratic. Therefore, it is appropriate to see if the data can reveal relative preference.

Following Bowen and Mosen's [2007] novel application of data envelopment analysis to composite index construction, I devise a *Relative Tax Competitiveness Index*, *RTCI*, by endogenising the weights in the following problem for each country.

$$RTCI_i \stackrel{def}{=} \min_{\langle w_{ij} \rangle} \sum_{j=1}^3 w_{ij} I_{ij}, \quad i \in [1, 14].$$

Subject to:

$$\sum_{j=1}^3 w_{ij} = 1, \quad w_{ij} \in [0.10, 0.50]$$

As indicated in this optimisation problem, each KPMG sub-index I_{ij} of statutory labour costs, corporate income tax and other capital taxes is combined with variable weights w_{ij} in a way that produces the smallest overall value of *RTCI*. Choosing these weights in this way embodies the idea that each country strives to be competitive in an overall tax system sense⁷. This model preserves the KPMG ranking structure in that a rank of '1' signifies that country is most tax competitive. Moreover, the larger the optimised weight attaching to a particular tax the stronger the implied preference or tolerance for that tax. A key departure from the KPMG study is the imposed restriction that the optimised weights are in the 10–50 per cent range. Limiting optimised weights to a reasonable range builds in the notion that distortionary effects on economic activity are greater the larger the tax impost on a given revenue base⁸.

With the data expressing itself, Figure 4 indicates six countries slip down the KPMG ranking, five climb up and three remain unchanged.

Relative to the KPMG index, Australia improves to eighth place (from tenth). Although Australia's weight on labour costs falls from 0.3 to 0.1, suggesting greater permissiveness in containing such costs (see Table ??), its ranking improves to 8th place because other countries that reveal similar tolerance do not improve on the capital costs dimension. Australia displaces the United States for eighth place and Italy now takes tenth place. Alongside Australia, Canada, Germany, France and the Netherlands accord the least weight on labour costs (0.1) and all but Canada and Germany improve their ranking. Of the seven countries placing the greatest weight (0.5) on labour costs, only Mexico improves its ranking; Brazil, Japan, Russia and the United States slip back; and China and India retain their KPMG ranking.

With a weight of 0.4 on corporate tax, Australia and the Netherlands improve their rank whereas Brazil, Germany, Japan, Russia and the United

⁶Union density may not pick up other labour market institutions and industrial relation regulations that can influence labour costs such as in Australia. et al [2008] note that whereas Germany has regulated wage bargaining arrangements, Japan's wage bargaining system is largely deregulated.

⁷KPMG data does not allow a full tax system assessment since it does not include consumption taxes and compliance and administrative imposts.

⁸This view about the excess burden of taxation can be found in public finance textbooks and leads to the tax reform mantra to broaden the tax base and lower the tax rate. Gruber [2011, p599] offers an accessible discussion.

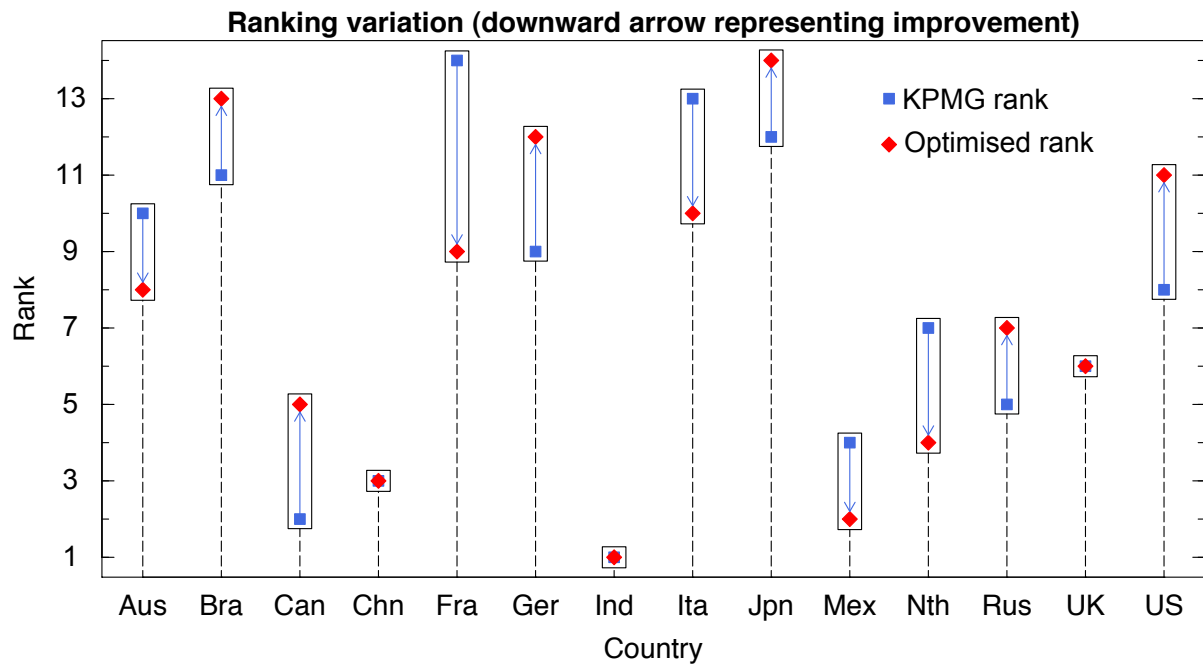


Figure 4: KPMG versus optimised rankings [KPMG, 2012b, Appendix A: Detailed Results, and author's calculation].

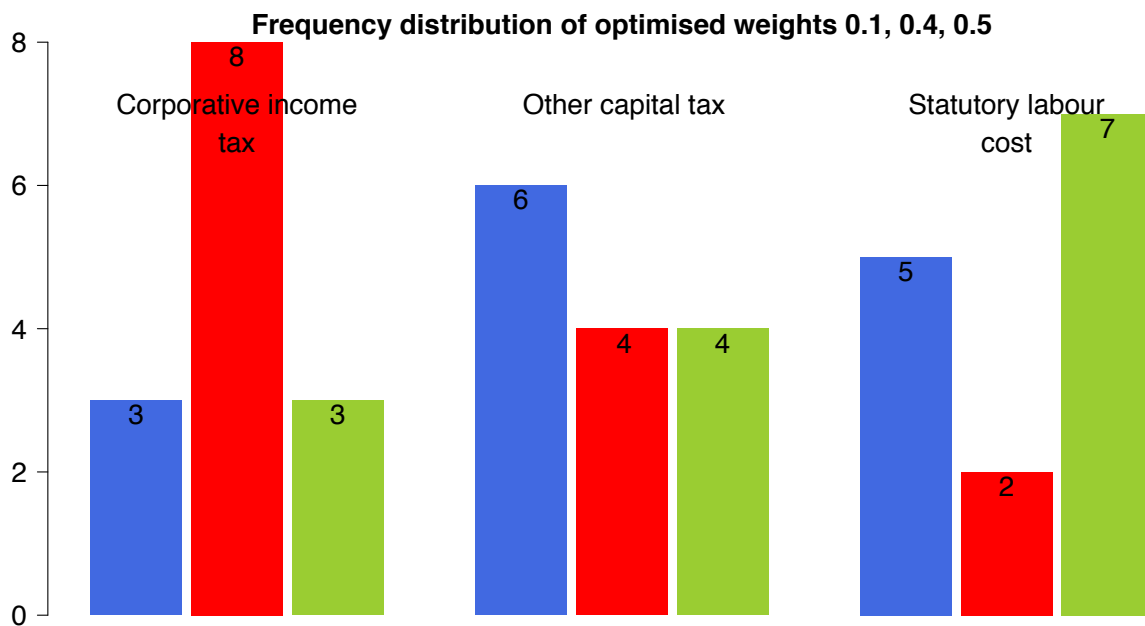


Figure 5: Distribution of preferences among countries for particular taxes (author's calculation).

Table 1: Comparison of implied KPMG weights and optimal weights for Australia.

Australia	Labour Costs	Corporate tax	Other capital taxes
Implied KPMG weights ¹	0.3	0.4	0.3
Optimised weights	0.1	0.4	0.5

States slip down and China is unchanged. Placing the highest weight (0.5) on corporate tax, the United Kingdom is unchanged and France and Canada improve their rank. With the lowest weight (0.1) on corporate tax, India retains its pole position and Italy and Mexico improve their ranks.

Figure 5 summarises the pattern of optimised weights, indicating that Australia is with the majority of countries on corporate and capital taxes but not with the majority on labour costs.

Summary

This paper has drawn out an interesting relationship between labour tax costs and capital tax costs not identified in the KPMG study. Notably such a relationship appears in recent Australian tax history.

Composite indicators are more descriptive than a single indicator, such as the statutory corporate tax rate. That is because a foreign firm wishing to locate in Australia will want to consider cost factors besides Australia's corporate tax rate. Likewise, an Australian firm considering offshore expansion will need to consider cost factors besides the foreign corporate tax rate. For a variety of reasons, governments may wish to change the mixture of taxes they levy which will require considering composite measures of competitiveness. However by using a fixed and uniform weighting scheme, conventional composite indicators, such as KPMG's tax competitiveness index, overlook information about a country's relative preference or tolerance of tax and regulatory costs.

By allowing the data greater expression, the relative tax competitiveness index reported in this paper provides a more realistic impression of international rankings. To the extent it is informative this type of index should assist policy deliberations that address traditional aspects of the tax system as well as regulatory costs.

Australians appear to accord a much smaller weight to labour tax costs compared to capital tax costs. This smaller labour cost weight is a likely reflection of Australia's well known labour market institutions and rigidities. Although reducing these rigidities would be desirable in their own right, rebalancing needs to be managed in a way that lowers overall Australian tax cost to enable economic activity to flourish.

References

- Harry P. Bowen and Wim Mosen. Benchmarking the performance of nations: nonuniform weighting and noneconomic dimensions. *Corporate Governance*, 7(1): 6–16, 2007.
- Duanjie Chen and Jack Mintz. Annual global tax competitiveness ranking: Corporate tax policy at a crossroads. *SPP Research Papers*, (6.35):1–33, 2013.
- Department of Finance. Commonwealth monthly financial statements. Web, 2014. URL <http://www.finance.gov.au/publications/commonwealth-monthly-financial-statements/>.
- Philip Du Caju et al. Institutional features of wage bargaining in 23 European countries, the US and Japan. *European Central Bank Working Paper Series*, (974):1–57, 2008.
- Alison Felix and James Hines. Corporate taxes and union wages in the US. *NBER Working Paper Series*, (15263): 1–63, 2009.
- Jonathan Gruber. *Public Finance and Public Policy*. Worth Publishers, 3rd edition, 2011.
- Ken Henry et al. Australia's future tax system: Report to the Treasurer, 2010. http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm.
- John Kehoe. Buffet's tax wake-up call for America. *Australian Financial Review*, 1 September 2014.
- KPMG. Competitive alternatives: KPMG's guide to international business location costs, 2012 edition. <http://www.competitivealternatives.com/download/archive.aspx>, 2012a.
- KPMG. Competitive alternatives: Special report: Focus on tax, 2012 edition. <http://www.competitivealternatives.com/download/archive.aspx>, 2012b.

Denial, Memory, and the Armenian Genocide: To Forget Rather than Remember

Alix Biggs

Nobel Peace Prize winner Elie Wiesel asserted that “to forget the dead would be akin to killing them a second time.” After one hundred years of Turkish denial, Armenians continue to fight for recognition and memorialisation of the Armenian genocide. The Turkish and Armenian communities are plagued by unresolved tensions stemming from a lack of justice, reconciliation and acknowledgement, and their dispute has harmed not only their bilateral relations but also Turkey’s standing on the world stage. The case of Turkey and Armenia calls attention to the broader problem of genocide denial, including tactics of denial, issues of definition and the importance of retributive and restorative justice. In the approach to the centenary anniversary of the atrocities in Anatolia, it is important to critically consider attempts at memorialisation and what prospects there are for the normalisation of relations between the Turkish and Armenian communities.

Denial is often suggested to be the final stage of genocide, and is connected with issues of memory, as political elites, perpetrators and even ordinary citizens seek to “forget rather than remember” [Judt, 2008]. Despite the resistance of aggressors to recognise their crimes, the importance of adequate recognition and memorialisation is recognised universally as a means of genocidal societies achieving closure and normalisation of relations. The problems of ongoing denialism have been demonstrated by the ongoing state denial of the Turkish genocide against Armenians, beginning in 1915, which has been systematically dismissed and denied in Turkey for nearly a century. Considering issues of denial and memory also necessitates the consideration of memorialisation—how it is practised, and how it can best be utilised. This essay will examine the harms of denial and the benefits of recognition, as well as issues of memorialisation.

The need to consider the Armenian genocide is increasingly pressing given that 2015 marks the centenary of the events that took place during the breakdown of the Ottoman Empire, with Armenians marking the commencement of the genocide marked on April 24. In Australia this event is inevitably overshadowed by commemorations marking Anzac Day on April 25, when Entente forces including Australians and New Zealanders landed on the Gallipoli peninsula, only a few hundred kilometres from Istanbul where the Armenian intelligentsia were being arrested *en masse* [Manne, 2007]. Denial of the Armenian genocide is relevant to Australia too in that the parliament of New South Wales’ motion recognising the genocide brought fierce condemnation from the government of Turkey along with the threat that all NSW state politicians were to be banned from Gallipoli centenary commemorations [Brissenden, 2013].

Denial is not an end point in genocidal cycles, but rather a stage in itself—perhaps the last before acceptance and reconciliation can begin to take place. It takes two forms—firstly, categorical

denial, which disputes that an event ever took place; and secondly, interpretive denial, where the nature of the event is disputed and often minimised [Obradovic-Wochnik, 2009]. Denial of the Armenian genocide generally takes the latter form in Turkey—which officially suggests that while many Armenians did die, there was widespread suffering on both sides exacerbated by the First World War, and so to declare the Armenian situation a genocide dismisses the grievances of Turks who died during the same period [Republic of Turkey Ministry of Foreign Affairs, 2011].

Genocide denialism takes several distinct forms, and is practised by different parties both directly and indirectly involved with genocide. It is important to understand why different groups choose to deny genocide. Political elites see acceptance of genocide—especially recent ones—as inherently harmful to national agendas and nationalism on a wider scale [Avedian, 2013]. This has been seen in Serbia, where political parties including the Serbian Radical Party and the Socialist Party of Serbia—both of whom had varying degrees of involvement in the Bosnian and Croatian wars—have sought to diminish massacres to absolve themselves of responsibility, which if successful, would enhance their current political credibility [Obradovic-Wochnik, 2009].

Perpetrators practise denial with a variety of motives. Primary among them is, of course, to avoid facing legal action. While genocide prosecutions have been notoriously unsuccessful [Avedian, 2013], denying that crimes ever took place is a declaration of innocence. In the case of Turkey, there were domestic Turkish military trials in 1919 and 1920 that led to no persecutions and an overwhelming failure of justice [Charny and Fromer, 1998]. Perpetrators also deny for personal needs—acceptance of having committed absolutely abhorrent crimes would destroy personal relationships and community standing [Stanley, 2001]. Interpretive denial is also conducive to

personal lack of guilt, as a perpetrator can justify to themselves their actions within a broader, if fictionalised, context [Stanley, 2001]. Examples can include placing genocide actions within a framework of self-defence or wider warfare, both of which attempt to reframe evidence in order to lessen their personal culpability [Obradovic-Wochnik, 2009].

Denialism by ordinary people is an attempt to absolve themselves of any culpability in genocidal crimes [Clark, 2012]. Denial by bystanders to genocide, or even by their descendants, denies that genocide is a failing of entire communities and countries, and instead focuses blame on select groups [Stanley, 2001]. Alternatively, ordinary people may deny because it is all they know. In Turkey, where even mention of the Armenian genocide raises state ire, it has been written out of education curricula and books, so with only limited officially sanctioned sources of information open to them, multiple generations of Turks have understandably limited perceptions of the actions of the Ottoman Empire towards its Armenian minority during its final years [Cengiz, 2013].

Ongoing collective denial has also been viewed as emboldening potential perpetrators, because the combination of the lack of justice combined with dispute over the accuracy of the alleged crimes means that there is little deterrent to committing genocidal crimes [Charny and Fromer, 1998].

Genocide denial can also be propagated by definitional issues. The ascribed United Nations definition of genocide is notoriously narrow and few of the ‘recognised’ cases actually comply with the entirety of its definition [Owens et al., 2013]. In many cases dispute has arisen over whether an atrocity is a genocide or a mass killing [Owens et al., 2013]. While both absolutely reprehensible, one is a crime against humanity recognised as the ‘crime of crimes’ whereas the other attracts lesser punishments and condemnation. For this reason, many deniers of genocide seek to define atrocities against groups as mass killings, downgrading them from the genocide definition [Charny and Fromer, 1998].

Another facet common of genocidal debates, and relevant especially to Armenian genocide denial, is that genocide and warfare often coexist. The Turkish government, among others, has tried to propagate that the actions against the Armenians were part of the broader violence and death of the First World War—and while “tragic and must be remembered” [Republic of Turkey Ministry of Foreign Affairs, 2011], not in fact a genocide, but a result of the “Turkish-Armenian War”. Similar disputes have played out over Srebrenica and the other atrocities in the Balkans during the early 1990s, with several nationalist Serb groups insisting that they were simply part of widespread

killing that took place [Obradovic-Wochnik, 2009]. Both these cases can be seen as ‘interpretive’ denial—based upon differing interpretations of the deaths and circumstances surrounding them [Obradovic-Wochnik, 2009].

Why is genocide recognition necessary? There are many, including the Turkish government, who instead advocate moving beyond the past and normalising relations [Avedian, 2013]. However, as the Armenian example amply demonstrates, this is close to impossible, even once the actual perpetrators and victims are all dead. Denial harms all groups, including victims, perpetrators, bystanders—as well as the successors of all these players [Alayarian, 2008]. The importance of recognition is reaffirmed by the lingering scars its denial and contestation has had on both Turkey and Armenia. Turkey, as the successor to the Ottoman Empire, has inherited the genocide of Armenians at the beginning of the 20th century and taken its repercussions upon itself [Bloxxham, 2006]. The Armenian genocide obviously still haunts both nations—as the ongoing diplomatic spats, closed borders and sanctions demonstrate.

Nobel Peace Prize winner Elie Wiesel, academic and political activist, suggested that “to forget the dead would be akin to killing them a second time” [Wiesel, 1982]. Genocide denial effectively tries to destroy the memories of victim groups, diminishing their suffering and harming the healing process [Avedian, 2013]. Reconciliation becomes near impossible for victim groups, which was seen in the massive Armenian protests against the Turkish-Armenian accords signed in 2009, which were intended to normalise relations [Cengiz, 2013]. Coming to terms with aggressors who refuse to accept the atrocities they have committed is seen as akin to accepting their version of events, making the perpetrators’ narrative the dominant one [Lippman, 2007].

Denial also harms the perpetrators and their successors. Turkey has seen repercussions of its denial, with over twenty nations including Canada and France criminalising Armenian genocide denial. This particular instance saw Turkey expel the French Ambassador with diplomatic relations severely strained. Within Turkey, Article 301 of the Turkish Penal Code makes it illegal to “insult the Turkish nation,” with most cases relating to journalists and publishers who accuse Turkey of being complicit in the Armenian genocide [Avedian, 2013]. The sensitivity with which the current Turkish government (the Justice and Development Party, which has been in power since 2002) regards accusations of the Armenian genocide is particularly interesting, given that the forces that did commit atrocities against the Armenians are so far removed,

both politically and by the intervening decades, from the current regime. The contrast between Turkey's ongoing strong stance against any recognition of the Armenian atrocities and Willy Brandt falling to his knees in front of the Warsaw Ghetto memorial in 1970 is stark. In a visit to the Armenian capital Yerevan in 2013, the Turkish Foreign Minister Ahmet Davutoglu, despite pressure to do so, failed to visit the Armenian Genocide Memorial Complex at Tsitsernakaberd [Ziflioglu, 2013], although he did declare that the deportation of Armenians in 1915 was inhumane [Camlibel, 2013]. Turkey's resistance to recognising the Armenian genocide must also be understood within the context of the events of the 1970s and 1980s, during which time dozens of Turkish diplomats and foreign envoys (as well as their families) were assassinated by Armenian terrorist groups [Republic of Turkey Ministry of Foreign Affairs, 2013]. To now acknowledge the crime whose denial prompted these extremist actions would betray the memory of these diplomats. With no living witnesses of the Armenian genocide, these more recent actions have guided contemporary Turkish views and only reaffirmed the tension and enmity existing between the two ethnic groups [Republic of Turkey Ministry of Foreign Affairs, 2013].

