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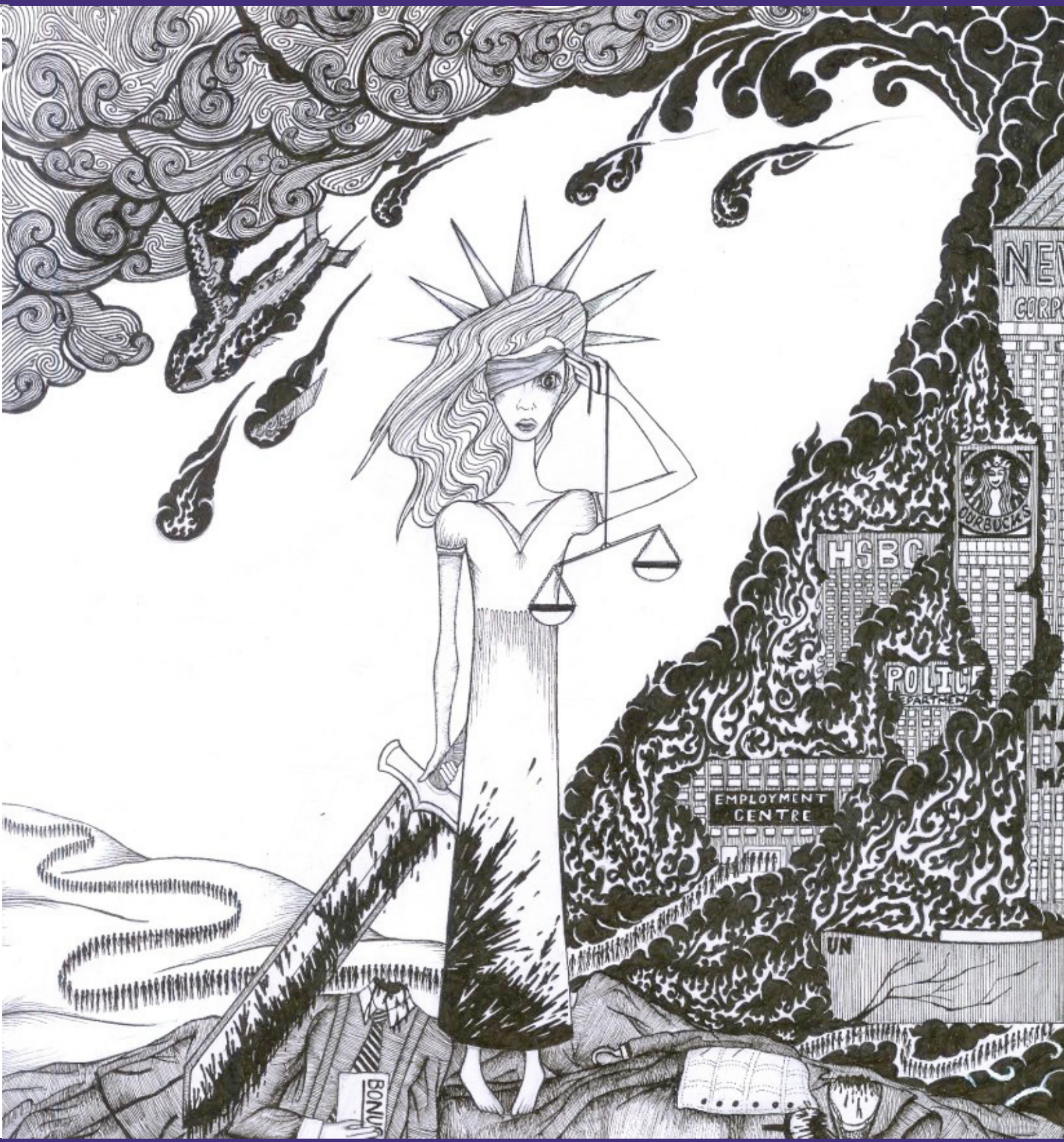

JUSTICE

Articles

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Dear Reader,

Welcome to the seventh instalment of Leviathan! As Edinburgh University's student-run politics and current affairs journal, we aspire to provide you with a platform for discussion and debate on today's critical political developments. As you flip through the pages of this journal, we hope you come across material that is new to you, that fuels your interest, and that perhaps even inspires you to contribute to Leviathan yourself.

This winter, we examine the ever-tumultuous arena of global politics through the prism of "Justice". How can we conceptualize such a fundamental human need? From governance and human rights to the environment and poverty, what is the source of injustice, and how can it be eradicated? Who suffers and who benefits from oppression and corruption across countries and polities? This issue of Leviathan features a wide range of timely topics including America's drone wars, Britain's education system, corruption in South Asia, EU immigration, and more.

Many thanks are owed to the dedicated work of the whole Leviathan team, who—despite winter flues, looming deadlines, and multiple time zones—never failed to deliver brilliantly. We are immensely grateful to all who have attended our fundraisers and donated to our efforts. Finally, generous support from the Politics and International Relations Department and the PIR Society has been invaluable, as they foster student interest and discourse through a wide variety of weekly talks, socials, and debate panels.

We hope this issue of Leviathan inspires you to reflect, question, and draw your own analyses on the myriad topics pertaining to justice in our community and in our world. We invite you to visit our brand new website, leviathanjournal.com, where you can find our past issues online and learn more about the journal. Questions and comments should be directed to leviathanjournal@gmail.com, and we welcome your feedback.

Cheers, and enjoy.

Natasha Turak
Editor in Chief

What can be said about

Professor Tim Hayward takes a

Fair trade, as a general idea, accords with some widely held ideas about justice. Its aim is to counteract some of the disadvantages experienced by the worst off people in a globalised economy by allowing them to secure a price for their produce that is more adequate to supporting a decent livelihood than they could get under completely liberalised market conditions. In practice, though, difficulties reside in the devising and implementing of certification schemes that underwrite the *fair trade* labelling of products; these prompt critical questions about the terms of entry into the schemes and the conditions to be fulfilled in order for poor producers to benefit from them. Furthermore, while the grounding principle of seeking fairness in trade commands our ethical attention, the question of what exactly 'fairness' means, and how it could apply to trade, opens a complex field of inquiry.

Yet while such an inquiry might seem worthwhile, there is a further problem that could pre-empt the point of even attempting to pursue it. In aiming to account for what fairness means in relation to trade, one presupposes that it does mean *something*, but here is the challenge: there are two very influential currents of sceptical thought according to which *nothing* that is really useful and intellectually respectable can be said on the subject of fair trade. One influential sceptical thought (S1) is that trade is distinguished from theft, extortion, piracy and so on, precisely in virtue of conforming to norms that are accepted by all parties involved and are therefore – in a pretty clear and robust sense – fair. If trade is necessarily fair, then, those who advocate 'fair trade' as if it were opposed to free trade have apparently not really understood what trade is. A separate line of sceptical argument (S2) would attempt not to claim that trade is necessarily fair but that trade cannot really be either fair or unfair. So to apply the category of 'fairness' to trade is simply a mistake. The concept of *fairness* applies when considering how people ought to apportion benefits and burdens between one another – as in John Rawls's theory of distributive *justice as fairness*, for example – because justice is the sort of thing that involves fairness. Trade, by contrast, is oriented to a different sort of value, and is more appropriately assessed by criteria of efficiency than justice: thus if someone says you *ought* to buy this or sell that they are not advising you about ethics or justice but about what is prudent market behaviour.

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Made in Senegal: Is China unfair trade competition to this Senegalese tailor? Photograph by Elizabeth Cooper in Koussanar, Senegal 2008. Elizabeth Cooper is the Fair Trade Coordinator for Edinburgh University.

"If trade is necessarily fair, then, those who advocate 'fair trade' as if it were opposed to free trade have apparently not really understood what trade is."

In order to develop ideas about fairness in relation to trade, therefore, one needs to engage those sceptical arguments and to defend a distinctive third view, namely, that trade can be, but is not always, fair: for if S1 were true there would be no need to campaign for fairness in trade; and if S2 were true there would be no possibility of a meaningful campaign.

Critical assessment of argument that trade is necessarily fair

S1 holds that trade is necessarily fair on the grounds that people freely engage in it. On this view, free trade *is* fair trade.

The holder of this view has a point: if parties to trade are not forced to enter into their trading relationship, and if each is assumed to gain something from doing so – as seems reasonable to assume, else why would they freely do so? – then there is a sense in which the relation must be a fair one. The deal may not be ideal, or even equally advantageous, for each, but it can still be *fair*. As in a competitive sport, for instance, one team may beat the other, but if the rules of the game are fairly applied and each team plays fairly, the result is a fair one. The analogy also serves to remind us not to confuse the idea of fairness with other ideas, like that of equality.

Still, fairness should not be confused, either, with another idea – namely, freedom. Otherwise one risks begging a criti-

fairness in relation to trade?

theoretical approach to justice in 'fair trade'.

cal question: why assume that because a practice is engaged in freely it is thereby *necessarily* fair? We at least need to consider what definition of that contested concept 'freedom' is invoked and how it is to apply. Thinking about what freedom means in relation to trade, we should recognize that trade is not simply about isolated individual actions. So the point about an agent's freely entering a trading arrangement making it thereby a fair one captures only part of a wider situation. There is more to trade than entering contracts, and so only on a very narrow definition of trade would the point clearly hold. In real trading contexts there have to be different sets of producers, infrastructures supporting them, and norms governing relations between them. Thus questions concerning a range of variables arise, such as: What are the rules of the game for trading? Who sets them? What is traded? What are conditions of its production? Who gets what from whom on what basis? If goods are traded for money, what is the source of latter? What underwrites its value? How did it come into being? We find, in short, a host of contextual questions about economics, politics, law, history, geography, anthropology, international relations, and so on. These questions merit our attention, and are not pre-empted by the first sceptical argument.

Critical assessment of argument that trade cannot be either fair or unfair

According to the second sceptical view (S2), questions about the fairness or otherwise of trade are simply misplaced. Fairness is a term of normative evaluation, cognate with ideas of equity and justice; but trade is not about trying to achieve equity or justice. Trade is simply a means through which different parties engage in practices of exchange with the aim of maximising their own advantage as measured against their interests. In the process (due to what, since Ricardo, we have known as *comparative* advantage) they increase the aggregate sum of advantages drawn: it is a 'positive sum' game. Trade, then, is not about fairness but about efficiency; the total amount of (tradable) good enjoyed in the world is increased by trade; if some parties lose out, or feel they do, then this is not unfairness but simply incompetence or inefficiency on their part.

There is certainly something to be said for this view, since it does capture the motivation that normally impels parties into trading relations. But again, as with (S1), we have to recognize that this, too, has a narrow basis. Granting that trade in and of itself is merely a means used in the pursuit of other ends means allowing that the argument that mere means can-

> "Ethical thinking can negotiate a path between the temptations of relativism on one side and dogmatism on the other..."

not be right or wrong, fair or unfair has some attraction. But how much? In the USA, for instance, there is a section of society that says 'guns don't kill people; people kill people' and on this basis they object to restricting trade in guns. If others of us regard this as a specious argument, our reasoning includes the thought that efficiency in the dissemination of lethal weapons is a social harm – and a much greater one than impeding it would be. Harm is not the same as unfairness, of course, but distributing harm can be: there might be a kind of rough justice at work if only people who owned guns got killed by guns; but often it is unarmed victims and bystanders. A society that allows this is allowing a pretty egregious kind of unfairness! Once we recognize that there can be legitimate limits to the kinds of thing that can be traded we are already thinking about wider contexts; we can continue from there to think, for instance, about whether free trade in goods whose production wreaks social or ecological harms is really ethically neutral. The problem of unfairness in trade is thereby recognized as one not about trade per se – here heeding the sceptics' narrow point – but about wider contextual concerns with how production is organised at input the input stage and how rewards are distributed as outputs of the process; it takes account of how some are positioned with structural advantages and others with structural disadvantages. It is this wider perspective that the question about fairness in trade opens up.

Natasha Turak

Conclusion

Many academics are understandably wary of invoking 'fairness': it is an unscientific term that is liable to a variety of interpretations; and for each interpretation, there can be divergent views on how to implement it; moreover, we also know that the term can be used naively, moralistically, or opportunistically by people seeking to muster public support in one way or another. And yet the values that the term 'fairness' stands for are at the heart of our very conception of a decent human life lived in society with others. I therefore believe that political philosophers are called to perform a modest but useful service in showing how ethical thinking can negotiate a path between the temptations of relativism on one side and dogmatism on the other to reveal the core of an idea that does, in fact, enjoy widespread agreement. That way, we can have some confidence in our convictions – including about the ethical value of trying to be fair – while at the same time being duly cautious about the particular claims that may be made by this campaigner or that critic regarding specific products of policies given a label of 'fair trade'.

Justice in Scotland: a sheriff's view

Edinburgh Sheriff Frank Crowe offers a glimpse into Scotland's justice system.

