

CROSS-SECTIONS

THE BRUCE HALL ACADEMIC JOURNAL



VOLUME VIII 2012



Cross-sections: The Bruce Hall Academic Journal
is an annual publication co-ordinated by the students of
Bruce Hall and ' he Australian National University.

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Published by ANU eView

The Australian National University
Canberra ACT 2601, Australia
E: anuepress@anu.edu.au

Front and Back Cover Image

The Road to Skye

Max Henshaw

This title is also available online at

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Printed by Australian National University

Printing Service

W: www.info.anu.edu.au/fbs

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ISSN: 1832-9578 (print)

ISSN: 1834-7983 (online)

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Foreword

Welcome to Volume VIII of the Bruce Hall Academic Journal, *Cross-sections*. Let me start by congratulating the work of all the Bruce Hall students who have worked on this outstanding edition. The editors, copy editors and contributors have kept up the fine standard of this student-run journal.

First published in 2005, *Cross Sections* is a wonderful exemplar of the research-led education offered by The Australian National University. ANU offers a distinctive intellectual experience to both our students and staff. It is in terms of student numbers, a small university and boasts a remarkably high proportion of students living on campus in residential halls. At the same time, ANU is a world-leading research university and our students have unrivalled access to academics who are global leaders in their fields. This relatively small number of students coupled with the research-intensive nature of the university creates distinctive research-led educational opportunities for our students.

Bruce Hall has long played a leading role in the research-led focus of ANU's education by creating both a physical and intellectual space to bring together outstanding students and academics to discuss key issues facing Australia and the world. As a Bruce Hall Fellow I am privileged to regularly have the wonderful opportunity to engage with the rich intellectual life of this great college. Every time I step into Bruce Hall I am reminded of John Henry Newman's famous description of a university being a place 'where inquiry is pushed forward, ... discoveries verified and perfected, and ... error exposed, by the collision of mind with mind, and knowledge with knowledge. ... Thus is created

a pure and clear atmosphere of thought, which the student also breathes.’¹

I strongly encourage you to read this entire excellent edition of *Cross-sections* and breathe in some of the intellectual excitement that Newman talks about, which is the joy of being part of ANU.

Professor Richard Baker
Director of Science Education
Vice Chancellor’s Courses Convenor
The Australian National University

¹ Newman, J.H. *The Idea of the University*. Notre Dame University Press. 1852.

Editorial

The eighth edition of *Cross-sections* truly does reflect its name. This year our authors range from first year undergraduate to postgraduate students, and the number of disciplines represented in this year's publication reflects the high level of academic achievement at Bruce Hall. The *Cross-sections* journal is a vital part of Bruce Hall's academic presence; it gives previously unpublished students the opportunity to have their name in print in connection with an outstanding piece of writing or artwork. Each of the essays presented here in this journal have been awarded High Distinctions, and the artworks have either received a similar grade or were awarded prizes in both the Bruce Hall and Interhall art shows.

The essays chosen for this year's journal are reflective of the wide range of academic interests of students at Bruce Hall. From discussing the best age to receive a brain injury to exploring the relationship between the jury and children in court, we believe that amongst these pages you're sure to find a topic that will interest you. Even if the topic is something that you might not know much about, you're sure to learn a lot – we know that after reading them all we came out feeling a lot more knowledgeable!

Without the support and assistance of a number of key people, this journal would not have come into being. We would like to thank the authors and artists for giving us something to publish; the academic referees for making sure the essays published were of the best possible quality; the copy editors for making everything tidy; Selena Bateman for her guidance; and Marion Stanton, Tim Mansfield, Brendan Harding and Dierdre Pearce for their advice and support. Without these people the journal would not be here today, and there would be three jobless editors.

From choosing the essays for publication to sending off the final journal to the printers, *Cross-sections* 2012 is the culmination of many hours of work. Being able to hold the published journal in our hands will be a moment we shall never forget. The time spent reading and re-reading essays, discussing each aspect of the journal to its finest points and ensuring that it looks perfect will all be worth it to see this journal in its final form. On that note, we humbly present to you *Cross-Sections* 2012, in the hope that it broadens your horizons and demonstrates the great talent and potential at Bruce Hall.

Best wishes and happy reading,

Bianca Hennessy, Eric Shek, and Eliza Thompson
The 2012 Editors of Cross-sections

Authors

Galvin Chia

Galvin is a current Bruce Hall resident in his fourth year of a combined Bachelor of Arts/Bachelor of Economics degree, majoring in politics and philosophy. Having grown up in Hong Kong, he is interested in exploring notions of Hong Kong identity. He hopes to one day reconcile the East and West and develop a theory of Confucian democracy.

Eugene Cheah

Eugene Cheah is a current Bruce Hall resident in his second year of a Bachelor of Business Administration degree. He majors in Management and International Business and hopes to join the Police Force after graduation.

Ellie Greenwood

Ellie is a current resident of Bruce Hall in her second year of a Bachelor of Arts/Bachelor of Laws degree. She is a recipient of the ANU's National Undergraduate Scholarship and hopes to one day find a career that combines her interests in law, feminism and pastry.

Timothy Wiles

Timothy is a current Bruce Hall resident in his third year of a Bachelor of a Medical Science degree. He hopes to undertake a Bachelor of Medicine, Bachelor of Surgery from next year to help him achieve his dream of becoming a clown doctor.

Courtney Landers

Courtney is a current Bruce Hall resident in her fourth year of a Bachelor of Philosophy (Science) (PhB), investigating dopamine transporters in the honey bee, *Apis mellifera*. After graduating, she intends to pursue a PhD as the first step in a career investigating mental illness genetics.

Isabella Basaglia

Isabella is a current resident of Bruce Hall in her first year of a Bachelor of International Relations. She hopes to undertake Honours in International Relations upon completion of her degree. Her research interests include international relations theory and history.

Shrikar Tummala

Shrikar is a current Bruce Hall resident in his second year of a Bachelor of Medicine/Bachelor of Surgery degree. He currently works as an assistant in the Buttery at Bruce Hall. He hopes to become either a cardiologist or gastroenterologist.

Matthew Callaghan

Matthew is a former resident of Bruce Hall. He is in his second semester of a Master of Translation degree at ANU (specialising in Spanish). He majored in English and Spanish in his BA in UCD Dublin. When he graduates he intends to continue his studies into a PhD and dreams of being a translator of Latin American and Spanish literature.

Jessica Avalon

Jessica is a current Bruce Hall resident in her third year of a Bachelor of Laws/Asia Pacific Studies degree. Inspired by her time on the Myanmar/Thai border, she looks forward to undertaking further in-country research in Kalimantan during an upcoming internship, and pursuing a career in development studies.

Elaine Yi Li

Elaine is a Bruce Hall resident in her fourth year of a Bachelor of Science (Psychology)/Bachelor of Laws degree. She is a volunteer paralegal at the Youth Law Centre and the Women's Legal Centre (ACT), and hopes to pursue a career in family law.

Artists

Daniel DeValentin

Daniel has enjoyed painting as a hobby for almost 12 years. In 2010, he won the national secondary school student art exhibition 'headspace' with his self-portrait entitled 'which way from here'. In this same year, his Higher School Certificate art major was selected for the state-wide 'Art Express' exhibition. He hopes to continue painting as a hobby in the future.

Janis Lejins

Janis is a current Bruce Hall resident who is his second year of a Bachelor of Arts/Bachelor of Visual Arts degree. His current areas of interest are: Art History, Art Theory and Photomedia. Increasingly Janis's research investigates the parallaxic nature of art and its ability to establish confrontational paradigms of disjuncture from macro societal ideals and trends.

Anthea 'Billie' Parsons

Billie is a sculptor whose work reflects the rural environment. Metal, timber and found objects combine to reinterpret how the land is seen. Objects and eras are revisited through an abstract lens, transforming these works into vehicles for arousing memory. Works are manifested through subject, form and colour, a conclusion of reasoning and reflection.

Megan Christie

Meg Christie is currently in her second year a Bachelor of Arts degree, with a focus on English and Ancient History. With no exact plans beyond university except travel, she also hopes to continue drawing and experimenting with different styles and mediums, as she has been very passionate about this from a very young age.

Focussing the Familiar? Locating the Foreign Domestic Worker in Postcolonial Hong Kong Discourse

Galvin Chia

Hong Kong (HK) has long prided itself on its modernity, cosmopolitanism, and major role in global finance, yet a closer examination reveals many tensions and contradictions. Located between a British colonial past and Communist Chinese future, and under the influence of a *laissez-faire* economy, it is no wonder that the idea of what it means to be a member of Hong Kong's community is ever in flux.¹ The indeterminacy of this identity is made all the more visible in the city's sizable population of foreign domestic helpers (FDHs), who are simultaneously essential to the functioning of HK's globalised economy and marginalised within its community.

This paper will locate the FDH and the politics of their representation in HK, particularly with regards to the effects of global capital. Using a discursive analysis of national discourse, the first section will sketch the tensions that face notions of 'Hong Kongness'. Through a material analysis of labour relations, the second section will explore how this indeterminacy, combined with the effects of globalisation, have affected the way in which FDHs are conceptualised.

This paper is constrained in several ways. In conceptualising the FDH, this paper, out of brevity, will only consider Filipino workers, who constitute the majority of domestic help in HK. In addition, it will take a narrow view of globalisation as the globalisation of labour.

¹ See, eg, Anthony Fung, 'What Makes the Local? A Brief Consideration of the Rejuvenation of Hong Kong Identity' (2001) 15(3-4) *Cultural Studies* 591, 594.

I 'Hong Kongness'?

HK is not known for its sense of local identity. It brands itself as 'Asia's world city',² emphasising cosmopolitanism, and has been affectionately referred to as the paragon of free-market economics.³

Whilst it may be tempting to write off notions of local identity in favour of a homogenous characterisation of global capitalism, this is not the case. Hard as it may be to pinpoint, local identity is in flux within a continuum, influenced by its colonial British history and its association with Chinese (both traditional and post-Communist revolution) culture. This section will examine both these influences. Sketching these will provide a clearer backdrop to the question of the FDH.

The British played a significant role in the way HK culture has developed. In its 155 years as a colony, the city has been buffered from the profound political, economic and social changes that have assailed mainland China. It did not partake in the tumultuous events, such as the Chinese civil war or the Cultural Revolution, that have come to characterise modern Chinese history. The lack of these shared experiences sets it apart from the national historical narrative of mainland China. In lacking the 'rich legacy of memories' that helps foster mutual association and unity, HK has been split from a major section of Chinese national discourse.⁴ In removing this element, which Ernest Renan sees as a necessary part in the historically contingent formation of the nation, HK is set aside. Homi K Bhabha writes that the nation is defined when history and physical space coincide – as a 'spatialization of historical time'.⁵ By disrupting the continuity of shared

² Information Services Department of the Hong Kong Special Administrative Region, *Brand Hong Kong* (2012) <<http://www.brandhk.gov.hk>>.

³ Milton Friedman, 'The Hong Kong Experiment' (1998) *The Hoover Digest* <<http://www.hoover.org/publications/hoover-digest/article/7696>>.

⁴ Ernest Renan, 'What is a Nation?' in Homi K Bhabha (ed), *Nation and Narration* (Routledge, 1990) 8, 19.

⁵ Homi K Bhabha, 'DissemiNation: Time, Narrative and the Margins of the Modern Nation' in Anthony Elliott (ed), *The Blackwell Reader in Contemporary Social Theory* (Blackwell, 1999) 139, 212.

history, the unity of HK and mainland Chinese nationhood is similarly disrupted.

This sense of foreignness is increased by the fact that HK's 'imagined political community' does not coincide with that of mainland China.⁷ Benedict Anderson sees imagining as the process by which members of a nation come to identify and construct abstract, but no less significant, notions of nationhood. British influence has meant that the context HK's community imagines itself into is different. Its status as a colony meant that it was 'severed from [its] cultural roots',⁸ and lacked the pre-colonial, traditional Chinese political and social institutions with which to anchor itself.⁹ At the same time, the city's colonial status meant that it could not possibly imagine itself as being entirely British, either. The result was a hybrid of the two – a community possessed of 'Chinese traditions which were Anglicised'.¹⁰

The prospect of a Chinese future has also served to emphasise the deep-seated ambiguity of local identity. Historically, the root of this framing can be traced back to HK's significant migrant population. Though the city's modern demographics were born in the 1950s after an influx of refugees, second- and third-generation residents in the 1970s began to identify less with the notion that HK was an immigrant city.¹¹ The city was seen as less of a 'safe haven' and more of a home.¹² In this process of collective forgetting and assimilation, the identities of the refugee and the foreigner are redefined as that of the local. Forgetting, Renan writes, is a 'crucial factor in the creation of a nation'.¹³ This marks the beginnings of the turn away from the centrality of the 'foreigner' as the subject of HK identity.

⁷ Benedict Anderson, *Imagined Communities* (Verso, 1983) 6.

⁸ Anthony Fung, 'Postcolonial Hong Kong identity: Hybridising the Local and the National' (2004) 10(3) *Social Identities: Journal for the Study of Race, Nation and Culture* 399, 401.

⁹ Eric Kit-wai Ma, *Culture, Politics, and Television in Hong Kong* (Routledge, 1999) 27.

¹⁰ *Ibid* 23.

¹¹ *Ibid*; Flora L F Kan, *Hong Kong's Chinese History Curriculum from 1945: Politics and Identity* (Hong Kong University Press, 2007) 30.

¹² Kan, above n 11.

¹³ Renan, above n 4, 11.

The second part of this turn towards a more insular discourse of local identity can be found in the relationship between the local and mainland. The uncertainty surrounding local identity and its relationship with mainland China are located in a distinctly *Chinese* context.

The nature of this relationship has been both congenial and antagonistic. The 1970s, for instance, saw the Chinese mainland portrayed as ‘uncivilised’ and ‘uneducated’,¹⁴ whilst the period after the 1997 handover saw an increased identification with national symbols.¹⁵ However much this process of identification has been in flux, it is always unquestionably located with a wider context of Chineseness. In his empirical studies, Anthony Fung emphasises that the question of local identity is consistently measured as the differences between the local and the national, and how both engage in a complex interplay of ‘domination, adaptation, accommodation and resistance’.¹⁶ Indeed, Agassi and Jarvie have observed that despite the Westernization of local culture, it remains ‘at root deeply Chinese’.¹⁷

Anderson’s reflection that the nation lacks ‘sociological solidity’ is thus particularly apt.¹⁸ Several events in recent years highlight this ambivalence: in a 2005 display of Chinese nationalism, locals protested against the behaviour of Japanese occupational forces in HK and China during World War II.¹⁹ Yet recently in 2012, a publically funded full-page ad in local newspapers attacked the mainland Chinese ‘locusts’ in HK, accusing them of flooding the city and denying locals access to social resources.²⁰ This was in spite of the fact that some of the

¹⁴ Fung, above n 8.

¹⁵ Ibid 399.

¹⁶ Ibid 411.

¹⁷ Ma, above n 9, 23.

¹⁸ Bhabha, above n 5, 217.

¹⁹ Keith Bradsher, ‘Thousands March in Anti-Japan Protest in Hong Kong’ (17 April 2005) *The New York Times* <<http://www.nytimes.com/2005/04/17/international/asia/17cnd-hong.html>>.

²⁰ BBC News, *Hong Kong Advert Calls Chinese Mainlanders Locusts* (1 February 2012) <<http://www.bbc.co.uk/news/world-asia-china-16828134>>.

wealthiest investors in HK, as well as the biggest spenders in the tourism industry, are mainland Chinese.²¹

The hybrid, contradictory nature of HK culture thus comes to fore: it is simultaneously local and national, simultaneously depending on and rejecting the mainland culturally and economically. In this way, local discourse is both 'obsessively fixed upon, and uncertain of, the boundaries of society'.²² But whilst it may be tempting to follow Fanon in labelling this a cultural 'undecidability' – a Derridean aporia, in a sense, this is not entirely the case.²³ For in framing the *question* of uncertainty around the poles of the local (Chinese) and the mainland (Chinese), the question ultimately remains one of *differentiation*. What is clear throughout is that the poles remain *Chinese*. In doing so, the discourse of local identity writes out non-Chinese foreignness, and the question of 'where do we locate the FDH?' remains unasked.

II Locating the Foreign (Domestic Helper)

In a population of over seven million people, some 285,000 are FDHs.²⁴ Filipinos form the largest portion of FDHs in HK and are the largest non-Chinese group in the territory. These live-in migrant workers handle the daily chores of their middle- and upper-class employers.²⁵ As part of their contract, they are entitled to range of rights – a minimum wage of around USD480 per month, furnished accommodation, paid holidays, and so on. They are also subject to restrictions. They are only eligible to perform the domestic duties of their employer, are unable to undertake any extra other form of paid work, and are unable to claim

²¹ Irina Fan and Joanne Yim, *Economic Focus: Hong Kong Tourism Industry* (Hang Seng Bank 2011) 1.

²² Bhabha, above n 5, 213.

²³ Ibid 217.

²⁴ Mary Ann Benitez and Winnie Tse, 'House of Cards' (2011) *The Standard* <http://www.thestandard.com.hk/news_detail.asp?we_cat=12&art_id=113579&sid=33196451&con_type=3&d_str=20110729&fc=7>.

²⁵ Daniel A Bell, 'Employers and Domestic Workers: A Confucian Approach' (2008) *Dissent* <<http://www.dissentmagazineorg/article/?article=993>>.

Permanent Residency.²⁶ In HK's context, Permanent Residency is the *de jure* recognition of citizenship, and by extension, an institutional acknowledgement of community membership. This section will explore the ways in which FDHs are conceptualised as economic means towards ends – as a function of the globalising effects of labour – in which local discourse presents them in the language of difference and threat. It will also explore the subjectivities of the FDH in reaction to such discourse, in the form of political resistance.

It is possible to reduce the role of the FDH to an instrumental one, or one of means towards ends. They are an employed source of labour, which frees up the time of their employers, allowing the latter to better live conceptions of the good life. As Bell notes, they engage with the difficult, yet 'socially necessary' work that locals are unwilling to do.²⁷ Both historical and economic perspectives can help our understanding of the implications of the FDH as an example of the globalisation of labour.

FDHs, as a form of exported labour flows, have arisen as a result of the economic concept of Ricardian comparative advantage. In the Filipino case, the Marcos administration in the 1970s saw labour migration as a potential solution to the country's economic problems.²⁸ Because of relatively low wages in the Philippines, here the 'sending country', labour can be exported cheaply. Wages in 'receiving countries' like HK are higher than in sending countries,²⁹ which makes it cheaper to hire imported labour. This puts both sending and receiving countries in a

²⁶ Immigration Department of the Hong Kong Special Administrative Region, *Employment Contract for a Domestic Helper Recruited from Outside Hong Kong – English Version* (2011) <<http://www.immd.gov.hk/ehtml/id407form.htm>>.

²⁷ Bell, above n 25.

²⁸ Odine de Guzman, 'Overseas Filipino Workers, Labour Circulation in Southeast Asia, and the (Mis)management of Overseas Migration Programs' (2003) *Kyoto Review of Southeast Asia* <http://kyotoreview.cseas.kyoto-u.ac.jp/issue/issue3/article_281_p.html>.

²⁹ See, eg, Carol G S Tan, 'Why Rights are not Enjoyed: the Case of Foreign Domestic Helpers' (2001) 30(3) *Hong Kong Law Journal* 354, 356. The wage differential can be as fifty times in some cases.

position of mutually beneficial trade.³⁰ The receiving country pays less for labour, exported labour receives a higher wage overseas than at home, and the sending country benefits from remittances from foreign workers. Indeed, Filipino remittances from HK make up the fourth largest contribution of remittances to the Philippines,³¹ and labour exports have become the Philippines' 'prime export commodity'.³²

The ability for labour to transcend national borders is one of the many manifestations of globalisation, in the form of the globalisation of labour flows.³³ The question of locating the FDH then can be said to arise from HK's engagement with these transnational labour flows, which have become 'part and parcel' of global political economy.³⁴ By situating the marketization of domestic work within the broader content of socioeconomic hierarchy, the FDH is often written out of the question as well. The concept of comparative advantage, for instance, works on the assumption that for the rational economic actor *homo economicus*, economic benefits translate into social benefits.³⁵ This does not always hold, given wider, normative considerations of the experiences of FDHs. Wages are still lower than those of local workers,³⁶ the perception of FDHs as being of 'low status' or 'second-class' is prevalent,³⁷ and regardless of time spent in HK or contributions to the economy FDHs will never officially be recognised as *de jure* members of the local

³⁰ See Paul R Krugman, Maurice Obstfeld and Marc J Melitz, *International Economics: Theory & Policy* (Pearson Education, 9th ed, 2012) 59.

³¹ Daniel A Bell and Nicola Piper, 'Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore' in Will Kymlicka and Baogang He (ed), *Multiculturalism in Asia* (Oxford University Press, 2005) 196, 212.

³² de Guzman, above n 28.

³³ Jan Aart Scholte, *Globalisation: a Critical Introduction* (Palgrave, 2000) 68.

³⁴ Karen Tranberg Hansen, 'Colonial, Postcolonial, and Transnational Relationships in Domestic Service' in Regina Schulte and Pothiti Hantzaroula (ed), *Narratives of the Servant* (European University Institute, 2001) 136.

³⁵ See Michael L Katz and Harvey S Rosen, *Microeconomics* (McGraw-Hill, 3rd edition, 2005) 25-30.

³⁶ At the minimum wage of USD3.6 per hour, working for 8 hours a day, 5 days a week for 4 weeks yields a monthly income of USD576. This is greater than the FDH monthly wage of USD480. See BBC News, *Hong Kong Workers to Enjoy Minimum Wage for First Time* (1 May 2011) <<http://www.bbc.co.uk/news/business-13248027>>.

³⁷ Stephen W K Chiu and Asian Migrant Centre, *A Stranger in the House: Foreign Domestic Helpers in Hong Kong* (Asian Migrant Centre, 2005) 35. See also Tan, above n 29, 359.

community, unlike other forms of imported labour, such as bankers. In this regard, the benefits that accrue within this system are asymmetric. Employers, other forms of imported labour and even sending countries benefit without the burden of the social challenges that FDHs face. Harvey writes how 'capitalism necessarily creates its own "other"',³⁸ and the HK case certainly provides a pertinent example.

FDHs can also be conceptualised as the expression of the bureaucratisation of labour in the private sphere – housework, child-rearing, caring for elderly parents, and so on.³⁹ Whilst relationships in this sphere tend primarily to be affective,⁴⁰ the outsourcing of such work to FDHs reconceptualises these relations on the basis of rights, as expressed through the norms and regulations of behaviour in contracts.⁴¹ The fact that FDH wages are lower than local wages in an area with as much personal significance as the private sphere indicates that such domestic labour is undervalued.⁴² In addition, by emphasising social relations and the roles of FDHs on contractual terms, the discourses surrounding the FDH remain located within (neoliberal) economic contexts.

This has very serious implications, for in this case the language surrounding FDHs is twice removed from considerations of identity. For one, the *foreignness* implicit in their definition labels them as Other. This is particularly pertinent in the context of HK, where the search for grounded definitions of local identity are rooted in Chineseness and already exclude foreigners. This has been expressed concretely in several instances. Commenting on the notion of offering FDHs Permanent Residency, a professor at the University of Hong Kong

³⁸ David, Harvey, 'Accumulation by Dispossession' in David Harvey, *The New Imperialism* (Oxford University Press, 2005) 137.

³⁹ For a legal definition of the domestic chores that FDHs are eligible to undertake, see Immigration Department of the Hong Kong Special Administrative Region, *Employment Contract for a Domestic Helper Recruited from Outside Hong Kong – English Version* (2011) <<http://www.immd.gov.hk/ehtml/id407form.htm>>.

⁴⁰ This characterisation would be culturally accurate in the Confucian tradition. See Bell, above n 25.

⁴¹ Ibid.

⁴² Xinying Hu, *China's New Underclass: Paid Domestic Labour* (Routledge, 2011) 4.

expressed concerns about ‘racial tension’ and social integration.⁴³ In addition, Nicole Constable’s empirical work has revealed that in some households, the term ‘Filipino’ has become synonymous with ‘domestic work’.⁴⁴ Indeed, she found that in general there existed a degree of ‘racial hostility towards foreign workers’.⁴⁵ In these cases, classifications of race structure the FDH’s position within the globalised labour market. This aligns their economic functions with their non-Chinese identities, emphasising difference and establishing what Gilroy describes as a form of social organisation where race provides a ‘foundational understanding of natural hierarchy’.⁴⁶

Economically, their conception as foreign *labour* can be read as an instrumental reduction – they are factors of production.⁴⁷ Bhabha writes that the sociological stability of the national narrative rests on the consistency of the national sign and the ‘image of the people’ – that a stable notion of national identity is the product of mutually reinforcing icons and an identification of both what the nation is and is not.⁴⁸ Within the HK context, locating the FDH becomes almost trivial – they are present in neither of these conceptions. A visual description may help to emphasise how much they feature in daily life, yet how little serious consideration they receive. Many families hire FDHs, and every Sunday many roads in HK’s central business district are closed to provide spaces for them to gather. Ads for hiring agencies are not hard to spot.⁴⁹ Yet simultaneously, as Bell (who himself employed a FDH during his time in the city) insightfully points out, ‘nobody thinks twice about hiring foreign domestic workers (the debate focuses on the *terms of their work*)’.⁵⁰ Means towards ends, indeed.

The globalisation of labour and the suppression of FDH identity that is implied under the *status quo* does have its benefits, however. Whilst

⁴³ Benitez and Tse, above n 24.

⁴⁴ Nicole Constable, *Maid to Order in Hong Kong* (Cornell University Press, 1997) 49.

⁴⁵ Ibid 47.

⁴⁶ Paul Gilroy, *After Empire: Melancholia or Convivial Culture?* (Routledge, 2004) 9.

⁴⁷ Krugman, Obstfeld and Melitz, above n 30, 310-2.

⁴⁸ Bhabha, above n 5, 217.

⁴⁹ See Figures 1 & 2 in Appendix.

⁵⁰ Bell, above n 26 (emphasis added).

there are systemic inequalities present in these global labour flows (in the vein of Wallerstein's world systems theory),⁵¹ there are more complex considerations and harder choices to be made. On an individual level, working as a FDH brings personal economic benefits – wages for the same type of work are certainly higher in HK than in sending countries. If the government were to award FDHs Permanent Residency, as a method of empowering and incorporating the Foreigner into local identity, such a move would come with significant costs. Permanent Residency in HK grants a range of rights, including the right to access social welfare.⁵² In Canada, where foreign live-in caregivers (including a population of Filipinos) are entitled to such rights, there are only some 21,000 caregivers – less than ten percent of the total FDHs in HK.⁵³ In this case, the HK model provides greater economic benefits for a far greater number of workers, whereas in the Canadian case more rights benefit a significantly smaller population. Which model is normatively better is fiendishly difficult to ascertain, but if the goal of exporting labour is to allow labourers to earn a higher wage, then the HK model triumphs. In this way, the question of the FDH lies at the complex intersection of the discursive and the material – between national identity and the necessarily hierarchical structure of global labour flows.

Despite the challenges of identity that FDHs face, they are not without agency. Constable notes the growing presence of non-governmental organisations that deal specifically with migrant worker issues, as well as how these issues increasingly deal with 'broader human rights' as opposed to labour conditions.⁵⁴ FDHs in the city have also expressed increased political awareness by participating in political resistance. In 2005 for instance, as a part of wider anti-World Trade Organisation protests, FDHs protested against exploitive and politically repressive

⁵¹ Alastair Greig, David Hulme and Mark Turner, *Challenging Global Inequality: Development Theory and Practice in the 21st Century* (Palgrave Macmillan, 2007) 88.

⁵² See *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* arts 26, 33 and 36.

⁵³ Caroline George, 'Federal Government Tightens Live-in Caregiver Regulations' (2011) *Canadian Medical Association Journal* <<http://www.cmaj.ca/content/183/9/E539.short>>.

⁵⁴ Nicole Constable, 'Migrant Workers and the Many States of Protest in Hong Kong' (2009) 41(1) *Critical Asian Studies* 143, 148.

governments in their home countries. Whilst these were only attended by between 35 – 45 FDHs at any given time,⁵⁵ it hints at a burgeoning political awareness.

Perhaps the most significant illustration of agency in recent years is the case of *Vallejos v Commissioner of Registration*.⁵⁶ Evangeline Banao Vallejos, who had been a FDH for 26 years, filed a case to challenge the legislation that prevents FDHs from claiming Permanent Residency. The original judgment which deemed the law unconstitutional has, however, since been overturned in the Court of Appeal.⁵⁷ This has generated much debate and media attention towards how HK conceptualises and treats its FDH population.⁵⁸ The result of this appeal notwithstanding, much can be said about the challenge itself.

First is the element of spectacle and imagery. By engaging in political resistance, FDHs refocus and reconceptualise their location within HK culture. This reminds viewers that they do indeed possess agency and are capable of action. It reaffirms that they are capable of independent thought, and are not unseen economic means towards ends. Second is the implication of critical questioning and challenge. Particularly in the case of *Vallejos v Commissioner of Registration*,⁵⁹ by challenging what it means to be legally included as a member of HK's community the FDH is forcefully critiquing the parochial debate surrounding local identity. The challenge inserts the unasked question of 'where do we locate the FDH?' into the public consciousness. These two forms of challenge can potentially provide the basis of a more radical reconceptualization of the FDH. In questioning their given roles, and asking if HK dares to face the challenge, it may be the case that FDHs finally get recognised for the

⁵⁵ Ibid 151.

⁵⁶ *Vallejos Evangeline B v Commissioner of Registration and Registration of Persons Tribunal* [2012] 2 HKC 185.

⁵⁷ Sisi Tang, 'Hong Kong Government Wins Appeal in Maids' Battle for Residency' (2012) *Reuters* <<http://www.reuters.com/article/2012/03/28/us-hongkong-abode-filipino-idUSBRE82R0CB20120328>>.