In the case of Turkey and Armenia, much of the ongoing animosity is clearly based in deep-rooted sentiment that is passed from one generation to the next. In the case of the Turks, this ongoing denial of the Armenian genocide has therefore become part of the national narrative [Charny and Fromer, 1998], especially as the modern Republic of Turkey was born out of the collapse of the Ottoman Empire, which includes the atrocities committed against the Armenians. That the attempted eradication of the Armenians is part of their national foundation story is clear from the post-World War I treaties that shaped that region of the world. In the Treaty of Sevres, which was signed in 1920 between the Ottoman Empire and the Allied Powers, the Turks were held accountable to hand over to the Allied Powers those "responsible for the massacres" committed on Ottoman territory during the war [Bloxham, 2006]. Notably, the later replacement treaty, the Treaty of Lausanne (1923) made no mention of Armenia or the massacres whatsoever [Bloxham, 2006]. Winston Churchill commented that "in the Lausanne Treaty, history will search in vain for the name Armenia" [Avedian, 2013]. This denial of the Armenian atrocities is therefore built into the Turkish national foundation mythology, and so to retract it would be to undermine the national narrative.

It is also important to look at genocide denial as an unresolved legal matter. With denial, there

can be no justice, including but not limited to reparations and compensation. Until some form of justice is served, a genocide "will keep tormenting the relations between the perpetrator and the victim" [Avedian, 2013]. Justice is necessary in order to rebuild faith in institutions and to rebuild social bonds. Only through retributive and restorative justice can the social fabric be rebuilt and normalisation of relations be achieved [Clark, 2012]. Retributive justice necessitates some sort of prosecution, which not only punishes the perpetrator, but also acts as a deterrent. It is for the latter that the ongoing prosecution of those involved in decades-old genocides, such as the Holocaust, continues. Restorative justice is also perhaps best exemplified by post-Holocaust societies such as Germany, where financial reparations were made (*wiedergutmachung*) as well as the restitution of Jewish property such as art and houses. (It is worth noting that this process is still ongoing, decades after the Holocaust.) These dual forms of justice side by side are key to overcoming genocide denial as an unresolved legal matter [Clark, 2012]. Despite the potential for genocide denial to be overcome, it is important to note that many suggest that closure can never be fully achieved for victims, who have undergone such trauma and violence that they will never be able to shut off the ordeal.

Issues of denial also raise the question of memorialisation. Memorialisation is acknowledged as a key part of recognition, and only when there is recognition can denial be completely eradicated. Memorialisation is also crucial to fighting denialism, because much of it takes place on a state scale. Memorialisation takes a number of forms, including monuments and museums, and is also incorporated into education. Memorials and monuments aim for impact, and are public tributes to genocides. While some are erected privately, the vast majority represent some sort of government involvement, and so are a public tribute to the dead. Notable examples of genocide memorials include the Kigali Genocide Memorial in Rwanda and the Memorial to the Murdered Jews of Europe in Berlin. The impact of these memorials is disputed, and a recent rise in 'dark tourism' has raised the question of whether visitors can ever comprehend the full horror of genocide [Goldberg, 2012]. Memorials also require a high degree of sensitivity and appropriate explanation in order that deaths are in no way trivialised.

Notably, in Turkey, memorialisation has been used against the Armenians. In several locations in eastern Turkey, including Subatan and Igdir, there are state-sponsored monuments commemorating the Turks killed by Armenians [Charny and Fromer, 1998]. While indeed there are documented instances

of Turks being killed by Armenians during the timeframe, these monuments seek to portray this as the major crime committed on Ottoman lands, as opposed to the systematic expulsion and extermination of the Armenian peoples [Stanford University Turkish Student Association, 2010]. Memorialising only this facet of the incidents that took place in the early twentieth century amid the collapse of the Ottoman Empire actively reinforces state opposition to any recognition of the Armenian genocide. With the memorial in Igdir dating from just 1999, this active political memorialisation continues to antagonise relations between Armenians and Turks. The power of memorialisation is then clear to see, and forms a core part of denialism.

Museums are the other prominent form of memorialisation. Museums have a greater educational impact and can disseminate more information than a memorial. Nevertheless they are often shaped by the values and politics of the societies in which they exist, giving the information they purvey an undeniable bias. Reflecting on the narratives of both the victim group and the perpetrators and a balance between individual and group suffering is also important and continues to challenge curators [Goldberg, 2012]. There is, for example, a global proliferation of Holocaust museums, and they are often accused of being ‘shrines’ rather than museums. Such has been the case in Serbia and Croatia as well, where there are many quasi-museums that enshrine the memories of both sides. There are numerous regional museums in eastern Turkey that include exhibits dedicated to the killings of Turks by Armenians [National Turk, 2010], once again demonstrating how memorialisation has been used as a tool against victim groups.

Beyond memorials and museums, alternative forms of memorialisation can be found worldwide, commemorating a range of different genocides. Libraries and archives have become increasingly popular, as seen in the Wiener Library for the Study of the Holocaust and Genocide in London, the Bosnian Genocide Film Library in Sarajevo and the Strassler Center for Holocaust and Genocide Studies in Massachusetts. These not only act as a form of memorialisation, but also seek to educate and also act as an ongoing resource for studies of genocide.

When all memorialisation can be potentially trivialised or abused for political ends, it is important to consider what are the most effective forms of memorialisation. Any effective means of memorialisation must provide a balanced, nuanced view of the events that took place, and ideally place them within some sort of geopolitical or social context [Goldberg, 2012]. To avoid ‘enshrinement’, there must be examination of the perpetrators as well as the victims, as groups as well as individuals.

Memorials should be respectful and dignified, and allow for grieving in a considerate manner. Within these frameworks the potential for memorialisation to be misused can be minimised.

A more abstract form of memorialisation is genocide recognition by states and countries. Twenty-one countries have officially recognised the Armenian Genocide and have passed legislation condemning and remembering it [Armenian National Committee of America, 2013]. While these sorts of decrees offer no physical memorial as such, they act as a way of remembering victims and also raise the profile of the crimes committed. However in the case of Turkey these actions by foreign nations have proven extremely provocative, and have exacerbated tensions and diplomatic rifts between Turkey and its allies [Brissenden, 2013]. Is this form of memorialisation then beneficial? The Armenian diaspora firmly believes so, and continues to lobby for further recognition.

Genocide denial is grossly harmful to all parties involved, and raises a host of issues for perpetrators, victims and bystanders. Communities that continue to deny genocide, or have genocide against them denied, are plagued by unresolved matters stemming from a lack of justice, a lack of reconciliation and a lack of acknowledgement. Normalisation of relations is impossible between such communities, as continues to be exemplified by the tensions between Armenia and Turkey. Genocide denial also raises questions of memorialisation, and how it can most appropriately be practised. While it seems that there will be little change in affairs between Turkey and Armenia in the impending years, the topic of genocide denial is sure to remain pre-eminent in light of the one hundredth anniversary of the atrocities that took place in Anatolia.

References

- Aida Alayarian. *Consequences of Denial: The Armenian Genocide*. Karnac Books, 2008.
- Armenian National Committee of America. Genocide recognition, 2013. http://www.anca.org/genocide_resource/recognition.php, accessed March 28, 2014.
- Vahagn Avedian. Recognition, responsibility and reconciliation: The trinity of the Armenian genocide. *Europa Ethnica*, 70(3/4):77–86, 2013.
- Donald Bloxham. The roots of American genocide denial: Near Eastern geopolitics and the interwar Armenian question. *Journal of Genocide Research*, 8(1):27–49, 2006.
- Michael Brissenden. Turkey threatens NSW parliament over Armenian genocide vote, August 2013. ABC News, <http://www.abc.net.au/news/2013-08-21/turkey-threatens-nsw-parliament-over-armenian-genocide-vote/4903444>, accessed April 3, 2014.
- Cansu Camlibel. Turkish fm: 1915 Armenian deportation inhumane, December 2013. *Hurriyet Daily News*, <http://www.hurriyetaileynews.com/turkish-fm-1915->

- armenian-deportation-inhumane.aspx?pageID=238&nID=59487&NewsCatID=355, accessed April 1, 2014.
- Orhan Kemal Cengiz. Turkish academia and the Armenian genocide, December 2013. Al-Monitor, <http://www.al-monitor.com/pulse/originals/2013/12/turkey-armenia-genocide-academic-research-media-exposure.html#>.
- Israel W Charny and Daphna Fromer. Denying the Armenian genocide: Patterns of thinking as defence-mechanisms. *Patterns of Prejudice*, 32(1):39–49, 1998.
- Janine Natalya Clark. The crime of crimes: Genocide, criminal trials and reconciliation. *Journal of Genocide Research*, 14(1):55–77, 2012.
- Amos Goldberg. The Jewish narrative in the Yad Vashem Global Holocaust Museum. *Journal of Genocide Research*, 14(2):187–213, 2012.
- Tony Judt. What have we learned, if anything? *New York Review of Books*, 55(7):16, 2008.
- Matthew Lippman. Darfur: the politics of genocide denial syndrome. *Journal of Genocide Research*, 9(2):193–213, 2007.
- Robert Manne. A turkish tale: Gallipoli and the Armenian genocide. *The Monthly*, (Feb 2007):20, 2007.
- National Turk. Mass graves found in Erzerum of Armenian massacre, June 2010. <http://www.nationalturk.com/en/mass-graves-found-in-erzurum-turkey-of-armenian-massacre-88874554>, accessed April 3, 2014.
- Jelena Obradovic-Wochnik. Knowledge, acknowledgement and denial in Serbia’s responses to the Srebrenica massacre. *Journal of Contemporary European Studies*, 17(1):61–74, 2009.
- Peter B Owens, Yang Su, and David A Snow. Social scientific inquiry into genocide and mass killing: From unitary outcome to complex processes. *Annual Review of Sociology*, 39:69–84, 2013.
- Republic of Turkey Ministry of Foreign Affairs. The events of 1915 and the Turkish-Armenian controversy over history: an overview, 2011. http://www.mfa.gov.tr/the-events-of-1915-and-the-turkish-armenian-controversy-over-history_-an-overview.en.mfa.
- Republic of Turkey Ministry of Foreign Affairs. Assassinated Turkish diplomats serving in missions abroad, 2013. http://www.mfa.gov.tr/sehit-edilen-diplomatlarimiz-ve-vatandaslarimiz_en.en.mfa.
- Stanford University Turkish Student Association. The Armenian genocide: the Turkish side of the story, 2010. Stanford University, <http://web.stanford.edu/group/ccr/GreenHatBlog/armenian.pdf>.
- Cohen Stanley. States of denial: Knowing about atrocities and suffering. *Malden, MA: Blackwell Publishers*, 2001.
- Elie Wiesel. *Night*. Bantam Books, New York, 1982. Translated by Stella Rodway.
- Vercihan Ziflioglu. Davutoglus Yerevan visit topic of debate in Armenia, September 2013. Hurriyet Daily News, <http://www.hurriyetdailynews.com/davutoglus-yerevan-visit-topic-of-debate-in-armenia.aspx?pageID=238&nID=59243&NewsCatID=355>, accessed April 1, 2014.

Female Genital Mutilation, Male Circumcision and Vaginoplasty: A Double Standard in Human Rights?

Jessica Elliott

Condemnation of female genital mutilation as a human rights abuse is pronounced and widespread. Despite this, male circumcision and vaginoplasty are widely accepted as uncontroversial forms of genital modification. This paper examines the inconsistency of international human rights treatment of genital modifications with respect to female genital mutilation, male circumcision and vaginoplasty. Consent, health risks and cultural significance are the primary factors in determining the human rights condemnation or acceptance of a practice. This paper argues that female genital mutilation, when practised on a minor in a form with severe health risks, is a human rights abuse. However, symbolic female genital mutilation and male circumcision are not human rights abuses, as both represent culturally significant practices with minimal or no health risks. Finally, vaginoplasty and female genital mutilation, when performed on adult women, are not human rights abuses due to a capacity to consent and an entitlement to bodily autonomy.

Consent, health risks and cultural significance are the primary factors determining whether female genital mutilation (FGM), male circumcision and vaginoplasty are classified as human rights abuses. Cultural imperialism is responsible for a double standard in Western human rights whereby all forms of FGM on children and consenting adult women are condemned, whilst male circumcision and vaginoplasty are widely accepted, despite the similarity of symbolic FGM to male circumcision, and of FGM on consenting adults to vaginoplasty. I argue that: (1) FGM, practised in a form with severe health risks, is a human rights abuse when performed on a minor incapable of giving consent. In this situation, a child's right to health and well-being outweighs the right of parents to consent to extreme forms of FGM for their children. (2) Symbolic FGM, (such as *sunna*) and male circumcision are not human rights abuses because they are practices with cultural significance and few or no health risks. (3) When performed on consenting adult women, vaginoplasty and FGM are not human rights abuses because adults, entitled to bodily autonomy, are capable of consenting to the procedure. Thus, blanket condemnation of all forms of FGM fails to recognise the sociocultural context of the procedure, the heterogeneous nature of FGM practices and the capacity for consent to be given for FGM, ensuring that the genital modification practices of non-Western cultures are viewed as a violation of human rights, whilst any criticism of male circumcision or vaginoplasty, either domestic or international, is significantly less prevalent.

FGM is an extremely heterogeneous practice encompassing a range of procedures performed on girls and women in various socio-cultural contexts. Since 1996, the World Health Organization (WHO) has defined FGM as 'all procedures that involve partial or total removal of the external female

genitalia, or other injury to the female genital organs for non-medical reasons', estimating that 140 million girls and women worldwide have undergone FGM [World Health Organisation, 2013]. The average age when FGM is performed varies across cultures from infants to late teens [Gruenbaum, 2001]. The practice is widespread in several African nations and present in the Arabian Peninsula, Indonesia and Malaysia [Gunning, 1991].

FGM practices vary considerably across the world, but the international community largely fails to discriminate between them. Herlund and Shell-Duncan [2007] argue that all forms of FGM are 'casually lumped together' as a human rights abuse despite their substantially different natures and consequences. WHO establishes four broad categories of procedures that are categorised as FGM, encompassing significantly different practices [World Health Organisation, 2013]¹. Oba [2008] contends that the WHO definition deliberately classifies both pricking of the clitoris and extreme forms of FGM (such as cauterisation) within 'type IV' to ensure that, according to their definition, every type of FGM becomes condemnable as a human rights violation.

The widespread use of the term 'mutilation' is reflective of the ethnocentric nature of human

¹Type I—excision of the prepuce, with or without excision of part or all of the clitoris;

Type II—excision of the clitoris with partial or total excision of the labia minora;

Type III—excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);

Type IV—pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue; scraping of tissue surrounding the vaginal orifice or cutting of the vagina; and introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.

rights discourse relating to the procedure. This is in contrast to the neutral language associated with male circumcision and vaginoplasty, despite the fact that both procedures can be equally, if not more severe than forms of FGM [Johnsdotter, 2007]. In contrast to the term ‘mutilation’, most local terms for FGM translate as ritual purification [Abusharaf, 2006]. The frequent use of ‘mutilation’ is emblematic of the condemnation and bias surrounding FGM [Smith, 2011]. The extremely negative connotations of the word ‘mutilation’ are confronting and degrading for women who have undergone FGM, who do not consider themselves mutilated, yet are viewed as ‘victims’ [Gallo et al., 2006]. Furthermore, Nnamuchi [2012] argues that the shift in discourse from ‘female circumcision’ to FGM, following WHO recommending the adoption of the term by the United Nations in 1991, strengthened the international community’s view of FGM as a human rights violation.

Condemnation of FGM operates within a culturally imperialist binary that views women supporting FGM, or ‘Third-World women’, as victims of male domination and oppressive cultural practices whilst Western women as liberated and devoid of any such oppression. For example, Daly [1978] describes women advocating for FGM as ‘mentally castrated’. Mohanty [1988] utilises a post-colonial framework to argue that the construction of ‘Third-World women’ as a homogeneous group is a form of discursive colonisation, ensuring that they are viewed as the ‘implicit victims of particular cultural and socio-economic systems’. Similarly, Walley [2002] highlights that Euro-American anti-FGM advocates typically characterises ‘African women as thoroughly oppressed victims of patriarchy and ignorance or both, not as social actors in their own right’. Grewal and Kaplan [1996] argue that this binary distinction between tradition, embodied by FGM-practising communities, and modernity, represented by the West, is a form of colonial discourse that serves to legitimise Western intervention. Therefore, it is essential that the perspective of international bodies such as the WHO towards FGM be derived from the self-defined ‘experiences, desires, and interests of women’ who undergo FGM, rather than from reference to a ‘universal woman’, defined by Western norms [Smith, 2011]. In reality, critics of FGM who oppose the practice on the grounds of women being unable to give valid consent serve only to preserve cultural nationalism by adopting a ‘West is best’ attitude. As Volpp [2003] notes, resistance ‘becomes configured as the necessity of preserving culture, leading to the freezing of particular identifications of culture, which keeps women trapped within the binary logic’.

Blanket condemnation of FGM is also culturally imperialist because it fails to give appropriate consideration to the sociocultural significance of such practices. Radical feminists, such as Daly [1978], Walker and Parmar [1993] and Hosken [1981] argue that FGM is an expression of male domination ensuring women’s patriarchal submission and acceptance of prescribed oppressive gender roles. For example, Hosken [1981] argues that that FGM seeks to ‘mutilate the sexual pleasure and satisfaction of women’ and thus ‘assure female dependence and subservience’. Contrastingly, Marxist feminists view FGM as a means of entrenching patriarchal control over women’s reproductive powers [Gunning, 1991]. However, both perspectives fail to appreciate the cultural significance of FGM, judging the cultural practices of ‘others’ through reference to Western standards. These views also ignore that the practice is frequently defended by women who have undergone the procedure. Take for example the *Ngaitana* (‘I will circumcise myself’) movement that followed the 1956 FGM ban in Kenya, whereby adolescent girls performed FGM on each other [Thomas, 1996]. Wangila [2007] highlights that the Western view of FGM as a patriarchal limit on female sexuality can be ‘shallow, uninformed, and misrepresent reality’.

There are diverse cultural motivations for FGM, including defining and maintaining cultural and gender identity, conforming to culturally determined ideals of beauty and purity, and upholding religious teachings [Diop and Askew, 2006]. For many defenders of FGM, the practice is essential in defining an individual’s place in the group [Brems, 2001]. Within many cultures, FGM is a major part of a celebration on womanhood, where the girl is the focus of extensive festivities with the community that honour and support her [Gunning, 1991]. For example, in some cultures, a girl who has not undergone FGM is unable to marry and characterised as immoral, sexually promiscuous, or satanic [Aldeeb Abu-Sahlieh, 2006]. An African woman, who had undergone FGM, defended the practice as ‘an enjoyable one, in which the girl is the centre of attention and receives presents and moral instruction from her elders’ [Gollaher, 2000]. Therefore, Germaine Greer highlights the need to examine ‘the whole woman’ where FGM is a legitimate facet of cultural identity [Australian Broadcasting Corporation, 2012]. Similarly, La Barbera [2009] argues that viewing FGM uniquely through medical and scientific categories renders the social, familial and cultural context of the practice invisible. Therefore, condemnation of the practice on the grounds that it is a symbol of female subordination fails to appreciate the cultural significance of the procedure

as a celebration of womanhood, rather than the oppression of women.