Frank R. Crowe has been a sheriff for over 15 years at the Dundee and Edinburgh Sheriff Courts. He was previously Director of the Judicial Studies Committee and a criminal solicitor advocate. The following remarks are purely of a personal nature.

The Scottish Legal system has always operated with rules and principles based upon equity, natural justice, reason, and fairness. Scotland's Supreme Courts additionally have a nobile officium which can be deployed in extraordinary circumstances to prevent injustice or provide a remedy for a party or accused where none exists.

Scotland was the first UK jurisdiction to formally incorporate Human Rights legislation when the Scotland Act 1998 came into force in 1999. Many lawyers argued that the Scots law concept of fairness encompassed most of the Convention Rights, but of course the Convention had been evolving through 50 years of jurisprudence and it has taken some time—perhaps longer than envisaged—to assimilate the wider experience of other jurisdictions to case law and practice in Scotland.

To take a practical example, if the sheriff is presiding at a jury trial which involves charges of a sexual nature against a number of women, in addition to keeping the evidence relevant to the terms of the indictment, approval may be granted in limited areas to question the sexual histories of the alleged victims where relevant to the allegations. The sheriff must ensure the trial is fair for the accused and that witnesses receive proper protection through "shield legislation" designed to prevent enquiry into sexual history. If required, the sheriff must also make special arrangements to take the evidence of witnesses who are children or otherwise vulnerable. Decisions in these matters are taken ideally some time before trial commences but can be amended by the trial judge in light of present circumstances—for example, fresh evidence or the need to alter arrangements for the witness to prevent unnecessary distress or allow dock identification. Similarly, in civil cases the sheriff has a dispensing power applicable for overcoming any technical failure to comply with rules, enabling the case to proceed to determine the issues of dispute between parties.

Whether cases involve the common law or statute, the sheriff has discretion to apply the law in a fair and just manner. Statutory provisions often leave words and phrases undefined or use words such as "reasonable", leaving the determination of particular situations to the sheriff.

Where an appeal is taken, the sheriff is required to set out the facts established and the methodology used in reaching a decision. In appeals against sentence the sheriff will set out the facts provided by the Crown, the details of the mitigation, and explain why the sentence was selected and imposed. In this way the appeals court can determine whether the case has been decided appropriately and according to law and justice.

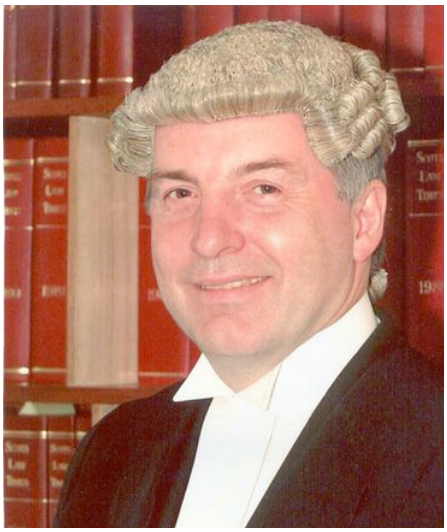
While there are some sentencing guidelines, sentencing is left to the judge at first instance to weigh up the various factors and deploy an "instinctive synthesis" based upon judicial experience. This approach contrasts with some jurisdictions in the USA where rigid guidelines give very little, if any, scope for judicial discretion in the particular circumstances of a case to do justice either by imposing a reduced or increased sentence as seems just.

Human Rights legislation and other statutory developments often highlight existing practice. Article 8 ECHR respecting the private and family life of an individual has largely been taken into account in the past. An accused for whom imprisonment or extradition may lead to the loss of home or job and place undue strain on dependants has always been able to put these considerations before the court. The incorporation of this right and others provides a more comprehensive background for the court to balance the competing public interests proportionally.

At common law the sheriff would be entitled to impose a greater sentence if it were established that an offence had been committed with a racist motive. There is now a specific provision when a racial aggravation added to a charge is established—the court must take this into account and indicate the extent to which the sentence has been increased by that element.

As with other walks of life, the judicial trend is towards greater openness and transparency. Most court cases are held in public, as has always been the case, however it is commensurate with justice for the sheriff to explain decisions taken both at important procedural stages as well as the final outcome. This may avoid unnecessary appeals and make it clear to an unsuccessful accused or litigant precisely why the court has made such a decision.

All court users must be shown respect. Most would rather be elsewhere but may have been required to attend as an accused or a witness or forced to raise or defend civil proceedings. Many will leave the court disappointed and some by a different route they entered the building, however for justice to take place, decisions must be explained clearly with regard to the circumstances of the case.



Shariff Frank R. Crowe

Obama's drones

Justifiable war strategy or moral quagmire? by Hamish Kinnear

Matt Martin starts and finishes his day like many other Americans, rising early and battling rush-hour traffic to get to work, worrying about picking up his kids from school or buying groceries at the end of the day. His job, however, involves operating a heavily armed Predator Drone—'Unmanned Ariel Vehicle' (UAV)—which conducts operations 7,500 miles away in Afghanistan. Martin, a US Air Force pilot, eliminates multiple targets on a battlefield the other side of the world before returning to the comfort of his bed once the day is done. As Martin himself rather worryingly puts it, "sometimes I felt like God hurtling thunderbolts from afar."[1]

Armed combat drones like the one Martin operates were first introduced into the US army under the Bush administration in 2001 and were deployed during the invasions of Afghanistan and Iraq. Their use under the Obama administration, however, has escalated massively; whilst 52 drone strikes were carried out during the 8-year Bush administration, the Obama administration in its first term oversaw nearly 300—six times more, equating to one every five days[2]. Extensive use of militarised drones has become a key facet of Obama's counterterrorism strategy, and though the Nobel-laureate President has withdrawn from Iraq and prescribed a 2014 withdrawal from Afghanistan, the massive escalation of drone strikes can be considered a new military adventure; a covert successor to the earlier efforts in the 'War on Terror'.

Indeed, the strategy of 'targeted killings' has had some success in attacking the command structure of the Taliban and loosely grouped Al-Qaeda organisation, eliminating a significant number of high-ranking members in each. However, also among drone strike casualties are US Citizens, such as the Yemeni-American radical Anwar al-Alwaki, and a high number of civilians—estimated at around 290 by the Bureau of Investigative Journalism. This policy therefore raises serious moral and judicial issues. How can the US justify that, despite the supposedly 'surgical' nature of these strikes, there are significant civilian casualties taking place in countries not formally at war with the US?

Opposition, or even questioning, of Obama's drone policy, however, amounts to little more than a whimper. Attempts to challenge the government on the lawfulness of its drone programme, or to uncover official data on the strikes, have met little success. The basic problem is that although Obama and his administration have commented on the programme of targeted killings, it remains officially secret and its details beyond the reach of the public. Government lawyers are currently fighting court battles with

Jessie Stevenson

the American Civil Liberties Union's Center for Democracy on the basis that since no government source has officially announced the drone programme, it thus may not even exist[3].

Setting aside issues of morality and law, the basic rationale behind the policy of targeted killings is "the ends justify the means". This of course begs the question: do targeted killings actually work? As mentioned above, it is undeniable that the strikes have succeeded in neutralising a significant cadre of top-ranking terrorists who constitute the leadership of the loosely connected al-Qaeda network.

However, the psychological impact of drone attacks on civilian populations has not been considered at any length. The most obvious reason for this is that, unlike the elimination of terrorist targets, the psychological effect is not easily quantifiable. As commentators Kilcullen and Exum point out in "Death from Above, Outrage Down Below", "while violent extremists may be unpopular, for a frightened population they seem less ominous than a faceless enemy that wages war from afar."[4] Kilcullen deals with this problem more extensively in his book *The Accidental Guerrilla*. Here, Kilcullen argues that by extending conflict into tribal areas, the US could turn local fighters into 'accidental guerrillas' who are not motivated by a global jihadist cause but simply because a foreign army is in "their space."[5] Though these accidental guerrillas only fight to expel the foreigner from their territory, it becomes increasingly difficult to distinguish them from the original target.[6] This is because the original target has taken shelter in the territory of the local fighter; just as elements of al-Qaeda have done in the Taliban-controlled regions of the Afghanistan-Pakistan borderlands.

If the drone attacks continue on the Afghan-Pakistani border and other locations, such as Yemen and the Horn of Africa, the results could be disastrous. This issue becomes doubly pressing when one takes into account that though there is a prescribed end in 2014 for the International Security Assistance Force presence in Afghanistan, drone use in targeted killings has had no such limitation. Indeed, the 'kill lists' of a network of US government organisations are expected to increase for years to come[7], resulting in a state of 'permanent war'.[8]

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Black robe,

Marko Supronyuk examines the Pussy Riot trial

Hans Kelsen, an influential 20th century jurisprudential scholar, deliberated extensively on the importance of distinction between law and morals. To separate the two, he argued, is essential for a well-adjusted legal order. In his magnum opus *Pure Theory of Law*, he wrote about the dangers of allowing one group to define justice through its own perception of personal morality.[1] Even within relatively homogenous societies, we find diverse views of "right" and "wrong," and the imposition of one notion of morality on all people can be a form of tyranny in itself. Kelsen did not advocate amorality, but he believed that this essential separation safeguards us from the morally self-righteous. Many decades after the publication of *Pure Theory of Law*, Kelsen's ideas are as relevant as ever to the state of affairs in the Russian Federation.

Russians have recently been subjected to state-sanctioned enforcement of morality as defined by the Russian Orthodox Church. It is a version of morality that is characteristically xenophobic, intolerant of dissenting views, and obsessed with respect for authority, specifically deference to priests and oligarchs. While in theory there is a separation of church and state, in practice the two function symbiotically. One would by no means describe contemporary Russia as a theocracy, but collusion between the governing class and the clergy of the Orthodox Church is an increasingly topical political issue, especially after last year's trial of three members of the punk rock band Pussy Riot.

On 21 February, 2012, several members of the Feminist anti-Putin protest group, wearing balaclavas and accompanied by cameramen, walked into Moscow's Cathedral of Christ the Saviour, approached the altar, and performed a "punk prayer," which consisted mostly of jumping and hitting the air with their fists while denouncing the perceived corruption in the relationship between the church and the state.[2] Later on, the band voiced over the footage with one of their songs, "Mother of God, Chase Putin Away," and posted it to Youtube. The song ridicules the Patriarch of the Orthodox Church as worshipping Putin instead of God and alleges the Church's hunger for temporal power and money. Among the highlights are "black robe, golden epaulettes, all parishioners crawl to bow," "the Church's praise of rotten dictators, the cross-bearer procession of black limousines," and "the head of the KGB, their chief saint, leads protesters to prison under escort."[3]

"The song ridicules the Patriach of the Orthodox Church as worshipping Putin intead of God and alleges the Church's hunger for temporal power and money."

Considering that the peaceful protest lasted for approximately one minute before the participants were removed from the premises, and that no property was damaged, one may expect the unpleasant matter settled there. But in the days following the event, the video went viral. Within several weeks, three of the band's members were arrested and charged with "hooliganism motivated by religious hatred:" a crime punishable by 2 to 7 years in prison.[4]

Perhaps the members of Pussy Riot might have had a chance at receiving a just and reasonable verdict if only Russia had a viable judiciary. Independent and impartial courts have long been considered by legal scholars to be guardians of democracy and guarantors of the rule of law. But Russia's courts are so heavily influenced by the political system, which in turn is influenced by the Church, that the judiciary is effectively made redundant. The setting of the trial following the women's arrests has been rightly called a "kangaroo court."[5]

Among witnesses for the prosecution were Russian Orthodox devotees who, though they were not present during the incident, were called upon to testify on account of their offended religious sensibilities. When the defence attempted to establish that the band's actions were a form of civil protest, the judge struck down all questions regarding potential political motives behind the demonstration.[4] In August, the three women were convicted and each sentenced to two years in prison.[5] In October, one of them was released on probation after she proved to the appeals court that she was not even inside the Cathedral during the protest.[6] The other two women are due to serve out their "corrective labour" terms in "penal colonies" and, if recent history is an indicator (see the Khodorkovsky case), it's hard to imagine that Russian authorities would have much difficulty extending that sentence if they chose to.[7]

The Pussy Riot trial is indicative of a larger underlying problem in Russia; the limitation of basic freedoms by what is morally acceptable to the Orthodox Church. The band's trial is a prominent example of what too often becomes of those whose expression is deemed offensive by the institution. Reasonable people can disagree on whether Pussy Riot's shock-approach is appropriate, effective, or indeed in good taste (listen to their music at your own risk). But individuals should not spend years of their lives in prison for wearing masks, screaming obscenities, and punching the air, even if they do it in a holy place. Of course public morality is protected in liberal democracies too and under certain circumstances can be claimed as a reason to restrict freedoms of others (e.g. Article 10(2) of the European Convention on Human Rights). But the Russian power structure seems interested solely in protecting the black robes of its own priestly brand.