⁵⁸ Benitez and Tse, above n 25.

⁵⁹ *Vallejos Evangeline B v Commissioner of Registration and Registration of Persons Tribunal* [2012] 2 HKC 185.

'essential work they perform for HK's privileged citizens within the global economy'.⁶⁰

This paper has illustrated how FDHs, through the complex intersection of both discursive and material spheres, are subject to a politics of exclusion and difference. Nestled as they are between the ambiguity of (Chinese) local identity and the forces of global labour flows, they are not without political agency. Unfortunately, this paper cannot provide a constructive suggestion of how the FDH may be reconceptualised to fit within the nebulous concept of HK identity. Should this be attempted – and it is certainly within the realm of possibility – it will definitely have profound implications for the city's politics of identity.

Acknowledgements

Heartfelt thanks must go out to my mother, Angela, and my father, Yen On - without their limitless support, none of this would have been possible.

⁶⁰ Constable, 'Migrant Workers and the Many States of Protest in Hong Kong', above n 54, 155.

Appendix

Figure 1



The Hong Kong CBD on a Sunday. Whilst FDHs are highly visible in Hong Kong's urban landscape, they are still excluded from mainstream conceptions of local identity.⁶¹

⁶¹ Taken from <<http://facingchinadotme.files.wordpress.com/2012/02/hsbc-hq.jpg>>.

Figure 2

*Ads for FDH hiring agencies feature prominently. Their services, as a form of commodified labour, help prop up Hong Kong's privileged role in the global economy.*⁶²

⁶² Taken from

<<http://upload.wikimedia.org/wikipedia/commons/thumb/9/99/Helperadvert2008.JPG/300px-Helperadvert2008.JPG>>.

References

A Articles/Books/Reports

Anderson, Benedict, *Imagined Communities* (Verso, 1983)

BBC News, *Hong Kong Advert Calls Chinese Mainlanders Locusts* (1 February 2012) <<http://www.bbc.co.uk/news/world-asia-china-16828134>>

BBC News, *Hong Kong Workers to Enjoy Minimum Wage for First Time* (1 May 2011) <<http://www.bbc.co.uk/news/business-13248027>>

Bell, Daniel A, 'Employers and Domestic Workers: A Confucian Approach' (2008) *Dissent*
<<http://www.dissentmagazine.org/article/?article=993>>

Bell, Daniel A and Nicola Piper, 'Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore' in Will Kymlicka and Baogang He (ed), *Multiculturalism in Asia* (Oxford University Press, 2005) 196

Benitez, Mary Ann and Winnie Tse, 'House of Cards' (2011) *The Standard*
<http://www.thestandard.com.hk/news_detail.asp?we_cat=12&art_id=113579&sid=33196451&con_type=3&d_str=20110729&fc=7>

Bhabha, Homi K, 'DissemiNation: Time, Narrative and the Margins of the Modern Nation' in Anthony Elliott (ed), *The Blackwell Reader in Contemporary Social Theory* (Blackwell, 1999) 139

Bradsher, Keith, 'Thousands March in Anti-Japan Protest in Hong Kong' (17 April 2005) *The New York Times*
<<http://www.nytimes.com/2005/04/17/international/asia/17cnd-hong.html>>

Chiu, Stephen W K and Asian Migrant Centre, *A Stranger in the House: Foreign Domestic Helpers in Hong Kong* (Asian Migrant Centre, 2005) 35

Constable, Nicole, *Maid to Order in Hong Kong* (Cornell University Press, 1997)

Constable, Nicole, 'Migrant Workers and the Many States of Protest in Hong Kong' (2009) 41(1) *Critical Asian Studies* 143

de Guzman, Odine, 'Overseas Filipino Workers, Labour Circulation in Southeast Asia, and the (Mis)management of Overseas Migration Programs' (2003) *Kyoto Review of Southeast Asia*
<http://kyotoreview.cseas.kyoto-u.ac.jp/issue/issue3/article_281_p.html>

Fan, Irina and Joanne Yim, *Economic Focus: Hong Kong Tourism Industry* (Hang Seng Bank 2011)

Friedman, Milton, 'The Hong Kong Experiment' (1998) *The Hoover Digest* <<http://www.hoover.org/publications/hoover-digest/article/7696>>

Fung, Anthony, 'Postcolonial Hong Kong identity: Hybridising the Local and the National' (2004) 10(3) *Social Identities: Journal for the Study of Race, Nation and Culture* 399

Fung, Anthony, 'What Makes the Local? A Brief Consideration of the Rejuvenation of Hong Kong Identity' (2001) 15(3-4) *Cultural Studies* 591

George, Caroline, 'Federal Government Tightens Live-in Caregiver Regulations' (2011) *Canadian Medical Association Journal*
<<http://www.cmaj.ca/content/183/9/E539.short>>

Gilroy, Paul, *After Empire: Melancholia or Convivial Culture?* (Routledge, 2004)

Greig, Alastair, David Hulme and Mark Turner, *Challenging Global Inequality: Development Theory and Practice in the 21st Century* (Palgrave Macmillan, 2007)

Hansen, Karen Tranberg, 'Colonial, Postcolonial, and Transnational Relationships in Domestic Service' in Regina Schulte and Pothiti Hantzaroula (ed), *Narratives of the Servant* (European University Institute, 2001) 136

Harvey, David, 'Accumulation by Dispossession' in David Harvey, *The New Imperialism* (Oxford University Press, 2005) 137

Hu, Xinying, *China's New Underclass: Paid Domestic Labour* (Routledge, 2011)

Immigration Department of the Hong Kong Special Administrative Region, *Employment Contract for a Domestic Helper Recruited from Outside Hong Kong – English Version* (2011)
<<http://www.immd.gov.hk/ehhtml/id407form.htm>>

Information Services Department of the Hong Kong Special Administrative Region, *Brand Hong Kong* (2012)
<<http://www.brandhk.gov.hk>>

Kan, Flora L F, *Hong Kong's Chinese History Curriculum from 1945: Politics and Identity* (Hong Kong University Press, 2007)

Katz, Michael L and Harvey S Rosen, *Microeconomics* (McGraw-Hill, 3rd edition, 2005)

Krugman, Paul R, Maurice Obstfeld and Marc J Melitz, *International Economics: Theory & Policy* (Pearson Education, 9th ed, 2012)

Ma, Eric Kit-wai, *Culture, Politics, and Television in Hong Kong* (Routledge, 1999)

Renan, Ernest, 'What is a Nation?' in Homi K Bhabha (ed), *Nation and Narration* (Routledge, 1990) 8

Scholte, Jan Aart, *Globalisation: a Critical Introduction* (Palgrave, 2000)

Tan, Carol G S, 'Why Rights are not Enjoyed: the Case of Foreign Domestic Helpers' (2001) 30(3) *Hong Kong Law Journal* 354

Tang, Sisi, 'Hong Kong Government Wins Appeal in Maids' Battle For Residency' (2012) *Reuters*

<<http://www.reuters.com/article/2012/03/28/us-hongkong-abode-filipino-idUSBRE82R0CB20120328>>

B Cases

Vallejos Evangeline B v Commissioner of Registration and Registration of Persons Tribunal [2012] 2 HKC 185

C Legislation

Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

Influence of Rationality and Perceptual Processes on Managerial Decision-Making

Eugene Cheah

Managerial decision-making and rationality are impacted and influenced by perceptual processes. This essay seeks to critically analyse and discuss perceptual processes as pivotal in any decision-making endeavour. Its importance is briefly discussed with particular emphasis placed on ways in which certain differences or biases in perception may have on individuals' understanding of reality as well as how it impinges on the decision-making process within a business environment where there are numerous variables. Furthermore, this essay looks at what happens when there are perceptual errors in decision-making within the business sphere. It also addresses the notion of rationality and its conflicting attainability with its application in a modern setting.

Perceptual processes are fundamental in understanding the impact perception has on decision-making. Managers make decisions every day, hour and minute based on the perceptions they interpret. As with management, the importance of understanding the influence of perceptual errors and improving perceptual accuracy are also addressed in the study of social psychology.¹ Perception causes people to make wrong choices based on false information. In an organisation, incorrect decisions result in a great deal of negative effects. Hence, it is important to delve deeper into the area of perceptual processes so as to identify and avoid the causes of such errors and biases in the decision-making process.

The characteristics of the decision-maker lay the basic foundation in understanding perceptual processes and biases. Before perceptual process actually begins, the characteristics of the perceiver will shape how he or she responds and selects a course of action. Research has shown that personal characteristics, and especially a person's self-

¹ Renato Taiguri, 'Person Perception' in Gardner Lindzey and Elliot Aronson (eds), *The Handbook of Social Psychology* (Addison-Wesley, volume 3, 1969) 395.

concept, can affect perception of the social world and of others in it.² For example, an individual with high self-esteem might be confident in making decisions and perceive himself as superior compared to one with a low self-esteem. Such characteristics are usually expressed when the perceiver forms impressions of others. Few decisions are made void of preconceived impressions or judgments. As such, this may be the spark that leads to distortion in the perceptual process which might in turn affect decision-making.

When it comes to forming judgments and interpreting information, the decision-maker may respond to irrelevant cues to arrive at a judgment. Failure to avoid inaccuracies in forming impressions is influenced by a few important factors, the first of which is stereotyping. Stereotyping is a common process which most of us are guilty of committing at least a few times in our lives. The definition that 'stereotyping' is to 'attribute to that person some characteristics which are seen to be shared by all or most of his or her fellow group members' was coined by Brown.³ It can be a powerful tool which influences and impels how a manager makes decisions. An example of stereotyping is the glass ceiling phenomenon in the working world. It is an invisible barrier that prevents women from rising up to the upper echelons of the corporate ladder. In 2008, the OECD found that the median earnings of female full-time workers were 17% lower than the earnings of their male counterparts.⁴ From this we might infer that biases and prejudices exist which prevent women from rising to the top, hence the lower pay. It also shows that judgment might be clouded when decisions to promote women to higher positions are made regardless of their experience or qualification.

Another type of perceptual distortion is perceptual defence. It affects decision-making by creating judgment about things which might not be true. Although it is normal for people to want to defend the way they perceive things, it is hard to change once established. Asch states that

² Jeffrey D Green and Constantine Sedikides, 'When do Self-Schemas Shape Social Perception?: The Role of Descriptive Ambiguity' (2001) 25(1) *Motivation and Emotion* 67.

³ Rupert Brown, *Prejudice: Its Social Psychology* (Blackwell Publishers, 3rd ed, 1995).

⁴ Organisation for Economic Co-operation and Development, 'OECD Employment Outlook - 2008 Edition', (2008) *OECD* <<http://www.oecd.org/dataoecd/8/19/40937574.pdf>>.

'perceptual defence occurs when a person's value orientations act as a barrier to stimuli that are threatening'.⁵ When this happens, the perceiver might not be able to accept the new fact and rejects it by making inaccurate perceptions. A real life example would be the current situation within the Officer Corps of the Singapore Armed Forces (SAF). There is a line drawn between officers who are granted scholarships and those who do not have a basic degree. Those who are offered scholarships to study at prestigious overseas universities are termed as 'scholars' and those who do not have degrees are known as 'farmers'. This distinction is accentuated as 'scholars' have accelerated careers, promoting them faster to senior ranks in comparison with 'farmers'. As such, the SAF has been criticized for 'using a promotion system that is based more on education and scholarships than on proven competence'.⁶ As the majority of the military's current top brass are 'scholars', there might be perceptual defence when it comes to deciding who gets promoted. 'Farmers' might be perceived as less competent in comparison with 'scholars' due to their educational qualifications, thus making promotion to senior ranks more difficult and fulfilling the existence of perceptual defence.

The halo effect is the third major distortion of the perceptual process. It is a form of bias which influences how one perceives an individual or object. It is used to describe a process in which a general impression that is favourable or unfavourable is used to evaluate specific traits.⁷ The halo effect can be considered omnipresent in the workplace. One such area is during performance appraisals. When a subordinate is highly proficient in some areas, a laid-back manager might perceive him or her to be proficient in all areas and appraise highly as a result. Another area is job tasks. When a person does something well out of his specified job scope, he or she might also be deemed as an expert in that particular task. An interesting 'feature' of the halo effect is that it not only

⁵ Solomon Asch, 'Forming Impressions of Personality' (1946) 41(3) *The Journal of Abnormal Psychology and Social Psychology* 258.

⁶ Sean P Walsh, 'The Roar of the Lion City: Ethnicity, Gender, and Culture in the Singapore Armed Forces' (2007) 33(2) *Armed Forces and Society* 265.

⁷ E Frank Harrison, *The Managerial Decision-Making Process* (Houghton Mifflin Company, 5th ed, 1999).

influences decisions within the organisation but outside of it as well, which in turn affects organisational performance. An example would be Apple Inc., whereby the positive perception of its features or services extends to the entire corporation. The iPod halo effect meant that customers who had a great experience with it would buy a Mac computer simply because it is made by Apple Inc., thus boosting its sales figures.

There is also a clear nexus between perceptual error and ethical decision-making. When confronted with making ethical choices, managers might make decisions solely on the basis of their outcome or consequence. In this instance, the majority might stand to gain albeit the decision not being most objective. Decisions might also be made based on the manager's own sense of impartiality. The underlying problem is that not everyone will conform to this standard as they might feel the decision is flawed or biased. T M Jones⁸ and Trevino⁹ affirm by stating that perceptual errors may affect an individual's ethical judgment by influencing later stages of individual planning and implementation of intentions when responding to ethical dilemmas. From this, it is evident that perceptual errors play a significant role when unethical workplace decisions are made. A classic example would be Enron Corporation's bankruptcy in 2001. Former CEO Jeffrey Skilling's objective was profit at all costs. His perception that profits should be the primary objective meant little regard for ethics and this led to the use of a reward system that only retains those who achieved profit targets.¹⁰ Such unrelenting push for profits ultimately led to the company's downfall as there were charges of financial fraud and corruption within the organisation. Perceptual errors are not only linked with decision-making; it influences the ethical standards of a decision which in turn may translate into extensive consequences for an organisation.

⁸ Thomas M Jones, 'Ethical Decision Making by Individuals in Organizations: An Issue-Contingent Model' (1991) 16(2) *Academy of Management Review* 366.

⁹ Linda Klebe Trevino, 'Ethical Decision Making in Organizations: A Person-Situation Interactionist Model' (1986) 11(3) *Academy of Management Review* 601.

¹⁰ Ronald R Sims, 'Changing an Organization's Culture Under New Leadership' (2000) 25(1) *Journal of Business Ethics* 65.

Prescriptive and normative models of decision-making assume that managerial decision-makers can process information and form judgment on the basis of rationality. Rationality is defined as a self-conscious process of using explicit reasoned arguments to make and defend knowledge claims.¹¹ Although widely used, there have been criticisms regarding the rational model of decision-making. This is because the theory focuses on decisions and the act of choice rather than the whole process of decision-making. Managers most often do not operate under conditions of perfect information. Lindblom supports this by asserting that decision-makers are not faced with concrete, clearly defined problems.¹² Rather, they first have to identify and formulate the problems on which they make decisions. Simon emphasised that a completely rational decision-making process demands too much of those making the decision.¹³ In a business context, we can consider the rise in the price of goods as an example. When there is an increase in price, it is easy for managers to blame it on inflation. Conversely, there are many causes to inflation such as high demand or low supply. The rational model is therefore hard to achieve as such causes are not clearly defined and are difficult for managers to determine.

The model of bounded rationality also seems to oppose this perfect rationality in decision-making. Bounded rationality happens when decision makers simply avoid the effort to be rational and comprehensive at the same time. According to Simon, the rational manager does not always have complete information, and optimal decisions are not always required.¹⁴ In other words, as managers do not have the time or ability to process complete information about complex decisions, they must select some alternative that promises to meet the objective. As such, it conflicts with rationality as it would mean that rational decision-making can now be made under risk, uncertainty, and imperfect information.

¹¹ Robert Nozick, *The Nature of Rationality* (Princeton University Press, 1993).

¹² Charles E Lindblom, *The Policy-Making Process* (Prentice-Hall, 1968).

¹³ Herbert A Simon, *Administrative Behaviour* (Macmillan, 2nd ed, 1957).

¹⁴ Herbert A Simon, 'Rational Decision-Making in Business Organisations' (1979) 69(4) *American Economic Review* 493.

Despite such challenges, the notion of rationality does not dissipate once we have considered the perceptual processes of the decision maker. It must be noted that not all critics of the rational model have the aim of invalidating it. In fact, they largely contribute to the further modification and development of the model. It is extremely challenging to try and achieve rationality in every decision. Therefore, rationality should be archetypal of an ideal benchmark for sound decision-making. The value of the 'rational' model is that it prescribes procedures for decision-making that will lead to the choice of the most efficient means of achieving goals and objectives. It should be used as a core concept to evaluate decision-making. It is argued that the use of the term 'rationality' in managerial decision-making is extremely useful as it creates a dialogue between philosophical and psychological perspectives of ethics and morality.¹⁵ From this, we can visualise the various theories and models through a simple illustration. If perceptual processes are sources of water, rationality as a concept would be the conduit in which water flows through, resulting in decision-making which would be the water coming through at the end of it. In order to achieve 'clean water' (effective decision-making), both the water source (perceptual process) as well as the conduit (rationality) have to function properly. All of these play a part as regards the decision-making process, and it shows that 'rationality' as a conceptual entity cannot stand alone or dissolve for that matter. The rational model will always remain a very important tool for management policy and decision-making.

Knowledge of perceptual processes is critical in understanding its relationship with rationality and decision-making. This essay has evaluated the importance of perceptual processes, the notion of rationality as well as how they both affect the outcome of decisions. Examining the characteristics of the decision maker has allowed us to appreciate the formation and presence of prejudgment resulting in distortions in perception. As such, various biases including stereotyping, halo effect and perceptual defence were considered to illustrate how such distortions affect decision-making. In addition, it is

¹⁵ Max Bazerman and David Messick, 'On the Power of a Clear Definition of Rationality' (1998) 8(3) *Business Ethics Quarterly* 477.

suggested that unethical decisions may be linked to errors in perception. This essay concludes with the discussion on the notion of rationality and the part it plays in linking perceptual processes with decision-making. Despite its detractors, it should subsist as an exemplary model acting as a guide for managers in making sound decisions.

Acknowledgements

Many thanks to my lecturer and tutor Alessandra Capezio for providing time and invaluable guidance in the writing of this piece. A very awesome academic indeed.

References

- Asch, Solomon, 'Forming Impressions of Personality' (1946) 41(3) *The Journal of Abnormal Psychology and Social Psychology* 258
- Bazerman, Max and David Messick, 'On the Power of a Clear Definition of Rationality' (1998) 8(3) *Business Ethics Quarterly* 477
- Brown, Rupert, *Prejudice: Its Social Psychology* (Blackwell Publishers, 3rd ed, 1995)
- Green, Jeffrey D and Constantine Sedikides, 'When do Self-Schemas Shape Social Perception?: The Role of Descriptive Ambiguity' (2001) 25(1) *Motivation and Emotion* 67
- Harrison, E Frank, *The Managerial Decision-Making Process* (Houghton Mifflin Company, 5th ed, 1999)
- Jones, Thomas M, 'Ethical Decision Making by Individuals in Organizations: An Issue-Contingent Model' (1991) 16(2) *Academy of Management Review* 366
- Lindblom, Charles E, *The Policy-Making Process* (Prentice-Hall, 1968)
- Nozick, Robert, *The Nature of Rationality* (Princeton University Press, 1993)
- Organisation for Economic Co-operation and Development, 'OECD Employment Outlook - 2008 Edition', (2008) *OECD*
<<http://www.oecd.org/dataoecd/8/19/40937574.pdf>>
- Simon, Herbert A, *Administrative Behaviour* (Macmillan, 2nd ed, 1957)
- Simon, Herbert A, 'Rational Decision-Making in Business Organisations' (1979) 69(4) *American Economic Review* 493

Sims, Ronald R, 'Changing an Organization's Culture Under New Leadership' (2000) 25(1) *Journal of Business Ethics* 65

Tagiuri, Renato, 'Person Perception' in Gardner Lindzey and Elliot Aronson (eds), *The Handbook of Social Psychology* (Addison-Wesley, volume 3, 1969)

Trevino, Linda Klebe, 'Ethical Decision Making in Organizations: A Person-Situation Interactionist Model' (1986) 11(3) *Academy of Management Review* 601

Walsh, Sean P, 'The Roar of the Lion City: Ethnicity, Gender, and Culture in the Singapore Armed Forces' (2007) 33(2) *Armed Forces and Society* 265

An Independent Judiciary?

Ellie Greenwood

*The US Supreme Court in *Mistretta v United States* 488 US 361 (1989) stated:*

The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship. That reputation may not be borrowed by the political Branches to cloak their work in the neutral colors of judicial action.

How have these same ideas been developed and applied by the Australian judiciary? Has our judiciary taken them too far, or not far enough?

I Introduction

It is largely taken for granted by the Australian public that the judiciary is independent of the other branches of government. To some extent the *Commonwealth Constitution* and the Australian courts mandate such independence through a separation of the powers of the judiciary, from those of the legislature and the executive. However, as the executive and legislature increasingly attempt to relegate parts of their power to the judiciary, the strictness of the application of the separation of powers has waned. *Mistretta v United States*, a case from the United States Supreme Court, stated that in certain circumstances non-judicial functions should not be conferred on the judiciary. The reasons given for this were that it would create a potential to undermine the judiciary's reputation for independence while giving the other branches an artificial appearance of impartiality.¹ This essay will argue that the Australian judiciary's application of these concepts has, in many circumstances, allowed non-judicial functions to be conferred on judges and that this is inadequate and excessively lenient given the serious detriment to judicial independence that could result from a degradation of the separation of powers.

¹ 488 US 361, 407 (1989) ('*Mistretta*').

This essay will firstly cover the law at the Commonwealth level by analysing the principle established in the *Boilermakers'* case that federal courts can only exercise federal judicial power,² how this has been applied through the definition of judicial power, and amended through the *persona designata* doctrine. Next, the essay will critique this by demonstrating the dangers of a less than stringent application of *Boilermakers'*, particularly given that the danger to judicial independence is incremental. It will demonstrate how the judiciary has loosely applied *Boilermakers'* by broadly defining judicial power and applying the *persona designata* exception. Lastly the essay will consider the application of similar principles at the State level in *Kable v DPP* ³ which has resulted in a similarly lenient approach being taken that endangers the separation of federal judicial power that is exercised in State courts.

II Commonwealth Level

A *The State of the Law*

1 *General Principles*

It is an established principle that the *Commonwealth Constitution* creates a separation of powers by creating the Federal Parliament, Executive and Judicature in distinct chapters and by vesting them with separate powers in ss 1, 61 and 71.⁴ It is also well established that judicial power is only exercisable by courts constituted according to s 72.⁵

Boilermakers' established the principle that Commonwealth courts can only exercise federal judicial power and power that is incidental to that power.⁶ This was based on the fact that Ch III of the *Commonwealth Constitution* is an exhaustive statement of the powers that can be

² *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254 ('*Boilermakers'*).

³ (1996) 189 CLR 51 ('*Kable*').

⁴ *Boilermakers'* (1956) 94 CLR 254, 275 (Dixon CJ, McTiernan, Fullagar and Kitto JJ); *Commonwealth Constitution* chs I-III, ss 1, 61, 71.

⁵ *NSW v Commonwealth* (1915) 20 CLR 54; *Waterside Workers' Federation of Australia v JW Alexander Ltd* (1918) 25 CLR 434; James Stellios, 'Reconceiving the Separation of Judicial Power' (2011) 22 *Public Law Review* 113, 114.

⁶ (1956) 94 CLR 254, 296 (Dixon CJ, McTiernan, Fullagar and Kitto JJ).

exercised by federal courts.⁷ If this doctrine were strictly applied, judges would not be allowed to carry out any non-judicial functions, and hence no challenge to the impartiality of the judiciary in the way described in *Mistretta* would arise. The *Boilermakers'* doctrine has never been overturned but has been applied leniently by Australian courts and in this way has been significantly diluted.⁸

2 Definition of Judicial Power

The *Boilermakers'* principle has made it necessary to define judicial power to ensure that no functions falling outside that definition are conferred on the judicature. It is widely accepted that the judicial, executive and legislative powers are not entirely exclusive of each other, and that judicial power is not conducive of an easily articulated definition.⁹ This has led to multiple, sometimes contradictory, cases applying different criteria to the question. Factors that have pointed towards a non-judicial function are if a 'court is authorised to act of its own motion';¹⁰ if the decision creates rights rather than ruling on existing rights or duties;¹¹ if the exercise of the power is discretionary¹² and if the grounds on which the decision is to be made are vague and hence function primarily as guidelines.¹³ However such factors have also been applied more loosely. In *R v Joske*¹⁴ a direction to the court to adjudicate based on whether a result was 'oppressive, unreasonable or unjust' was held to be in keeping with judicial power even though

⁷ Ibid 272 (Dixon CJ, McTiernan, Fullagar and Kitto JJ).

⁸ John de Meyrick, 'Whatever Happened to Boilermakers? Part I' (1995) 69 *Australian Law Journal* 106, 107.

⁹ *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167, 188-9 (Mason CJ, Brennan, Dean, Dawson, Toohey, Gaudron and McHugh JJ); Sir Anthony Mason, 'A New Perspective on Separation of Powers' [1996] (82) *Canberra Bulletin of Public Administration* 1, 2, 6.

¹⁰ *R v Spicer; Ex parte Australian Builders' Labourers Federation* (1957) 100 CLR 277, 289 ('*Spicer*').

¹¹ *R v Davison* (1954) 90 CLR 353, 368 (Dixon CJ and McTiernan J).

¹² *Spicer* (1957) 100 CLR 277, 289.

¹³ Ibid 290.

¹⁴ *R v Joske; Ex parte Australian Building Construction Employees and Builders' Labourers' Federation* (1974) 130 CLR 87 ('*Joske*').

similar words were considered too vague in *Spicer*.¹⁵ Similarly in *R v Quinn*¹⁶ it was held that a function could be both judicial and non-judicial and its character could depend on the performer of the function, not the nature of the function.¹⁷

3 *Persona Designata*

The *persona designata* doctrine is an exception to the *Boilermakers'* principle established in Australia in *Hilton v Wells* which stated that non-judicial functions could be conferred on judges in their personal capacity.¹⁸ *Grollo v Palmer* subsequently required, referring to *Mistretta*, that any non-judicial function conferred on a judge as *persona designata* not be incompatible with the judge's exercise of their judicial functions or the judiciary's exercise of judicial power.¹⁹ The Court said that such incompatibility could arise in three ways, one of which was if the performance of the non-judicial function was of such a nature that the public confidence in the judge or the judiciary would be diminished.²⁰ Both these cases allowed judges to approve warrants for the interception of telecommunications. *Persona designata* was again applied in *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* which applied a number of criteria to determine incompatibility.²¹ This case ultimately decided that the judge in question could not be given a duty to report to a Minister because this function was not independent of the Minister but placed the judge 'firmly in the echelons of administration'.²²

¹⁵ Ibid 94 (Barwick CJ); P H Lane, 'The Decline of the Boilermakers' Separation of Powers Doctrine' (1981) 55 *Australian Law Journal* 6, 11.

¹⁶ *R v Quinn; Ex parte Consolidated Foods Corporation* (1977) 138 CLR 1 ('*Quinn*').

¹⁷ Ibid 10-1 (Jacobs J); De Meyrick, 'Whatever Happened to Boilermakers? Part I', above n 8, 118.

¹⁸ (1985) 157 CLR 57, 74 (Gibbs CJ, Wilson and Dawson JJ), 82 (Mason and Deane JJ).

¹⁹ (1995) 184 CLR 348, 365 (Brennan CJ, Deane, Dawson and Toohey JJ) ('*Grollo*').

²⁰ Ibid.

²¹ (1996) 189 CLR 1, 17 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ) ('*Wilson*').

²² Ibid 18 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ).

B *These Ideas Have Not Been Taken Far Enough*

Given the potentially serious results of a less than strict application of the separation of powers, it is clear that the principle should be strictly applied. Currently the Australian judiciary is not going far enough in achieving this.

A strict application of the separation of powers is necessary to protect the rule of the law and ensure the public perception of the legitimacy of the judiciary is maintained. Firstly, a key function of the judiciary is to act as a check on the other branches of government by adjudicating actions between the Executive and others.²³ This can only be legitimately done where the separation of powers is adhered to in order to ensure the judiciary is independent from the other branches and hence not prejudiced in their favour.²⁴ Secondly, the separation of powers is necessary to ensure that the public continues to accept the legitimacy of the judiciary which depends on its appearance of independence.²⁵ If the judiciary's legitimacy is doubted it cannot act to enforce the laws of the country. It should also be noted that the separation of powers is '*not* a loose general framework' but a doctrine that the High Court has found to be embodied in our *Constitution*.²⁶

Despite the potentially serious consequences of a breakdown of the separation of powers, the Australian judiciary continues to indicate that it will apply the *Boilermakers'* principle loosely. It has done this through wide definitions of judicial power and the application of the *persona designata* exception, both of which will be further discussed below. Such a loose interpretation is dangerous as the threat to the judiciary's independence and reputation for independence is an 'incremental'

²³ Ibid 11 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ); Stellios, 'Reconceiving the Separation of Judicial Power', above n 5, 120.

²⁴ Stellios, 'Reconceiving the Separation of Judicial Power', above n 5, 120; Wilson (1996) 189 CLR 1, 11 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ).

²⁵ [1989] USSC 9.

²⁶ John de Meyrick, 'Whatever Happened to Boilermakers? Part II' (1995) 69 *Australian Law Journal* 189, 192; *Boilermakers'* (1956) 94 CLR 254, 275 (Dixon CJ, McTiernan, Fullagar and Kitto JJ).

one.²⁷ Redish affirmed this, saying that ‘eventually the judicial branch will either have acquired an excess of authority or will have lost much of its requisite integrity, but no single breach could be attributed responsibility for the overall harm’.²⁸ Hence, although on a case-by-case basis the functions designated to the judiciary may appear to be harmless, the continuous widening of judicial power challenges the independence of the judiciary.