Despite the importance of recognising that FGM occurs within a broader sociocultural framework, FGM, when performed on minors in a form with severe health consequences, is a human rights abuse. In these cases, the severity of the health risks posed on non-consenting minors outweighs the right to practise culture and the right of parents to consent to the procedure for their children. The WHO details an extensive list of short- and long-term health consequences of FGM, including: haemorrhage, bacterial infection, recurrent bladder and urinary tract infections, cysts, infertility and an increased risk of childbirth complications [World Health Organisation, 2013]. When such severe health risks exist, cultural relativism cannot be used as an excuse for human rights abuses. The fact that FGM is a deeply entrenched cultural practice is not a valid excuse for the infliction of a procedure with such grave health risks on minors incapable of giving consent. Similarly, Dembour [2001] argues that a cultural relativist argument that is taken too far can become ‘an excuse for abuse’, and therefore the solution is to ‘err uncomfortably between the two poles represented by universalism and relativism’.

Significantly, mild forms of both FGM and male circumcision are not human rights abuses, as they are practices with strong cultural significance that also possess few health risks. Anti-FGM advocates promote a misleading list of purported health risks by failing to differentiate between the diverse types of FGM, so the harmful effects of infibulations are transferred to all forms of FGM, despite *sunna* having the fewest possible complications [Oba, 2008]. *Sunna*, or symbolic pricking of the clitoris, is the primary example of a mild form of FGM with few or no health risks [Wangila, 2007]. The American Academy of Paediatrics has compared *sunna* to ear-piercing, with evidence of its minimal health risks [The Economist, 2010]. *Sunna* is in fact less invasive and involves less risk of complications than male circumcision [Johnsdotter, 2007]. Like symbolic FGM, male circumcision, or surgical removal of the foreskin, is a deeply entrenched cultural practice with a ‘low level of risk’ [World Health Organisation, 2007].

Despite both male circumcision and symbolic forms of FGM being cultural practices with few health risks, the international community unjustifiably views them in polarised ways. By the 1990s, international condemnation of FGM as a human rights abuse was well established [DeLaet, 2009]. Contrastingly, there is no comparable condemnation of male circumcision as a human rights abuse either internationally or domestically. For example, none of the countries with anti-FGM

legislation have outlawed male circumcision [DeLaet, 2009]. It is illegal in the US to perform any genital alteration on female minors, yet male newborn circumcision is widely practised [Soloman and Noll, 2007]. However, increasing immigration has intensified protests against this hypocrisy and calls for states to confront the issue of how and to what extent to accommodate the genital modification practices of other cultures [Renteln, 2004]. In 1996 the Harborview Medical Centre in Seattle proposed a compromise that doctors would perform a tiny cut on the prepuce, with analgesia and under sterile conditions, on the daughters of Somalia immigrants wishing their daughters to undergo FGM [Davis, 2001]. The suggestion was abandoned after community backlash and the Attorney General declaring the compromise as violating anti-FGM laws [Oba, 2008].

An argument frequently cited in defence of the polarised treatment of FGM and male circumcision is that FGM is purely cultural whereas male circumcision possesses medical benefits [Davis, 2001]. However, this fails to recognise that both procedures are culturally based, with any potential medical benefits of male circumcision being highly contested [Soloman and Noll, 2007]. For example, the American Medical Association, recognising the inconclusive and sparse nature of valid data on medical benefits of male circumcision, has adopted the viewpoint that male circumcision is ‘an elective procedure to be performed at the request of the parents ...and is no longer indicated for any potential medical benefits’ [Soloman and Noll, 2007]. A further argument in defence of the differing condemnation of FGM and male circumcision is that there are much higher levels of ‘pain, suffering, morbidity and death’ associated with FGM [Davis, 2001]. Whilst this may be true for more severe forms of FGM, it is not the case with symbolic forms of FGM, such as *sunna*, which is viewed as less invasive than male circumcision [Johnsdotter, 2007]. Further opponents such as Mountis [1996] condemn FGM on the basis that it primarily occurs in unsanitary conditions by poorly trained individuals. However, this argument is misguided, as it would warrant improvements in sanitation and training, rather than condemnation as a human rights abuse. Furthermore, FGM is prohibited even when performed by trained Western doctors in sanitary conditions, such as the Seattle Harborview Medical Centre. Therefore, due to the similarities of mild forms of FGM and male circumcision in terms of cultural significance and health risks, it is essential that mild forms of FGM be viewed in analogous terms to male circumcision, with both being viewed consistently as either a human rights violation or a non-issue.

Despite the prohibition of FGM, medical doctors in the West routinely perform vaginoplasty, which is culturally and procedurally similar. Both FGM and vaginoplasty are medically unnecessary surgeries, performed with the frequent aim of making women conform to a cultural norm [Dustin, 2010]. Vaginoplasty is an increasingly popular surgery that involves procedures such as labia minora reduction, labia majora remodelling and clitoral reduction that are nearly identical to some forms of FGM [Herlund and Shell-Duncan, 2007]. Like FGM, these procedures possess substantial surgical risks and side effects [Oba, 2008]. However, the fundamental difference between vaginoplasty and FGM is that FGM is primarily performed on minors that are incapable of giving consent, whilst vaginoplasty is performed on consenting adults. Therefore, although vaginoplasty may likewise resemble forms of FGM and similarly be culturally motivated, it is not a human rights abuse when performed on consenting adult women.

Despite these similarities and the right of adults to have bodily autonomy over procedures performed on their bodies, FGM is frequently outlawed and condemned as a human rights abuse even when performed on consenting adult women. For example, the *Prohibition of Female Circumcision Act* (UK) prohibits FGM on both minors and adults, yet vaginoplasty is a widely accepted procedure [Sheldon, 1998]. Similarly, migrant women in Australia who wished to re-undergo FGM after childbirth viewed the denial of the procedure as institutional racism in the face of widespread vaginoplasty [Dustin, 2010]. The discriminatory distinction between the ability of adult women in non-Western cultures to consent to FGM and the ability of Western adult women to consent to vaginoplasty exposes the contradictory standards of human rights, grounded in the view that valid consent cannot be given for FGM. For example, opponents such as Slack [1988] frequently claim that valid consent cannot be given for FGM due to direct and indirect pressure from friends and families, societal expectations, and inadequate education. Similarly, Boulware-Miller [1985], Walker and Parmar [1993], and Nussbaum [1998] contend that African women's agency is non-existent or extremely limited. However, such views are an extreme form of cultural imperialism whereby Third World women are viewed as oppressed, vulnerable and incapable of giving consent. If this were the case, it would justify the implementation of safeguards to ensure that consent were valid and informed, such as those that operate in the UK to regulate organ donation, rather than an outright denial of a capacity to consent [Sheldon, 1998]. Furthermore, male circumcision and vaginoplasty are similarly influenced by societal pressure, including the desire

to conform to prescribed body ideals. Therefore, adult women should be able to give valid consent to undergo FGM, like vaginoplasty, without it being condemned as a human rights violation.

In conclusion, fundamental changes need to occur to eliminate the cultural imperialism that is evident in the double standard that views FGM as a human rights abuse, yet allows widespread acceptance of male circumcision and vaginoplasty. A failure to recognise the heterogeneous nature and sociocultural context of FGM and the capacity of adult women to consent to the procedure ensures that all forms of FGM are unjustifiably condemned as a human rights abuse. Symbolic or mild forms of FGM must be treated as a human rights non-issue, like male circumcision, as both are a cultural practice with minimal health risk. Similarly, adult women have a right to bodily autonomy, ensuring that they are capable of consenting to FGM, like vaginoplasty, without it being condemned as a human rights abuse. Severe forms of FGM, however, are a human rights abuse as the major health consequences outweigh the right of parents to consent to the procedure for their children. It is essential that the international community eliminate this double standard to ensure consistency in its human right stances towards the genital modification practices of non-Western and Western cultures.

References

- RM Abusharaf. Introduction: The custom in question. In RM Abusharaf, editor, *Female circumcision: multicultural perspectives*, pages 1–16. University of Pennsylvania Press, 2006.
- SA Aldeeb Abu-Sahlieh. Male and female circumcision: The myth of the difference. In RM Abusharaf, editor, *Female circumcision: multicultural perspectives*, pages 47–74. University of Pennsylvania Press, 2006.
- Australian Broadcasting Corporation. Q&a: Mutilation and the media generation. Television program, 27 August 2012. Available from <http://www.abc.net.au/tv/qanda/txt/s3570412.htm>.
- K Boulware-Miller. Female circumcision: Challenges to the practice as a human rights violation. *Harvard Women's Law Journal*, 8:155–177, 1985.
- E Brems. *Human Rights: Universality and Diversity*. Martinus Nijhoff Publishers, 2001.
- M Daly. *Gyn/Ecology: The Meta-ethics of Radical Feminism*. Beacon Press, 1978.
- D Davis. Male and female genital alteration: A collision course with the law. 11:487–570, 2001.
- DL DeLaet. Framing male circumcision as a human rights issue? contributions to the debate over the universality of human rights. 8(4):405–426, 2009.
- MB Dembour. Following the movement of a pendulum: Between universalism and relativism. In JK Cowan, MB Dembour, and RA Wilon, editors, *Culture and rights: Anthropological perspectives*, pages 56–79. Cambridge University Press, 2001.

- NJ Diop and I Askew. Strategies for encouraging the abandonment of female genital cutting: Experiences from Senegal, Burkina Faso, and Mali. In RM Abusharaf, editor, *Female circumcision: multicultural perspectives*, pages 125–141. University of Pennsylvania Press, 2006.
- M Dustin. Female genital mutilation/cutting in the UK: Challenging the inconsistencies. *European Journal of Women's Studies*, 17(1):7–23, 2010.
- PG Gallo, E Tita, and F Viviani. At the roots of ethnic female genital modification: Preliminary report. In GC Denniston et al., editors, *Bodily Integrity and the Politics of Circumcision: Culture, Controversy, and Change*, pages 49–56. Springer, 2006.
- DL Gollaher. *Circumcision: A History of the World's Most Controversial Surgery*. Basic Books, 2000.
- I Grewal and C Kaplan. Warrior marks: Global womanism's neo-colonial discourse in a multicultural context. *Camera Obscura*, 39(3):4–33, 1996.
- E Gruenbaum. *The Female Circumcision Controversy: An Anthropological Perspective*. University of Pennsylvania Press, 2001.
- IR Gunning. Arrogant perception, world-travelling and multicultural feminism: The case of female genital surgeries. *Columbia Human Rights Law Review*, 23: 189–248, 1991.
- Y Herlund and B Shell-Duncan. Transcultural positions: Negotiating rights and culture. In Y Herlund and B Shell-Duncan, editors, *Transcultural Bodies: Female Genital Cutting in Global Context*, pages 1–45. Rutgers University Press, 2007.
- F Hosken. Female genital mutilation and human rights. *Feminist Issues*, 1(3):3–24, 1981.
- S Johndotter. Persistence of tradition or reassessment of cultural practices in exile? discourses on female circumcision among and about Swedish Somalis. In Y Herlund and B Shell-Duncan, editors, *Transcultural Bodies: Female Genital Cutting in Global Context*, pages 107–145. Rutgers University Press, 2007.
- MC La Barbera. Revisiting the anti-female genital mutilation discourse. *Diritto & Questioni Pubbliche*, 9:485–507, 2009.
- C Mohanty. Under Western eyes: Feminist scholarship and colonial discourses. *Feminist Review*, 30:61–88, 1988.
- EG Mountis. Cultural relativity and universalism: Re-evaluating gender rights in a multicultural context. *Dickinson Journal of International Law*, 15:113–150, 1996.
- O Nnamuchi. 'circumcision' or 'mutilation'? voluntary or forced excision? extricating the ethical and legal issues in female genital ritual. *Journal of Law and Health*, 25(1): 83–119, 2012.
- M Nussbaum. *Sex and Social Justice*. Oxford University Press, 1998.
- AA Oba. Female circumcision as female genital mutilation: Human rights or cultural imperialism? *Global Jurist*, 8(3): 1–38, 2008.
- AD Renteln. *The Cultural Defense*. Oxford University Press, 2004.
- S Sheldon. Female genital mutilation and cosmetic surgery: Regulating non-therapeutic body modification. *Bioethics*, 12(4):163–284, 1998.
- AT Slack. Female circumcision: A critical appraisal. *Human Rights Quarterly*, 10(4):437–486, 1988.
- C Smith. Who defines 'mutilation'? challenging imperialism in the discourse of female genital cutting. *Feminist Formulations*, 23(1):25–46, 2011.
- LM Soloman and RC Noll. Male versus female genital alteration: Differences in legal, medical, and socio-ethical responses. *Gender Medicine*, 4(2):89–96, 2007.
- The Economist. Ending a brutal practice, 10 June 2010.
- LM Thomas. 'ngaitana (i will circumcise myself)': The gender and generational politics of the 1956 ban on clitoridectomy in Meru, Kenya. *Gender & History*, 8(3):338–363, 1996.
- L Volpp. Feminism versus multiculturalism. In AK Wing, editor, *Critical Race Feminism: A Reader*, pages 395–405. New York University Press, 2003.
- A Walker and P Parmar. *Warrior Marks: Female Genital Mutilation and the Sexual Binding of Women*. Harcourt Brace & Co, 1993.
- CJ Walley. Searching for 'voices': Feminism, anthropology, and the global debate over female genital operations. In SM James and CC Robertson, editors, *Genital Cutting and Transnational Sisterhood: Disputing US Polemics*, pages 17–53. University of Illinois Press, 2002.
- MN Wangila. *Female Circumcision: The Interplay of Religion, Culture and Gender in Kenya*. Obris Books, 2007.
- World Health Organisation. Male circumcision information package. Web, 2007. URL <http://www.who.int/hiv/pub/malecircumcision/infopack/en/index.html>.
- World Health Organisation. Female genital mutilation. Web, 2013. URL <http://www.who.int/mediacentre/factsheets/fs241/en/>.

The Price is Rice: Micro-Irrigation and Development in Myanmar

Jessica van Lieven

Once called the ‘rice bowl of Asia’, Myanmar’s agricultural industry has suffered significantly over the past century under the policies of its dictatorial government. A lack of investment in technology and innovation has hamstrung its ability to produce rice and other cereals, and hence to generate profit. This inadequacy has contributed not only to the poverty of rural farmers, but also to the incidence of hunger. Nevertheless, agriculture still plays a vital role in Myanmar’s economy, and it is the key to its future development and to increasing the wellbeing of Myanmar’s population. This policy paper discusses micro-irrigation of rice crops as a more efficient means of increasing rice productivity, as well as decreasing poverty and hunger in Myanmar’s rural population. This initiative also encourages a sustainable approach to water use; an approach that will become increasingly significant in the future, when climate change is likely to increase the frequency of drought and water shortage.

Introduction

Myanmar is a country only now emerging into the 21st century. Fifty years of military dictatorship and restrictive agricultural policy have severely hampered the country’s development and the capacity of its agrarian economy. Rice production plays a fundamental role in its economy, not only as a staple of the population’s diet, but also as a means of generating profit. However, the fifty-year neglect of irrigation technologies for rice has suppressed the potential of its production and placed the food security of Myanmar’s rural population in jeopardy. This policy paper presents the upgrading of Myanmar’s existing irrigation systems, and the introduction of micro-irrigation to rice crops, as a means of making progress towards resolving the problems identified above.

Investment in agriculture in Myanmar is ‘a singularly powerful instrument for raising rural incomes and reducing poverty, food prices and hunger’ [Haggblade et al., 2013]. According to a study conducted by the Myanmar Development Resource Institute and Michigan State University, ‘Myanmar requires a growth strategy that will generate rapid income growth as well as broad-based poverty reduction’ [Haggblade et al., 2013]. The introduction of micro-irrigation to rice crops at a community level is an effective means of doing both of these things. Since poor households spend 70% of their income on food and 60% of households produce rice purely for subsistence, increasing rice production through micro-irrigation can allow farmers to increase their income by selling more rice, and to reduce the hunger in their families and communities [Haggblade et al., 2013].

Brief Background

Myanmar, a strategic land bridge between South and South-East Asia, has a population of approximately 60 million people, of whom 66% live in rural areas [ADB, 2012]. It is ranked among one of the poorest

countries in the world by the International Monetary Fund, and is 149th out of 187 countries on the United Nations human development index [ADB, 2012]. Despite the Burmese ethnicity representing the majority of Myanmar’s population, the country is home to 135 ethnic minorities, whose rights to recognition under the constitution and to equal access to land have been systematically denied by the government. This has resulted in a continuous state of ethnic tension and civil war throughout its history.

Myanmar is bordered on the East and West by mountain ranges, which enclose the fertile plains of the Ayeyarwaddy, Chindwin and Sittaung River valleys [Win, 2013]. As a result, Myanmar relies heavily on its natural resources as a source of capital; in particular gas, teak, fish products and farming [ADB, 2012]. Rice production has historically underpinned the economy of Myanmar, and continues to play a pivotal role in its economic development [Okamoto, 2007]. Agriculture accounts for 36% of Myanmar’s GDP [ADB, 2012], and 70% of employment [Kudo et al., 2013]. It also accounts for between 25% and 30% of exports by value [ADB, 2013]. Rice production accounts for 80% of Myanmar’s total agricultural income [Haggblade et al., 2013], and cultivation occurs primarily in rural areas, where 84% of Myanmar’s poorest people live [Haggblade et al., 2013]. Studies have concluded that agriculture will continue to be the main source of employment for Myanmar citizens at least in the medium term [Haggblade et al., 2013].

Myanmar is in the midst of emerging from a tumultuous political period. Following a botched movement for independence from Britain in 1947, General Ne Win seized control of Myanmar in 1962 via military coup. During this era of military dictatorship, democratic liberties in the country were suspended, and international investment and assistance were withdrawn. Strong economic sanctions were also imposed on the regime by the United Nations [UN, 2014]. During this era, the

military regime adopted a socialist approach to agriculture and economic development, in which emphasis was placed upon agricultural exploitation and rice production [Fujita and Okamoto, 2006]. Following the suppression of democratic protests in 1988, the regime artificially suppressed the price of rice in order to avoid social unrest and to maintain its power [Fujita and Okamoto, 2006].

In response to the changing international economic and political climate, there was a gradual *ad hoc* transformation of the rice economy during two periods of 'liberalisation', between 1998 and 2001, and in 2003 [Okamoto, 2007]. Despite this, economic mismanagement on the part of the regime 'thwarted the development of Myanmar's private rice marketing sector' [Okamoto, 2009]. Poor investment in infrastructure, political instability and rural poverty persist [Dapice, 2010]. With specific regard to agricultural infrastructure, canals and hydraulic structures are in poor condition and sedimentation is a serious problem [UNDP, 2004].

Under the leadership of President U Thein Sein, elected in the first democratic elections in 2010, Myanmar has passed a series of law reforms to enable it to join the ASEAN Economic Community [Win, 2013]. Named the 'Framework for Economic and Social Reform', key measures aim to improve access to credit, facilitate land reform and create job opportunities [ADB, 2013]. However, reform has tended to neglect developing the country's capacity for irrigation in favour of investment in developing storage facilities for water, and hence many of the downstream development projects have not gone ahead [UNDP, 2004]. As a result, only 45% of a total projected command area has been developed, and official statistics suggest that only 18.8% of the net area sown with rice is irrigated [UNDP, 2004].

Approaches and Results

Low productivity in Myanmar's agricultural sector, in particular with regards to rice production, is increasingly hampering the development of Myanmar's economy, as well as exacerbating the poverty and food insecurity of its population [Haggblade et al., 2013]. In the setting of little to no investment in irrigation technologies and projections of increased chances of flood and drought, provision of water management systems is vital [Haggblade et al., 2013]. Furthermore, significant areas of Myanmar have been deemed to be medium to severely water-scarce [UNDP, 2004], increasing the urgency of establishing effective water management systems. Existing infrastructure needs to be restored and maintained, and investment in the development of new irrigation systems must be made [Haggblade et al., 2013].

