- Editor's Comments –

The seventh volume of *Dialogue, e-Journal*, Issue One, continues the journal's reputation for engaging widely with developments in many fields related broadly to politics; international relations, law and economics in particular. Beginning with international relations, in the aptly titled "Eagle vs. Dragon Show Cancelled to Popular Uprising" George Karavas offers a discursive analysis of American and Chinese engagement in Africa. The paper argues that the dominant discourse on China's engagement in Africa is reflected through an American lens. The result has the been the silencing of alternative discourses on China's engagement with Africa by a hegemonic discourse that reflects more about American values than the implications of China's actual engagement. In "Aluta Continua", Elmari Whyte interrogates how South Africa's reputation from a relatively peaceful transition from *apartheid* has been replaced by its reputation for violent crime. She argues that South Africa's peace building processes failed to address a number of issues that are implicated in the state's current crime situation, namely structural and physical violence. While the Truth and Reconciliation Commission focused on physical political violence it did not effectively deal with non-political violence and as such, South Africa's liberal-democratic model for peace building has not been effective in preventing criminal violence in the wake of *apartheid*.

Moving to international political economy, Abhaya Kamalakanthan and James Laurenceson, in "How important is foreign capital to income growth in China and India?", offer new insights into the economies of China and India. Both states are among the world's fastest growing economies and both have been high profile recipients of foreign capital inflows. The widely held view has been that while foreign capital inflows are seen to be linked with rapid national growth that they also contribute to income disparities at the provincial/state level. On the basis of Krugman's research from 1993, Kamalakanthan and Laurenceson posit that domestic factors rather than the forces of globalisation are the more important determinants of income growth in China and India.

Moving to international law, Jessica Howley in "The Non-State Actor and International Law" argues for the necessity of recognising legal actors other than the sovereign state. With the emergence of powerful non-state actors in world politics, Howley contends that it is essential that international legal recognition now be extended to, *inter alia*, multinational corporations and non-governmental organisations. This is to not only ensure accountability of such actors under

international law, but also to enable them to acquire participant rights in the international legal system.

To close the edition we have a review of Andrew Linklater's new book *Critical Theory and World Politics*, a collection of his most significant papers written between 1982 and 2007.

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The *Dialogue, e-Journal* team continues to expand with Jessica Howley from the School of Law and Nicholas Carah from the School of Journalism and Communication now acting as liaison editors to the journal. If you are interested in attending committee meetings, being part of the committee, or in anyway wish to take part in the various activities associated with *Dialogue, e-Journal* please contact myself at s.brincat@uq.edu.au

If you are interested in submitting an article or essay to *Dialogue e-Journal* please email me (s.brincat@uq.edu.au), or if you wish to submit a Book Review proposal please contact Samid Suliman (s.suliman@uq.edu.au). If you would like to make a comment or offer any feedback to *Dialogue e-Journal* in the form of letters to the editor, article replies, or any other general suggestions, please feel free to contact me at the aforementioned email address.

I would like to finish by offering my thanks to all of our anonymous referees for their time and expert comments, without which this journal would not be possible. I would also like to thank all our contributors who have provided this edition of *Dialogue e-Journal* with such variegated and interesting material.

Shannon Brincat,
12 August, 2009

Aluta Continua: The Struggle Continues in South Africa – Against Violent Crime

By Elmari Whyte[1]

Abstract

Concerns for safety and security as South Africa's hosting of 2010 FIFA World Cup draws nearer highlight the degree to which South Africa's reputation for a relatively peaceful transition from Apartheid has been replaced by its reputation for violent crime. Its transition, and the peacebuilding efforts that followed it, are not completely unrelated to its current high levels of violent crime. In fact, this article argues that there were a number of issues South Africa's peacebuilding process failed to address that are relevant to the country's violent crime situation. A significant reason for this failure was an inability or unwillingness to engage the full spectrum of Apartheid's violence with equal rigour. Apartheid inflicted structural violence, through it racially oppressive laws, as well as physical violence, through enforcing its laws and suppressing its opposition, on the people of South Africa. Peacebuilding in South Africa primarily focused on Apartheid's physical violence. Through the work of the Truth and Reconciliation Commission, the focus was narrowed down further to physical political violence. Due to this narrow focus, it did not attend effectively to non-political violence – which includes gender-based violence, the esteem violence had attained during and due to Apartheid, disarming the country of illegal firearms, and narrowing the income gap between the country's rich and poor.

While South Africa proudly claims ownership of its conflict resolution and peacebuilding processes, it still emulated predominant models of building peace through liberal democracy and a market economy. These models have been drawn from Western success stories in diminishing interstate conflict, while South Africa is a developing country that was recovering from an intrastate conflict. Pursuing these models has had benefits for South Africa, but not in many of the ways it needed in order to effectively prevent a surge in criminal violence in the wake of Apartheid.

Introduction

The death of world-renowned South African reggae musician, Lucky Dube, at the hands of carjackers in Johannesburg late in 2007, and the xenophobic attacks of 2008 refocused international attention on the realities of violent crime in South Africa, and the seeming arbitrariness with which it is meted out. Despite South Africa's relatively peaceful transition from a minority-led, racially segregated Apartheid state to a majority-led, multi-racial post-Apartheid state having been lauded a modern political miracle, in the 15

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years since that transition the dark cloud of violent crime has been eclipsing the nation's "rainbow".

Enabled by the inevitable mistakes and oversights of first-time post-reconstruction governments, the structural and physical violence of Apartheid produced a South African society plagued with violent crime. A fundamental mistake was a misdiagnosis, or rather an underdiagnosis of what the building of lasting peace in South Africa would require. By restricting peacebuilding to the realm of political violence, the non-political violence it masked, the attitude towards the law both forms of violence displayed and promoted, and the complex inequalities entrenched by the Apartheid system were largely overlooked and allowed to engage in a macabre synergistic dance. Where these aspects were (and still are) addressed, they were seldom viewed as a pivotal part of the country's peacebuilding process, denying them the focus and resources enjoyed by the political violence facet at the time when it would have been most effective – at the time of the country's transition.

I assert here that the application of too narrow an understanding of peacebuilding in the South African context has played an integral part in facilitating the high levels of violent crime now prevalent in that country. It cannot be denied that a broader focus would have been difficult, if not impossible, or that the outcome of these oversights could easily have been predicted. I do, however, hope that this article will contribute to the existing, but seemingly limited awareness and sensitivity among peacebuilding theorists and practitioners to the non-political dimensions of a conflict that have to be addressed when building peace, and the possible negative consequences if those are ignored. Furthermore, in considering the South African case from this perspective, it might assist current policy makers in dealing with the country's violent crime problem, which is marring the progress of a country that has real potential to change the predominant, negative international view of the African continent.

Background and Terminology

As the fight between the South African Apartheid government and its opponents was an unconventional conflict, in that an all-out civil war was never called, its aftermath also required to be dealt with in a less conventional fashion. In order to come to terms with the atrocities of its Apartheid past, South Africa opted for a Truth and Reconciliation Commission (TRC), as opposed to granting blanket amnesty to all perpetrators, which was considered a more "politically expedient" option (Hay 1999: 29-30). The violence that had to be dealt with, however, was not only political and physical, it was also structural in terms of its social, economic and psychological impact.

Efforts to confront the past in South Africa were primarily focused on making significant changes to the political landscape and dealing with political conflict. This approach was considered successful because political violence greatly diminished. Whilst some occurrences might still be racially driven, recent violence in South African society is not primarily of a political nature. The socio-economic legacy of the Apartheid system and the psychological effect it has had on South Africans, combined with the "culture of violence" (Robertson 1998) created by the long-term struggle against Apartheid has effectively set the country up for the high levels of violent crime it now experiences. Dealing with the socio-economic effects of Apartheid as well as its broader, macro-level psychological consequences did not, however, form a very significant part of peacebuilding in South Africa. This lapse can be ascribed to an adherence to a more limited understanding of peacebuilding.

In the South African case, unlike conflict situations with considerable external intervention, it has prided itself on its peace process being homegrown and self-selected. So, while South Africa cannot and does not claim that how it chose to pursue peace was imposed upon it, it is "universally" common for "moderates searching for peace from within the conflict environment… to expropriate Western models in their search for a solution" (Richmond 2005: 158). This is usually done in order for the process to be approved by the international peacebuilding community, which is largely Western-driven and funded. The end-goal of peace as understood by the latter is the "liberal-democratic state" (Richmond 2005: 155).

The establishment of a liberal-democratic state in South Africa has not prevented almost 300 000 murders from being committed between April 1994 and April 2007 (SAPS 2004: 1, 2007: 7), and murder is only the most extreme form of violent crime. Peacebuilding ventures and literature have tended to focus on preventing the resurgence of political, medium to large scale conflict, with non-political, one-on-one crime – in other words the kind of conflict that occurs in largely peaceful societies too – receiving less attention. The purpose of the research in this article is to address this void, as this has clearly presented a significant problem in the South African case. To fulfil this purpose, though, certain key concepts need to be defined at the outset.

It is important to give a general understanding of what is meant by the terms Apartheid, post-conflict, peacebuilding in general and in the South African context, and violent crime in this article, though their complexities will be explored further. Apartheid refers to the policy of systematic and legalised racial discrimination in South Africa, spanning from the National Party's (NP) accession to power in 1948, until the first democratic elections on 27 April 1994. "Post-conflict", therefore, refers to the period including and following May 1994. "Peacebuilding" is simply and broadly understood as post-conflict reconstruction with the view to ensuring lasting peace. Whilst its consolidation is an

ongoing process, this article refers to peacebuilding in South Africa as the attempts of its first democratically elected government, in office from 1994 until 1999, to address its past and establish sustainable peace.[2] "Violent crime" entails contact crime that is violent in nature or uses the threat of violence, and, based on South African Police Service (SAPS) categorisations, includes murder, rape, attempted murder, various forms of assault, and robbery with aggravating circumstances.

Race is, understandably, a sensitive issue as a result of South Africa's past, but remains an undeniable part of its present. Through preferential treatment policies, such as Affirmative Action/Employment Equity and Black Economic Empowerment, racial classifications entrenched by Apartheid are perpetuated, as they are in South African society, where they retain socio-cultural significance. For these reasons, the classifications Black (originally of West Central African decent), White (originally European), Coloured (indigenous Khoisan people[3] and those of Malay and/or "mixed"[4] racial descent) and Indian (originating from the Indian subcontinent) are used in this article, despite their undisputable shortcomings. The term "non-White" is used in reference to Black, Coloured and Indian people as a group, though the objectionability of defining those race groups in terms of White people is acknowledged. The terms are capitalised as they still hold legal significance in South Africa.

This article shows that the understanding and application of peacebuilding in post-Apartheid South Africa has been insufficient in context of the recent high levels of violent crime in that country in a number of parts. The section immediately following provides a survey and review of existing literature to show the lack of concern with non-political violent crime and the elements that contribute to it in general in thinking about peacebuilding and post-conflict reconstruction, and particularly in practice in South Africa. The third and fourth parts provide an historical analysis and a critical analysis, respectively, of Apartheid and its legacy; how that legacy was addressed in peacebuilding efforts in South Africa, and finally, how lapses in those efforts have contributed to a South African environment conducive to violent crime. The final, concluding section reflects on the article and its argument as a whole.

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[2] Ali and Matthews (2004: 7) describe two phases of peacebuilding – a first, "transitional phase of several years", and a second period of peace consolidation. Peacebuilding in South Africa in this article refers to the first phase.

[3] This heritage of the Coloured people is what makes labeling Black South Africans as exclusively "African" problematic.

[4] The inverted commas are to acknowledge that racial purity is a fallacy, and that all races have been mixed.

Peacebuilding and Post-Conflict Violent Crime in South Africa

- Peacebuilding

For a relatively new field of study, emerging in the academic space created within the International Relations field by the end of the Cold War, the body of literature on peacebuilding is quite substantial. The chief reason for this is arguably that increased intrastate conflict over the last two decades has evoked significant international interest and involvement, which is often expressed in the desire to create sustainable peace in such conflict areas. A brief overview of peacebuilding literature is necessary in order to understand the thinking that influenced the South African peacebuilding project.

According to Johan Galtung (1976), peacebuilding formed one of "Three Approaches to Peace" – peacekeeping, peacemaking and peacebuilding. Peacebuilding goes both wider and deeper than the former two, in that it seeks to "*remove causes of wars and offer alternatives to war in situations where wars might occur*" (Galtung 1976: 298, italics in original). This means that while peacekeeping and peacemaking happen in direct relation to a conflict, peacebuilding can take place even where there is relatively little conflict. So, even countries that have not been subject or party to a political conflict recently are engaging in some form of peacebuilding – if by other names – as the "*causes of war*" are not stagnant, which makes removing them an ongoing process.

Peacebuilding is often conducted by international governmental and non-governmental organisations in post-conflict societies, to the extent that Roland Paris termed it a "form of liberal internationalism" (1997: 59). The shift in international focus in the post-Cold War era in this area was exemplified by the then United Nations (UN) Secretary General, Boutros Boutros-Ghali's *An Agenda for Peace* (1992). His references to "monitoring elections", "reforming or strengthening governmental institutions", and the entire paragraph 59 on the formation or "strengthening of new democratic institutions" (Boutros-Ghali 1992) sketch a picture of democracy as a requirement for successful post-conflict peacebuilding.

The adoption of liberal democratic political and free market economic models by countries considered reformed warmongers, such as Germany and Japan, has seen a link drawn between the political and economic principles they have adopted and their now seemingly peaceful nature. This link has been exemplified by liberal internationalism's democratic peace theory and the notion that "trade brings peace" (Graham 2003), espousing respectively that no two democracies have ever gone to war (Ray 1998: 31), and that countries that trade together are less likely to go to war with one another (Polacheck and Seiglie 2006). Unsurprisingly, peacebuilding efforts in recent years have promoted similar principles (Brown 2003). This conceptualisation of peacebuilding has proven problematic, especially when these theories that pertain to the reduction of

interstate conflict are applied to situations of intrastate conflict, and has increasingly been criticised in peacebuilding literature.

Oliver Richmond took issue with "the Liberal Peace from Above" approach that "represents the dominant dimension of the peacebuilding consensus" (2005: 149). This is a Western-centric dimenions, or what Paris called "[t]he liberal bias of peacebuilding" (2002: 639), that promotes liberal democracy and free market economies as a fundamental part of post-conflict reconstruction that would ensure lasting peace. The critiques of this approach are mounting (David 2002; Paris 1997, 2002; Richmond 2005). A possible outcome of the "dominant dimension" of peacebuilding is the creation of a "virtual peace" (Richmond 2005: 149, 150), where a post-conflict society might display all the social, economic and political institutions required by liberal peace, but still not truly acquire peace. The imposition of this notion of peace, from outside and from above with a quasi-colonial flavour (Montiel and Wessells 2001), has been justified on the basis that once those it is imposed on get to know its "character", they would embrace it and in so doing "legitimate its imposition" (Richmond 2005: 151). Richmond (2005: 159-173) and Paris (1997: 65-73) show how this idea has been disproved in numerous recent post-conflict situations. The problématique of the "dominant dimension" has resulted in a search for alternative approaches to peacebuilding.

To acknowledge the nuanced and challenging nature of peacebuilding, attempts have been made to conceptualise and operationalise peacebuilding for its practitioners (Jeong 2002, 2005; Lederach 1997, 2002); non-Western and indigenous approaches to conflict resolution have been explored (Bleiker and Brigg 2009 - forthcoming;; and the need to address the gendered dimensions of conflict as well as acknowledging and analysing gender roles in conflict resolution and peacebuilding has been highlighted in recent literature (Chinkin and Charlesworth 2006; Pankhurst 2000; Porter 2003; Whitbread 2005). Despite these developments, peacebuilding literature is still quite silent on the links between group-based violence of a political conflict and the individual-based, non-political violence in a post-conflict situation.

- Peacebuilding and Post-Conflict Violent Crime

A primary explanation for the occurrence of violence in post-conflict societies is the psychological effect of the conflict in creating or perpetuating a pre-existing cycle, predisposition to, or culture of violence (Fisher 2001; Krause and Jütersonke 2005; Kynoch 2005; Lambach 2007; Lira 2001; Lumsden 1997; Steenkamp 2005). The latter forms part of a host of psychological reasons that only provide a partial explanation for violence. Basic texts from the field of criminology all address psychological explanations for violence and violent crime, but pay equal if not more attention to environmental issues, such as socio-economic circumstances, the role of drugs and

alcohol, the availability of firearms, class structures, and education (Englander 2003; Jones 2000, 2006; Wolfgang and Weiner 1982). Despite attempts at and acknowledgement of the need to address environmental issues, the focus of official peacebuilding efforts tends to remain on the psychological effects of conflict with the view to prevent the recurrence of earlier political violence. Possible reasons for this are that environmental issues take so much longer – and by implication, so many more resources – to address; the focus on political violence is justified as it is primary to the conflict being dealt with; and furthermore, non-political violence is an accepted part of "peaceful" societies. This reasoning might have a lesser effect in some post-conflict situations, but where structural violence has formed a fundamental part of the conflict, as it did in South Africa, it could have dire consequences for the future stability of the society that is being rebuilt.

Given the fragility of transitional societies, especially in the area of rule of law, the scarcity of interdisciplinary dialogue between the fields of criminology and peacebuilding seems striking. The fact that both these fields have their academic and intellectual homes in Western ways of thinking can largely account for this. The truth of this has already been shown in reference to peacebuilding, and criminology as the scientific study of crime, criminality and crime control is firmly rooted in Western social philosophy, and more notably in Auguste Comte's positivist notion of applying scientific methods to the social sciences (Siegel 2006: 5-7). It is then not surprising that the mainstream criminology research focuses mostly on the West, as can be seen through the focus especially on the United States and United Kingdom in introductory criminology texts (Jones 2006; Siegel 2006). The fact that much of the field of criminology focuses on developed countries, and that peacebuilding mostly occurs outside those countries goes some way in explaining the lack of interaction between the two fields. This lack has proven dire in the case of South Africa.

- Peacebuilding in South Africa

The peacebuilding literature on South Africa mainly focuses on the country's Truth and Reconciliation Commission. Given the international interest in South Africa's Apartheid regime, especially as illustrated by the global anti-Apartheid movement, it is understandable that that interest was extended to how the country dealt with the human rights violations of its past. South Africa's decision to offer amnesty rather than mete out justice has received particular attention.

The choice between amnesty, or a process of forgiveness and justice, or a process of retribution, is a source of great debate in the fields of ethics and peacebuilding (Bennett 2002; De Greiff 1996; Digeser 1998; Fletcher and Weinstein 2002; Halpern and Weinstein 2004; Schaap 2003). This debate was echoed in the South African context – in

terms of the wisdom of choosing amnesty in general and, in particular, the effectiveness of the Truth and Reconciliation Commission (TRC) as the vehicle for that choice (Abrahamsen and Van Der Merwe 2005; Colvin 2000; Gibson 2005, 2006; Gibson and Gouws 1999; Godobo-Madikizela 2002; Hamber 2000, 2002; Hamber, Nageng and O'Malley 2000; Hay 1999; McGregor 2001; Vora and Vora 2004; Wilson 2001). The wealth of literature on the TRC and the degree of public attention it has received has thoroughly overshadowed other elements of the South African peacebuilding process. As Simpson (2002) points out, the TRC was merely a part of a larger process of transitional justice, within the greater reconciliation agenda. That having been said, however, the TRC "is promoted as the primary tool for achieving reconciliation" (Simpson 2002), and as such has been subject to the most scrutiny within the South African peacebuilding process.

The primary criticism of the South African TRC was that it simply did not do enough. Whilst the value of the work of the TRC cannot be underestimated, as it brought to light many stories that might otherwise have gone untold, it "only [began] a process" (Simpson 2002). Van der Walt, Franchi and Stevens (2003) drew attention to the ambiguity of the TRC's mandate and how it has informed South Africa's post-conflict reconstruction. They argue that the country and the Commission's "restrictive focus" on reconciliation and national unity was "pursued at the expense of economic, social and psychological reparation to the majority of South Africans" ((2003: 251). It is arguable that one of the wages of that decision has been rampant violent crime. While the role of Apartheid in creating the circumstances conducive to violent crime in South Africa is self-evident to most, the effect South Africa's decisions on dealing with that history has had on violent crime remains an underexplored, but promising area of debate.

Violent Crime in South Africa

Issues of violent crime in South Africa are included in a more general political, socio-economic, security and criminological discourse on crime in that country, and are seldom considered independently of that discourse. Literature on crime in South Africa in general will therefore form the substance of this section, as violent crime is addressed through it. Due to the public focus on crime in South Africa, it is not surprising that there is a significant and growing body of work on the subject. Most of the literature, understandably, is concerned with the actual and the perceived causes of crime, and drawing conclusions about responses based on those, while some also consider the effects of crime.

Factors that are identified as causes of crime in South Africa do not differ significantly from those that cause crime in other, especially developing, countries. It is, of course, the specific ways these factors combine in the South African context that produce the brand of crime witnessed in that country. Criminologists consider sociological, biological, and

psychological factors as determinants of crime (Englander 2003; Jones 2000, 2006; Wolfgang and Weiner 1982). While biological and psychological causes of crime are not discounted, sociological factors are predominant when explaining South Africa's crime situation. Maree and Prinsloo (2002: 99-108) cite a relatively young population, high levels of urbanisation, negative experiences of poverty (not poverty itself), drug and alcohol abuse, the effects of having committed crime before, the role of culture, how effective the police and judicial system are, and the opportunities for crime as social factors contributing to crime in South Africa.

The legacy of Apartheid shines through in the causes of crime in South Africa, even though the link is not always overtly made. Kruger and Landman (2008) presented an interesting case for the role of South Africa's built environment – in most cases still a direct result of Apartheid policies – in crime, both as a cause and potential solution. Socio-economic conditions conducive to crime and violence – a link in the case of South Africa that is illustrated particularly well through a quantitative analysis by Demombynes and Özler (2006) – also infer links to Apartheid, due to that system's marginalisation of such a large part of the population.

The creation of a "culture of violence" through Apartheid-time violence has also been held responsible for violent crime in particular. Gary Kynoch (2005), however, takes issue with the latter's supposed link. He argues that much of the violence in South Africa during the 1980s and 1990s that was considered political violence was in fact criminal violence masquerading as political violence or with "the most tenuous connection with politics" (Kynoch 2005: 501). He points out that even before Apartheid was instituted, non-white communities were largely left to their own devices when it came to controlling violent crime, which bred vigilante groups that sometimes evolved in criminal organisations themselves (Kynoch 2005: 497). Whilst Kynoch makes an exceptionally strong case for considering an aspect of violence during the transition era that has gone largely unchecked, his reasoning can – however mistakenly – be construed as reinforcing the stereotypical notions of crime and violence somehow being inherent to Black people. This would undoubtedly have a negative influence on the reception of his limited recommendations on how incorporating an understanding of the link between political and criminal Apartheid-time violence might assist in fighting the current "violent crime epidemic" (Kynoch 2005: 493) in South Africa. The potential for such an interpretation and consequent lack of acceptance of their work could be why researchers have stepped lightly around the issue of non-political violence in South Africa before and during Apartheid. Mark Shaw (2002b), however, does point out the link between post-conflict crime in South Africa and its transition in a less controversial way than Kynoch, and compares the South African experience with those of other transitional governments and societies in recent decades. What is clear, however, is that what are considered causes of crime are often determining factors in responding to crime.

As South African law enforcement agencies and its criminal justice system are notoriously overburdened, responses to crime are mostly focused on crime prevention. One theme is that of crime prevention through social policies (Dixon 2006; Frank 2003, 2006), reiterating the link between social circumstances and crime. Chandre Gould (2007a; 2007b) highlights the risk of framing what are ultimately social matters as policing problems, as the former tends to be much more difficult and time-consuming than the latter. This falls into a greater critique of South Africa's national crime prevention strategies and the role of the SAPS within those strategies (Altbeker 2007; Bruce 2006; Camerer 1996; Louw 2007; Masuku 2002; Omar 2007; Pelser and Louw 2002; Schönteich 1999b). The inability of the South African government to successfully address issues of crime has had profound effects on the country.