Russia's alliance between church

golden epaulettes

in context of morality and religion in Russia.

and state is well documented. Accusing Pussy Riot of religious intolerance is particularly laughable when one considers the church's own record: it is many things, but it is neither a victim nor a martyr. Years after its suffering and oppression under Communist rule, it is now the most formidable of bullies, not least because it also happens to be a jealous one. Princes of the church regularly incite intolerance towards others, delivering derogatory sermons in mass media, referring to non-Russian Orthodox religious groups as "sects," and expressly claiming that to be a member of another church is unpatriotic. Meanwhile the state, through a campaign of mass intimidation and bureaucratic hurdle-making, strangles civil society and leaves less room every year for other religions, however innocuous.[8] When the state chooses to punish critics of the Russian Orthodox Church on grounds of "religious hatred," it is not standing up for the gentle and weak, it is officially sanctioning a state religion immune to dissent.

The Guardian's Nick Cohen outlines the exchange of favors between the church and the state. Among them are state funding for the expansion of churches and a partial restoration of the clergy's tsarist privileges, like the reinstatement of priests to key public roles in secondary and higher education. In return, the church promotes support for the Kremlin as a "quasi-religious duty."[9] Shortly before Pussy Riot's hapless demonstration in Moscow, and less than a month before the presidential election that would see Vladimir Putin's return to the presidency, the Patriarch called Mr. Putin's rule a "miracle of God."[10]

Jessie Stevenson

But despite these echoes of a fallen empire, the current regime is in truth a successor of the Soviet Union. Of course the former is rooted in a de facto state religion while militant atheists led the latter. But the differences dim there. Religious intolerance, persecution of unconventional political views, hatred of things perceived as foreign, a strict adherence to a dogma, and the demand to punish those who deviate from it – these present-day patterns also dominated the era of communist repressions, and Pussy Riot are certainly not the first rockers to get in trouble for ideological unorthodoxy. In Soviet-controlled Czechoslovakia of the 1970s, musicians from a rock band called The Plastic People of the Universe were arrested and charged with playing music with an "antisocialist and antisocial impact."[11] They were convicted and sent to prison for lengths of term similar to those handed down to members of Pussy Riot.[12]

Laying out his vision for what a legal order should be in the 1930s, Hans Kelsen might have been surprised to find his name appear in the same sentence as something called The Plastic People of the Universe or Pussy Riot, but he might not have been disconcerted once he found out the facts. The more one studies cases like this, the clearer it becomes that there is moral value in separating law from ethics; that morality without the freedom of choice is little more than a petty, insecure kind of despotism; that those who lead and promote such systems tend to be concerned primarily with their own power; that such people, it would seem, despise intellectual autonomy and have a low opinion of man as an individual. The Russian people can define justice for themselves without being lectured by priests in gilded mitres, and they can tell right from wrong without being talked down to by men of God who are far more interested in this world than the next.

"Accusing Pussy Riot of religious intolerance is particularly laughable when one considers the church's own record."

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[5]Pussy Riot members sentenced to 2 years in prison, in USA Today.
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[7]Khodorkovsky judge denies being pressured into verdict, in BBC.
[8]C. J. Levy, At Expense of All Others, Putin Picks a Church, in The New York Times.
[9]N. Cohen, An evil collusion between a tyrant and a man of God, in The Guardian.
[10]Russian Patriarch Calls Putin Era "Miracle of God," in Reuters.
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[12]J. Yanosik, The Plastic People of the Universe, in Perfect Sound Forever.

Bills of rights: the corner

Alex Paul analyses the necessity

Documents enshrining the basic rights of the individual are a cornerstone of democratic states around the world. Articles contained within them detail the certain rights that the people hold and offer the only absolute protection we have against the capriciousness of government policy. These 'bills of rights' are some of the most widely accepted but heavily disputed pieces of legislation in existence. So how did these documents evolve to become a crucial element of democracies today? And why are we still disputing their contents? This article explores their development from 1215 to the present day and considers the on-going debate in the UK over the content and use of our very own 'bill of rights': the Human Rights Act.

Arguably the first ever bill of rights was the *Magna Carta*, sealed by King John of England in 1215, which "subjected the King to the law of the land for the first time in Britain's history"[1] and was a source of the inspiration for the most famous bill of rights in history: the United States *Bill of Rights*, which appears as the first ten amendments to the US Constitution.

Early bills of rights also appeared in medieval European states. These included the 1222 *Golden Bull* in Hungary, which first subjected the monarch to the rule of law, and the 1525 *Twelve Articles* in Bavaria, which recognised the freedom of the people. The impact of the *Twelve Articles* was felt in the *Declaration of the Rights of Man and of the Citizen*, a central document of the French Revolution, which developed many of the demands found in the *Twelve Articles*.

The *Rights of Man* also drew inspiration from declarations of rights – drawn up by individual states in the new United States of America, such as the 1776 *Virginia Declaration of Rights*, which declared, amongst other things, that "all men are by nature equally free and independent and have certain inherent rights"[2]. The Virginia Declaration was, in the main, the basis for the *Bill of Rights*, drafted in 1789 (the same year as the *Declaration of the Rights of Man* was adopted in France), which sought to protect the American people against the potential tyranny of government.

Whilst national bills of rights have existed for many hundreds of years, it is only since World War II that supranational conventions have been developed. Notable among these is the *Universal Declaration of Human Rights* (1948) and the *European Convention on Human Rights* (1950). In particular, the Universal Declaration of Human Rights "represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings"[3] regardless of race, nationality or culture and includes articles forbidding slavery and torture as well as recognising the right to equal treatment before the law. It is widely seen as the foundation of international human rights law and has inspired subsequent treaties detailing rights for specific groups, including the *European Convention on Human Rights* (ECHR).

Julius Colwyn

> "Until 1998, the UK arguably had no legislation that definitively stated the rights of the people vis-à-vis the state."

As well as ratifying basic rights and freedoms for European citizens, the ECHR created a legal mechanism to enforce the rights contained within it, namely the European Court of Human Rights. Any European citizen can take a complaint against a member state to the Court and, uniquely in international law, the Court's judgement is legally binding on the member state concerned. It is this court, and some of its recent decisions (such as declaring that prisoners in the UK have the right to vote) that have caused so much controversy in the UK in recent years with many Conservative MPs.

Aside from the *Magna Carta*, legislation such as the *1689 Bill of Rights* (similar to Scotland's *Claim of Rights Act 1689*) helped establish the modern British state with its constitutional monarchy, and established in law the rights of the people over the monarch, exercised by their elected representatives in Parliament.

However, until 1998, the UK arguably had no legislation that definitively stated the rights of the people vis-à-vis the state. Then, in that year, the Labour Government passed the *Human Rights Act* (HRA), which incorporated into UK law the *European Convention on Human Rights*. This meant that all UK law must be compatible (as far as possible) with the HRA; that a court can declare an Act of Parliament incompatible with the rights in the HRA; that all public authorities have

stones of democracies?

of the Human Rights Act.

to act in accordance with the rights set out in the HRA; and that any individual whose rights, as set out in the HRA, have been violated by a public authority can initiate legal proceedings to remedy such a violation[4].

Of particular concern to many Conservative MPs in recent years has been the introduction into UK law, by the *Human Rights Act*, many of the provisions of the ECHR. This allows British judges to declare UK law 'incompatible' with the Convention and has led to claims that UK law is secondary to European law, as determined by the European Court of Human Rights in Strasbourg. Indeed, such was the concern over the 'secondary' status of UK law that in December 2012 72 MPs, including several former Conservative ministers, voted to repeal the *Human Rights Act*, claiming that it was "'fundamentally undemocratic' that unelected European judges could override the will of Parliament"[5]. And this view is not just one held by backbench Tories.

In 2006 David Cameron himself said a Conservative government would "scrap, reform or replace" the *Human Rights Act*. But the current government, under pressure from the Liberal Democrats, could only agree on "establish(ing) a Commission to investigate the creation of a British Bill of Rights"[6] in the Coalition Agreement. The duly created commission reported back in December 2012 with little success, as its nine members were unable to even reach a consensus as to whether the UK needed to amend or replace the *Human Rights Act*. But the current government, under pressure from the Liberal Democrats, could only agree on "establish(ing) a Commission to investigate the creation of a British Bill of Rights" in the Coalition Agreement.

The duly created commission reported back in December 2012 with little success, as its nine members were unable to even reach a consensus as to whether the UK needed to amend or replace the *Human Rights Act*.

Unsurprisingly, the commission was heavily criticised by many. Sadiq Khan, Labour's shadow justice secretary, pointed to the £700,000 cost of the commission and labelled it a waste of money. At the same time, Liberal Democrat MP Dr. Julian Huppert argued that "civil liberties are a core, unifying issue for the Lib Democrats"[7] and that defending civil liberties "is right at the core of our continued support for this government"[8]. Other groups have also weighed into the debate, with the civil rights group Liberty claiming that they are "doubtful that any replacement 'British Bill of Rights' will extend rather than diminish the protection of human rights in this country"[9]. Considering the current deadlock between the two parties in government, it seems likely that the issue of amending or replacing the *Human Rights Act* will be put on hold until after the next election in 2015. Subject to interpretation?

> "Whilst national bills of rights have existed for many hundreds of years, it is only since World War II that supranational conventions have been developed."

It is clear that bills of rights, and the provisions contained within them, have played a central part in determining the relationship between the state and its citizens. They form a central tenet of any democracy as a demonstration of the basic principles and liberties of every citizen. But despite widespread agreement on the need for their existence, the contents of many bills of rights are still widely disputed, with the current debate in the UK being just one example. Whilst all parties agree on the need for a "British bill of rights" to exist, they disagree widely on the contents of any such bill.

Meanwhile, in the US, the 10 articles that make up the *Bill of Rights*, whilst undisputed in their existence, are subject to fierce debate over their interpretation and exact meaning. One recent example is that of the Second Amendment, which guarantees that "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed"[10]. But who possesses this right is subject to variances in interpretation. One reading of the Amendment has it protecting the right of States to raise militias. Another reading has it protecting the rights of individuals to keep and bear arms. A third could even have it protecting the rights of individuals to keep and bear arms but only if it is closely supervised by the government.

Regardless, what these arguments demonstrate is the enduring and fundamental tension between the power of the state and the rights of the people. This debate, reflected in disputes over bills of rights, is central to our democratic system. As such, we need to be careful about acquiescing to calls to rewrite such documents without good reason. That is not to say they cannot be changed, but for governments to demand change to them simply because they disagree with the outcome in law of articles contained within bills of rights is questionable and best and downright sinister at worst. However imperfect in form, bills of rights are one of the few absolute forms of protection the people have against the power of the state and must be safeguarded as such.

[1]http://www.bbc.co.uk/history/british/middle_ages/magna_01.shtml
[2]http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html
[3]http://www.un.org/en/documents/udhr/hr_law.shtml
[4]http://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/how-the-human-rights-act-works/index.php
[5]http://www.guardian.co.uk/politics/2006/may/12/immigration-policy.immigration
[6]http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf
[7]http://www.guardian.co.uk/commentisfree/libertycentral/2012/mar/11/liberal-democrats-human-rights-liberty
[8]Ibid.
[9]Ibid.
[10]http://www.archives.gov/exhibits/charters/constitution_transcript.html

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Justice delayed is justice denied

Imran Khan takes a critical look at the complex dynamics of 'justice' in Pakistan.

The colonial legacy left more than just the memory of partition on the Subcontinent. It left a blueprint for many institutions prevalent today. In present-day Pakistan, no institution could claim to be stronger, more organised, better financed, or more clearly defined than the military. However, in a political era where democracy is a benchmark and Pakistan is seamlessly at the world's contention, an independent judiciary ought to be able to fulfil that claim. It does not.

At the 2008 departure of General Pervez Musharraf (who ruled for almost a decade after a military coup) and the reinstatement of an 'era of democracy' with open elections, there was hope of a new age of accountability and transparency. That hope was short-lived. The Pakistani government are now at a standoff with the judiciary[1] stemming from the refusal of the government to reopen corruption charges against the incumbent President, Asif Ali Zardari. The result? The former Prime Minister, Yusuf Raza Gillani, has been disqualified from office, refusing to re-open the investigations, after conviction in a contempt of court case; his successor has been announced, and the fiasco rambles on.

Pakistan's tumultuous saga does not end there: Tahirul Qadri, a populist cleric, recently returned to Pakistan after some years abroad and led a mass anti-corruption rally straight into Islamabad. He called for parliament to dissolve amid growing anti-corruption sentiment. Coincidently, on January 15th 2013, the Supreme Court again issued an arrest warrant for the current Prime Minister, Raja Pervez Ashraf (nicknamed 'Raja Rental'), charged with corruption whilst serving as a government Minister in 2010. Then, on January 18th, an investigating official on the case—from the National Accountability Bureau (Pakistan's anti-corruption watchdog)—was found hanged in his government hostel; many suspect foul play. With elections set to take place in May this year, once again, the fiasco rambles on...