Furthermore, Myanmar's current economic expansion, encouraged by its sudden appearance on the international scene in 2010, cannot be sustained by its current infrastructure. For example, between 1990 and 2010, the area used for rice cultivation doubled and rice production tripled [ADB, 2012]. According to the UNDP, Myanmar's current gross water withdrawals for irrigation are above sustainable levels [UNDP, 2004].

With regards to environmental sustainability, under the socialist policy of the military regime, in which the price of rice was artificially reduced to maintain social stability, farmers were forced to use the land intensively in order to survive, unwittingly 'destroying the agro-ecological system on which they depend[ed]' [Dapice, 2010]. Hence, Myanmar's land and water resources must be carefully monitored so that the strain on environmental management and natural resources that historically accompanies development does not cause irreparable damage [ADB, 2013].

Micro-irrigation provides a solution to these problems. It is a technology that applies water to the soil at the base of a plant by dripping or spraying [Madramootoo and Morrison, 2013]. In a small community context, the requisite water can be pumped from small wells or streams [UNDP, 2004]. It enables more efficient use of water, since the targeted application of water reduces evaporation and runoff [DiGennaro, 2010]. The efficiency of micro-irrigation is estimated at 90%, compared with that of furrow irrigation, which has an efficiency of 60% [DiGennaro, 2010].

In addition to this, micro-irrigation decreases the labour required to irrigate fields, since water is applied constantly at a determined rate, requiring no human intervention [DiGennaro, 2010]. The use of micro-irrigation on crops in Zambia allowed rice farmers to have a second and third crop, thereby doubling or tripling their rice productivity, and hence also their income [DiGennaro, 2010]. Furthermore, micro-irrigation provides for the reuse of wastewater and fresh water 'of a marginal quality' [Madramootoo and Morrison, 2013, Molden (ed.), 2001], thereby further increasing water efficiency. Finally, micro-irrigation systems can be modified to inject fertiliser into the irrigation water, thereby decreasing labour, increasing yield and expanding flexibility of production [Modinat A Adekoya et al., 2014].

Drip-irrigation, a form of micro-irrigation, has been trialled by the not-for-profit organisation, Kopernik, in the Indian city of Kechla [Kopernik, 2013]. The irrigation technology, provided by the American company DripTech, was made available to farmers at half the price of other commercially available irrigation systems. Farmers were educated

as to the operation and installation of the equipment, and a survey was conducted after the farmers had harvested their first drip-irrigated crop. The survey data of the project indicated that the irrigation systems saved significant amounts of time, since, as in Myanmar, farmers in Kechla had traditionally irrigated their crops manually. Secondly, farmers utilising the system reported an average saving of \$40 USD on their harvest over the year [Kopernik, 2013]. Considering their average yearly earnings were approximately \$340 USD [Kopernik, 2013], this was a significant saving for farmers.

However, the experience in Kechla exposes several barriers to the effective implementation of micro-irrigation. The first challenge is the time required to receive the technology and install it. Especially since this process was conducted during the wet season harvest, an extremely busy time for farmers, the excess time posed a significant deterrent to adopting the technology. Hence, it is important to make efforts to remove administrative requirements and paperwork, improve the efficiency of the process, and complete the installation of the irrigation technology after the wet season harvest is over. If this can be done, the technology can be tested over the dry season, when water is scarce. This would have the added benefit of allowing farmers to immediately see the benefit of the technology as it functions in the dry season. Since a demonstration of concrete benefits has been proven to encourage adoption of the technology, this procedural change would make a substantial difference in adoption of the technology [UNDP, 2004].

The second challenge is the cost of the technology. A critical problem in rural areas of Myanmar is a severe lack of access to credit [Dapice, 2010]. Indeed, lack of access to credit has been recorded as a factor contributing to the rejection of micro-irrigation technologies [DiGennaro, 2010]. A solution to this problem is to subsidise the price of irrigation systems. Given that micro-irrigation systems are divisible and expandable, farmers are able to invest in the appropriate sized equipment necessary for their needs, and expand if their needs increase [DiGennaro, 2010]. In this manner the cost of the technology is minimised both for the farmer and for the installer of the irrigation systems.

The third and most significant barrier to the introduction of micro-irrigation of rice crops is the differences between irrigation of rice and irrigation of root-based plants. Rice crops, in contrast to the root-based crops on which the project in Kechla was conducted, require flood irrigation; that is, the submersion of the crop in water. The process of partial (instead of total) flooding provided by micro-irrigation of rice can encourage an increased weed presence. Hence, future

development of micro-irrigation for rice paddies will require increased use of pesticides [Madramootoo and Morrison, 2013]. This could have potentially negative environmental impacts.

However, cultivation of rice paddies through drip-irrigation has been trialled in India by a private irrigation company with great success [Business Standard, 2010]. The Asian Development Bank has also donated funds to the Chhattisgarh Irrigation Development Project in India to provide for the upgrading of 134 irrigation networks in the state [Asian Development Bank, 2014]. As a result of the improved irrigation, the average annual yield of rice has increased from 2.7 tons per hectare to 5.9 tons per hectare. It has also made it possible to generate two rice crops per year, instead of one [Asian Development Bank, 2014].

Similar results were observed in a project that upgraded existing irrigation technologies to micro-irrigation in Zambia. In addition to the possibility of a second and potentially third crop, farmers were able to rely on a more consistent level of rice production [DiGennaro, 2010].

A report by the UNDP on Myanmar's agrarian economy noted that, in view of international experience, farmers are more willing to participate in irrigation development if incremental benefits can be demonstrated from the technology [UNDP, 2004]. This problem has been discussed above. Trialling the irrigation systems in the dry season, in order to highlight the differences it makes to water efficiency and rice production, would help to solve this problem.

Furthermore, any successful project must involve a farmer-centred approach, in which farmers are educated and actively involved in the use and maintenance of the irrigation systems [UNDP, 2004]. Adopting an approach that engages farmers and educates them as to the benefits and use of the technology would address issues arising from farmers' uncertainties about the new technology, inadequate information and insufficient training, which tend to limit the adoption of new irrigation technologies by farmers [DiGennaro, 2010].

Conclusion and recommendations

This paper highlights the benefits of upgrading existing irrigation systems in Myanmar for its economy and for its people. For the individual farmer, the impact of this technology can be substantial. They can spend less time irrigating their crops and more time generating money through other ventures. Increased water efficiency allows for conservation of water along with increased rice production. This would benefit both individuals and the wider community, in addition to generating improvements on a national scale, contributing

to Myanmar's progress towards the Millennium Development Goals of reducing poverty and hunger.

The introduction of systems such as micro-irrigation into communities in Myanmar requires no more than a modest water source such as a well or river. Despite potential difficulties in the application of micro-irrigation to rice cultivation, current research indicates that these difficulties can be overcome through modifying the technologies to better suit rice cultivation. In addition, social challenges such as mistrust of new technology, economic barriers such as lack of access to credit and educational barriers can all be overcome through the establishment of a farmer-centred approach to installation with an emphasis on education, and the application of a partial or full subsidy on the price of equipment.

In order to alleviate hunger and poverty in Myanmar and to improve the country's agricultural sector, existing irrigation technologies should be upgraded and micro-irrigation systems should be established in rice paddies. To ensure that farmers benefit from these upgrades, the price of the micro-irrigation systems should be subsidised as much as is reasonable, and farmers must be educated and actively involved in the process of managing, operating and repairing the technology, so that the technology is integrated into the lives of the farmers, and not simply abandoned because it is too complicated or too foreign. However, it must be recognised that such a program is no small feat, and particularly in the context of the price of micro-irrigation technologies, collaboration between non-governmental organisations and the Myanmar government would be expedient.

The introduction of micro-irrigation to Myanmar is a modest step that has the potential to improve population health and poverty rates, and to bring Myanmar's once great agrarian economy into the twenty first century—a crucial step in enabling Myanmar's human development.

References

- ADB. *Myanmar in Transition: Opportunities and Challenges*. Asian Development Bank, August 2012. URL <http://www.adb.org/publications/myanmar-transition-opportunities-and-challenges>.
- ADB. *Myanmar: Agriculture, Natural Resources, and Environment Initial Sector Assessment, Strategy and Road Map*. Asian Development Bank, April 2013.
- Asian Development Bank. India agriculture: Better irrigation boosts rice yields, 2014. URL <http://www.adb.org/features/better-irrigation-boosts-rice-yields-india>.
- Business Standard. Rice output can rise to 130 mtns by 2020 via drip irrigation, 2 July 2010. URL http://www.business-standard.com/article/markets/rice-output-can-rise-to-130-mtns-by-2020-via-drip-irrigation-110070200209_1.html.
- David Dapice. Recapitalizing the rural economy. In Lex Reiffel, editor, *Myanmar/Burma: Inside Challenges, Outside Interests*, pages 77–85. Brookings Institution Press, 2010.
- Simeon William DiGennaro. Evaluation of the livelihood impacts of a micro-irrigation project in Zambia, 2010.
- Koichi Fujita and Ikuko Okamoto. Agricultural policies and development of Myanmar's agricultural sector: an overview. *Institute of Developing Economies Discussion Papers*, 2006.
- Steven Haggblade et al. A strategic agricultural sector and food security diagnostic for Myanmar. *Michigan State University/Myanmar Development Resource Institute Working Paper Series*, 2013.
- Kopernik. Project report: Drip irrigation in Kechla, India, 2013. URL <http://kopernik.info/project-report/drip-irrigate-kechla-india>.
- Toshihiro Kudo, Satoru Kumagai, and Hikari Ishido. Agriculture plus plus: growth strategy for Myanmar agriculture. *Institute of Developing Economies Discussion Papers*, 2013.
- Chandra A Madramootoo and Jane Morrison. Advances and challenges with micro-irrigation. *Irrigation and Drainage*, 62:255–261, 2013.
- Eli Vered Modinat A Adekoya, Zaochang Liu et al. Agronomic and ecological evaluation on growing water-saving and drought-resistant rice (*Oryza sativa* L.) through drip irrigation. *Journal of Agricultural Science*, 6(5), 2014.
- David Molden (ed.). *Water for Food, Water for Life: A Comprehensive Assessment of Water Management in Agriculture (summary)*. Earthscan, 2001.
- Ikoku Okamoto. Transforming Myanmar's rice marketing. In Monique Skidmore and Trevor Wilson, editors, *Myanmar: The State, Community, and Environment*, pages 135–159. ANU Press and Asia Pacific Press, 2007.
- Ikoku Okamoto. Transformation of the rice marketing system after market liberalization in Myanmar. In Koichi Fujita, Fumiharu Mieno, and Ikoku Okamoto, editors, *The Economic Transition in Myanmar after 1988: Market Economy versus State Control*, pages 216–245. NUS Press, 2009.
- UN. Security Council report: UN documents for Myanmar, 2014. URL <http://www.securitycouncilreport.org/un-documents/myanmar/>.
- UNDP. *Myanmar Agricultural Sector Review and Investment Strategy: Volume 2—Agricultural Sector Investment Strategy*. United Nations Development Program, January 2004. URL <http://www.mm.undp.org/content/myanmar/en/home/library/poverty/investsectorreview/>.
- Nilar Win. Experiences of Myanmar Agricultural Development Bank program on value chain finance on agriculture: Country report of Myanmar, June 2013.

Freedom, Democracy and Slavery: Liberal Justifications for Slavery in the Antebellum United States

Tristan McCall

The emancipation of slaves in the United States of America is often characterised as a victory for liberal democratic ideals over backward ideas of racial inequality and racial inferiority. However, analysis of the language used Southern intellectuals and politicians during the antebellum era illustrates that far from rejecting the principles of liberal democracy, such ideals were invoked regularly to justify slavery. This essay does not discuss the merits of such arguments or the underlying social or political forces that shaped them but instead seeks to illustrate how contrary to popular belief, anti-abolitionist leaders evoked the language of civil rights and democracy as a justification for the continued bondage of African American slaves. As such it draws heavily from the statements and writings of preeminent Southern scholars and politicians. From such evidence it is clear that within antebellum America, a concerted effort was made to rationalise slavery as a means of protecting and extending personal liberty, civil rights and the progression of society. Such analysis supports the work of Garland and other historians who have argued that far from following a linear progression, changing notions of crime and justice resulted from a complex mix of social and political factors. In this case, it is evident that the emancipation of slaves in the US was the result of a far more complex set of circumstances than the common view that superior intellectual ideas triumphed over backward notions. The very ideals of liberal democracy were contested.

During the nineteenth century, the language of liberal democracy was used extensively by the proponents of slavery as a justification for its continued existence in the United States of America. Throughout the debate over slavery leading up to the American Civil War, proponents for slavery regularly invoked principles of freedom, civil and property rights, democratic government and the progress of civilisation to demonstrate that slavery promoted rather than detracted from these values [Ericson, 2001]. In doing so, slave owners and upholders of slavery, primarily Southerners, attempted to interpret the fundamental principles of liberal democracy in accordance to their own world view and apply them to the social and political conditions of the South. Pro-slavery arguments commonly consisted of two main dimensions. Firstly, that slavery was a positive good for society as it provided liberty for both slaves and the slaveholders. And secondly that slavery was a necessary evil, the abolition of which would be detrimental to liberal democratic principles. Throughout the slavery debate it is clear that the notions of liberal democracy were contested and that fundamentally illiberal beliefs such as racial inferiority and natural inequality were often inter-mixed with the promotion of liberal ideals. The dispute over these notions of liberal democracy thus provides some insight into how continuing dilemmas such as the appropriateness of restrictions on property rights within capitalism have endured, as they are intrinsically tied to power dynamics and are thus influenced by broader political considerations [Huston, 1999]. Despite these complications however, it is clear that the language of liberal democracy

and its principles was relied upon to justify slavery.

Liberal ideas based on illiberal notions

In using the language of liberal democracy throughout the slavery debate, Southern intellectuals and political leaders sought to adapt and restrict certain principles according to the differing social strata in society. Such social constructs and exclusions were explicitly linked to notions of racial inferiority and the subjugation of the African-American population. In doing so proponents of slavery could justify their emphasis on civil rights, liberty and equality for the dominant slaveholding class despite denying those principles to slaves. A poignant example of these efforts is in the rejection of the idea that key documents espousing liberal democratic ideals such as the Declaration of Independence and US Constitution did not apply to slaves [Ericson, 2001]. Such arguments did not seek to reject the universal nature of such principles, but sought to restrict such notions to a selective part of the population. It was posited that the principles enshrined in these documents were “never intended to apply . . . to any barbarous or semi barbarous people” [Christy, 1860]. In doing so, anti-abolitionists saw themselves as elevating the high ideals of liberal democracy and thus protecting against their degradation. This was further articulated by John C. Calhoun, Vice-President of the United States between 1824 and 1832, who rejected the presumption that “those high qualities [of liberty and equality] belonged to man without effort to acquire them, and to all equally alike, regardless of their intellectual and moral condition” [Calhoun, 1854]. Perceived racial incompatibility

saw slaveholders justify the restriction of such ideals to the white population. Thus the universe in which these universal principles applied was a restricted one. The selective application of such principles is therefore pivotal in explaining how the language of liberal democracy was used so extensively despite its obvious denial to the slave population.

A clear example of these restricted notions of democracy is evident in the common appeals of Southern political leaders to just and representative government as a justification for slavery. Governor of South Carolina between 1842 and 1944 James Hammond argued that considering that slavery was consented to by the governed through their representative governments in the Southern states, any attempt to abolish the institution against their will would be a constitute a violation of democratic principles [Hammond, 1866]. Here it is clear that by restricting the notion of democracy to a particular propertied class, anti-abolitionists were able to appeal to democratic principles as a justification for continued bondage. Regardless of the denial of said principles to the slave population, such arguments represent a clear use of democratic language as a race-based justification for slavery.

Necessary Evil Arguments

Property Rights

A key justification for the maintenance of slavery during the nineteenth century was that the emancipation of slaves without just compensation would be a violation of fundamental individual property rights. As a cornerstone of the capitalist system in the US, and a key liberal tenet, property rights (even if they were over other human beings) were argued to be an inviolable right that went to the core of individual and economic freedoms [Harrison, 1949]. Put into historical context, during the nineteenth century the notion of democracy was one that was in many ways limited to propertied individuals [Genovese, 1995]. Thomas R. Dew, one of the most prolific and respected of the Southern intellectuals during the nineteenth century maintained, the great object of government remained first and foremost, the protection of private property [Dew, 1853]. Thus it was argued by anti-abolitionists that as slaveholders were not guilty of the original enslavement of African Americans, emancipation would inevitably mean a violation of the slaveholder's own rights and liberties [Huston, 1999].

Prominent Southern intellectuals such as Thomas Roderick Dew extended such arguments by contending that slaveholders didn't actually hold property rights in men but in the products of their labor [Ericson, 2001]. Unlike free workers, slaves

received a benefit for their labor in the form of food and shelter rather than wages. Such views were promulgated often through pamphlets such as Thomas Thompson's 1772 pamphlet 'The African Slave Trade' in which he commented that, "the serving without wages, is not serving for nothing for there is his keeping, and all necessities found him" [Thompson, 1987]. In describing slavery as a form of mutual benefit labor, such commenters sought to portray bondage in a more Lockean dynamic of contract where slaves exchanged some form of liberty in return for subsistence and protections [Ericson, 2001]. It was argued that by surrendering their civil liberties slaves actually gained a certain amount of practical freedom. In doing so, the defenders of slavery justified continued bondage through an interpretation of freedom as a more practical rather than absolute concept.

The attempts by Southern intellectuals like Dew to justify slavery through the protection of slaveholders' property rights, illuminates the broader debate over the appropriateness of slavery within the capitalist system. As historian James Huston has commented, the question of restricting property rights in human beings did not have an identifiable answer within the capitalist doctrines [Huston, 1999]. An inherent aspect of slavery was coercion on behalf of the slaveholders and the over-arching sanction of such practices by authorities [Huston, 1999]. Therefore, ultimately the enduring question regarding property rights hinged on who had control of the state as only a 'coercive social organisation' can define the "rules of the game" [Huston, 1999]. This can explain how these enduring dilemmas can remain unresolved as they are linked to political dynamics outside of their own theoretical domain.

Economic Degradation and Social Disharmony

Continued bondage was further justified through claims that emancipation would lead to economic degradation and widespread social unrest ultimately leading to political instability and the breakdown of civil institutions. Such a situation would lead to more intrusive governance and a diminishing of personal freedoms and rights for the population as a whole. Based on the view that African Americans were inferior and barbaric in their nature, many commentators predicted that emancipation would lead to racial violence and civil unrest. Coupled with the economic cost of emancipation due to the loss of billions of dollars Southerners had invested in slaves, high rates of unemployment and lost economic potential, anti-abolitionists cast a bleak picture of post emancipation society [Dew, 1853]. Such alarmist predictions are epitomized in Calhoun's predication that emancipation would

“involve a whole region in slaughter, carnage and desolation” [Calhoun, 1838]. It was argued that such a situation would lead to greater restrictions and draconian policies as the propertied class turned to a more authoritarian government to restore order. Ultimately this would result in a diminished level of individual liberties and rights for the population as a whole [Ericson, 2001]. The extension of liberty to slaves according to former Secretary of State (1825–1829) Henry Clay would “violate the incontestable powers of the state, subvert the union ... and [bury] the liberty of both races” [Mallory, 1844]. As such, politician and leading Southern intellectual William Harper mused, that only the continued social stability that bondage provided could maintain the maximum amount of liberty for both social groups [Harper, 1837]. The threat that emancipation would infringe upon the rights and liberties of both slaveholders and slaves is indicative of the manner in which the protection of liberal democracy was used to justify continued bondage.