Arguably the most significant effect of crime on South Africa as a whole is the effect of perceptions of crime. Harris and Radaeli describe South Africa as a country "paralysed by fear" (2007: 1). This fear is often in response to generalising from one or a few cases, and seldom a reflection of actual crime rates. If SAPS crime rates are taken at face value, crime has stabilised if not decreased in recent years, yet public panic has been on the rise. Distrust in the government to deal with crime has resulted in a boom in the private security industry and the development of gated communities (Carrier 1999; Schönteich 1999a; Tshehla 2003). Fear of crime and scepticism towards government is not confined to those residing in wealthy suburbs, but are just as prevalent among township dwellers (Kynoch 2003). In less impoverished areas, these sentiments are often translated into vigilantism (Nina 2000; Tshehla 2007). Perceptions of crime in South Africa have moved beyond the national realm, leading to safety concerns for the country's hosting of the 2010 FIFA Soccer World Cup (Burger 2007), and earning it a rap over the knuckles from the African Peer Review Mechanism (APRM)[5] (Burger 2006). The media is often blamed for fuelling negative perceptions of crime in South Africa (Kanyegirire 2008). Despite the public and academic interest in violent crime in South Africa that is often linked with Apartheid, it is seldom linked with the how the country has dealt with that Apartheid past.

Significant works have been contributed by Mark Shaw – sometimes in conjunction with others – regarding the intersection between South Africa's transition and its experiences with crime since that transition, with particular emphasis on policing and police transformation (Gastrow and Shaw 2001; Marks and Shaw 2002; Shaw 2002a, 2002b; Shaw and Gastrow 2001). It is also in the field of policing that issues of peacebuilding and crime eventually do meet up. One might think that disarmament would be another

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[5] The APRM is a mechanism of self-evaluation for members of the African Union, falling under the auspices of the New Partnership for Africa's Development (NEPAD).

such issue, but while many mention it, few authors seem to explicitly engage the issue of the availability of firearms as a contributing factor to violent crime in South Africa.

It is clear, then, that the literature on peacebuilding hardly takes up the issue of non-political violent crime. In literature pertaining to South Africa, there is a divide, with the literature on peacebuilding and reconciliation through the TRC on one side, and the literature on violent crime on the other. The intersection and overlap between the two are very seldom explored, and it is this gap that this article wishes to step into.

From Apartheid to its Aftermath

Before one can critique the understanding and application of peacebuilding in context of violent crime in South Africa, one needs to understand how peacebuilding was indeed understood and applied. Judging the appropriateness of the post-conflict peacebuilding process is also dependent on the nature of the conflict it was meant to address. This first analytical section, therefore, focuses on the history and effects of the Apartheid-time conflict in South Africa, and the peacebuilding process that was put in place to deal with it.

Apartheid and the South Africa it created

The history of Apartheid is relevant here in three ways: firstly, with regard to the structural violence it inflicted on the majority of South Africans; secondly, in terms of the physical violence used to enforce it and to fight it; and finally, with respect to how these two kinds of violence affected South African society.

- Apartheid's Structural Violence

Apartheid meets Johan Galtung's definition of structural violence as violence that is "built into the structure and shows up as unequal power and consequently as unequal life chances" (1969: 171). Whereas structural violence is often considered a more covert form of violence, in South Africa the structural violence of Apartheid was quite obvious, as it was law. Under the newly elected National Party government of 1948, Apartheid was instituted to formalise and intensify policies of racial segregation that had been practiced in preceding decades. Racially discriminatory practices and policies were nothing new in South Africa and many other countries, but in the context of decolonisation and the changing international attitudes towards racial intolerance as a result of the Second World War, "[A]partheid began to stand out internationally as an immoral system" (Beinart and Dubow 1995: 12-13).

Apartheid was a "creed" in addition to being a "set of policies" (Barber 1999: 140). It was considered by the White people at the time as both a duty to God and necessary for the preservation of their race, given that they were greatly outnumbered by Blacks in

particular (Barber 1999: 140). The preservation of their race was reliant on non-White labour, though, so Whites could not operate in the complete isolation some desired. The result was a range of legislation to restrict and oppress approximately 80 percent of South Africa's population.[6]

Apartheid governed every facet of life in South Africa.[7] The *Population Registration Act (No. 30) of 1950* required that every South African be classified by race – Black, White, Coloured or Indian.[8] Marriage and sexual relations between Whites and non-Whites were prohibited by the *Prohibition of Mixed Marriages Act (No. 55) of 1949* and the *Immorality Act (No. 21) of 1950*, respectively. The *Reservation of Separate Amenities Act (No. 49) of 1953* assigned separate public amenities to the different races. Race was also the basis on which the *Group Areas Act (No. 41) of 1950* and later related laws governed where people could live. It was as a result of this Act that people were often forcibly removed from their homes. It should be pointed out that Black people – in correlation with the level of the threat that they posed to Whites through their population size – were discriminated against more severely than their Coloured and Indian counterparts.

Black people, who were further subdivided according to tribes, were assigned a Bantustan or homeland (see Figures 1 and 2) – deemed semi-autonomous under the *Bantu Authorities Act (No. 68) of 1950* – based on that tribe. When they did travel outside those Bantustans to urban areas – as most had to in order to earn a living – pass laws, as a form of influx control, required Black men and women to produce pass documents to authorities on demand. Failure to do so could result in immediate detention (Byrnes and Library of Congress 1997: 57). While this kind of legislation facilitated unequal development of the races, there were laws that did this explicitly.

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[6] South Africa's population was 21 percent White in 1936, but by 1980 they account for 16 percent – a figure that would continue to decline in decades to come (Byrnes and Library of Congress 1997: 70)

[7] The facts about Apartheid legislation, as set out in the following paragraphs, result from a combination of the author's own knowledge, and the works of Byrnes (1997: 54-57) and Barber (1999: 141).

[8] See earlier interpretations of these terms in the introduction to this article.
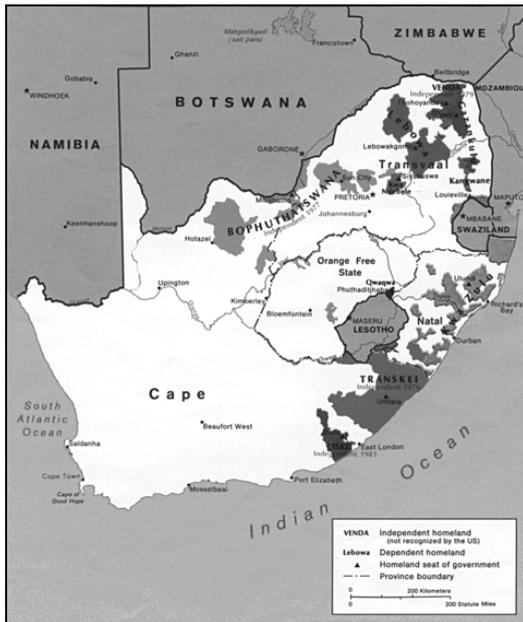
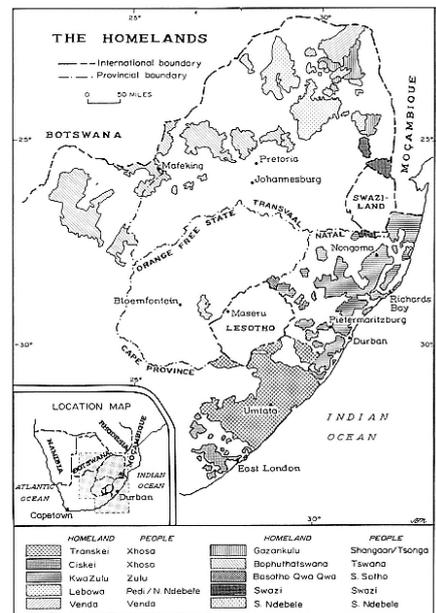Figure 1: Map of South Africa, including Bantustans

Figure 2: Map of South African Bantustans

Some legislation blatantly deprived non-White racial groups of opportunities to further themselves. Jobs were reserved for certain racial groups, based on the *Industrial Conciliation Act (No. 28) of 1956*. This usually meant that skilled, better paying jobs were reserved for Whites and unskilled, low paying jobs were reserved for non-Whites. This was underwritten by lower levels of education for the latter – significantly lower for Blacks, in accordance with the *Bantu Education Act (No. 47) of 1953*. Where non-Whites did seek a university education, due to the *Extension of University Education Act (No. 45) of 1959*, they had to do so at a university specifically established for their race group.

To keep this oppressive system in place, it was supported by laws that cracked down on opposition from all race groups. The *Suppression of Communism Act (No. 44) 1950*, with a very broad definition of communism, outlawed the ideology and the Communist Party; the *Public Safety Act (No. 3) of 1953* empowered the British Governor-General to declare a State of Emergency; the *Criminal Law Amendment Act (No. 8) of 1953* made public opposition to any laws illegal – and offence for which one was presumed guilty until proven innocent; Blacks could be exiled to remote areas based on the *Native Administration Act (No. 42) of 1956*; and the *Customs and Excise Act of 1955* and

Official Secrets Act (No. 16) of 1956 allowed the censoring of various kinds of media (Byrnes and Library of Congress 1997: 57). These laws did not, inevitably, curb opposition to Apartheid, which often led to violent clashes between the Apartheid government and its dissenters.

- Apartheid's Physical Violence

The first kind of physical violence that marked Apartheid was the violent enforcement of its laws. The brutality and violence with which the SAPS fulfilled its mandate – supplemented by the work of the homelands police forces – was notorious. They were heavy-handed in their manner, prejudiced against non-Whites, and frequently disregarded due process (Rauch 2000). Once in custody, confessions were often obtained through coercion, and torture was not uncommon (Rauch 2000). The South African Police and Defence Force also regularly suppressed protest marches with violence. Opposition to the structural violence of Apartheid and the physical violence with which it was often enforced evoked the second category of physical violence – an armed struggle – which was spearheaded by the African National Congress (ANC).

The moderate leadership of the ANC, formed in 1912, was overthrown by the more radical ANC Youth League in 1949. It then began employing more "militant tactics" leading to the banning of the organisation in 1960 (Nupen 2004: 123). Together with other banned political organisations, the Pan-Africanist Congress and the South African Communist Party, the planning of "armed insurgencies" commenced in 1961 (Nupen 2004: 123-124). The Sharpeville massacre of 1960, that saw 69 people killed while protesting the pass laws, lent impetus to this move, which resulted in the creation of the ANC's military wing, Umkhonto we Sizwe ("Spear of the Nation"). Much of these organisations' leadership, including Nelson Mandela, would be imprisoned in the wake of these actions.

The aftermath of the South African Police's killing of approximately 20, mostly young people during the Soweto uprising of 1976, when Black school pupils protested peacefully against the use of Afrikaans as the language of tuition in their schools, saw the ANC establish its leadership of the liberation struggle and "initiate a modest programme of urban guerrilla warfare" (Nupen 2004: 124). Violence between government and liberation forces escalated in South Africa from the 1980s, especially after the State of Emergency declared in 1985, until the mid-1990s. This armed struggle included violence perpetrated by Black people against other Black people, markedly between ANC and Inkatha Freedom Party (IFP) supporters towards the last years of Apartheid. This violence is believed to have been fuelled by the outgoing National Party government

Dialogue e-Journal

through a "Third Force",[9] while it was seated at the negotiation table (Byrnes and Library of Congress 1997; Hamber 1998: 389; Simpson and Rauch 1993). Both the physical and structural violence of Apartheid shaped South Africa in a very distinctive manner.

- Apartheid's South Africa

The two forms of Apartheid violence discussed thus far left South Africa's new government in 1994 with a challenging legacy to overcome. The structural violence entrenched and intensified physical divisions and socio-economic discrepancies between its people. The physical violence nurtured a culture of violence and disrespect for the rule of law, in addition to a disregard for the law in general that already resulted from the unfairness of the Apartheid laws.

The destructive power of the Apartheid system was that its ideas were self-perpetuating. Whites saw Blacks as uneducated and uneducatable, and only useful as maids, nannies, "garden boy[s]" and street sweepers in White homes, gardens and streets (Frederikse 1986: 8, 10, 12). Policies were implemented based on these beliefs, resulting in non-Whites indeed being poor, undereducated and reliant on low-wage employment. By the end of Apartheid, nearly half of the population lived below "internationally determined minimum-subsistence levels", and due to decades of "Bantu education" the country sorely lacked the skills to lift these sections of the population out of that poverty (Byrnes and Library of Congress 1997: lxii). Migrant labour practices had chipped away at social and familial cohesion, and most Black people in urban areas were concentrated in sprawling townships on the outskirts of major cities – often under sub-standard living conditions, and some distance from viable, legal sources of income and employment in the central business districts, with public transport highly problematic. While the physical scars of Apartheid on South African society were quite visible, those left on the national and individual psyches were less so.

Apartheid normalised violence. From police brutality to armed struggle, violence was considered a necessary evil for both sides in the fight for what they believed in. While exact figures are understandably hard to come by, an estimated 22 000 people died as a result of political violence, 16 000 of those from the mid-1980s onwards (Amnesty International and Human Rights Watch 2003: 9; Shaw 2002a: xii). Additionally, the SAPS was notoriously unconcerned with crimes non-Whites committed against one

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[9] The ANC alleged that a "Third Force" or "hidden hand" was stoking the fire of violence between members of the ANC and IFP in what is now Kwazulu-Natal and Gauteng during 1990 and 1993 as a means to derail the negotiations to end Apartheid and to weaken the ANC's considerable political position during those negotiations (Truth and Reconciliation Commission 1999: 579). The allegations that covert units of the Apartheid security forces colluded with the IFP in fighting ANC supporters were generally found to be true by the TRC (Truth and Reconciliation Commission 1999: 579-588).

another, allowing organised as well as random crime and violence to flourish in non-White areas, especially townships (Kynoch 2005: 498). Under Apartheid, the colour of a person's skin determined the value of their life. The post-Apartheid government had to expel the notion that a White life had higher value than a non-White life by addressing the political, social and economic structures based on it that also helped to reinforce it.

Dealing with South Africa's Apartheid Past

Apartheid officially ended with the first elections based on universal suffrage in South Africa in 1994, which resulted in the country's first multiracial government, led by the ANC. South Africa's political transformation further entailed scrapping the racially oppressive laws of Apartheid and the public service undergoing a drastic overhaul to reflect the racial dynamics of the New South Africa as well as its new domestic and international priorities. Converting political structures was arguably one of the easier steps in the transition, though it was hard-fought for in the two Conventions for a Democratic South Africa (CODESA) – the major sets of negotiations to end Apartheid. A point of contention that presented a significant obstacle to South Africa's political and social reconstruction, which neither CODESA nor its successor that brought about an interim constitution, the Multiparty Negotiating Forum (MPNF), could settle, was what would happen to those who committed politically motivated crimes during Apartheid.

The ANC and the National Party (NP) jointly drafted a postscript to the interim Constitution after the MPNF was over, containing an amnesty clause (Wilson 2001: 8).[10] While controversial, without amnesty, the NP would not have gone through with the transition to democracy (Gibson 2006: 424; Hamber 2002: 62; Vora and Vora 2004: 302). The title of the postscript was "National Unity and Reconciliation", the same as the 1995 act establishing the Truth and Reconciliation Commission (TRC). The blanket amnesty, that was arguably the notion behind the postscript, was amended to amnesty through truth-telling (Wilson 2001: 8-9).

The work of the TRC commenced in December 1995, with its report submitted to the government in March 2003. It dealt with political crimes from 1960 until 1994. For amnesty to be granted, an individual application had to be lodged, the crimes for which amnesty was sought should have had a political aim, and all the facts relevant to the crimes in question had to be fully disclosed. (Abrahamsen and Van Der Merwe 2005: 84; Schaap 2003; Simpson 2004: 1).[11] However, remorse was not a requirement. Despite its

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[10] The clause made provision for the creation of an amnesty mechanism pertaining to politically motivated crimes, of which the finer details of were to be determined at a later date (Dugard 1997: 87).

[11] Amnesty was granted for the crime, not the individual (Hamber 2002: 62), so a perpetrator could receive amnesty for some crimes and prosecuted for others. This was the case with Eugene de Kock, a senior

controversiality, the TRC did provide an "undeniable historical record" of the human rights violations South Africans suffered during Apartheid (Rauch 2004). It also presented survivors with the opportunity to engage the applicants' version of the past (Abrahamsen and Van Der Merwe 2005; Hamber, Nageng and O'Malley 2000). Victims did not receive much more than the truth from the Commission, as they were granted approximately USD 4 000 in compensation (at May 2008 exchange rates - South African Government Information 2005) – less than a quarter of what the Commission had recommended.[12] This, however, remains a significant amount to the average South African, given their economic situation.

Reforming South Africa's economy so that it would benefit the members of its populace more equitably was a major challenge for the new government. The Reconstruction and Development Programme (RDP) was introduced in 1994 as a macroeconomic policy to address poverty and inequality in South Africa (Bornstein 2000: 181), and to reconstruct its economy (Lodge 1999: 27). The RDP started moving away from its socialist roots very early on, however, and by 1996 was effectively replaced by the Growth, Employment and Redistribution (GEAR) macroeconomic strategy. GEAR was much more closely aligned with "the neo-liberal framework advocated by the [International Monetary Fund] in its structural adjustment programmes" (Adelzadeh 1996: 67). Despite the friction GEAR caused within the tripartite alliance of the ANC, the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), the South African economy experienced its steadiest growth in decades and ranked among the 30 largest economies in the world in 2005 (Department of Trade and Industry 2008). Its Human Development Index (HDI) ranking, however, has dropped from 93 in 1992 to 121 in 2005 (UNDP 2002 in Aliber et al. 2006: 236; UNDP 2007), and with a Gini coefficient of 65, it is one of the most economically unequal societies in the world.

Apartheid was a system of structural violence that was often enforced and opposed with physical violence. In its attempts at post-conflict reconstruction, the first multiracial South African government followed a model used in peacebuilding missions the world over – a "liberal market democracy" form of domestic governance (Paris 2002: 638), while it sought to deal with the psychological effects of its armed conflict through a process of truth-telling in exchange for amnesty. The next section analyses these

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Apartheid government official responsible for the deaths of many, now serving 212 years and two life sentences for those of his crimes for which he did not receive amnesty (Godobo-Madikizela 2002: 17).

[12] The TRC's recommendation amounted to approximately R130 000 (± USD 17 000 at May 2008 rates) compensation for each of the 22 000 victims (Amnesty International and Human Rights Watch 2003: 9).

decisions and the role they might have played in the state of violent crime post-Apartheid South Africa has been experiencing.

The Effectiveness of South Africa's Peacebuilding Process

This section engages in a critique of the peacebuilding approach taken in South Africa in view of the difficulties the country has been experiencing with violent crime. In order to do so, the context of violent crime in South Africa is first sketched, followed by the ways in which peacebuilding in that country did or did not take that context into account.

To expand on the figures referenced in the introduction, based on SAPS figures (2007: 7), an average of 19 884 murders and 27 077 attempted murders, 53 685 rapes and 9 183 indecent assaults, 247 459 assaults with the intent to cause grievous bodily harm, 255 137 common assaults, and 125 062 aggravated robberies were reported per annum between 2001 and 2007. Collectively this translates into an annual average of 1596.5 reported violent crimes per 100 000 South Africans over that period. These rates would be even higher per 100 000 Black South Africans, as the majority of these crimes take place in Black "megatownships" on the outskirts of major South African cities (SAPS 2007: 35). In most reported occurrences of violent crimes, the perpetrator was known to the victim and firearms are frequently used; the majority of violent crimes took place in the Gauteng, Kwazulu-Natal and Western Cape provinces; and occurred mostly over the summer holiday period, weekends and at night (SAPS 2007: 5, 28-36). The main sources and causes of crime identified by SAPS (2007: 22-27) are urbanisation, poverty and unemployment, vigilantism, previous offenders and the use and abuse of alcohol and drugs. These causes have clear links to both the physical and structural violence of Apartheid that were not sufficiently addressed by peacebuilding and development efforts in South Africa.

The aspect of physical violence that South African peacebuilding overlooked was the non-political violence that was interspersed with the political violence during Apartheid. Transition-era violence, which saw the highest levels of violence during Apartheid, was sometimes automatically attributed to "party political divides" without it necessarily being the case (Bonner and Nieftagodien in Kynoch 2003: 495). Kynoch argues township-based violence prevalent in post-conflict South Africa is not a new phenomenon, but a continuation of "generations of violence" (2003: 495). The convergence of political and non-political violence is reflected in the fact that two of the provinces with the highest rates of post-Apartheid violent crime, Gauteng and Kwazulu-Natal, were also the hotbeds of political violence during the transition. The TRC's exclusive focus on political violence meant that its purview did not allow for the exposing of these dynamics. Under Apartheid, through both political and non-political violence, the use of force became legitimate.

Apartheid did not only nurture a culture of violence, but also the "nobility of violence" (Dempster 2002). Violence became a currency through which to obtain what one desired, and the use of violence was seen to be rewarded. The enforcers of Apartheid used violence, and not only were they not punished for it at the time, their race group was wealthier as an indirect result of that violence. Even after Apartheid ended, their violence still went largely unpunished as they could be granted amnesty.[13] The increased use of violence by non-Whites in the fight against Apartheid played an undeniable role in ending it. This taught South Africans the effectiveness of violence. They also saw many who used violence to fight Apartheid occupying positions of great wealth and stature in the New South Africa. The unfortunate by-product of granting amnesty in post-conflict situations is that it lends a certain legitimacy to the use of violence that can be difficult to overcome. This arguably feeds into the legacy of another form of "non-political"[14] violence the TRC overlooked – gender-based violence.

Despite the role of women in fighting Apartheid, how well they are represented in post-Apartheid political power structures, and the extent to which the South African Constitution enshrines their rights, there was a noticeable silence around gendered violence in South Africa's peacebuilding process. Focusing peacebuilding on the political, and a distinctive understanding thereof, meant overlooking gender-based violence that occurred during Apartheid such as rape, sexual assault, sexual abuse and domestic violence. While racially inclusive statistics on these forms of violence from the Apartheid era are not available, there has been an annual average of over 60 000 reported sexually based offences[15] over the last seven years, and those statistics did not emerge from a vacuum.[16] A more gendered approach to peacebuilding, as outlined in the literature review, would have attempted to uncover more information about Apartheid-time gender-based violence to better equip the new government with the means to tackle

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[13] It should be pointed out, though, that most of the applicants for amnesty were from the liberation organisations, specifically the ANC, with very few applications from members of the South African Police Security Branch (Abrahamsen and Van Der Merwe 2005; Rauch 2004).

[14] See Louise du Toit's "A Phenomenology of Rape" (2005) for an argument on the political dynamics of rape in the South African context.

[15] This combines SAPS' rape and indecent assault statistics. Domestic violence or an equivalent is not a separate category within SAPS statistics.

[16] The statistics are grim enough, but their gravity of is magnified exponentially when combined with the threat of HIV/AIDS. In 2005, approximately 3.1 million [56%] of the estimated 5.5 million HIV positive South Africans (UNAIDS 2006b: 6-7), were female (UNAIDS 2006a: 506). The migratory labour practices fortified by Apartheid contributed to this trend in two ways. It fostered poverty amongst women – especially rural women who remained in the Bantustans when their husbands went to work in the cities – which negates their ability to negotiate safer sex. It also increased the likelihood of their husbands and partners having multiple sexual partners due to their separation, which invariably heightened the exposure of all involved to Sexually Transmitted Diseases (STDs), including HIV/AIDS.

in after Apartheid. An even better-established aspect of peacebuilding, with direct links to violent crime, that peacebuilding in South Africa did not address sufficiently is disarmament.

Disarmament is an accepted requirement for establishing and maintaining peace in post-conflict societies (Mulikita 2005: 24), yet by 2003 an estimated 12 million firearms were in circulation in South Africa – two-thirds of which were illegally owned (Van Der Merwe 2003: 73) Whilst South Africa received international commendation for its nuclear disarmament, its attempts at post-conflict small arms disarmament were largely ineffective and unsuccessful (Shaw 2002a: 20; Van Der Merwe 2003: 74). The result of this is that "[y]esterday's weapons of war and political liberation have become today's weapons of crime and violence in South Africa" (Van Der Merwe 2003: 73). The lack of commitment the government illustrated to small arms disarmament in the immediate aftermath of Apartheid held an undeniable politcal message – whether intended or not – as to the acceptability of guns, both legal and illegal, in South African society. In addition to its critical failure in the area of disarmament, peacebuilding in South Africa did not tackle the socio-economic conditions that nurture violent crime with the same fervour with which it attempted national reconciliation.