But as the Executive and the Supreme Court battle over legal and constitutional disputes, the average Pakistani civilian is left frustrated and without hope, as the attainment of justice seems increasingly determined by the elites and their financial muscle. Chants of "Zardari Kutta!' 'Zardari Chore!" (Zardari Dog! Zardari Thief!) were frequently heard during the speech of legendary cricketer-turned-politician and budding political opponent, Imran Khan, at a recent fund-raising dinner in Glasgow in aid of his Pakistan Tehreek-E-Insaf (PTI) party. Khan maintained that the universality of justice

Rae Gilchrist

is very compelling; an ordinary Pakistani may not be able to explain the concept of 'democracy' sufficiently, but ask him about justice and he could provide you with a plethora of answers, perhaps fuelled by local customs or Islamic principles.[2]

This knowledge, understanding, and expectation of justice contribute to the complex dynamics of the judicial process. The British Raj left behind criminal and civil law, which heavily influence the current state law; Federal Sharia Courts ensure that the Pakistani penal code is in accordance with Islamic Law; and local customary laws are manifested in community court systems (often councils of villagers or tribal elders) in the different provinces—Panchayats in Punjab and Jirgas in the Northern areas.

This latter informal justice structure has had important ramifications; some positive, some questionable. By most accounts the councils' decisions are made quickly and emphatically—in stark contrast to the slow and tedious nature of the state court system. An ordinary Pakistani in a village may thus be inclined to submit a case to these councils. However, the councils have also become notorious for essentially sanctioning extra-judicial actions. The infamous 'honour-revenge' case of Mukhtar Mai, a woman gang-raped on the orders of a tribal council, still resonates in the international media. This highlights the dangers of what many call an archaic and unjust system—the sanctioned action was more to do with revenge than justice. Clearly, however, there are differing perceptions of justice and its enactment. For Pakistan's judiciary to flourish, work must be done to bridge the gaps between state law, religious directives, and local customs.

Pakistani officials attempting to reform should tread carefully; in 2011, a Pakistani Federal Minister Shahbaz Bhatti and the Governor of Punjab Salman Taseer were assassinated after questioning the controversial blasphemy laws. But the future is not so bleak: there was Pakistani unity and mass condemnation of the Taliban shooting of schoolgirl Malala Yusufzai, strengthening the gender equality momentum. The Lawyers' Movement initiated during the term of Pervez Musharraf illustrated gladly the problems the judiciary could cause when attempts are made at its marginalisation. And the judiciary's ongoing and relentless attempts to reopen the corruption charges against the incumbent president show a determined resilience.

What will be fundamental to the success of Pakistan's judiciary? It is crucial that there is greater consistency between local practices and state law, and the judiciary must ensure that corruption is stamped out. Above all, reform of the system must ensure efficiency; after all, justice delayed is justice denied (Magna Carta - Clause 40). [3]

[1]BBC News (2012) Pakistani court extends corruption case deadline for PM. Available at: http://www.bbc.co.uk/news/world-asia-19389835. Last accessed 10 January 2013
[2]Lieven, Anatol (2011) Pakistan: A Hard Country. London: Penguin.
[3]G. R. C. Davis, Magna Carta, Clause 40. Revised Edition, British Library, 1989. Available at http://www.fordham.edu/halsall/source/magnacarta.asp Last Accessed 10 January 2013

Secret justice

Alex Clark questions the power of national security over human rights.

The British government recently agreed to pay £2.2 million to Sami al-Saadi, a Libyan opponent of Muammar Gaddafi's regime who accused the SIS (MI6) of assisting in his rendition to Libya. Another Libyan man, Abdul Hakim Belhaj (commander of the rebel troops that overthrew Gaddafi in 2011) is suing Jack Straw and Sir Mark Allen, an MI6 official, for their part in his rendition. At the same time, the de Silva report revealed British state collusion in the murder of Pat Finucane by loyalist militants in 1989. All in all, it has been a tough couple of weeks for the reputation of the British secret service. It is believed that al-Saadi and Belhaj's rendition was part of Tony Blair's 2004 'Deal in the Desert', which brought Gaddafi in from the international cold. Gaddafi gave up his chemical weapons programme in return for investment in Libyan business, and help in catching opposition to his regime. Yet now Belhaj is a British ally, having helped toppled his predecessor, demonstrating the fickleness of international politics.

Despite the huge sum being paid to al-Saadi, the Foreign Office is not admitting to any of the allegations against them. This is because the intelligence services have persuaded the government that if their agents were made to testify in court, then their safety and Britain's relationship with the United States would be compromised. Indeed, attempts are being made by the government to introduce laws enabling courts to hear intelligence in secret session. Luckily this is being resisted, both by human rights groups and the House of Lords – the justice process must be transparent and clear for all. Understandably, al-Saadi is disappointed that the truth has not emerged in court: "I started this process believing that a British trial would get to the truth in my case. But…even now, the British government has never given an answer to the simple question: 'Were you involved in the kidnap of me, my wife and my children?'"[1] Such a form of justice does not befit a nation that regularly speaks out against similar events elsewhere around the world.

al-Saadi by Sarah Werner

"The intelligence services have persuaded the government that if their agents were made to testify in court, then their safety and Britain's relationship with the United States would be compromised."

The Intelligence and Security Committee (ISC) is responsible for overseeing the actions of the intelligence services. A year ago, the ISC itself recommended that its role and powers should be extended, and that it should be held accountable to both the Prime Minister and to Parliament.[2] This shows how inadequate the current system is. The secret service is able to hide some of its less palatable actions, and to blur the line between what is acceptable and what is not. Torture is banned under British law and by international convention, yet the cases of al-Saadi, Belhaj, and the British residents imprisoned in Guantanamo Bay strongly suggest some level of complicity or awareness of such atrocities by British secret service personnel, although there are no allegations of active participation in torture.

One of the main reasons offered as an excuse for the rendition of al-Saadi and Belhaj are alleged links to al-Qaeda. These may be true, and al-Saadi has admitted to meeting Osama Bin-Laden before the 9/11 attacks, but we will never know as the evidence was to be heard in secret. One of the ISC's main goals is to ensure that evidence relating to security matters can be heard in the public domain. However, the heads of Britain's security agencies have the power to withhold 'sensitive' information, although the Government believes the ISC should be able to require information from these intelligence agencies.[3]It is vital that these changes happen in order for Britain's security services to be held properly accountable to public scrutiny.

Part of Britain's international authority comes from perceived moral superiority over autocratic regimes. Increasing controls over our intelligence services may adversely affect our intelligence-sharing relationship with the United States, but how much more damaging could further accusations of abuse be to our international reputation? Thomas Hobbes argued in Leviathan that society should be controlled by an absolute authority, to which we give up certain liberties for protection from "war of all against all."[4] Any abuses of power by this authority are the price to pay for peace. Certainly, some would argue that in the face of a potential terror attack, an illiberal society is acceptable. I would disagree.

[1]Richard Norton-Taylor, The Guardian Online. "Government pays Libyan dissident's family £2.2m over MI6-aided rendition". [Online] Available at: http://www.guardian.co.uk/uk/2012/dec/13/libyan-dissident-mi6-aided-rendition, [Accessed 13 December 2012].
[2]Justice and Security Green Paper (London, October 2011), p 40.
[3]Ibid., p 44.
[4]Hobbes, T., Leviathan: Parts One and Two, Indianapolis: 1978), p 106.

Democracy for sale: super

Hallam Tuck discusses solving the

There were few events in the course of the last campaign for the U.S. presidency as engrossing as Karl Rove's televised train wreck on Fox News, after the network called the crucial state of Ohio, and therefore the election, for President Obama. Confronted with numbers proving there was no hope for a republican victory in the battleground state, Rove vociferously disputed the call, only to be conclusively proven wrong. For Rove, and many within the GOP presidential campaign, it seemed that demographic change had made the conservative conception of America's electorate obsolete. Every Republican president since Herbert Hoover had been elected on the back of overwhelming support from the white male middle class. Despite gaining their vote, Romney lost what was supposed to be a close campaign in an election that nearly became a rout in the Electoral College. The moral of the story, it seemed, was that the GOP needed to drastically redefine its ideology if it was going to win a Presidential election anytime soon.

Although this campaign narrative reflects a level of reality, another powerful story has been obscured in the wake of Obama's victory. A tidal wave of political contributions, spurred on in part by the Supreme Court's decision in Citizens United v. Federal Electoral Commission, has drastically reshaped the political landscape, threatening to hijack the American political discourse. According to the Economist, it is likely that total spending during the election cycle exceeded $6 billion, dwarfing previous campaigns. Simply overturning Citizens United, however, won't fix an unethical and undemocratic campaign finance system. Similarly, a constitutional amendment broad enough to establish legitimate reform would set a dangerous precedent as to the federal government's ability to regulate political speech. Campaign finance is mired in a series of legal and political swamps that predate Citizens United.

The drive to regulate political contributions goes back nearly forty years. The first major reform legislation was passed in 1971 and 1974, and partially upheld in the 1976 Supreme Court decision Buckley v. Valeo. Buckley upheld caps on contributions by individuals and politics action committees and disclosure requirements for ads expressly advocating candidates. It also declared the regulation of independent expenditure unconstitutional under the First Amendment. Under this system, 527 groups (so called because of their designation under the IRS tax code) were beyond the pale of state and federal regulation because they were not explicitly connected to any candidate. For example, a 527 group in West Virginia could spend millions of dollars on ads asserting that the regulation of coal mining was bad for the economy, as long as the ads didn't name a political party candidate. This constitutional precedent would prove to be one of the defining influences of Citizens United.

In the 1990s the great political demon was 'soft money,' political contributions by corporations, unions, and individuals that effectively circumvented FEC regulation. Campaign finance regulation allowed unlimited "non-federal" contributions, which could be used for generic party purposes like voter drives and to fund ads that named candidates, as long as they weren't expressly advocated. It's almost difficult to understand, from a post-Citizens perspective, the primacy of the problems posed by soft money to the democratic process. One and a half billion dollars in soft money contributions were raised by the Republican and Democratic parties between 1993 and 2002, an astronomical number in the context of the previous thirty years. At the end of 1999, 'soft money' seemed bound to control the future of politics.

Natasha Turak

Then, in 2002, the landscape changed drastically. The Bipartisan Campaign Reform Act (BCRA), known to pundits as 'McCain-Feingold,' aimed to protect popular democracy by combating soft money and issue ads. To this end, BCRA was successful, stamping out soft money and damming up the cash flow critical to the political establishments. First Amendment protections for 527 groups and independent political action committees, however, meant that major corporations and wealthy individuals could fund shadow operations. Those who had the disposable cash to invest in issue ads were suddenly able to protect their interests without ever involving the Republican or Democratic National Committees. In an effort to squash soft money, BCRA created a cash vacuum that handed an unprecedented amount of power to any concerned millionaire who could write a check. The legal precedent developed in Citizens United is derivative of this effort to regulate campaign finance.

On a basic, if simplistic level, those engaged in the debate over campaign finance seem to have forgotten a simple truth. Wealthy, independent political groups exerted influence years before Citizens United. Although it might be politically expedient to accept causal relationship between the Supreme Court's decision in Citizens United and the billions of dollars dumped into the presidential campaign, it is simply wrong.

The two major changes instituted by Citizens United relate to the First Amendment protection of political speech by corporations—given the same rights as individuals—and a new division of the 527 group. Corporations are now allowed

PACs and Citizens United

problems in campaign finance.

to give vast amounts of money to Political Action Committees, as long as the PAC discloses its donors. Justice Kennedy's Opinion makes explicit that "no sufficient governmental interest justifies limits on the political speech of non-profit or for-profit corporations." The decision also splits previously shadowy 527 groups into the aforementioned PACs and new 'Social Welfare Groups.' The latter group is allowed to accept any amount of money from anyone without disclosing donor information as long as the group is not affiliated with a candidate.

It would seem that by opening up political contributions to corporations, Citizen United paved the way for increased campaign contributions. However Matt Bai, a political correspondent for The New York Times, puts this to bed. According to a Senate brief filed by Mitch McConnell (Senate Minority leader and fierce opponent of campaign finance reform), of the $96 million raised during the Republican presidential primaries, only 14% came from corporations, none of which made the Fortune 100. Bai's research instead points to the percentage increase in campaign contributions since 2004. In the four years after 2004, outside contributions increased by 164% and increased by 135% in the subsequent four years. It's obvious that McCain-Feingold, by making it expedient for outside groups to invest in elections, was much more responsible for this increase than Citizens United.