The Positive Good Argument

Economic Development and the Progression of Civil Society

A key justification for the continued existence of slavery was that the economic benefits it provided created a stable foundation for the political system and facilitated the progression of civil society. Slavery was thus justifiable as it created the economic means for society to develop and extend greater freedoms to wider population [Genovese, 1995]. Although freedom could not be guaranteed for all it could however be extended to an increasing number of people on the back of economic development [Genovese, 1995]. Therefore, a disenfranchised lower class provided the means from which the middle class could be elevated [Christy, 1860]. There had never been, according to Calhoun, “a wealthy and civilised society in which one portion of the community did not ... live on the labor of the other [Calhoun, 1937]. This view was encapsulated within Hammond’s ‘mudsill’ argument that claimed that all great societies required a disenfranchised lower class that would “constitute the very mudsill of society and of political government” [Hammond, 1866]. The South had thus “found a race adapted to that purpose” [Hammond, 1866]. Free from the burden of manual labor, Southerners could cultivate their talents and progress society, eventually expanding the level of freedom to a greater proportion of the populace [Genovese, 1995]. Such language appealed to not only protecting but further developing the stability and progression of the American model of governance. Far from detracting from civilisation as

abolitionists claimed, slavery was argued to be the “corner-stone of [the American] republican edifice” [Ericson, 2001, quoting McDuffie]. Although limiting freedom for a select few on the basis of race, it was argued that slavery facilitated the extension of the maximum amount of liberty to the populace and in a manner that protected the stability and integrity of the system as a whole.

Furthermore, it was also argued that the slavery created the social stability required for civilisations progress as the institution of slavery avoided the class conflict that was considered to stem from free wage based labor. At all “stages of wealth and civilisation” argued Calhoun had their been a “conflict between labor and capital” [Calhoun, 1937]. Only in the slaveholding South it was argued was “capital labor and labor capital” [Fitzhugh, 1988]. Thus dispute over wages and working conditions between labour and capital was minimised. The expansion of freedom to all classes of society risked provoking the kind of social conflict that would undermine the freedom that already existed in the US [Genovese, 1995]. Such arguments were fundamentally rooted in the liberal vision of societal development.

Liberty for Slaves

Along with providing for greater liberties and rights in the broader population, proslavery advocates justified continued bondage on the grounds that it provided the material wellbeing that allowed slaves to enjoy greater personal freedoms. As slaves had all their necessities provided for they were free from exploitation and the oppressive fight for survival that effected free laborers. Coupled with the implication that African Americans (as an ‘inferior’ race) would struggle to survive if freed, it was thus argued that slaves enjoyed the most practical liberty in light of their circumstances [Ericson, 2001]. African Americans posited social theorist George Fitzhugh, would be an “insufferable burden to society” and would be “outstripped or outwitted in the chaos of free competition” [Fitzhugh, 1988]. Considering that they were “fed, clothed, and protected” slaves were far better off than their free Northern equivalents who had “freedom but in name” and liberty only to starve [Grayson, 1963]. Such arguments took the view that slavery only institutionalised the bondage already present between workers and their employers but with the added protection of subsistence and the guidance of moral and Christian principles [Faust, 1979]. Again such arguments appealed to a restricted idea of what freedom entails. In reworking the concept of absolute freedom in more practical terms, proponents of slavery attempted to use notions of freedom as



Figure 1: "The Negro in his own Country" vs. "The Negro In America" [Priest, 1852].

a justification of the racist institution's continued existence.

Not only was the material wellbeing of slaves used to justify their continued bondage but also the 'civilising' effect that exposure to western culture had. Slaves were thus prepared for future equality and freedom as they gained moral and intellectual advancement in the western world [Ericson, 2001]. The image depicted on Figure 1, found in Josiah Priest's 'Bible Defence of Slavery' further illustrates such arguments [Priest, 1852].

As depicted, free from the dangers and desolation of their native lands, slaves in America were provided with material comforts and attained a level of civility that elevated them from their native condition. Slavers were bound to "lift and guide the lesser" [Simms, 1848] and in doing so attain for African Americans a position of moral and intellectual improvement [Calhoun, 1937]. If slaves were civilised in such a way they would be "rendered capable of freedom . . . and be prepared for it in the best and most effectual manner" [Harper, 1837]. Considering that the 'intelligence' of western slaveholders was a key legitimiser of control over African American slaves, the civilising of slaves thus implies that the institution was justified on the grounds that it provided a means for an 'inferior' race to gain a measure of security and care in society.

Conclusion

Throughout the slavery debate in the nineteenth century, considerable emphasis was placed on the nature and application of liberal democratic ideals and the implications of the institution of slavery. Bondage was justified through a range of arguments that proposed that far from detracting from the liberal ideals of the US, slavery contributed to endurance and extension of personal liberty, civil rights and the progression of society. Its removal would lead to the violation of 'sacred' property rights, cause economic degradation and ultimately lead to the instability of civil institutions that guaranteed democracy and upheld the rights and liberties of the broader population. Furthermore, through its continued existence, it was argued that bondage provided the economic strength that enabled the US to develop western civilisation, ensured the expansion rights and liberties and provided for the material and intellectual support that gave slaves practical freedom and equality. These efforts demonstrate that the language of liberal democracy was used extensively to justify slavery and also highlights the intellectual dispute between slaveholders and abolitionists over the authority to control and determine the principles that governed society. As such, it illuminates that enduring dilemmas, like restrictions on property

rights within the capitalist system were maintained by being tied to the power dynamics and political disputes, rather than solely theoretical issues.

References

- John C Calhoun. Reports and public letters of John c Calhoun. chapter Remarks on the State Rights Resolutions in regard to Abolition. D Appleton and Company, 1838.
- John C Calhoun. *The Works of John C Calhoun*. D. Appleton, 1854.
- John C Calhoun. Slavery: A positive good, 1937. URL <http://caho-test.cc.columbia.edu/ps/10157.html>.
- David Christy. *Slavery in the Light of Political Economy*. Pritchard, Abbott and Loomis, 1860.
- Thomas R Dew. *The Pro-Slavery Argument; as maintained by the most distinguished writers of the Southern States*, chapter Essay on Slavery. Lippincott, Grambo & Co, 1853.
- David F Ericson. *The Debate Over Slavery: Antislavery and Proslavery Liberalism in Antebellum America*. NYU Press, 2001.
- Drew Gilpin Faust. A southern stewardship: The intellectual and proslavery argument. *American Quarterly*, 31(1), 1979.
- George Fitzhugh. *Cannibals All! Or Slaves Without Masters*. Harvard University Press, 1988.
- Eugene D Genovese. *The Slaveholders Dilmma: Freedom and Progress in Southern Conservative Thought*. University of South Carolina Press, 1995.
- William J Grayson. *Slavery Defended: The Views of the Old South*, chapter The Hiring and the Slave. Prentice-Hall, 1963.
- James H Hammond. *Selections from the Letters and Speeches of the Hon. James H Hammond, of South Carolina*, chapter Speech on the Admission of Kansas under the Lecompton Constitution. J F Trow & Company, 1866.
- Robert Harper. *Cotton is King*, chapter Slavery in the Light of Social Ethics. Pritchard, Abbott & Loomis, 1837.
- Lowell Harrison. Thomas Roderick Dew: Philosopher of the old South. *The Virginia Magazine of History and Biography*, 1949.
- James L Huston. Property rights in slavery and the coming of the civil war. *Journal of Southern History*, 65(2):250, 1999.
- Daniel Mallory. *The life and speeches of the Hon. Henry Clay*. Van Ambringe and Bixby, 1844.
- Josiah Priest. *Bible Defence of Slavery*. W. S. Brown, 1852.
- William Gilmore Simms. Headley's life of Cromwell. *Southern Quarterly Review*, 1848.
- Thomas Thompson. *Proslavery: A History of the Defense of Slavery in America, 1701-1840*, chapter The African Slave Trade 1772. University of Georgia Press, 1987.

Fragmentation and Dichotomy in Contemporary International Law

Stuart Mooney

Globalisation has contributed to profound changes in the international landscape of law. These changes include diversification, expansion and intensified fragmentation of international law. Two trends associated with this fragmentation are increased interstate cooperation and growth in non-state legal norms and actors. These phenomena blur the boundaries of 'classic' conceptions of private and public international law. To make sense of contemporary international law practice, scholars have proposed a new category of law that seeks to move beyond the conventional conceptual international law dichotomy: 'transnational law'. Transnational law remains an emerging, broad and contentious way of classifying law. Nevertheless, it is an important concept and offers insights that have value in describing and understanding the complex and evolving processes of contemporary international law.

Introduction

Influential definitions see public international law as externally enforceable and binding rules that regulate principally the conduct of states (Lauterpacht, 1970). Conversely, private international law is concerned with applications of rules in disputes crossing state borders, including state jurisdiction and choices as to which state law should be used (Stevenson, 1952). In legal discourse, private and public international law are typically seen as separate but parallel theoretical fields (Mills, 2009). However, changes to states' role in making and using international law have blurred the boundaries of the conventional private versus public international law dichotomy (Reimann, 2003). These changes are related to forces of globalisation, which have been associated with a diversification and expansion of international law. This article will first sketch the relationship between globalisation and fragmentation. It will then outline two trends associated with fragmentation: increased interstate cooperation and growth in non-state legal norms and actors. Finally, it will introduce a growing body of scholarship that attempts to make sense of evolving international law by recognising that the traditional dichotomy is insufficient to explain law, processes and actors that are not captured by the 'classic' model of international law¹.

Globalisation and fragmentation shaping international law

Contemporary scholarship across theoretical fields has adopted a vocabulary of globalisation (Holmes, 2011). However, notwithstanding that globalisation is a dominant social paradigm, in general discourse its scope and content remains vague (Michaels, 2013). Globalisation often refers to dynamic processes of increased international integration, global forms of governance, and social and environmental

inter-linkages across borders (Dreher *et al.*, 2008). From a legal perspective, globalisation has been observed to include the movement of legal categories and ideas contributing to homogenisation between different legal systems (Zamboni, 2007).

Such legal globalisation is not new; indeed, the movement of legal norms and legal transplants has played an important role in molding legal systems throughout the world since antiquity (Grazedei, 2006). However, contemporary judicial interaction is increasingly occurring above and below state borders through diverse processes, including between national and international courts, transnational litigation, and constitutional cross-fertilisation (Slaughter, 1999). In the current European legal perspective, globalisation has been said to be related to disparate but interrelated notions of international integration, de-bordering and transformations of the nation-state (Bogdandy, 2004).

From the perspective of international law, the International Law Commission (ILC) has noted that fragmentation has been manifested in the growth of sub-fields such as 'law of the sea', 'European law' and 'human rights law', each with its own legal principles and institutions (Koskenniemi, 2006). Inconsistencies regarding the interpretation and application of legal rules, for example, between WTO dispute resolution bodies, regional trade courts and domestic courts, are commonplace and demonstrate a lack of systemic coherence within the regime of international trade law (Petersmann, 2006). There has also been a rapid proliferation of international courts and tribunals, which has had the effect of changing profoundly international law and relations (Alford, 2000). This rise of international adjudication and expanding jurisdiction of international dispute resolution mechanisms has brought 'numerous practical problems' (Kingsbury, 1998).

Scholars, however, differ over the exact causative relationship between globalisation

¹For an overview of the 'classic' model of international law, see (Reimann, 2003), especially at pp. 399–401.

and international legal fragmentation. Eyal Benvenisti and George W. Downs (2007), for example, view fragmentation as ‘only partly the accidental byproduct of broad social forces such as globalisation’. Koskenniemi & Leino (2002) have noted that public international law has ‘always lacked a clear normative and institutional hierarchy’. Perhaps mindful of these considerations, the ILC instead framed its discussion of fragmentation in terms of it having ‘many new features’ and its ‘intensity differ[ing] from analogous phenomena of the past’ (Koskenniemi, 2006). In any case, while scholars differ over the causes and extent of fragmentation, the idea is unquestionably dominant in current academic discourses about international law in the era of globalisation (Dupuy, 2007). It is therefore a useful point of departure to look at changes in international law practice and theory more generally.

Increased cooperation and growth in non-state law and actors

Two trends which have been discussed at length in the scholarly debate surrounding globalisation and fragmentation are first, increased cooperation and second, a growth in non-state law and actors². The first of these two trends relates to massive increases in cooperation, multilateralism and international organisation through the twentieth century and into the new millennium (Jenks, 1959). Key initiatives during this period towards collective action saw the rate of treaty making surge; indeed, since 1945 more than 55,000 treaties have been registered with the United Nations³. Consequently there are now more multilateral agreements and institutions in force, addressing more areas of policy, than ever before (Raustiala, 2000). As Klabbers (2009) has noted, this multilateralism is reflected in an explosive rise in the number of international organisations, which on most estimates now outnumber states. International organisations are a standard means to facilitate interstate cooperation Klabbers (2009). At the same time, international organisations shape the world and contribute to globalisation and play a key role in the globalisation of law (von Benda-Beckmann, 2002). The sharing—and at times, delegation—of sovereignty through international organisations has been argued to

be most vividly manifest in the case of the EU, a ‘supranational’ organisation with its own regulatory regime that affects directly the internal regulatory regimes of Member States⁴. European integration has, consequently, transformed profoundly legal relations between EU member states (Koskenniemi, 2006).

A second trend associated with processes of fragmentation is the emergence of ‘inchoate’ kinds of global law which are not made formally by states, and which involve non-state actors Teubner (1997). These legal norms include so-called non-binding, non-obligatory ‘soft law’ rules and instruments increasingly being made and used to facilitate international relations (Boyle, 2010). Other forms of global legal rules that do not fit neatly with traditional conceptions of what constitutes ‘law’ include privately created standards and codes, and legal models from other states that are promoted by transnational entities (Shaffer, 2010). States may not formally create or consent to these normative concepts and instruments; they are instead made and transmitted through ‘state bureaucrats, NGOs, foreign development agents, migrants or through modern communication channels’ (von Benda-Beckmann, 2006). Such non-state entities, Indigenous peoples, transnational networks, multinational corporations and NGOs are in many and diverse ways increasingly involved in the creation of international law, both through and beyond formal state-related institutional processes (Boyle, 2007). For example, research has suggested that a special *lex laboris transnationalis* is taking form, connected with the normative regimes of multinational corporations rather than a formal framework provided by any single domestic legal system or formal treaty regime (Liukkunen, 2014).

Conceptualising international law: ‘transnational law’

A central organising dichotomy in international law—between private and public international law—is underpinned by what Michaels has called ‘methodological nationalism’, or ‘the idea that the state presents the ultimate point of reference for both domestic and international law’ (Michaels, 2013). As Tuori has argued, legal theory has manifested an ‘at least implicit commitment to the closed legal order of the nation-state’ (Tuori). However, the creation of legal norms by entities other than states has helped ‘shake’ the ‘monopoly of the nation-state legislator’ (Tuori). As the foregoing analysis attempted to

²Among the many scholars discussing these two trends, see e.g. Koh (1997) and Weiss (2000). On the growth of cooperation and ‘transgovernmentalism’, see Raustiala (2002). More recently, (Michaels, 2013) has argued that globalisation has changed role of government as an element of statehood in two important ways: ‘increased global interdependence of states’ and ‘the importance of non-state norms’.

³Aust (2013) notes that the real number of treaties in force in the same period was probably higher.

⁴See Jaremba (2013). It should be noted, however, that scholars continue to debate hotly the EU’s legal character, including whether it can be considered an international organisation at all (Verdirame, 2013).

illustrate, processes of globalisation have therefore brought into question the centrality of the unitary state as the dominant actor and fundamental locus of the standard ‘Westphalian’ model of international law (Michaels, 2013). Indeed, there is a growing consensus among international lawyers that simplistic accounts involving independent states, located in discrete territories, exercising unfettered sovereignty do not reflect the reality of international relations (Schachter, 1997)⁵.

There is also a growing body of scholarship that argues the traditional dichotomy is insufficient to explain law, processes and actors that are not captured by the traditional international law model (Berman, 2004). This reorientation in international law discourse has involved some international lawyers arguing for a shifting of theoretical focus away from analysing traditional international rules, sources and objects and toward subjects, processes and interaction at a transnational level (Higgins, 1994)⁶. Others, however, have gone further and proposed an altogether new category of international law that looks at law beyond the confines of purely state-law and interstate-law assumptions: ‘transnational law’ (Scott, 2010). In what Slaughter & Burke-White (2006) called a ‘hegemonic move’, Jessup found existing categories of international law unsatisfactory in explaining rules regulating the ‘world community’ and instead proposed that ‘transnational law’ refer to ‘all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories’ (Jessup, 1956). Such categories, according to Cotterell (2012), include new ‘legal relations, influences, controls, regimes, doctrines and systems that are not those of nation state (municipal) law, but, equally, are not fully grasped by extended definitions of the scope of international law.’

Transnational law, in the words of a leading scholar in the field, is ‘neither purely domestic nor purely international, but rather, a hybrid of the two’ (Koh, 2005). But at this point understandings of the notion diverge. The *lex mercatoria*, or medieval ‘law of merchants’, provides a useful illustration. The *lex mercatoria* can be understood as a private body of law and institutions that has evolved to govern contemporary trans-border trade, and which has ‘detached itself from national and international laws, and has thus become a truly autonomous transnational law system, independent of both national and international

law’ (Gimenez Corte, 2012)⁷. Because of the cross-border nature of international commercial transactions and the particular legal challenges they pose, some scholars suggest *lex mercatoria* can be called ‘transnational law’ (Schmitthoff, 1982). Michaels (2007), for instance, has argued that *lex mercatoria* is a developing set of global legal norms, bodies and processes of arbitration that merges national and non-national and can therefore be seen as transnational law. Indeed, Teubner (1997) has called *lex mercatoria* ‘the most successful example of global law without a state.’ Others, however, have argued that a set of non-national *lex mercatoria* norms does not exist, that transactions transcending national borders must by necessity be governed by domestic law, and that the use of the word ‘transnational’ is therefore ‘obscure’ and ‘unfortunate’ (Mann, 1998).

As the ongoing debate about *lex mercatoria* and transnational law⁸ illustrates, the legitimacy of transnational law as a phenomenon and separate type of law is contentious. Even those who trumpet its values as an analytical tool note its limitations, including ‘woeful’ conceptual incompleteness, reliance on ‘troubling’ assumptions, and normative weakness (Dibadj, 2008). Certainly, as Scott (2009) has written, transnational law remains a fluid, ‘fuzzy’ concept with a number of variants. Nevertheless, he identifies two basic ‘usages’ of the term in legal discourse: first, the ‘practitioner’s usage’, which relates to the applicability in a given context of “transnational” rules, principles, standards, and systems; and second, a ‘first principles theorisation of what, if any, uses of “transnational law” would be conceptually coherent’. These two basic usages notwithstanding, scholars and practitioners approach transnational law in many different ways, the concept continues to evolve, and there are strong differences in opinion as to its value as a new category in international law⁹.

Conclusions

Globalization has contributed to profound changes in the international landscape of law, including the diversification, expansion and intensified fragmentation of international law. Indeed, so significantly has international relations changed that some have suggested a ‘total demise’ of the contemporary nation-state is possible (Ferreira-Snyman, 2006) and that a ‘people-centered transnational legal order’ is

⁷See also Berman & Kaufman (1978).

⁸For an overview of the stages of the debate, see Gaillard (2001).

⁹For an overview of the history of how the concept of ‘transnational law’ evolved after Jessup’s lectures and his subsequent book on the subject, see Zumbansen (2011).

⁵More generally, see discussion in part 2 of Held & McGrew (2013).

⁶More generally, there are a range of transnational legal process theories, e.g. (Shaffer, 2010).

emerging (Bradlow & Grossman, 1993). If law is an essentially social phenomenon—as many legal thinkers take it to be—then changes in underlying fundamental social facts or events may affect the very nature of what can be counted as ‘law’¹⁰. Maybe, then, globalisation has so changed the reality of behavior and convention in the international community that it forces a determination of new types of legal validity—transnational law—beyond what is arguably an obsolete framework of international law. Less controversially, transnational law may have merit as a descriptive tool of analysis to explain emerging forms of organisation and normative rules that are not otherwise reflected in more conventional state-centric approaches to international law (Michaels, 2013).