The new 1994 government's RDP programme did yield some positive results, but that progress was undone to some degree by GEAR. Under the RDP, government expenditure was redistributed to address health care, land reform, housing, roads, clean water and electrification for the most disadvantaged (Lodge 1999: 31-32). This was a significant improvement on the focus of the previous regime, but amounted to a drop in the proverbial bucket of what needed to happen in order to turn South Africa around socio-economically. While the goals of the RDP have now mostly been taken up by the relevant national and provincial government departments, the acceptance of GEAR as the new macroeconomic strategy in 1996 marked a definitive shift in the government's approach to the country's economic development. The combination of GEAR and corrective policies, such as Affirmative Action and Black Economic Empowerment, has seen the creation of a non-White elite. These policies have managed to empower non-Whites, but only a few. The rich-poor divide is no longer strictly a White-Black divide – "intraracial inequality" has increased across all race groups (Nattrass and Seekings 2001: 49). The Gini coefficient within the Black community has increased significantly,[17] with poverty amongst Whites also on the rise (Jacobson 2008; Marais 2001: 200-201; Nattrass

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[17] While property theft remains racial, i.e. non-Whites stealing from Whites, which is ironically called "affirmative shopping" (Dempster 2002), as the rich non-Whites' wealth increases, and the poor non-Whites' poverty deepens, such crimes are taking on a class dynamic, just as "the basis of disadvantage [has] shifted from race to class" (Seekings and Nattrass in Makino 2007: 510).

Dialogue e-Journal

and Seekings 2001: 49). Using GEAR to address inequality is to assume the power of the market to negate "the structural constraints inherited from the past" (Mhone 2003: 45). Proponents of GEAR advocated "a trickle-down approach to economic development" (Adelzadeh 1996: 67), that simply is not trickling down.

It is clear from the above analysis that not dealing sufficiently with non-political Apartheid violence – including gender-based violence, the elevated status violence had achieved due to Apartheid, the availability of firearms, and the socio-economic reconstruction of South Africa to the inequitable benefit of its population – were key flaws in South Africa's peacebuilding design and implementation that have provided fertile ground for violent crime to flourish. The role ineffective socio-economic reconstruction has played in fostering violent crime in South Africa shows that peace that is forged without effectively addressing deprivation and structural inequality is bound to be fragile (Cockell 2000: 22).

Dialogue e-Journal

Conclusion

The end of Apartheid has not meant the end of violence in South Africa. With the cessation of political violence, patterns of non-political violence have emerged that had remained hidden behind political violence and police indifference during Apartheid. The level of violent crime in South Africa and the fear of crime and violence that has gripped its populace raise the question as to the fabric of peace in that country. By extension, it questions the quality, effectiveness and applicability of the peacebuilding path chosen for South Africa by its initial post-Apartheid leadership. This research report has thus argued that, in the context of the violent crime now plaguing South Africa, the country's understanding and application of peacebuilding was too narrow.[18]

South Africa has proudly claimed ownership of its conflict resolution and peacebuilding processes, which have often been externally imposed on conflict areas elsewhere. Nonetheless, its peacebuilding model has emulated the liberal democracy and market economy style of peacebuilding promoted by the West. This model was useful to South Africa's political and economic reconstruction, supplemented by the TRC process to bring national healing and reconciliation. Utilising this Western mode of peacebuilding,

however, meant that key socio-economic factors specific to the South African context were overlooked. These socio-economic elements have been identified as key drivers of crime in South Africa.

Conceptualising and implementing peacebuilding in South Africa more broadly through a human security approach could have been more effective in addressing the issues conducive to violent crime. Cockell (2000: 25-26) identifies four crucial sectors such as an approach focuses on – political, community, personal and economic security. In terms of political security, South Africa fared well, with regards to community security a little less so, while personal security and economic security produce a mixed result. Had it effectively addressed all these forms of security with equal rigour and commitment, South Africa's peacebuilding efforts might have been more successful in diminishing the level of violent crime.

This case study of South Africa has highlighted a need for greater interdisciplinary dialogue between criminology and peacebuilding. The line between political and non-

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[18] Given the nature of this research report, and the resources available for its completion, the arguments used do not claim to prove what might have happened in hindsight. It provided a critique of South Africa's approach to peacebuilding, given its current problems with violent crime. Proving causal links between the points of critique and violent crime would form a useful agenda for future research, but does not fall within the purview of this research.

Dialogue e-Journal

political violence is often blurred, which deems such a dialogue mutually beneficial. An engagement of this nature could entail reflecting on reporting and data gathering mechanisms, in a particular context, to highlight where there are gaps and overlaps. Mark Shaw shows the overlap of these two disciplines clearly when he states that "conflictual transitions that end through negotiated peace deals reached when conflicts are in stalemate, provide a conducive environment for surges in violent crime" (2002a: 20).

The violent protests in July 2009 and the xenophobic attacks by South Africans on immigrants in May 2008 once again shone a spotlight on violent crime in that country and its links with socio-economic deprivation. This article admits that this link is a complex one and its resolution even more so. Given that peacebuilding is an ongoing process, though, it might not be too late for South Africa to take into consideration the issues highlighted through this report. And while it might bring little solace to the hundreds of thousands of families that have lost loved ones to violent crime in post-Apartheid South Africa, other post-conflict societies could learn from the weaknesses of the South African peacebuilding model and prevent its repetition in theirs.

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Eagle vs. Dragon Show Cancelled Due to Popular Uprising: A discursive analysis of US and Chinese engagement in Africa and the silencing of alternatives.

By George Karavas[1]

Abstract

China's recent engagement with Africa has attracted a significant amount of attention among United States (US) policymakers, academics, journalists and think tanks. By exploring this commentary through an emerging dominant discourse on China's engagement in Africa, this article argues that it is interwoven with a discourse on US engagement in Africa, performing a Manichean dynamics that reflects analysis of China's engagement in Africa through a US lens. As a result, alternative discourses and insights are silenced as China's engagement in Africa is interpreted through issues counterpoised to those with which the US distinguishes itself. In establishing this dynamics in the dominant discourse, its rhetorical nature is further demonstrated through alternative discourses on the effects of US and Chinese engagement in Africa. Using alternative discourses to de-center the rhetoric in dominant discourses on the benefits of free markets and the disadvantages of state led development, the US and China become perceived as both engaging in Africa through existing economic and political structures in a shared pursuit of markets and resources. The effects of US and Chinese engagement are discussed in regards to these pursuits. Giving voice to alternative discourses reveals the rhetorical nature of the dominant discourses that reflect more about US values than the implications of China's engagement in Africa.

Introduction

...China is a metaphor for something else: for an enormously expensive Pentagon that has lost its bearings; for neoconservatives who no longer have a Left worthy of serious attack; for American idealists in search of themselves, in a country that has lost its moral center; for an American polity that imagines itself coterminous with mankind and therefore cannot understand true difference. (Cumings 1999: 169).

The Chinese are doing more than the G8 in making poverty history. If a G8 country had wanted to rebuild the stadium, we'd still be holding meetings. The Chinese just come and do it.

(Quote from Sierra Leone ambassador to Beijing, Sahr Johnny, cited in Hilsum 2005).

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Dialogue e-Journal

In 1967, representatives from Tanzania, Zambia and China met in Peking to sign an agreement on the Tanzania-Zambia Railway which would be China's biggest aid development in Africa (Yu 1975: 29-51). That same year, a report in *The Wall Street Journal* stated "the prospect of hundreds and perhaps thousands of Red Guards descending upon an already troubled Africa is a chilling one for the West" (The Wall Street Journal 1967). Such commentary is more representative of United States (US) values, which in this case involved fears about the spread of communism than about the impact of Chinese aid in Africa (Monson 2008: 199). The perception by the US of its own engagement in Africa and China's engagement in Africa has recently re-emerged as a significant category of analysis. Places where US values mix with discussions on China-Africa relations have again emerged with the attention surrounding China's recent engagement with Africa. In 2007, an article in *The Washington Times* also evoked stirring emotions over China in Africa, by stating that, "even more troubling, Chinese officials have shown a historical tendency to work with Islamist governments in order to negotiate favourable agreements to… counter US interests, especially in the Middle East. The same strategy has been employed in Africa" (Stakelback 2007). This excerpt belongs to a wider discussion on China's recent engagement with Africa that has emerged in the US, as the implications of this development capture the imaginations of policymakers, academics and journalists.[2]

As commentators in the US have sought to explain the dynamics and implications of these changes, a discourse has emerged that demonstrates concern about China's impact in Africa, partly on account of its authoritarianism and that it also represents a successful state-led model of development. In what can be called the US's China-Africa discourse, these concerns play out through familiar themes. For example, China's provision of aid to African states with 'no-strings attached' enables states to resist pressure by the US, in the

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[2] The attention accorded to China-Africa relations has developed partly in response to the number of high-level diplomatic negotiations between Chinese and African government leaders at the Forum of China-Africa Cooperation (FOCAC) meetings, the emergence of China as a significant aid donor and investor in Africa's oil infrastructure and its meetings, the emergence of China as a significant aid donor and investor in Africa's oil infrastructure and its increasing contribution to UN troop deployments in Africa. These issues have generated a substantial amount of literature in recent years in an attempt by analysts to evaluate the changing nature of China-Africa relations. For a review of this literature, see: Alden (2007), Alden, Large and Oliveira (2008b), Broadman (2007), Kitissou (2007), Manji and Marks (2007), Rotberg (2008), Waldon (2008), and Wild and Mepham (2006).

form of conditional aid, to reform governance institutions. China's relationship with states such as Sudan and Zimbabwe are also cited as representing an inherent disregard for human rights. Without doubting the importance of these issues, reiterating such themes performs a Manichean operation by imbuing China's forms of engagement in Africa with an inherent adversity in contrast to the benevolence associated with US approaches towards Africa. The US China-Africa discourse can be read as a narrative defining China's engagement with Africa as exporting authoritarian values and state-led development strategies, contra free market principles, that are not only perceived as detrimental for Africa but as also posing a challenge to US interests in Africa.

Interwoven with the US China-Africa discourse is also a concomitant discourse defining the role of the US in Africa. In the US-Africa discourse, US approaches to Africa stand in stark contrast to China's approaches. This discourse constitutes its own set of themes that outline the US approach to Africa and derives from a mixture of humanitarian and security concerns. Humanitarian themes focus on the importance of facilitating development in Africa through promoting democracy and free trade. Security themes focus on the importance of combating terrorism and developing Africa's energy markets. More implicit is a tendency in the discourse to equate US values with African interests. In making this equation however a 'what is good for the US is good for everyone' mentality emerges, exposing a sense of missionary-like zeal in perceptions towards Africa.

Absent from these discourses then, are the reactions contained within alternative accounts of US and Chinese engagement in Africa. Such accounts exist in response to the effects of both US and Chinese engagement in Africa and can be found in social movements, local resistance and critical voices. One of the effects of US engagement, despite promoting the goals of development in Africa through democracy and free trade, has been the imposition of strict conditions upon African states by the US and the International Finance Institutions (IFIs). These conditions have left a lasting legacy of debt for many African states in addition to generating broad resistance to US models of economic development through social movements such as the African Social Forum. Critical voices have also suggested that while China has ties with authoritarian states in Africa to secure access to oil, in terms of pursuing its self-interest, this must be seen in the context of the US pursuing its self-interest in Africa through similar avenues (Sautman & Hairong 2006). These accounts are part of an alternative discourse that calls attention to wider structural forces in relation to US and Chinese engagement in Africa. In addition, the alternative discourse contrasts strongly with the way China's engagement in Africa is conveyed through the interaction of both the US-Africa and US China-Africa

discourses. The contrast between dominant and alternative discourses constitutes the subject of this paper on the basis that it illuminates gaps between rhetoric and practice in US analyses of China-Africa relations.

This paper argues that current approaches to China's engagement in Africa, as demonstrated in the US China-Africa discourse, limit the understanding of this issue to those factors prioritised by the US.[3] The dominant discourses articulate China's engagement in Africa as one directly opposed to US goals there. By epitomising US goals through the US-Africa discourse such as promoting democracy or free trade, China's engagement is portrayed as antithetical to US interests. Investigating alternative discourses silenced in the US-Africa and US China-Africa discourses questions dominant interpretations through accounts on the effects of US and Chinese engagement in Africa. Alternative accounts reveal that the US and China pursue similar interests in Africa such as securing access to markets and resources, the negative impacts of which create various forms of resistance regardless of whether it is a result of US or Chinese engagement. Based on the position that US and Chinese engagement in Africa exhibit similarities rather than purely inherent differences, the silencing of alternatives in the dominant discourses acts as a rhetorical device obfuscating an understanding of the US and China as external powers that both reinforce existing power structures in Africa.

To develop this argument the paper undertakes a discursive analysis of the dominant discourses on US and Chinese engagement in Africa for the first half, followed by an inquiry into the alternative discourses on the effects of this engagement. The analysis of key themes from the US-Africa discourse and the US China-Africa discourse focuses on points of contention used by US commentators to distinguish between US and Chinese engagement in Africa. The themes discussed in the US-Africa discourse include development, security and failed states. This is followed by a discussion on themes in the US China-Africa discourse which include China's non-conditional aid policy in Africa, China's relations with authoritarian regimes and backlashes in Africa as a response to China's engagement. As a discursive analysis, literature is sourced from a variety of key contributing US academics, policy analysts and journalists. To elucidate recurring themes from the arguments and ideas circulating within the literature, multiple sources are

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[3] The argument outlined here acknowledges the debates in the broader literature and is not an attempt to engage with such issues as China's strategy in Africa or the nature of China's resource diplomacy in Africa. In the approach adopted here, these debates are sidestepped to engage in questioning the dominant themes through which China's engagement in Africa is interpreted in the US. The importance placed on questioning the authority of dominant themes relates to the implications of how China's engagement in Africa is understood and ultimately, acted upon or responded to.

analysed to discern dominant attitudes, trends and patterns of understanding within the discourses. These sources include academic publications on US-Africa and China-Africa relations, journal articles, magazine articles, newspapers, publications from think-tanks and government testimonies from various individuals

An analysis of the dominant discourses is followed by an inquiry into the effects of US and Chinese engagement as understood within alternative discourses. Those effects of US engagement in Africa that are analysed include US (and IFIs) promotion of an economic model based on neoliberal reforms, African social resistance movements that have developed as a response to such reforms and the impact of US multinational companies (MNCs) in Africa. The effects of Chinese engagement are analysed with regards to the notion of a Chinese model of development that has developed broad appeal in many African states, the impact of Chinese MNCs in Africa, and the impact that growing Chinese migrant populations have begun to demonstrate in Africa.

A Point of Departure

Previous studies that have adopted discourse analysis with regards to analyses, or representation of, China-Africa relations in the West include Emma Mawdsley's (2008) analysis of how China's engagement in Africa is portrayed United Kingdom (UK) broadsheet newspapers. In her analysis Mawdsley reveals how China has been demonised in the media through a focus on the negative aspects of China's engagement and through portraying Africa as a victim of China's 'ruthlessness' (2008: 517). In contrast, the role played by the West is cast in a comparatively positive light and as reformed in its approach to Africa, evidenced by the developmental role played by Non-Government Organisations (NGOs). By drawing attention to these representations in the mainstream media, Mawdsley makes a similar argument about the UK discourse on China's engagement in Africa to that made here about the US China-Africa discourse; in dominant discourses on China's engagement in Africa, China is portrayed negatively in Africa in contrast to the benevolence displayed by Western powers in Africa. To illustrate this point Mawdsley cites an author later identified in this paper as a contributor to the US China-Africa discourse. According to Drew Thompson (2004), "China's presence in Africa is illustrative of Beijing's efforts to create a paradigm of globalization that favours China" (Thompson 2004). Mawdsley (2008) concludes from the following excerpt that:

> Coded within this is either a naïve belief that the present structures of
> globalization are neutral and even-handed, and that China is attempting to
> malevolently subvert this situation; or that it is right and natural that the

Dialogue e-Journal

> current paradigm of globalization does and should favour the US, because
> then (in the classic formulation) everyone benefits from 'benign' US
> hegemony.

<div align="right">(2008: 525)</div>

In making this conclusion, Mawdsley demonstrates how in another part of the West, a similar representational process to that being discussed here has occurred. The argument of this paper takes the above commentary as an introductory excerpt before starting an exploration of the US-Africa and the US China-Africa discourse. In doing so, this paper seeks to build upon Mawdsley's conclusions with an *analysis of the effects* of US and Chinese engagement in Africa via alternative discourses otherwise silenced in the dominant discourses to emphasise contrasts between rhetoric and practice.

Exploring the Discourses

The US China-Africa discourse and the US-Africa discourse both demonstrate the discursive terrain in which China's engagement is discussed. This section is dedicated to identifying the key themes that guide them. Both discourses demonstrate the presence of a US lens through which US values are projected onto interpretations of US-Africa and China-Africa relations. Though both discourses interweave on a broader level in the sense that the themes in one discourse define the meaning and importance of themes in the other by virtue of the Manichean operation discussed earlier, they are separated for analysis in this chapter to locate the contexts from which they originate. In doing so, this section is divided in two: an analysis of the US-Africa discourse followed by an analysis of the US China-Africa discourse. Each section begins with a small excerpt from the literature within the discourse that acts as a locating point from which to branch out into the discursive field of inquiry.

The US-Africa Discourse:

The US-Africa discourse consists of themes through which we can gain an insight into how relations between the US and Africa are perceived. These themes emerge from discussions on responding to Africa's underdevelopment, recognising the increasing strategic importance of Africa as a source of oil and incubator for terrorist groups and meeting the challenges posed by weak and failed states in the post-9/11 era. In a recent edition of *Foreign Policy* Jeffery Gettleman (2009), currently the East Africa bureau chief of *The New York Times*, provides a snapshot of the issues confronting one area of Africa that represents a microcosm of the challenges facing the continent today:

Dialogue e-Journal

> Nearly an entire generation of Somalis has absolutely no idea what a government
> is or how it functions. I've seen this glassy-eyed generation all across the country,
> lounging on bullet-pocked street corners and spaced out in the back of pickup
> trucks, Kalashnikovs in their hands and nowhere to go. To them, law and order are
> thoroughly abstract concepts. To them, the only law in the land is the business end
> of a machine gun.
> (2009: 69)

In this concluding excerpt from an article about the foreign policy blunders of the US in Somalia, Gettleman gives us some insight into the deeper issues facing the development of an African state devastated by poverty, terrorism and constant political instability. As an account of US attempts to subdue conflict and install social and political organisation to reorient the country towards development, it raises a number of key issues in itself. However, it is the subtext underlying this analysis that is of interest here. In this case it is a call to embrace the task at hand – helping a generation of African people catch up with the modern world. They are young and yet too mature. They have no concept of ideas about the state, governance or democracy. There is no awareness on their behalf of the extent to which they have strayed from the trajectory of development that the observing journalist has in mind when evaluating the cause and remedy of their plight. This excerpt provides an insight into US-Africa relations perceived in terms of developed and developing states in an age when an emphasis on the porous nature of national borders evokes memories of 9/11. This excerpt raises issues that will be discussed as themes in the US-Africa discourse under the following headings: development, strategic concerns and failed states.[4]

Development:

One of the core ideas in the US-Africa discourse is the conception of the US as a state imbued with a morality that prides itself on humanitarian values. Raymond Copson describes the normative basis of US aid policy as a "moral argument for a fair and just policy in Sub-Saharan Africa [that] is particularly compelling because the United States has incurred moral obligations toward the region over a troubling history of more than three centuries" (2007: 3). Added to this moral argument is the idea that the US is a world leader with "a special responsibility to inspire other wealthy countries to fulfill their own responsibilities toward the region" (Copson 2007: 5). By combining a moral argument

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[4] Another field of enquiry involves the recent establishment of AFRICOM, though for reasons of space is unable to be explored further. For a recent analysis, see Volman and Minter 2009.

with America's place in the world –as leader in the UN supporting the Millennium Development Goals (MDG) and architect of the IFIs responsible for managing international debt and development – the US also perceives itself as acting for a purpose larger than itself and on behalf of the international community. This connection of the moral cause in the name of global humanity is what endows the US with a sense of authority in defining what other states need to develop.

Derived from such moral arguments in combination with its authoritative position in global forums on development is also the US self-perception that it possesses an exemplary model of development. This translates into promoting a path to development for other states based on US principles that extol the free-market values or neoliberalism. Such a perception has been central to the formulation of some of recent US aid polices under the Bush Administration such as the Millennium Challenge Account (MCA) and the Millennium Challenge Corporation (MCC), the latter of which is the body responsible for dispersing the funds allocated to the MCA by the government. The MCA is described as representing a new direction in aid because demands for economic and political institutional reform were made central to the process for poor countries seeking assistance (Kessler 2004). African states can apply for aid available from the MCC through an eligibility process based on meeting criteria on governance issues such as transparency and accountability. MCA principles are for "countries serious about governance and development… venal governments should get cut off" (Diamond 2008: 12). But in addition to isolating governments resistant to such changes, the new direction in US aid policy is also about promoting an economic model.

In an article published in *The New York Times*, members from the MCC Board of Directors argue that the incoming Obama Administration should continue to support the MCC principles on the basis "that poor countries assume primary responsibility for their own development" (Craner et al. 2008). The aim of the MCC then involves "building its program around independent measures of policy performance" (Craner et al. 2008). To explain how the eligibility process works, former chief executive of the MCC Paul V. Applegarth states that governments are "rated on 16 criteria– corruption, political rights, education expenditures and days it takes to start a business, among others – that are assembled by independent groups, such as the World Bank, World Health Organisation and the Heritage Foundation" (Kessler 2004). For Applegarth, the problem with Africa's underdevelopment is the lack of financial sectors and capital markets, without which Africa cannot hope to expect economic growth (Applegarth 2004: 23). Such arguments fit neatly within broader US economic principles of free-market ideology and it is through

these that we can see how delivering aid to Africa is also about extolling the virtues of the market. Removing obstacles to the development of free-markets such as transparency and accountability are analogous to the provision of aid. The outcome of these ideas on the value of the free-market is described in arguments about the way the private sector is best equipped to deliver aid and create conditions of good governance that facilitate economic development (Rucker 2008; US Senate Committee on Foreign Relations 2008; Ward 2008). As Marina Ottaway (2001) argues, such approaches to development entail a strong move away from state-led development in order to enable the private sector to instigate market growth.[5] By underwriting the strength of the US economic model with humanitarian goals, US interests also come to be described as being in Africa's interests.[6]

Strategic Concerns:

Within the US-Africa discourse, Africa represents a region important to the US in terms of its capacity as an oil producer and a place conducive to the creation and operation of existing terrorist groups that must be contained. In the manner that US and African interests are connected in the theme on development, arguments based on strategic concerns in the discourse display a similar tendency. To start with, the strategic focus of the US-Africa discourse is neatly captured in a report published in 2005 by the Council on Foreign Relations entitled *More than Humanitarianism: A US Strategic Approach Toward Africa* (Lyman and Morrison 2005). Partly in response to the attention Africa received during the time of the *Live 8* concerts, the authors pointedly expressed that such

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[5] Additional arguments on how US aid policy should be provided can be found in the debates between Jeffery Sachs (2005) and William Easterly (2006). Sachs is an avid supporter of the MDGs and the current institutional frameworks through which aid is provided. In contrast, Easterly argues that US aid fails to be properly distributed to poor countries on account of the bureaucratic complexity that stifles the effectiveness of aid agencies. Though both authors represent opposite ends of the debate on providing aid they both support market-orientated economic growth and neoliberal approaches embodied in the broader framework of US aid policy.

[6] In an article on the nature of change in US aid policy implemented by the MCA, various media such as *The Washington Post*, *The Financial Times* and *The Economist* all published articles at the time President Bush announced the creation of the MCC in 2002 that were supportive of the neoliberal economic model on which it was based. Hook argues that the changes to US aid policy meant that the MCC acted "as an institutional repository for its neoliberal founding principles [and that] the MCC endures despite subsequent research findings that challenged the empirical link between performance-based aid allocations and economic growth" (2008: 163). Another initiative launched under the Bush Administration included the Presidents' Emergency Plan for AIDS Relief (PEPFAR). Part of the controversy that surrounded the program was due to its unilateral approach that neglected existing global initiatives such as the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). Despite this, as President Bush was ending his presidential term in 2008, Laurie Garrett, a senior fellow for global health at the Council on Foreign Relations, stated in *USA Today* that PEPFAR was a US aid policy that would "go down as the major positive legacy of [Bush's] eight years" (Wolf 2008). These sentiments were also echoed in an article by Stolberg (2008) in *The New York Times*.