The lack of solutions highlights the dysfunction of campaign finance. An election in which Bob Perry, Harold Simmons and Sheldon Adelson are allowed to spend 119.5 million dollars is obviously unethical. Meaningful participation in the democratic process should not cost a million dollars. According to Justice Kennedy's Opinion in Citizens United, however, capping political contributions violates the "open marketplace of ideas" that is made free by the First Amendment. Simply put, spending equals 'speech' and as such is free from government interference. This legal precedent is obviously detrimental to the democratic process. Not only does protecting large-scale individual and corporate donation enable political agendas to be held hostage by those who have the money, it is also enormously prohibitive to political officials and endangers the free market. Success in an election shouldn't be dictated by those who can raise the most money just as success in the marketplace shouldn't be dictated by which business can put together the best team of lobbyists.

"In the four years after 2004, outside contributions increased by 164% and increased by 135% in the subsequent four years."

Acknowledging these problems, there are two broad ways to solve them. One option involves passing a constitutional amendment that would overturn Citizens United and limit constitutional rights to 'natural people.' Proposed by Jim McGovern, a Democratic congressman from Massachusetts, the amendment would radically redefine the First Amendment precedent that props up Citizen United. Although this would provide the most substantial reform, it would set a dangerous precedent in allowing federal regulation of free speech. Many from the far right have criticized McGovern's amendment, suggesting it would limit free speech more than the influence or appearance of corruption. An amendment broad enough to limit individual spending and eliminate corporate spending would seriously endanger free speech, whereas an amendment specific to corporate spending wouldn't prevent Sheldon Adelson from bankrolling his favourite candidate. Additionally, it would be nearly impossible to push this amendment through the current congress.

Another, more realistic solution would involve legislation requiring the disclosure of donors by all groups and mandate disclaimers. The DISCLOSE Act, aimed at enacting these requirements, was shot down by congressional Republicans in 2010. The passage of such legislation, now that many in congress bear scars from the most costly races in history, seems much more likely. The rise of shadow organizations, like the empire run by Karl Rove and Ed Gillespie through American Crossroads and Crossroads GPS, threaten to endanger the GOP's control of its own agenda. Disclosure requirements would give agency and power back to party establishments. This reform could be beefed up by appointing a Federal Election Commission willing and able to take on outside influence.

Perhaps this helps explain Karl Rove's televised tantrum on election night. Aside from his dismay at the electoral drubbing, he had just flushed $176.9 million (or $1.71 per vote) down a Romney-shaped toilet. Remarkably, outside spending had a terrible election night. The Center for Responsive Politics reports that the candidate with the outside money advantage lost in seven out of ten congressional races. It's unlikely, however, that this will always be the case. The state of campaign finance post-BCRA and Citizens United means that political contributions will have more influence in future elections than ever before. Democracy will become less democratic. There are no perfect solutions, but passing disclosure legislation and giving the FEC some teeth would be a good way to start.

[i]Buckley vs. Valeo 424 U.S. 1
[ii]Bai, Matt. "How Much Has Citizens United Changed the Political Game?." New York Times 17 Jul 2012, Web. 27 Dec. 2012. <http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?>.
[iii]Ibid.
[iv]Gora, Joel, and Peter Wallison. "If Soft Money Goes, Then So Does Free Speech." New York Times 17 Mar 2001, Web. 27 Dec. 2012. <http://www.nytimes.com/2001/03/17/opinion/if-soft-money-goes-then-so-does-free-speech.html>.
[v]Bai, Matt. "How Much Has Citizens United Changed the Political Game?." New York Times 17 Jul 2012, Web. 27 Dec. 2012. <http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?>.
[vi]Citizens United vs. Federal Election Commission 558 U.S. 08-205. p. 50.
[vii]Bai, Matt. "How Much Has Citizens United Changed the Political Game?." New York Times 17 Jul 2012, Web. 27 Dec. 2012. <http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?>.
[viii]Ibid.
[ix]"The future of campaign finance: A morning-after constitutional?." Economist. 24 2012: Web. 27 Dec. 2012. <http://www.economist.com/news/united-.
[x]Citizens United vs. Federal Election Commission 558 U.S. 08-205. p. 38.
[xi]Floyd, Abrams. "The First Amendment Is Just Fine As Is." New York Times 24 Oct 2012, Web. 27 Dec. 2012. <http://www.nytimes.com/roomfordebate/2012/10/24 /amend-the-constitution-to-limit-political-spending/the-first-amendment-is-just-fine-as-is>.
[xii]"The future of campaign finance: A morning-after constitutional?." Economist. 24 2012: Web. 27 Dec. 2012. <http://www.economist.com/news/united-.
[xiii]Ibid.

Educational injustice

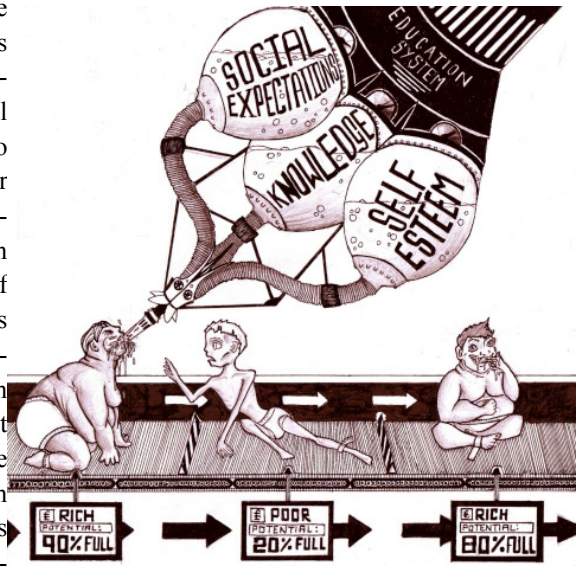
Oonagh Mannix asks what price society pays

Ethical justice can be defined as the principle that, "like cases should be treated alike."[1] This is more familiarly enshrined in the Universal Declaration of Human Rights as the basic tenet that "all human beings are born free and equal in dignity and rights."[2] Today our society infringes on both of these rights from the moment of our birth. By the age of four or five, children from low-income households in the UK score 19 months behind their high-income household peers in vocabulary tests[3]. Such tests are a standardised measure of cognitive outcomes. This educational gap between rich and poor does not narrow over a child's life; instead it widens so that at the age of 15 almost 20% of British students are judged to be functionally illiterate[4]. Students from the highest social groups are three times more likely to enter university than those from lower social classes in England[5]. This injustice not only has an enormous human cost, as exemplified by a low level of social mobility, but also represents an economic bill of over £90 million pounds per week[6]. The Program for International Student Assessment (PISA) has shown that such injustice is unnecessary - that children from lower socio-economic backgrounds do not have to be condemned to perpetuate an intergenerational cycle of low attainment, unless their society actively permits this[7].

The Millennium Cohort Study follows the lives of approximately 19,000 babies born across the UK in 2000-2001;[8] it shows that babies born to low socio-economic status (SES) families typically face a less advantageous early-childhood caring environment than their higher SES peers[9] (including less regularity in bedtime and mealtime routines). This does not, however, account for around a third of the gap in cognitive outcomes between rich and poor three-year-old children. Even after accounting for factors such as parental education, ethnicity, and home environment there is still a direct relationship between SES and cognitive outcomes. This gap is more significant in the UK than in other developed countries. In Canada, low SES children aged four or five are 10.6 months behind high SES

"Children in the UK are born alike but not equal."

children on vocabulary tests; this gap is 19 months for British children[10]. By the time children begin school there are quantifiable inequalities that are solely dependent on their parents' socio-economic circumstances. This comparison with Canada's youth shows that the gap in the UK is unnecessarily wide and represents societal injustice.



Julius Colwyn

Pre-school discrepancy is both preserved and exacerbated during a child's educational career. All studies from a multi-level review discovered that school creates greater disparity between children from rich and poor backgrounds[11]. Compounding this problem, schools in low SES communities suffer from migration of the best-qualified teachers – only 10% of teachers would consider teaching in a challenging school[12]. The result of these disparities is that only 21% of the poorest fifth of pupils will achieve five A*-C passes at GCSE, compared to 75% of pupils from the top quintile[13].

Such imbalance causes a myriad of problems, especially as it can damage a student's self-confidence, something which has remarkably serious consequences. There is a strong statistical link between a student's confidence and the probability they are resilient[14]. A resilient student is defined by PISA as coming from a disadvantaged background, relative to students in their own country, and achieving high scores by international standards. These comparisons are made meaningful by analysing the overall relationship between background and performance, and also considering the student's own background. In Shanghai and Hong-Kong over 70% of disadvantaged students are classed as resilient - in the UK this figure is below 25%[15]. Social attitudes can partially account for the dramatic difference in these figures. In the UK, 81% of the richest mothers hope their nine-year-old child will go to university, compared to 37% of the poorest[16]. These attitudes are reflected in schools and social institutions. In an Ipsos Mori survey of pupils aged 11 to 16, 27% of students said that top universities "are not for people like me." Similarly, when asked why they would not wish to attend a private school, low SES students were more likely to select the response, "I am not clever enough."[17] Both responses reflect findings from the Avon Longitudinal Study of Parents and Children, a study that followed 14,000 pregnant women in Avon from 1991/2. Low SES pupils have dramatically less confidence in their own abilities than high SES pupils. This difference in attitude resolves itself in the form of test scores. Differences in prior attainment explain 60% of the gap in test scores between pupils from rich and poor backgrounds[18] As previously noted, low

in the United Kingdom

for the inequality in our education.

SES students have lower attainment even before beginning school. Beliefs such as this can be challenged, and scholarly attainment changed in a positive way by a process called the 'school effect'.

It has been shown that qualities of schools make a significant difference to pupil progress, even when accounting for characteristics and background of its student body[19]. It is upon this principle that charities such as Teach First (in the UK) and Teach for America are founded. Teach First operates with the vision that no child's educational success is limited by their socio-economic background[20]. Their solution is to place high-achieving graduates from some of Britain's top universities, as teachers in challenging schools, on a two-year leadership development program. It has been shown that Teach First teachers being present in a school can account for between 20-40% of the between-school variance in pupil performance at GCSE[21]. Qualitatively, at Uxbridge High School - a Teach First partner school - the proportion of pupils getting five GCSEs A*-C has risen from 29% in 2003 to 88% in 2010[22]. This demonstrates that dramatic improvement is possible, and that if this policy were spread across the UK it could bring both educational justice and significant economic benefits.

"There is a strong statistical link between a student's confidence and the probability they are resilient."

The aforementioned under-development of human capital in the UK has only hindered the country's economic development. A lack of skilled workers, coupled with a large youth unemployment rate, and high rate of youth crime costs the economy upwards of £90 million per week. This includes £10 million per day in lost productivity, and £20 million per week in job seekers allowance[23]. The Prince's Trust, a charity working to help change young lives, states that reducing youth unemployment by one percentage point could save £2 million in terms of youth crime avoided. The estimated total cost of youth crime is £1 billion each year[24]. According to the social exclusion unit, nearly two-thirds of young offenders are unemployed at the time of their arrest. A further report conducted in 1997 found that prisoners released aged 18-20 reoffended with a rate of 72% over the two years immediately following their release. Compared to the general population, convicts are 13 times more likely to be unemployed. Almost half of unemployed young people say that lack of qualification prevents them from reaching their goals. Lack of education has an enormous human cost: 17% of women aged 23 without qualifications suffer depression compared with just 4% of those with a university degree. Quantifiably the cost of depression arising from educational injustice is between £11 and £28 million. In total, the Prince's Trust states that the cost of educational underachievement is £18 billion every year[25].

"Quantifiably the cost of depression arising from educational injustice is between £11 and £28million."

Children in the UK are born alike but not equal. Statistically their fate is predetermined – when 52% of students perceive top universities as "places for pupils with mainly wealthy backgrounds,"[26] they are mainly right. Other countries have shown that this is not necessary. The preschool vocabulary attainment difference is much narrower in Canada. Shanghai, Hong-Kong and Canada all have a much higher percentage of resilient students. In Britain, charities such as Teach First have shown that by implementing the 'school effect' it is possible for a child's future not to be dependent on their socio-economic background; that we can live in a more just society. PISA states that disadvantaged students can and often do defy the odds against them when given the opportunity to do so. The Prince's Trust has documented the great costs – actual and potential, economic and human - of educational disadvantage. John Rawls famously opened the first full section of A Theory of Justice with the assertion that "Justice is the first virtue of social institutions."[27] Is it not our duty to ensure that our schools and educational policies uphold this virtue for all?

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Justice for the people

Carmen Morawska anaylses Chávez's

"Fourteen years is enough, twenty is too much." This was the spirit driving the political campaign of Henrique Capriles, the opposition candidate running against Hugo Chávez in Venezuela's last presidential elections. The charismatic forty year-old was defeated, however, on 7th October, 2012. For many Venezuelans, Capriles embodied the country's biggest opportunity for change since Chávez came to power in 1999. The opposition was, for the first time in over a decade, relatively united under Capriles' command.[1] This unification gave those who oppose Chávez the hope that maybe this time things would change, leading to an impressive turnout where 81% of eligible voters cast their ballots.[2] It also meant that President Chávez was not as safe from threat as he would have hoped—after all, Capriles did get 44% of votes.[3] That percentage, Capriles warned the victor, represents those who have grown weary of Chávez's self-proclaimed twenty-first century socialist revolution. But if so many people are unhappy with Chavismo, then why did Chávez win again?