Either way transnational law is approached, the mixed reaction with which it has been greeted by practitioners and academics may not so much relate to its inherent weakness, but rather its ‘scope and conceptual aspiration’ (Zumbansen, 2006). The field of transnational law is interdisciplinary and, given its global nature, speed of its emergence and pervasiveness, it has attracted attention from legal minds, political observers, sociologists and economists. Thus it remains a ‘fuzzy’ and controversial idea. This ‘fuzziness’, however, may in fact signal the real strength of transnational law and theory: its conceptual flexibility makes it a useful tool in analysing and making predictions about similarly amorphous and fluid legal rules, processes and actors in the emerging and ever-changing international community.

References

- Roger P Alford. *The Proliferation of International Courts and Tribunals: International Adjudication in Ascendancy*, American Society of International Law Proceedings **94** (2000), 160–165.
- Anthony Aust. *Modern Treaty Law and Practice*, 3e. Cambridge University Press (2003).
- Eyal Benvenisti and George W Downs. *The Empire’s New Clothes: Political Economy and the Fragmentation of International Law*, Stanford Law Review **60** (2007), 595–631.
- Harold J Berman and Colin Kaufman. *The Law of International Commercial Transactions (Lex Mercatoria)*, Harvard International Law Journal **19** (1978), 221–277.
- Paul S Berman. *From International Law to Law and Globalization*, Columbia Journal of Transnational Law **43** (2004), 485–556.
- Alan Boyle and Christine Chinkin. *The Making of International Law*. Oxford University Press, 2007.
- Alan Boyle. Soft law in international law-making. In Malcom Evans, editor, *International Law*, 3e. Oxford University Press, 2010.
- Daniel D Bradlow and Claudio Grossman. *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, American University International Law Review **9** (1993), 1–25.
- Roger Cotterrell. *What is Transnational Law?*, Law & Society Inquiry **37** (2012), 500–524.
- Reza Dibadj. *Panglossian Transnationalism*, Stanford Journal of International Law **44** (2008), 253–300.
- Axel Dreher, Noel Gaston, and Pim Martens. *Measuring Globalisation: Gauging its Consequences*. Springer, 2008.
- Pierre-Marie Dupuy. *A Doctrinal Debate in the Globalisation Era: On the “Fragmentation” of International Law*, European Journal of Legal Studies **1** (2007), 1–19.
- Magdalena P Ferreira-Snyman. *The Evolution of State Sovereignty: a Historical Overview*, Fundamina: A Journal of Legal History **12** (2006), 1–28.
- Emmanuel Gaillard. *Transnational Law: A Legal System or a Method of Decision Making?*, Arbitration International **17** (2001), 59–71.
- Cristian Gimenez Corte. *Lex Mercatoria, International Arbitration and Independent Guarantees: Transnational Law and How Nation States Lost the Monopoly of Legitimate Enforcement*, Transnational Legal Theory **3** (2012), 345–370.
- Michele Graziadei. Comparative law as the study of transplants and receptions. In Mathias Reimann and Reinhard Zimmermann, editors, *The Oxford Handbook of Comparative Law*, 2006.
- David Held and Anthony McGrew, editors, *The Global Transformations Reader: An Introduction to the Globalization Debate*, 2e. Polity Press, 2013.
- Rosalyn Higgins. *Problems and Process: International Law and How we Use It*. Oxford University Press, 1994.
- Pablo Holmes. *The Rhetoric of Legal Fragmentation and Its Discontents-Evolutionary Dilemmas in the Constitutional Semantics of Global Law*, Utrecht Law Review **7** (2011), 113.
- Urszula Jaremba. *At the Crossroads of National and European Union Law: Experiences of National Judges in a Multi-level Legal Order*, Erasmus Law Review **6** (2013), 191–203.
- Wilfred C Jenks. *The Challenge of Universality*, American Society of International Law Proceedings **53** (1959), 85–98.
- Philip C Jessup. *Transnational Law*. Yale University Press New Haven, 1956.
- Benedict Kingsbury. *Foreword: Is the Proliferation of International Courts and Tribunals a Systemic Problem?*, NYU Journal of International Law and Politics **31** (1998), 679–696.
- Jan Klabbbers. *An Introduction to International Institutional Law*, 2e. Cambridge University Press, 2009.
- Harold H Koh. *Why Do Nations Obey International Law?*, Yale Law Journal **106** (1997), 2599–2659.
- Harold H Koh. *Why Transnational Law Matters*, Penn State International Law Review **24** (2005), 24–745.
- Martti Koskenniemi and Päivi Leino. *Fragmentation of International Law? Postmodern Anxieties*, Leiden Journal of International Law **15** (2002), 553–579.
- Martti Koskenniemi. *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*. UN, 2006.
- Sir Hersch Lauterpacht. *International Law: Being the Collected Papers of Hersch Lauterpacht*. Cambridge University Press, 1970. Edited by Elihu Lauterpacht.

¹⁰This could be called loosely a positivistic approach to law. See generally Zalta (2011).

- Ulla Liukkunen. Transnational labour law and fundamental labour rights: Making Chinese workers matter? In Roger Blanpain, editor, *China and ILO Fundamental Principles and Rights at Work*. Kluwer Law International, 2014.
- Francis A Mann. Introduction. In Thomas E Carbonneau, editor, *Lex Mercatoria and Arbitration*, revised edition. Kluwer Law International, 1998.
- Ralf Michaels. *The True Lex Mercatoria: Law Beyond the State*, Indiana Journal of Global Legal Studies **14** (2007), 447–469.
- Ralf Michaels. Globalization and law: Law beyond the state. In Reza Banakar and Max Travers, editors, *Law and Social Theory*. Hart Publishing, 2013.
- Alex Mills. *The Confluence of Public and Private International Law: Justice, Pluralism and Subsidiarity in the International Constitutional Ordering of Private Law*. Cambridge University Press, 2009.
- Ernst-Ulrich Petersmann. *Justice as Conflict Resolution: Proliferation, Fragmentation, and Decentralization of Dispute Settlement in International Trade*, University of Pennsylvania Journal of International Economic Law **27**, 273–366 (2006).
- Kal Raustiala. *Sovereignty and Multilateralism*, Chicago Journal of International Law **1** (2000), 401–419.
- Kal Raustiala. *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, Virginia Journal of International Law **43** (2002), 1–92.
- Mathias Reimann. *From the Law of Nations to Transnational Law: Why We Need a New Basic Course for the International Curriculum*, Penn State International Law Review **22** (2003), 397–415.
- Oscar Schachter. *The Decline of the Nation-State and its Implications for International Law*, Columbia Journal of Transnational Law **36** (1997), 7–23.
- Clive M Schmitthoff, Nature and Evolution of the Transnational Law of Commercial Transactions. In Norbert Horn and Clive M Schmitthoff, editors, *The Transnational Law of International Commercial Transactions*. Kluwer, 1982.
- Craig Scott. *Transnational Law as Proto-Concept: Three Conceptions*, German Law Journal **10** (2009), 859–876.
- Craig Scott. *Introducing Transnational Legal Theory*, Transnational Legal Theory **1** (2010), 3–4.
- Gregory Shaffer. *Transnational Legal Process and State Change: Opportunities and Constraints*, University of Minnesota Legal Studies Research Paper Series **10-28** (2010).
- Anne-Marie Slaughter. *Judicial Globalization*, Virginia Journal of International Law **40** (1999), 1103–1124.
- Anne-Marie Slaughter and William Burke-White. *The Future of International Law Is Domestic (or, the European Way of Law)*, Harvard International Law Journal **47** (2006), 327–352.
- John R Stevenson. *The Relationship of Private International Law to Public International Law*, Columbia Law Review **52** (1952), 561–588.
- Gunther Teubner. Global Bukowina: Legal pluralism in the world society. In Gunther Teubner, editor, *Global Law Without a State* Dartmouth, 1997.
- Kaarlo Tuori. *Law beyond the nation-state*. <http://www.aka.fi/Tiedostot/Tiedostot/ENVLAW/comparative%20tuori.pdf>, accessed 30 July 2014.
- Guglielmo Verdirame. *A Normative Theory of Sovereignty Transfers*, Stanford Journal of International Law **49** (2013), 371–424.
- Keebet von Benda-Beckmann. *Globalisation and Legal Pluralism*, International Law Forum du droit international **4** (2002), 19–25.
- Franz von Benda-Beckmann and Keebet von Benda-Beckmann. *The Dynamics of Change and Continuity in Plural Legal Orders*, The Journal of Legal Pluralism and Unofficial Law **53-54** (2006), 1–44.
- Armin von Bogdandy. *Globalization and Europe: How to Square Democracy, Globalization, and International Law*, European Journal of International Law **15** (2004), 885–906.
- Edith Brown Weiss. *The Rise or the Fall of International Law?*, Fordham Law Review **69** (2000), 345–372.
- Edward Zalta. *The Nature of Law*, The Stanford Encyclopedia of Philosophy, 2011. <http://plato.stanford.edu/archives/win2011/entries/lawphil-nature/>, accessed 30 July 2014.
- Mauro Zamboni. *Globalization and Law-making: Time to Shift a Legal Theory's Paradigm*, Legisprudence **1** (2007), 125–153.
- Peer Zumbansen. Transnational law. In Jan Smits, editor, *Encyclopædia of Comparative Law*. Edward Elgar Publishing, 2006.
- Peer Zumbansen. *Transnational law, Evolving*, Transnational law, evolving. Osgoode CLPE Research Paper Series No. 27, Vol. (7), 2011.

The Trianel Case: Implications for the Right of Access to Justice for Environmental NGOs

Camilla Pondel

The 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the ‘Aarhus Convention’) created binding obligations on European Union (EU) Member States to ‘guarantee the rights of access to information, public participation in decision-making and access to justice’ [UNECE, 1998]. The Aarhus Convention works on the assumption that protecting these procedural rights leads to improved environmental protection, as it will improve the outcomes of environmental decision-making [Pedersen, 2008, Steele, 2001]. Kofi Annan, the former UN Secretary General, agreed with this when he said that environmental procedural rights are ‘a prerequisite for meaningful progress towards sustainable development’ [UNECE, 2014]. This assumption will be examined by an assessment of whether the procedural rights protected by the Aarhus Convention, in particular the Article 9(2) right of access to justice for Environmental NGOs (‘ENGOS’), have demonstrated a practical capacity to create better environmental protection. This question will be discussed in light of the *Trianel* case (Case C-115/09 *Trianel* [English, 2011]), which concerned access to judicial review for ENGOS in Germany. This case is seen as substantially advancing ENGOS’ procedural rights; however, at the same time it demonstrated shortcomings in the effectiveness of these rights. The case raises concerns that the right of access to justice, as protected by the Aarhus Convention, has inherent limitations to actual environmental progress.

The Trianel Case

Background

The key issue in the *Trianel* Case was whether BUND (*Bund für Umwelt und Naturschutz Deutschland*/Friends of the Earth), an ENGO, had standing in the German national court to challenge the granting of a coal-fired power plant permit (the ‘Trianel permit’). BUND challenged the permit on the basis of the Environmental Impact Assessment (EIA) Directive,¹ Article 10a of which codifies Article 9(2) of the Aarhus Convention.

Article 9(2) of the Aarhus Convention states that each party to the Aarhus Convention, within its own national legislation, must ensure that members of the ‘public concerned’ who have (a) sufficient interest or (b) maintain the impairment of a right where the administrative or procedural law of a party requires this as a precondition, have access to a review procedure before a court. Under this article, ENGOS expressly meet the ‘sufficient interest’ requirements in subsection (a). EU Member States have a legal obligation to incorporate the right of access to review procedures for ENGOS into their national legislation, which seems to ensure that environmental groups are able to protect environmental interests through national courts.

BUND is an ENGO; *prima facie*, the above-mentioned provisions grant BUND with sufficient interest in environmental matters to challenge an environmental permit in the German national court. However, under German law a challenge of an administrative act is only admissible

if (1) the challenge relates to a provision which confers individual rights and (2) the applicant falls within the scope of the relevant individual rights.² By this procedural requirement, ENGOS are granted standing before a court—and therefore able to bring an action against projects likely to have significant effects on the environment—only where they can show potential infringement of a rule which confers *individual rights* [Eliantonio, 2011]. The particular law which BUND claimed was violated by the administrative act of issuing the *Trianel* permit did not confer individual rights.³ Conversely, BUND was not maintaining that individual rights had been infringed as the relevant law did not confer individual rights. Instead, BUND claimed that the *Trianel* permit was likely to cause environmental harm and was against the public interest.

The German court found that German law prevented BUND from applying to the court because it was not relying on the infringement of any individual rights. The court did not recognise any assumed standing for ENGOS in relation to environmental matters. BUND did not meet the requirements of standing and thus could not seek to challenge the administrative act which it claimed had been a violation of the EIA Directive and Habitats Directive.

This outcome seems to undermine Aarhus Convention Article 9(2), which expressly secures access to the courts for ENGOS. The German court, recognising the inconsistency between the

¹86/337 as amended by Directive 2003/35

²As demonstrated in Paragraph 42(2) of the *Verwaltungsgerichtsordnung* and Paragraph 2(1) of the *Umwelt-Rechtsbehelfsgesetz* (UmwRG).

³*Trianel*, para 18.

purpose of the Aarhus provision and the outcome reached through application of German law, referred the case to the Court of Justice of the European Union (CJEU). The question posed to the CJEU was whether the Aarhus Convention and the EIA Directive require Member States to give ENGOs the right to bring an action before the national courts without relying on the infringement of a substantive individual right⁴. As was pointed out by Advocate General Sharpston, the crux of the problem was twofold. Firstly, what type of ‘right’ may ENGOs claim is being impaired, and secondly, can Member States limit the range of rights which will constitute substantive individual rights?⁵

CJEU Judgement

The CJEU ruled that BUND should not be prevented from having standing before a German court, reasoning that German law preventing BUND from bringing an action was not compatible with EU Law.⁶ The CJEU interpreted Article 10a of the EIA Directive, codifying Article 9(2) of the Aarhus Convention, to preclude national procedural rules which bar ENGOs from seeking judicial review of administrative acts, if the reason for this is that the allegedly violated laws protect only *public* interests and not *individual* ones.⁷ Conversely, this means that ENGOs in the EU are able to bring environmental claims that rely on either individual or public interest [Blain and Long, 2013].

The *Trianel* case significantly increased the standing of ENGOs to challenge administrative acts [Müller, 2011]. It expanded the possible reach of ENGO actions to include public interest matters. However, what it has also done is highlight the limitations of the procedural right of access to justice, enshrined by the Aarhus Convention, and demonstrated potential blocks in the materialising of environmental procedural rights into substantive environmental protection.

Blocks to ENGOs’ procedural rights

ENGOs face a number of difficulties in establishing infringement of an individual right as required by some EU Member States’ law, which is possibly why the Aarhus Convention requires that Member States recognise their extended standing in national courts.⁸ German law requires, firstly, that a claim relies on the infringement of a rule conferring an individual right, and secondly, that the applicant

falls within the scope of the conferral.⁹ An ENGO is not an individual, but an organisation. Proving that an environmental organisation has individual rights which are protected or conferred by certain environmental legislation *and* that the ENGO falls within the scope of the individual right is fraught with legal hurdles. By its very nature an ENGO is not an individual, so how exactly would an ENGO go about proving that it has had its individual rights infringed?¹⁰ There is a tension in this question which, in theory, is avoided by the relevant articles in the Aarhus Convention and EIA Directive that give ENGOs broad and automatic grounds for standing. Broad standing for ENGOs in environmental matters is supported by the majority of German scholars [Müller, 2011]. In practice, however, the *Trianel* case demonstrated that this is not necessarily the case.

Even if an ENGO is able to successfully show that it falls within the scope of a particular individual right, a greater problem arises in the legislative drafting of German domestic environmental law. Germany has enacted a wide range of legislation which aims to protect and improve the environment [English, 2011]. The general trend is that this environmental legislation is expressed in terms of general public interest, as opposed to individual interest or rights.¹¹ In a system where administrative acts can only be challenged when an individual right or interest exists, and the applicant falls within the scope of that right or interest, legislation which couches its protection in the public interest will not be able to be challenged on the grounds of an infringement of an individual right. What this effectively means is that no applicant, ENGOs included, are able to challenge an administrative act based on the violation of such public interest environment laws.

Arguably one of the most important aspects of the environmental procedural right of access to justice is that it promotes accountability of decision makers, in order to result in better environmental decisions [Steele, 2001]. The *Trianel* case showed that this accountability only existed in theory for the period before the CJEU’s judgement. Therefore it cannot be simply said that the procedural laws were leading to better substantive protection if the very objective of the procedural right was barred. Moreover, this shows that there are deficiencies in implementation of the right of access to justice which have led to a discrepancy between the aims of the right and the outcome. Simply put, it becomes clear that there are loopholes within the environmental protection regime. It is possible that there are further loopholes

⁴Advocate General Sharpston, Opinion of 16 December 2010 in Case C-115/09 *Trianel* para 2.

⁵*Ibid*, para 46.

⁶*Trianel*, para 48.

⁷*Ibid*.

⁸Art 9(2) and 10a, respectively.

⁹Paragraph 42(2) *Verwaltungsgerichtsordnung*.

¹⁰Sharpston, para 46.

¹¹*Ibid*, para 34.

extant that haven't yet been brought to the CJEU's attention for clarification.

Inconsistency between German and EU law

Prior to the *Trianel* judgement, the requirement of a violation of a legitimate individual rights acted as an absurd barrier to access to justice for ENGOs. The absurdity arises from enacting legislation that protects the environment nationally, granting ENGOs procedural rights to challenge the administrative compliance with such legislation at EU level, but then relying on national provisions to prevent such challenges as being admissible. This barrier has affected the ability of ENGOs to challenge many German environmental laws, similar to the situation in *Trianel*. For example, German anti-pollution laws¹² could not previously be invoked in front of German national courts by ENGOs, even when they were relying on procedural rights created and conferred upon them in EU law. Inconsistency between substantive laws at national level, and procedural laws at EU level, have created uncertainty in the interpretation of the German doctrine [Müller, 2011]. This can be seen in the inconsistency between the approaches of the German national courts and the CJEU on the interpretation of environmental matters.

The CJEU consistently takes a broad interpretive approach to Article 9(2) of the Aarhus Convention and Article 10a of the EIA Directive [Müller, 2011]. Despite this, the discretion allowed to Member States in implementing the provisions of the Aarhus Convention allowed the German national court to take a narrow interpretation, one which is inconsistent with the objective of the right of access to justice and the CJEU's broad approach. The CJEU has regularly exercised a teleological approach to interpreting the Aarhus Convention, i.e. interpreting the texts in light of their objectives. The objective of Article 9(2) of the Aarhus Convention is to give the public concerned wide access to justice. The express naming of ENGOs indicates that the Convention intends for ENGOs to be treated more favourably than individual applicants [Pedersen, 2008]. The reasons for this are discussed by Advocate General Sharpston in her opinion on the *Trianel* Case:

“The special role, and corresponding rights, accorded to environmental NGOs under the Aarhus Convention and the EIA Directive result in a particularly strong and effective machinery for preventing environmental damage. An environmental NGO gives expression to the collective interest and may possess a level of technical

expertise that an individual may not enjoy.”¹³

Indeed, with this line of reasoning, procedural rights created by the Aarhus Convention create direct substantive environmental protection, in which ENGOs are an important component. But the *Trianel* case demonstrated that these benefits have, in some instances, been displaced by the procedural inconsistencies between German national and EU law.

Extent of the outcome

In their reasoning, the CJEU sided with the majority of German scholars who argue, as does Advocate General Sharpston, that ENGOs are in a privileged position and their standing before the courts should not be limited by narrowly constructed procedural laws [Elia Antonio, 2011]. The anomaly, however, is that the concept of broad standing of ENGOs before national courts already expressly exists by virtue of the Aarhus Convention and the EIA Directive. Thus, the victory of the *Trianel* case can be taken as not extending the procedural rights of ENGOs, but rather merely recognising and properly implementing existing ones.