From the above analysis it is clear that it is essential to apply the separation of powers strictly; however the Australian judiciary has not done this. In *Joske* it was stated that the *Boilermakers’* doctrine ‘was unnecessary ... for the effective working of the *Australian Constitution*’.²⁹ Such comments indicate the growing view in the courts that the *Boilermakers’* doctrine is inconvenient which has led to the practice of circumventing it without openly challenging it.³⁰ One way this is done is by inconsistent and wide definitions of judicial power. This is seen, as discussed above, by the inconsistency of *Joske* with the *Spicer* factors to define judicial power,³¹ the questionable characterisation of power in *Quinn*³² and other similar cases.

The greatest challenge to the *Boilermakers’* separation of powers is the *persona designata* exception. The notion that judges can undertake executive functions in their personal capacity without affecting judicial independence is artificial, especially given that the judges are usually chosen for the *persona designata* functions precisely because they are judges and they may deal with the matter in their chambers and using

²⁷ Martin H Redish, ‘Separation of Powers, Judicial Authority, and the Scope of Article III: The Troubling Cases of *Morrison* and *Mistretta*’ (1989) 39 *DePaul Law Review* 299, 303; Kristen Walker, ‘Persona Designata, Incompatibility and the Separation of Powers’ (1997) 8 *Public Law Review* 153, 163; Colin D Campbell, ‘An Examination of the Doctrine of Persona Designata in Australian Law’ (2000) 7 *Australian Journal of Administrative Law* 109, 114-5.

²⁸ Redish, above n 27, 303; Walker, above n 27, 163; Campbell, above n 27, 114-5.

²⁹ (1974) 130 CLR 87, 90 (Barwick CJ).

³⁰ De Meyrick, ‘Whatever Happened to Boilermakers? Part II’, above n 26, 107, 112.

³¹ *Joske* (1974) 130 CLR 87, 94 (Barwick CJ); Lane, above n 15, 11.

³² (1977) 138 CLR 1, 10-1 (Jacobs J); De Meyrick, ‘Whatever Happened to Boilermakers? Part I’, above n 8, 118-9.

their usual staff.³³ Further, the incompatibility condition from *Grollo* and *Wilson* is unsatisfactory. Although *Wilson* applied criteria to determine whether a function was incompatible,³⁴ it is a largely subjective test which requires making a judgement as to 'public confidence'.³⁵ Further, it has been applied inconsistently particularly between *Grollo* and *Wilson* where the former case appeared to be decided to some extent on the desirability of the use of a judge for the function,³⁶ while the latter rejected this as a criteria for allowing *persona designata*.³⁷ This has led Walker to criticise incompatibility as an 'I know it when I see it' test.³⁸ As discussed above the danger to judicial independence is incremental and while each case may be deemed 'compatible', in totality they may eventually lead to a break down of judicial independence.³⁹

Finally, it is argued that a lenient application of the separation of powers is necessary because it allows judges to perform functions that are best suited to them because of their impartiality, as was a significant reason for the decision in *Grollo*.⁴⁰ While it is pertinent that an impartial body carry out these functions, it is not only judges that are able to be impartial.⁴¹ Gummow J stated that retired judges or Commonwealth law officers could have equally taken on the role given in *Grollo*.⁴² Furthermore, the statistics on warrants granted in *Grollo* indicated that judges refused less than one per cent of the warrants requested by the executive,⁴³ suggesting they may be less impartial in this role than commonly thought.⁴⁴ Hence the fact that judges are suited to certain non-judicial functions is not a convincing or adequate justification for infringing on the separation of powers.

³³ Mason, above n 9, 1-2; Walker, above n 27, 154.

³⁴ *Wilson* (1996) 189 CLR 1, 17 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ).

³⁵ Campbell, above n 27, 117.

³⁶ (1995) 184 CLR 348, 367 (Brennan CJ, Deane, Dawson and Toohey JJ).

³⁷ *Wilson* (1996) 189 CLR 1, 9 (Brennan CJ, Dawson, Toohey, McHugh and Gummow JJ); Walker, above n 27, 160.

³⁸ Walker, above n 27, 160.

³⁹ *Ibid* 163; Campbell, above n 27, 114-5.

⁴⁰ (1995) 184 CLR 348, 367 (Brennan CJ, Deane, Dawson and Toohey JJ).

⁴¹ Walker, above n 27, 164.

⁴² *Grollo* (1995) 184 CLR 348, 391 (Gummow J).

⁴³ *Ibid* 382 (McHugh J).

⁴⁴ Walker, above n 27, 164.

Thus while it is clear that a strict application of the separation of powers is necessary to maintain the independence of the judiciary, this is clearly not occurring given the lenient interpretation of judicial power and the *persona designata* doctrine that contradicts *Boilermakers*'.

III State Level

It is widely recognised that there is no separation of powers in state Constitutions.⁴⁵ Despite this, *Kable* emphasised that state courts are not wholly independent of implications from Ch III of the *Commonwealth Constitution* because they are part of a national system for the exercise of federal judicial power.⁴⁶ *Kable* held that state courts cannot be invested with power that is 'incompatible with the exercise of federal judicial power'.⁴⁷ This could occur where non-judicial functions were conferred on a state court so as to lead to the appearance of a lack of independence.⁴⁸ Since 2009 the *Kable* doctrine has been reanimated and has been successfully applied in a number of cases to disallow the conferral of certain functions on State judiciaries.⁴⁹ In particular, in *Wainohu* the Court considered the *persona designata* cases at the Federal level and extended the incompatibility doctrine found therein to the State level.⁵⁰

Therefore, the incompatibility test used at the State level both in *Kable* and in subsequent cases such as *Wainohu* effectively amounts to the incompatibility condition from the *persona designata* doctrine.⁵¹ As a result, the perceived independence of the State judiciary faces some of the same dangers stemming from this doctrine as were considered above in relation to the Federal judiciary. Thus, while the *Kable* principle

⁴⁵ *Kable* (1996) 189 CLR 51, 109 (McHugh J); Chief Justice French, 'Executive Toys: Judges and Non-Judicial Functions' (2009) 19 *Journal of Judicial Administration* 5, 16.

⁴⁶ (1996) 189 CLR 51, 102 (Gaudron J), 116 (McHugh J).

⁴⁷ *Ibid* 116 (McHugh J).

⁴⁸ *Ibid* 117 (McHugh J).

⁴⁹ See, eg, *International Finance Trust Co Ltd v NSW Crime Commission* (2009) 240 CLR 319; *South Australia v Totani* (2010) 242 CLR 1; *Wainohu v New South Wales* (2011) 243 CLR 181 ('*Wainohu*').

⁵⁰ *Wainohu* (2011) 243 CLR 181, 227 (Gummow, Hayne, Crennan and Bell JJ).

⁵¹ Walker, above n 27, 165.

offers a compromise between the separation of powers and the plenary powers of state Parliaments,⁵² this is ultimately a weak protection which is especially concerning where state courts exercise federal jurisdiction.

IV Conclusion

It is essential for the maintenance of the judicial independence that the *Boilermakers'* principle is strictly adhered to. However, this has not eventuated in Australia where the judiciary leniently applies the separation of powers. This essay has considered the serious detriment to the real or perceived independence of the judiciary that could arise from such an approach, particularly because of the incremental danger to the independence of the judiciary. The judiciary's broad definition of judicial power and its application of the *persona designata* doctrine have demonstrated that it is not strictly applying the separation of powers and hence endangering our system. This essay extended these principles to demonstrate the unsatisfactory application of the separation of powers at the state level. Despite this analysis, it is likely that the judiciary will continue to loosely apply the separation of powers and continue to create exceptions to it. It remains to be seen whether this will seriously undermine Australia's legal system in the long term or whether the integrity of Australian's judges will ultimately sustain the legitimacy of the system.

Acknowledgements

Many thanks to Ann Porcino and Brooke Greenwood for helping me structure my thoughts and my argument. Thanks also to Dominique Dalla-Pozza for her feedback and suggestions on my essay.

⁵² Ibid 164.

References

A Articles/Books/Reports

Campbell, Colin D, 'An Examination of the Doctrine of Persona Designata in Australian Law' (2000) 7 *Australian Journal of Administrative Law* 109

Clarke, Jennifer, Patrick Keyzer and James Stellios, *Hanks' Constitutional Law* (LexisNexis Butterworths, 8th ed, 2009)

De Meyrick, John, 'Whatever Happened to Boilermakers? Part I' (1995) 69 *Australian Law Journal* 106

De Meyrick, John, 'Whatever Happened to Boilermakers? Part II' (1995) 69 *Australian Law Journal* 189

French, Chief Justice, 'Executive Toys: Judges and Non-Judicial Functions' (2009) 19 *Journal of Judicial Administration* 5

Hanks, Peter, Frances Gordon and Graeme Hill, *Constitutional Law in Australia* (LexisNexis Butterworths, 3rd ed, 2012)

Stellios, James, *The Federal Judicature: Chapter III of the Constitution* (LexisNexis Butterworths, 1st ed, 2010)

Stellios, James, 'Reconceiving the Separation of Judicial Power' (2011) 22 *Public Law Review* 113

Lane, P H, 'The Decline of the Boilermakers' Separation of Powers Doctrine' (1981) 55 *Australian Law Journal* 6

Mason, Sir Anthony, 'A New Perspective on Separation of Powers' [1996] (82) *Canberra Bulletin of Public Administration* 1

Redish, Martin H, 'Separation of Powers, Judicial Authority, and the Scope of Article III: The Troubling Cases of *Morrison* and *Mistretta*' (1989) 39 *DePaul Law Review* 299

Walker, Kristen, 'Persona Designata, Incompatibility and the Separation of Powers' (1997) 8 *Public Law Review* 153

B Cases

Fardon v Attorney-General (Qld) (2004) 223 CLR 575

Grollo v Palmer (1995) 184 CLR 348

Hilton v Wells (1985) 157 CLR 57

International Finance Trust Co Ltd v NSW Crime Commission (2009) 240 CLR 319

Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51

Mistretta v United States 488 US 361 (1989)

NSW v Commonwealth (1915) 20 CLR 54

Precision Data Holdings Ltd v Wills (1991) 173 CLR 167

R v Davison (1954) 90 CLR 353

R v Joske; Ex parte Australian Building Construction Employees and Builders' Labourers' Federation (1974) 130 CLR 87

R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254

R v Quinn; Ex parte Consolidated Foods Corporation (1977) 138 CLR 1

R v Spicer; Ex parte Australian Builders' Labourers Federation (1957) 100 CLR 277

South Australia v Totani (2010) 242 CLR 1

Wainohu v New South Wales (2011) 243 CLR 181

Waterside Workers' Federation of Australia v JW Alexander Ltd (1918) 25
CLR 434

Wilson v Minister for Aboriginal and Torres Strait Islander Affairs (1996) 189
CLR 1

C Legislation

Commonwealth Constitution

The Best Age at which to Receive a Brain Injury

Timothy Wiles

Abstract

This essay will look at whether brain injury is better managed by the brain when young, and still in a rapid phase of development, or later, when the brain is more developmentally stable. The enhanced plasticity of the infant brain will be explored in relation to how this is proposed to aid recovery from brain injury. The arguments which state that a more developed and mature brain is better able to manage and recover from brain injury are also examined. The arguments for both sides are compared, and it is concluded that psychological functioning appears to be generally less impaired over time in older individuals, rather than in young individuals whose brains are still developing.

There is much contention in the scientific community about whether lasting effects of brain injury and trauma are better managed by the brain when young, when the brain is still in a rapid phase of development, or later, when the brain is more developmentally stable. Young children have very high levels of neuroplasticity, which is the capacity of the brain to be influenced through environmental interaction.¹ Some researchers have proposed that the highly adaptable nature of the young brain renders it well equipped to recover after receiving a brain injury.² However, others argue that the highly plastic nature of the young brain makes it highly vulnerable to brain injury, which causes disastrous disruptions to developing neural structures.³ This essay will look at these arguments in an attempt to establish whether the young brain can effectively recover from brain injury. First, the essay will explore arguments which state that the plasticity present

¹ Monica Luciana, 'Cognitive Development in Children Born Preterm: Implications for Theories of Brain Plasticity Following Early Injury' (2003) 15(4) *Development and Psychopathology* 1017.

² Michael V Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation' (2009) 15 *Developmental Disabilities* 94.

³ Vicki Anderson et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications' (2010) 35(7) *Journal of Pediatric Psychology* 716.

in the young developing brain is sufficient to overcome the initial functional problems presented by brain injury.⁴ The benefits of enhanced plasticity will be examined, along with conditions that may reduce neuroplasticity.⁵ Subsequently, the opposing arguments will be investigated. First, that early childhood is the most dangerous time to receive brain damage as the brain is undergoing crucial foundational development and is constructing key systems required for higher-order functioning, which can be irreversibly damaged by cerebral lesion.⁶ Second, that plasticity itself can have a negative effect on, and be affected by, brain injury.⁷ The potential for symptoms from early brain insult to have delayed onset will also be explored.⁸ Results of studies supporting arguments on both sides will be examined, before a conclusion is reached about which argument seems more likely in light of the findings.

The main argument in support of the idea that psychological functioning is less impacted by brain damage sustained early in life, rather than later, is the convincing evidence that there is a very high level of plasticity in the infant brain.⁹ This high level of plasticity results from large numbers of experience-expectant synapses present in newborns.¹⁰ Experience-expectant synapses have not yet been selected and connected into networks specialised for particular functions, therefore allowing rapid learning and integration of new concepts throughout the child's development.¹¹ Plasticity also assists children in key developmental areas, such as: discerning language cues to assist development in understanding the rules of language; or learning skills

⁴ Angela O Ballantyne et al, 'Plasticity in the Developing Brain: Intellectual, Language and Academic Functions in Children with Ischaemic Perinatal Stroke' (2008) 131 *Brain* 2975.

⁵ Johnston, above n 2.

⁶ Anderson et al, above n 3.

⁷ Igor Fineman et al, 'Inhibition of Neocortical Plasticity During Development by a Moderate Concussive Brain Injury' (2000) 17(9) *Journal of Neurotrauma* 739; Michael V Johnston, 'Clinical Disorders of Brain Plasticity' (2004) 26 *Brain & Development* 73.

⁸ Paul J Eslinger et al, 'Developmental Consequences of Childhood Frontal Lobe Damage' (1992) 49(7) *Archives of Neurology* 764.

⁹ Ballantyne et al, above n 4.

¹⁰ Ross A Thompson, 'Development in the First Years of Life' (2001) 11(1) *Future of Children* 21.

¹¹ Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation', above n 2.

such as a playing a musical instrument.¹² It has been noted that children who start learning an instrument early in childhood acquire associated skills more rapidly than those who start in later childhood or in adulthood.¹³ The enhanced plasticity present in the developing brain, some researchers argue, enables the brain of a young child to better cope with brain injury than a more mature brain.¹⁴ The reason why plasticity decreases beyond childhood is because rarely-activated synapses are streamlined and 'pruned back', while often-used synapses are enhanced and become incorporated into specific networks.¹⁵

The brain of a developing child is constructing cortical maps and neural networks within, and between, different areas of the cortex, being adapted in response to information received from the environment.¹⁶ It is thought that, if injury is sustained during this formative period, there can be rapid reshuffling of connections and processing regions; another region in the brain may assume aspects of functions carried out by the affected area, and hence some functionality affected by the brain injury may be recovered, for example language function may switch from predominantly left- to predominantly right-side control.¹⁷ This is demonstrated in the longitudinal study by Ballantyne et al,¹⁸ where a group of 29 primary school-age, and younger children who had suffered unilateral ischaemic perinatal stroke (IPS) were tested in various developmental domains, such as: intelligence and language. Data was collected over 20 years at two time points. The tests used were the Wechsler Intelligence Scale for Children-Revised, the Wide Range Achievement Test-Revised, the Clinical Evaluation of Language Fundamentals-Revised and the Peabody Picture Vocabulary Test-

¹² S Vicari et al, 'Plasticity and Reorganization During Language Development in Children with Early Brain Injury' (2000) 36 *Cortex* 31; Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation', above n 2.

¹³ Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation', above n 2.

¹⁴ Ballantyne et al, above n 4.

¹⁵ Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation', above n 2.

¹⁶ Linda Ewing-Cobbs, Marcia A Barnes and Jack, Fletcher, 'Early Brain Injury in Children: Development and Reorganization of Cognitive Function' (2003) 24(2-3) *Developmental Neuropsychology* 669; Ana Katušić, 'Early Brain Injury and Plasticity: Reorganization and Functional Recovery' (2011) 2(1) *Translational Neuroscience* 33.

¹⁷ Ewing-Cobbs, Barnes and Fletcher, above n 16; Ballantyne et al, above n 4.

¹⁸ Ballantyne et al, above n 4.

Revised. The data was examined longitudinally. The participants undertook the first test at ages between seven and eight. They were retested at ages eleven to twelve. The results found that the cognitive functioning indicated by these tests, although lower than the control group, remained stable over the three-year test-retest interval and there was even an increase in performance on the CELF-R language task within the IPS group between the two test points. The results of this study support the theory that the young developing brain can adapt to cope with injury and that the brain's plastic nature is sufficient to lay a sound basis, such that performance can be improved beyond the injury.

While it would appear that the highly plastic nature of the young growing brain is responsible for the ability of young children to make significant recoveries after early brain insult, there may also be other less apparent processes occurring that contribute to improvement in their psychological functioning. To show that enhanced neuroplasticity is responsible for early brain insult recovery in young children, it has to be shown that young children with diminished plasticity levels have reduced rates of cognitive development, as compared with their highly plastic, but still brain injured, counterparts. This can be seen in children who suffer seizures. In a study by Ballantyne et al,¹⁹ the participants with IPS who experienced seizures were assessed on intelligence and language tests, and compared in their performance to their counterparts in whom seizures were absent. The results show that participants who experienced seizures performed to a lower standard on language development and cognition functioning tests than the non-seizure group, and also did not show improvement in IQ assessment in the retest after three years.²⁰ It is acknowledged in the study that it is difficult to determine whether the seizures cause the differences in performance on tests, or whether anti-epileptic drugs may contribute. It is also noted that some participants were not taking medication at the time of testing and, of those that were, most were on the newest drugs with very few known side-effects, leading the researchers to believe the disparity in performance between groups was due to the seizures themselves, and not preventive medication. The study does not,

¹⁹ Ballantyne et al, above n 4.

²⁰ Ibid.

however, consider the fact that seizures may, themselves, cause damage to the brain. If the researchers are correct, and seizures do result in reduced neuroplasticity, it would conversely suggest that the high neuroplasticity present in the young developing brain is, at least partially, responsible for progress and improvement in psychological function after impairment due to brain injury. Due to the fact that plasticity levels are highest in early years of development,²¹ this would suggest that the early years are the best time to receive a brain injury, in terms of recovering psychological functioning post-injury.

While the results of some studies support the idea that elevated plasticity leads to an increased ability of the brain to compensate after brain injury, others show that the plastic nature of the developing brain may make children more susceptible to the harmful effects of brain injury, and that individuals whose brains have matured to a further extent may better be able to cognitively compensate than sufferers of early brain insult.²² The arguments which oppose the idea that young children are better able to cope with the consequences of brain injury than older individuals will now be explored. These arguments include the fact that plasticity itself can have a negative effect on, and be affected by, brain injury;²³ the young child's brain, as it engages in a critical period of development, is more vulnerable to impairment by lesions;²⁴ and the potential for delayed onset of symptoms from early brain insult.²⁵

Contrary to the arguments of those who think that enhanced neuroplasticity gives young children an advantage in recovering from brain injury, is the idea that the rapid growth and plasticity occurring in the developing brain actually renders it more vulnerable to brain

²¹ Johnston, 'Plasticity in the Developing Brain: Implications for Rehabilitation', above n 2.

²² Vicki Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?' (2005) 116(6) *Pediatrics* 1374.

²³ Fineman et al, above n 7; Johnston, 'Clinical Disorders of Brain Plasticity', above n 7.

²⁴ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

²⁵ Eslinger et al, above n 8.

injury.²⁶ In the case of adult brain injury, lesions disrupt established networks and plasticity serves to assist in the reinstitution of functionality, whereas with perinatal insult, primitive networks that will lay the foundations for later development are disrupted, so this could have a negative impact on later development and arrangement of neural structures.²⁷ Because of the fast rate of development and increased plasticity present in the young brain, it can be influenced to a great extent by the environment, and this influence is not always positive.²⁸ For example, in the developing brain, increased excitability is present in certain neurotransmitter synapses, and although this leads to increased plasticity, the overstimulation of neurons by neurotransmitters can also lead to neural cell death.²⁹ In brain injury sufferers, this can exacerbate the problem of lesions and prevent or delay recovery.³⁰ This demonstrates that side effects of plasticity exist that are not advantageous in terms of minimising impairment to psychological function after a brain injury, and enhanced plasticity levels may even serve to inhibit recovery.

In addition to the negative consequences that a highly plastic brain can have on cerebral lesions, the neuroplasticity itself can be affected by brain injury. Here I am referring to the neuroplasticity that allows typical experience-induced development, and not the recovery-plasticity present after injury. Studies have been conducted with human participants to establish a link between age of cerebral insult and expected recovery outcomes. Some of these studies have found that younger children recover from brain injury less successfully than their older counterparts.³¹ One such study is that undertaken by Anderson et

²⁶ Anderson et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications', above n 3.

²⁷ Joan Stiles, 'The Effects of Injury to Dynamic Neural Networks in the Mature and Developing Brain' (2012) 54(3) *Developmental Psychobiology* 343.

²⁸ Johnston, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 2.

²⁹ Ibid.

³⁰ Ibid.

³¹ Susan C Levine et al, 'IQ Decline Following Early Unilateral Brain Injury: A Longitudinal Study' (2005) 59 *Brain and Cognition* 114; Robyn Westmacott, 'Cognitive Outcome Following Unilateral Arterial Ischaemic Stroke in Childhood: Effects of Age at Stroke and Lesion Location' (2010) 52 *Developmental Medicine & Child Neurology* 386.

al,³² which examined 122 children who had suffered traumatic brain injury. The study found younger children (three to seven years old) exhibited negligible levels of recovery for severe brain traumas, whereas older children (eight to twelve years old) made more successful recoveries. Infants (under three years old) performed more poorly in terms of recovery from even a moderate brain injury when compared with older children. Inconsistent with the plasticity theorists, this study suggests that children's developing brains are more vulnerable to injury, as severe head trauma sustained between the ages of newly-born to seven years old damages cognitive function to a greater extent than in older children. Although this study is specific to traumatic brain injury,³³ it does suggest that the plasticity argument cannot be universally applied to cover all types of brain injury. These results are supported by findings from Anderson et al,³⁴ who ran a study examining early brain insult sustained in six age groups, from birth to late childhood. They found that there were cognitive shortfalls across all indicator tests, which included language, memory and attention tasks, for participants who had received early brain insult before age two, whereas children who had received early brain insult when older performed close to average in the tests.³⁵ This presents further evidence suggesting that brain injury received in a period of critical development can be more detrimental to the brain of a growing child than the state of enhanced plasticity is beneficial.³⁶ This is an indication that recovery from brain injury may be more successful in older individuals who are not in such a crucial period of growth as young children.³⁷

In comparing studies which support the hypothesis that young brains can better manage brain damage³⁸ with studies which say young

³² Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

³³ Ibid.

³⁴ Anderson et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications', above n 3.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Stiles, above n 27.

³⁸ Ballantyne et al, above n 4.

children's brains are highly vulnerable to brain damage,³⁹ it would appear that there are inconsistencies in the reported age best able to recover from brain injury. While some studies found that younger children with brain injury showed greater improvements in cognitive functioning over a period of time,⁴⁰ other studies found the exact opposite.⁴¹ Proponents of the 'early vulnerability' hypothesis state that this discrepancy in results is due to the facts that: young children's apparent cognitive improvement is temporary; the tests which support the early plasticity model of recovery do not have a long enough intermediate period between tests and retests; and follow-ups are not sustained for long enough.⁴² While this idea is supported by a study by Levine et al,⁴³ where younger children had reduced performance in verbal assessment and a reduction in IQ on a second test taken an average of eight years after the first, another study by Anderson, Godfrey, Rosenfeld and Catroppa⁴⁴ found that young children were making 'age-appropriate progress' on cognition assessments 10 years post-injury. Having said this, it is a valid point that follow-ups on test participants should be continued beyond the scope of the research paper in order to observe if developmental outcomes change over time.

A problem with comparing papers in this field of research is that there are various different types of brain injury studied across papers. Ballantyne et al⁴⁵ studied individuals who had suffered IPS and found that individuals who were younger at the time of the stroke had larger improvements in their cognitive performance than participants in whom the stroke occurred later in the post-natal period. In contrast, individuals who had suffered traumatic brain injury at an older age

³⁹ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

⁴⁰ Ballantyne et al, above n 4.

⁴¹ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

⁴² Anderson et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications', above n 3.

⁴³ Levine et al, above n 31.

⁴⁴ Vicki Anderson et al, 'Predictors of Cognitive Function and Recovery 10 Years After Traumatic Brain Injury in Young Children' (2012) 129(2) *Pediatrics* 254.

⁴⁵ Ballantyne et al, above n 4.

were found to show better recovery patterns than the early brain insult contingent.⁴⁶ Perhaps what can be concluded from this is that the optimum age for successful recovery from brain injury varies, depending on the type of lesion received.

Across all papers supporting the hypothesis that recovery of psychological function is more readily achieved in the young brain than in an older one, there is really only one argument, which states that enhanced plasticity renders the brain better able to deal with brain injury than a more stable brain in a later stage of development.⁴⁷ This has been shown to be true in some cases, such as in the study by Ballantyne et al.⁴⁸ However, there are a greater number of findings presented that state that more developed and neurally stable brains are more fully equipped to effect recovery from brain injury.⁴⁹ The arguments put forward in this essay which state that: injury to a young brain still undergoing fundamental development and neural structure arrangement can be irreversibly damaging;⁵⁰ and that plasticity itself, the proposed recovery mechanism, may be negatively affected by brain injury,⁵¹ combine to form a stronger case than that proposed by plasticity theorists, because if brain injury causes a reduction in the level of plasticity, it will have diminished capability to assist in the restoration of psychological function.

In conclusion, there are studies reporting findings which support both sides of the argument: increased brain plasticity does appear to aid recovery of psychological function from stroke in young children in some cases,⁵² whereas in other cases, such as with traumatic brain

⁴⁶ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

⁴⁷ Johnston, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 2.

⁴⁸ Ballantyne et al, above n 4.

⁴⁹ Anderson et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications', above n 3.

⁵⁰ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

⁵¹ Fineman et al, above n 7.

⁵² Ballantyne et al, above n 4.

injury, older children showed better patterns of cognitive recovery.⁵³ A lack of standardisation of brain injury types studied made it difficult to compare between studies, but overall, based on findings from studies, this essay found psychological functioning to be generally less impaired over time in older individuals, rather than in young individuals whose brains were still developing.

Acknowledgements

Amy Wiles, who read my drafts and made suggestions. Danielle Clout and Dr Phillipa Butcher, who edited my essay and made suggestions for improvements.

⁵³ Anderson et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?', above n 22.

References

Anderson, Vicki et al, 'Functional Plasticity or Vulnerability After Early Brain Injury?' (2005) 116(6) *Pediatrics* 1374

Anderson, Vicki et al, 'Predictors of Cognitive Function and Recovery 10 Years After Traumatic Brain Injury in Young Children' (2012) 129(2) *Pediatrics* 254

Anderson, Vicki et al, 'Does Early Age at Brain Insult Predict Worse Outcomes? Neuropsychological Implications' (2010) 35(7) *Journal of Pediatric Psychology* 716

Ballantyne, Angela O et al, 'Plasticity in the Developing Brain: Intellectual, Language and Academic Functions in Children with Ischaemic Perinatal Stroke' (2008) 131 *Brain* 2975

Eslinger, Paul J et al, 'Developmental Consequences of Childhood Frontal Lobe Damage' (1992) 49(7) *Archives of Neurology* 764

Ewing-Cobbs, Linda, Marcia A Barnes and Jack M Fletcher, 'Early Brain Injury in Children: Development and Reorganization of Cognitive Function' (2003) 24(2-3) *Developmental Neuropsychology* 669

Fineman, Igor et al, 'Inhibition of Neocortical Plasticity During Development by a Moderate Concussive Brain Injury' (2000) 17(9) *Journal of Neurotrauma* 739

Johnston, Michael V, 'Clinical Disorders of Brain Plasticity' (2004) 26 *Brain & Development* 73

Johnston, Michael V, 'Plasticity in the Developing Brain: Implications for Rehabilitation' (2009) 15 *Developmental Disabilities* 94

Katušić, Ana, 'Early Brain Injury and Plasticity: Reorganization and Functional Recovery' (2011) 2(1) *Translational Neuroscience* 33

Levine, Susan C et al, 'IQ Decline Following Early Unilateral Brain Injury: A Longitudinal Study' (2005) 59 *Brain and Cognition* 114

Luciana, Monica, 'Cognitive Development in Children Born Preterm: Implications for Theories of Brain Plasticity Following Early Injury' (2003) 15(4) *Development and Psychopathology* 1017

Stiles, Joan, 'The Effects of Injury to Dynamic Neural Networks in the Mature and Developing Brain' (2012) 54(3) *Developmental Psychobiology* 343

Thompson, Ross A, 'Development in the First Years of Life' (2001) 11(1) *Future of Children* 21

Vicari, S et al, 'Plasticity and Reorganization During Language Development in Children with Early Brain Injury' (2000) 36 *Cortex* 31

Westmacott, Robyn, 'Cognitive Outcome Following Unilateral Arterial Ischaemic Stroke in Childhood: Effects of Age at Stroke and Lesion Location' (2010) 52 *Developmental Medicine & Child Neurology* 386

GM Crops: Blessing or Bandaid?