There are two main—and opposing—views. The first is that he cheated and didn't deserve to win. The second, put rather simply, is that Chávez won because people wanted him to; because the majority is better off with him than it was before he came to power. The view is that his victory represents justice for the people, a justice Venezuelans have been without since Chávez came to power. Leftist presidents, journalists, and political analysts have praised Chávez's victory as a confirmation that democratic socialism has triumphed in the country. Since Chávez came to power over a decade ago, unemployment has been cut in half, access to medical care has been increased, child mortality has declined from 20 deaths per 1,000 live births to 13 deaths per 1,000, per capita GDP has increased from $4,000 in 1999 to $10,000 today, and extreme poverty has declined from 23% of the population when Chavez entered office in 1999 to 8.5% today.[4] This inevitably means that those who had been left out by previous governments are finally enjoying some social inclusion.

It is perhaps the latter aspect which, placed in a historical context, serves to best explain the victory. Before Chávez became president the steady inflow of petrodollars and the alternations of power between the two main (conservative) parties had created a seemingly prosperous democracy; but beneath the surface festered oil dependence, poverty, corruption, and social exclusion.[5] When Chávez took over, he vowed to work for the poor and to make them the focus of his government, ending the abuse and oppression by upper classes that had made Venezuela one of the world's most socially polarised countries. This initial appeal to the masses is clearly still a salient factor in his continuing rule. A common argument cites widespread emotional loyalty as the reason for Chávez's re-election, and that many across Venezuela were simply not prepared to vote against him.[6]

"When Chavez took over, he vowed to work for the poor and make them the focus of his government."

Nevertheless, the tight margin that separated the two candidates is a clear sign that however enamoured some Venezuelans were with the socialist revolution of Chávez, their affections are waning. The country has seen a dramatic increase in violent crime, which has doubled since Chávez came to power. Now, according to a Mexican think-tank, Venezuela's Caracas ranks sixth in the list of the most dangerous cities in the world.[7] The increased crime rate is accompanied by a crumbling national infrastructure, increased corruption, and a bloated bureaucracy. Furthermore, despite its oil wealth, Venezuela has borrowed heavily in recent years and now runs a fiscal deficit of 16% of GDP.[8] All these elements played part in the almost successful political campaign of Henrique Capriles, the young, charismatic lawyer and politician who was so close to snatching the presidency from Chávez's hands. The runner up had promised to tackle all the aforementioned issues, yet this was not enough to convince the majority of Venezuelans.

Hugo Chávez's victory created an interesting pattern of responses from other governments across the globe. The Argentine President Cristina Fernández de Kirchner said to Chávez "Your victory is our victory!"[9] , echoing the feelings of many other leftist governments in the region, like Brazil, Ecuador and Bolivia. Many Latin American nations see Chávez's Venezuela as the role to follow in the region's 'left turn', which would have made a defeat by a centre-right candidate a tough one to swallow. Cuba is probably the most relieved by the outcome of the elections, as Chávez has been a 'welcomed ideological and commercial friend', especially since the collapse of the Soviet Union.[10] The island, along with many other Caribbean and Latin American states, has benefitted immensely from the PetroCaribe programme under which Venezuela provides oil and natural gas at preferential prices.[11] Many feared that a victory by the opposition would have meant a renegotiation of the deal at best, if not a complete re-formulation of Venezuela's economic largesse vis-à-vis ideological friends.

North of the Latin American border, the U.S. capitalised on the "Chávez issue" as part of the presidential campaigns of both candidates. Mitt Romney accused President Obama of being 'soft' with Chávez, and claimed he would do more to counteract leftist governments such as that of Venezuela and Cuba. The Republican candidate claimed Latin America wants to resist the failed ideology of socialism and deepen ties with the United States. Obama, on the other hand, has refrained from taking too harsh a stance against such governments in the region, and argues that the U.S.'s image has improved under his watch. While Obama's lack of pressure has certainly been a welcomed change after the tumultuous relationship with George W. Bush—how could anyone forget the

or a deluded revolution?

twenty-first century socialism.

Joshua Valanzuolo

time Chávez said Bush was the devil at a UN General Assembly?—the U.S.'s role in Latin America will depend on whether Obama decides to maintain his policy of almost conscious disengagement with the politics of the region, or whether he will be pressured into taking a stronger position against leftist governments. China, on the other hand, is wildly encouraged by the continuation of pseudo-socialist programmes in the region, as exemplified by Venezuela. Beijing's relationship with these governments is based on mutual economic benefit, coupled with the convenient perk of demising Western—mainly U.S.—influence in the region.[12] The Latin American continent most closely approximates China's current level of economic growth, making for a very beneficial relationship. The unification of these forces along with the on-going crumbling of U.S. and European markets makes the alliance of leftist Latin American governments and China a force to be reckoned with.

There are, of course, those who claim that the elections were not fair. Capriles accused Chávez of unfairly leveraging Venezuela's oil wealth to finance his campaign, as Chávez formulated a last-minute cheap housing programme before the election in order to tilt the electorate in his favour.[13] True or not, Chávez is not short of foes; the middle and upper classes are his archenemies. As Owen Jones, a columnist for The Independent bluntly put it: "Venezuela's oligarchs froth at the mouth with their hatred of Chávez" even though "his government has barely touched them."[14] Jones claims that taxes have not hurt the top layers of society; tax evasion is still rampant in the country. Then why do they hate him? Jones argues it is because, under Chávez, "the poor have become a political power that cannot be ignored."[15] Jones might have hit the nail on the head.

Chávez was re-elected because he significantly improved the living standards of the average Venezuelan. His initial success came from the regional rejection of neoliberalism and its related economic and political deficiencies, which spawned throughout the 1980s and 1990s.[16] This is part of a wider regional trend by which leftist governments have sought and achieved popular rule over the past decade. The results in Venezuela are a reflection of the country's general mood: confusion mixed with hope. Confusion and disappointment stem from Chávez's failures that have made Venezuelans feel increasingly unsafe on their own soil. But many have not forgotten that things were worse before Chávez assumed office a decade and a half ago. Hope remains that he will continue with the positive work and results achieved throughout his mandate, and that there is yet a chance to turn around the parts that have not gone so well. However, as the president's disease casts an even darker shadow of doubt upon the Venezuelan population, speculations as to whether Chávez will be able to continue his rule of 'justice for the people' are rampant. Although the president has had his failures, the majority of Venezuelans still appreciate the work done for them since he came to power. Contrarily, the opposition waits hopefully for his rule to end. This, they argue, would be a chance to revert those catastrophic policies that have been deleterious to Venezuela's economy and society. Therefore, while Chávez success in recovering would mean justice for those who rightfully put him in power, the opposite result would pose a new challenge to Venezuela, as many question whether Chavismo without Chávez is possible or even desirable.

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A dark day

David Kelly examines the morality of the

In a small corner of a Tripoli suburb, an old man lay dying, slowly and painfully, of prostate cancer. Thousands of miles away, on the other side of the world, politicians and citizens waited for him to die. The old man duly did, passing away in ignominy on 20 th May 2012.[1] The old man's name? Abdelbasset Ali Mohmed al-Megrahi. A former employee of the Libyan intelligence services, Megrahi was the only man convicted of the Lockerbie bombing.

On 21st of December 1988, Pan American Flight 103, - en route from London Heathrow to John F. Kennedy International Airport in New York, - exploded over the small town of Lockerbie in the Scottish Borders, killing all 243 passengers and 16 crew, as well as 16 residents on the ground.[2] The events of that fateful winter's night when it rained "liquid fire" changed Scotland forever.[3]

When a special Scottish court at Camp Zeist in the Netherlands finally convicted Megrahi of mass murder in January 2001, it looked as though the deep scars left by Lockerbie might finally be allowed to heal. However, in August 2009, Kenny MacAskill MSP, Scotland's Cabinet Secretary for Justice, decided to release Megrahi, diagnosed with terminal prostrate cancer, on compassionate grounds. This resurrected past traumas and reopened old wounds for the Lockerbie community and the victims' families.[4]

The controversies and technicalities of Megrahi's conviction are far too intricate to regurgitate fully here. The complexity of the case is such that we may never find out the whole truth. Few believe Megrahi acted alone; many believe Megrahi was wrongly convicted. New allegations of incompetence and even corruption in the Lockerbie investigation are extensively detailed in John Ashton's book Megrahi: You Are My Jury – The Lockerbie Evidence, published in February 2012.[5]

The renowned Justice for Megrahi group maintains that the Libyan suffered a gross miscarriage of justice. The campaign's membership includes prominent American intellectual Noam Chomsky; editor of Private Eye magazine, Ian Hislop; head of the Catholic Church in Scotland, Cardinal Keith O'Brien; Archbishop Desmond Tutu; the architect of the Camp Zeist trial, Professor Robert Black QC; and several victims' relatives, including determined activist Dr. Jim Swire.[6] For decades, Dr. Swire, whose daughter Flora was killed on Pan Am 103, has insisted that Megrahi is an innocent man.

It is clear that serious doubts cloud Megrahi's conviction. However, the decision by MacAskill to release him was not a judgement on his alleged innocence. Megrahi had been convicted by the Scottish judicial system and, thus, had to be treated as such.

> "We may not be able to answer the question of his guilt or innocence, but we can seek to answer another: was the release of Megrahi just?"

We may not be able to answer the intractable question of his guilt or innocence, but we can seek to answer another, more pertinent, but no less difficult question: was the release of Megrahi just?

The reaction to Megrahi's release was, in many quarters, apoplectic. Opponents of the SNP in the Scottish Parliament immediately pounced upon this golden opportunity to gain partisan political capital. Scottish Labour's Justice Spokesperson, Richard Baker, branded the Loading...decision an "act of unpardonable folly".[7] Former Labour First Minister Jack McConnell claimed that the decision had "brought shame" upon Scotland.[8] Then Leader of the Opposition and current Prime Minister, David Cameron, seeking to improve his reputation for being tough on issues of law and order, opined that Megrahi "should never have been released from prison".[9]

On the other side of the Atlantic, Senators from across the partisan divide lined up to attack Megrahi's release. US President Barack Obama, feted across cosmopolitan Europe as a fellow liberal, waded into the row, claiming that Americans were "surprised, disappointed and angry".[10] In a contemptuous letter to MacAskill, FBI Chief Robert Mueller said the decision made a "mockery of the rule of law" and "gave comfort to terrorists".[11] Mueller, partly responsible for the original Lockerbie investigation, added that, "releasing Megrahi is as inexplicable as it is detrimental to the cause of justice."[12]

This attitude was shared by most of the relatives of Lockerbie's American victims. Instinctively, many felt that it could never be just for a convicted mass murderer to be released from prison. Megrahi was surrounded by his family and friends as he died – yet his victims were given no such luxury. He was shown compassion by the Scottish legal system – yet he showed no remorse or compassion toward the innocents that he slaughtered.

However, what provoked almost unanimous opprobrium was the hero's welcome awaiting Megrahi upon his return to Libya's capital Tripoli. He was greeted at the airport by the son of Colonel Muammar Gaddafi, Saif al-Islam, and a large crowd jubilantly flying the Scottish Saltire. The image of the Saltire flying high as a convicted terrorist received the congratulatory adulations of a tyrannical despot were beamed across the world and were certainly damaging to Scotland's international reputation. Sadly, the Scottish Government was powerless to prevent it. Such a welcome for Megrahi was unspeakably insensitive and inappropriate. From afar, it seemed as though Libya was, thanks to the actions of the Scottish Government, indulging in the glorification of terrorism.

Some even suggested that a grand conspiracy between the UK Government, the Scottish Government, BP, and the Gaddafi regime had secured the release of Megrahi. However, such eccentric theories have since been dismissed for

for justice?

decision to release the Lockerbie bomber.

what they are – utterly untrue.[13] The procedure followed in the consideration of Megrahi's application for compassionate release was entirely in accordance with the letter and spirit of Scots law. The rules followed in Megrahi's case are exactly the "same rules" which have "been followed in all 40 compassionate release cases since the legislation was introduced in 1993."[14]

Nevertheless, some of these criticisms struck a chord with many Scots. In the immediate, emotional aftermath, one poll suggested that as much as 60% of Scots opposed Megrahi's release.[15] It seemed inherently unjust that a convicted mass murderer be permitted to die at home, surrounded by his loved ones, having cruelly denied such an end to his victims. Shockingly, Megrahi had served less than 14 days in custody per victim before his release. From this perspective, the release of Megrahi appears incomprehensible and indefensible.