Dialogue e-Journal

events "reinforced an outdated view of Africa" (Lyman and Morrison 2005: 6). The authors of the publication were referring to the strong emphasis that was placed on Africa with regards to humanitarian issues at the expense of other issues such as security concerns. A crucial point that underscored arguments in subsequent chapters of the book demonstrates how US interests are also definable as African interests. For example, Lyman and Morrison (2005) argue that recognising the strategic importance of Africa's energy resources and the role of China in Africa ensures that "humanitarian interests would be better served by a more comprehensive US approach toward Africa" (2005: 6). This dynamic in the discourse is also evident in discussions on the importance of oil and the threat of terrorism.

Diversifying the US supply of oil by gaining access to other sources outside the Middle East is crucial to ensuring US energy security, which Goldwyn and Ebel define as having "access to diverse, affordable supplies of oil and gas" (2004: 11).[7] However, gaining access to Africa's oil supply is fraught with dangers that persist in oil-producing regions due to the inability of various governments to provide security. Therefore, it is in the perceived interests of the US and Africa that African states make improvements to their governance structures and the US be able to purchase the resources and provide the region with the resultant wealth. Goldwyn and Ebel are explicit on this point:

> As the region adds approximately 2 to 3 million barrels per day to world markets in the next five years, that expansion could bring prosperity or disaster to a fragile region and to complex and expanding U.S. interests there. If these nations achieve greater stability, invest wisely, improve governance, and respect the rule of law, the benefits will be felt throughout the entire surrounding region. At the same time, vital U.S. interests in regional stability, counterterrorism, human development, and promotion of democracy and human rights will be advanced.
>
> (2004: 9)

US and African interests are also linked through arguments on terrorism in Africa. At present the US continues to remain engaged in fighting terrorism the Middle East and Africa. The geographical proximity of Africa to the Middle East plays a role in this theme of the US-Africa discourse by signaling a strong vulnerability in Africa where the conflict could easily spread. According to Morrison and Lyman, Africa already displays symptoms that perpetuate terrorist activity, including "weak state partners, deep economic marginality and alienation, ethnic and religious fissures… and fragile

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[7] This point is also made by Cohen (2003).

governance" (2004: 104). Combined with these factors are ongoing conflicts and hostilities between states in the Horn of Africa and concerns that Al Qaeda's networks in the region could also spread to West Africa or to eastern states such as Kenya –a US ally (Scarborough 2008). Sudan is already central to many analyses on the terrorist threat (Kaplan 2007). Osama bin Laden has reportedly made Sudan a strategic base from which to continue orchestrating the operation of Al Qaeda (Perry 2007; Pham 2007).

At the root of these concerns with terrorism in Africa, is the existence of a large Muslim population. Herman Cohen states that this population is considered to practice a moderate form of Islam that "eschews the medieval rigidities and bigotry prevalent in the Persian Gulf", and he goes on to say that "if only a tiny percentage can be subverted by the extremists, the dangers to mainstream African interests could be significant" (2003: 23). Such potential is discussed by Robert Rotberg (2007) with regards to Nigeria as radical Islamic group's posses the potential to negatively influence more moderate Islamic groups and threaten regional stability. Nigeria is seen as particularly vulnerable because the country is roughly divided between Christian and Muslim populations yet should radical Islam inflame the situation, there is a potential for an escalation of hostilities (Morrison and Lyman 2004: 106).

Failed States:

Similar to the portrait of Somalia described by Gettleman (2009), another vision of Africa's volatility and underdevelopment is given in *The Coming Anarchy* by Robert Kaplan (1994) who also provides an insight into how US-Africa relations are interconnected:

> Africa may be marginal in terms of conventional late-twentieth-century conceptions of strategy, but in an age of cultural and racial clash, when national defense is increasingly local, Africa's distress will exert a destabilizing influence on the United States.
>
> (1994: 34)

While Kaplan provides an account of Africa through Huntington's lens of conflicting civilisational identities, his argument also emphasises the role of the US in ensuring stability in Africa. Such a diagnosis raises the issue of failed states and their central relevance to US security concerns. The 2002 US National Security Strategy outlined weak states as characteristic of the West African region and constituting a danger to US

interests because such countries face internal unrest and potential outbreaks of violence (Lyman 2009; Pham 2007). Africa remains a continent of fragile states where weak governments remain vulnerable to internal unrest (Lyman 2009). What becomes an emerging issue within this theme is the building of an argument through which to intervene in Africa – to have a presence, to justify intervention. One argument is that if weak economic and political structures are allowed to persist, then foreign aid comes to be seen as "nothing more than a cow to be milked" therefore requiring more involvement by international actors to implement "new institutional frameworks… especially the World Bank and the International Monetary Fund" (Ellis 2005: 136). Central to this notion is the idea that strong states are successful because they have pursued US values. Because promoting US values in Africa is central to the vision of establishing liberal democracies, signs of weak leadership become a concern for the US. These are signs currently evident in the authoritarian tendencies demonstrated in coups and flawed elections in numerous states (Cooke and Morrison 2009; Dugger, Barboza and Cowell 2008). Such weaknesses in African state structures can also indicate deficiencies in other areas such as peacekeeping forces. This translates into a limited ability to respond to regional conflicts and the likelihood of the US being called upon to respond – a situation which has been argued as something requiring action by the US before a situation escalates – which demands "vigorous outside participation" (Lyman and Morrison 2005: 9).[8] The combination of responding to issues of aid and promoting US values are outlined in the recent initiative of the US to centralize US military command in the region through AFRICOM. The goals of this new US military command are to deal with terrorism in Africa, focus on the intersection of security and development issues (such as assisting in the aid programs described above) and building a response to the recent emergence of China (Davis 2009; Dowd 2008; McFate 2008; Mills and Herbst 2007; Patterson 2007). New unified commands such as AFRICOM have been described as "the prisms through which the Pentagon views the world" (McFate 2007: 10). In the US-Africa discourse, AFRICOM is described as incorporating the themes discussed above by serving US ideological, humanitarian and security goals

This concludes the analysis on the US-Africa discourse and has outlined the key themes of development, security concerns and failed states. The following section discusses the US China-Africa discourse.

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[8] A similar argument is also made by Ottaway, Herbst and Mills (2004).

Dialogue e-Journal

The US China-Africa discourse

The following excerpt is by Joshua Kurlantzick (2008b) who occupies a prominent position in the US China-Africa discourse as a contributor based at the Carnegie Endowment for International Peace and as the author of *Charm Offensive: How China's Soft Power is Transforming the World* (Kurlantzick 2007). The excerpt published in 2008 by *Time*, provides a useful entry point in the discourse through which to investigate the themes that characterise the US perception of China's engagement with Africa:

> In nations like Angola and Chad, Chinese aid has allowed venal governments to ignore multinational donors seeking conditions to ensure that governments buy bread, not BMW's. In a world where easily recoverable oil is dwindling and the price has hit record highs, competition for untapped offshore petroleum in West Africa could spark conflict, with Chinese and Western firms jockeying to build new infrastructure, control ports and woo political leaders. Through its training programs for African technocrats, many of whom return from China amazed, Beijing could indeed promote its authoritarian development model to a continent where democracy still has shallow roots.
>
> (Kurlantzick 2008b).

This passage conveys some of the key narrative tropes of the US China-Africa discourse. Its pertinence lies in its ability to bring to an analysis of China-Africa relations powerful examples on issues such as the morality of providing aid, the seriousness of international competition for scarce resources and the implications of a clash of values between two different models of development. By condensing these issues into overarching themes for the purpose of identifying their presence throughout the wider literature, the following lines of enquiry emerge: China's aid policy, China's economic competition with the US and how China's impact in Africa has bred localised forms of resentment.[9]

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[9] In discussing the themes of the US China-Africa discourse it is acknowledged that this does not represent a single, collective and unified group of perspectives and differences of opinion exist between them on some issues. One area of difference includes the issue of whether to interpret China's engagement with Africa as an opportunity that the US should respond positively to, or whether this development represents a threat. For discussions on China's engagement in Africa presenting an opportunity for the US, see Gill, Huang and Morrison (2007). For a discussion on how China's engagement in Africa is represents a development perceived as a threat for the US, see Rogers (2007).

Dialogue e-Journal

Aid

China's provision of aid and soft loans to African states plays a key role as a conceptual anchor in holding down a broader view of China's engagement in Africa. The centrality of China's aid policy to the US China-Africa discourse stems from a fundamental difference between Chinese and US conceptions of how and why aid is provided. Unlike the US approach of providing aid on a conditional basis, China's aid policy rejects imposing conditions on states based on a strong respect for state sovereignty and a preference for non-interference in the domestic affairs of states. In practice China's aid policy is described as keeping business separate from politics (Lyman 2005). Within the US China-Africa discourse, China's business-only approach amounts to a policy based on self-interest, masked by a thin guise of offering support to African states and antithetical to the humanitarian goals prescribed by US aid. The difference between Chinese and US forms of aid is clear. The US adopts humanitarian goals. China adopts goals based on self- interest. By establishing this distinction at the outset, China's self-interest in Africa becomes a central tenet of its aid policy.

China's broader motives in Africa are then discernable within the US China-Africa discourse based on the notion that self-interest is central to China's aid policy. On one hand China seeks to distinguish itself from US aid. According to Gill, Huang and Morrison, China perceives "Western development approaches as overly moralizing, bureaucratic, conditional, and grounded in a corrosive and short-sighted skepticism. In contrast, Beijing…provide[s] development aid with "no political strings attached'" (2007: 6).[10] From this view, China is portrayed as seeing the West as hindering the aid provision in Africa while its own condition-free policy is touted as being more beneficial. On the other hand China's aid policy and its contrast with US aid in Africa serves an instrumental purpose as a "public relations tool" (Eisenman and Kurlantick 2006: 221) by allowing China to be seen as tackling debt in Africa when in fact, it is used to promote its own interests. Chinese aid may not make the same demands as US aid however, conditions are attached in other ways such as ensuring China receives rights to extracting natural resources, Chinese companies receive contracts for infrastructure projects and African governments cease recognition of Taiwan (Lyman 2005; Copson 2006). By keeping a conception of Chinese aid tied to notions of self-interest central to the US

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[10] Robert Rotberg (2008a) also provides an account of why China seeks to distinguish itself from the US: "There is a profound Chinese disdain for Africa and Africans, and an underlying contempt for do-gooding Western notions of how Africa should be nurtured. For this reason, among many others, China supplies small arms and other weapons – sometimes aircraft – indiscriminately and in defiance of UN strictures" (2008a: 12).

Dialogue e-Journal

China-Africa discourse, other aspects of China's engagement in Africa are consequently framed in these terms. Issues such as China's relations with African authoritarian states and the disruptive effect China's aid policy has had upon traditional donor and recipient relations that are seen as undermining US efforts in Africa, tend to dominate analyses of China in Africa and become analogous to the US China-Africa discourse.

The "venal" governments referred to in Kurlantzick's excerpt also refer implicitly to Zimbabwe and Sudan as the two states that have been most frequently cited in the US China-Africa discourse (Kurlantick 2008b).[11] Self-interest also underpins China's relationship with other authoritarian states and is understood as one of mutual assistance. China provides military support to states faced with restrictions in return for preferential access to markets and natural resources in addition to using its position on the UN Security Council to shield states from international actions or criticism.[12] The conceptualisation of China's authoritarian influence in Africa became a part of official government discourse in 2006 when the US Treasury Department issued a statement labeling Chinese lending practices to poor countries as that of a "rogue creditor" (Phillips 2006). Situating the image of China as an authoritarian state befriending African states with similar credentials has spurred other arguments that portray China's influence in Africa as an affront to the established liberal order there.[13]

China's aid policy has not been limited in its appeal to authoritarian governments, as the extent of China's warm reception from a variety of African governments has also been perceived as driving a "wedge" between China and traditional donors (Kurlantick 2006: 5).[14] The repercussions from this development are three-fold. Firstly, China's aid reduces US leverage over African states as in the case of the Angolan government refusing to meet demands set out by the International Monetary Fund (IMF) on the basis of a US$2

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[11] See also, Copson (2006); Eisenman (2005); Lyman (2005); Rogers (2007); Rotberg (2008a); Shinn and Eisenman (2005); Shin (2008); Swan and Christensen (2008); and Vines 2007.

[12] Two cases that are often cited refer to China's attempts to block UN Security Council resolutions in Darfur and China's provision of weapons to Zimbabwe during its last election when the opposition faced severe repression (Eisenman and Kurlantzick 2006; Kurlantzick 2006; and Rogers 2007).

[13] The notion that one of the largest authoritarian states is consolidating relationships with smaller like-minded outposts throughout Africa has encouraged imaginative arguments. Arthur Waldron argues that there is "a strategic purpose behind China's outward investment. Admittedly 'strategic purpose' is very difficult to define. But briefly I [Waldron] would take it as meaning creating a China-centered community, mostly of small and medium sized states, that could serve as a counterweight to the emerged or emerging powers of the West, Japan, India and so forth" (2008a: 7). See also an argument by Robert Kagan regarding the possible formation of "an informal league of dictators" (2006).

[14] Kurlantzick also states that "China's expanding presence could undermine donor coherence and strengthen some of the continents worst regimes" (2006: 1). Lyman refers to China as altering "the international role" (2005) played by IFIs.

billion soft loan from China. Secondly, there is the danger of establishing a trend in which other states might emulate China's success of non-conditional aid.[15] Thirdly, the US could be forced to weaken its position on democracy, governance and human rights to remain competitive with China. In 2006, US oil companies in Equatorial Guinea convinced the US government to open a new embassy in Malabo, forcing the US to "upgrade" its relationship with the Obiang government which has also been criticised for possessing authoritarian characteristics (Vines 2007: 215).

Through the scenario described above in which there is a gradual erosion of democracy and human rights in Africa resulting from China's engagement in Africa, it is also perceived as posing a challenge to the US. By combining those aspects of China's involvement discussed above – including China's self-interest, its ties with authoritarian states and its disruption of the traditional donor-recipient relationship – China's position in Africa amounts to one construed as fundamentally at odds with US engagement. As such, China is explicitly described as "a clear challenge to America's stated commitment to promoting good governance in the region" (Economy 2008: 2). Stephanie Giry argues that by summarising the key areas where potential exists for the US and China to clash over resources and market share, "Beijing's tactics should worry Washington – not to mention average Africans" (2004: 23).

Chinese Economic Competition:

Kurlantzick's (2008b) excerpt also describes the possibility of conflict erupting between Chinese and Western companies competing over resources and influence in Africa. However, China's increases in oil imports are not significantly higher than the growth rate for other regions of the world (Broadman 2007: 82). There is little doubt about the concerns of economic competition in Africa, but another factor that emerges from such concerns, is a critique of the Chinese state-led model of development. This suggests that it is not competition that is entirely the issue per se, but rather the US fear of an alternative model of development establishing itself in Africa. The Chinese state-led model of development stands in stark contrast to the Western free-market model

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[15] During the time when Angola was in the process of negotiations with the IMF, the Angolan government reportedly stated that other countries such as Brazil and India were also prepared to negotiate on terms similar to China (Lyman and Morrison 2005: 51). Similarly, Kurlantzick (2008a) also suggests that the new state capitalists – which include China, the UAE and Russia – represent the emergence of authoritarian nations as increasingly significant commercial powers. Goldwyn (2008) argues that other countries such as Russia and Malaysia are also beginning to make deals with African states and must be engaged with by the US in order that they understand the importance of maintaining standards on governance.

Dialogue e-Journal

promoted by the US and the IFIs, the differences of which were argued by Robert Wade (2001: 126-130; 1997) as significant to the causes and outcomes of the Asian Economic Crisis in 1997.[16]

China's authoritarianism is drawn upon as being a key factor in how Chinese companies have spread throughout Africa. Due to China's lack of civil society, there are no domestic challenges and no political ramifications that have deterred Western companies from investing in states such as Sudan in the past (Thompson 2007: 52). By lacking this characteristic of democratic societies, China is "unencumbered by principles, [and] Chinese companies are free to go where many Western firms cannot" (Giry 2004: 22).[17] Another issue stemming from this critique on the domestic origins of the Chinese state is also provided in regards to the links between companies and the state which could become "an invitation for rapacious governments" to take advantage of an economic model that facilitates corruption (Kurlantzick 2006: 5). As Gill and Reilly explain, the Chinese state-led approach is a model of inefficiency and

> because of its complex bureaucratic structures, China will inevitably face problems in Africa and these are likely to continue to get worse. Indeed the government is now struggling to address tensions from these 'internal contradictions.'
>
> (2007: 45)

Lyman argues that because Chinese companies are also supported by state banks, they "do not have to be profitable if they serve overall Chinese objectives" (2005). At the heart of such critiques, is a display of faith in the market-led model of the US that is opposed to state-led development.

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[16] The reaction of the IFIs to the Asian Financial Crisis is argued by Wade (2001, 1997) as representing a response by the West to use opportunities presented by the crisis to bring the Asian state-led development model into line with the dominant Western free-market. Wade (2001) argues that "a central aim of US economic policy since the Second World War has been the worldwide acceptance of free-market ideology—the belief that the free flow of goods, services and capital is to the mutual benefit of all" (2001: 126). See also; Wade and Veneroso (1998).

[17] See also; Copson (2006).

Dialogue e-Journal

Backlashes

The resentment displayed towards China in Africa from various sources such as worker protests or criticism from civil society groups, serves to illustrate in the US China-Africa discourse key points of distinction between the impact of the US and China in Africa. In one way it serves to demonstrate the supposed 'reality' of Chinese engagement. Two examples discussed here include economic impacts of Chinese investment and issues surrounding labour practices at Chinese-owned companies. For example, in contrast to the initial fervor that surrounded the widely publicised meetings between Chinese and African state leaders between 2003 and 2006, there have been significant protests over the impact of trade imbalances between China and Africa forcing the loss of thousands of jobs in the African textile industry (Lyman 2005). Many African textile factories could barely compete with Chinese imports and were forced to shut down. The growing number of Chinese migrant communities in Africa is also cited as having negative impacts in Africa since the "Chinese often establish their own restaurants, small hotels/dormitories, and stores to serve the needs of the Chinese workers, thereby limiting the value of the new labor to the local economy" (Economy 2008: 3). This has also led to "fears the [Chinese] diaspora is remitting nearly all of its money back to China rather than reinvesting it into local economies" (Eisenman and Kurlantzick 2006: 221). In the accounts reported by Serge Michel, the Chinese presence is compared to being "like the devil" (2008: 45).

The labour practices at Chinese-owned companies are also mentioned in terms of their adverse impacts. One commonly cited example involves an incident in 2006 at a Chinese-owned mine in Chambishi, when an explosion led to the deaths of forty-one Zambian workers.[18] The resultant outrage in the local community led to the creation of a political platform at the following elections based on the adverse impacts of the Chinese presence in Zambia. In the following local elections this incident led to protests against the Chinese through various demonstrations throughout Zambia that were considered an important reason why Hu Jintao, on a visit to Zambia in 2007, skipped a planned trip to the copper mining region in the country over concerns of protests. Kurlantzick argues that "in nations with strong civil societies like South Africa, there is a growing realization that many Western firms train local workers and understand how to operate in a free political environment" (2008b). In a 2008 testimony by James Swan to the US Senate Foreign

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[18] This incident is cited by Economy (2008); Michel (2008); Polgreen and French (2007); Swan and Christensen (2008); and Vines (2007).

Relations Committee, the desire from Africans for Western economic models is explained:

> While welcoming increased Chinese engagement, Africans have also signaled the importance of business practices that reinforce African Union and New Partnership for Africa's Development (NEPAD) principles on good governance. Chinese labor, environmental and quality-control standards have drawn extra scrutiny from many Africans.
>
> (2008: 8)

As these examples demonstrate, such images that are cited throughout the US China-Africa discourse act as instances from which to extrapolate about the broader nature of China's engagement in Africa. This concludes the section analysing the US-Africa and the US China-Africa discourses. The next section will look at the effects of US engagement in Africa.

The US in Africa

This part of the paper investigates narratives within the alternative discourse on US engagement in Africa and the effects of this engagement. The aim is to provide alternative discourses with a voice outside of the US-Africa discourse and demonstrate the importance of their role in contributing to a broader understanding of US engagement in Africa. In contrast to the US-Africa discourse, alternative discourses reveal that US engagement in Africa has not been as benevolent as conveyed in the US-Africa discourse. This section begins by situating US engagement in Africa within a broader historical context of colonialism and external intervention. The remainder of this part is divided into three sections. These will look at the effects of neoliberal policies imposed upon African governments through the IFI's, the emergence of broad-based social movements in response to the perceived failure of neoliberalism as a development model, and the implications of US MNCs in Africa.

Situating US-Africa Relations

To understand how US-Africa relations can be perceived outside of the US-Africa discourse, alternative narratives place the US in a wider socio-historical context. In his article on African perceptions towards the US, Sulayman S. Nyang, chairman of the African Studies Department at Howard University in Washington D.C., argues that:

Dialogue e-Journal

> One must state categorically that the slave trade and the Middle Passage are two symbolic and concrete realities that have defined the perceptions of black intellectuals over the last 300 to 400 years.

> (2005: 918)

This passage provides a crucial entry point into understanding a defining aspect of US-Africa relations. It illustrates how an alternative discourse perceives more continuity than departure with US-Africa relations based, for example, upon Africa's past relationship with colonial powers and its present economic marginalisation in contemporary world trade forums and meetings. At the centre of these perceptions is the view that the dynamics once driving foreign powers to exploit Africa's human and natural resources, persist in the contemporary period. For example, Issa G. Shivji, a Tanzanian public intellectual involved with NGOs for fifteen years, gives an account of the historical narrative based on these dynamics in which the US is situated. Shivji relates a history of subjugation that begins with European contact five centuries ago, followed by the slave trade and colonialism up to the contemporary period of globalisation in which "the neoliberal package boils down to further deepening the integration of African economies in the world capitalist system, thus reproducing essentially colonial and neocolonial economic structures" (2007: 1).[19] Though this account does not explicitly name the US, the latter's involvement is still strongly implied as a proponent of neoliberalism demonstrated through the IFIs involvement in Africa. The historical narrative that Shivji outlines then speaks to US engagement in Africa as analogous to that of the preceding colonial powers.

To provide a clearer explanation of how the US exhibits dynamics in its engagement with Africa similar to that of colonial powers, a useful description can be found in analyses of US and Africa relations in the wider context of North-South relations. Through an account of US expansion into Central and Latin America during the nineteenth and twentieth century, Slater describes the characteristics of US imperial power as displaying an

> enduring invasiveness or desire and capacity to penetrate other societies and cultures…the will to impose on the other a set of values, imaginations and practices, which are deemed to be superior…[with a] lack of respect for the other, being manifested in subordinating modes of representation.

> (2004: 52)

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[19] For a complete explanation, see Shivji (2007: 1-26).

Central to these characteristics is an underlying mentality that encouraged US expansion with a sense of moral obligation and fervent belief in spreading the values of American civilisation for the benefit of all peoples. Doctrines such as 'Manifest Destiny', which professed an inherent superiority in American values and notions of progress, imbued the US mentality and civilising mission in its expansion with an unyielding sense of conviction (Slater 2004: 52). From such characteristics, parallels can be drawn with the civilising mission of colonial Europe in Africa.

It is on this point of pursuing a Westernised civilising mission or form of development, that a crucial aspect is revealed in the dynamics of relationships between the colonising and the colonised. Stefan Andreasson makes the connection between US aspirations to facilitate development in Africa and the European civilizing mission by drawing upon dynamics that exist in the "relationship between the developers and those who are to be developed" (2005: 974). He argues that it was as a result of the very process adopted by the US and colonial powers of defining themselves as developed, that non-Western others were perceived as still developing. This involved a process in which positions of authority and hierarchy were established (Andreasson 2005: 974). This process facilitated hierarchical relationships of power and also provided a justification for external intervention in Africa. As Slater argues, in the case of the US, intervention was "based on the presumption of Occidental supremacy and a belief in the benign diffusion of such power" (2004: 113). By drawing on the parallels between US and European imperialism and demonstrating underlying principles guiding the US moral justification of intervention in Africa, a conceptual framework can be outlined for interpreting the role played by US economic policymaking in Africa.