The specific rule which the CJEU established in *Trianel* was that ENGOs cannot be barred by national legislation from bringing claims before the national court which rely on the public interest.¹⁴ This may not go as far in eventuating actual environmental protection as it seems. The court pointed out that it still lies within the discretion of the Member States to discern what is a public interest right and what kind of act will impair the public interest, and ultimately to determine the conditions for the admissibility of such actions.¹⁵ From this, the argument can be made that this ruling actually will have only a marginal effect on ENGOs' actual ability to bring claims. Given that Germany has been reluctant to alter its general rules concerning the standing of ENGOs [Müller, 2011], it is possible that public interest, or violation of the public interest, may be given a narrow definition for the purposes of granting standing. This would result again in a lack of access to justice for ENGOs in search of environmental protection.

Is there a solution?

A solution to this exists, in theory, in Article 9(3) of the Aarhus Convention, which contains what is referred to as the *actio popularis* provision. Under this provision, any party, individual or

¹³Sharpston, para 51.

¹⁴*Trianel*, para 46.

¹⁵*Ibid*, para 55.

¹²*Bundesimmissionsschutzgesetz* (2002) BGBl I-3830.

organisation, would enjoy unlimited ability to challenge administrative decisions on environmental grounds.¹⁶ There would be no procedural barrier to ENGOs, or any individual, from essentially acting as a public check on administrative decisions which impact the environment. After all, a main feature of the right of access to justice is that it will act as a public check on administrative decisions, ultimately improving the decisions made. Unfortunately, however, Article 9(3) has not yet been incorporated into EU law, and thus neither Germany nor any other EU Member state has an obligation to permit an *actio popularis*.¹⁷

Perhaps in order to avoid future cases where procedural rights are inappropriately denied to applicants, the EU must incorporate the *actio popularis* provision into EU law. This would remove the potential for Member States to use their own discretion in maintaining national procedural rules that may disallow certain applicants from protecting the environment. Moreover, it would allow many more environmental actions to be brought using the right of access to justice. Surely this would be the best and most successful way of ensuring that through the right of access to justice, the environment is protected as best as possible. The question then arises as to why 15 years after the adoption of the Aarhus Convention, and with proven examples such as *Trianel* in which the right of access to justice isn't being fully fulfilled under the current regime, the need to incorporate the *actio popularis* concept hasn't been recognised as necessary within EU law.

Accepting the *actio popularis* concept would come very close to accepting Christopher Stone's conception of granting environment legal rights [see Stone, 1972]. Under Stone's conception, a court-appointed guardian would be able to represent the environment in legal affairs. This ensures that the environment's best interests are protected. Recognising this, it is arguable that any law which brings procedural rights closer to Stone's conception is necessarily a positive outcome for the environment. In a way, allowing an *actio popularis* would grant everyone the right to rely on environmental damage in an action. In turn, this is similar to acting on behalf of the environment as per Stone's conception.

Environmental benefits flowing from adopting a version of Stone's conception through *actio popularis* must be weighed against the administrative, judicial and financial burdens that any amendment to the status quo will cause. In the *Trianel* case the German government observed that resources available to the courts are limited, and that by employing strict admissibility rules, the courts can

function with enough judicial scrutiny for effective judicial protection.¹⁸ It is not in a Member State's interest to have courts become overwhelmed with applications, since it could slow proceedings, delay environmental outcomes and possibly make the right of access to justice inefficient. Therefore it is critical to have screening measures attached to the right of access to justice, and this is foreseen by the limitation of 'public concerned' in Article 9(2) of the Aarhus Convention.

Conclusion

The *Trianel* case showed that there currently are gaps in the right of access to justice that prevent procedural rules from bringing about environmental benefit; gaps such as high thresholds for judicial action, discretion in implementation and inconsistency of procedural laws and interpretation. These gaps have thus far led to an absurd situation where ENGOs cannot rely on their procedural rights in order to protect the environment, defeating the entire object of granting them a wide range of procedural rights in the first place. The CJEU outcome was a victory for ENGOs and the environment, to an extent, but the ruling created only a very specific rule based on the specific facts of the case, applying only to EU Member States. It is still to be seen whether there will be a broad interpretation of the term 'public interest', which is necessary to give ENGOs the full benefit of the rule. Furthermore, the case highlighted the need to find ways to alleviate said tension, such as altering admissibility thresholds and better aligning Member State law with EU law. Collectively, these factors show that procedural rights established by the Aarhus Convention and incorporated into EU law have the potential to create a better environment. There must, however, be mechanisms to ensure that these rights are fully translated into national law so that their object and purpose are not lost.

References

- John Blain and Sharon Long. Standing of environmental NGOs: new measures to fast-track proceedings, March 2013. URL <http://www.lexology.com/library/detail.aspx?g=aa288c7e-41a6-480c-b413-aba68dddfdcf>.
- Mariolina Eliantonio. The Aarhus Convention and access to justice for environmental NGOs before courts in the EU: good news with a bitter aftertaste. *Effectius Newsletter*, (14), 2011.
- Rosalind English. C-115/09 bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen v Bezirksregierung Arnsberg Trianel kohlekraftwerk Lnen (intervening), January 2011. URL http://www.1cor.com/1315/?form_1155.replyids=1343.

¹⁶Sharpston, para 41.

¹⁷Ibid, para 42.

¹⁸Ibid, para 31.

Bilun Müller. Access to the courts of the member states for NGOs in environmental matters under European Union law judgment of the court of 12 May 2011—case c-115/09 Trianel and judgment of 8 March 2011—case c-240/09 Lesoochranské Zoskupenie. *Journal of Environmental Law*, 2011.

Ole Pedersen. European environmental human rights and environmental rights: A long time coming? *Georgetown International Environmental Law Review*, 21(1), 2008.

Jenny Steele. Participation and deliberation in environmental law: Exploring a problem-solving approach. *Oxford Journal of Legal Studies*, 21(3):415–442, 2001.

Christopher Stone. Should trees have standing? *California Law Review*, 45:450–501, 1972.

UNECE. *CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS*, 1998.

UNECE. *United Nations Secretary General—UNECE*. United Nations Economic Commission for Europe, 2014. URL <http://www.unece.org/env/pp/statements.05.11.html>.

LSD and the American Counterculture: Comrades in the Psychedelic Quest

Scott Stephenson

LSD shaped the American counterculture in its own image. The powerful drug strongly influenced countercultural ideas, symbols, fashions, and music. ‘Dropping acid’ was a rite of passage into the counterculture that helped to separate it from mainstream society. Psychedelic experiences also encouraged users to question and rethink social mores and fostered a sense of community within the movement. Some historians contend that acid and other drugs killed the counterculture, but I argue that LSD played only a minor role in the movement’s decline.

Introduction

Have you ‘turned on’? *Are You Experienced?* Have you passed the Acid Test? Within the American counterculture, these three questions all drove at the same inquiry: Have you tried LSD yet? Swiss chemist Albert Hofmann first discovered the psychedelic effects of LSD (Lysergic acid diethylamide, or simply ‘acid’) in 1943 [Gahlinger, 2004]. By 1969, millions of young Americans had taken it [Lee and Shlain, 1992]. This article will argue that LSD was a key factor in the formation of the counterculture in 1960s America, and that it continued to shape and change the movement throughout the decade. Countercultural ideas, symbols, fashions, and music were all greatly influenced by the drug. Acid also helped to distinguish the counterculture from mainstream society, and promoted a sense of community within the movement. LSD’s ability to warp the user’s reality encouraged the questioning and rethinking of social norms. Finally, contrary to popular perception, LSD played only a small role in the counterculture’s decline.

In making the above argument, this article provides a review and synthesis of existing research on LSD and the American counterculture and presents it with an original perspective informed by my own additional primary research. I have consulted a multitude of first-hand accounts of life in the American counterculture, including ‘trip reports’ detailing LSD experiences. A range of contemporary popular culture sources have also proven useful. These include novels and journalism, visual sources and album art, and music recordings, which I have interrogated in light of the existing historiography.

The 1960s ‘counterculture’ is notoriously difficult to define. ‘There are as many definitions of the term counterculture’, say Peter Braunstein and Michael William Doyle, ‘as there were utopian fantasies during the actual counterculture’ [Braunstein and Doyle, 2002]. According to the most restrictive definition, the counterculture includes only those who completely ‘dropped out’ of straight society, abandoning their homes, studies and careers [Braunstein and Doyle, 2002]. However, most

historians also include the ‘part-timers’ who enjoyed elements of the counterculture’s fashion, music, ideas, and lifestyle without completely leaving mainstream society [Sayre, 1996].

While the commitment-level and beliefs of its members varied greatly, the counterculture was essentially a cultural youth movement that questioned and rejected many of America’s established values and beliefs [Braunstein and Doyle, 2002]. At the core of the movement was individual freedom. Jentri Anders remembers the ‘freedom to explore one’s potential, freedom to create one’s Self, freedom of personal expression, freedom from scheduling, freedom from rigidly defined roles and hierarchical statuses’ that she enjoyed whilst living in a countercultural commune [Anders, 1990]. With its epicentre in the Haight-Ashbury area of San Francisco, countercultural ideas spread rapidly throughout the United States [Echols, 2002].

The Psychedelic Experience

By the 1960s, drug use and abuse was prevalent throughout the United States. Over-consumption of alcohol was commonplace, and 80 per cent of men smoked cigarettes [Braunstein and Doyle, 2002]. In 1965, doctors wrote 123 million prescriptions for benzodiazepines such as Valium, and 24 million for amphetamines [Stevens, 1987]. These drugs were highly addictive and deadly, yet they were legal and socially acceptable. LSD was also legal until 1966. If it had been just another drug that made people euphoric or numbed their anxiety, its social impact would have been minimal. Understanding the peculiar *psychedelic* effects that LSD (and its rarer cousins such as mescaline and psilocybin) has on the human mind is therefore crucial to understanding its social and cultural impact.

Unfortunately, many historians have stumbled at this first hurdle. By dismissing LSD use as simply ‘getting high’, historians such as Arthur Marwick fail to explain why LSD had such a huge cultural impact while other, stronger euphoricants such as cocaine did not [Marwick, 1998]. In his book *The Sixties*, Terry Anderson is equally mistaken when he writes that LSD was a ‘device used for coping’ with a

‘society that increasingly rejects humanitarian values’ [Anderson, 2007]. LSD, in other words, dulled the pain of being young in 1960s America. However, anyone who took LSD to get through a tough time in their lives or numb their depression was in for a rude shock. Alice Echols is closer to the mark when she argues that LSD was not simply about feeling good: ‘some trips were bad, but mostly spiritually cathartic, even transcendent’ [Echols, 2002]. For Echols, the emotional and spiritual intensity of the LSD experience was an ‘antidote to the adventure shortage’ that many young people felt growing up in post-war America [Echols, 2002].

So what, then, is it like to ‘trip’ on LSD? Gerard DeGroot puts it well when he says that ‘LSD acts by temporarily dismissing the sentries guarding the gates of consciousness’, the ‘unprotected brain is invaded by a mob of unprocessed stimuli on which it is unable to impose logic’ [DeGroot, 2008]. For six to twelve hours, LSD transforms the tripper’s world into a very different and often indescribably surreal place. This can bring anything from ecstatic wonder to nightmarish terror, depending on the user’s mindset and setting [Gahlinger, 2004]. Colours appear brighter, small details become more noticeable, and intricate patterns overlay surfaces. The world warps and melts and objects morph into one another [Gahlinger, 2004]. Bruce Hoffman was part of the initial wave of university students who sampled the LSD distributed by Harvard psychologist Timothy Leary. He recalls that on LSD ‘really some remarkable perceptual changes take place’, at times ‘you’d have the floor dissolve beneath you, the walls would be acting more like jello than masonry’ [Hoffman, 2001]. Feelings of deep connection with nature, the universe, and other people are commonplace. Jane DeGennaro remembers experiencing ‘religious ecstasy’ on her first trip in 1967, the year that she graduated from high school: ‘I was absolutely, completely 100 percent satisfied. I cannot express how fulfilled I was, how absolutely, totally happy’ [DeGennaro, 2001].

Psychedelic Symbology

LSD’s most obvious impact on the counterculture was its influence on the symbols and fashions of the movement. Reflecting the effects of LSD, the symbols and fashions of the counterculture were brightly coloured, intricately patterned, and deliberately strange. Psychedelic text, which increasingly appeared on everything from posters to shop-fronts, had a warped and melted appearance [University of Virginia Library, 1998]. Swirling patterns in brightly coloured tie-dyed clothing recalled LSD’s kaleidoscopic closed-eye visuals.

At the forefront of the counterculture, author Ken Kesey (*One Flew Over the Cuckoo’s Nest*)

and his acid-fuelled friends, the ‘Merry Pranksters’, travelled the country in a multi-coloured Harvester bus. Painted on the front of the bus was its destination: ‘Furthur’ [*sic*]. On the back, its contents: ‘Caution: Weird Load’. The Pranksters and their followers deliberately dressed and acted as strangely as possible in an attempt to ‘blow the minds’ of ‘straight America’ [Stephens, 1998]. At one of the Pranksters’ early ‘Acid Tests’, journalist Tom Wolfe recorded ‘A ballroom surrealistically seething with a couple of thousand bodies stoned out of their everloving bruces in crazy costumes and obscene makeup’ [Wolfe, 1968]. Posters advertising the ‘Acid Tests’ featured a bewildering combination of ‘oriental deities, Victorian cartoon characters, Indian sadhus, engravings from Greek statues and cowboys from American Westerns’ [Stephens, 1998].

LSD users’ desire to reflect the strangeness of their drug-induced state through bizarre fashion and behaviour spread quickly. Bruce Hoffman recalls that at New York’s 1967 Great Easter Be-In ‘everyone was stoned out of their minds on grass or mescaline or acid or all of the above’ and dressed in ‘outrageous costumes, Day-Glo paints on the skin, people handing out daffodils to policemen and businessmen’ [Hoffman, 2001]. At a 1967 peace march in Washington DC, Norman Mailer observed ‘buckskins, top hats, ponchos, army surplus jackets, turbans, capes, even an unhorsed knight who stalked about in the weight of real armour’ [Bromell, 2000].

There is a historical consensus that rock music was central to the counterculture [Farber, 1994]. But many historians refuse to acknowledge the huge impact that drugs, and particularly LSD, had on 1960s rock. Brick’s 228 page book *The Age of Contradictions* focuses on rock music and the counterculture in great depth but features zero references to ‘LSD’, and just two passing references to ‘psychedelics’ [Brick, 1998]. Dickstein’s *Gates of Eden*, meanwhile, celebrates ground-breaking albums such as Jefferson Airplane’s *Surrealistic Pillow*, and The Beatles’ *Sgt. Pepper’s Lonely Hearts Club Band* without discussing drugs at all [Dickstein, 1989].

The lyrics of counterculture musicians such as Jimi Hendrix, Jefferson Airplane and The Beatles are full of thinly (if at all) veiled references to LSD. Hendrix’s debut album title asked *Are You Experienced?*, and the album cover’s warped photograph, yellow and purple colouring, and psychedelic text made it obvious what he was talking about [University of Virginia Library, 1998]. In their hit song *White Rabbit*, Jefferson Airplane famously advised their listeners to ‘remember what the dormouse said’ and ‘feed your head’ [Jefferson Airplane, 1967]. The Beatles, meanwhile, sang of ‘tangerine trees’, ‘marmalade skies’ and ‘Lucy in the

Sky with Diamonds' (LSD) [The Beatles, 1967].

In addition to the lyrics, LSD also greatly influenced the sound and format of sixties rock. Artists used electronics to create strange, drawn-out, warping sounds that reflected the effects of LSD [Lytle, 2006]. The echoed, rising crescendo of Jefferson Airplane's *White Rabbit*, for example, was designed to mirror psychedelic sensory distortions [Bromell, 2000]. The depth of the psychedelic experience inspired artists to create increasingly layered and complex music. While The Beatles' first album took less than 10 hours to record, *Sgt. Pepper's* took over 700 [Lytle, 2006]. Standard 3-minute songs were ill suited to the long, flowing LSD experience. Instead, psychedelic rock bands such as the Grateful Dead played 30-minute songs that flowed smoothly into one another [Lytle, 2006].

'Acid rock' groups were also quick to embrace the electric guitar. 'Plugging in' to electrics mirrored the 'monumental stimulus' and 'high voltage charge' provided by psychedelics [Echols, 2002]. Grateful Dead guitarist Phil Lesch recalled that 'you can hear it all. That's what electronics do—they amplify the overtones to a degree never thought possible in an acoustic instrument' [Echols, 2002]. In 1965, San Francisco rock critic Richard Goldstein wrote that 'with safety in numbers, the drug and rock 'n' roll undergrounds swim up the same stream. The psychedelic ethic—still germinating and still unspoken—runs through the musical mainstream in a still current' [Goldstein, 1995].

Countercultural Questioning

By the late 1960s, the divide between establishment culture and counterculture was becoming increasingly stark. In 1967, the Gray Line Bus Company began 'Hippy Hop Tours' of Haight-Ashbury. Mainstream Americans were encouraged to take the 'only foreign tour within the continental limits of the United States' [Echols, 2002]. DeGroot argues that drugs 'divided the world into hips and squares, with unbelievers ostracised. Like heathens judged by a peculiarly bigoted religion, those who did not indulge were cast from the kingdom' [Echols, 2002]. DeGroot's comparisons with a 'bigoted religion' are extreme. But he is correct that drugs, and particularly LSD, played a crucial role in dividing counterculture ('hips') from mainstream culture ('squares').

From the mid-1960s, having your mind 'blown' by acid served as a rite of passage into the counterculture [Lytle, 2006]. In 1972, psychiatrist Ross Speck wrote that experience with LSD 'is a card of identity that unites the culture of youth perhaps as strongly as blue jeans or bell-bottoms' [Speck et al., 1972]. Bruce Hoffman recalls that 'in the madness of those years, we really thought that

we were the chosen, the ones to lead everyone to the truth. Our egos were having free reign, and we basically had a very simplistic vision: the straights vs. those who knew—comrades in the psychedelic quest' [Hoffman, 2001]. The criminalisation of LSD in California in 1966 further emphasised the divide between 'heads' and 'straights' [Anderson, 2007]. Simply taking LSD became a rebellious act that signalled the user's rejection of mainstream American society and its laws [Lee and Shlain, 1992]. Collective acid experiences at concerts and parties also helped to foster a sense of community within the counterculture [Braunstein and Doyle, 2002]. One user realised that 'on acid you can jump those boundaries without intruding. You can enter someone else's sphere, and they can enter yours' [Bromell, 2000].

By 1972, one third of Americans under 25 considered marriage obsolete, half held no living American in high regard, and 40 percent considered America a 'sick society' [Anderson, 2007]. The youth of the 1960s had clearly partaken in a widespread and dramatic questioning of their parents' beliefs. Many historians have argued that drugs such as LSD had a mentally limiting effect on members of the counterculture. DeGroot, for example, writes that 'for most people who sought rebellion through drugs, the crusade went no further than their own heads. Taking LSD was a selfish act which allowed escape from reality' [DeGroot, 2008]. But some historians such as Nick Bromell have correctly recognised that the 'insight into the world's instability provided by pot, acid and rock had political consequences.' 'After getting high or tripping, 60s users realised that their belief in a core self was naïve, that their faith in stability was foolish, and so they were fully prepared to see through everything', he argues [Bromell, 2000]. In other words, the reality-altering effects of LSD helped to foster the questioning of established 'truth', 'reality' and social mores, which was a defining feature of the counterculture.