Courtney Landers

Global events have once again sparked debate about the role genetically modified ('GM') crops should play in feeding the world; whether they are the blessing their supporters make them out to be or just another Band-Aid like past agricultural revolutions; only a short-term and superficial fix. As reported by The New York Times, in late 2007-early 2008 a rapid decrease in food stocks coincided with a spike in food prices, leading to unrest and food riots in up to 33 different countries.¹ A repeat food crisis was predicted,² which proved accurate when in January and February of this year when food prices and the World Bank Food Price Index reached 2008 levels and beyond.³

Multiple human, environmental and economic factors have combined to increase demand past supply. Population increase presents one of the most serious; in order to feed a projected 9 billion people by 2050,⁴ crop yields will have to increase by a staggering 44 million metric tonnes per year.⁵ The resources required to produce this yield are however decreasing; water is becoming increasingly scarce,⁶ energy stocks are

¹ Elisabeth Rosenthal, 'World Food Stocks Dwindling Rapidly, UN Warns', *The New York Times* (online), 17 December 2007

<<http://www.nytimes.com/2007/12/17/world/europe/17iht-food.html>>;

New York Times, 'The World Food Crisis' *The New York Times* (online), 10 April 2008

<<http://www.nytimes.com/2008/04/10/opinion/10thu1.html>>.

² Alex Evans, 'The Feeding of the Nine Billion: Global Food Security for the 21st Century' (Paper, Chatham House, January 2009).

³ Krugman, Paul 'Droughts, Flood and Food', *The New York Times* (United States), 18 April 2008, A23; World Bank, 'Global Food Crisis' (Press Release, March 2012)

<<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,print:Y-isCURL...menuPK:34480~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>>.

⁴ The Royal Society, 'Reaping the Benefits: Science and the Sustainable Intensification of Global Agriculture' (Report No 11/09, The Royal Society, October 2009).

⁵ Maria Reguera, Zvi Peleg and Eduardo Blumwald, 'Targeting Metabolic Pathways for Genetic Engineering Abiotic Stress-Tolerance in Crops' (2011) *Biochimica*.

⁶ The Royal Society, above n 4.

falling and prices are soaring,⁷ while land is being lost to overuse and urbanisation,⁸ and the quality and fertility of available soils has been damaged by over-tilling, erosion and pollution.⁹ Climate change will only exacerbate this resource loss.¹⁰ Since abiotic stressors such as heat, drought, salinity and submergence in water all decrease crop yields,¹¹ the fluctuations in temperature and increase in damaging weather events like drought, storm and flood caused by climate change may already bear the major responsibility for crop yield losses and price spikes.¹²

Rising levels of affluence in 'emerging economies' like China and India are increasing consumption and demand for meat products; production of grain for feed will continue to compete with food crop production.¹³ On top of all this, the subsidisation of corn production for ethanol in the United States has produced an 'ethanol tsunami',¹⁴ encouraging the conversion of food-producing land and further decreasing supply of food crops.¹⁵

The possibility to increase the yield of crops via genetic modification has been promoted as an essential part of solving the food crisis by government bodies, seed companies and academics alike.¹⁶ Yet completely aside from the debate over potential risks to human and

⁷ New York Times, 'The World Food Crisis' *The New York Times* (New York), 10 April 2008 <<http://www.nytimes.com/2008/04/10/opinion/10thu1.html>>.

⁸ Reguera, Peleg and Blumwald, above n 5; The Royal Society, above n 4.

⁹ Hanne Ostergard et al, 'Time for a Shift in Crop Production: Embracing Complexity Through Diversity at All Levels' (2009) 89(9) *Journal of the Science of Food and Agriculture* 1439.

¹⁰ Ibid.

¹¹ The Royal Society, above n 4.

¹² Krugman, above n 3; Reguera, Peleg and Blumwald, above n 5; World Bank, above n 3.

¹³ Evans, above n 2.

¹⁴ Evidence to Subcommittee on Horticulture and Organic Agriculture, House of Representatives, United States, 18 April 2007 (Lynn Clarkson).

¹⁵ Ibid; Krugman, above n 3.

¹⁶ David Adam, 'GM Will Not Solve Current Food Crisis, Says Industry Boss', *The Guardian*, 27 June 2008; Paul Collier, 'The Politics of Hunger: How Illusion and Greed Fan the Food Crisis' (2008) 87(6) *Foreign Affairs* 67; *Sustainable Agriculture* (2011) Monsanto <<http://www.monsanto.com/ourcommitments/Pages/Sustainable-Agriculture.aspx>>; The Royal Society, above n 4.

environmental health posed by GM crops, there are serious doubts about their ability to increase food security. Although large-scale food production in industrialised nations such as Australia, the United States, Russia, Argentina and Ukraine plays a vital part in feeding the hungry and determining food prices,¹⁷ it constitutes neither the largest nor the most important target of solutions for the food crisis. The majority of the world's one billion or more poor and hungry people depend on mixed-production, small-holder farming for their food and/or income,¹⁸ of which more than half may be spent on food.¹⁹ The need to target solutions to developing regions and countries means the current direction of GM crop research and production, and the failure of past agricultural revolutions suggest that GM may even worsen the food crisis.

This essay will discuss the benefits and limitations of GM crops in solving the food crisis and discuss alternative solutions. I will make the case that although research into GM crops should continue, the resources they may provide should only be called upon if still needed when a 'pro-poor' system of agriculture embracing diversity and sustainability is in place.

The basis for GM crops as the solution to the food crisis is the possibility of producing higher yields on less land, with fewer resources and in a harsher climate. However, the success of attempts to achieve such yield increases, and their use in solving the food crisis, is limited. Sinclair, Purcell and Sneller describe two possible ways of using genetic modification to increase crop yields: increasing the physiological ability to produce yield (intrinsic yield) and increasing the ability to tolerate stressors, preventing yield losses (operational yield).²⁰ The complexity of yield as a genetic trait has troubled attempts to increase intrinsic yield.²¹

¹⁷ Evans, above n 2; World Bank, above n 3.

¹⁸ M Herrero et al, 'Smart Investments in Sustainable Food Production: Revisiting Mixed Crop-Livestock Systems' (2010) 327 *Science* 822; E Toby Kiers et al, 'Agriculture at a Crossroads' (2008) 320 *Science* 822.

¹⁹ World Bank, above n 3.

²⁰ Thomas R Sinclair, Larry C Purcell and Clay H Sneller, 'Crop Transformation and the Challenge to Increase Yield Potential' (2004) 9(2) *Trends in Plant Science* 70.

²¹ Paul Roberts, *The End of Food* (Houghton Mifflin Company, 2008) 239.

Although more is known now about the genes, pathways and mechanisms that control yield than 40 years ago, few increases in intrinsic yield have been achieved as a result.²² Many of the systems that could be manipulated to increase intrinsic yield are complex, still poorly understood and likely exist in an equilibrium that would quickly cancel out any introduced changes.²³

Attempts to increase operational yield have been somewhat more successful. Two major types of stressors – abiotic and biotic – prevent crops from producing the level of yield of which they are capable. The majority of yield loss stems from abiotic stressors.²⁴ The aforementioned potential of climate change to increase the severity and range of these stressors means tolerant crops could be crucial to future agriculture. Although some key elements are still unknown, the genes and mechanisms involved in tolerance are becoming better understood. Despite this, recent attempts to genetically manipulate tolerance have had conflicting results, and most abiotic-tolerant plants produced have been model plants grown and tested in artificial environments, with survival – not yield – used as a measure of success.²⁵ Recent claims from Monsanto of soon-to-be-released drought-tolerant and water efficient maize varieties are difficult to verify from independent sources.²⁶ Industry and its supporters in government and science instead offer yield increases in crops tolerant to the biotic stresses of pests and weeds as evidence for the ability of GM crops to improve food security. Monsanto promotes the idea that not only have their herbicide-tolerant and insect-resistant crop varieties increased yield by decreasing the percentage of crop lost to insects and weeds, they have increased the sustainability of agriculture by decreasing tilling, chemical pollution and greenhouse gas emissions and improving soil quality – thereby improving yield even further.²⁷ The developing world would appear to

²² Sinclair, above n 20.

²³ J E Sheehy et al, 'Systems Biology or the Biology of Systems: Routes to Reducing Hunger' (2008) 179(3) *New Phytologist* 579; Sinclair, above n 20.

²⁴ Reguera, Peleg and Blumwald, above n 5.

²⁵ Ibid.

²⁶ *Sustainable Agriculture*, above n 16.

²⁷ *Do GM Crops Increase Yield?* (21 September 2009) Monsanto

<<http://www.monsanto.com/newsviews/Pages/do-gm-crops-increase-yield.aspx>>.

have benefited from the spillover of these technologies from the industrial world;²⁸ small-plot farmers adopting these GM crops in developing countries show decreases in yield loss, chemical use and environmental and health consequences greater than those in industrialised countries.²⁹ However, these benefits are only comparably greater due to lack of access to conventional pest and weed control methods before introduction of these crops.³⁰ Now that resistance to the chemical associated with these tolerant crops has begun to emerge, requiring increased labour in the form of integrated pest management,³¹ those benefits may be negated. The ability of this yield gain to ease the food crisis is also questionable given that GM cotton – a non-food crop – is one of the poster-crops for yield increases; in some countries such as China, India and Mexico it is the major or only form of GM crop adopted by small-plot farmers.³² Overall then, the ability of GM crops to assist food production to adapt to the causes of the current food crisis is limited, if not questionable.

Most GM crops available now are ill-suited to a solution focused on the developing world, and similarities to past agricultural revolutions indicate the GM crop movement may also cause more problems than it solves. The case of GM cotton described above is just one example of how current GM crop varieties are not designed to aid food production in developing countries. In 2003, 85% of transgenic crops planted were herbicide-resistant soybeans, insect-resistant maize and insect-resistant cotton,³³ all of which were designed to decrease production costs and

²⁸ Janet E Carpenter, 'Peer-Reviewed Surveys Indicate Positive Impact of Commercialised GM Crops' (2010) 28 *Nature Biotechnology* 319.

²⁹ Ibid; Alan Raybould and Hector Quemada, 'Bt Crops and Food Security in Developing Countries: Realised Benefits, Sustainable Use and Lowering Barriers to Adoption' (2010) 2(3) *Food Security* 247; World Bank, 'World Development Report 2008: Capturing the Benefits of Genetically Modified Organisms for the Poor' (Report, World Bank, 19 October 2007).

³⁰ Carpenter, above n 28.

³¹ Raybould and Quemada, above n 29; Roberts, above n 21.

³² Raybould and Quemada, above n 29; World Bank, above n 29.

³³ Louise O Fresco, 'Which Road do we Take? Harnessing Genetic Resources and Making Use of Life Science, a New Contract for Sustainable Agriculture' (Speech delivered at Towards Sustainable Agriculture for Developing Countries: Options from Life Sciences and Biotechnologies, Brussels, 30-31 January 2003).

increase efficiency in large-scale industrial agriculture.³⁴ By 2008 still only one-third of research into new GM crop varieties was directed at the developing world.³⁵ Little research has attempted to introduce pro-poor traits into the five most important semi-arid, small-scale crops used in developing nations – sorghum, pearl millet, pigeon pea, chickpea and groundnut.³⁶ Monsanto has instead focused on GM maize,³⁷ and one of their competitors recently released a maize variety designed to improve ethanol production that could compete for land and damage food stocks.³⁸ The IAASTD³⁹ thus concluded that GM crops have so far not delivered on their potential benefits to the developing world.⁴⁰ The arrival of pro-poor varieties in the near future is doubtful in light of an admission by the chair of multinational seed company Syngenta, Martin Tony, that even if regulations were altered to make the developing world a more profitable market, it may still take 20 years to produce useful crops since existing varieties are not suitable.⁴¹

All GM crops then have to offer the millions affected by the food crisis are the same problems and failings of previous agricultural ‘revolutions’. The Green Revolution of the 1950 – 1960’s introduced new pesticides, herbicides, seed varieties and farming practices that dramatically increased food production. Although some benefits were felt by the developing world, many farmers could not afford the chemicals and seed and did not benefit at all.⁴² These new innovations

³⁴ Roberts, above n 21; Annie Shattuck and Holt-Gimenez, ‘Why the Lugar-Casey Global Food Security Act Will Fail to Curb Hunger’ (Policy Brief No 18, The Institute for Food and Development Policy, 15 April 2009).

³⁵ Kiers, above n 18.

³⁶ Fresco, above n 33; World Bank, above n 29.

³⁷ Roberts, above n 21.

³⁸ Suzanne Goldenberg, ‘GM Corn Being Developed for Fuel Instead of Food’, *The Guardian* (England), 16 August 2011, 1.

³⁹ International Assessment of Agricultural Science and Technology for Development.

⁴⁰ Kiers, above n 18.

⁴¹ David Adam, ‘GM Will Not Solve Current Food Crisis, Says Industry Boss’, *The Guardian* (online), 27 June 2008

<<http://www.guardian.co.uk/environment/2008/jun/27/gmcrops.food>>.

⁴² Food and Agriculture Organisation, *Save and Grow: A Policymaker’s Guide to the Sustainable Intensification of Smallholder Crop Production* (Food and Agriculture Organisation, 1st ed, 2008); Shattuck and Holt-Gimenez, above n 34.

also resulted in degradation of soil, increased pollution and a serious decrease in resources and biodiversity.⁴³ In developed nations, the culture of unsustainable, industrial monoculture allowed by the Green Revolution eventually produced the Organic Revolution; a social movement of farmers and consumers rejecting the use of synthetic chemicals and transgenics along with the treatment of food like any other commodity.⁴⁴ Despite its intentions of returning food production to a local, socially-based system embracing diversification, as demand outpaced supply the organic movement soon found itself 'co-opted by the market it set out to change.'⁴⁵ In the US, national standards for organic food almost allowed for use of antibiotics, parasiticides, irradiation and sewerage fertiliser due to pressure from 'politically powerful chemical and seed companies'.⁴⁶ Fears that their exclusion would imply uncertainty about safety and affect trade nearly placed genetically modified products under organic classification too.⁴⁷ Having become aware of huge profit margins attracted by organic crops,⁴⁸ industrial food producers then adapted organic principles to large-scale monoculture; past habits and cost pressures also prevented the adoption of diversification by independent farmers.⁴⁹

Genetically modified crops show the potential to introduce or exacerbate the problems experienced by both the green and organic revolutions into developing nations struggling to produce food. Genetically modified seeds are still expensive, locking out poorer farmers as effectively as the Green Revolution.⁵⁰ Where they are used they will further increase the monopoly held by large chemical and seed companies over the food market,⁵¹ very possibly introducing or increasing industrialised monoculture in developing countries.

⁴³ Food and Agriculture Organisation, above n 42.

⁴⁴ Roberts, above n 21.

⁴⁵ Ibid 268.

⁴⁶ Ibid 252.

⁴⁷ Leora Broydo, 'Organic Engineering', *Mother Jones* (United States), May 1998, 25.

⁴⁸ Evidence to Subcommittee on Horticulture and Organic Agriculture, House of Representatives, above n 14.

⁴⁹ Ibid; Roberts, above n 21.

⁵⁰ Shattuck and Holt-Gimenez, above n 34.

⁵¹ Roberts, above n 21; Martin Webber, 'GM Crops 'May Give Lower Yields' *BBC News* (Britain) 6 February 2009 <<http://news.bbc.co.uk/2/hi/business/7866687.stm>>.

Although some promote the idea of ‘creating a modern agricultural infrastructure everywhere’ to solve the food crisis,⁵² such an event would cause the unemployment of millions,⁵³ and perpetuate pollution and resource degradation.⁵⁴ In other words GM crops represent only a Band-Aid solution to the food crisis; a temporary fix that will secure food production for neither the developing or developed world into the future.

Consensus appears to be forming that a shift to a new paradigm of diverse, sustainable agriculture is the best way to solve the food crisis, within which the role of GM crops is still under debate. Some academics and policy-makers still insist that widespread industrial agriculture is the best way to improve yield from currently farmed land.⁵⁵ Most authorities however warn that ‘business as usual’ will fail.⁵⁶ The FAO has stated that ‘the present paradigm of intensive crop production cannot meet the challenges of the new millennium’.⁵⁷ They instead support the multifaceted approach of ‘sustainable intensification’.⁵⁸ This concept emphasises the construction of a resilient food production system via diversity, complexity and sustainability; social and economic needs such as yield increases would be balanced while maintaining or enhancing natural resources and conserving biodiversity.⁵⁹ Small-holding farmers in developing nations already efficiently apply many of the methods required to achieve such a system. Soil fertility can be preserved and improved via crop rotation to reduce tilling and the use of nitrogen-fixing legumes, vastly reducing the need for fertiliser application.⁶⁰ Over two thirds of the world’s population are currently fed by or living in mixed crop-livestock systems that use crop residues

⁵² Nina Fedoroff, ‘Seeds of a Perfect Storm’ (2008) 320 *Science* 425.

⁵³ Shattuck and Holt-Gimenez, above n 34.

⁵⁴ Food and Agriculture Organisation, above n 42; Kiers, above n 18.

⁵⁵ Collier, above n 16; Fedoroff, above n 52.

⁵⁶ John Vidal, ‘Change in Farming Can Feed World: Report’ *The Guardian* (Britain), 18 April 2008, 15.

⁵⁷ Food and Agriculture Organisation, above n 42.

⁵⁸ Ibid; Kiers, above n 18; The Royal Society, above n 4.

⁵⁹ Phil Mitchell, ‘Doubts About GM Crops’ (2008) 321 *Science* 489; Ostergard et al, above n 9; Roberts, above n 21; The Royal Society, above n 4.

⁶⁰ Evans, above n 2; Food and Agriculture Organisation, above n 42; Ostergard et al, above n 9.

to feed livestock and manure to nourish plants where needed; these provide real potential for increasing productivity while protecting resources. Along with integrated pest management and improved irrigation,⁶¹ these methods have already been shown to increase yield,⁶² prompting the IAASTD to suggest that they be applied to large-scale industrial farming.⁶³ It would thus appear that the solution to the food crisis is emerging from the developing world, not the developed; opinions vary on whether the contribution of GM crops by industrialised nations will still be needed. The ABC,⁶⁴ representing agricultural biotechnology in the UK, insists that 'GM crops are not a "silver bullet", but must be seen as part of the solution',⁶⁵ a stance mirrored by The Royal Society and some policy institutes.⁶⁶ Some propose that GM crops *may* be useful, as just one way to implement sustainable practices.⁶⁷ Others are more sceptical, siding with the IAASTD's finding that GM crops are 'appropriate in some contexts, unpromising in others, and unproven in many more'.⁶⁸ It may be that future research findings allow GM crops to form a 'buffer', to be used only to assist the implementation of sustainable intensification or where no other solution is applicable. Regardless, it is clear that the direction of GM crop research, and the attitudes and practices attached to their use, will have to change first.

Acknowledgements

The author would like to thank Associate Professor Barbara van Leeuwen for her comments on and suggestions for this essay.

⁶¹ Evans, above n 2.

⁶² Food and Agriculture Organisation, above n 42.

⁶³ Kiers, above n 18.

⁶⁴ Agricultural Biotechnology Council.

⁶⁵ 'ABC Welcomes Government Comments on GM Crops' (2008) 8 *GM Observer* 1, 1.

⁶⁶ Evans, above n 2.

⁶⁷ Fresco, above n 33; Herrero et al, above n 18.

⁶⁸ Kiers, above n 18, 120.

References

'ABC Welcomes Government Comments on GM Crops' (2008) 8 *GM Observer* 1

Adam, David, 'GM Will Not Solve Current Food Crisis, Says Industry Boss', *The Guardian* (online), 27 June 2008
<<http://www.guardian.co.uk/environment/2008/jun/27/gmcrops.food>>

Broydo, Leora, 'Organic Engineering', *Mother Jones* (United States), May 1998, 25

Carpenter, Janet E, 'Peer-Reviewed Surveys Indicate Positive Impact of Commercialised GM Crops' (2010) 28 *Nature Biotechnology* 319

Collier, Paul, 'The Politics of Hunger: How Illusion and Greed Fan the Food Crisis' (2008) 87(6) *Foreign Affairs* 67

Do GM Crops Increase Yield? (21 September 2009) Monsanto
<<http://www.monsanto.com/newsviews/Pages/do-gm-crops-increase-yield.aspx>>

Evidence to Subcommittee on Horticulture and Organic Agriculture, House of Representatives, United States, 18 April 2007 (Lynn Clarkson)

Evans, Alex, 'The Feeding of the Nine Billion: Global Food Security for the 21st Century' (Paper, Chatham House, January 2009).

Fedoroff, Nina, 'Seeds of a Perfect Storm' (2008) 320 *Science* 425
Save and Grow: A Policymaker's Guide to the Sustainable Intensification of Smallholder Crop Production (Food and Agriculture Organisation, 1st ed, 2008)

Fresco, Louise O, 'Which Road do we Take? Harnessing Genetic Resources and Making Use of Life Science, a New Contract for Sustainable Agriculture' (Speech delivered at Towards Sustainable

Agriculture for Developing Countries: Options from Life Sciences and Biotechnologies, Brussels, 30-31 January 2003)

Goldenberg, Suzanne, 'GM Corn Being Developed for Fuel Instead of Food', *The Guardian* (England), 16 August 2011, 1

Herrero, M et al, 'Smart Investments in Sustainable Food Production: Revisiting Mixed Crop-Livestock Systems' (2010) 327 *Science* 822

Kiers, E Toby et al, 'Agriculture at a Crossroads' (2008) 320 *Science* 320

Krugman, Paul, 'Droughts, Flood and Food', *The New York Times* (United States), 18 April 2008, A23

Mitchell, Phil, 'Doubts About GM Crops' (2008) 321 *Science* 489

New York Times, 'The World Food Crisis', *The New York Times* (online), 10 April 2008

<<http://www.nytimes.com/2008/04/10/opinion/10thu1.html>>

Ostergard, Hanne et al, 'Time for a Shift in Crop Production: Embracing Complexity Through Diversity at All Levels' (2009) 89(9) *Journal of the Science of Food and Agriculture* 1439

Raybould, Alan and Hector Quemada, 'Bt Crops and Food Security in Developing Countries: Realised Benefits, Sustainable Use and Lowering Barriers to Adoption' (2010) 2(3) *Food Security* 247

Reguera, Maria, Zvi Peleg and Eduardo Blumwald, 'Targeting Metabolic Pathways for Genetic Engineering Abiotic Stress-Tolerance in Crops' (2011) *Biochimica*

Roberts, Paul, *The End of Food* (Houghton Mifflin Company, 2008) 239

Rosenthal, Elisabeth, 'World Food Stocks Dwindling Rapidly, UN Warns', *The New York Times* (online), 17 December 2007

<<http://www.nytimes.com/2007/12/17/world/europe/17iht-food.html>>

The Royal Society, 'Reaping the Benefits: Science and the Sustainable Intensification of Global Agriculture' (Report No 11/09, The Royal Society, October 2009)

Shattuck, Annie and Holt-Gimenez, 'Why the Lugar-Casey Global Food Security Act Will Fail to Curb Hunger' (Policy Brief No 18, The Institute for Food and Development Policy, 15 April 2009)

Sheehy, J E et al, 'Systems Biology or the Biology of Systems: Routes to Reducing Hunger' (2008) 179(3) *New Phytologist* 579

Sinclair, Thomas R, Larry C Purcell and Clay H Sneller, 'Crop Transformation and the Challenge to Increase Yield Potential' (2004) 9(2) *Trends in Plant Science* 70

Sustainable Agriculture (21 September 2009) Monsanto
<<http://www.monsanto.com/ourcommitments/Pages/Sustainable-Agriculture.aspx>>

Vidal, John, 'Change in Farming Can Feed World: Report' *The Guardian* (Britain), 18 April 2008, 15

Webber, Martin, 'GM Crops 'May Give Lower Yields' *BBC News* (Britain) 6 February 2009 <<http://news.bbc.co.uk/2/hi/business/7866687.stm>>

World Bank, 'Global Food Crisis' (Press Release, March 2012)
<<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,print:Y~isCURL...menuPK:34480~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>>

World Bank, 'World Development Report 2008: Capturing the Benefits of Genetically Modified Organisms for the Poor' (Report, World Bank, 19 October 2007)

Artwork Details

Portrait of Veronica (2011)

Daniel DeValentin

Oil paints on canvas

Head shot (2011)

Anthea 'Billie' Parsons

Steel, timber and wool

Redeemer (A typology of faith) (2012)

Janis Lejins

Crayola crayon, nails and oil paint on six fibre- based silver gelatin prints

Untitled (2012)

Megan Christie

Graphite pencil and charcoal on paper

Portrait of Veronica (2011), Daniel DeValentin



Heat shot (2011), Anthea 'Billie' Parsons



Redeemer (A typology of faith) (2012), Janis Lejins



Untitled (2012), Megan Christie



The Contribution of Post-Colonial Theory to the Construction of Identity of Identity in International Relations

Isabella Basaglia

In the era following 1945 and the end of World War II, the wave of decolonisation and emancipation of ethnic groups from under colonial rule prompted a significant shift in constructions of individual and collective identity throughout much of the globe. This is characterised as the post-colonial age, whereby the lasting impressions of colonial rule continue to affect erstwhile colonies and shape identities despite imperial colonisation having officially ended. Post-colonialism has emerged as a lens through which the relationship between identity and international relations can be explored. This essay examines these interactions, by understanding post-colonial theory, its relationship to the International Relations orthodoxy, its response to colonial imagery as seen in the Democratic Republic of Congo, and finally the post-colonial hybridity of identity. Post-colonialism seeks to explain how identities of the colonised can be understood and applied to an understanding of International Relations. As such, it contributes to the development of International Relations by attempting to comprehend the complexities that a broadening of cultural identities has entailed, while widening the scope through which we view the global stage.

The necessity of identity to the study of International Relations derives from its ability to unite and divide people and societies. An identity is a source of stability and belonging within the myriad of social, cultural, economic, religious and gender differences throughout the human population. Identity can thus be understood as a form of meaning, a social construction emphasising the notion of the 'self' as opposed to the 'other'.¹ As such, myriad conceptions of identity must be accommodated within the international system in order to facilitate a

¹ Annick Wibben, 'Who Do We Think We Are?' in Jenny Edkins and Maja Zenfuss (eds), *Global Politics: A New Introduction* (Routledge, 2009) 70, 87.

cohesive global community, as an individual's or group's perceived identity will ultimately be the basis that shapes the direction their actions and ideals will follow.

Defining the post-colonial is significant in understanding the developments of critical theory in International Relations. Post-colonial studies are centred on the relationships between the coloniser and the colonised, with a particular emphasis on the interpretations and histories of the colonised group. An interdisciplinary branch with roots in sociology, anthropology and literature, post-colonialism was not a significant approach to the discipline until the 1990s.² It has been said that in post-colonialism, 'we are witnessing the emergence of a new discourse of global cultural relations.'³ There can be no doubt that this period of International Relations is one of critical analysis, however the periodisation of post-colonialism reveals several issues in determining who, when and where is post-colonial, and thus who can be identified as such. The removal of colonial structures since 1945 and particularly around 1960 has resulted in the labelling of this period now as post-colonial, yet Brazilian independence was granted from Portugal in 1822 and British control in India formally ended in 1947.⁴ As decolonisation was not a uniform process, its effects are not limited to one period; rather, it is an 'infinite aftermath'.⁵

As such, it can be argued that we are not in an era of post-colonialism at all and, as Darby suggests, that colonialism continues in the persistence of imperialism through culture, politics and economics as opposed to bureaucratic control.⁶ This is instead labelled neocolonialism, where indirect channels keep former colonies under the economic, cultural or

² Christine Sylvester, 'Post-colonialism', in John Baylis, Steve Smith and Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations* (Oxford University Press, 2011) 182, 184.

³ Phillip Darby and A J Paolini, 'Bridging International Relations and Postcolonialism' (1994) 19(3) *Alternatives: Global, Local Political* 371, 375.

⁴ J E Goldthorpe, *The Sociology of Post-colonial Societies: Economic Disparity, Cultural Diversity and Development* (Cambridge University Press, 1996) 45.

⁵ Peter Childs and R J Patrick Williams, *An Introduction to Post-Colonial Theory* (Prentice Hall/Harvester Wheatsheaf, 1997) 8.

⁶ Darby and Paolini, above n 3.

political influence of greater powers. Eduardo Galeano regards the United States neoliberal intrusion into the Latin American economy through the Inter-American Development Bank (IDB), International Monetary Fund (IMF) and U.S. corporations as monetary reincarnations of imperial control. Latin American development has always been subjected to the whims of the developing capitalist market due to its reliance on the export of its commodities for foreign markets, contemporaneously regulated and controlled by the aforementioned institutions. Galeano aligns the IMF with the Spanish Crown and the slave trade dividends with General Motors profits in order to emphasise the continuing dominance of the West over Latin America.⁷

The post-colonial era is not restricted to just the former colonies of old European empires. It also includes those areas touched by colonialism and imperial influence. Within this, the extent of the colonial control or oppression will ultimately have effects on the construction of post-colonial identities and stable independence. There is thus unevenness in the theoretical scope.⁸ The complexity of characterising periods in global interactions signifies the importance of critical analysis to the discipline. Indeed the recognition of post-colonial theory in the study of International Relations is an indication of the changing nature of the discipline away from traditional approaches such as realism and liberalism.

Post-colonialism has altered the way we think about International Relations as it questions and rejects grand narratives- that is, dominating or totalising illustrations of the world- and their inability to explain the complexities and variances of the contemporary era.⁹ As an emerging argument in the Third Great Debate of the 1970s and 80s in International Relations theory, post-colonialism seeks to broaden the agenda of the discipline beyond the traditional realist narrative and reconsider it from a bottom-up or Third World perspective. The study

⁷ Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (Siglio XXI Editores, 1971) 8.