However, many not only understood the decision, but actively sought to defend it – including relatives of some of the victims and former President of South Africa, Nelson Mandela, who wrote to the Cabinet Secretary declaring his support.[16]

By the time of his release, Megrahi was a severely weakened, terminally ill, elderly man. He posed no threat to anyone. His only wish was to die in peace. If the Scottish government had denied Megrahi this, it would have denied him exactly what he denied his victims. In other words, if an institution denies a criminal their fundamental dignity as a human being, it chooses to act like him; it chooses to commit revenge and to perpetuate violence. In order to feel that true justice has been done, why must we make a man suffer? In the search for justice why do we demand that a man die in pain and alone, thousands of miles from his family and home?

We must not stoop to the level of those who seek to destroy our way of life. How can we claim the moral high ground if we callously deny a dying man his final breaths of freedom? For what end do we defend our country against terrorism if we surrender all our liberal principles of compassion and solidarity in order to fight it?

Rae Gilchrist

By releasing a dying man, Kenny MacAskill did not disregard, condone or demean the heinous attack that exploded onto the nation's consciousness in the skies above Lockerbie all those years ago. His decision was a solemn and noble recognition of Scotland's aspirations to be a truly egalitarian, compassionate and, above all, just society. "In Scotland", he explained, "we are a people who pride ourselves on our humanity. It is viewed as a defining characteristic of Scotland and the Scottish people. The perpetration of an atrocity and outrage cannot and should not be a basis for losing sight of who we are, the values we seek to uphold, and the faith and beliefs by which we seek to live."[17]

There is nothing to be gained from prolonging suffering or breeding vengeance. Retribution cannot undo the past. Revenge cannot bring back the dead. As the leader of India's struggle for independence, Mahatma Gandhi, once said so eloquently and yet so simply: "an eye for an eye makes the whole world blind".[18] We must not allow our anger and pain, no matter how legitimate or raw, to make us blind to injustice.

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What do we mean

Callum McGregor on the need to theorise

What do we mean when we speak of climate justice? Justice for whom, where, when and by what means? In what follows, I attempt to theorise climate justice, drawing upon Nancy Fraser. It is a salient moment to discuss this trope, given that we have recently seen the creation of a Scottish Government Climate Justice Fund for climate adaptation in developing countries (given£3 million over three years), with Alex Salmond declaring 2012 a "year of climate justice" .

Climate justice is positioned against a "post-political" discourse of undifferentiated responsibility for tackling the global problem of climate change, in which businesses, states, communities or individuals are all complicit, and must 'do their bit' to live sustainably. At its most straightforward, it is premised upon the notion that those who have contributed the least to anthropogenic climate change suffer its effects the most. Beyond that, the term has in recent years become common currency among grassroots activists, environmental organisations, policymakers, governments, UN delegates and trade associations . Consequently, it is fair to say that climate justice means very different things to these different actors.

A vibrant transnational activist public has been effective in articulating compelling and diverse visions of climate justice. However, its integration into UN debates has reframed the issue in terms of a technocratic market framework that can result in commodifying elements of the carbon cycle, charitably redistributing capital from rich to poor countries, and reforming development in a clean direction. This approach has been criticised for obfuscatory practices that ride roughshod over sociomaterial and geographical contingencies and inequalities. Experts are forced to make questionable equivalences between very different places and practices in order to 'hem in' CO_2e, so as to give it a calculable exchange-value . At best, as Bumpus recognises, the sheer complexity of 'hemming in' CO_2e in some cases requires an elevated role for local and indigenous knowledge, which acts as the gateway between local practices and market logic.

The efficacy and efficiency of market approaches notwithstanding, to understand climate justice as cognitive justice is to ask questions about the accountability and legitimacy of esoteric spaces of decision-making and calculation. The work of critical academics and transnational social movement intellectuals remains vitally important here: as Lohmann argues, "to frame a new market…is to black-box

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items (Latour 1999) which, with some effort, can be again made visible . One need only acknowledge the presence of large counter-summits and protests parallel to UN discussions, to realise that many on the receiving end are rejecting these compromised "invited spaces" of participation, in favour of "invented spaces" . Firstly then, it should be recognised that climate justice is simultaneously an issue of "cognitive justice" . To agree with this presupposes a deliberative and dialogical approach to policy. In fact, it presupposes an understanding of justice itself as "participatory parity", as understood by Nancy Fraser .

Fraser's argument for reframing the concept of justice in a globalising world helps us to disaggregate justice into three analytic strands in a way that clearly demonstrates what is at stake. Firstly, and most importantly, Fraser reminds us that "it is not only the substance of justice, but also the frame which is in dispute" , such that struggles over material redistribution and political and cultural recognition are always implicitly circumscribed by the issue of who is represented in the political space. The three dimensions of justice are therefore to do with distribution, recognition, and representation. Representation can itself be bifurcated into two kinds of question: the first is "do the boundaries of the political community wrongly exclude some who are actually entitled to representation?" The second is "do the community's decision rules accord equal voice in public deliberations and fair representation in public decision-making to all members?" . Whilst the former is concerned with boundary work, the latter is concerned with who is involved in setting the boundaries. Let us then take these issues of distribution, recognition and representation in turn.

In distributive justice terms, richer nations have, over the course of their material development, used more than their fair share of atmospheric space as a part of the global commons. This is perhaps the most intuitive concept of climate justice—the historical 'ecological debt' frame. However, distribution not only covers climate finance and the right to pollute in order to develop, but the distribution of technology and knowledge needed for adaptation and mitigation, and the attendant issue of intellectual property rights. It also speaks to the colonial 'land grabbing' practices of energy companies for fossil fuel extraction, such as seen for example in the bitumen ('tar sands') extraction projects in Alberta, Canada (a climate justice issue that the Scottish Government stays curiously silent on despite RBS' questionable role in underwriting major loans to tar sands operators, ConocoPhillips).

As regards recognition, we find genealogical roots in environmental justice struggles, as campaigners and communities of resistance assert that the consequences of climate change are visited disproportionately on particular identities. To continue with the example of the controversial tar sands, this involves recognising the land rights, knowledge, social and cultural practices of indigenous peoples, as seen in the strained relationship between the Government of Canada and the First Nation. It also relates to the development of a gender analysis that we see in climate justice discourse: in developing countries, women are recognised as being more directly dependent on agriculture and the informal sector, are less mobile than men,

by 'climate justice'?

the 'justice' in 'climate justice'.

and have less access to the education, technology, credit and finance needed to adapt and mitigate .

Finally, we arrive at representation (the framing of political space), possibly the most troublesome of the concepts. The abstract nature of the threat creates ruptures between cause and effect as well as between perpetrators and victims. Depending on how we see the "butterfly effect" of causality , chains of responsibility can seem too complex to be adduced in any practical sense. As Majority World negotiators argue, emissions resulting from the production and transport of commodities produced in developing nations, but consumed by developed nations, are effectively 'outsourced'.

An often overlooked aspect of representational climate justice is the displacement of individuals and communities on account of the effects of climate change: we see now the emergence of the term "climate change refugee" despite its lack of recognition in asylum law . This has important ramifications in terms of how political institutions (including those in Scotland) might come to understand climate justice. Williams, in addressing this "lacuna" in the Refugee Convention, proposes regional cooperation, where nations work with the notion of internally displaced persons framework under the UNHCR, which confers rights and guarantees for protection on people displaced as a result of disaster .

Having addressed how we might think systematically about the 'justice' in 'climate justice', it is nevertheless notable that much of this discussion is focused on a supranational scale. I conclude below that for the concept of climate justice to have domestic resonance, a dialogical approach beyond the rhetorical work of expert advocacy and policy workers is needed to link climate justice with domestic social justice issues, so that it may genuinely take root.

How might climate justice make links with domestic social justice issues? On an international scale, if we know that a narrative of undifferentiated responsibility to act is unacceptable, how does this apply closer to home? Domestically, it is often argued that appeals to justice don't motivate behavioural change, so we must appeal to people's enlightened self-interest. This is an important move away from naïve narratives of austerity critiqued by the likes of George Monbiot . Nevertheless, collaborative ENGO working group "Common Cause" recently pushed this conversation forward, arguing that whilst social marketing can motivate short term change by appealing to "extrinsic" values (e.g. money saving, consumer fashion etc.), it damagingly reinforces these values long-term. They propose "framing" the issue in ways that tap into people's pre-existing capacity to address "bigger than self" problems. Although this is a leap forward in thinking, advocating "identity campaigns" based on the careful use of rhetoric fails to see that "broad-based civic participation cannot be brought about by expert advocacy", rather, it requires "civic engagement and dialogue, not clever spin campaigns" .

Taking this view, we arrive back at the notion of climate justice as participatory parity. Dialogue between educated and mobile activists, those with least capacity to act, those who rely on polluting industries for a living, trade unions, policy makers and scientists is the only way forward. This requires the development of deliberative fora for mutual education through dialogical exchanges between those who promulgate 'climate' discourse and the material interests of ordinary people. For example, in the Scottish context, reorienting the strategic aims of the Climate Challenge Fund —a fund for community responses to climate change—would provide dialogical opportunities to ensure that, with the help of educational resources, such initiatives need not merely be abstract carbon counting, but can be about, and in a sense can be climate justice.

Tsunami Victim by Ellyce Morgan

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Immigrants of the Arab Spring:

Maksym Beznosiuk scrutinizes the EU's

The recent political and social movements in Mediterranean Arab countries have raised serious concerns over migration and its consequences for European Union countries. Immigrants escaping persecution to pursue safety in the EU are under constant pressure from both the EU and their home countries. This reflects double standards in the EU's immigration policy, which discounts international human rights standards.

Migrant flows, the issue of double standards, and the role of Frontex in immigration prevention are all vital in understanding the injustice imposed upon North African and Middle Eastern immigrants to the EU.

Large-scale emigration from Mediterranean Arab countries started four to five decades ago. When revolts broke out at the end of 2010, the region was the source of almost 8 million first-generation immigrants; 62% of them were living in an EU member state, 27% in another Arab state (20% in the Gulf) and 11% in other parts of the world[1]. The turmoil of the Arab Spring has caused approximately 2 million Arabs to leave their homes and seek better lives in the West[2]. EU leaders, however, have not been very active concerning the livelihoods of those immigrants. Approximately two thousand have died at sea trying to reach Europe. The rest have suffered in camps under severe conditions.

Nicolas Beger, Director of Amnesty International's European Institution Office, describes the EU actions as shameful. Despite praising the Arab Spring, EU governments made little effort to help people find refuge in the EU. The UN High Commission for Refugees appeal has so far resulted in EU countries offering to resettle a mere 900 people[3]. But for the majority of migrants, the only option is to settle in another country where they can rebuild their lives in safety. Instead of aiding them, EU countries have let them suffer in squalid camps or return to their countries of origin, where they are often prosecuted or tortured. According to a Human Rights Watch report,

"Even as the EU and member states proclaimed the importance of human rights in the pro-democracy Arab Spring movements, they remained unwilling to prioritise human rights at home. Policy responses to migration from North Africa—including calls to limit free movement inside EU internal borders, disputes over rescuing boat migrants in peril, and reluctance to resettle refugees from Libya—exemplified this negative approach.[4]" In February 2012, adding insult to injury, multiculturalism was declared a failed policy both in the UK and in France. In June 2012 the Council of Europe's European Commission Against Racism and Intolerance warned against increasing racism, specifically hateful discourse, discrimination against Muslims, and violence against migrants and refugees[5].

These developments demonstrate the double standards of EU governments regarding immigrants who seek a better life in the EU and are sent back to countries where they are degraded and oppressed. In this context, it is necessary to emphasise the importance of Articles 1, 3, and 5 of the Universal Declaration of Human Rights. According to Article 1, "All human beings are born free and equal in dignity and rights and should act towards one another in a spirit of brotherhood." Article 3 is on the right to security of person, while Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Articles 13 and 14 establish the right to movement, and the right to seek and enjoy asylum from persecution in other countries.

EU countries are ignoring these provisions and other international law standards. In the meantime, immigrants continue to suffer and die on a regular basis.

The rise of radical right parties in Europe correlates with the phenomenon of mass migration, especially in Western Europe[6]. Anti-immigration

Natasha Turak

justice or abandonement?

double standards on Arab migration.

parties gaining seats in national and EU parliaments reflect the growing sentiments of certain communities against these immigrants, who are made scapegoats[7]. For instance, since 9/11 the immigration debate has become more focused on religion, and Islam in particular. Political and intellectual groups have debated Islam's compatibility with democracy, leading to calls for restrictions such as the 'burqa ban' of Belgium and France.