Harvard psychologist and acid guru Timothy Leary believed that the questioning of social norms that LSD inspired had the power to transform society. This was because LSD rearranged the 'imprinting process' in the human mind and allowed people to rethink things they had previously taken for granted [Stevens, 1987]. Ken Kesey, who described his early trips as 'shell shattering ordeals', similarly believed in the transformative power of acid: 'the purpose of psychedelics is to learn the conditioned responses of people and then to prank them. That's the only way to get people to ask questions, and until they ask questions they're going to remain conditioned robots' [Lytle, 2006]. Years later, Kesey elaborated: 'LSD lets you in on something. When you're tripping, the idea of race

disappears; the idea of sex disappears; you don't even know what species you are sometimes. And I don't know of anybody who hasn't come back from that being more humane, more thoughtful, more understanding' [Lee and Shlain, 1992]. Dissident poet Allen Ginsberg agreed, saying 'technology has produced a chemical which catalyses a consciousness which finds the entire civilisation leading up to that pill absurd' [Stevens, 1987]. In his 1972 study of communes, psychiatrist Ross Speck praised psychedelics as 'a sacrament, a religious and aesthetic expansion and renewal' that allowed 'a rapid restructuring of human social values, capable of saving mankind' [Speck et al., 1972].

LSD inspired many youths that they could escape the establishment's 'reality'. That they could 'drop out' of a sick American society and create their own collective experience at concerts, on campus, and in communes. After taking LSD, Anne Waldman realised that 'the darkness was someone else's evil version of reality, not reality itself. Nothing was that solid or insurmountable. We were changed forever because we were experiencing these inspiring truths' [Waldman, 2000]. For John Barlow, LSD made it 'obvious to me that all of the separateness ordinarily perceived was, in fact, an artefact of cultural conditioning, and was less real than what I was supposedly hallucinating' [Barlow, 2000]. Some trippers found the social norms of the world that they returned to stranger than the warped world of acid. Bruce Hofmann recalls that after his first trip 'when you reappeared on campus, you felt like you had re-entered the historical past that was still alive' [Hoffman, 2001].

Not surprisingly, the 'establishment' was less than thrilled by this widespread, 'drug-induced' questioning of beliefs and traditions [Stevens, 1987]. At the 1966 Congressional hearings into LSD, psychiatrist Stanley Cohen testified that 'we have seen something which is most alarming, more alarming than death in a way. And that is the loss of cultural values, the loss of feeling of right and wrong, good and bad. These people lead a valueless life, without motivation, without ambition ... they are decultured, lost to society, lost to themselves' [Braunstein and Doyle, 2002]. In 1967, a government official deemed the 'anti-social' effects of LSD 'the greatest threat facing the country today' [Lee and Shlain, 1992].

Bad Trip: The Decline of the Counterculture

Hunter S. Thompson's classic 1972 novel *Fear and Loathing in Las Vegas* opens as Raoul Duke and his attorney set off for Las Vegas. Armed with a suitcase full of LSD and other drugs, they are in search of the 'American Dream'. *Fear and Loathing* provides a satirical critique of the ugliness and hypocrisy

of sixties-era American culture. But the novel also takes aim at LSD's destructive impact on the counterculture. Thompson criticises Timothy Leary who 'crashed around America selling consciousness expansion without ever giving a thought to the grim meat-hook realities that were lying in wait for all the people who took him too seriously' [Thompson, 1972]. LSD had taken 'all those pathetically eager acid freaks who thought they could buy Peace and Understanding for three bucks a hit' and turned them into 'a generation of permanent cripples, failed seekers' [Thompson, 1972].

Many historians have similarly argued that the counterculture was destroyed through excess, particularly in relation to drugs. Marwick writes that 'the LSD phase passed, and few in later decades believed the rubbish about the beneficial, mind-expanding qualities of drugs ... if I am to praise 1960s society for some of its legacies, I must surely condemn it for being the society in which drug abuse began to run out of control' [Marwick, 1998]. 'Certainly drugs cut a big swathe through the counterculture and the world of sixties rock', argues Echols, 'everyone knows the big names—Hendrix, Joplin, Morrison—but there were so many more losses' [Echols, 2002].

Drugs did indeed destroy many lives in the counterculture. LSD has received much of the blame, but this is largely unfounded. Alcohol and prescription barbiturates killed Hendrix, and Janis Joplin and Jim Morrison both overdosed on heroin [Braunstein and Doyle, 2002]. The lethal dose of LSD is around 1200 standard doses [Gahlinger, 2004]. A recreational user would therefore need access to production-level quantities to have any chance of overdosing. Physically, LSD is non-toxic and non-addictive, and high-level, short-term tolerance makes daily use unlikely [Gahlinger, 2004]. The intensity of the acid voyage means that most people desire a substantial break before re-embarking. In the words of one sixties user, getting addicted to LSD would be like 'being addicted to having the shit beat out of you' [Echols, 2002]. Yet people did die on LSD. Users' disconnection from reality could cause accidents, typified by the stories of trippers jumping out of windows. But LSD's chief dangers were psychological, frequently causing or exacerbating mental illness [Stevens, 1987].

Critics also argue that LSD was a 'gateway' substance that led to the abuse of more destructive drugs [Lee and Shlain, 1992]. Some drug-users did indeed progress (or regress) from acid to heroin and methamphetamine. Bruce Hoffman was horrified to learn that his trip-guide from his maiden LSD experience was 'experimenting with heroin and shooting up speed ... He was one of the first clues I had that something was going wrong, because

at the time I still had a rather utopian ideal of what psychedelics could bring about in our culture' [Hoffman, 2001]. Dealers pushed the addictive drugs. Unlike acid which was more casually used and often given away, there was serious money to be made in addictive substances [DeGroot, 2008]. For this reason, the radical activist San Francisco Diggers were highly critical of the illegal drug trade and encouraged people to 'Make It—Grow It—Give It—Share It' [Sayre, 1996]. Scholars still debate the 'gateway theory' of drug abuse today [Tarter et al., 2006]. But it seems fair to conclude that for many users, LSD's psychoactive effects, and resulting contact with the illegal drug trade, did lead them to try harder substances. But this was not the primary cause of the counterculture's degeneration.

After 1967, the counterculture began its decline as increased media coverage caused tens-of-thousands of young people to descend on countercultural hot spots such as Haight-Ashbury. This marked a key shift as the counterculture increasingly entered the mainstream and the weight of numbers exacerbated existing difficulties and caused new problems. Alex Foreman remembers San Francisco in 1966: '[T]he city was just exploding with this counterculture movement. I thought, "This is it!" It was like paradise there. Everybody was in love with life and in love with their fellow human beings' [Foreman, 2001]. After the 1967 'Summer of Love', however, 'it got very ugly very fast. People got into really bad drugs like speed and heroin. There were rip-offs, violence, guns being drawn, people really malnourished, hepatitis, people living off the street' [Foreman, 2001]. Troubled youths who came in search of the ecstasy and meaning that LSD was said to provide soon embraced mind-numbing substances [Stevens, 1987]. Within months, Haight-Ashbury was unrecognisable as its original countercultural inhabitants escaped *en masse* [Lee and Shlain, 1992]. Nancy Getz reflected angrily on the destructive media-driven invasion: 'The Haight was our town. It was sunshine and flowers and love. And the media got hold of it and ate us and fed us back to ourselves' [Lee and Shlain, 1992].

Conclusion

LSD was a crucial ingredient in the formation of the American counterculture. The drug continued to shape and change the movement throughout the 1960s as more and more young Americans were influenced by the substance itself and by the cultural aura it created. I have argued that LSD greatly affected countercultural ideas, symbols, fashions and music. Acid also fostered a sense of community within the counterculture, while distinguishing it from mainstream American society. LSD's ability to bend the user's perception encouraged the

questioning and rethinking of social mores. The drug had some negative effects, but it did not play a major role in the counterculture's decline, which was instead caused by an unsustainable media-driven influx of youths.

References

- Jentri Anders. *Beyond Counterculture*. Washington State University Press, 1990.
- Terry Anderson. *The Sixties*. Longman, 2007.
- John Barlow. *Tripping: An Anthology of True-Life Psychedelic Adventures*, chapter My First Trip. Penguin, 2000.
- Peter Braunstein and Michael William Doyle, editors. *Imagine Nation: The American Counterculture of the 1960s and '70s*. Routledge, 2002.
- Howard Brick. *Age of Contradiction: American Thought and Culture in the 1960s*. Twayne Publishers, 1998.
- Nicholas Knowles Bromell. *Tomorrow Never Knows: Rock and Psychedelics in the 1960s*. University of Chicago Press, 2000.
- Jane DeGennaro. *From Camelot to Kent State: The Sixties Experience in the Words of Those Who Lived It*, chapter The Counterculture. Oxford University Press, 2001.
- Gerard DeGroot. *The Sixties Unplugged: A Kaleidoscopic History of a Disorderly Decade*. Harvard University Press, 2008.
- Morris Dickstein. *Gates of Eden: American Culture in the Sixties*. Penguin, 1989.
- Alice Echols. *Shaky Ground: The 60s and its Aftershocks*. Columbia University Press, 2002.
- David Farber, editor. *The Sixties: From Memory to History*. University of North Carolina Press, 1994.
- Alex Foreman. *From Camelot to Kent State: The Sixties Experience in the Words of Those Who Lived It*, chapter The Counterculture. Oxford University Press, 2001.
- Paul Gahlinger. *Illegal Drugs: A Complete Guide to Their History*. Plume, New York, 2004.
- Richard Goldstein. "Takin' it to the Streets": *A Sixties Reader*, chapter San Francisco Bray. Oxford University Press, 1995.
- Bruce Hoffman. *From Camelot to Kent State: The Sixties Experience in the Words of Those Who Lived It*, chapter Reflections on the Counterculture. Oxford University Press, 2001.
- Jefferson Airplane. White rabbit. Song, RCA Victor, 1967.
- Martin Lee and Bruce Shlain. *Acid Dreams: The Complete Social History of LSD*. Grove Press, New York, 1992.
- Mark Hamilton Lytle. *America's Uncivil Wars: The Sixties Era from Elvis to the Fall of Richard Nixon*. Oxford University Press, 2006.
- Arthur Marwick. *The Sixties: Cultural Revolution in Britain, France, Italy and the US*. Oxford University Press, 1998.
- Nora Sayre. *Sixties Going on Seventies*. Rutgers, 1996.

Burgmann Journal III (2014)

Ross Speck et al. *The New Families: Youth, Communes and the Politics of Drugs*. Tavistock, 1972.

Julie Stephens. *Anti-Disciplinary Protest: Sixties Radicalism and Postmodernism*. Cambridge University Press, 1998.

Jay Stevens. *Storming Heaven: LSD and the American Dream*. Grove Press, 1987.

Ralph E Tarter et al. Predictors of marijuana use in adolescents before and after illicit drug use: Examination of the gateway hypothesis. *The American Journal of Psychiatry*, 163(12):2134–2140, 2006.

The Beatles. Lucy in the sky with diamonds. Song, EMI, 1967.

Hunter S Thompson. *Fear and Loathing in Las Vegas: A Savage Journey to the Heart of the American Dream*. Random House, 1972.

University of Virginia Library. The psychedelic 60s. Online art exhibition, 1998. <http://www2.lib.virginia.edu/exhibits/sixties/index.html>, accessed 15 October 2014.

Anne Waldman. *Tripping: An Anthology of True-Life Psychedelic Adventures*, chapter Point and Click: Icons in the Window to the Ancestral Manse. Penguin, 2000.

Tom Wolfe. *The Electric Kool-Aid Acid Test*. Farrar, Straus and Giroux, 1968.

A New Commonwealth for our New World

William Stoltz

When the newly liberated American states came to drawing up their constitution, two opposing groups emerged; the Federalists and the Anti-Federalists [Wood, 1992]. The Federalists sought to unite the states under a centralised government embodying American sovereignty—as distinct from the sovereignty of each state. The oratory nous of James Madison and the rousing prose of Alexander Hamilton enamoured the Federalists to the American people while the Anti-Federalists, conversely, simply became defined by what they weren't: they weren't for federation, and their movement did not create an alternative model around which Americans could rally. The same is true of the Australian Republican Movement (ARM) today, where the republic option remains defined by what it *won't* be as opposed to what it *could* be. For many, the monarchy symbolises the dignity of state, the versatility of the Westminster system and the rich heritage of an empire that has shaped the world. A republic, however, could encapsulate our dignity of state, versatile politics and sense of heritage even more so than our current system, as it would be a system devised *by*, and designed *for*, a modern Australia. Tragically though, by deriding the monarchists, the public imagination has deduced that the ARM is diametrically opposed to the status quo, when all that is good about our Commonwealth would only be improved by the transition to a republic. This is because becoming a republic is not a divergence from time-honoured values, or our proud heritage; it is in fact the natural progression of our liberal-democratic trajectory. First we were settlements, then colonies, and now we are an independent Federation of states. We owe the peacefulness of that transition to the virtues of the Westminster tradition, and it is those same virtues that have prepared us to become a republic today. To take the next step we need only patriotic citizens to be willing; for what Thomas Paine wrote of his time, is true of us now: “we have it in our power to begin the world over again” [Craig, 2007].

Australia's youth as a nation has meant that forms of extroverted patriotism remain somewhat unfashionable. Amongst monarchist and the republican devotees, however, we find Australians who embrace unashamed national pride. Both groups, for example, share a love of country, and a desire to see Australia as its best self. This a commonality the ARM must realise, because as the

next generation find their place in Australian politics, a striking number still turn to the Australian Monarchist League (AML). As these individuals are politically enthusiastic and patriotic, they are the very same people the ARM should be attracting. Yet as they naturally have a respect for our national foundations, they believe, with all its rhetoric of removing the Queen, that the ARM doesn't share that respect. Thus a chasm exists between two camps that should, by all logic, be far closer. The true divide should be how we as citizens answer the only question that matters: Is Australia's democracy the best it can be? As a progressive, prosperous nation founded on Enlightenment ideals of bettering human life, we should know in our hearts that it is not. If we are content with the status quo now, we submit to mediocrity for the future. Reform to our democratic institutions should not be flippant, but neither should it be sacrilegious. Democracy is organic and fluid, changing with its citizens. Our founders understood this, and while those such as Henry Lawson and George Dibbs might have preferred to see an Australian republic in their lifetime, they knew that the versatility of the Westminster system gave their fledgling Federation the best chance to be an enduring, adaptive democracy [Kirby, 2013]. This is why, at a time when much of humanity still lived in divided and illiberal societies, Australia took the lead in the enfranchisement of women, the mandating of a living wage and the protection of religious freedom. We had a system that grew as we did.

Though our founders saw the evolution of our democracy as entirely organic, a republic is not going to materialise simply by virtue of its own self-evidence. It's depressing that this debate only peaks during royal visits, but not when our nation's leader is scuttled in the dead of night by unelected power brokers, or when Ricky Muir, a complete unknown, is elected to the Senate with only 0.51% of the vote [ABC, 2013]. These instances may seem tangential, but they point to defects in our system that go to the very heart of our democratic integrity. Australia is the best democracy in the world, but it's not yet the best it *can* be. Becoming a Republic is an opportunity to reform multiple aspects of our Commonwealth; a foreign royal's name in our Constitution being the least among them. For one, with the Governor-General's power annexed by the Prime Minister and the Cabinet, the Federal

executive has become an impotent shell, and the PM lacks any codified checks and balances. The working power of the Prime Minister and Cabinet remains incredibly susceptible to the appeal of individual personalities. When John Howard was PM, this working power crescendoed through his bi-cameral majority and loyal band of ministers, but under Julia Gillard it collapsed as she was assailed by a minority government and a hostile party room. Perhaps more importantly, executive branch oversight of the nation's leadership simply doesn't happen under the present system. Currently a Royal Commission has strayed into what it calls "uncharted legal territory", as it deliberates over Cabinet accountability for a destructive home-insulation policy that killed four labourers and caused over 200 house-fires [ABC, 2014]. When a flawed national policy kills people and we cannot easily determine who is responsible, we have a problem. Codified power will mean codified accountability. Furthermore, our current Constitution has allowed for swollen government. Living in Melbourne, I had a local councillor, a mayor, a State lower-house MP, a State upper-house MP, a Federal lower-house MP and Federal upper-house MP. Keeping in mind multiple representatives mightn't mean better representation, when we have such freedom of movement and communication today, do we really need so many? The layers of government in Australia have become unnecessarily complex, expensive and opaque. With a reforming republic we can have representation to suit the way Australians live today, rather than remain beholden to how they lived yesterday. Electoral reform, more efficient representation, and a directly elected national leader with codified power, are just a handful of the reforms a republic could instil.

Despite the need for reform, many remain apathetic because of the inability of the ARM to seize the national discussion with a reformist narrative that is inclusive, compelling and inspiring. Republicanism is not about the Queen; it is about what we believe we want Australia to be in the next century. In his Lowy Institute Lecture, Rupert Murdoch declared that "the 21st century is Australia's for the taking," and that "we are not hapless victims of circumstance—we are people who define our own destiny" [Murdoch, 2013]. Yet how can we define our own destiny if we can't define our own democracy? Australia's neighbourhood is shifting rapidly, as the Indo-Pacific powers on our doorstep become richer, bolder and more proactive. We stand in the slipstream of history as the rhythm of world-affairs resonates from *our* neighbourhood. Only with a new national vision underpinned by our unique sense-of-self, can Australia enter this new age as leaders of regional prosperity and peace.

To revitalise our democracy, and to reimagine Australia's role in the world, the process of becoming a republic must begin in earnest.

References

- ABC. Senate results: Victoria. Web, 2013. URL <http://www.abc.net.au/news/federal-election-2013/results/senate/vic/>.
- ABC. Royal commission into the home insulation program: The four men who died. *Australian Broadcasting Corporation*, 12 May 2014. URL <http://www.abc.net.au/news/2014-03-17/young-men-who-died-in-insulation-scheme/5322168>.
- Nelson Craig. *Thomas Paine: Enlightenment, Revolution, and the Birth of Modern Nations*. Viking Penguin, New York, 2007.
- Michael Kirby. The Australian republican referendum 1999—ten lessons. Address, 3 March 2013. URL <http://www.lawfoundation.net.au/ljf/app/&id=DF4206863AE3C52DCA2571A30082B3D5>.
- Rupert Murdoch. Annual Lowy lecture: 2013 address by Rupert Murdoch. Speech, 31 October 2013. URL <http://www.lowyinstitute.org/publications/2013-annual-lowy-lecture-address-rupert-murdoch-ac>.
- Gordon S. Wood. *The Radicalism of the American Revolution*. Random House, New York, 1992.

Ēchō Lū'nā

Keely van Order

I want to draw *luni-verse*.

So I imagine for a moment, that I am Appelles of Kos, contemplayting celestial bodies.

I envision a Chiron made of star debris, so impossibly pristine that I throw my *lápiz* in fury at

... Le blanc sheet...

...merde...

Such art will be worthy only of Satyr.

... I cannot draw horse foam under these conditions, Poseidon.

It's the eleventh hour. With vanity I try my hand at a clockwork constellation of moons a cluster of planetary grapes, if you will so *de-vino* [sic] that the centaurs and sirens of limbo may rise and nibble at them. But Alas. *¿Qué hora es?*

The higher the time, the faster it flies... and

... I am forever on earth.

Horus only knows that
Eye sea stars

Floating Fish on electric currents
Chorus of

Silver Sterlings & Vesica Pisces,
Psalmónes,
Copperfish
Carpe Diems

But naught a single Babelfish

Echo pax in péz
Echo peace in pieces

. Fiat Lux .

Vesper steels the Vision
And makes a Lyra of me.

Fin



Artwork Details: Ēchō Lū'nā by Keely van Order ©2014 | Pencil | 76.5 x 57.5 cm | Image photo credit: Tony Le

The Wonderland Art Series

Tan Haur

The Wonderland Art Series was inspired by my recent life experiences, travel, people, the continually shifting world, with its stillness of nature and the excitement of humanity. As a nature lover and watercolourist, my inspiration is interior and is impacted by nature's kaleidoscope of patterns and forms. I am drawn and respond to the multiplicity of repetitive patterns which occur at different scales in nature. Acknowledgement of the Zen experience is also a major influence in my life and work, and expression of colour as well as composition is very much related to the literary works and teachings of the Southeast Asian mythology.