The US Development Model in Africa: A Neoliberal Project

By drawing upon the framework outlined above, two aspects of the US-Africa discourse can be exposed as examples of the US civilising mission and a presumed superiority. These are moments where the justification for US intervention is deployed in the name of pursuing development in Africa by promoting the US model of development. Defined by the application of neoliberal policies through the IFIs, the US model is presented as the exemplary model to which African governments should adhere. Firstly, the moral justifications for the US pursuit of development in Africa can be located in explanations of Africa's underdevelopment. Such explanations can be found in excerpts, such as Gettleman's (2009: 69) referred to earlier, that portray Africa as a continent in which violence and anarchy are inherent characteristics. Robert Kaplan's (1994) well known

Dialogue e-Journal

piece, *The Coming Anarchy*, which argued that Africa's governance problems and perpetual violence posed a threat to which the US must respond to preserve order and stability, provides another example. For Andreasson, it is within such "Kaplanesque travelogues depicting the inherent chaos and terror of the Dark Continent" that explanations exist for the causes of Africa's underdevelopment (2005: 973). Such accounts also make the implicit assumption that the US model of development provides the solutions.

This point raises the second issue regarding the notion that the US provides an exemplary model of development for African states to follow. Contemporary efforts by the US and IFIs to promote development are centered on the pursuit of consolidating neoliberalism in

Africa. This is despite the evidence that such neoliberal approaches to development in Africa have failed to improve the standard of living for the majority of people in Africa. For example, in spite of decades of applying neoliberal policies, Africa remains the only region in the world that has not improved in terms of human development indicators (United Nations Development Program 2006). In addition, many African states are off track in meeting the MDGs (MDG Steering Group 2008).[20] However, as stated in a report from the MDG Steering Committee which includes the World Bank and the IMF, the principles of neoliberalism are central to the development strategy:

> In combination with sound economic policies to promote private sector development and increased participation in trade, these results [provided the full recommendations of the report are implemented] will reduce barriers to progress, take countries closer to achieving the MDG's and lay the foundation for robust economic growth.

(2008: 4)

This excerpt illustrates the US approach to development in Africa through the IFIs pursuit of neoliberal policies. Such policies have been most visible in the form of the conditions attached to loans, aid and debt relief.

Conditions imposed by the IFIs reduced the role of government as service providers and attempted to transform them into engines of economic growth. Throughout the 1980s and 1990s, the IFIs responded to debt crises affecting African governments with policies

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[20] For a brief discussion on African states recent progress in meeting the MDGs, see UNDP Poverty Group 2004.

intended to foster economic and political reforms and remove obstacles that prevented economic growth.[21] During the 1980s, conditional loans dispersed by the IFIs were delivered in the form of Structural Adjustment Programs (SAPs). SAPs were designed by the IFIs to be conditional on the basis that reforms in economic and political institutions were necessary to ensure that aid contributed to economic growth through trade liberalisation policies. In practice, SAPs meant reducing the size of the state and reducing its capacity for interfering with market processes. The reforms entailed a mixture of conditions aimed at reducing government expenditures, introducing user-pays systems and introducing the privatisation of state-owned companies (Bond 2003: 23). These policies set in motion trends in African governance that became characteristic of the IFIs intervention in Africa. The effects of attempting to meet the conditions can be illustrated in examples that include privatising water supplies and thereby restricting access to large numbers of people, but mostly the poor, lowering the capacity of hospitals by reducing staff numbers and supplies due to cuts in governments budgets and forcing domestic agricultural industries to compete with subsidised agricultural markets in the US.[22] The focus on solely economic factors by the IFIs also limited their concerns regarding the political ramifications of their policies and as a result many authoritarian governments received financial support from the US. The disparities that existed between the enrichment of the state elites though IFI-lending and the persistent poverty of the general populace invoked claims of "criminality" towards the imposition of conditions that led to the poor paying for debts incurred by the rich (Hoogvelt 1987). The perceived effects of US supported IFIs reducing the capacity of governments to provide vital social services and keep authoritarian governments in power led to widespread protests, riots and resistance.

The result of austerity measures imposed upon African governments created protests as a response to government cutbacks on wages, subsidies on food and fuel and public services (Riley and Parfitt 1994: 140-70).[23] In addition, the level of resistance grew to

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[21] Bond provides a detailed argument about the causes of debt crises as resulting from both internal and external factors. For a full discussion, see Bond (2003: 3-30).

[22] These effects have been described through various accounts of privatisation of African state utilities. For an analysis of the privatisation of providing access to water, see Bayliss (2003). For an account of the implications that competition that the cotton industry in Mali and Burkina Faso have experienced, see Akinwande (2007). For a discussion of the privatisation of water in Ghana, see Whitfield (2006). For an account of Kenya's healthcare crisis due to IMF reforms, see Ambrose (2007). For an analysis of how neoliberalism has impacted upon reforms in Zimbabwe, the DRC and South Africa, see Moore (2001).

[23] On a global level, riots and protested emerged as common response to the changes in government service provision as a result of austerity policies imposed by the IMF. Between 1976 and 1992, 146 austerity protests occurred in 39

Dialogue e-Journal

such an extent that a 'wave' of democracy swept across the continent which absolved many entrenched authoritarian leaders of their power. However, as both Abrahamsen (2000: 112-37) and Riley and Parfitt (135-70) have argued, the culmination of these protests, creating change throughout Africa, were not the result of the IFIs' conditions facilitating a desire for multiparty democracy, but a result of their negative impacts upon people's standards of living that created the momentum for such changes.

In response to the resistance generated towards the IFIs, the SAPs were modified to reduce the adverse social impacts, or 'shock' effects, they produced (Bracking and Harrison 2003: 1308). To adopt a more 'human face', the concept of ownership was developed to be seen as giving control over the implementation of policy reform to African governments and respond to criticisms of the SAPs as imposed in a top-down manner and provide a degree of participation from local constituencies.[24] The new orientation towards giving ownership to African governments was deployed through Poverty Reduction Strategy Programs (PRSP). However, PRSPs did not venture beyond the assumption that neoliberal polices were the only acceptable option for development. For Abrahamsen, the image of the IFIs reaching out to African governments with a genuine intention towards empowerment acted as a mirage:

> If taken literally this call for empowerment has far-reaching political consequences, in that it implies a challenge to local as well as national power structures. If people were enabled to hold those in power accountable, they might demand more services and a more just distribution of income, and thus put into question the whole gamut of existing socio-economic arrangements.
>
> (2000: 57)

Furthermore, the notion that including civil society organisations into the implementation process of PRSPs creates more participation ignores the links between NGOs and the liberal agenda of the IFIs and creates a form of surveillance in which the decisions of governments remain monitored (Fraser 2005: 332). The new direction taken by the IFIs in implementing neoliberal polices appears as more of a continuation of pursuing

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countries. Walton and Seddon (1994) define austerity protest as "large-scale collective actions including political demonstrations, general strikes, and riots, which are animated by grievances over state policies of economic liberalisation implemented in response to the debt crisis and market reforms urged by international agencies" (1994: 13-14).

[24] Adopting a "human face" is a reference to a 1987 report by UNICEF that strongly criticised the negative social impacts of SAPs. See, Cornia, Jolly and Stewart (1987).

Dialogue e-Journal

neoliberal policies in Africa rather than the rhetorical suggestion of it as being progressive. Harrison (2005: 1309) has argued that this direction by the IFIs represented a shift in the previous SAPs aims at reducing the size of the state. As part of the new aim of giving government a sense of ownership over policymaking, the goal amounted to giving the state a role to "ensure the conditions for people to act socially in a market-conforming fashion" (Harrison 2005: 1310). This approach has also underwritten the most recent attempts to instill a sense of ownership among African leaders as demonstrated through facilitation of the New African Partnership for Africa's Development (NEPAD).

NEPAD is based on the notion that African governments can take ownership over governance by taking responsibility for instituting what are deemed by the IFIs to be responsible measures towards facilitating economic growth. Despite this new approach many of the fundamentals of neoliberalism remained in place. African leaders requested changes to trading regulations at each G8 meeting between 2002 at Kananaskis, Canada and 2005 at Gleneagles, Scotland (Smith 2006: 13). The requests which entailed changes such as a "market access, agricultural subsidies, reduction in tariffs, fair trade and increased foreign aid" (Smith 2006: 13), were met with the response that problems facing African states were governance related – hence the necessity of instituting the reforms as advocated by the IFIs. Touted as embodying the spirit of African leadership based on ownership and self-empowerment, NEPAD has undermined previous attempts towards continental initiatives towards development (Lesufi 2006: 70). NEPAD has also been understood as representing an expression of neoliberalism which has led critics to argue that neoliberalism has already presented Africa with serious obstacles to development in addition to entrenching the position of elite circles that have remained in power over decades.[25] For Patrick Chabal, NEPAD represents a "continuation with, rather than a break from, the type of relations that have guided the continents engagement with the international community since independence" (2002: 462). Another part of the NEPAD process is the African Peer Review Mechanism (APRM) which has been adopted to promote governance, yet despite calls from NEPAD for untied aid, accession to the APRM is being used by some sectors of the international community as a condition for receiving aid (Rocha 2007: 25).

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[25] Loxley argues that NEPAD "does not challenge conventional wisdom in any significant way, while at the same time committing Africa to police itself on implementing neo-liberal economic policies" (2003: 127). Melber (2002) also makes the argument that NEPAD does not confront the existing political structure facing many African states and this factor may prove to be a key obstacle for the objectives of NEPAD.

Dialogue e-Journal

Harrison's (2005) argument neatly concludes the themes of this section in that neoliberalism acted as a project to the extent that it was pursued primarily by the US and the IFIs embodied with its policies, to maintain a level of intervention in African economies. For Harrison, "neoliberalism works to illuminate important aspects of the ontology of certain agencies, which collectively express a global project of economic and other policy initiatives based in the desirability of free-market social relations" (2005: 1305). The reforms represented attempts by the IFIs to establish neoliberalism in Africa as a sociopolitical project that acted as a process of "social engineering" (2005: 1306). These accounts of US engagement in Africa remain silenced in the US-Africa discourse and they present an alternative perception to how the US is perceived in Africa. It is through this side of US engagement that broader social movements have resultantly become established in Africa.

Seeds of Change: Resistance and Social Movements

Resistance movements have developed in opposition to the impact of policies based on the US economic model on Africa. In contrast to the depictions in the US-Africa discourse of the US development model providing the necessary benefits of development to Africa, there has been substantial resistance to the effects of neoliberal polices. Originating from the protests and riots that resulted from the effects of the SAPs during the 1980s, groups that were once separated and focused on individual struggles against neoliberal policies such as privatisation and economic liberalisation, have since evolved to form part of broader movement that is more closely aligned around a collective set of goals. As more groups developed the perception that they had a common agenda, a "mass consciousness" began to develop that is evident in contemporary movements such as Jubilee South, a campaign focused on the cancellation of Africa's debt; and the African Social Forum (ASF), an African offshoot of the World Social Forum.[26] As E. Osei Kwadwo Prempeh argues, "the African Social Forum can be properly understood as a new and emergent form of counter-hegemonic praxis and politics against imperial globality which is expressed in the form of neoliberal globalisation" (2006: 82). One of the most significant impacts for these social movements is that they question the logic of the US-Africa discourse in which neoliberalism is perceived as beneficial for Africa. Such movements represent the current state of a movement that developed out of smaller localised forms of resistance.

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[26] For information on Jubilee South, see: http://www.jubileesouth.org/. For information on the African Social Forum, see: http://www.africansocialforum.org/english/index.html.

Dialogue e-Journal

Prempeh argues that groups that emerged in protest to the trade liberalisation and privatisation policies of SAPs, involved local civil society groups such as the Soweto Electricity Crisis Committee, the Anti-Privatisation Forum in South Africa and the Nigerian Labour Congress (2006: 78). In 1999, leading church and social movement organisations signed the Lusaka Declaration after a three day conference that initiated a process for the creation of an "African Consensus". The declaration was based on the notion that the conditions placed on African states had a devastating impact and often increased hardship for the majority of people. Following this conference, the "African Consensus" was taken to the Dakar 2000 Summit on Debt. The result was "The Dakar Declaration for the Total and Unconditional Cancellation of African and Third World Debt". The declaration made the following account of debt and its role maintain its position in the global economy:

> Countries of the North owe Third World countries, particularly Africa, a manifold debt: blood debt with slavery; economic debt with colonization,and the looting of human and mineral resources and unequal exchange; ecological debt with the destruction and the looting of its natural resources; social debt (unemployment; mass poverty) and the cultural debt (debasing of African civilizations to justify colonization).

(2000)

These declarations have been the voice of African resistance that has developed in response to the imposition of neoliberalism as pursued through the IFIs and promoted by the US.

Enter the US Corporation

US MNCs in Africa demonstrate not only the effects that such companies have had in Africa, but also serve to add to the alternative discourse a critique of US companies with regards to resistance and adverse effects. This critique also contests silences within the US-Africa discourse regarding the role of US companies used to describe the adverse impact of Chinese companies, as described in the US China-Africa discourse, which appears then as an inherent characteristic of China's engagement in Africa. There are a number of examples of poor corporate social responsibility in Africa by US companies. US oil producing company Chevron has met with resistance in the Niger Delta region where oil platforms are located. In 1998, two protesters were killed on an oil platform. The following year Nigerian troops were transported with Chevron's assistance to attack

villages in the Niger Delta (Pegg 1999: 477; Bassey 2007: 136).[27] In 1999 US pharmaceutical companies lobbied the US government to force the South African government to repeal legislation enacted to allow the purchase of cheaper generic drugs (Bond 1999). In 1997, an example of developing countries losing rights under the Trade Related Intellectual Property Rights (TRIPS) legislation involved the US pharmaceutical company Phytera, which signed an agreement with a Swiss University sharing Zimbabwean genetic resources to the exclusion of the Zimbabwean government and traditional leaders "affected by this bio-prospecting" (Commey 2003: 15). As an omission of the nature of MNCs in general, the US China-Africa discourse silences those critiques of US corporate engagement in Africa discourse at the cost of making poor corporate social responsibility appear as a characteristic feature of China's engagement with Africa.

This chapter closes by returning to Nyang (2005: 930), who recalls Kwame Nkrumah, the first president of Ghana and a strong proponent of the Pan-African movement. According to Nyang, Kwame sought to intervene in the middle of the Vietnam War much to US President Lyndon Johnson's annoyance, in the hope of finding a diplomatic solution to the conflict and that "if the author of the CIA exposé, *In Search of Enemies*, is to be trusted, then we could say that Johnson was implicated in the overthrow of Nkrumah's government" (2005: 930). Such an event only adds to the African collective memory of US engagement in Africa.

China in Africa

In the US China-Africa discourse, China's impact in Africa was discussed in relation to three themes that capture characteristic aspects of China's engagement. These themes included China's non-conditional aid to African states, China's economic competitiveness based on the support it receives from the Chinese state, and backlashes against the Chinese presence in Africa. As these themes have guided the dominant discourse on China's engagement in Africa, so too have they silenced alternative ways of understanding. This chapter provides an account of the effects of Chinese engagement in Africa with a consideration of broader structural and socio-historical contexts. Divided into three sections, it is by no means an exhaustive list, but provides a contribution

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[27] Chevron was cleared in a court case in 2008 over the deaths of two protesters on an oil platform in Nigeria in 1998. *The Wall Street Journal* reported the results of the court case as "a high-profile blow to the fairly new legal theory that multinational companies can be sued in US courts and held accountable for alleged human-rights violations overseas" (Gold 2008).

Dialogue e-Journal

towards a critical understanding of some aspects of China's engagement in Africa. These sections include a discussion on conceptualising a Chinese model of development in Africa and its influence, the impact of Chinese MNCs and the emergence of Chinese migrant communities in Africa.

A Chinese Model: Divergence and Convergence

A key thread to the themes discussed in the US China-Africa discourse involves the level with which China is exerting its influence in Africa. China's level of influence is regarded as a concern because its economic model and modernisation serve as a powerful example to African governments that development is possible without political liberalisation. Among the commentators in the US China-Africa discourse, the meetings between Chinese and African leaders at the Forum on China-Africa Cooperation (FOCAC) conferences served as a strong illustration of China's appeal.[28] Due to the perceived antithetical nature of China's engagement in Africa as perceived in the dominant discourse, there is a strong concern about the implications of how China's appeal in Africa will develop.

There is little doubt that China takes advantage of opportunities to develop relations with authoritarian regimes, allowing it a form of leverage with other states simply due to the absence of US involvement. However, by portraying the purely antithetical and divergent nature of Chinese engagement in Africa, the discourse precludes ways in which to perceive both Chinese and US engagement in Africa as converging in the self-interested pursuit of access to markets and resources. In addition, such a focus on China's engagement in Africa prevents understanding the ways in which China might be perceived differently by African leaders and people.

To seek alternative perspectives on Chinese engagement in Africa, it is helpful to give prominence to the historical origins of China-Africa relations in the contemporary period. This helps to shed light not only on the way China seeks to distinguish itself from the US, but also on conceptions in Africa of China as an alternative to the US. Intertwined with the history between China and Africa, over a period in which they developed strong ties,

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[28] The establishment of FOCAC also signalled a committed initiative between Chinese and African heads of state to maintain strong diplomatic relations. From the comments of individuals from various African governments, China was warmly welcomed. With the new engagement between China and Africa symbolised by the unprecedented level of diplomatic contact culminating in the meetings of the Forum on China-Africa Co-operation (FOCAC), it did indeed appear that not only was the Chinese model contrary to US interests in Africa, but it also received a wide audience. See Ministry of Foreign Affairs of the People's Republic of China (2006).

Dialogue e-Journal

is also the selective emphasis by both Chinese and African leaders on particular historical moments as a part of a contemporary narrative of engagement (Alden and Aves 2008: 48). Through the importance of such meetings as the Bandung Conference in 1955 and the Afro-Asian People's Solidarity Organisation in 1957, China developed its support with Third World struggles and "drew on 'missionary like' convictions of its righteousness in assisting Africa" (Mohan and Power 2008: 28). By 1970, China's support for Africa's anti-colonial struggles and liberation movements culminated in the largest Chinese aid project in Africa: the construction of the Tanzania-Zambia Railway, demonstrating China's activism on the international stage (Yu 1975). Also known as the 'Great Freedom Railway', the Tan-Zam Railway project symbolised China's intention to liberate Africa from depending upon transport routes through states with colonial regimes and promote freedom from the neo-colonialism and neo-imperialism of the Soviet Union and the US (Monson 2008: 217).[29] The spirit of such endeavors between China and Africa can be seen in the FOCAC declarations today.[30]

In addition, the notion of a Chinese alternative to the US has also emerged recently in the shape of the 'Beijing Consensus' (Ramo 2004). As Arif Dirlik notes, the Beijing Consensus has evolved to symbolize a wider dissatisfaction with the imposition of neoliberalism (as evident in the shock therapies administered by the IFIs to Southeast Asian states during the Asian Financial Crisis and to Russia and other eastern European states following the end of the Cold War), and embodies the hope that alternatives exist to counter the domination of Western powers (Dirlik 2006). These origins along with the contemporary connotations attached to China's development through the Beijing Consensus, illustrate how China diverges from US approaches to Africa.

With regards to China's recent engagement with Africa, however, the ideological focus plays less of a role as economic issues have taken priority (Large, Oliveira and Alden 2008a: 6). The reasons for this shift in China's Africa policy are due to multiple factors that involve the end of the Cold War and the retreat of the superpowers, China's economic liberalisation and importantly, the need to secure access to natural resources vital to China's rapid industrialisation (Payne and Veney 1998; Taylor 2006; Tull 2006).

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[29] Monson (2008) also describes reactions to the project in the US at the time from an article in *The Wall Street Journal*: "The prospect of hundreds and perhaps thousands of Red Guards descending upon an already troubled Africa is a chilling one for the West" (1967).

[30] The Chinese leadership sought to invoke the spirit of partnership in addressing the issue of "a huge gap between the rich North and the poor South" in which "the injustice and inequality in the current international system are incompatible with the trend towards world peace and development" (Ministry of Foreign Affairs of the People's Republic of China 2006).

Dialogue e-Journal

On a domestic level the seed of change for China's reform and outward orientation – and the reason why China exhibits a level of convergence with the US in its engagement with Africa – were sown with the opening up of China's economy to economic liberalisation under Deng Xiaoping during the late 1970s. By slowly incorporating market-orientated reforms, China embarked upon a massive restructuring of its domestic economy transforming its governance institutions while facilitating tighter interconnections with foreign powers and the global economic system. China has raised the standard of living in its country but at the cost of widespread "environmental degradation, social inequality and eventually something that looks uncomfortably like the reconstitution of capitalist class power" (Harvey 2005: 122). In addition, domestic changes have also led to one of the largest human migration movements in history as people have moved from the poorer rural areas to the rapidly developing coastal provinces. China seeks closer integration into the global economic system which, in regards to Africa, means engaging with Africa through the existing economic structures to take advantage of access to markets and resources. On this level, China adds to the economic competition faced by African exporters in global markets, reaffirming Africa as a provider of primary commodities while preventing the possibility of indigenous management of such resources and the hope that African producers might benefit from the profits of their exports (Holsag 2006).[31] Despite notions of Third World solidarity and state-led development, China does not seek to overturn the existing economic architecture to trade with Africa. Beyond this orientation of China's engagement in Africa, China also lacks any hegemonic potential to rival the US. Despite its size and relevance to international forums on global issues, China does not carry the same ideological support of the US nor can it claim a status as a key architect of global institutions such as the IFIs (Schoeman 2007). In the US China-Africa discourse the image of China as undoing the gains made by Western democracy and rights in Africa neglects the implications of China's contribution in other ways, such as through UN troops and its desire to be increasingly seen as responsible power in the existing international order (Harman 2007). Despite China's glacial pace towards embracing free market reforms, China still seeks to engage with Africa through the existing political and economic structures. As a result, China's approach does not constitute an alternative in terms of addressing the structural constraints that perpetuate Africa's current economic position. In this sense, China's engagement with Africa demonstrates that it is a rising economic power that does not seek to change existing structures through which Africa is engaged in the global economy.

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[31] For an account of China's adverse impact on African industrial exports in Sub-Saharan Africa, see Kaplinsky 2008.

Chinese Companies in Africa: A Well Worn Path

China's MNCs were discussed in the US China-Africa discourse as having an adverse impact in Africa. They were considered as such on two accounts. These included a low level of corporate social responsibility (CSR), as demonstrated by the protests against labour conditions in Africa, and a critique of their inefficiency based on their affiliations with the Chinese government.

As an example of the labour conditions at Chinese-owned companies, an often repeated example involved the case of the Chambishi mine accident. Though demonstrating the need for China's companies to display better CSR, the reference of this incident also conveys the assumption that China lacks those standards of corporate practice, as exists in the US. By citing the responses from such protests in the US China-Africa discourse, it was also suggested that African workers preferred Western corporate standards. That such instances are specific to Chinese companies in Africa is alluded to by Reilly and Na: "Chinese companies pursuit of profits may lead them to operate in ways that generate local resistance, potentially undermining China's broader diplomatic and economic objectives" (2007: 147). The example then also serves to illustrate a seemingly inherent characteristic attributed to Chinese MNCs rather than a being a characteristic of MNCs regardless of their country of origin.[32] As discussed in relations to US MNCs in Africa, workers demanded appropriate labour standards regardless of the nationality of the company.

Similar to US MNCs, Chinese MNCs have also demonstrated adverse impacts on labour rights and environmental aspects. One of the common criticisms of Chinese companies is that many of them have invested in regions troubled by conflict and weak in terms of government regulations on corporate behavior. Some of the notable areas include Chinese oil companies investing in Sudan, in the Cabinda province in Angola and in the Niger Delta.[33] In Zambezia province in Mozambique, Chinese logging companies have engaged

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[32] In addition to the forty-nine miners who died at the Chambishi mine accident, other accidents at Mopani Copper Mines (Switzerland), First Quantum (Canada) and ZCCM Investment Holdings PLC (ZCCM.ZM) (Zambia), claimed more than twenty deaths in 2005 (Range 2005).