⁸ Childs and Williams, above n 5, 9.

⁹ Bill Ashcroft, Gareth Griffiths, and Helen Tiffin, *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (Routledge, 1989) 11.

of world politics has largely been a Western one, dominated by Eurocentric academic history.

As Childs and Williams argue, Eurocentric history is essentially inescapable as it is the foundation of modern International Relations and the perspectives of old colonies such as India or the Congo are merely variations of the 'history of Europe'.¹⁰ An example of this neglect of a group in International Relations discourse is in the lack of case studies and theories from African perspectives. Nkiwane suggests that this ignorance prior to post-colonial approaches means crucial perspectives on the functioning of African states after European occupation are missed.¹¹ Post-colonialism seeks to undermine the notion that the history and political agenda of these Third World countries is entirely a western creation, by giving the post-colonial groups a voice and a means through which they can project their own identity. With an emphasis on culture and rhetoric, post-colonialism challenges the epistemological basis of power and Western hierarchy in mainstream International Relations theories.¹² This unequal relationship between the East and West is evident in the imagery that has been used to create the identity of the other.

Prior to post-colonial studies, the Eurocentricity of International Relations resulted in a characterisation of the 'other' that implied Western supremacy. In the construction of identity, juxtaposition against the 'other' is necessary in achieving a distinction within the global sphere.¹³ Thus, imagery is foundational in the reconstruction of nations following colonial occupation as it creates a sense of self that is projected to the wider world. As seen in the relationship between the orient and the occident, this characterisation ultimately affects the relationship between the east and west. Orientalism, as the representation of the East in Western literature, is a post-colonial

¹⁰ Childs and Williams, above n 5, 9.

¹¹ Tandeka C Nkiwane, 'Africa and International Relations: Regional Lessons for a Global Discourse' (2001) 22(3) *International Political Science Review* 279, 280-281.

¹² Darby and Paolini, above n 3, 384.

¹³ Wibben, Annick 'Who Do We Think We Are?' in Jenny Jenkins and Maja Zenfuss (eds), *Global Politics: A New Introduction* (Routledge, 2009) 70, 88.

discourse that seeks to identify how the West imagines the East and as such controls it in the global sphere. Said emphasises the unequal relationship between the orient and occident as a result of this imagery which creates a primitive and undeveloped picture of the East.¹⁴ Post-colonialism in turn questions this image of superiority and power of the West, which has in the past protected Western imperialist ventures.¹⁵ By examining the post-colonial perspective of a state in the global South labelled 'collapsed' or 'backwards' by the West, a deeper understanding of the state's actual condition can be assessed.

The importance of a post-colonial perspective in a nation's imagery is evident in the case of the Democratic Republic of Congo (DRC). Colonised by Belgium in the late nineteenth century, modern international relations and interactions with the DRC rely largely on its Western perceptions. Most notably, Joseph Conrad's *Heart of Darkness* (1899), accompanied by ongoing detrimental media coverage of diseases, poverty and violence in the Congo, are 'colonially scripted images of African backwardness and primitivism'.¹⁶ These symbols of regression that have occurred since the grant of DRC's independence in 1960 speak to the West as an indication of the failure of post-colonial societies and the need for Western intervention to restore order and stability, also regarded as the 'White Man's Burden'.¹⁷ Redrawing on this colonial imagery, the DRC is thus still labelled 'the heart of darkness'. Consequently, the foreign policy and actions of other state actors is influenced by this identity that the global North has created.

Furthermore, this categorisation of the DRC and other nations in the global South as requiring Western aid and influence is a means through which the West can control the East for extracting profit,¹⁸ as is argued with US military presence in the Middle East where large supplies of oil

¹⁴ Edward Said, 'Orientalism' in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds), *The Post-colonial Studies Reader* (Routledge, 1995) 87.

¹⁵ Geeta Chowdhry and Sheila Nair, *Power, Postcolonialism and International Relations: Reading Race, Gender and Class* (Routledge, 2002) 12.

¹⁶ Kevin C Dunn, *Imagining the Congo: The International Relations of Identity* (Palgrave Macmillan, 2003) 5.

¹⁷ Sylvester, above n 2, 189.

¹⁸ Chowdhry and Nair, above n 15, 12.

are located. Post-colonial literature, such as Dunn in *Imagining the Congo: The International Relations of Identity*,¹⁹ trace back through this construction of a third world nation's identity to reveal the hierarchical and power structures between the global North and South.²⁰ This is important when studying geopolitics and the nature of relations between states, as post-colonialism allows for the consideration of the perspectives of the global South and the construction of a new, hybrid identity outside the channel of Western imperialism.

The influences on collective and individual identity in the post-colonial world can be understood through the post-colonial sub-theory of hybridity. It refers to the difficulties in reconstructing a sense of self and country following colonial occupation. The inability to completely recover the past and the difficulties of separating from the culture of the former coloniser, create an identity which is an amalgamation of both the traditional and the Western in a process of 'cultural fragmentation and multiculturalism'.²¹ This can also be attributed to the 'intensifying global interdependence and interconnectedness' of globalisation.²² Globalisation, post-colonial theory argues, is a force in the construction of identity that contributes to the move away from statism and the realist view of International Relations, as it implies a more integrated international community beyond the geographical boundaries of states. Rather than nations, we have dissemi-nations, a term introduced by post-colonial thinker Homi Bhabha, meaning the transferral of ideas and knowledge between, the colonised and colonisers which defies any separatism to nations and cultures.²³

While the globalisation of Western values and culture can be seen as a continuation of Western imperialism, it also upsets the realist notion of International Relations from a top-down approach, instead considering the interaction of cultures from the bottom up. Furthermore, this

¹⁹ Dunn, above n 16.

²⁰ Ibid 9.

²¹ David Slater, 'Post-Colonial Questions for Global Times' (1998) 5(4) *Review of International Political Economy* 647, 650.

²² Ibid 648.

²³ Sylvester, above n 2, 192.

cultural hybridity rejects the previously discussed imagery of the third world as being barbaric and regressive, as it clearly indicates an ability to adopt the knowledge and practices of the 'civilised' West. Thus, post-colonial hybridity is an important means of broadening the scope of International Relations beyond the Western hegemony that has become orthodox to the discipline.

Post-colonialism can thus be regarded as a rewriting of the grand narratives of International Relations. As a theoretical viewpoint it does not seek to ignore the colonial past of international relations, but examines its lasting effects on the integrated relationship between identity and the international political and cultural arena. As this essay has discussed, the colonial imagery and characterisation of the global South, as seen in the Congo, the hybrid reconstruction of identity and the complexities in defining the 'post-colonial', emphasise the need to reconsider the effects of colonial rule and how it has shaped modern international relations. Post-colonial theory is thus significant to our thinking on global politics and interactions as it challenges the epistemological foundations of International Relations, while giving us a framework with which to examine the future developments in a post-colonial era.

Acknowledgements

I would like to thank Ben Power for his invaluable contribution to the editing of this essay and Bianca Hennessy for her patience during this process.

References

Ashcroft, Bill, Gareth Griffiths, and Helen Tiffin, *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (Routledge, 1989)

Barkawi, Tarak and Mark Laffey, 'Retrieving the Imperial: Empire and International Relations' (2002) 31(1) *Millennium - Journal of International Studies* 109

Childs, Peter and R J Patrick Williams, *An Introduction to Post-Colonial Theory* (Prentice Hall/Harvester Wheatsheaf, 1997)

Chowdhry, Geeta and Sheila Nair, *Power, Postcolonialism and International Relations: Reading Race, Gender and Class* (Routledge, 2002)

Darby, Phillip and A J Paolini, 'Bridging International Relations and Postcolonialism' (1994) 19(3) *Alternatives: Global, Local Political* 371

Dunn, Kevin C, *Imagining the Congo: The International Relations of Identity* (Palgrave Macmillan, 2003)

Galeano, Eduardo, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (Siglio XXI Editores, 1971)

Goldthorpe, J E, *The Sociology of Post-colonial Societies: Economic Disparity, Cultural Diversity and Development* (Cambridge University Press, 1996)

Ireland, Judith, 'US Marines not a "US base" on Australian Soil: Smith', *Sydney Morning Herald*, 4 April 2012, 1

Lake, David A, 'The New Sovereignty in International Relations' (2003) 5(3) *International Studies Review* 303

Nkiwane, Tandeka C, 'Africa and International Relations: Regional Lessons for a Global Discourse' (2001) 22(3) *International Political Science Review* 279

Paolini, Albert J, Anthony Elliot, and Anthony Moran, *Navigating Modernity: Postcolonialism, Identity and International Relations* (Lynne Rienner Publishers Inc, 1999)

Said, Edward, 'Orientalism' in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds), *The Post-colonial Studies Reader* (Routledge, 1995) 87

Slater, David, 'Post-Colonial Questions for Global Times' (1998) 5(4) *Review of International Political Economy* 647

Smith, Anthony D, 'The Nations: Invented, Imagined, Reconstructed?' (1991) 20(3) *Millennium - Journal of International Studies* 353

Sylvester, Christine, 'Post-colonialism' in John Baylis, Steve Smith and Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations* (New York: Oxford University Press, 2011) 182

Wibben, Annick, 'Who Do We Think We Are?' in Jenny Jenkins and Maja Zenfuss (eds), *Global Politics: A New Introduction* (Routledge, 2009) 70

Yang, Geng, Qixue Zhang, and Qi Wang, 'The Essence, Characteristics and Limitations of Post-Colonialism: From Karl Marx's Point of View' (2006) 1(2) *Frontiers of Philosophy in China* 279

A Multifactorial Model of Stroke and a Comparison of the Causality of Stroke in Indigenous and Non-Indigenous Australians

Shrikar Tummala

Abstract

Stroke is the leading cause of disability and the second leading cause of death in Australia. Stroke is defined as the death of an area of the brain due to a sudden interruption of blood flow to that area of the brain. The interruption of blood flow may be due to a blood clot or plaque (ischaemic stroke) in the artery or it may be due to bursting of the artery (haemorrhagic stroke). A stroke may lead to death or affect functions such as movement of body parts, vision and swallowing. Although the mortality rates due to stroke have declined in the last 20 years, the mortality rates in the Indigenous population are twice as high compared to non-Indigenous Australians. Though focus has been largely placed on the 'traditional' risk factors for stroke such as non-modifiable and biomedical risk factors and health behaviour, focus on other stroke risk factors such as socioeconomic and environmental factors has been emphasised. This paper discusses a multifactorial model which accounts for the interaction between stroke risk factors and the impact of these risk factors on the health of Indigenous and non-Indigenous Australians.

I Introduction

According to the National Stroke Foundation, stroke is the leading cause of disability in Australia.¹ The number of deaths due to stroke has decreased by 8.8% in the last ten years, however stroke was still the second leading cause of death in Australia in 2009.² Stroke is defined as the death of an area of the brain due to a sudden interruption of blood

¹ National Stroke Foundation, 'Facts, Figures and Statistics' (29 June 2011)

<<http://www.strokefoundation.com.au/facts-figures-and-stats>>.

² Australian Bureau of Statistics, 'Causes of Death' (03 May 2003)

<<http://abs.gov.au/ausstats/abs@.nsf/Products/B6940E9BF2695EE1CA25788400127B0A?opendocument>>.

flow through an artery that supplies that area of the brain. The interruption of blood flow may be due to a blood clot or plaque (ischaemic stroke) in the artery or it may be due to a bursting of the artery (haemorrhagic stroke). A stroke may lead to death or affect functions such as movement of body parts, vision, swallowing and communication, which subsequently disables patients.³

Stroke has a detrimental impact on the health of both Indigenous and non-Indigenous Australians. According to the Australian Bureau of Statistics, an Indigenous person is defined 'as a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives'.⁴

Despite the declining number of deaths due to stroke, the incidence of stroke is projected to increase each year due to the ageing Australian population.⁵ Of those that survive a stroke, most have some form of disability. Stroke also has a major impact on the health care system, costing an estimated \$2.14 billion a year.⁶

There have been a plethora of studies highlighting the poorer health, social and economic outcomes of Indigenous Australians compared to non-Indigenous Australians.⁷ The impact of stroke in Indigenous and non-Indigenous Australians is influenced by a variety of factors which include non-modifiable, biomedical, behavioural, socioeconomic and environmental factors. Stroke is therefore a result of multiple independent and interacting risk factors.

³ Susana Senes, 'How We Manage Stroke in Australia' (Cardiovascular Disease Series Number 24, Australian Institute of Health and Welfare, 2006).

⁴ What Works, 'Who Can Identify as an Indigenous Australian Person?' (01 September 01) <<http://www.whatworks.edu.au/dbAction.do?cmd=displaySitePage1&subcmd=select&id=369>>.

⁵ National Stroke Foundation, above n 1.

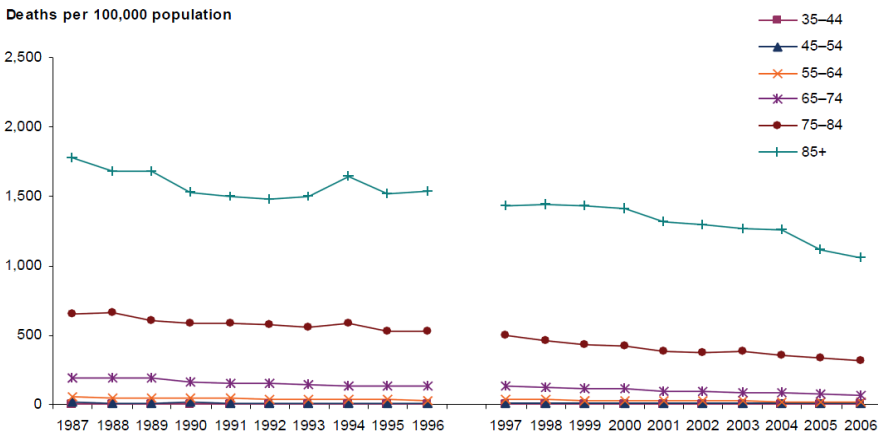
⁶ Ibid.

⁷ Judith M Katzenellenbogen et al, 'Burden of Stroke in Indigenous Western Australians : A Study Using Data Linkage' (2011) 42 *Stroke* 1515,1515.

II Patterns of Stroke in Indigenous and non-Indigenous Australians

Clear patterns in the Australian population regarding the impact of stroke have emerged. Between 1987 and 2006, the age-standardised death rate due to stroke declined in both men and women; however the rate of decline was greater in men.⁸ For both men and women, this decline appeared to be the greatest in the 85+ age group, as shown in *Figures 1* and *2*. These figures also show that for men and women, the number of deaths due to stroke increases markedly with age from about 75 years onwards, suggesting that stroke predominantly affects older Australians.⁹

Figure 1

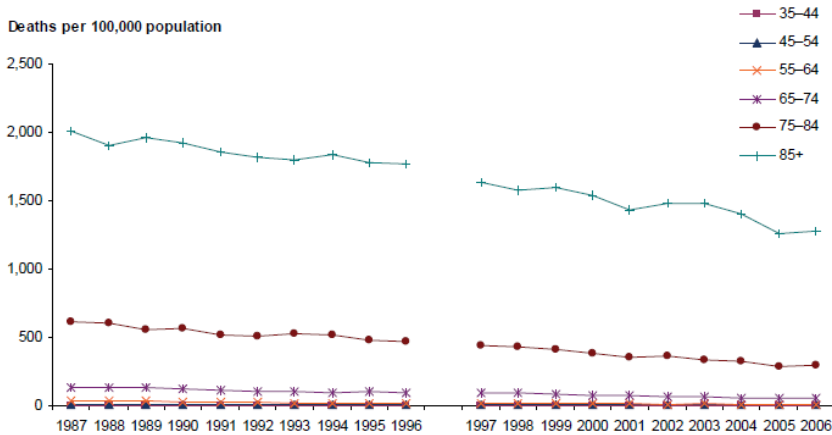


Trends in age-specific death rates from stroke in men, 1987-2006 (Reproduced from Australian Institute of Health and Welfare.¹⁰)

⁸ Australian Institute of Health and Welfare, ‘Cardiovascular Disease Mortality: Trends at Different Ages’ (AIHW Cardiovascular Series Number 31, Australian Institute of Health and Welfare, 2010).

⁹ Ibid.

¹⁰ Australian Institute of Health and Welfare, above n 8.

Figure 2

Trends in age-specific death rates from stroke in women, 1987-2006 (Reproduced from Australian Institute of Health and Welfare.¹¹)

Furthermore, in 2009, more women died due to stroke compared to men,¹² which is partly due to the larger number of elderly women in the population.¹³ Additionally, the median age of death due to stroke for women (87.3 years) was higher than men (82.7 years), suggesting that women on average were affected by stroke later in life.¹⁴

While the impact of stroke in Australians is well documented, information on the impact of stroke in Indigenous Australians is limited.¹⁵ However, the trend in the impact of stroke in the Indigenous population is alarmingly clear. The Indigenous to non-Indigenous age-standardized stroke incidence rate ratio was 2.6-fold in men and 3.0-fold

¹¹ Australian Institute of Health and Welfare, above n 8.

¹² Australian Bureau of Statistics, above n 2.

¹³ National Centre for Monitoring Cardiovascular Disease, 'Heart, Stroke and Vascular Diseases: Australian Facts 2004' (AIHW Cardiovascular Series Number 22, Australian Institute of Health and Welfare, 2004).

¹⁴ Australian Bureau of Statistics, above n 2.

¹⁵ Katzenellenbogen, above n 7, 1515.

in women.¹⁶ Furthermore, despite the declining mortality rates of stroke in Australia, the age standardised stroke mortality rates for Indigenous males and females were 2.4 and 2.2 times higher than for non-Indigenous males and females respectively.

Also, the median age of death due to stroke for Indigenous Australians was 68.3 years, compared with 85.6 years for non-Indigenous Australians,¹⁷ which suggests that Indigenous Australians are affected by stroke earlier in life than non-Indigenous Australians.¹⁸

III Burden of Stroke in Indigenous and non-Indigenous Australians

As the leading cause of disability in Australia,¹⁹ stroke poses a significant burden on patients, their families, the healthcare system and aged care services.²⁰ In 2003, around 146,400 Australians had a disability which was the result of their stroke. 50% of these survivors lived at home and needed assistance with health care, household chores, home maintenance, mobility and transport; and 25% needed help with self-care, cognitive or emotional tasks, meal preparation and paperwork.²¹ However, the burden of stroke in Indigenous Australians is a much greater concern.

In Indigenous people, the disability-adjusted life years were 3.2-fold higher than that of male non-Indigenous Australians and 2.8-fold higher than that of female non-Indigenous Australians, indicating that Indigenous Australians suffer a greater disability due to stroke.²² Furthermore, Indigenous Australians have a mortality rate for stroke which is twice as high as non-Indigenous Australians; however, this

¹⁶ Ibid 1515.

¹⁷ Australian Bureau of Statistics, above n 2.

¹⁸ Aboriginal Stroke Project Steering Committee, Commonwealth Parliament, *National Stroke Unit Program Aboriginal Stroke Report* (2004).

¹⁹ National Stroke Foundation, above n 1.

²⁰ Senes, above n 3.

²¹ Ibid.

²² Katzenellenbogen, above n 7, 1520.

ratio increases to six to eight times for Indigenous Australians in the 25–64 year age group.²³

III Important Risk Factors for Stroke, a Multifactorial Model of the Interaction between Stroke Risk Factors and a Comparison of the Causality of Stroke in Indigenous and non-Indigenous Australians

Stroke requires a multifactorial model in order to understand the relationship between stroke risk factors. The National Stroke Foundation identified old age, being male, and having a family history of stroke as non-modifiable risk factors for stroke, while a personal history of transient ischaemic attack (TIA), hypertension, cigarette smoking, hyperlipidaemia, poor diet, lack of exercise, obesity, diabetes and risky levels of alcohol consumption were identified as modifiable risk factors for stroke.²⁴

Indigenous Australians have been shown to experience a greater prevalence of stroke risk factors such as hypertension, type 2 diabetes, obesity and cigarette smoking compared to non-Indigenous Australians.²⁵ The greater the prevalence of stroke risk factors, the more likely the occurrence of stroke. This serves to partially explain the relatively high incidence, mortality and burden of stroke in Indigenous Australians.

A conference which discussed cardiovascular health in Indigenous Australians highlighted that besides the ‘traditional’ stroke risk factors, there needed to be more emphasis on other risk factors for stroke such as low socioeconomic status, poor education and environmental

²³ National Centre for Monitoring Cardiovascular Disease, ‘Heart, Stroke and Vascular Diseases: Australian Facts 2001’ (AIHW Cardiovascular Series Number 13, Australian Institute of Health and Welfare, 2001).

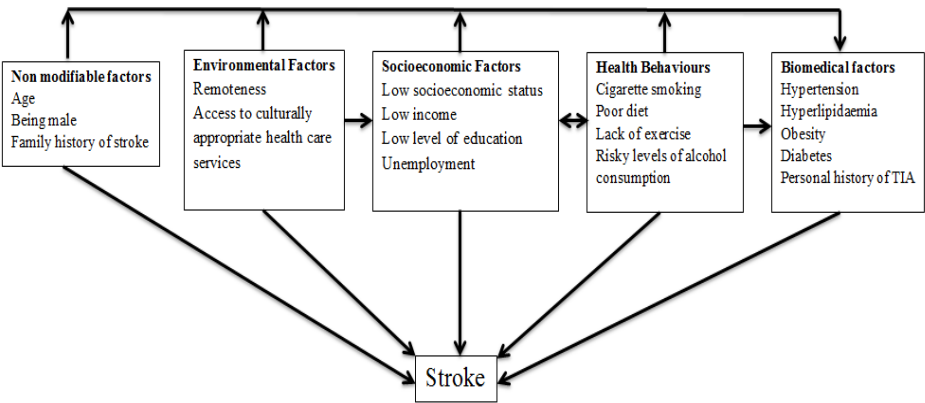
²⁴ National Stroke Foundation, ‘Risk Factors’ (9 June 2011).

<<http://www.strokefoundation.com.au/stroke-risk-factors-general-information>>.

²⁵ Amanda G Thrift, Dominique A Cadilhac and Sandra Eades, ‘Excess Risk of Stroke in Australia’s Aboriginal and Torres Strait Islander Populations’ (2011) 42 *Stroke* 1501, 1501.

factors.²⁶ Figure 3 shows that these factors also contribute to the health status of Indigenous Australians and so they must also be considered along with the ‘traditional’ risk factors for stroke in order to develop a greater understanding of the factors which affect Indigenous health.

Figure 3



A multifactorial model accounting for the interaction between non-modifiable, environmental, socioeconomic, behavioural and biomedical factors and the impact of these on the development of stroke.

Regarding the non-modifiable risk factors for stroke, increasing age increases the incidence of stroke. For each successive 10 years after the age of 55, the stroke rate more than doubles in both men and women.²⁷ Increased age also worsens the effects of other risk factors such as smoking, hyperlipidaemia, diabetes and hypertension.²⁸ Men have a stroke incidence rate that is 1.25 times greater than women; however, women have a higher mortality rate due to stroke since women tend to live longer than men.²⁹ In Indigenous Australians, the mortality rates due to stroke are greater among all age categories compared with non-

²⁶ Warren F Walsh, ‘Cardiovascular health in Indigenous Australians: a Call for Action’ (2001) 175(7) *Medical Journal of Australia* 351.
²⁷ Ralph L Sacco et al, ‘Risk Factors’ (1997) 28 *Stroke* 1507.
²⁸ National Stroke Foundation, above n 24.
²⁹ Sacco et al, above n 27.

Indigenous Australians.³⁰ Furthermore, Indigenous men have a higher mortality rate than women.³¹ A family history of stroke increases the risk of stroke in both men and women.³²

IV Biomedical Factors

There are many biomedical risk factors which increase the risk of stroke. Hypertension, hyperlipidaemia and obesity have all been shown to increase the risk of stroke.³³ Obesity is associated with hypertension, type 2 diabetes and hyperlipidaemia.³⁴ In comparison to non-Indigenous Australians, the prevalence of hypertension, hyperlipidaemia and obesity is higher in the Indigenous population.³⁵

Diabetes also increases the risk of stroke, as it accelerates atherogenesis and enhances thrombosis, making cerebral arteries more prone to occlusion.³⁶ Furthermore, diabetic patients have an increased risk of acquiring other stroke risk factors, notably hypertension, obesity and hyperlipidaemia.³⁷ In Indigenous Australians, the prevalence of diabetes is 3.4 times higher compared to non-Indigenous Australians.³⁸

The occurrence of a TIA indicates that a person is at a greater risk of having a major stroke.³⁹ Both stroke and TIA were responsible for 4% of

³⁰ National Centre for Monitoring Cardiovascular Disease, above n 23.

³¹ Katzenellenbogen, above n 7, 1520.

³² Sacco et al, above n 27.

³³ Ibid.

³⁴ National Stroke Foundation, above n 24.

³⁵ Zaimin Wang et al, 'Blood Pressure and Hypertension for Australian Aboriginal and Torres Strait Islander People' (2006) 13(3) *European Journal of Preventive Cardiology* 438,438; D N O'Neal, 'Australian Aboriginal People and Torres Strait Islanders have an Atherogenic Lipid Profile that is Characterised by Low HDL-cholesterol Level and Small LDL Particles' (2008) 201 *Atherosclerosis* 368; J Burns and N Thomson, 'Summary of Overweight and Obesity among Indigenous People' (22 December 2008) Australian Indigenous HealthInfoNet.

³⁶ Sacco et al, above n 27.

³⁷ Ibid.

³⁸ Australian Indigenous HealthInfoNet, 'Review of diabetes among Indigenous Peoples' (17 December 2008) <<http://www.healthinonet.ecu.edu.au/chronic-conditions/diabetes/reviews/our-review>>.

³⁹ National Stroke Foundation, above n 24.

the mortality gap between Indigenous and non-Indigenous Australians.⁴⁰

V Health Behaviours

Particular health behaviours also increase the risk of stroke. Of these health behaviours, cigarette smoking, poor diet, lack of exercise and risky levels of alcohol consumption are all cited as important determinants of the risk of stroke.⁴¹ Cigarette smoking increases the risk of atherosclerosis, hypertension and stroke,⁴² while a lack of exercise and a poor diet increase the risk of hypertension, hyperlipidaemia and diabetes, all of which increase the risk of stroke.⁴³ Regarding the consumption of alcohol, high levels of alcohol consumption are a risk factor for stroke.⁴⁴ Poor health behaviours can also worsen socioeconomic factors, which increase the risk of stroke.

The prevalence of these risky health behaviours in Indigenous Australians is a major concern. Indigenous Australians aged eighteen years and over are approximately twice as likely to smoke as non-Indigenous Australians.⁴⁵ Furthermore, their average diet is high in fat, sugar and salt, and low in nutritional value and they are more likely to be physically inactive than non-Indigenous Australians.⁴⁶ Indigenous Australians are more than twice as likely to smoke as non-Indigenous Australians; their average diet is high in fat, sugar and salt, and low in

⁴⁰ Australian Institute of Health and Welfare, 'Contribution of Chronic Disease to the Gap in Adult Mortality between Aboriginal and Torres Strait Islander and other Australians' (AIHW Australian Institute of Health and Welfare, 2011).

⁴¹ National Stroke Foundation, above n 24; Sacco, above n 27.

⁴² Sacco et al, above n 27.

⁴³ National Stroke Foundation, above n 24.

⁴⁴ Kristi Reynolds et al, 'Alcohol Consumption and Risk of Stroke: A Meta-analysis' (2003) 289(5) *The Journal of the American Medical Association* 579.

⁴⁵ National Centre for Monitoring Cardiovascular Disease, above n 23.

⁴⁶ Better Health Channel, 'Aboriginal Diet and Nutrition' (2012)

<[http://www.betterhealth.vic.gov.au/bhcv2/bhcvpdf.nsf/ByPDF/Aboriginal_diet_and_nutrition/\\$File/Aboriginal_diet_and_nutrition.pdf](http://www.betterhealth.vic.gov.au/bhcv2/bhcvpdf.nsf/ByPDF/Aboriginal_diet_and_nutrition/$File/Aboriginal_diet_and_nutrition.pdf)>.

nutritional value, and they are more likely to be physically inactive than non-Indigenous Australians.⁴⁷

Furthermore, 8% of Indigenous Australians were considered to have a high alcohol risk level compared with 3% among non-Indigenous Australians.⁴⁸

VI Socioeconomic Factors

Socioeconomic factors represent a part of the stroke multifactorial model that is particularly difficult to address. Socioeconomic factors include a low socioeconomic status, low income, low levels of education and unemployment. These factors are associated with increased smoking, consumption of alcohol at risky levels, low levels of exercise and reduced daily intake of fruit and vegetables.⁴⁹ In relation to stroke, low socioeconomic groups have been shown to have higher rates of incidence and mortality, lower chances of survival following a stroke and greater stroke severity compared to high socioeconomic groups.⁵⁰

Indigenous Australians have been shown to have lower levels of socioeconomic status.⁵¹ They are also 2.5 times as likely to be in the lowest income group and 4 times less likely to be in the top income group compared to non-Indigenous Australians.⁵² With regards to education, a smaller portion (38%) of Indigenous students continued to

⁴⁷ National Centre for Monitoring Cardiovascular Disease, above n 23.

⁴⁸ Ibid.

⁴⁹ Australian Bureau of Statistics, 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples' (29 October 2010) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/78C7BB6D94C5837BCA2574390014BA02?opendocument>>.

⁵⁰ Anna M Cox et al, 'Socioeconomic Status and Stroke' (2006) 5 *The Lancet Neurology* 181.