Moreover, many EU countries have tightened their asylum and general immigration laws to curb immigration except that of highly skilled workers. And although the new EU emphasis was on democracy-building, it did not elaborate

"Despite praising the Arab Spring, the EU remained unwilling to prioritize human rights at home"

any new responses to migration drivers[8]. The fate and justice of immigrants does not seem to concern those in power in the EU. EU countries choose to tighten laws and prevent immigrants from entering without taking into account human rights factors. At the same time, in order to elevate their public image, they emphasise their contribution to a limited number of programs aimed at improving cooperation between the EU and those developing countries.

The EU has reacted to the increased flow of immigrants by establishing common border control. In 2004, Frontex, The European Agency for the Management of External Borders, was created. Its tasks include providing member states with the necessary support in organising joint return operations, and providing rapid response capability[9]. The agency began its work in 2005, with a budget of €6.2 million for that year. The budget rose to €19.2 million in 2006, and to €35 million in 2007. In 2011, the budget was €118 million[10].

In 2007, the European Parliament issued a directive on the formation of 'Rapid Border Intervention Teams'. Their main purpose is to be available for a "limited period of time" and in "exceptional and urgent situations" if "a member state is faced with a mass influx of third-world country nationals attempting to enter its territory illegally"[11]. According to its report for 2010, the agency directed a total of 20 'operations'. They included air, land, and sea border joint operations, whose aim was to apprehend potential immigrants. It should also be noted that the funding of extra-territorial camps and the tightening of border controls coincide with political pressure on African countries to take active measures themselves against the flow of refugees. Between 2004 and 2006, the EU Commission allocated €120 million under its AENEAS Programme for "financial and technical assistance to third world countries in the area of migration and asylum matters." This is specifically intended to cover "management of migratory flows, return and reintegration of migrants in their country of origins, asylum, border control, refugees and displaced people."

Several human rights organisations have cited violations by Frontex. In 2011, for example, Human Rights Watch condemned Frontex for its decision to deport 65 asylum seekers to Greek detention centres. Altogether, Frontex was responsible for rejecting over 6,000 refugees in 2011 alone, forcing these asylum seekers to return to the source of their persecution[12]. Apart from giving some financial assistance, EU countries have largely chosen to ignore human rights standards concerning immigrants of the Arab uprisings. They have instead conducted preventive policies, combining Frontex activities with stricter legal measures applied to immigrants illegally living in the EU. There is thus total injustice with regard to most immigrants who dream of finding

"Funding of extra-territorial camps coincides with political pressure on African countries to take active measurements themselves against the flow of refugees."

a better life in Europe. In order to comply with international human rights standards, the EU needs better policies and programs concerning immigration, as well as deeper cooperation with the immigrants' countries of origin.

It is high time to realise that it is impossible to stop this incremental influx of immigrants from the Middle East and North Africa without more active engagement with their authorities and support of democracy development in those countries. And it is crucially important to reconsider the policy double standards regarding the immigrants who hail from those unstable and unpredictable states.

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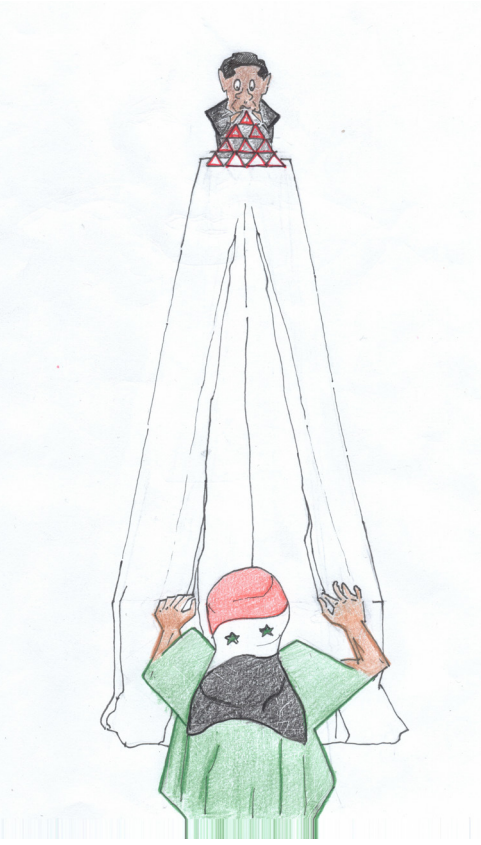
Justice and Syria: is a just war credible?

Alexander Stolz on why Western intervention in Syria is not the solution.

World War II was the last time that the case for just war was so clear and compelling. Subsequent wars invariably have been judged by its moral yardstick and have fallen short of the normative grounds for war. This essay will look at the current war in Syria and gauge whether the narrative of the Just War can be applied in this context and what actions, if any, are legitimate in toppling the Assad Regime.

The United Nations has clearly failed to deal with Syria, with Russia like Cerberus on the Security Council. This leaves the governments in the West powerless to stop the bloodbath in Syria. A creeping recurring theme of the new age liberals has resurfaced: humanitarian intervention. Is this option even remotely realistic, let alone just? The answer is a resounding no. Any military attack must pass through the Security Council and will be blocked by an obstinate and obtuse Russia rendering any subsequent military action illegal. This leaves the West with its final trump card; unilateral military action in the name of justice. First of all, any military intervention is not feasible; and secondly, the ensuing chaos would only expedite a new religious war in the hot bed of sectarian violence, rendering any attempt at justice a farce.

Hard-line Islamists have hijacked the political discourse from moderate Muslims and liberals, so the very people who could replace Assad are marginalised. Assad is reacting militarily to the security threat, and his regime possesses thousands of missiles, as well as chemical weapons. It would take the entire US military apparatus to neutralise this considerable threat, and success is never guaranteed.[1] The risk of any of these weapons falling into the wrong hands is too great to warrant potentially destabilising the country. Assad could give the weapons to Hezbollah or they could take them of their own accord. Al-Qaeda and its affiliates, already present there and expanding, could procure such weapons. This would be disastrous and would drastically increase the security threat in the Middle East. Obama has floated the idea of chemical warfare in Syria, a seemingly incongruous development in the war that brings eerily to mind the pretext used to invade



Jessie Stevenson

Iraq. There is little chance that chemical weapons would be used in Syria, simply because it does not serve the purpose of the regime. The ruling cabal of sadists would not hesitate to bomb entire towns, but chemical weapons are ineffective in their current predicament. This is not Iraq in 1988. The rebels are in Damascus; any chemical attack where government headquarters are located is inconceivable. Furthermore, if Syria were to use chemical weapons, it would become a pariah state even beyond the status of North Korea.

Secondly, any justice served must presumably be done in the name of some oppressed victim—in this case, the Syrian rebels and people. A doe-eyed West has romanticised the Syrian rebels since the start of the Arab Spring. The English-speaking Facebook users shown on the news are not the ones fighting the oppressive regimes in the Middle East; their views have no currency in the Arab streets. The Free Syrian Army clearly stated that they do not value the political input of the Syrian Council, the sole legitimate representative of the Syrian people, according to the West. One of the main raisons d'etre of these repressive regimes was to combat the West's more lugubrious enemies abroad so they would not pose a threat domestically. This paradigm worked well until the house of cards tumbled down two years ago. Now the same people routinely described as terrorists are in power in Tunisia and Egypt. While democracy should be encouraged, the record of these countries is abysmal. Their economies are in ruins and hordes of religiously fixated troglodytes roam the streets. Some will claim more time is needed. Thirty years on, Iran is still an Islamic state run by degenerate Mullahs inebriated with Stone Age ideas, and transfixed by holy war. Religion and state never mix well, and Syria is no exception. If justice is to be done then it must be done through negotiation. The UN is fickle and its envoys are a charade. Targeted asset freezes and holistic economic sanctions are more effective and just than proxy wars. The West must not be complicit in aiding the Salafists plaguing Syria. Syrian minorities fear being slaughtered, women fear becoming second-class citizens. If justice is to be done, we must learn from the past.

[1]The Independent "A decade on from the failure of the Iraq War, are we any wiser about when, and when not, to intervene?" December 25 2012.

Justice of Muhammad

Archie Zverev analyses the standpoint of Sharia Law to apostacy.

Some Zanadiqa (atheists) were brought to 'Ali and he burnt them. The news of this event, reached Ibn 'Abbas who said, "If I had been in his place, I would not have burnt them, as Allah's Apostle forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of Allah's Apostle, 'Whoever changed his Islamic religion, then kill him.'" (Bukhari, Apostates, no. 6922)

This passage, taken from Sahih Al Bukhari, one of the six largest Sunni hadiths[1], gives us an idea of the situation of atheists residing in a predominantly Muslim country. In particular, the case of Alexander Aan, a 29-year-old atheist sentenced to two and a half years in prison in Indonesia, comes to mind. His comments on Facebook encouraging apostasy were deemed incitement of religious hatred in a country not subject to sharia law, but with a population that is 86.1% Muslim.[2] There was public outcry over his actions; fellow prisoners beat him severely, and the Islamic Society Forum, a coalition of groups that promote Islamic growth, called for his execution, basing their judgement in particular on the above hadith.

The question I ask is not whether the trial was fair, and the sentence commensurate to the offence, but whether apostasy is a crime according to the sharia. Islamic legal principles

"The concept of justice in Islam is not codified, but must be obtained subjectively by the follower."

derive from two sources: the Qur'an and the Sunna (the collection of narrations about Prophet Muhammad, his actions and words, constituting in themselves the basis of moral and just behaviour). However, the concept of justice in Islam is not codified, but must be obtained subjectively by the follower. The Quran (Sura VI:152) encourages one to "be just, even if it should be to the near kinsman." Hence, we come across an almost Kantian sense of justice and morality, derived from within one's subjectivity; however, instead of pure practical reason, it is faith and acts, consistent with divine prescription, which enable one to be just and fair. As Lawrence Rosen states, "Relationships among men and toward God are reciprocal in nature, and justice exists where this reciprocity guides all interactions."[3]

It is therefore clear how the notion of justice in Islam is linked to the collection of religious texts, and as such is open to interpretation and differing standards. For instance, Quran 18:29 dictates, "The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve,"[4] assuring the liberty of one to believe or not believe. Sunnan Abu Dawood, another Sunni hadith, states: "Beware! Whoever is cruel and hard on a non-Muslim minority, or curtails their rights, or burdens them with more than they can bear, or takes anything from them against their free will; I [Prophet Muhammad] will complain against the person on the Day of Judgment."[5]

It appears far from true that Islam is inherently intolerant of non-Muslims, a fact affirmed by many prominent historians, such as Will Durant, who once wrote: "At the time of the Umayyad caliphate, the people of the covenant, Christians, Zoroastrians, Jews and Sabians, all enjoyed a degree of tolerance that we do not find even today in Christian countries. They were free to practice the rituals of their religion and their churches and temples were preserved."[6]

Viewing Islamic justice in this context allows a better understanding of the social and judicial response to the actions of Alexander Aan and similar figures, such as Kasem El-Ghazzali, a 23-year-old Moroccan who had to seek asylum in Switzerland for running the

"A mere declaration of one's atheism does not constitute an offence, in a strict sense of sharia law."

blog 'Atheistica'. As mentioned above, Islamic justice is not a codified set of absolute values, but rather an evaluation of human relations, upholding divine prescription; as a result, the particular circumstances of those relations play a central role. Therefore, if an accused's acts, though harmless in themselves, could lead to imbalance and distress in the subjective path of a Muslim in establishing divine morality, then a harsh verdict will follow.

Alexander Aan's sentence, for instance, was determined by the content of his Facebook comments, as not only did he declare himself an atheist, but also made derogatory and ironic depictions of the Prophet. It would appear that a mere declaration of one's atheism does not constitute an offence, in a strict sense of sharia law; it is often the irrational attempt at converting others (de-converting, actually) that affects the stability of the religious and social system, urging institutions to take equally irrational methods.

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[3]Lawrence Rosen, 2000. The Justice of Islam: Comparative Perspectives on Islamic Law and Society (Oxford Socio-Legal Studies) Edition. Oxford University Press, USA. p.155
[4]2004. The Qur'an (Oxford World's Classics Hardcovers). Edition.

Inviting interested editors, graphic designers, illustrators, and writers to contribute to our next issue.

The theme for our Spring issue will be 'Development'. Development tends to be understood in terms of economic progress. But is there more to it?

Many argue that the basic purpose of development is to enlarge human freedoms, to expand the choices people have to live full and creative lives. Others have understood development to be the fusion of modern advances in science, technology, democracy, values, and social organisation. Some see development simply as positive change.

But is development necessarily a good thing? Is there a clear model of the ideal state towards which it aims? Is the whole idea Western-centric, imposed by powerful people upon the less powerful, or can it be a bottom-up process? How should it be assessed? Through GNP, employment, literacy, or Gross National Happiness?

These are some of the questions you might like to look at for our next issue. We hope this rich theme inspires you to contribute!

The deadline for submission is 10th April, 2013. Visit us online at leviathanjournal.com, or email us at leviathanjournal@gmail.com to find out more.

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