[33] On Chinese companies in Sudan, see Askouri (2007). According to an advertisement from the Save Darfur Coalition's Divest for Darfur Campaign, a number of investment firms including JP Morgan and Franklin Templeton among others, have been requested to withdraw their investment s from the CNPC that is involved in exporting oil from Sudan (Hight 2007). On Chinese companies in Angola, see Peoples Daily Online (2006), Human Rights Watch (2004). On Chinese companies in the DRC, see Chan-Fishel (2007: 145). Commenting on the Chinese presence, Moise Katumbi, governor of Katanga province stated, "Katanga is not a jungle. They worked as if it was a jungle". In regards

in "a deforestation process often referred to as 'the Chinese takeaway'" (Lemos and Ribeiro 2007: 65). Through the manipulation of regulations with licensing, reporting the number of logs exported and the influence of political connections, Chinese companies have been involved in facilitating illegal logging. In Zimbabwe to pay for the government's debt, there is a concern that the economy has been opened up to Chinese investment to the extent that "it is questionable whether he [Mugabe] has not simply replaced Western colonialism with Chinese imperialism" (Karumbidza 2007: 95). Chinese companies have also been involved in projects on dam constructions that have led to the displacement of local villages and communities.[34] It is clear "that Chinese companies are quickly generating the same kinds of environmental damage and community opposition that Western companies have spawned around the world" (Chan-Fishel 2007: 148).

In relation to Chinese connections to the Chinese government and the broader notion that a coordinated strategy is in operation, observers in the US China-Africa discourse have argued that Chinese MNCs follow a strategy connected to state interests and part of broader foreign policy initiatives. Chinese MNCs are central to broader state policy objectives which in the case of China's Africa policy, has involved securing access to oil, increasing trade and investment and strengthening diplomatic ties (Reilly and Na 2007: 134). However, the connection between state interests and corporate interests are not specific to China as the example of French companies in Africa (Alden and Davies 2006: 84). In this case, the interests of French oil companies and the French state developed a convergence in interests that resulted in French troops being deployed to Africa to suppress resistance against authoritarian governments. Instead of demonstrating unique Chinese characteristics, the largest of China's are being groomed for the Fortune 500 (Alden 2007: 40). Chinese MNCs are in fact following the lead of the major players in international markets by following Western examples. According to a report on Chinese MNCs, while they are not the most efficient companies, they are on the path to becoming strong competitors in international markets. It shows that Chinese companies are learning from their Western counterparts about the value of research and development for innovation and seeking new markets (Chan 2006; Corkin 2006). Chinese companies are pursuing trends that are familiar to MNCs in general, and in considering the adverse of

to labour practices, he stated that, "they didn't pay their people. They didn't respect anything. We have already written to them to ask them to give severance pay to their staff and to pay the tax due to the government" (Quoted in Jopson 2009).

[34] On the Mpanda Nkuwa dam in Mozambique, see (Lemos and Ribeiro 2007: 66). On the Merowe dam in Sudan, see Askouri (2007: 78).

Dialogue e-Journal

China's MNCs compared to others, the goal here is not to dispute this, but suggest that Chinese companies follow paths outlined by US and other Western MNCs. To suggest where this trend may be headed, recent events in the Niger Delta where China has secured oil deals with the Nigerian government prove illustrative. In 2006 the Movement for the Emancipation of the Niger Delta (MEND) detonated a car bomb in the port town of Warri as a warning to China that it should avoid becoming involved in the area (BBC News 2006). This was followed by nine Chinese workers being kidnapped in 2007 at an oil company compound in southern Nigeria (Xinhua News Agency 2007). The question arises then as to whether Chinese companies will follow the path of US companies such as Chevron in the Niger Delta. In contrasting comments of Chinese MNCs made in the US China-Africa discourse, it appears that the discourse omits reference to the behaviour of the US or other companies in Africa that, upon consideration, demonstrate that there is nothing inherently Chinese about the effects of Chinese companies in Africa.

Chinese Migrant Communities in Africa: Devils and Popularity

Chinese migrant communities in Africa play an important part in China's engagement by demonstrating the effects of socio-economic forces at the local level. There are multiple complexities involved with Chinese migrant communities which should be considered in relation to negative perceptions that characterise the Chinese presence in Africa in the US China-Africa discourse. It is within these complexities that the dialectics of China's engagement with Africa can be revealed and demonstrated through ways in which Chinese migrants have become interconnected with local social, economic and political networks. Providing clearer articulations of what such interconnections reveal defuses the negatives perceptions of China's presence in Africa depicted in the US China-Africa discourse.

In the US China-Africa discourse, the Chinese presence in Africa is portrayed through examples of China's negative effects. The oft-cited case of the accident at the Chinese-owned mine in Zambia enabled a negative perception of the Chinese presence.[35] Other accounts cite local African perceptions in which Chinese migrants are described as being "like the devil" (Michel 2008: 45). In addition to such accounts, there is little doubt regarding the increasing visibility of Chinese people on the local level. The total number of Chinese migrants in Africa varies depending on the sources of data but from those that are available, the most pertinent figures demonstrating migratory patterns have shown

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[35] US Senate Committee on Foreign Relations Subcommittee on African Affairs 2008, Polgreen and French (2007), Wines (2007), US Senate Committee on Foreign Relations Subcommittee on African Affairs (Swan) (2008).

Dialogue e-Journal

rising numbers "between two-and-thirty fold increase [s] between 2001 and 2006" (Mohan and Kale 2007: 10). Such a significant rise of numbers has partly contributed to the sense of alarm and resentment at the growing Chinese presence in Africa.

The increasing visibility of Chinese migrants in Africa does not need imply the irrelevance of socio-economic contexts. Nina Sylvanus's ethnographic study in the marketplaces of Lome, Togo, revealed how the local African traders also referred to Chinese people as "devils"; "they're not honest; they'll sell to everyone" (2007). For Sylvanus's study, the focus was on analysing "local representations of "Chinese devils" that circulate in the market with Togo's recent conjuncture of democratisation and market reform" (2007). In connection with these observations is an analysis that draws a connection to market dynamics in which competition from Chinese traders has minimised the advantages once enjoyed by local traders. The market may be filled with Chinese imitations of African print copies, but it was African traders who had travelled to China in an earlier period with a blueprint in search of a cheap producer. The unintended consequence has been that Chinese traders have now moved directly to the Lome marketplace. In this example, negative perceptions of China are a product of economic competition. In addition to this, perceptions of Chinese migrant communities also differ between African leaders and local people.

In Namibia, the friction between the attitudes of locals and government leaders is more pronounced where China has overtaken South Africa's reputation as the perceived imperialist in the country. As Greg Dobler argues, "social unrest is increasingly formulated along a new indigenous/ exogenous divide" (2008: 244). In his case study of the Chinese migrant community in Oshikango, Namibia, Dobler investigates the relationships that developed between the towns elite with Chinese investors who developed a mutual interest as links were connected to towns in China. As both parties benefited through mutual interest, there was little critical inquiry into the broader impact of Chinese investment as resentment continued to develop on the local level. Dobler argues that "both sides tried to shield the cooperation from outside criticism by linking Chinese investments even more strongly to development – without reference to its real impact on the Namibian economy" (2008: 253). In this case, the connections between the elites in the township and Chinese investors demonstrated a relationship of convenience, yet on the local level, resentment continued to develop.

To illustrate the extent to which such resentment can be connected to socio-economic contexts, the example of Chinese migrant communities in Cape Verde is insightful

(Carling and Haugen 2008). Cape Verde is one of the few places where there has not been a significant level of resentment generated towards Chinese communities. In a 2005 survey held in Cape Verde on the popularity of immigrants from Asia, eighty-five percent responded favourably to the suggestion that they made a positive economic contribution to the country. A number of factors have been important in considering the positive impact of Chinese communities such as there were no negative economic impacts from Chinese migrants including job losses or impacts from Chinese imports on the manufacturing sector. Local conditions, such as limited corruption, were also important as it tended to reduce the possibility for Chinese communities to become associated with the negative impacts. As Carling and Haugen (2008) argue, "the variety in local markets and social and political contexts across the continent precludes sweeping conclusions about the impact of China's growing presence in Africa" (2008: 337). Broader perceptions of the presence of Chinese migrant communities in Africa are evidently connected to socio-economic conditions rather than to stereotypical images such as those portrayed in the dominant discourse on China's engagement with Africa.

As these examples illustrate, there are a variety of complexities involved in issues of Chinese migration in China. The insight from these analyses suggests that further investigation into the structural factors that facilitate these complexities is required. This section on Chinese migrant communities concludes the chapter on China's effects in Africa.

Conclusion

> *If one day China should change her colour and turn into a superpower, if she too should play the tyrant in the world, and everywhere subject others to her bullying, aggression and exploitation, the people of the world should identify her as social-imperialism, expose it, oppose it and work together with the Chinese people to overthrow it.*
>
> *(Deng Xioping: Speech at special session of the UN General Assembly,1974)*

Central to this paper is the question of interpretation and the issue of how US perceptions shape Chinese and US engagement in Africa. Through an analysis of the US-Africa discourse and the US China-Africa discourse alongside each other it was revealed that a Manichean dynamic perpetuated a series of themes that were counterpoised to each other. This paper argued that US engagement became perceived as being for the benefit of Africa while China's was perceived as detrimental as reflected through the existence of a

Dialogue e-Journal

US lens. As a result, this tended to limit an understanding of China's engagement in Africa by silencing alternative discourses. When explored, alternative discourse revealed that in contrast to the differences between US and Chinese engagement in Africa as conveyed through the dominant discourses, instances emerged demonstrating similarities. The US and China clearly exhibit different models of development but despite this, in the pursuit of markets and resources, both countries engaged in Africa through the existing political and economic structures. In addition, US and Chinese MNCs also demonstrated the similar capacity to have adverse impacts. As these factors also served to draw attention to wider structural forces of globalisation, the examples of forms of resistance and migrant communities demonstrated the complexities involved with the engagement of external powers in Africa.

The argument put forward here also raises a number of issues. As the alternative discourse reveals similarities between US and Chinese engagement in Africa, the real question regarding China's engagement is not whether it is authoritarian or pursuing a state-led model of development. Without intending to understate the importance of such issues, the argument raised here suggests that existing political and economic structures are of greater concern in discussions on the role of external actors in Africa. Not only does this question defuse the rhetoric of China's adverse impacts in Africa as portrayed in the US China-Africa discourse, but it also implicates the US for its continued engagement in Africa. For if the continued orientation of Africa's economies as primary commodity suppliers continues at the expense of the development of localised industry, or if external powers continue to engage with Africa through existing political and economic structures, then it is unlikely that improvements will arise in the conditions Africa currently faces. Such a conclusion comes as a result of exploring the gap between rhetoric and practice in how China's engagement with Africa is understood by giving a voice to alternative discourses that at once reveal the complexities of the issue and the importance of interpretation.

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How important is foreign capital to income growth in China and India?[1]

By Abhaya Kamalakanthan and James Laurenceson[2]

Abstract

China and India are amongst the world's fastest growing economies. Both countries have also been high profile recipients of foreign capital inflows, and a striking feature of these inflows is that they have tended to concentrate in particular localities within both countries. Thus, the picture often painted is that foreign capital inflows are prominently linked to rapid growth at the national level, and contribute to widening income disparities at the provincial/state level. In this paper we take a step back from the media hype and tests of statistical significance, and revisit Krugman's (1993) contention that foreign capital can hardly be considered an important income growth driver, when in most developing countries it only accounts for a fractional share of gross capital formation. In the case of contemporary China and India, the data suggests that Krugman's critique holds largely true, even in the coastal regions that are considered magnets for foreign investment. Thus, domestic factors, rather than the driving forces of globalization, appear to be the more important determinants of income growth in both countries. As such it appears that the effects of globalization on investment, growth and inequality are overstated for these Asian nations.

Introduction

Since the 1990s, China and India have been amongst the world's fastest growing economies. In 2003, both countries grew in real terms by 9 percent. At the same time, both countries have been leading recipients of high profile foreign capital flows. In the case of China, foreign capital has predominantly flowed into the manufacturing sector and is said by many to be transforming China into a 'factory to the world'. In the case of

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India, it is foreign investment to the services sector, particularly IT services, that has been most prominent and an analogous tag has been used to describe India as an emerging 'back office to the world' (*The Economist*, 05/05/2001). With all the media attention devoted to foreign investment and rapid rates of income growth in both countries, it is unsurprising that the two variables are generally thought to be linked in a significant and causal manner (Venu, 2001; Secor, 2003).

A striking feature of foreign investment in both China and India is that it is strongly concentrated in particular localities. As a result, in addition to being considered a driver of income growth at the national level, foreign capital flows are also thought to be foremost amongst those factors that explain widening income disparities within both countries (Fujita and Hu, 2001; Venu, 2001; Xing and Zhang, 2004). In China and India, foreign capital has flowed overwhelmingly to the coastal provinces/states. The reasons for this are several. Most obviously, these regions hold a natural locational advantage for engaging in foreign trade and are thus, attractive hosts for trade-orientated foreign direct investment (FDI). Greatly augmenting their locational advantage is the fact that historically these provinces/states have been the leading points of embarkation for Chinese and Indian labour migration abroad. With respect to China, it is no surprise then that facing rising production costs in places such as Hong Kong and Taiwan, overseas Chinese funded the mainland's initial foreign investment boom and drew on their personal connections in the coastal regions to help negotiate their way through China's underdeveloped legal and physical infrastructure (*The Economist*, 03/05/2005). China's coastal provinces are also the richest in the country, and therefore desirable locations for domestic market-orientated foreign investment.

In the case of India, Srivastava and Sen (2003) and a recent International Monetary Fund report titled '*India: Selected Issues*', cited in Srinivasan (2005), argue that apart from Delhi, five coastal states (two each in the southern and western regions of the country, and one in the eastern region), i.e. Karnataka, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh account for 60-70 percent of the total FDI inflows into India. These so-called high performing state economies (HPSEs), as baptized by Shand and Bhide (2001), have better infrastructure to connect with the surrounding states, a crucial factor that has helped them to be chosen as a center for the establishment of export processing zones (EPZs), and special economic zones (SEZs) for attracting export-oriented FDI. Regional FDI inflows into India have also been distinctly associated with a high degree of urbanization. For instance, all of the five coastal states mentioned above are quite highly

urbanized, due to the presence of metropolitan cities like Bangalore, Chennai, Mumbai and Hyderabad (Srivastava & Sen, 2003). Thus, the stylized facts do indeed appear to point to globalization's driving forces – labour migration, trade and investment – forming a virtuous circle that strongly drives localized income growth. If globalization's driving forces do contribute prominently to income growth, particularly at the provincial/state level, this has broad economic and political implications. For example, spatial differences in income per capita drive internal labour migration, which in turn determines the strain that will be placed on a country's infrastructure. At least in the case of China, the authorities have also repeatedly expressed concern over the effect that regional income inequalities could have on future political stability.

In this paper we take a step back from the media hype surrounding foreign investment and economic growth in China and India, and even from many of the academic studies that report a statistically significant relationship between foreign investment and economic growth. Statistical significance is after all simply a comparison between an estimated coefficient and standard error. What really matters in terms of the impact on income growth is the *size* of the estimated coefficient. Our aim is a simple one – to consider the scale of foreign capital inflows vis-à-vis domestic capital as a source of gross capital formation. Our reflection on this issue is motivated by Krugman's (1993) observation that foreign capital generally only contributes an extremely small amount to gross capital formation in developing countries. For Krugman then, to label foreign capital as an important income growth driver was nonsensical. The basic data analysis undertaken in this paper shows that Krugman's critique has much relevance in contemporary China and India. Domestic capital remains of primary importance, even in the coastal regions that are regarded as magnets for foreign investment. Domestic capital is also shown to be moving towards the same localities that attract the bulk of foreign capital inflows. To explain why the apparent marginal productivity of capital is higher in these areas than elsewhere, it is necessary to look beyond the driving forces of globalization and consider the impact that domestic factors have on income growth.

Qualifying the link between foreign capital inflows and income growth

In commenting on the popular view that foreign capital was an important driver of income growth in developing countries, Krugman (1993) contended that this was logically impossible when foreign capital only accounted for a fraction of gross capital formation in these countries (approximately 3 percent). He also added that he saw no

Dialogue e-Journal

good reason to expect this to change anytime soon. Levine (2001) took exception to Krugman's argument based on the fact that foreign capital might primarily contribute to income growth through its contribution to technological change and total factor productivity growth, rather than capital accumulation *per se*. Others have pointed out that the level of foreign capital inflows into developing countries has continued to rise during the 1990s and early 2000s. Yet none of these retorts amount to a particularly effective critique of Krugman's basic argument. Even if the key contribution of foreign capital is to technological change, this effect is still linked to its scale. One must also take the view that foreign capital is somehow special vis-à-vis domestic capital in terms of its linkage, spillover and agglomeration effects. What matters in terms of income growth is not the *level* of foreign capital inflows but its *proportional* significance.

In the 2000s, there can be little doubt that Krugman's observation has largely been forgotten amidst the excitement surrounding the rising levels of foreign capital inflows in China and India and the changes these flows are supposed to be making to the geography of global output. To assess whether Krugman's critique has any relevance to contemporary China and India, Table 1 presents net inflows of foreign direct investment (FDI) and net inflows of non-FDI capital (non-FDI) (i.e., net inflows of portfolio investment + net inflows of debt) as a percentage of gross capital formation in both China and India. The chief reason to include the latter is the common complaint emanating from India that FDI comparisons between China and India are unfair, since India's more sophisticated financial institutions and advanced direct capital markets mean that foreign capital often enters the country in forms other than FDI. Table 1 contains several points of interest. Firstly, it is plain that the importance of foreign capital inflows in gross capital formation is greater in the case of China than India. Over the period 1995-2003, net inflows of foreign capital into China contributed more than twice as much to gross capital formation as they did in India. Secondly, while the importance of foreign capital in China and India's capital formation exceeds that of Krugman's 'average' developing country, even in the case of China, it remains relatively small as a share of the total at 13.0 percent. Moreover, of particular interest in the case of China is that during recent years when the hype has been on the increase, the significance of foreign capital as a source of gross capital formation has actually declined.

Dialogue e-Journal

Table 1. **Net foreign capital inflows as a percentage of gross capital formation (GCF)**

	China			India		
	Net inflows of FDI (% GCF)	Net inflows of non-FDI (% GCF)	Net foreign capital inflows (% GCF)	Net inflows of FDI (% GCF)	Net inflows of non-FDI (% GCF)	Net foreign capital inflows (% GCF)
1995	12.5	6.4	18.9	2.2	1.0	3.2
1996	12.4	4.9	17.3	2.9	5.6	8.5
1997	12.9	7.0	19.9	3.9	1.1	5.0
1998	12.3	-3.8	8.5	2.9	1.0	3.9
1999	10.5	-0.3	10.2	2.1	1.1	3.2
2000	9.8	0.4	10.2	2.4	5.7	8.1
2001	9.8	0.2	10.0	3.6	1.0	4.6
2002	9.6	0.5	10.1	3.2	0.1	3.3
2003	8.5	3.4	11.9	3.1	2.7	5.8
Average	*10.9*	*2.1*	*13.0*	*2.9*	*2.1*	*5.1*

Source – World Bank, World Development Indicators Database and Global Development Finance Database.

To assess whether foreign capital is relevant in explaining divergences in the spatial distribution of income within China and India, it is necessary to assemble provincial/state-level data. In Tables 2 and 3 we use sub-national level data from China and India to calculate (in the case of China) the share of actually used foreign investment as a percentage of gross capital formation in each province, and (with respect to India) the share of FDI approvals as a percentage of gross capital formation in each of the major states. Two findings stand out. Firstly, in China foreign capital clearly contributes more significantly to gross capital formation in the coastal eastern provinces than in the central and western regions. Surprisingly however, in India, FDI contributes more extensively to gross capital formation in the middle-income states than in the high and low-income states. This can be attributed to the fact that the Indian central government to date has played a limited role in promoting the investment climates of the states. Rather, it is up to each state to try to attract more foreign investment. Secondly, in spite of its relative significance in some provinces compared with others, even in the case of the former, foreign capital does not come close to rivaling domestic capital in terms of its importance. On average, foreign capital only accounts for 12.4 percent of gross capital

Dialogue e-Journal

formation in the eastern provinces of China and 9.6 percent in the middle-income states of India. Admittedly though, there is considerable variation amongst the Chinese eastern provinces and middle-income Indian states. In Guangdong province in China, for example, the share of foreign capital reaches nearly one quarter. Nonetheless, on the whole it would be difficult to construct the argument that foreign capital flows are a key factor driving income growth at both the national and provincial/state levels in China and India.

Table 2. **Foreign investment in China as a percentage of gross capital formation, average 2001-2003**

Eastern provinces		Central provinces		Western provinces	
Beijing	7.8	Anhui	2.0	Chongqing	2.0
Fujian	19.2	Heilongjiang	2.3	Gansu	0.9
Guangdong	23.9	Henan	1.5	Guizhou	0.5
Guangxi	3.8	Hubei	6.6	Ningxia	0.6
Hainan	13.9	Hunan	4.8	Qinghai	1.3
Hebei	2.5	Inner Mongolia	1.2	Shaanxi	2.5
Jiangsu	17.3	Jiangxi	5.2	Sichuan	2.2
Lioning	12.7	Jilin	2.4	Tibet	N/a
Shandong	10.2	Shanxi	1.9	Yunnan	0.7
Shanghai	12.7			Xinjiang	0.2
Tianjin	13.6				
Zhejiang	11.5				
Average	*12.4*		*3.1*		*1.2*

Source – China Statistical Yearbook.

Dialogue e-Journal

Table 3. **Foreign investment approvals in India as a percentage of gross capital formation, average 1991-2001**

High-income states		Middle-income states		Low-income states	
Punjab	3.1	Kerala	1.9	Bihar	1.2
Gujarat	8.2	Andhra Pradesh	9.4	Rajasthan	2.8
Maharashtra	12.4	Karnataka	14.2	Uttar Pradesh	2.0
Haryana	4.8	Tamil Nadu	13.1	Madhya Pradesh	1.9
Delhi	N/a	West Bengal	9.5	Orissa	14.1
				Assam	N/a
Average	*7.1*		*9.6*		*4.4*

Source – Lakhchaura (2004) and Singh and Srinivasan (2004).

In the case of China, Zhang and Zhang (2003) is arguably the most instructive econometric study to date on the impact of globalization forces on spatial differences in income per capita. Using provincial level data, they find in common with most previous studies that there exists a statistically significant relationship between the foreign capital stock and labour productivity. However, the more telling feature of their study in terms of the impact on income growth was the fact that the size of the estimated coefficient associated with the domestic capital stock was *15 times larger* than that associated with the foreign capital *stock*. Such results follow logically from the *flow* FDI data presented in Tables 1 and 2. Zhang and Zhang (2003) also draw on their econometric findings to explain the contributions that the domestic capital stock and the foreign capital stock (along with other variables) made to observed divergences in spatial income inequalities between 1986-1998. They conclude that the contribution of the domestic capital stock was 75.1 percent, compared with just 11.1 percent for the foreign capital stock.

Amongst India's states, Maharashtra has been by far and away the standout performer in terms of attracting FDI, attracting more than double that of its closest rivals, Tamil Nadu, Karnataka, Gujarat, Delhi and Andhra Pradesh. Yet even for Maharashtra, between 1991-2001, FDI only accounted for 12.4 percent of the state's gross fixed capital formation. The fractional share of foreign investment in gross capital formation across Indian states helps to explain why some states can be relatively rich while capturing only a fraction of the national foreign investment total. Punjab, Haryana, Kerala and West Bengal, for example, are considered to be middle to high-income states, yet collectively they only account for 5.9 percent of national FDI approvals (Mahendra Dev, 2004). Foreign

investment, in aggregate, simply does not matter much. The above numbers also mean that the results of econometric studies by Dua and Rashid (1998), and Chakraborty and Basu (2002) who report no statistically detectible, causal relationship running from FDI to economic activity in the case of India are unsurprising.