⁵¹ Australian Institute of Health and Welfare, 'Socio-economic Context of Indigenous Health' (23 September 2003) <<http://www.aihw.gov.au/socio-economic-context-of-indigenous-health/>>; Australian Human Rights Commission, Commonwealth Parliament, *Face the Facts* (2008).

⁵² Australian Bureau of Statistics, 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples' (29 October 2010) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/78C7BB6D94C5837BCA2574390014BA02?opendocument>>.

Year 12 compared with non-Indigenous students (76%), furthermore, only 6% of indigenous people were attending university in 2006, compared to 25% of non-Indigenous people.⁵³ Indigenous Australians (16%) also experience a greater rate of unemployment compared to non-Indigenous Australians (5%).⁵⁴

VII Environmental Factors

Environmental factors such as remoteness and access to culturally appropriate health care services impair people's ability to seek preventative and ongoing care for stroke and also for chronic risk factors such as type 2 diabetes and hypertension. Environmental factors appear to have more of an impact on Indigenous health as 26% of Indigenous Australians live in remote or very remote areas of Australia compared to only 2% of non-Indigenous Australians.⁵⁵ Furthermore, 50% of Indigenous Australians are located more than 25km from the nearest community health centre and they are 3 times as likely to have transport difficulties compared to non-Indigenous Australians.⁵⁶ In addition, access to culturally appropriate health services is poorer in Indigenous peoples.⁵⁷ This restricts the ability of Indigenous Australians to access health care and it serves as an explanation for late presentations to hospital following a stroke, deficiencies in the management of stroke risk factors and inadequate follow-up following the treatment of stroke.⁵⁸

VIII Conclusion

Despite the decline in the mortality rates due to stroke, it is still the leading cause of disability and the second leading cause of death in Australia. However, the impact of stroke is greater in Indigenous

⁵³ Australian Human Rights Commission, above n 51.

⁵⁴ Ibid.

⁵⁵ Australian Institute of Health and Welfare, 'Access to Health Services' (03 September 2011)

<<http://www.aihw.gov.au/access-to-health-services-indigenous/>>.

⁵⁶ Ibid.

⁵⁷ Thrift, Cadilhac and Eades, above n 25, 1501-1502.

⁵⁸ Ibid 1502.

Australians as they experience a mortality rate that is roughly twice that of non-Indigenous Australians. Though focus has been largely placed on the 'traditional' risk factors for stroke such as non-modifiable and biomedical risk factors and health behaviour, focus on other stroke risk factors such as socioeconomic and environmental factors have been emphasised. This stresses the need for a model of the multifactorial causation of stroke in order to understand the interaction between the risk factors which determine the impact of stroke in Australians. The risk factors highlighted in this model must be considered by health professionals and politicians wishing to direct interventions in order to reduce the impact of stroke, particularly in Indigenous Australians.

Acknowledgements

I would like to thank my lecturer and tutor Dr Indira Samarawickrema for her guidance and feedback. I would also like to thank my family for their endless love and support and without whom I would not have made it this far.

References

Aboriginal Stroke Project Steering Committee, Commonwealth Parliament, *National Stroke Unit Program Aboriginal Stroke Report* (2004)

Australian Indigenous HealthInfoNet, 'Review of Diabetes among Indigenous Peoples' (17 December 2008)
<<http://www.healthinfonet.ecu.edu.au/chronic-conditions/diabetes/reviews/our-review>>

Australian Institute of Health and Welfare, 'Contribution of Chronic Disease to the Gap in Adult Mortality between Aboriginal and Torres Strait Islander and other Australians.' (AIHW Australian Institute of Health and Welfare, 2011)

Australian Bureau of Statistics, 'Causes of Death' (03 May 2003)
<<http://abs.gov.au/ausstats/abs@.nsf/Products/B6940E9BF2695EE1CA25788400127B0A?opendocument>>

Australian Bureau of Statistics, 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples' (29 October 2010)
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/78C7BB6D94C5837BCA2574390014BA02?opendocument>>

Australian Human Rights Commission, Commonwealth Parliament, *Face the Facts* (2008)

Australian Institute of Health and Welfare, 'Access to Health Services' (03 September 2011) <<http://www.aihw.gov.au/access-to-health-services-indigenous/>>

Australian Institute of Health and Welfare, 'Cardiovascular Disease Mortality: Trends at Different Ages' (AIHW Cardiovascular Series Number 31, Australian Institute of Health and Welfare, 2010)

Australian Institute of Health and Welfare, 'Socio-economic Context of Indigenous Health' (23 September 2003)

<<http://www.aihw.gov.au/socio-economic-context-of-indigenous-health/>>

Better Health Channel, 'Aboriginal Diet and Nutrition' (2012)

<[http://www.betterhealth.vic.gov.au/bhcv2/bhcv2/bhcv2/pdf/ByPDF/Aboriginal_diet_and_nutrition/\\$File/Aboriginal_diet_and_nutrition.pdf](http://www.betterhealth.vic.gov.au/bhcv2/bhcv2/bhcv2/pdf/ByPDF/Aboriginal_diet_and_nutrition/$File/Aboriginal_diet_and_nutrition.pdf)>

Burns, J and N Thomson, 'Summary of Overweight and Obesity among Indigenous Peoples' (22 December 2008) Australian Indigenous HealthInfoNet <<http://www.healthinfonet.ecu.edu.au/chronic-conditions/diabetes/reviews/our-review>>

Cox, Anna M et al, 'Socioeconomic Status and Stroke' (2006) 5 *The Lancet Neurology* 181

Katzenellenbogen, Judith M, et al, 'Burden of Stroke in Indigenous Western Australians: A Study Using Data Linkage' (2011) 42 *Stroke* 1515

National Centre for Monitoring Cardiovascular Disease, 'Heart, Stroke and Vascular Diseases: Australian Facts 2001' (AIHW Cardiovascular Series Number 14, Australian Institute of Health and Welfare, 2001)

National Centre for Monitoring Cardiovascular Disease, 'Heart, Stroke and Vascular diseases: Australian Facts 2004' (AIHW Cardiovascular Series Number 22, Australian Institute of Health and Welfare, 2004)

National Stroke Foundation, 'Facts, Figures and Statistics' (29 June 2011) <<http://www.strokefoundation.com.au/facts-figures-and-stats>>

National Stroke Foundation, 'Risk Factors' (9 June 2011)

<<http://www.strokefoundation.com.au/stroke-risk-factors-general-information>>

O'Neal, D N, 'Australian Aboriginal People and Torres Strait Islanders have an Atherogenic Lipid Profile that is Characterised by Low HDL-cholesterol Level and Small LDL Particles' (2008) 201 *Atherosclerosis* 368

Reynolds, Kristi, 'Alcohol Consumption and Risk of Stroke: A Meta-Analysis' (2003) 289(5) *The Journal of the American Medical Association* 579

Sacco, Ralph L et al, 'Risk Factors' (1997) 28 *Stroke* 1507

Senes, Susana, 'How We Manage Stroke in Australia' (Cardiovascular Disease Series Number 24, Australian Institute of Health and Welfare, 2006)

Thrift, Amanda G and Dominique A Cadilhac and Sandra Eades, 'Excess Risk of Stroke in Australia's Aboriginal and Torres Strait Islander Populations' (2011) 42 *Stroke* 1501

Walsh Warren F, 'Cardiovascular Health in Indigenous Australians: a Call for Action' (2001) 175(7) *Medical Journal of Australia* 351

Wang, Zaimin et al, 'Blood Pressure and Hypertension for Australian Aboriginal and Torres Strait Islander People' (2006) 13(3) *European Journal of Preventive Cardiology* 438

What Works, 'Who can Identify as an Indigenous Australian Person? ' (01 September 01)

<<http://www.whatworks.edu.au/dbAction.do?cmd=displaySitePage1&subcmd=select&id=369>>

Julio Cortázar's 'La Autopista del Sur': a Critical Comparison of Suzanne Jill Levine's English Translation with the Original

Matthew Callaghan

This essay will examine and critique the translation 'The Southern Thruway' by Suzanne Jill Levine¹ of Julio Cortázar's short story 'La Autopista del Sur', from his collection *Todos Los Fuegos el Fuego*² (translated by Levine as *All Fires the Fire*). It will argue that its defining features are a strong tendency towards 'domestication' of the source text in the translation, contrasted with a literal method of translation; and that the effect of these is such that much of the complexity and eloquence of the source text becomes lost.

Laurence Venuti laments a trend in modern Anglo-cultural translation towards fluency and transparency, which 'continues to be an invisible practice'.³ He claims that a 'translated text is judged successful ... when it reads fluently, when it gives the appearance that it is not translated, that it is the original, transparently reflecting the foreign author's personality or intention or the essential meaning of the foreign text'.⁴ Although this translation does not perfectly exemplify his claim, the predominance of Anglo and, in particular, Anglo-American culture imbues much of it, evident even in the selection of the title itself. Given a number of different translation choices available for the word '*autopista*', (highway, motorway etc.), she adopts the very American term 'thruway', word seldom heard in most other English speaking countries. Indeed 'thruway' is defined in the Oxford English Dictionary as 'noun N. Amer.: a major road or motorway'⁵ (coincidentally

¹ Julio Cortázar, *The Southern Thruway* (Suzanne Jill Levine trans, Random House, 1973) [trans of *La Autopista del Sur* (first published 1973)].

² Julio Cortázar, 'La Autopista del Sur' in Julio Cortázar, *Todos los Fuegos el Fuego* (Editorial Norma 1991) 9.

³ Lawrence Venuti, 'Introduction' in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge, 1992) 1, 1.

⁴ Ibid 4.

⁵ *The Oxford Dictionary of English* (Oxford University Press, 2nd revised ed, 2005).

motorway would be the most literal rendition: *auto* = motor; *pista* = way).⁶

According to Venuti, such a 'fluent strategy performs a labor [sic] of acculturation which domesticates the foreign text, making it intelligible and even familiar to the target-language reader, providing him or her with the narcissistic experience of recognizing his or her culture in a cultural other'.⁷ This 'narcissistic experience' is seen in the translation of the metric system into imperial units, of which in this short story, there are many examples. On the first page, '*avanzar tres metros*'⁸ becomes 'move three **yards**',⁹ and throughout the story, '*calientes kilometros*'¹⁰ become 'hot miles'¹¹ and so on. This is particularly telling given the rest of the English-speaking world's conversion to metric units.¹² A simple but effective way of maintaining the sense of 'foreignness' of the text, especially for American readers, would have been to maintain the metric units of the original –after all set in France.

By itself, this would perhaps not be compelling evidence, but when combined with references to such American terms as 'traffic cop'¹³ for '*gendarme*',¹⁴ 'pastries'¹⁵ for '*bizcochos*',¹⁶ 'appointments book'¹⁷ for

⁶ At a recent Latin American reading group event at ANU analyzing this short story, it was suggested that this choice may have been an attempt by the translator to represent the transience which is a potential theme in the short story, as the characters, and human beings in general are merely 'passing through'. Even if this is the case, this is an element not present in the original text.

⁷ Venuti, above n 3, 5.

⁸ Cortázar, 'La Autopista del Sur', above n 2, 9 (emphasis added).

⁹ Cortázar, *The Southern Thruway*, above n 1, 3 (emphasis added).

¹⁰ Cortázar, 'La Autopista del Sur', above n 2, 12.

¹¹ Cortázar, *The Southern Thruway*, above n 1, 6.

¹² Although admittedly, perhaps somewhat unfair, as this conversion took place well after the publication of this translation.

¹³ Cortázar, *The Southern Thruway*, above n 1, 8.

¹⁴ Cortázar, 'La Autopista del Sur', above n 2, 14

¹⁵ Cortázar, *The Southern Thruway*, above n 1, 9.

¹⁶ Cortázar, 'La Autopista del Sur', above n 2, 16.

¹⁷ Cortázar, *The Southern Thruway*, above n 1, 10.

'agenda',¹⁸ 'brandy'¹⁹ for 'aguardiente'²⁰ and phrases like 'move up along',²¹ amongst others, a clear picture of 'acculturation' emerges.

As well as illustrating the American-ness of this translation, these examples betray an additional level of what Venuti calls the 'ethnocentric violence of Translation'.²² 'La Autopista del Sur' is inherently 'exotic'. It is written in Spanish by an Argentine who lived and wrote in France for much of his life (and became a citizen and was buried there). It is set in the countryside outside Paris, yet contains many aspects of Argentine and Latin American culture. The story is not limited to a single linguistic and cultural background, but contains elements foreign to an average Spanish-speaking reader, and not common to French culture.

For example, before the story begins, there is a short quotation attributed to Arrigo Benedetti which appears in the English as '[s]weltering motorists do not seem to have a history... as a reality a traffic jam is impressive, but it doesn't say much'.²³ This would seem appropriate to the theme of the story and readers of the English translation would not notice, unless they were to look at the original text (not the case for the majority of the 'consumers' of this translation), that it is somewhat different: '*Gli automobilisti accaldati sembrano non avere storia... Come realtà, un ingorgo automobilistico impressiona ma non ci dice gran che*'. This is not Spanish, but Italian; nonetheless it appears in English in the target text, with no hint that it has been translated from a *third* language.

While this may seem of minimal importance to the common reader, whom Venuti would describe as 'aggressively monolingual and culturally parochial',²⁴ this is precisely the point. In the Spanish, the

¹⁸ Cortázar, 'La Autopista del Sur', above n 2, 16.

¹⁹ Cortázar, *The Southern Thruway*, above n 1, 15.

²⁰ Cortázar, 'La Autopista del Sur', above n 2, 21.

²¹ Cortázar, *The Southern Thruway*, above n 1, 4.

²² Jeremy Munday, *Introducing Translation Studies: Theories and Applications* (Routledge, 2nd ed, 2008) 191.

²³ Cortázar, *The Southern Thruway*, above n 1, 3.

²⁴ Venuti, above n 3, 6.

Italian *is* foreign and Spanish speakers, especially lesser-educated ones, would not intuitively understand Italian. In English it is simply portrayed as being English, and thus this important element of foreignness in the source text is simply omitted from the target text.

This is further illustrated by the presence of the American ‘tourist from Washington D.C. who barely understood French,’ who speaks English in the original. The fact that he barely spoke French implies that the other characters communicate in French, bringing a *fourth* language into the mix. His words ‘you understand, my wife will be awfully anxious, damn it’,²⁵ are the same in source and target texts, the only difference being the italics in the former. This subtle difference indicates what is foreign in the source text but becomes simply another line (perhaps the only line of direct speech in the whole text) in the translation. As in the case of the Italian, Spanish readers would not necessarily understand English; even if they did, it would nonetheless be foreign to them in a way that it is not to the reader of the translation.

The engineer ‘mockingly called’ his 404 by a new name once it becomes a place to sleep. The term ‘sleeping car’ which Levine decides to use in her translation²⁶ is the direct English equivalent of the ‘*wagon-lit*’ of the original.²⁷ They both refer to a dedicated (railway) carriage for sleeping, but again Levine fails in her English translation to acknowledge that ‘*wagon lit*’ is a French term,²⁸ itself foreign in the Spanish, and not necessarily familiar to the reader. Furthermore, the French term appears in the Oxford English Dictionary defined as ‘a sleeping car on a continental railway’, from French ‘*wagon* “railway coach” + *lit* “bed”’,²⁹ perhaps negating the need for translating the term in the first place.³⁰ Equally, ‘*bizcochos*’ and ‘*aguardiente*’ are peculiarly Hispanic terms (despite having differing meanings across different Spanish-speaking

²⁵ Cortázar, *The Southern Thruway*, above n 1, 7; Cortázar, ‘La Autopista del Sur’, above n 2, 13.

²⁶ Cortázar, *The Southern Thruway*, above n 1, 15.

²⁷ Cortázar, ‘La Autopista del Sur’, above n 2, 21.

²⁸ *The Oxford-Hachette French Dictionary* (Oxford University press, 4th ed, 2007).

²⁹ *The Oxford Dictionary of English*, above n 5.

³⁰ Indeed it is used In English, in the same way as something like *hors d'oeuvres* has been adopted.

societies), which seem out of place, and better suited to an *autopista* on the outskirts of Buenos Aires. By rendering them as ‘pastries’ and ‘brandy’ respectively, they become generic English language equivalents which do not possess the third or even the second language dimensions present in the source text. Instead of French people consuming, say, Argentine products they become French people consuming American products and the Hispanic element is lost completely.³¹ In Schleiermacher’s terms, the author has been brought so far in the direction of the reader that he has ceased to be Argentine, and is writing as he would have written as an American ‘born and bred’.³²

At the same time as ‘domesticating’ the source text, Levine has also followed a fairly literal translation method which results in some awkward phrasing in the translation. For example, as ‘the August heat [that] mingled with the tire-level temperature’,³³ which is much more effective in the source text: ‘*El calor de agosto se sumaba a ras de neumáticos*’.³⁴ The description of the sleeping girl in the Dauphine also loses much of its sensuality in translation, as the engineer ‘amused himself by watching her shadow’.³⁵ In the original ‘*se divirtió explorando en la sombra su perfil*’,³⁶ at once more sensual and less invasive. ‘The curve of her slightly puckered lips’, doesn’t quite capture ‘*la curva de los labios que soplaban suavemente*’ either. Words such as ‘later’ and ‘decided’ are used repeatedly where English synonyms are less common than in Spanish, breaking the common English convention which shuns repetition.

Although an essay by Suzanne Jill Levine appears in the aptly named ‘Rethinking Translation’, a collection edited by Venuti, which ‘proposes an intervention designed...to make translation visible’, this translation

³¹ Bizarrely, a reference to Coca Cola in the Spanish (Cortázar ‘La Autopista del Sur’, above n 2, 15) is completely absent from the translation.

³² Friedrich Schleiermacher, ‘On the Different Methods of Translating’ (Douglas Robinson trans, 2002) [trans of *Ueber die Verschiedenen Methoden des Uebersetzens* (first published 1813)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 225, 229b.

³³ Cortázar, *The Southern Thruway*, above n 1, 4.

³⁴ Cortázar, ‘La Autopista del Sur’, above n 2, 10.

³⁵ Cortázar, *The Southern Thruway*, above n 1, 11.

³⁶ Cortázar, ‘La Autopista del Sur’, above n 2, 17.

does not seem to follow the same line. While it may read well – and in most cases does, even reproducing with relative success the tempo and long sentence structure of the original³⁷ – the target text is so impoverished when compared to the complexity of the source text that it is barely recognisable.

In her essay in that collection,³⁸ Levine calls herself the ‘faithfully unfaithful translator’,³⁹ positing that ‘[b]ecause of what is lost and can be gained in crossing the language barrier, because of the inevitable rereading that occurs in transposing a text from one context to another, a translation must subvert the original’.⁴⁰ She would seem to be an exponent of what Philip Lewis calls ‘abusive fidelity’,⁴¹ and illustrates some of the ways she goes about it in this essay. Venuti praises ‘resistant strategies’ such as those she utilises for translating the Cuban writer Cabrera Infante which ‘can help to preserve the linguistic and cultural difference of the foreign text by producing translations that are strange and estranging, which mark the limits of dominant values in the target-language culture and hinder those values from enacting an imperialistic domestication of a cultural other’.⁴² However, in this case the translation preserves little of the ‘foreign’ in the source text, and is neither strange nor estranging, except for the (arguably intentional) awkwardness of some of the phrasing. Here she fails to meet (at least) Tytler’s third principle of translation, ‘that the original should have all the ease of original composition’;⁴³ and to take heed of Scheiermacher’s

³⁷ A topic for an essay in itself.

³⁸ Suzanne Jill Levine, ‘Translation as (Sub)version: on Translating “Infante’s Inferno”’ in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge 1992) 75, 75.

³⁹ Ibid 75.

⁴⁰ Ibid 83.

⁴¹ Lawrence Venuti, ‘I. U. Tarchetti’s Politics of Translation; Or, a Plagiarism of Mary Shelley’ in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge, 1992) 19, 224.

⁴² Venuti, above n 3, 13.

⁴³ Alexander Fraser Tytler, ‘The Proper Task of a Translator’ [from *Essay on the Principles of Translation* (first published 1791)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 208, 209b.

warning not to mix his two methods of translation⁴⁴ ‘as that would increase the likelihood that the writer and the reader would miss each other entirely’.⁴⁵ It seems here that this is precisely what has happened.⁴⁶ She neither brings the author all the way towards the reader (domestication), nor brings the reader fully over to the author (foreignisation); as a result they never quite find one another.

Levine seems to be torn between two approaches and has produced a text which does not work especially well. It often reads awkwardly (like a translation), despite obviously having been produced with a monolingual Anglo-American publisher and audience in mind. As this essay shows, she has actively pursued a policy of domestication, and repeatedly misses opportunities to maintain the sense of ‘the foreign’ in the original, but yet has not truly succeeded in producing a text that feels like an English text. It does not read like the Spanish but neither does it feel English. It sits in an awkward limbo that does not represent the original work, either in its foreignness or in the eloquence of the author. If it is to be seen, using the translator’s words, as ‘a version more than a translation or – as all translations are – another book’,⁴⁷ then surely it is an inferior one.

⁴⁴ ‘I believe there are only two [paths]. The translator either (1) disturbs the writer as little as possible and moves the writer in his direction, or (2) disturbs the reader as little as possible and moves the writer in his direction’ (Schleiermacher, Friedrich, ‘On the Different Methods of Translating’ (Douglas Robinson trans, 2002) [trans of *Ueber die Verschiedenen Methoden des Uebersetzens* (first published 1813)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 225, 229a).

⁴⁵ Friedrich Schleiermacher, ‘On the Different Methods of Translating’ (Douglas Robinson trans, 2002) [trans of *Ueber die Verschiedenen Methoden des Uebersetzens* (first published 1813)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 225, 229a-b.

⁴⁶ Early in her career, perhaps she had not quite mastered her art. This translation was published for the first time in 1973, a mere seven years after the publication of Cortázar’s original. Her essay on ‘Cabrera Infante’ was reprinted in *Rethinking Translation* in 1992, but was originally published in 1983 by the University of Wisconsin Press, 10 years after her translation of *Todos los Fuegos el Fuego*.

⁴⁷ Cortázar, *The Southern Thruway*, above n 1, 75.

Acknowledgements

The author would like to thank Dr Kevin Windle for his ongoing support, guidance and time during the editing of this paper; Jeremy Callaghan for his proof-reading prowess; and Bruce Hall for this opportunity and for providing an environment conducive to such endeavours.

References

Cortázar, Julio, 'La Autopista del Sur' in Julio Cortázar, *Todos los Fuegos el Fuego* (Editorial Norma 1991) 9

Cortázar, Julio, *The Southern Thruway* (Suzanne Jill Levine trans, Random House, 1973) [trans of *La Autopista del Sur* (first published 1973)]

Levine, Suzanne Jill, 'Translation as (Sub)version: on Translating "Infante's Inferno"' in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge 1992) 75

Munday, Jeremy, *Introducing Translation Studies: Theories and Applications* (Routledge, 2nd ed, 2008)

The Oxford Dictionary of English (Oxford University Press, 2nd revised ed, 2005)

The Oxford-Hachette French Dictionary (Oxford University press, 4th ed, 2007)

Schleiermacher, Friedrich, 'On the Different Methods of Translating' (Douglas Robinson trans, 2002) [trans of *Ueber die Verschiedenen Methoden des Uebersetzens* (first published 1813)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 225

Tytler, Alexander Fraser, 'The Proper Task of a Translator' [from *Essay on the Principles of Translation* (first published 1791)] in Douglas Robinson (ed), *Western Translation Theory: From Herodotus to Nietzsche* (St Jerome, 2002) 208

Venuti, Lawrence, 'Introduction' in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge, 1992) 1

Venuti, Lawrence, 'I. U. Tarchetti's Politics of Translation; Or, a Plagiarism of Mary Shelley' in Lawrence Venuti (ed), *Rethinking Translation: Discourse, Subjectivity, Ideology* (Routledge, 1992) 19

Causes of Preventable Death Amongst Ethnic Minorities in Eastern Myanmar

Jessica Avalon

For decades, the people of eastern Myanmar have experienced high levels of preventable and premature death. Since 1948, the Karen, Karenni and Shan ethnic groups of eastern Myanmar have experienced ongoing internal conflict between ethnically based insurgencies and the national military. Trauma, hardship and abuse have motivated minority populations in armed guerrilla warfare, which has traditionally centred on demands for increased autonomy or independence.¹ Widespread human rights abuses have undoubtedly been perpetrated by both government (*tatmadaw*) and insurgency forces, though it is widely agreed that *tatmadaw* forces are responsible for the bulk of such actions.²

In the past year, ceasefires between the government and the Karen National Union, the Karenni National Progressive Party, and Shan State Army-South and -North have been signed, which alongside positive national government reform, has buoyed hopes for change.³ The impact being felt within eastern Myanmar is uncertain, and questions remain as to whether the government and ethnic armed groups can move from unstable truce, to true conflict resolution processes.

Statistics and reports cited herein are often regrettably dated and often derived from non-comprehensive surveys of fluid conditions. Limited data is an outcome of difficulties faced in accurately surveying

¹ Interview with young (Karen) refugees (Mae La Camp, 7 July 2011).

² Martin Smith, *Ethnic Groups in Burma: Development, Democracy and Human Rights* (Anti-Slavery International, 1994), 72; Kavita Shukla, 'The International Community's Responsibility to Protect' (April 2008) 30 *Forced Migration Review* 7, 7-9.

³ Saw Yan Naing, 'Burmese Army Breaches Karen Ceasefire', *The Irrawaddy* (online), March 21 2012 <<http://www.irrawaddy.org/archives/912>>; Lawi Weng, 'SSA-South Accuses Govt of Risking War', *The Irrawaddy* (online), June 18 2012 <<http://www.irrawaddy.org/archives/7082>>; Renaud Egretreau, 'Assessing recent ethnic peace talks in Myanmar' (2012) 13(3) *Asian Ethnicity* 311, 311-313; '23rd Clash After Ceasefire Pact', *Shan Herald Agency for News* (online), 20 July 2012 <http://www.shanland.org/index.php?option=com_content&view=article&id=4816:23rd-clash-after-ceasefire-pact&catid=86:war&Itemid=284>.

populations within conflict-affected and infrastructure-poor areas. Data may also be moulded to suit a particular agenda. Governmental bodies have strong incentives for overstating the rate of change to spur increased direct foreign trade and investment. Conversely, NGOs working from the Thai-Myanmar border may be inclined to understate developments in order to preserve dwindling financial revenues diminished by the re-direction of aid to expanding NGO projects within Myanmar.⁴

Accounts of refugees, journalists, NGO workers and Thai officials on the Thai-Myanmar border indicate that the chronic humanitarian crisis persists.⁵ This is likely a consequence of the extremity and longevity of conflict and neglect. Even if we assume national-level reform is sincere, it will take time for government policy and infrastructure to be developed, and for the area to be demilitarised. In order to forge pathways to reconciliation and reconstruction, it will be crucial to understand the experiences and hardships of eastern Myanmar's ethnic minorities. Without such understanding, we risk failing to understand the investment and dedication required of local, domestic and international forces.

Statistics gathered in eastern Myanmar reveal the level of long term commitment that will be needed, even if sincere change is now underway. Health indicators closely resemble those of states with recent severe civil war.⁶ High birth rates and low life expectancy are indicative of low levels of health resources and poor economic development. Notably, there is irregularity in population trends between mid-teens and mid-thirties, indicating the higher risk of conflict and forced labour related deaths. The discrepancy between the concave population distributions of eastern Myanmar and Myanmar nationally, show the vast difference in conditions throughout the state.

⁴ Personal Communication (Lue Smyth), 3 June 2012.

⁵ Mae Tao Clinic Briefing on the Current Reforms in Burma, *Mae Tao Clinic* (May 2012) <<http://maetaoclinic.org/wp-content/uploads/2012/05/MTC-Briefing-on-Current-Reforms-in-Burma-May-2012.pdf>>.

⁶ See Figures 1-4, Appendix.

The extremity of health conditions is a result of far more than mere failure to invest in health systems. Longstanding poor, irresponsible governance has led to poverty and severe deficiencies in basic state infrastructure. However, it is the impact of conflict and brutal military actions that most strikingly differentiate health outcomes of eastern Myanmar's ethnic minority populations from those of less conflict-afflicted populations. Militarisation, a policy of military self-sufficiency, institutionalised brutality, the 'Four Cuts' policy and associated displacement have caused extreme poverty, acute health infrastructure deficiencies and direct harm.

I Conflict and Militarisation

The shift to a quasi-civilian government in 2010 has seen changes in government policy. Encouragingly, in September 2011 the development of a controversial Chinese-backed dam in the northern ethnic area of Kachin state was halted. The move is in stark contrast to previous government priorities, and may signal a willingness to negotiate with ethnic groups. Alongside such positive developments though, conflict in Karen and Shan states reignited after years of unsteady truce. Recent ceasefires are unstable, and hence conflict-related casualties (and, in all likelihood, human rights abuses) are reported to have increased since 2010.

Despite ceasefires, the number of *tatmadaw* battalions in ethnic areas continues to increase.⁷ 2011 estimates indicated 1/3 of *tatmadaw* troops are placed in eastern Myanmar alone,⁸ with some reporting that in Shan state this has grown since the implementation of ceasefires in 2012.⁹ Issues outlined below are likely to be exacerbated by increased troop presence.

⁷ Chistina Fink, 'Militarization in Burma's Ethnic States: Causes and Consequences' (December 2008) 14(4) *Contemporary Politics* 447; Thailand Burma Border Consortium (TBBC), 'Protracted Displacement & Chronic Poverty in Eastern Burma/Myanmar', (Chiang Mai, 2010), 14.

⁸ Interview with Phil Thornton (Mae Sot, 15 July 2011).

⁹ Interview with a SWAN representative Luke Smyth (Thailand, 11 July 2012).

Since the 1990s, a policy of *tatmadaw* self-sufficiency has resulted in civilians being forced to surrender food, goods, capital and land for military use.¹⁰ Forced labour is also used, sometimes to tend the land that was originally obtained under duress.¹¹ Practices of forced labour and confiscation of land and capital inhibit food and income generation capabilities, as civilians have limited land to farm, and reduced labour hours or capital to invest in production. Furthermore, forced labour often involves brutality or overwork, causing injuries that subsequently impede productivity. The loss of assets and earning capacity increase impoverishment and malnutrition. It may also force displacement as people flee *tatmadaw* forces.

In addition to needs-driven abuse, ingrained institutional brutality fosters wholly unnecessary human rights violations. Diminished popular support for the military following the 1988 crackdown on pro-democracy demonstrators led to increased non-voluntary and unsuitable conscripts, including convicted criminals seeking to escape punishment,¹² and high numbers of child soldiers.¹³ Child soldiers are typically more physically vulnerable, fearful, or admiring of their senior officers, decreasing critical questioning of institutional practice.¹⁴ *Tatmadaw* forces are subjugated to extreme abuse by superiors, which they are then forced to administer to other soldiers and civilians.¹⁵ Punishment is often degrading and cruel, used to demonstrate authority rather than for practical purpose,¹⁶ and often accompanied by alcohol

¹⁰ Fink, above n 7, 450.

¹¹ Ibid.

¹² Betsy Apple, *School for Rape: The Burmese Military and Sexual Violence* (EarthRights International, 1998), 5.

¹³ Jo Becker, 'Child Recruitment in Burma, Sri Lanka and Nepal', Working Paper (Ford Institute for Human Security, 2007), 9; Martin Smith, 'The Enigma of Burma's Tatmadaw: A "State Within a State"' (2003) 35(4) *Critical Asian Studies* 261.

¹⁴ Images Asia, *No Childhood At All: A Report about Child Soldiers in Burma* (Images Asia Ltd., 1997), 10; Duncan Chappell and Vittorio Di Martino, *Violence at Work* (International Labour Office, 3rd ed, 2006) 103.

¹⁵ Ibid 11, 36.

¹⁶ Ibid 30, 40, 46, 51.

and (to a lesser extent) drug abuse.¹⁷ Alongside such brutality lies systematic indoctrination. Since 1960 soldiers have been encouraged to consider ethnic minority forces and civilians as the enemy,¹⁸ and that 'ethnic rebels are robbers and bandits'.¹⁹ Low education levels amongst recruits facilitate such indoctrination,²⁰ with evidence suggesting that violence and abuses of power are condoned as tactical intimidation.²¹

High levels of human rights abuses against civilians are therefore unsurprising. Sexual violence has been reported by Shan Women's Action Network (SWAN) as an ongoing issue.²² SWAN's *License to Rape* report is now 10 years old, though SWAN representatives cite cases of gang rape and the sexual slavery of a 15 year old girl in November 2011, indicating that such abuses have not been adequately rectified.²³ Of the 173 cases documented in 2002, 83% of rapes were committed by officers, usually in front of their troops, and only in one instance was a perpetrator punished by his commanding officer.²⁴ *Ex-tatmadaw* soldiers also tell of being obliged to beat forced porters.²⁵ Instigation of rape and abuse by officers indicates that such human rights violations have existed as institutionally ingrained practices, rather than outlying instances of individual cruelty. Again, low education levels, unscrupulous recruitment, and little accountability or review of *tatmadaw* activities have allowed such practices to become institutionalised features. High levels of death and severe injury arise

¹⁷ Apple, above n 12, 48-49; Human Rights Watch, *'They Came and Destroyed Our Village Again': The Plight of Internally Displaced Persons in Karen State* (2005) 33; Images Asia, above n 14, 39, 40, 43, 44, 46.

¹⁸ Fink, above n 7, 443-444.

¹⁹ LjN, 'Tatmadaw Relives Glory Days with Attacks on Refugees', *The Irrawaddy*, April 1998.

²⁰ Ibid 31.

²¹ The Shan Human Rights Foundation and The Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State' (2002).

²² Ibid.

²³ Interview with SWAN Representative Luke Smyth (Thailand, 11 July 2012).

²⁴ Ibid. (this is the original footnote but doesn't match with above source).

²⁵ Images Asia, above n 14, 36.

from both sexual violence,²⁶ forced labour, and other brutality. Such injury ultimately contributes to death, both directly and by decreasing earning ability, increasing poverty, and exacerbating physical/mental weakness.²⁷ Unsurprisingly, such experiences have led to ingrained distrust, fear, and loathing within many ethnic minority groups toward the *tatmadaw*. This will be a major obstacle in negotiating more permanent conflict resolution and persuading ethnic armies to disarm.

Efforts to force ethnic armed groups into ceasefires have strongly contributed to this hardship and distrust. The Four Cuts policy employed from the late 1960s onwards aimed to deprive insurgencies of food, funds, information and recruits.²⁸ Villagers were relocated from contested or insurgent-controlled areas, before declaring the area a 'free-fire zone'.²⁹ All remaining people, including villagers resisting relocation or returned for food collection, could be shot with impunity.³⁰ Relocation in these situations is often accompanied by destruction and confiscation of land and property, summary executions, rape, torture, and arbitrary taxation.³¹ Although no longer explicitly implemented as a policy, such strategy has for an extended time informed military strategy. The divisive nature of the strategy is likely to discourage its use at present; a positive aspect of changes in government and military objectives.

Most obviously, the direct conflict between Tatmadaw forces and ethnic armies causes injury and instability. Both civilians and combatants are injured and killed in this process; landmines and even *tatmadaw* forces are indiscriminate in who is targeted, and often the distinction between civilian and combatant is already blurred. The region has experienced

²⁶ The Shan Human Rights Foundation and The Shan Women's Action Network, above n 21.

²⁷ Human Rights Watch, *'The Came and Destroyed Our Village Again': The Plight of Internally Displaced Persons in Karen State* (2005) 17.

²⁸ Donald Seekins, *Historical Dictionary of Burma (Myanmar)* (Scarecrow Press, Inc, 2006), 192.

²⁹ Ibid.

³⁰ Ibid.

³¹ The Burma Medical Association et al, 'Diagnosis: Critical: Health and Human Rights in Eastern Burma' (2010) 18.

heightened intensity of conflict over the past two years, though whilst casualties from conflict have increased, far higher casualty rates are being suffered by *tatmadaw* battalions. There are reports that landmine use has slowed or possibly stopped in Karen State following ceasefire agreements there, indicating some military commitment to decreasing conflict. It is likely that in this unstable time, we will see continuation of high casualty rates from direct conflict, despite an overall mood of change and hope for eventual conflict resolution.

As a result of this ongoing conflict and militarization, hundreds of thousands of people in eastern Myanmar have become either internally displaced people (IDPs) or refugees.³² At the end of 2010, there was documentation of 446,000 IDPs within rural eastern Myanmar alone, with actual numbers likely to be higher.³³ Many IDPs relocate several times per year, compounding problems associated with displacement.³⁴ Inhabitants of Relocation Centres and Villages experience severe poverty and malnutrition, little to no health and education access, high disease prevalence and violence.³⁵ In more well-established relocation centres, access to basic education and health services is available, and greater opportunities for income generation exist than outside of the camp. Thus, some people do stay voluntarily. However, poor conditions cause many more to flee official relocation sites to go into hiding or (less frequently) enter Thailand.³⁶

Those in hiding experience high levels of poverty, poor living conditions, and physical and mental harm. Dwellings are often temporary; many hope to return to their villages, though these are often raised and repeatedly checked by military forces to prevent

³² The situation of Myanmar refugees and migrants in Thailand has been documented by various groups and academics. Resources include; TBBC biannual reports and other resources, available at <<http://www.tbtc.org/resources/resources.htm>>; Inge Brees, 'Refugees and Transnationalism on the Thai-Burmese Border' (2010) 10(2) *Global Networks* 282; Marie Benner et al, 'Reproductive Health and Quality of Life of Burmese Refugees in Thailand' (2010) 4(5) *Conflict and Health*.

³³ TBBC, '2010 Programme Report: July to December' (Scanda-Media Corp., LTD, 2010).

³⁴ Human Rights Watch, above n 17, 46.

³⁵ Ibid 48-52.

³⁶ Ibid 50.

resettlement.³⁷ Crops, assets, and local trading systems are often destroyed, resulting in poverty and malnutrition comparable to IDP populations in the Horn of Africa.³⁸ Those fleeing are most often on foot, and report feeling unable to light fires for cooking for fear of discovery; IDPs are often subject to direct violence and sexual assault, as well as the threat of being caught in crossfire. Those remaining in conflict-prone areas are subject to instability and uncertainty of the future, discouraging investment in enterprise and reducing markets for goods. Access to necessary goods, such as basic health supplies, is also often severely limited. Ultimately, this increases levels of impoverishment.

Many IDPs experience family breakup; parents often seek to send children to monasteries and schools in refugee camps, and able-bodied fathers and young men may be injured or killed while fighting or undertaking forced labour.³⁹ Family contact may be irregular or absent.⁴⁰ Inevitably, social disruption impacts mental wellbeing. IDPs in hiding have extremely scarce or no access to health systems, as government provided accessible healthcare is absent, NGO access to communities verges on impossible, and the disruption of displacement affects community ability to maintain and develop traditional health care practices.⁴¹ In summary, IDPs both within and outside of official relocation centres experience high levels of poverty, poor living conditions, physical and mental harm, and poor or non-existent health and education systems.

II Outcomes of Conflict

Death, injury, displacement and distress resulting from militarisation and conflict compound and contribute to a conglomeration of interrelated problems faced by people in eastern Myanmar. Directly, these experiences contribute to poverty, food insecurity, poor living conditions, mental health issues, and poor or no access to health and

³⁷ Ibid 47.

³⁸ Ibid 52-3; TBBC, 'Internal Displacement and Vulnerability' (2008) 3-5.

³⁹ Interview with young Myanmar (Karen) refugees (Mae La Camp, 7 July 2011); Human Rights Watch, *'They Came and Destroyed Our Village Again'* (2005), 51-2.

⁴⁰ Interview with Young Myanmar (Karen) refugees (Mae La Camp, 7 July 2011).

⁴¹ Interview with Dr Voravit Suwanvanichkij (Chiang Mai, 18 July 2011).

education, compounding pre-existing consequences of poor governance. The combination of problems themselves also exacerbate hardship, whilst a death may be attributed to diarrhoea, the disease may have become significantly serious due to not only poor sanitation and living conditions, but also poverty-induced malnutrition, exertion through forced labour, longstanding wounds, and the absence of medical attention or medicine.

Direct death from combat is relatively uncommon, though multiple deaths arise from murder, torture, crossfire and landmines.⁴² Far more suffer severe injury, leaving victims and dependants vulnerable and with reduced earning capacity. Similarly, forced labour, brutality and rape are often not direct causes of death, but affect an individual's long-term ability to contribute to the community due to reduced physical capabilities, reduced time available, and mental health issues arising from trauma.

Food insecurity is widespread throughout Myanmar and acute in conflict zones. Over 40% of children under five in eastern Myanmar are acutely malnourished.⁴³ Correlation between human rights violations and malnutrition is strong.⁴⁴ Even where starvation does not occur, the body is weakened.⁴⁵ As such, many cases of death from other causes, such as disease, could be partly attributed to food insecurity and malnutrition.

Poverty not only reduces a household's ability to procure food, but impedes ability to take basic health measures. Resources needed for travel to a health clinic, for adequate medicine and health education, are deficient. Hence, the spread of disease is not contained and high rates of treatable illnesses prevail. Administering of incorrect medicine, largely due to poor education and attempts to reduce costs, has also led Myanmar to become an epicentre of multi-drug resistant malaria,

⁴² The Burma Medical Association et al, above n 31, 22.

⁴³ Ibid 6.

⁴⁴ Ibid.

⁴⁵ Interview with Dr Voravit Suwanvanichkij (Chiang Mai, 18 July 2011).

tuberculosis and Lymphatic Filariasis. As such, patients who eventually access adequate health facilities in Thailand may not be treatable.⁴⁶

The disastrous effects of deficiencies in basic health systems are seen in reproductive health. Only 21.8% of women in eastern Myanmar use any modern contraception,⁴⁷ and many incorrectly use this. Health clinicians at Mae Tao Clinic cited multiple instances of unwanted pregnancy following the use of fake or incorrectly administered contraceptive pills.⁴⁸ Numerous births pose significant health risks and increase financial pressures. No access to safe abortion is available; hence women may seek highly dangerous and often fatal abortions.⁴⁹ Further, low contraception prevalence promotes the current HIV epidemic afflicting the population.⁵⁰ The importance of addressing reasons for displacement is highlighted by the nine-fold increase in women not using any contraceptives amongst displaced populations.⁵¹

Low sanitation levels and poor housing affect most people in the region. A mere 32% of households can access protected wells or other safe water sources.⁵² TBBC surveys found that almost 60% of households had either an uncovered pit or no latrine at all for excreta.⁵³ It is estimated that, worldwide, 88% of child diarrhoea results from poor sanitation, insufficient access to clean water, and inadequate hygiene.⁵⁴ Poor hygiene will also contribute to the spread of other diseases and infections directly and indirectly causing death.

⁴⁶ Ibid.

⁴⁷ The Burma Medical Association et al, above n 31, 33.

⁴⁸ Interview with Health Worker (Mae Sot, 9 July 2011); Interview with Burma Children Medical Fund Worker (Mae Sot, 5 July 2011);

⁴⁹ Interview with Health Worker (Mae Sot, 9 July 2011).

⁵⁰ Chris Beyrer et al, 'HIV AIDS in Burma: Public Health Constrained' in David Celentano and Chris Beyrer (eds), *Public Health Aspects of HIV/AIDS in Low and Middle Income Countries* (Springer Science+Business Media, 2008) 434, 437.

⁵¹ See Figure 5.

⁵² TBBC, '2011 Programme Report: January to June' (2011) 155.

⁵³ Ibid.

⁵⁴ World Health Organization, 'Water, Sanitation and Hygiene Links to Health' (2004) *World Health Organization*

<http://www.who.int/water_sanitation_health/en/factsfigures04.pdf>.

Hardship and trauma experienced by Eastern Burmese people lends itself to high rates of mental illness, substance abuse, and social dysfunction. Security issues, the difficulty of assessing broad-scale mental health, and cultural disinclination to speak about such matters inhibit accurate assessment.⁵⁵ However, professional mental health surveying undertaken on Karenni refugees in three refugee camps in Mae Hong Song, Thailand, indicated high levels of anxiety, depression and post-traumatic stress disorder similar to those found in other communities that have undergone persecution and conflict.⁵⁶ There are also personal accounts of mental health issues within other Thai camps.⁵⁷ It is highly likely that those remaining in Eastern Myanmar experience similar levels of mental health problems due to high levels of traumatic events.⁵⁸ In surveying cases of sexual violence within eastern Myanmar, SWAN found that insomnia, weight loss and lethargy were reported as physical symptoms, evidencing mental distress.⁵⁹

There are strong indications that substance abuse is high within Eastern Burmese communities. As the world's second largest supplier of illegal opiates, Myanmar has high levels of drug availability and addiction.⁶⁰ Anecdotal evidence suggests that alcohol and drug use are also turned to as a form of coping with trauma and related negative mental health

⁵⁵ Sandy Barron et al, *Refugees From Burma: Their Backgrounds and Refugee Experiences*, (Centre for Applied Linguistics, 2007), 46-47; Barbara Cardozo et al, 'Karenni Refugees Living in Thai-Burmese Border Camps: Traumatic Experiences, Mental Health Outcomes, and Social Functioning' (2004) 58(12) *Social Science & Medicine* 2637, 2641.

⁵⁶ Cardozo et al, above n 55, 2637-2644. The survey included 495 participants from three camps. 58% were women, 82% were married.

⁵⁷ Elizabeth McCarthy, 'Evaluation of Burma Border Projects Mental Health Trainings Along the Thai Burma Border,' *Burma Border Projects* <http://www.google.com.au/url?sa=t&rct=j&q=living%20in%2010%20camps%20along%20this%20border.%20the%20government%20of%20thailand%20estimates%20that%20there%20are%201.2%20-%201.6%20million&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.burmaprojects.org%2FMedia%2FPublications%2FTrainingEvaluation.doc&ei=_WnTrWmK62tiQeCzZC2Dw&usg=AFQjCNHV0N77h67PMkRQkt65HXnLF9Yi6g&sig2=M1wutEU2sHgxcceAMxEzew>.

⁵⁸ Cardozo et al, above n 55, 2641.

⁵⁹ Ibid.

⁶⁰ Women's League of Burma, 'Women in and from Conflict areas of Burma,' A Shadow Report to the Beijing Plus Five NGO Conference (2000) 19.

outcomes.⁶¹ Though anecdotal evidence and generalised reporting exists in relation to Eastern Burmese refugees in Thailand, there is a severe lack of primary information on how significant alcohol and drug abuse problems are in Eastern Myanmar itself. Mental health and substance abuse are likely to have a significant destructive effect on households and communities, heightening problems of poverty, food insecurity, poor health and domestic violence.

Finally, it is likely that people in eastern Myanmar, particularly IDPs, experience above-average rates of domestic abuse. Communities that have lost control over their cultural, psychological and economic resources are particularly vulnerable to domestic violence and have little protective social systems.⁶² High rates of domestic violence are recorded in communities that have experienced or are experiencing similar violence, dislocation and poverty.⁶³

*'This is what happens when you have no health system.'*⁶⁴

Overwhelmingly, deaths in Eastern Myanmar could be prevented but for the lack of basic health facilities, medics and drugs. Healthcare is expensive and often involves extensive travel on foot through jungle and mountainous terrain.⁶⁵ Once located, treatment is often not correctly administered or financially accessible.⁶⁶

Lack of healthcare also precludes the administering of important vaccines, food supplements and other vital preventative health measures.⁶⁷ Vaccination for *Lymphatic Filariasis* is extremely easy and effective, leading to its eradication throughout much of the world. However, lack of vaccination in Eastern Myanmar results in repeated

⁶¹ Barron et al, above n 55, 46; McCarthy, above n 57, 6.

⁶² Eileen Pittaway, *The Ultimate Betrayal: An Examination of the Experience of Domestic and Family Violence in Refugee Communities* (Centre for Refugee Research, UNSW, 2004).

⁶³ Ibid.

⁶⁴ Interview with Dr Voravit Suwanvanichkij (Chiang Mai, 18 July 2011).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

re-infection in neighbouring Thai provinces.⁶⁸ Similar circumstances have arisen relating to cholera and tuberculosis.⁶⁹

Supplementation of the health system by NGOs has for decades been severely impeded by the government and military forces.⁷⁰ Nationwide, government-sanctioned operations have, in the past, taken years to be approved, only to be constantly impeded from operating by military forces.⁷¹ In Eastern Myanmar, problems are compounded by security risks, and the government's disinclination to allow foreigners to view and interfere in the atrocities taking place.

Instead, many NGOs are based in Thailand along the border. From there they treat and assist migrants, refugees, and Burmese specifically seeking healthcare.⁷² Backpack medics travel across the border on foot, accessing displaced communities covertly.⁷³ The difficult terrain, lack of infrastructure and risk of supply confiscation or violence by Tatmadaw forces mean that everything must be transported by foot through the jungle, and only basic supplies may be carried.⁷⁴ The medical work and research conducted is of extreme value, but barely touches the surface of demand in the area.

III Conclusion

*'Some of the most effective basic health strategies are not strictly biomedical.'*⁷⁵

The immediate situation in eastern Myanmar continues to involve threat of combat and abuse, and the continuing grind of longstanding

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Interview with a health worker (Mae Sot, 9 July 2011).

⁷¹ Wikileaks, *Cable 06RANGOON1014, Burma's NGOs Operating in an Unstable Environment* (Date unknown) <<http://wikileaks.ch/cable/2006/07/06RANGOON1014.html>>.

⁷² For example, operations at Mae Tao Clinic and with Burma Children Medical Fund, Mae Sot, Thailand.

⁷³ Backpack Health Worker Team, *Ten Years Report 1998-2009: Life, Liberty and the Pursuit of Health: A Decade of Providing Primary Health Care in Burma's Displaced and Vulnerable Communities* (2011).

⁷⁴ Ibid 43.

⁷⁵ Interview with Dr Voravit Suwanvanichkij (Chiang Mai, 18 July 2011).

poverty. Any road from conflict will necessarily be long and incremental. Changes in governance over the past two years have upset the status quo, both disrupting and creating ceasefires.⁷⁶ Crucially, changes on a national level have aroused the possibility of negotiation and conflict resolution, sparking hope that peace may be established and society may, in the foreseeable future, begin to rebuild.

Conflict resolution will require seismic shifts in long-held mindsets, by government, military and ethnic leaders. Farrelly and Ball suggest that the charisma and common trust found in Aung San Suu Kyi could enable her to broker the peace, though her thoughts and abilities regarding ethnic minorities in Myanmar remain largely unknown.⁷⁷ The trust required for any resolution of differences is high; it will be necessary that violence, brutality and oppression not only cease in eastern Myanmar, but in other areas of ethnic conflict.

Change in Myanmar is likely to be a slow and tumultuous process, necessitating much patience and dedication. Even with optimum progress, it will take years to rebuild health systems, education, and communities. Nevertheless, the current situation demands that action be taken. Until there is change, needless deaths will continue.

Acknowledgements

To Ajaan Chintana Sandilands and Nicholas Farrelly, for going above and beyond to offer us a truly remarkable experience. I too hope that one day, this course will travel peacefully along the other side of the border.

⁷⁶ Desmond Ball and Nicholas Farrelly, 'Burma's Broken Balance' in Bob L Job (ed), *CSCAP Regional Security Outlook 2012* (Council for Security Cooperation in the Asia Pacific, 2012) 18, 19-21.

⁷⁷ Ibid 23.

Appendix

Figure 1⁷⁸

Causes of Death in Survey Area, Eastern Myanmar		
Cause of Death	All Ages	Children
Malaria*	24.7	27.7
Acute Respiratory Infection*	19.5	14.9
Diarrhea*	14.9	17.4
Neonatal	11.4	11.4
Pregnancy-related	2.2	0.0
Gunshot wound	1.7	0.0
Landmine injury	0.6	0.0
Other	24.9	12.9
Total	100	100

* Data from this survey was collected during the dry season. As such, it is likely that deaths from diarrhoea, ARI and malaria represent a lower proportion of deaths than they might in wet season figures.

⁷⁸ The Burma Medical Association et al, above n 31, 22. Figures derive from surveys undertaken across areas bordering Thailand. 6181 households participated, with an average of 5 people per household. Though other surveys have been conducted, this is by far the most comprehensive survey undertaken in recent years.

Figure 2⁷⁹

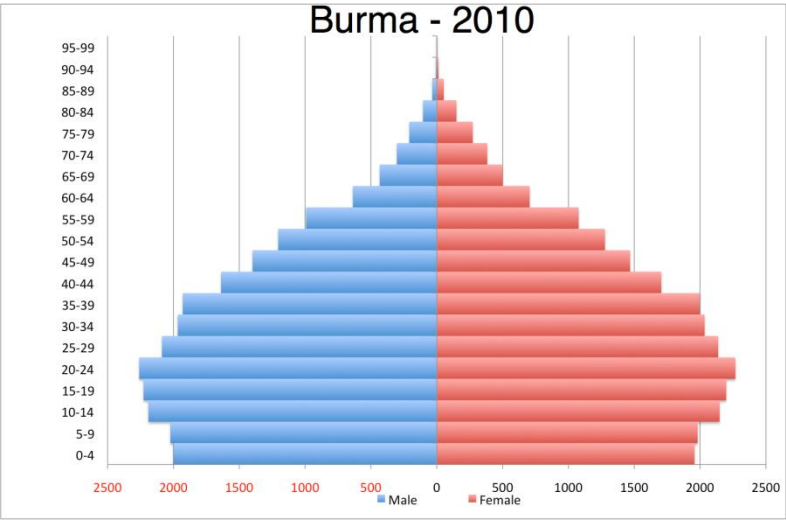
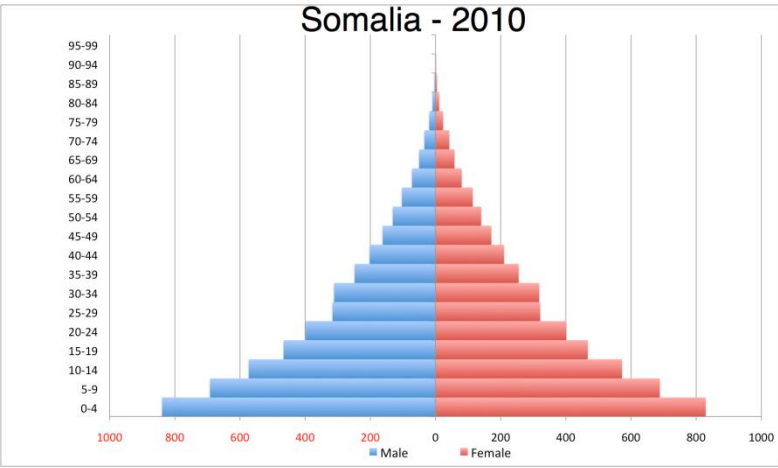


Figure 3⁸⁰



⁷⁹ World Population Prospects: The 2010 Revision, Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat
<<http://esa.un.org/unpd/wpp/index.htm>>.

⁸⁰ Ibid.

Figure 4⁸¹

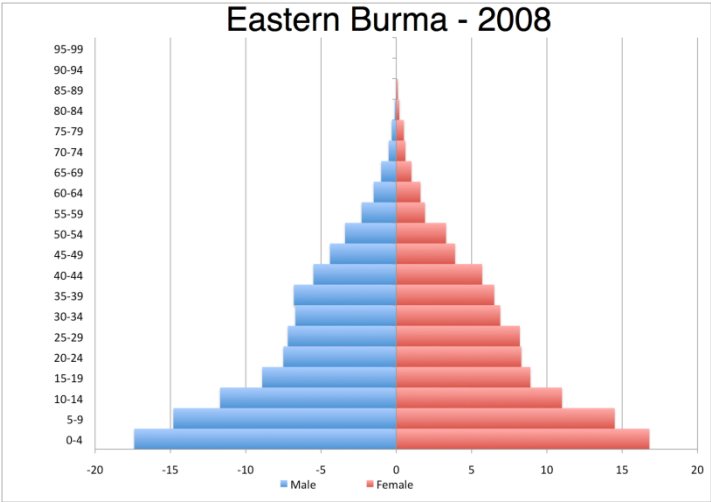


Figure 5⁸²

Human Rights Violation	Health Outcome	Increased Odds
Experienced any human rights violation	Infant death	1.5
	Child death	1.4
	Moderate-severe acute child malnutrition	1.7
	Severe acute child malnutrition	1.9
Forced labor	Infant death	2.5
	Child death	1.9
Displacement	Infant death	1.3
	Child death	1.7
	Child diarrhea	1.6
	No contraception use	9.1
	Moderate-severe acute child malnutrition	3.3
	Severe acute child malnutrition	4.8
Destruction and seizure of food	Moderate-severe acute child malnutrition	1.8
	Severe acute child malnutrition	1.6

⁸¹ The Burma Medical Association et al, above n 31, 21.

⁸² Ibid 41.