Another feature of the data is that it shows that domestic capital in China and India also moves to particular localities. Table 4 shows that gross capital formation per capita in China's eastern provinces in 2003 was more than twice that in the central and western provinces. This was in spite of the central government's 'Go West' campaign, which sought to reallocate domestic capital toward the inland regions through budgetary means and directed credit, as well as through establishing a host of incentives to lure foreign capital. Table 5 also demonstrates a similar trend with regards to India, with the high-income states in 2000 accumulating gross capital formation per capita that is almost double that of the middle-income states, and more than 3 times the amount in the low-income states. The fact that both domestic and foreign capital moves to the same localities strongly suggests that the marginal productivity of capital in these regions is higher than elsewhere. Given the scale of foreign capital inflows, if we are to explain such spatial differences in the productivity of capital, we need to look elsewhere for a chief explanation.

Table 4. **Gross capital formation (RMB) per capita, 2003**

Eastern provinces		Central provinces		Western provinces	
Beijing	15,751	Anhui	2,270	Chongqing	4,199
Fujian	6,872	Heilongjiang	3,428	Gansu	2,346
Guangdong	6,612	Henan	2,974	Guizhou	1,963
Guangxi	2,121	Hubei	3,569	Ningxia	5,522
Hainan	3,895	Hunan	2,609	Qinghai	5,512
Hebei	4,622	Inner Mongolia	5,460	Shaanxi	3,712
Jiangsu	8,348	Jiangxi	3,185	Sichuan	2,638
Lioning	5,543	Jilin	4,079	Tibet	3,871
Shandong	6,344	Shanxi	3,712	Yunnan	2,622
Shanghai	17,283			Xinjiang	5,787
Tianjin	13,057				
Zhejiang	9,913				
Average	*8,363*		*3,477*		*3,817*

Source – China Statistical Yearbook.

Dialogue e-Journal

Table 5. **Gross capital formation (Rs.) per capita, 2000**

High-income states		Middle-income states		Low-income states	
Punjab	4,130	Kerala	4,056	Bihar	1,439
Gujarat	8,179	Andhra Pradesh	3,437	Uttar Pradesh	2,250
Maharashtra	6,454	Karnataka	5,363	Madhya Pradesh	3,506
Haryana	6,203	Tamil Nadu	4,821	Rajasthan	3,085
Delhi	7,616	West Bengal	1,635	Orissa	1,783
				Assam	899
Average	*6,516*		*3,862*		*2,160*

Source – Lakhchaura (2004) and Singh and Srinivasan (2004).

Concluding comments

The purpose of this paper was a simple one – to take a step back from the conventional wisdom that closely links foreign investment and income and consider the scale of foreign capital inflows vis-à-vis domestic capital as a source of gross capital formation. This reflection was motivated by Krugman's (1993) critique that foreign capital is generally unimportant as a source of capital formation in developing countries. Despite the high profile accorded to China and India as hosts of foreign investment, we find that foreign capital inflows only equate to a small share of gross capital formation at both the national and provincial/state level. The data also points to large variations in the spatial marginal productivity of capital.

We leave providing a detailed commentary on the reasons for spatial variations in the marginal productivity of capital for other papers and future research. Here we simply list some of the likely determinants. The importance of trade to the regional economy is likely to be one determining factor. Beyond that however, a host of domestic factors strike us as being far more relevant than the driving forces of globalization. In the case of China, a key issue is the deficiencies associated with the fiscal system in performing its redistributive function, which impacts on the provision of physical infrastructure and human capital development at the local level (OECD, 2004). There are also question marks over the relative efficiency of local government institutions (an issue encountered in India as well), and the impact of central government policies that favour some regions over others (Brown, et al., 2005). China's domestic market also remains quite fragmented with wide-ranging differences in the degree of marketisation between the provinces (Fan, et al., 2001). In India's case, low quality infrastructure remains the main concern, with

infrastructure in most states in need of considerable upgrading. Other factors include the absence of jointly coordinated policies by both the central and state governments towards enhancing the productivity of capital, an inflexible labour market due to stringent labour laws, limited scale of export processing zones, corruption, and the significant burden of bureaucratic red tape and regulation (Rao, 2004; Srinivasan, 2005). Given the practical conundrums that spatial variations in income growth engender, it is a matter of importance that research and policy attention is focused on key issues. The analysis undertaken in this paper suggests it would be wise not to become overly fixated on the impact of globalization.

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The Non-State Actor and International Law: A Challenge to State Primacy?

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Abstract

With the emergence of powerful non-state actors onto the international plane, it has been necessary for international law to adapt and recognise legal actors other than the sovereign state. This article contends that it is essential that international legal recognition now be extended to multinational corporations and non-governmental organisations. This ensures that such actors cannot escape accountability for violations of international law but also that they granted legitimate rights as participants in the international system. Such a development does not require that the primacy of the state under international law be diminished. On the contrary, the theory and practice of international law requires that the state retain its position atop the international hierarchy.

Introduction

International law has long been the exclusive domain of the nation state. However, since the beginning of the twentieth century, this situation has begun to be challenged by the emergence of 'non-state actors' as powerful entities in the international community. Multinational corporations and non-governmental organisations are among the actors widely recognised as wielding significant economic and political influence on the international plane at the same time that the power of states is diminishing. International law is, however, yet to respond adequately to the challenge that they present. While other actors, such as individuals and intergovernmental organisations, have been granted a degree of legal status under international law, corporations and non-governmental organisations continue to lie outside of international legal regulation. This raises real concerns as to the degree to which such non-state actors are able to escape accountability for breaches of international law. This is particularly so when one considers the ease with which transnational actors, being beyond the control of any single state, are able to avoid effective domestic regulation. Equally, it raises concerns as to the degree to which such actors are being denied their legitimate rights as contributors to the development and enforcement of international legal norms.

This article contends that, in order to retain its relevance, international law must respond to the challenge that these non-state actors pose by recognising them as legal actors under international law. The most appropriate mechanism for doing so is to grant non-state actors international legal personality, recognising that these actors are, like states, international legal persons. These actors would thereby become bound by international law to a degree appropriate to their juridical

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capabilities. A failure to develop international law in such a manner is to ignore the changing realities of international relations. It invites criticism of the legitimacy and credibility of international law which the already vulnerable field of endeavour can ill afford.

However, the traditional primacy of the state under international law does not need to be abandoned. On the contrary, the state can, and indeed must, retain its status at the apex of the international system. The primacy of the state is not only perfectly compatible with an international legal system that recognises a variety of other international legal actors, but is also essential to it. The state must remain the primary subject of international law, both so as to provide a final arbiter of which actors are deserving of a grant of international legal personality, and also so as to provide the means by which international law can be effectively enforced against such actors. One cannot expect to see the demise of the sovereign state in the foreseeable future. One must therefore be prepared to adapt the international system to reflect new realities, but to retain those hallmarks of it which ensure that it can continue to work as a functional reality.

The challenge of the non-state actor

States were envisioned as the traditional actors in an international system governed by law. Historically, 'modern' international law is considered to have emerged in 1648 when the Peace of Westphalia established a system of international relations based on state sovereignty (Harding, 2001:110; Nijman, 2004:10). International law was to be the structure that governed the actions of those states as independent, equal and consenting actors within the international system (Hobe, 2002:657). Reflecting the realist school of thought in international relations, the state has long been considered the only legitimate actor on the international plane and thus, the only entity to which international law addressed itself (Nowrot, 1999:604; Green, 2008:51).

In legal terms, the dominance of states on the international plane was reflected in the positivist idea that they alone were considered the *subjects* of international law and thus, the only entities to enjoy 'international legal personality' (ILP) (Spiro, 1997:19). As international legal persons, states were considered to be 'capable of possessing international rights and duties' and thus able to act on the international legal plane, much as individuals and juristic persons, such as corporations, act under domestic law (Brownlie, 2003:57). Non-state actors were not subjects of international law and were thus not only incapable of enforcing rights under international law but equally incapable of breaching international law, as they were under no international legal obligations. Ultimately, international law did not govern the actions of any actor in the international system other than the state.

However, as other entities have begun to emerge onto the international plane, concern has arisen that the state-centric focus of international law is not adequately reflecting changing international realities. On the one hand, the capacity of the nation state to regulate its traditional sources of power is under threat. The causes of this fragmentation are generally encapsulated in the term 'globalisation' and are both numerous and interrelated. Among the more commonly listed causes

are the 'global telecommunications revolution' (Spiro, 1997:21), the increased mobility of global finance and populations, the interdependency of societies and economies (Hobe, 2002:656), and the increasing capacity of non-state groups to exercise military power (Engle, 2004:30), all of which undermine the realms of influence traditionally belonging to the nation state. At the same time, the world has seen a large variety of non-state actors emerge as 'significant independent forces in a post-Cold War world' (Spiro, 1997:19). Individuals, intergovernmental organisations, multinational corporations and non-governmental organisations are among the various and increasingly prominent actors in international relations. While it is perhaps too early to assert that the state is fading into irrelevance in an age of globalisation (Hickey, 1997:14), it is certainly true that states are no longer alone in being powerful players on the international stage (Spiro, 1997:19). The concern is that unless international law adapts itself to these changing power realities, it risks becoming obsolete in failing to address itself to key participants in international society (Hickey, 1997:15; Spiro, 1997:36).

In recent years, particular concern has been raised regarding the position of international non-governmental organisations (NGOs)[1] and multinational corporations (MNCs) as major international players that have escaped regulation by international law. An NGO for these purposes is considered to be a not-for-profit and non-violent private body, free from governmental control (Willetts, 2001). A MNC is a corporation which is registered and centrally owned in one state, but has integrated subsidiaries operating in one or more other states (Rubin, 1975:1). While both NGOs and MNCs usually have some status under domestic law, neither non-state actor is commonly considered to be an *international* legal person. They consequently lack rights and duties under international law, a situation which engenders a twofold concern. On the one hand, there is a fear that these actors are able to escape accountability under international law because of their status as non-states (Alston, 2005:6). On the other hand, a lack of recognition fails to acknowledge the contributions that such actors make to international law and the legitimate rights they should consequently be expected to enjoy.

Accountability

The first of these concerns, the asserted lack of accountability for non-state actors, is undoubtedly the more significant. MNCs and the larger NGOs tend to be transnational, operating in more than one jurisdiction. Without directly applicable international standards for these non-state actors, enforcement of international law is limited to the indirect or 'horizontal' application of norms by states (Joseph, 2000:77). This means that states translate their international legal obligations into domestic legislation in order to ensure that other private actors within that state abide by the same standards as the state itself (Reinisch, 2005:54). NGOs and MNCs operating within a certain state are obliged to comply with the law of the land. Consequently, they must also comply with

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[1] Wherever reference is made to the term 'NGO', it is to be read as referring to an *international* non-governmental organisation, namely an NGO operating on the international level.

international law insofar as it is recognised by the domestic law of that state. But it remains domestic law that is governing these non-state actors, not international law. And of course, the degree to which international law is recognised by municipal law differs from state to state. In some states, international law is implemented minimally, if at all. Additionally, even where international law is effectively implemented into domestic law, a single state is generally limited to regulating the activities of private actors only where they are undertaken within that state's territory or where the actor is registered within the state (Seidl-Hohenveldern, 1987:12). Through movement in the place of activity or registration, non-state actors are able to escape the regulation of any given state with relative ease (Wells and Elias, 2005:148; Nowrot, 1999:587). With non-state actors taking on 'a wide range of functions and responsibilities which it had previously been unimaginable to entrust to them,' one can appreciate concern at the lack of applicable accountability mechanisms (Alston, 2005:7).

A. MNCs

The MNC is the non-state actor that has attracted the most criticism for taking advantage of this gap in accountability. MNCs have emerged as exceptionally powerful international actors, taking on functions in the economic and security spheres that were once the sole province of states (Jagers, 1999:181). With many MNCs now possessing 'wealth and power' in excess of that of states (Alston, 2005:17), it is inevitable that they wield significant influence over the domestic policies of those countries in which they operate (Aguirre, 2004:55; Sullivan, 2003:308). Reported figures indicate that of the one hundred largest economies in the world, 51 of these are MNCs, more than the proportion of states (Weissbrodt, 2005:318). With such economic might, it is no wonder that there is concern that MNCs are capable of escaping international regulation. These concerns are essentially threefold. First, many of the states in whose territory these MNCs operate (host states) lack the will to regulate them. These states need the direct foreign investment that MNCs provide, making it possible for corporations to withdraw, or even to threaten to withdraw, their operations from a particular state, in order to discourage strict regulation of their activities under domestic law (Joseph, 2000:78). Secondly, even assuming the requisite will to regulate, certain states, particularly those which are still developing, lack the capacity to monitor and enforce obligations relating to the operations of large MNCs (Joseph, 2000:78). Where minimal domestic regulation exists, the 'economic muscle' of MNCs can be flexed to enable these corporations to flout internationally accepted norms (Kamminga and Zia-Zarifi, 2000:2). Thirdly, the states in which MNCs are registered (home states) are reluctant to regulate their MNCs under *their* domestic law, as this places these corporations at a disadvantage vis-à-vis those of other nations (Joseph, 2000:80). It comes as no surprise, therefore, that there are many examples of MNCs using their economic largesse to avoid regulation by states in relation to commonly accepted human rights, environmental and other international standards (Spiro, 1997:35). One infamous example is Royal Dutch Shell's pollution, particularly through spillage, of the oil-rich Ogoni region in Nigeria in the mid 1990s and its complicity in the assault, detention and killing of locals who protested against the resulting environmental degradation (Wick, 2003:67-72).

Yet while these concerns regarding MNCs have attracted international attention, MNCs have yet to be recognised as international legal persons owing obligations to other international legal actors under international law (Brownlie, 2003:65; Shaw, 2003:225). Only once an entity is recognised as an international legal person can it be responsible for its conduct on the international plane (Brownlie, 2003:655). As a result, accountability mechanisms for corporations have tended to be limited to voluntary codes of conduct. In many cases, MNCs have individually developed charters incorporating international norms, particularly in relation to human rights, generally after high-profile criticism of their practices (Avery, 2000:53-58). Other MNCs have joined together to adopt industry-wide voluntary codes of conduct which outline expected standards for corporate activity in particular areas of production (Reinisch, 2005:44; Joseph, 2000:82). However, subscription to these codes is by no means universal, with many companies not committing themselves to particular standards of conduct (Avery, 2000:69; Joseph, 2000:83; Sullivan, 2003:316). In addition, there is doubt as to the efficacy of such codes, which may be used as mere public relations tools, without making any significant change to the manner in which a company operates (Kamminga and Zia-Zarifi, 2000:9; Joseph, 2000:83). This is of particular concern when these codes lack enforcement or monitoring mechanisms (Avery, 2000:62).

This is not to say there has not been an attempt at international regulation. The United Nations Commission on Transnational Corporations (UNCTC) adopted a draft code for corporations in 1984 which, however, was never implemented (Reinisch, 2005:43). The OECD adopted a revised code for the conduct of corporations in 2000, and the ILO created principles relating to labour rights for corporations as early as 1977 (Reinisch, 2005:43-44). In 2003, the United Nations Sub-Commission on Human Rights adopted the 'Norms on the Responsibilities for Transnational Corporations and Other Business Enterprises with Regard to Human Rights' (Steinhardt, 2005:205). However, these codes are non-binding and are to be implemented primarily via host and home state action, with all of the problems that this engenders (Steinhardt, 2005:204, 209; Joseph, 2000:84-85). Thus, despite international efforts, direct regulation of MNCs is not yet a reality. There is no uniform set of international obligations for companies, and the power of enforcement remains with the state (Joseph, 2000:87-88). Consequently, the regime for the accountability of MNCs remains 'deficient' (Joseph, 2000:92; see also Pillay, 2004:522-523).

B. NGOs

While NGOs have avoided some of the more serious criticism directed at MNCs, the fact remains that they can be similarly accused of avoiding international accountability (Banks, 2003:297). NGOs are prolific, not only in terms of number, but in terms of the activities which they undertake (Maragia, 2002:304). These activities may be generally divided into two distinct categories. On the one hand, a sizeable number of NGOs, particularly those which are major multinationals, have actually taken over some of the traditional roles of the state in distributing aid, providing services and implementing large-scale projects (Alston, 2005:18). On the other hand, NGOs such as Greenpeace and Amnesty International focus on advocacy in order to exercise significant leverage over the political actions of both states and other international actors (Spiro, 1997:26; Maragia,

2002:326). However, NGOs generally remain unaccountable and may behave without fear of international legal sanction. Thus, for example, in what has become known as the 'Brent Spar episode,' Greenpeace mobilised sufficient public opinion to force Royal Dutch Shell to dispose of an oil rig on land rather than in the deep sea, at great cost to the company (Nowrot, 1999:598; Spiro, 1997:34). This was despite the existence of some evidence which indicated that Shell's plan was more environmentally-friendly than that proposed by Greenpeace. Without international accountability however, Greenpeace was able to use its influence, arguably quite irresponsibly, to pursue its own ends (Nowrot, 1999:598; Spiro, 1997:34).

Despite these concerns, NGOs are, like MNCs, not considered international legal persons.[2] NGOs thus owe no legal obligations to other international actors and there can never be legal sanction on an international level for their activities. Regulation of NGOs, where it exists, is basically limited to self-imposed voluntary codes of conduct (Reinisch, 2005:49). A large number of NGOs, like MNCs, have the same capacity to violate international legal norms as states (Reinisch, 2005:75). However, where regulation of states exists by virtue of their status as international legal persons, the existing international legal regulation of non-state actors is inadequate (Jagers, 1999:183). Without recognition under international law, NGOs and MNCs remain unaccountable and their violations of international norms go unhindered.

Rights

A. MNCs

The fact that non-state actors do not possess international rights is a necessary consequence of their lack of ILP and a direct corollary of their lack of international responsibility. For MNCs, an absence of directly enforceable international rights is not of particular concern. This is because their interests are largely sheltered by indirect protections provided to them by states. Since the middle of the twentieth century, most states have signed what are generally termed 'Bilateral Investment Treaties' with other states (Ryan, 2007:731). These treaty agreements provide a framework for the establishment of direct foreign investment in host states (Salacuse, 1990:660). They provide protections to the corporations of the home state from unfair exercises of power by a host state and a mechanism to enforce those protections through binding dispute settlement procedures (Salacuse, 1990:661). Host states are obliged to provide a minimum standard of treatment to foreign corporations, including protections against discrimination and expropriation, before foreign investment will take place in their territory (Ryan, 2007:731). Given these protections afforded to MNCs, many question the fairness of excluding MNCs from international responsibility for their actions.

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[2] The one key exception to this is the International Committee of the Red Cross which is granted a degree of status under the four Geneva Conventions: see Kamminga, 2005: 99.

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B. NGOs

In the case of NGOs, a lack of directly enforceable international rights is far more problematic. NGOs are not granted legal status despite their key roles in both the development of international law and its enforcement (Nowrot, 1999:590). In relation to the first of these, NGOs have become indispensable players in the decision-making processes which lead to developments in international law. NGOs contribute significantly to the passage of new international legal instruments by participating in the international conferences leading up to their adoption, proposing areas to be addressed, providing expert information, negotiating with state delegates and suggesting potential drafts (Nowrot, 1999:591-592; Spiro, 1997:26). Indeed, many state-led developments in international law would not occur without the urging and input of NGOs (Banks, 2003:295). Thus, for example, NGO input was pivotal in ensuring the United Nations Convention on the Rights of the Child, the Framework Convention on Climate Change and the Landmine Ban Convention, among others, came into being (Kamminga, 2005:102-104). Some NGOs are also granted consultative status with some international bodies which furthers their capacity to influence international legal development. Thus, for example, under Article 71 of the UN Charter, the Economic and Social Council (ECOSOC) recognises certain NGOs as observers and accepts their input into proceedings through oral and written submissions (Spiro, 1997:26). Many UN specialised agencies have similar arrangements with NGOs (Nowrot, 1999:625). However, such arrangements do not grant NGOs any degree of legal status (Martens, 2003:15); they continue to possess no general rights of participation in the field of international law.

The second key role played by the NGO is as an enforcer of international law. NGOs are well known as entities that monitor the actions of a variety of actors and push for the enforcement of international law in relation to many of the softer political issues such as human rights and the environment (Reinisch, 2005:75; Nowrot, 1999:580). By investigating and identifying breaches of international law and mobilising public opinion against recalcitrant actors, NGOs are now, more than states, the key enforcers of international obligations in their areas of concern (Reinisch, 2005:75; Maragia, 2002:305). It is well known, for example, that Amnesty International is extremely influential in encouraging compliance by states with their human rights obligations (Weiss, 1995:68). However, NGO action occurs not only in relation to breaches of international law by states, but also, importantly, in relation to other international actors, such as MNCs, which possess the factual capacity to violate international norms (Joseph, 2000:81). Thus, for example, in 1998, Nike adopted significantly improved labour practices in its Asian factories in response to widespread criticism from NGOs (Joseph, 2000:81). However, NGOs effect this change via non-legal means. Without international legal rights, they are unable to bring claims for breaches of international law before international judicial forums (Maragia, 2002:304-305). They are limited to pressuring governments to take action on their behalf and to acting under domestic law where appropriate remedies exist (Banks, 2003:295).[3]

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[3] At most, NGOs may act as third party interveners in disputes between states: see Nowrot, 1999: 631-632.

Despite their significant influence in the development and enforcement of international law, NGOs are not recognised as international legal persons. They are forced to act in the interests of the concerned citizens they represent through extra-legal means. This is of particular concern because their interests are not, like those of MNCs, protected by states. As Spiro notes, NGOs 'would have no need to mobilize were their positions adequately advanced by state representatives' (Spiro, 1997:33; see also Hobe, 2002:660). Ultimately, it is indeed 'counterintuitive' to accept the valuable contributions that NGOs make to the development and enforcement of international law without at the same time recognising their entitlement to legitimate status as legal actors in the international community (Maragia, 2002:313).

The need for International Legal Personality

The foregoing discussion demonstrates that international law is failing to regulate NGOs and MNCs adequately. Both sets of actors avoid, intentionally or otherwise, international responsibility for their actions and, especially in the case of NGOs, are denied legitimate rights due to the fact that they are not considered subjects of international law. Because ILP is an essential prerequisite to these non-state actors bearing rights and responsibilities on the international plane (Hirsch, 1995:10; Shaw, 2003:175), the obvious solution to the problems raised is to recognise NGOs and MNCs as international legal persons. By doing so, MNCs and NGOs would be bound not only by any treaty obligations which they have undertaken, but also by the same principles of customary international law that are binding on states.[4] Naturally, the degree of personality granted to any given actor must depend on their capacity to possess rights and duties. Thus, for example, a corporation, as a juridical person, is unable to be tortured, and therefore does not possess an international right of freedom from torture as individuals do (Green, 2008:72). However, a grant of personality would subject a non-state actor to those international rights and obligations to which their factual capacities make them susceptible. Thus, for example, MNCs and NGOs would be subject to international customary norms relating to human rights and environmental protection. Any actor violating such norms would be liable to be sued by other international actors for that breach in an international forum.[5] Equally, they would be entitled to make claims against the other existing international subjects for their breaches of international law. NGOs in particular would no longer be forced to adopt extra-legal means for the enforcement of international norms, with legal mechanisms now at their disposal. Ultimately, a grant of personality is the means by which non-state actors such as MNCs

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[4] That a grant of ILP means that the actor in question is bound by treaty and customary obligations has been accepted by the International Court of Justice: *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt,* Advisory Opinion, ICJ Reports 1980, 73, 89-90. While the case involved the World Health Organisation as an agency of an intergovernmental organisation (the United Nations), the reasoning is equally applicable to other actors which are recognised as international legal persons. The proposition would thus stand for NGOs and MNCs should they be recognised as possessing ILP.

[5] It should be noted at this point that there may, at present, be no such available forum. This point is addressed in further depth *infra.*

and NGOs can exit the realm of international relations and enter that of international law (Green, 2008:50).

While ILP was originally reserved for the state, there is no theoretical barrier to granting ILP to non-state actors. On the contrary, since the end of World War Two, ILP has been employed flexibly to accord a range of non-state actors varying degrees of personality (Brolmann, 2007:73). For, as the International Court of Justice has noted:

> The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States

> (*Reparations Case*, 1949:178).