References

Apple, Betsy, *School for Rape: The Burmese Military and Sexual Violence* (EarthRights International, 1998)

Backpack Health Worker Team, *Ten Years Report 1998-2009: Life, Liberty and the Pursuit of Health: A Decade of Providing Primary Health Care in Burma's Displaced and Vulnerable Communities* (2011)

Ball, Desmond and Nicholas Farrelly, 'Burma's Broken Balance' in Bob L Job (ed), *CSCAP Regional Security Outlook 2012* (Council for Security Cooperation in the Asia Pacific, 2012) 18

Barron, Sandy et al, *Refugees From Burma: Their Backgrounds and Refugee Experiences* (Centre for Applied Linguistics, 2007)

Benner, Marie et al, 'Reproductive Health and Quality of Life of Burmese Refugees in Thailand' (2010) 4(5) *Conflict and Health*

Beyrer, Chris et al, 'HIV AIDS in Burma: Public Health Constrained' in David Elentano and Chris Beyrer (eds), *Public Health Aspects of HIV/AIDS in Low and Middle Income Countries* (Springer Science + Business Media, 2008) 434

Beyrer, Chris et al, 'Health and Human Rights 3: Neglected Disease, Civil Conflicts, and the Right to Health' (2007) 370 *Lancet* 619

The Burma Medical Association et al, 'Diagnosis: Critical: Health and Human Rights in Eastern Burma' (2010)

Cardozo, Barbara et al, 'Karenni Refugees Living in Thai-Burmese Border Camps: Traumatic Experiences, Mental Health Outcomes, and Social Functioning' (2004) 58(12) *Social Science & Medicine* 2637

Chappell, Duncan and Vittorio Di Martino, *Violence at Work* (International Labour Office, 3rd ed, 2006)

Cimbala, Stephen, *Coercive Military Strategy* (Texas A&M University Press, 1998)

Clapp, Priscilla, *United States Institute of Peace Special Report: Burma's Long Road to Democracy* (United States Institute of Peace, 2007)

Derichs, Claudia and Andrea Fleschenberg (eds), *Religious Fundamentalisms and Their Gendered Impacts in Asia* (Friedrich-Ebert-Stiftung, 2010)

Egreteau, Renaud, 'Assessing Recent Ethnic Peace Talks in Myanmar' (2012) 13(3) *Asian Ethnicity* 311

Fink, Christina, 'Militarization in Burma's Ethnic States: Causes and Consequences' (December 2008) 14(4) *Contemporary Politics* 447

Hartcher, Peter, 'How Far Can Burma Bend for Change' *The Age*, 18 October 2011

Held, David, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, 1995)

Heppner, Kevin and Jo Becker, 'My Gun Was as Tall as Me': *Child Soldiers in Burma* (Human Rights Watch, 2002)

Heyward, Sopantini, 'The Influence of Societal Culture to School and Classroom Reform' (2009) *Australian Association for Research in Education* <<http://www.aare.edu.au/09pap/hey091142.pdf>>

Hori, Masahiro, and Yu Ching Wong, 'Efficiency Costs of Myanmar's Multiple Exchange Rate Regime' (2008) *IMF Working Paper*

Human Rights Watch, 'They Came and Destroyed Our Village Again': *The Plight of Internally Displaced Persons in Karen State* (2005)

Human Rights Watch, 'We are Like Forgotten People': *The Chin People of Burma: Unsafe in Burma, Unprotected in India* (2009)

Human Rights Watch, *Perilous Plight: Burma's Rohingya Take to the Seas* (2009)

Images Asia, *No Childhood At All: A Report about Child Soldiers in Burma* (Images Asia Ltd., revised edition 1997)

Karen Human Rights Group, *Patterns of Abuse: Photographs of Rural Life in Militarized Karen State*, (KHRG, 2010)

LJN, 'Tatmadaw Relives Glory Days with Attacks on Refugees', *The Irrawaddy*, April 1998

Linn, Hsat, 'In Burma's Public Hospitals, You Get What You Pay For', *The Irrawaddy*, 20 September 2010

Mae Tao Clinic, 'Mae Tao Clinic Briefing on the Current Reforms in Burma', May 2012 <<http://maetaoclinic.org/wp-content/uploads/2012/05/MTC-Briefing-on-Current-Reforms-in-Burma-May-2012.pdf>>

McCarthy, Elizabeth, 'Evaluation of Burma Border Projects Mental Health Trainings along the Thai Burma Border' *Burma Border Projects* <www.google.com.au/url?sa=t&rct=j&q=living%20in%2010%20camps%20along%20this%20border.%20the%20government%20of%20thailand%20estimates%20that%20there%20are%201.2%20-%201.6%20million&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.burmaborderprojects.org%2FMedia%2FPublications%2FTrainingEvaluation.doc&ei=J_WnTrWmK62tiQeCzC2Dw&usg=AFQjCNHV0N77h67PMkRQkt65HXnLF9Yi6g&sig2=M1wutEU2sHgxcceAMxEzew>

Ministry of Health, Republic of the Union of Myanmar, 'Curative Services' (2011)
<<http://www.moh.gov.mn/file/curatives%20services.pdf>>

Ministry of Health, Republic of the Union of Myanmar, 'Health Infrastructure' (2011)

<<http://www.moh.gov.mm/file/health%20infrastructure.pdf>>

Ministry of Health, Republic of the Union of Myanmar, 'Health Policy, Legislation and Plans' (2011)

<<http://www.moh.gov.mm/file/health%20policy%20legislation%20and%20plans.pdf>>

The New Light of Myanmar, 22 June 2011

<<http://www.burmalibrary.org/docs11/NLM2011-06-22.pdf>>

Physicians for Human Rights, *Life Under the Junta: Evidence of Crimes Against Humanity in Burma's Chin State* (Cambridge, 2011)

Pittaway, Eileen, *The Ultimate Betrayal: An Examination of the Experience of Domestic and Family Violence in Refugee Communities* (Centre for Refugee Research, UNSW, 2004)

Rudland, Emily, *Political Triage: Health and the State in Myanmar (Burma)*, Thesis, Department of Political and Social Change, Research School of Pacific and Asian Studies (Australian National University, 2004)

Ruland, Jurgen, 'Burma Ten Years After the Uprising: The Regional Dimension' in Robert H Taylor (eds), *Burma: Political Economy Under Military Rule* (C. Hurst & Co. (Publishers) Ltd., 2001) 137

Sarkees, M, F Wayman and J Singer, 'Inter-State, Intra-State, and Extra-State Wars: A Comprehensive Look at Their Distribution over Time, 1816-1997' (2003) 47 *International Studies Quarterly* 49

Saw Yan Naing, 'Burmese Army Breaches Karen Ceasefire', *The Irrawaddy* (online), March 21 2012

<<http://www.irrawaddy.org/archives/912>>

Seekins, Donald, *Historical Dictionary of Burma (Myanmar)* (Scarecrow Press, Inc, 2006)

Seekins, Donald, 'Myanmar in 2008: Hardship, Compounded' (2009) 49(1) *Asian Survey* 166

The Shan Human Rights Foundation and The Shan Women's Action Network, 'License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State' (2002)

The Shan Human Rights Foundation and The Shan Women's Action Network, 'License to Rape: The UN Commission on Human Rights, 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: Guiding Principles on Internal Displacement' (1998)

Shan Herald Agency for News (online), '23rd Clash After Ceasefire Pact', 20 July 2012

<http://www.shanland.org/index.php?option=com_content&view=article&id=4816:23rd-clash-after-ceasefire-pact&catid=86:war&Itemid=284>

Shwe, Than, 'Tatmadaw Puts Good Foundations in Place for National Development with Good Will so that New Government Elected by People Can Build New Nation', *New Light of Myanmar*, 11 December 2011, 1

Smith, Martin, *Ethnic Groups in Burma: Development, Democracy and Human Rights* (Anti-Slavery International, 1994)

Smith, Martin, 'The Enigma of Burma's Tatmadaw: A "State Within a State"' (2003) 35(4) *Critical Asian Studies* 621

South, Ashley, *Ethnic Politics in Burma: States of Conflict* (Routledge, 2008)

Steinberg, David, *Burma/Myanmar: What Everyone Needs to Know* (Oxford University Press, 2010)

Thailand Burma Border Consortium (TBBC), '2010 Programme Report: July to December' (Scanda-media Corp., LTD, 2010)

TBBC, '2011 Programme Report: January to June' (2011)

TBBC, 'Internal Displacement and Vulnerability' (2008)

TBBC, 'Internally Displaced People and Relocation Sites in Eastern Burma' (TBBC, 2002 September)

TBBC, 'Protracted Displacement & Chronic Poverty in Eastern Burma/Myanmar' (Chiang Mai, 2010)

Turnell, Sean, 'Fundamentals of Myanmar's Macroeconomy: A Political Economy Perspective' (2011) 6 *Asian Economic Policy Review* 136

Turnell, Sean, 'Myanmar's Economy in 2006' in Monique Skidmore and Trevor Wilson (eds), *Myanmar: the State, Community and the Environment* (ANU E Press and Asia Pacific Press, 2007)

United Nations High Commissioner for Refugees, *2009 Global Trends Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, Report, Division of Programme Support and Management (UNHCR, 2010)

United Nations Development Programme (UNDP) Indonesia, *Women's Participation in Politics and Government in Indonesia* (UNDP Indonesia, 2010)

Vatikiotis, Michael, 'Three Scenarios for Myanmar's Future' in Lex Reifel (ed), *Myanmar/Burma: Inside Challenges, Outside Interests* (Brookings Institution Press, 2010) 101

Welch, A, 'Blurred vision?: Public and Private Higher Education in Indonesia' (2007) 54(5) *Higher Education* 665

Weng, Lawi, 'SSA-South Accuses Govt of Risking War', *The Irrawaddy*, June 18 2012 <<http://www.irrawaddy.org/archives/7082>>

Wikileaks, *Cable 06RANGOON1014, Burma's NGOs Operating in an Unstable Environment*
(Date unknown)
<<http://wikileaks.ch/cable/2006/07/06RANGOON1014.html>>

Wikileaks, *Cable 08RANGOON557 Continuing the Pursuit of Democracy in Burma* (14 July 2008)
<<http://wikileaks.org/cable/2008/07/08RANGOON557.html>>

Wilson, Trevor, *Myanmar: the State, Community and the Environment* (ANU E Press and Asia Pacific Press, 2007)

Women's League of Burma, 'Women in and from Conflict areas of Burma', A Shadow Report to the Beijing Plus Five NGO Conference (2000)

Wong, S and S Guggenheim, 'Community-driven Development: Decentralisation's Accountability Challenge' in *East Asia Decentralises: Making Local Government work* (The World Bank, 2005)

The World Bank, *Understanding Civil War: Evidence and Analysis*, Vols. II: Europe, Central Asia, and Other Regions (The World Bank, 2005)

World Health Organization, 'Water, Sanitation and Hygiene Links to Health' (2004) *World Health Organization*
<http://www.who.int/water_sanitation_health/en/factsfigures04.pdf>

Zarzecki, T, *Arms Diffusion: the Spread of Military Innovations in the International System* (Routledge, 2002)

Children and Jury in Court

Elaine Yi Li

I Introduction

Cross-examination is stressful and witnesses are often forced to answer harassing, offensive and humiliating questions put forth by barristers, which inevitably have a detrimental impact on the quality of their testimonies.¹ In response to these concerns, s 41 has been inserted into the *Evidence Act 1995* (NSW), the *Evidence Act 1995* (Cth), and the *Evidence Act 2008* (Vic), which requires judges to intervene and disallow improper questions put to a witness in cross-examination. However, harsh cross-examination tactics remain widely used, which may account for the appallingly low conviction rate. Children are particularly vulnerable not only as sexual abuse victims but as witnesses in the courtroom. Expert witnesses such as psychologists and psychiatrists also face aggressive cross-examination tactics that aim to discredit their testimonies.²

This paper will review the psycholegal literature on child sexual assault victims testifying in court, and the effectiveness of hostile cross-examination practices used on expert witnesses. Ultimately, the evidence suggests that while jurors' perceptions of a child's credibility can be enhanced, the prosecution's case can be undermined by using offensive cross-examination techniques on the defence's expert witness.

¹ Tania Eaton, Peter Ball, and Gemma O'Callaghan, 'Child Witnesses and Defendant Credibility: Child Evidence Presentation Mode and Judicial Instructions' (2001) 31 *Journal of Applied Social Psychology* 1845.

² Bridget Larson and Stanley Bodsky, 'When Cross-Examination Offends: How Men and Women Assess Intrusive Questioning of Male and Female Expert Witnesses' (2010) 40 *Journal of Applied Social Psychology* 811, 814.

II Children and the Jury

A *Should Children Testify in Court?*

Research into the effectiveness of legislative amendments such as s 275A of the *Criminal Procedure Act 1986* (NSW), modelled on s 41 of the *Evidence Act* (NSW) suggest that legal procedures continue to disadvantage children. A study that conducted a series of interviews with experienced defence and prosecution barristers from Sydney found that intimidating cross-examination tactics are still widely used to undermine child sexual abuse allegations.³ Moreover, according to the Australian Institute of Criminology, only 33 per cent of child sexual abuse complainants in New South Wales would report a sexual abuse again following their experiences in the criminal justice system.⁴ With the growing awareness of these concerns, it is hard to justify encouraging child sexual assault complainants to testify in court if stress-inducing techniques employed by the defence lawyers effectively undermine the credibility of the child and the prosecution's case.⁵ Alternatively, child testimonies may result in higher conviction rates if juries could be persuaded to perceive children as credible and honest, despite being subject to harsh cross-examination techniques.

B *Jurors' Perceptions of Credibility*

The credibility of a child's testimony has been shown to be influenced by the jurors' preconceived stereotypes of the child's age and speech style, and their behaviour patterns during cross-examination.⁶ In addition, research suggests that children who can demonstrate confidence and honesty when giving consistent testimonies are more

³ Russell Boyd and Anthony Hopkins, 'Cross-Examination of Child Sexual Assault Complainants: Concerns About the Application of s 41 of the Evidence Act' (2010) 34 *Criminal Law Journal* 149, 163.

⁴ Christine Eastwood, 'The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System' (2003) 250 *Trends and Issues in Crime and Criminal Justice* 1, 2.

⁵ Boyd and Hopkins, above n 3, 151.

⁶ Casey Schmidt and John Brigrman, 'Jurors' Perceptions of Child Victim-Witnesses in a Simulated Sexual Abuse Trial' (1996) 20 *Law and Human Behavior* 581, 583.

likely to influence the jury's guilty verdict. Each of these factors play an important role in the persuasiveness of a child's testimony.

1 *Age and Speech Style*

There is psychological evidence suggesting that a child will be perceived as highly credible if he or she testifies in a powerful spoken manner beyond what is expected for that age. Some researchers hypothesize that powerless behaviour patterns are consistent with jurors' negative stereotypes regarding young children.⁷ Schmidt and Brigham conducted an experiment investigating the effects of a child witness' age and speech style and found that 'nervous fidgeting, poor posture, reduced eye contact with the questioner, and language patterns with unusually long hesitations and halting speech'⁸ consequently reduces the jurors' perceived credibility of a child's testimony. However, a jury is more likely to be swayed if the child delivers a powerful testimony with good posture, clear speech and eye contact. Thus, where possible, child witnesses testifying in court should adopt a powerful speech style to disconfirm jurors' negative age-related stereotypes about the unreliability of children.

Similarly, an experiment by Ruva and Bryant examining the effects of witness age, witness speech style and prosecuting attorney's questioning style on perceived witness credibility and trial outcome, found a significant interaction effect of age and speech style.⁹ Speaking in a powerless manner was less detrimental to the child witness' credibility than for the adult witness credibility. Moreover, verdict and guilt ratings were correlated with the credibility ratings. Psychologists accordingly attribute these findings to the expectancy theory of persuasion, whereby an 'assimilation effect is said to occur when people's perceptions of others adapt toward their stereotypes and preconceptions'.¹⁰ Hence, an implication of this finding is that a

⁷ Ibid 582.

⁸ Ibid.

⁹ Christine Ruva and Judith Bryant, 'The Impact of Age, Speech Style, and Question Form on Perceptions of Witness Credibility and Trial Outcome' (2004) 34 *Journal of Applied Social Psychology* 1919, 1939.

¹⁰ Ibid 1921.

powerless speech style will not necessarily have a detrimental effect on perceived credibility, as it is congruent with the negative age-related stereotypes about children's language and cognitive abilities.

The study also provides evidence encouraging lawyers to use open-ended non-leading questions, to allow children to demonstrate their credibility through giving narrative and autonomous answers.¹¹ It was also found that closed-ended questions by lawyers do not necessarily have a detrimental effect on credibility. Leading questions highlight children's susceptibility to suggestion, which is congruent with jurors' preconceived stereotypes about children. Consistent with attribution theory, children who responded to open-ended questions in a powerful manner performed above the norm for 6 year-olds, which lead to higher credibility ratings and resulting in higher guilty verdicts. However, closed-ended *leading questions* appeared to mislead the child witness, resulting in lower ratings of credibility.¹² Therefore, the prosecution lawyer should use open-ended questions to assist the child witness in demonstrating behaviour that exceeds the age-related stereotypical performance of a child that age.

However, there is also evidence indicating that witness age has no uniform influence on juror perceptions of credibility.¹³ Goodman et al derived inconsistent findings in their study challenging Ruva and Bryant's research. Mock jurors rated 6 year-old testimonies as the least credible compared to 10 and 30 year-old witnesses despite the content of the testimonies being identical.¹⁴ Interestingly, Goodman et al found that children's powerful speech style did not affect guilty ratings despite enhancing perceived credibility.¹⁵ Thus, it cannot simply be

¹¹ Ibid 1938.

¹² Ibid 1939.

¹³ David Ross et al, 'The Child in the Eyes of the Jury: Assessing Mock Jurors' Perceptions of the Child Witness' (1990) 14 *Law and Human Behavior* 5, 18.

¹⁴ Ibid 7.

¹⁵ Gail Goodman et al, 'When a Child Takes the Stand: Jurors' Perceptions of Children's Eyewitness Testimony' 11 *Law and Human Behavior* 26, 26.

assumed that encouraging children to act adult-like will enhance their perceived credibility as other factors may be involved.¹⁶

2 *Honesty*

In child sexual abuse cases, witness credibility will depend not only on competency as demonstrated through a powerful speech style, but also honesty. In one experiment, mock jury participants either read a simulated trial robbery or sexual assault case. The findings indicate that children are perceived to be more credible and honest in sexual assault cases compared to robbery cases, and can influence the jury's guilty verdict.¹⁷ Contrary to the researchers' hypotheses, witness age did not impact on perceptions of the child's credibility, honesty or memory. However, perceptions of memory and honesty were found to predict verdict and punishment.¹⁸ Thus, whether a child's testimony is perceived as more or less credible may depend on whether the context places greater emphasis on competency or the witness' honesty.¹⁹

Consequently, jurors attribute credibility to a child's level of honesty, as honesty is particularly salient in sexual abuse trials. Bottoms and Goodman conducted three experiments examining mock jurors' reactions to children's testimony about sexual abuse. Jurors were asked to rate the child's credibility and the guilt of the defendant after watching a videotape or written scenarios of child sexual abuse trials. The results confirm that the child's credibility depends on the relevant salience of the child's cognitive ability, or honesty and innocence.²⁰ Therefore, a lack of cognitive competence in sexual knowledge or inability to resist suggestive questions may not necessarily disadvantage the prosecution's case. Rather, these specific behaviours

¹⁶ Ross et al, above n 14, 8.

¹⁷ Michelle McCauley and Janat Parker, 'When Will a Child be Believed? The Impact of the Victim's age and Juror's Gender on Children's Credibility and Verdict in a Sexual-abuse Case' (2001) 25 *Child Abuse & Neglect* 523, 534.

¹⁸ Ibid 534.

¹⁹ Ross et al, above n 14, 20.

²⁰ Bette Bottoms and Gail Goodman, 'Perceptions of Children's Credibility in Sexual Assault Cases' (1994) 24 *Journal of Applied Social Psychology* 702, 724.

may enhance perceived credibility to work favourably for the prosecutor's case.

3 *Confidence and Consistency*

Other specific behaviours related to perceived credibility include whether the child is confident and consistent when testifying in court. A field study by Cashmore and Trimboli surveyed 277 jurors from 25 juries, hearing child sexual assault trials held in Sydney. Jurors were given questionnaires measuring their reactions and views on child sexual assault trials. The results indicated that credibility was strongly correlated with the child's perceived confidence in answering questions and the consistency of the child's testimony.²¹ Moreover, both the perceived consistency and credibility of the child were significantly correlated with guilty verdicts. The implications drawn from this research suggest that children's testimonies can be perceived as more convincing if the child answers questions posed by the cross-examiner in a confident manner, and provides consistent statements in their testimonies.²²

Despite the stress and trauma many children face when testifying in court, psycholegal literature can inform the prosecutor of multiple factors that can influence a jury's decision of a guilty verdict. These are, but not limited to, witness age,²³ speech style, the form of questioning (leading versus non-leading questions),²⁴ and honesty.²⁵ Where possible, children should be encouraged to act confidently and testify in a powerful manner to disconfirm jurors' negative stereotypes about children's competency.²⁶ However, a powerless speech style will not necessarily be damaging to the child's testimony if it is perceived as age appropriate.²⁷ Moreover, there are reassuring findings that young

²¹ Judy Cashmore and Lily Trimboli, 'Child Sexual Assault Trials: A Survey of Juror Perceptions' (2006) 102 *New South Wales Bureau of Crime Statistics and Research* 1, 9.

²² *Ibid* 1.

²³ Schmidt and Brigham, above n 7, 582.

²⁴ Ruva and Bryant, above n 9, 1921.

²⁵ McCauley and Parker, above n 17, 534.

²⁶ Cashmore and Trimboli, above in 21, 22.

²⁷ Ruva and Bryant, above n 9, 1939.

children, who are seen as sexually naïve, are more likely to persuade the jury as they appear more honest than adults.

III Expert Witness Testimony

A *How Should Experts be Cross-Examined?*

Lawyers often use hostile cross-examination tactics to undermine the opponent's expert witness' credibility by questioning their expertise and understanding, or subjecting them to personally intrusive questions to invoke embarrassment and humiliation. There is currently a lack of research on whether these hostile cross-examination tactics effectively undermine the expert's perceived credibility. However, some studies have highlighted the importance of the lawyer's likeability in trial.²⁸ It appears that the lawyer's case will be undermined if they appear aggressive in an unnecessary and unfair manner. In fact, expert witness credibility can be enhanced when the lawyer utilizes hostile cross-examination strategies such as leading and personally intrusive questions.

1 *Leading Questions*

While lawyers use non-leading questions to establish the credibility of their own witnesses, leading questions are employed to discredit the opponent's expert witnesses. Hostile leading questions are thought to have a detrimental effect on the opponent's case by reducing the witness' credibility, and making them appear inarticulate and unknowledgeable.²⁹ Unfortunately, despite the extensive use of cross-examination practices, psychological research has not yet adequately investigated the effectiveness of leading questions to discredit expert witnesses.

²⁸ Robert Cramer, Stanley Brodsky and Jamie Decoster, 'Expert Witness Confidence and Juror Personality: Their Impact on Credibility and Persuasion in the Courtroom' (2009) 37 *The Journal of the American Academy of Psychiatry and the Law* 63, 64.

²⁹ Margaret Gibbs et al, 'Cross-examination of the Expert Witness : Do Hostile Tactics Affect Impressions of a Simulated Jury?' (1989) 7 *Behavioural Sciences & the Law* 275, 276.

However, Gibbs et al (1989) conducted a study suggesting that leading questions are an ineffective cross-examination technique, especially when presented in a hostile manner.³⁰ Mock jurors viewed a video of a simulated personal injury trial with a psychologist as expert witness testifying about the plaintiff's psychological problems. Hostile examination tactics worked to enhance expert witness' credibility and the opponent's case.³¹ The researchers postulate that hostile tactics backfired on the lawyer's case as jurors developed sympathy for the expert, while the use of hostile leading questions created a negative impression of the lawyer. On the other hand, non-leading questions presented in a non-hostile manner were also perceived to be ineffective, as it was inconsistent with juror's expectations of what a lawyer should be like.³² Accordingly, prosecutors should be seen as powerful without appearing unnecessarily hostile and unfair.

2 *Personally Intrusive Questions*

Personally intrusive questions are 'not related to the case itself, but are an attempt to be able to discredit the witness by showcasing the expert's personal shortcomings'.³³ It is important that expert witnesses maintain both personal composure and professional credibility in order to persuade the jury.³⁴ Cramer et al investigated the relationship between expert witness confidence and credibility, and found that expert witness confidence had a significant effect on ratings of credibility as well as juror individual difference factors.³⁵ Hence, lawyers often use personally intrusive questions to agitate expert witnesses and diminish their confidence, which consequently harms their perceived credibility.³⁶

³⁰ Ibid 279.

³¹ Ibid 276.

³² Ibid 280.

³³ Larson and Brodsky, above n 2, 814.

³⁴ Wayne Chapelle, Kent Rosengren and George Fox, 'Maintaining Composure and Credibility as an Expert Witness During Cross-Examination' (2001) 1 *Journal of Forensic Psychology* 51, 56.

³⁵ Cramer, Brodsky and DeCoster, above n 28, 63.

³⁶ Ibid.

However, contrary to legal professionals' beliefs, personally intrusive questions may prove to be more detrimental to the lawyer who is cross-examining the witness than to the expert witness' credibility. A study by Larson and Brodsky investigated the impact of gender-intrusive questions on female and male experts.³⁷ Participants were presented with a videotaped summary of a criminal murder trial and an excerpt of a cross-examination from the trial. The expert witness was a psychologist hired by the defence to assess the defendant's state of mind.³⁸ Although female experts were rated as less confident, trustworthy, likable and credible than the male expert, both male and female experts were rated as more credible, trustworthy and believable after encountering gender-intrusive questions.³⁹

The researchers postulated that participants were able to recognize that the personally intrusive questions posed to the expert witness were too personal and unnecessary, and were used only to cause distress to the witness.⁴⁰ Thus, although expert witness confidence is important to enhance jurors' perceptions of credibility, the use of leading questions and personally intrusive questions appears to backfire and lead to detrimental consequences for the lawyer who employs these hostile tactics. Hostile leading questions should be avoided to prevent the jury from sympathizing with the expert witness or forming a negative impression of the lawyer.⁴¹ Similarly, lawyers should steer clear from personally intrusive questions that have no relevance to the case, as jurors are likely to rate the expert witness as more credible.⁴²

IV Future Research

More research is necessary to reconcile the inconsistent findings regarding the relationship between credibility and guilty verdicts. Although it is assumed that jurors will reach a guilty verdict when the child appears credible, some studies have not found a relationship

³⁷ Larson and Brodsky, above n 2, 823.

³⁸ Ibid 817.

³⁹ Ibid 814.

⁴⁰ Ibid 825.

⁴¹ Gibbs et al, above n 29, 276.

⁴² Larson and Brodsky, above n 2, 823.

between credibility and guilty verdicts.⁴³ Moreover, there is an alarming finding that both jurors and legal professionals have the misleading belief that consistency is an indicator of accuracy and reliability.⁴⁴ Defence lawyers may highlight inconsistencies in child testimonies to reduce their credibility. However, a prosecutor should inform the jury of psychological literature indicating that details surrounding true accounts can be inconsistent, and that inconsistencies do not necessarily indicate false allegations.⁴⁵

Furthermore, while there is extensive psychological research on the impact of child testimonies on the jury, more research is needed to examine whether hostile cross-examination techniques are effective to undermine the credibility of expert witnesses. Despite the general acceptability and wide use of cross-examination techniques,⁴⁶ there is still a lack of empirical evidence supporting the use of aggressive tactics.

V Summary of Findings

It is argued that 'substantive, legislative and procedural reforms have not given children the belief, respect, protection or justice they deserve and to which they are entitled'.⁴⁷ Expert witnesses are also reluctant to participate in the criminal justice system due to concerns that their testimony will be distorted by the cross-examiner.⁴⁸

However, according to the psycholegal literature discussed above, children may not be as disadvantaged by the criminal justice system as is often thought. There are multiple factors that can interact to persuade the jury that the child's testimony is credible. The prosecution lawyer should pose open-ended questions wherever possible to give children the opportunity to answer confidently and assertively. There are also optimistic findings that young children are perceived to be more honest and hence, more credible. Moreover, the prosecution lawyer should

⁴³ Goodman et al, above n 17, 1987.

⁴⁴ Cashmore and Trimboli, above n 21, 9.

⁴⁵ Ibid 15.

⁴⁶ Ibid 62.

⁴⁷ Eastwood, above n 5, 2.

⁴⁸ Gibbs et al, above n 29, 275.

avoid unnecessary hostile leading questions and personally intrusive questions when cross-examining the defence's expert witness. Although it is important for the prosecution to highlight flaws and uncertainties in the defence's expert testimony to the jury, the jury will sympathise with the expert if it is obvious that the cross-examiner is unduly harsh and intimidating.

Acknowledgements

I would like to thank my lecturer Dr Mark Nolan for providing invaluable guidance and insight into the critical intersection of law and psychology.

References

A *Articles/Books/Reports*

Bottoms, Bette and Gail Goodman, 'Perceptions of Children's Credibility in Sexual Assault Cases' (1994) 24 *Journal of Applied Social Psychology* 702

Boyd, Russell and Anthony Hopkins, 'Cross-Examination of Child Sexual Assault Complainants: Concerns About the Application of s 41 of the Evidence Act' (2010) 34 *Criminal Law Journal* 149

Cashmore, Judy and Lily Trimboli, 'Child Sexual Assault Trials: A Survey of Juror Perceptions' (2006) 102 *New South Wales Bureau of Crime Statistics and Research* 1

Chapelle, Wayne, Kent Rosengren and George Fox, 'Maintaining Composure and Credibility as an Expert Witness During Cross-Examination' (2001) 1 *Journal of Forensic Psychology* 51

Cramer, Robert, Stanley Brodsky and Jamie Decoster, 'Expert Witness Confidence and Juror Personality: Their Impact on Credibility and Persuasion in the Courtroom' (2009) 37 *The Journal of the American Academy of Psychiatry and the Law* 63

Eastwood, Christine, 'The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System' (2003) 250 *Trends and Issues in Crime and Criminal Justice* 1

Eaton, Tania, Peter Ball and Gemma O'Callahan, 'Child Witnesses and Defendant Credibility: Child Evidence Presentation Mode and Judicial Instructions' (2001) 31 *Journal of Applied Social Psychology* 1845

Gibbs, Margaret et al, 'Cross-Examination of the Expert Witness : Do Hostile Tactics Affect Impressions of a Simulated Jury?' (1989) 7 *Behavioural Sciences & the Law* 275

Kovera, Margaret et al, 'Expert Testimony in Child Sexual Abuse Cases: Effects of Expert Witness Type and Cross-Examination' (1994) 18 *Law and Human Behavior* 653

Larson, Bridget and Stanley Bodsky, 'When Cross-Examination Offends: How Men and Women Assess Intrusive Questioning of Male and Female Expert Witnesses' (2010) 40 *Journal of Applied Social Psychology* 811

McCauley, Michelle and Janat Parker, 'When Will a Child be Believed? The Impact of the Victim's Age and Juror's Gender on Children's Credibility and Verdict in a Sexual-abuse Case' (2001) 25 *Child Abuse & Neglect* 523

Neal, Tess and Stanley Bodsky, 'Expert Witness Credibility as a Function of Eye Contact Behaviour and Gender' (2008) 35 *Criminal Justice and Behaviour* 1515

Nightingale, Narina, 'Juror Reactions to Child Victim Witnesses' (1993) 17 *Law and Human Behavior* 679

Oats, R Kim, 'Problems and Prejudices for the Sexually Abused Child' (2007) 81 *Australian Law Journal* 313

Ross, David et al, 'The Child in the Eyes of the Jury: Assessing Mock Jurors' Perceptions of the Child Witness' (1990) 14 *Law and Human Behavior* 5

Ruva, Christine and Judith Bryant, 'The Impact of Age, Speech Style, and Question Form on Perceptions of Witness Credibility and Trial Outcome' (2004) 34 *Journal of Applied Social Psychology* 1919

Schmidt, Casey and John Brigman, 'Jurors' Perceptions of Child Victim-Witnesses in a Simulated Sexual Abuse Trial' (1996) 20 *Law and Human Behavior* 581

B *Legislation*

Evidence Act 1995 (Cth)

Evidence Act 1995 (NSW)

Evidence Act 2008 (Vic)

Criminal Procedure Act 1986 (NSW)