Thus, for example, a large variety of intergovernmental organisations (IGOs), including the United Nations and its specialised agencies, and regional organisations, such as the European Union, have been recognised as possessing a personality distinct from their state members and are thus able to accrue rights and obligations of their own accord (Hickey, 1997:6-10; Blokker, 2004:158; Brownlie, 2003:649). Likewise, individuals have been granted a degree of personality under international law. On the one hand, movement has been made towards developing an international human rights regime whereby individuals are afforded the direct protection of international law for certain of their political, civil, economic, social and cultural rights (Shaw, 2003:233). In some cases this has been accompanied by movements towards providing a mechanism for enforcing those rights before international tribunals, such as under the Optional Protocol to the International Covenant on Civil and Political Rights (*Optional Protocol to the International Covenant on Civil and Political Rights*, 1966: Article 2). The flipside of this is the emergence of doctrines of individual responsibility for certain violations of international law. Individuals now have direct international obligations not to undertake actions in violation of piracy, slavery and war crimes laws (Shaw, 2003:234). Most recently, the Statute for the International Criminal Court was adopted which provides for individual responsibility and punishment for persons committing serious crimes such as genocide, crimes against humanity and aggression (Shaw, 2003:238).

The important point to appreciate in relation to these non-state actors is that ILP was granted in response to a perceived need of the international community. In the case of individuals, the human rights regime emerged in response to the horrendous treatment of individuals during World War Two, with the aim of preventing the reoccurrence of such acts (Cassidy, 2004:554). Individual criminal responsibility was established as a result of an understanding that crimes are committed by individuals, not states, and that to fail to prosecute those individuals would leave a large gap in accountability for violations of international law (Harding, 2001:121-122). Such crimes were of

international concern but were rarely, if ever, prosecuted under domestic law. A grant of ILP to individuals in these specified circumstances was therefore warranted.

In the case of IGOs, the fact that they 'play a major role in the present international system and have gradually been entrusted with functions which were traditionally assigned to sovereign states' means that they inevitably undertake activities which pose 'risks to third parties' (Hirsch, 1995:1, 5; see also Blokker, 2004:158). Particularly when military action is involved in IGOs fulfilling their respective roles, the potential for third party damage is high: one need only to consider, for example, damage caused during UN peacekeeping operations (Brolmann, 2001:332) and the NATO bombing of Yugoslavia in 1999 (Blokker, 2004:160) to appreciate this (Wilde, 2005:396). However, in the absence of a grant of ILP, those independent IGOs could not be held responsible for any breach of the law, leaving affected third parties without recourse to a remedy. The solution to this undesirable state of affairs was to acknowledge that IGOs do possess ILP, thereby avoiding a 'situation in which such an active actor in the global system may violate binding international norms without bearing the consequences in the sphere of international responsibility' (Hirsch, 1995:8).

At the same time, it is important that IGOs possess rights on the international plane. This was most famously acknowledged by the International Court of Justice in its 1949 advisory opinion relating to the United Nations (*Reparations Case*, 1949:174). In determining that the UN did possess ILP, the Court noted that the organisation was more than merely a forum for its members to meet. The UN as a body was 'charged with political tasks of an important character' which could not be carried out without a degree of detachment from its membership (*Reparations Case*, 1949:179). The UN needs, for example, to be able to insist that members accept the decisions of the Security Council as binding and that its members comply with the terms of treaties concluded with the organisation (*Reparations Case*, 1949:178-179). It cannot do this without possessing rights on the international plane and being thus outside of the control of any one state. Ultimately, the Court concluded that the members of the United Nations 'by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged' (*Reparations Case*, 1949:179). Such reasoning is equally applicable to other international and regional IGOs.

The factors which encouraged the international community to grant ILP to actors such as IGOs and individuals bear a striking resemblance to those that presently exist with respect to non-state actors such as MNCs and NGOs. The primary concern is that these non-state actors are, like certain individuals and IGOs, wielding significant international power unchecked by legal regulation. There is a need to make them accountable on the international plane through the imposition of international responsibilities and thereby provide a means of relief to other actors affected by their activities. *Quid pro quo,* these actors are entitled to international rights to refect their input into the international system.

Ultimately, the actions of these non-state actors are of international concern. It is precisely because NGOs and MNCs are transnational that they become so difficult to regulate, being outside of a single state's jurisdiction. It becomes particularly appropriate therefore that international law be developed as the solution to this problem. After all, international law is *international* because it is designed to deal with those challenges that extend beyond the borders of a single state (Hobe, 2002:656). Should it fail to adequately regulate international actors which are, by definition, its concern, its relevance may well be questioned. For, as Nowrot notes, 'a failure to bring the major international actors under the rule of law' ultimately risks destroying the legitimacy of the entire international legal order (Nowrot, 1999:613).

The question of state primacy

Having enumerated the necessity of recognising NGOs and MNCs as subjects of international law in the interests of ensuring it adequately reflects the present state of international relations, the question turns to whether the fundamental tenets of international law must consequently be revised. A grant of ILP to NGOs and MNCs would be beneficial in ensuring the existence of accountability and rights on their part under international law. But should this evolution of rights and responsibilities on the part of non-state actors radically alter the system of accountability away from states under international law (Hickey, 1997:2)? Does the primacy of the state under international law need to end in order to accommodate non-state actors such as NGOs and MNCs? Is it true that the 'era of globalisation marks an end to public international law' as we know it (Hobe, 2002:657)?

Some international relations scholars answer in the positive, quick to ascribe the rise of non-state actors to the downfall of the state-based international order (see Brolmann, 2007:25; Engle, 2004:23). They propose that state sovereignty and the primary position states hold under international law must be at an end. However, international lawyers have not generally shared the same concerns regarding the primacy of the state under international law (Brolmann, 2007:25). Indeed, as Nijman notes:

> [I]nternational law scholars have by now begun to realise that the onslaught on the concept of state sovereignty in the field of international relations does not automatically need to be followed by a similar comprehensive challenge of the institution of the state in international law

> (Nijman, 2004:6).

Further examination demonstrates the correctness of retaining state primacy under international law, both on a theoretical and a practical level. The first theoretical point to appreciate is that 'international law is not a zero-sum system' such that granting non-state actors certain rights and obligations means that they must be taken away from states (Kamminga and Zia-Zarifi, 2000:6; Hollis, 2002:251). It would be absurd to propose that because, for example, MNCs are placed under an international obligation to respect human rights, states are then freed from that same obligation and may abuse human rights with impunity. Rather, as the developments relating to ILP have

shown, many actors may be subjects of international law contemporaneously. There is no theoretical difficulty in granting ILP to non-state actors such as MNCs and NGOs, as other actors have already been recognised as possessing ILP in the international system (Green, 2008:51). Thus, the mere fact that other actors have emerged onto the international plane does not, in and of itself, threaten the primacy of the state.

A. Recognition

On the contrary, a grant of personality to non-state actors not only does not *need* to undermine the primacy of the state but also *should* not. This is because ILP for non-state actors under international law actually depends on the primacy of the state. A state has ILP 'by definition,' as one of the indicia of the very fact of statehood (Hickey, 1997:18). While recognition of a new state by other states is important for its practical capacity to operate on the international plane (Shaw, 2003:371; Meijknecht, 2001:44), the preferred view is that 'recognition…is a political act, which is, in principle, independent of the existence of the new State as a subject of international law' (Crawford, 2006:22).

However, the position of non-state actors is quite different. They have traditionally depended, for their possession of ILP, on state recognition (Meijknecht, 2001:26). Their ILP derives from the state as the primary subject of international law (Crawford, 2006:15). Thus, in the case of organisations and individuals, ILP has been granted by states through the general channels of international law: either through a direct grant of personality under a written treaty or through recognition occasioned by the development of customary international law (Hickey, 1997:12; Shaw, 2003:243). On the one hand, 'recognition and acquiescence may sustain an entity' which otherwise would not fall within the traditional definition of a subject of the law (Brownlie, 2003:58). On the other hand, a lack of recognition 'can make the construction of a legal person meaningless' (Meijknecht, 2001:44). A threat to the state-centric nature of international law is therefore also a threat to the traditional means of granting ILP. The major obstacle facing those who argue for a dilution of state primacy is to answer the challenge of where, in the absence of the state, ILP will find its source.

Many authors fail to answer this challenge adequately. Thus, for example, Hickey outlines the view of what he terms 'factual realists' who believe that 'once a non state entity factually establishes an ability to influence and shape the content and application of international law, it should have international legal personality with, or without, the permission of states' (Hickey, 1997:15). Maragia makes a similar point in arguing that certain non-state actors 'need not go through the traditional processes of legitimation to be deemed legal persons or legitimate actors' (Maragia, 2002:307).[6]

Such assertions do not, however, provide a viable alternative to the state-centric process of recognition. They fail to appreciate that personality must be granted in accordance with the rules of

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[6] The traditional process of legitimation is recognition by the state.

the international system. As Brolmann notes, it is a basic tenet of the law that an actor cannot 'unilaterally' grant itself personality (Brolmann, 2007:68). Otherwise, chaos and lawlessness would ensue, with any entity able to claim or disclaim international rights and responsibilities at will. It must therefore be at 'the discretion of the relevant legal order whether it attributes rights and duties to an entity and thus makes it its "subject"' (Meijknecht, 2001:26). The problem at present is that there are no 'clearly defined rules and procedures for attaining international legal personality' (Maragia, 2002:307). There is no overarching mechanism as in domestic law for 'recognizing and registering associations as legal persons' (Brownlie, 2003:648). This is particularly problematic for the more controversial candidates for ILP, such as NGOs and MNCs, when the very definition of these entities remains disputed (Kamminga, 2005:96; Wells and Elias, 2005:149; see also Shaw, 2003:224). With states the primary actors in the international system, it has in the past fallen to them to provide a means of ensuring that the pool of candidates for ILP remains a closed group by granting them the power of recognition. If states are to be on an equal footing with all other subjects of international law, then some other method of recognition will need to be established.

Recognising this difficulty, various proposals have been made to provide alternatives to state recognition. Thus, for example, it has been proposed that the United Nations take control of MNCs by removing them from national law altogether and registering them internationally to be subject to the supervision of UN organs (Seidl-Hohenveldern, 1987:22). Objections to this particular proposal lie in removing MNCs entirely from state regulation, presumably because international law is not sufficiently developed to fill the resulting legal gap adequately (Seidl-Hohenveldern, 1987:26). An alternative proposal from the World Development Movement is ratification of a treaty by states providing an international tribunal with the power to regulate MNCs (Joseph, 2000:87). A similar proposal exists in relation to NGOs, with Nowrot, for example, arguing that international organisations, particularly the United Nations, should take control of the regulation of these non-state actors according to agreed international standards (Nowrot, 1999:640). Ultimately, however, such proposals do not really challenge the primacy of the state. Intergovernmental organisations, such as the United Nations, necessarily act in accordance with their state members' wishes. Any alteration to the international system to develop an authority for dealing with non-state actors will therefore inevitably require state consent. The theory of ILP thus requires retention of state primacy under international law.

B. The aura of the state

In addition to these theoretical considerations, there are practical reasons for retaining state primacy in the international system. The first is that, irrespective of the increasing influence of non-state actors, states remain powerful international entities. While the realist argument that the existence of non-state actors is 'superficial' and of little practical consequence to the Westphalian order is perhaps taking the point too far (see Maragia, 2002:303), it must be acknowledged that states are still the most influential of international actors. Non-state actors such as NGOs and MNCs are certainly powerful, but they do not seriously impede the traditional role of the state in governing sovereign territory and a permanent population in the international community (Kamminga,

2005:110). It would indeed be surprising if states, as '[i]nstitutions with three-hundred-year pedigrees' disappeared 'in mere decades' (Spiro, 1997:24). On the contrary, states are not vanishing, but continually emerging as the chosen form of peoples' political representation on the international plane (Crawford, 2006:715). It is a fair conclusion that 'States still plainly overshadow other actors as the primary progenitors, agents, and enforcers of international law, and their real-world powers remain vast' (Spiro, 1997:24). While this power may be gradually fragmenting, there is no reason, at least at present, to doubt the primacy of the state as an actor under international law.

C. Enforcement

The power of the state raises the second practical objection to challenging its primacy under international law: the question of enforcement. One would be naïve to consider that a grant of ILP to non-state actors such as NGOs and MNCs would instantaneously solve the gaps in accountability and rights that are plaguing the international system. On the contrary, without reasonable prospects for enforcement, it makes little *practical* difference whether non-state actors have legal rights and obligations or not, though the theoretical difference may be vast (Aguirre, 2004:55). International law has always been troubled by a lack of sufficient enforcement mechanisms to ensure that international norms are properly policed. The world remains 'anarchical' in the sense that there is no sovereign authority higher than the state (Wells and Elias, 2005:145) and there is no 'central enforcement authority' for international law (Nowrot, 1999:636). The existing international formal enforcement mechanisms, such as the International Court of Justice, are set up almost exclusively for the use of states, making the enforcement of the rights and responsibilities of non-state actors extremely difficult.

The primary existing mechanism for enforcing international law in relation to non-state actors such as NGOs and MNCs relies upon the state itself (Weissbrodt, 2000:131). As discussed above, states enforce international law 'horizontally' by translating their own international obligations into domestic law, thereby ensuring that other private actors must abide by the same standard as the state itself. In some states, this is taken further by the 'extraterritorial application' of domestic law, meaning that a state extends the operation of its domestic law beyond its borders to any actor which has a connection with that state, thereby preventing entities operating overseas avoiding their domestic obligations (Reinisch, 2005:55). The most famous of these initiatives is the United States *Alien Tort Claims Act* which allows courts in the US to hear cases in which a violation of international law is alleged (Wells and Elias, 2005:153). The difference at present is that it is the state which is bound by international law, not the non-state actor. Legal regulation can be escaped by moving to a jurisdiction in which international law is either not recognised or enforced. If ILP were granted to MNCs and NGOs, those actors would be directly bound by uniform international legal norms no matter where they were. Nonetheless, and despite the many and various problems with state-based enforcement, it would remain, to a large degree, dependent on the state to enforce international norms against non-state actors within its territory.

It is not outside of the realms of possibility that non-state actors could create agreements for international standards among themselves, without the involvement of states (Nowrot, 1999:640). Indeed, voluntary codes in some industries already exist, and have proved to be not entirely ineffective: economic disadvantage, in the forms of consumer retaliation and poor publicity, often sway an actor's decision to abide by non-binding standards (Reinisch, 2005:53). However, present experiences with codes of conduct warrant caution in relation to the feasibility of non-state actors imposing *binding* standards upon themselves. Existing codes of conduct for MNCs and NGOs rarely have an enforcement mechanism, but are rather voluntary ethical standards by which the actor in question purports to abide (Reinisch, 2005:53). While non-state actors remain reluctant to enforce international law against themselves, the potential for them to take a step further and enforce international law against *one another* must be doubted.

Ideally, once NGOs and MNCs are recognised as international legal persons, a body could be created at the international level for their regulation. It could take, as a starting point, the idea of a permanent institution exercising jurisdiction over defined entities for certain breaches of international law, along the lines of what has been adopted with the passage of the Statute of the International Criminal Court (ICC) for individuals (see *Rome Statute of the International Criminal Court*, 1998: Article 1). Naturally, the ICC has a specific purpose and the parallel to what could be created to regulate non-state actors other than individuals cannot be carried too far. Nonetheless, the ICC provides a good example of how a supranational enforcement body can be created and can operate in practice in order to avoid perceived lacunae in the enforcement of international law against non-state actors. There would be no reason why a body created to regulate NGOs and MNCs could not exercise jurisdiction complementarily with signatory states, as the ICC does (see *Rome Statute of the International Criminal Court*, 1998: Article 1). However, there might be cause for jurisdiction to extend beyond those matters referred by states, such that NGOs and MNCs could both bring, and be the subject of, applications to such a body. The creation of such an entity would avoid at least a substantial number of the problems relating to specific host state enforcement by providing a comprehensive and blanket regime for NGOs and MNCs operating on the international plane. Whatever its form, the creation of such a body would depend on a grant of ILP to these non-state actors. Further, realistically, only states have the power to impose their will on non-state actors and the creation of such a body would therefore depend on state consent. This explains why many of the foremost proponents of developing new enforcement mechanisms to deal with non-state actors acknowledge that this requires a 'major structural change' which could not take place without the support of states (Reinisch, 2005:85). In any event, until such a change can take place, international law must rely on state-based enforcement to ensure that a MNCs and NGOs remain accountable. Until the nation state is overtaken by a 'world State', it must retain its primacy in the international system (Brownlie, 2003:58).

Conclusion

The international community has witnessed fundamental structural changes in the last century. The primacy of states as the sole repositories of ILP under international law is increasingly

compromised by, on one hand, the fragmentation of state power as a result of globalisation and, on the other, the emergence of powerful non-state actors. In recognition of the dangers of allowing such actors to wield significant influence in the absence of international rights and responsibilities, the international legal system has been willing to extend a degree of ILP to certain non-state actors, among them international organisations and individuals. This has meant that these actors have become bound directly by the international norms, both treaty and custom, to which their capabilities make them susceptible.

It has become increasingly apparent, however, that there are at least two other categories of actor, in MNCs and NGOs, which operate widely on the international plane outside of the regulatory jurisdiction of international law. Without ILP, these actors have neither obligations nor rights under international law. This is of concern primarily because they are escaping accountability for violations of international law, particularly when that law is not effectively implemented in the domestic laws of the jurisdictions in which they operate. At the same time, there is concern that these non-state actors, particularly NGOs, are denied legitimate international rights due to their lack of status under international law. The further extension of ILP to MNC and NGOs is warranted in the interests of ensuring that international law addresses itself to the key players in international society.

However, this does not mean that the state has lost its relevance to the international system. On the contrary, the state must retain its position at the apex of the international hierarchy for three main reasons. First, the state remains a powerful international actor which represents the interests of individuals on the international stage. Secondly, state primacy is essential for ensuring that ILP retains its utility as a coherent mechanism for distinguishing those actors that should be considered international legal persons and those which are sufficiently regulated by municipal law. Finally, international law continues to depend on the power of the state for its enforcement. While it would be desirable to see, in conjunction with a grant of ILP for NGOs and MNCs, the creation of a supranational body which would regulate such actors, one must expect the state to shoulder much of the burden of enforcement for the foreseeable future. The historical hierarchy of international law must therefore remain intact. However, international law risks losing its relevance and legitimacy in the realities of the twenty-first century if it does not broaden its scope to recognise the existence and significance of non-state actors such as NGOs and MNCs.

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- Book Review -

Andrew Linklater, *Critical Theory and World Politics: Citizenship, sovereignty and humanity*, Special Indian Edition, Delhi: Routledge/Manohar, 2008. pp 240. $10.60, ISBN 0-415-39930-0 (Paperback).

This book is a compendium of Andrew Linklater's most significant papers written between 1982 and 2007. The volume is arranged into distinct themes, the problems of community, citizenship and harm respectively. Each division is representative of the three key areas that have continued to animate Linklater's thought on world politics throughout the last three decades. As such, the volume captures well the theoretical development of one of the most important theorists in IR whose work is marked by its incredible consistency of focus, namely, the overriding concern with expanding the boundaries of moral community in world politics. So while many of us may have read some or all of these papers before, the benefit of the volume is not only that it places them in easy reach but because the pieces were chosen by Linklater himself. The selection has been well made, with Linklater obtaining advice from a number of colleagues (Richard Devetak, Richard Shapcott and Toni Erskine in particular) on which papers to include and how to best organise them. One could interrogate the reasons behind his selectivity however, as the inclusions and exclusions of the book throw up interesting insights into the future tasks of Critical International Relations Theory (CIRT), at least, as one of its leading theorists views them. Pursuing the question of why certain influential pieces were omitted from the volume, such as "Hegel, the State and IR" (1996: 193-209) or "Dialogue, Dialectic and Emancipation in International Relations" (1994: 119-131), help reveal the intentions and concerns underlying Linklater's focus today; less with philosophical and normative concerns, and more with sociological and historical questions, or what he refers to as the "cosmopolitan approach to the sociology of states-systems" (2008d: 159).

Part I of the book looks at the nexus between moral obligations and political community, probably the most well-known aspects of Linklater's thought which stemmed from his ambitious doctoral research published as *Men and Citizens* (1982). Part II offers a survey of Linklater's thought on citizenship, particularly the notions of uncoupling citizenship from the state, and transforming the boundaries of political community to what Linklater has referred to as the post-Westphalian state. Here we see Linklater's concern with the 'good international citizen' and the basis of his dialogic community in Habermasian discourse ethics. Part III is an attempt to lay the foundation for a sociology of the state-system that analyses the dominant attitudes to

harm and suffering in history and the prospects for extending community. Of interest here is that these four chapters largely foreshadow the nature of Linklater's current project; his soon to be completed magnum opus, contained in three volumes, that will focus on the principle of harm in world politics.

Of key importance is the Introduction to *Critical Theory and World Politics*, which does not just preface the book but is in fact an excellent summation of the long trajectory of Linklater's thought; its basis is in the problem of the separation between 'men' and 'citizens', its praxeological interest in the transformation of political community and citizenship, and its current focus on the reduction of harm and 'distant suffering' in world politics. Here Linklater expresses a Kantian view that the entangled global relationships have forced communities to reflect on the moral consequences of relations with 'strangers' (2008a: 1). Due to this increased awareness, the central question of the process of globalisation seems to be how the relationships between the dimensions of interconnectedness and particularism in social and political life will develop in the future (2008a: 2). The transformation of Europe suggests to Linklater that the "time is ripe" to complete the Copernican Revolution in political thought initiated by Kant more than two centuries ago. What is necessary however are "appropriate visions" of what such a post-Westphalian state could be (2008b: 90).

Linklater claims that there have been some conceptions of post-national citizenship that envisage new forms of political community in which state powers are shared with 'higher' and 'lower' authorities and where traditional 'national' loyalties yield to both local and cosmopolitan attachments (2008a: 7). Similarly, Linklater refers to a vision of the 'supranationalisation' of citizenship through worldwide democratic structures and radical global political innovations (2008a: 8). Together these form the general foundation from which Linklater defends the idea for stronger cosmopolitan moral orientations that are coupled with radical institutional innovations (2008a: 8). This is not presented as mere idealist caprice however. Rather, it is viewed as a struggle to create a "worldwide public sphere" as a crucial means in which cosmopolitan citizenship can exist without a world state (2008c: 122). So despite his open acknowledgement of the world's weariness with "utopian experiments" and disenchantment in the belief that political action can secure universal emancipation, for Linklater it is nevertheless premature to abandon the quest to embed cosmopolitan moral ideals in the organisation of world society (2008a: 12). The key area through which Linklater hopes to establish a commitment to cosmopolitan ethics is through a practical and sociological focus on the issue of harm – and hence Linklater's sustained examination of this area in recent years.

Yet Linklater's turn towards a study of the sociology of states-systems that focuses on harm as means to ground cosmopolitan politics, is not without its limitations or detractors. Griffiths for example has suggested that there exists an ambiguity in Linklater's writings between the need to transcend the state-system and a tendency to accept the state as the "medium of change and reform" (Griffiths 1999: 142). As such, he has advocated for the recovery of Linklater's early emphasis on political theory rather than the later emphasis on the philosophy of history and sociology (Griffiths 1999: 142). However, focusing on harm, which has important philosophical *and* practical implications for world politics, may circumvent other criticisms of Linklater's ongoing project in CIRT. Some critics have asserted that a continued focus on the traditions of Habermas or Foucault by Linklater would still not bestow a philosophical foundation for mediating cases of conflict between cultures (Jackson 1992: 274). To counter this perceived limitation, one could contend that a commitment to the reduction of harm and suffering of others could provide some standard to determine the forms of conduct that ought be recognised and respected in world politics.

However, going back to Linklater's acknowledgement of the need for "appropriate visions" of the post-Westphalian state, a focus on harm does not seem, *prima facie*, to advance this to a great degree. While we can logically deduce that the harm principle would be a component of a just and moral world-order, it remains only one aspect of that order – and a negativist aspiration at that. Yet, it is important here to not speculate on the basis of the four chapters presented in this volume alone. These papers essentially constitute the preliminary analysis which informs Linklater's current and expansive project. It is also important to note that Linklater does not seem to advance a minimalist account of the harm principle, such as one consistent with the liberal principles of J.S. Mill. From the injunction 'do no harm' could flow fundamental and radical change to the existing world order; political, social, environmental and economic. We can only anticipate what Linklater's focus on harm will lend to the critical tradition and its theory of world politics with an emancipatory intent but its potential cannot be doubted.

Critical Theory and World Politics **is available in Australia from Manohar Publishers for $10.63 (Paperback).**

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