FALL 2012, Vol. XIV, No. 3

Harvard Asia Quarterly

A Journal of Current Affairs Affiliated with the Harvard University Asia Center

INSIDE: South Asian Perspectives in the Modern Context

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LETTER FROM THE EDITOR

Dear Reader,

The current edition of the *Harvard Asia Quarterly* represents a collection of perspectives on the issues facing South Asian society today. Our last issue focused on the diversity of developments taking place in Asia as a whole; the present issue continues this discussion, focusing instead on the diversity of challenges facing South Asia in particular. From the Sepoy Revolt in India to the Lawyers' Movement in Pakistan, and from the establishment of universities in Bengal to the establishment of war crimes tribunals in Bangladesh, the broad range of topics covered within this issue is indicative of the richness and depth of the region itself.

We open this issue with an interview of Tarun Khanna, Jorge Paulo Lemann Professor at the Harvard Business School and Director of the South Asia Initiative at Harvard University. Speaking from his experience in working with multinational and indigenous companies in emerging markets worldwide, Professor Khanna offers his take on the developmental challenges facing India and China, as well as the role that innovation will play in addressing these challenges.

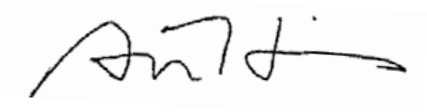
The following section explores the historical implications of the region's colonial past. Sangeeta Mediratta of Stanford University examines the representation of the Indian Sepoy Revolt in the nineteenth-century United States, including its impact on the national discourse on ethnic tensions and imperial concerns. Suvobrata Sarkar of Jawaharlal Nehru University analyzes the establishment of Bengali institutions of higher learning during the British colonial era and the role of techno-scientific education in developing the province's industrial capabilities.

A discussion of the politics of legal institutions in the region comes next, beginning with an historical account of judicial independence in Pakistan by Rao Imran Habib of Bahauddin Zakariya University and Mahdi Zahraa of Glasgow Caledonian University. Jhuma Sen, a practitioner of the Supreme Court of India, then dissects the key issues arising from the International Crimes (Tribunals) Act of 1973 as amended in 2009, and its legal implications for tribunals seeking to prosecute war crimes of the 1971 Bangladesh Liberation War.

We close the issue with a trio of essays that center on the geopolitical dynamics of the region. The section begins with an article by Emilian Kavalski of the University of Western Sydney, offering his perspectives on a "*Pax Indica*" built on India's current self-positioning in the international arena. We take a small detour out of South Asia with Shamsul Khan of the University of South Australia, who offers a complementary perspective on China, presenting a conceptual framework for understanding a "*Pax Sinica*" at both the regional and global levels. Finally, Douglas Hill of the University of Otago focuses not on a single country but rather on the region as a whole, arguing for alternative institutional arrangements to address the challenge of managing South Asia's transboundary water resources.

Indeed, the diversity of topics relevant to South Asia reflects a dynamism that necessitates nuanced analysis and understanding. And in part, this issue seeks to convey the breadth of the academic discussion of the region today. But equally important, however, is the hope that this issue also contributes to promoting the discussion itself, facilitating scholarly exchange on a region traditionally underemphasized and, in line with the goals of our journal, providing a platform upon which scholarship on the region can be presented and furthered.

With kind regards,



Allan Hsiao
Editor-in-Chief

ABOUT THE HARVARD UNIVERSITY ASIA CENTER

Established on July 1, 1997, the Harvard University Asia Center was founded as a university-wide inter-faculty initiative with an underlying mission to engage people across disciplines and regions. It was also charged with expanding South and Southeast Asian studies, including Thai Studies, in the University's Faculty of Arts and Sciences.

The Center sponsors a number of seminars, conferences, lectures, and programs during the academic year, including the annual Tsai Lecture, the Modern Asia, Southeast Asia, and Islam in Asia seminar series, the Ezra F. Vogel Distinguished Visitors Program, and the Asia Vision 21 conference. In addition to its award-winning Publications Program, the Center issues a weekly bulletin featuring Asia-related events at Harvard and in the greater Boston area, as well as an on-line newsletter.

For more information on the Harvard University Asia Center, visit asiacenter.harvard.edu.

ABOUT THE SOUTH ASIA INITIATIVE AT HARVARD UNIVERSITY

The South Asia Initiative (SAI) at Harvard University engages faculty and students through interdisciplinary programs to advance and deepen the teaching and research on global issues relevant to South Asia.

As a catalyst and bridge between Harvard faculty and the region, the South Asia Initiative's goals are to:

- Facilitate scholarly exchanges among Harvard faculty and students, international South Asia specialists, visiting academics, and public figures from South Asia.
- Sponsor lectures and conferences at Harvard and in the region by distinguished academic, governmental, and business leaders whose work contributes to a better understanding of the challenges facing South Asia.
- Support Harvard students with grants for language study, research, and internships in-region.
- Bring knowledge from South Asia to Harvard by supporting faculty and student research, study, and service learning.
- Build a community of stakeholders committed to building scholarship on South Asia at Harvard and in-region.

For more information on the South Asia Initiative, visit southasiainitiative.harvard.edu.

ERRATA (VOL. 14, NO. 1 & 2)

Page 11: Professor Carter Eckert's name was incorrectly printed as "Carter Eckhart." We offer our sincere apologies for this editorial oversight.

Page 54: "Prime Minister Atal Behari Vajpayee, at the helm of the United Progressive Alliance (UPA) government" should instead read "Prime Minister Atal Behari Vajpayee, at the helm of the National Democratic Alliance (NDA) government." Indeed, Prime Minister Vajpayee is referred to with the correct party affiliation on the following page.

I. INTERVIEW

II. THE COLONIAL PAST

III. THE POLITICS OF LEGAL INSTITUTIONS

IV. INTERNATIONAL RELATIONS: ASIA AND BEYOND

INTERVIEW: TARUN KHANNA

ON INDIA, CHINA, AND INNOVATION

INTERVIEW BY **ALLAN HSIAO**

Professor Khanna, it's a pleasure to speak with you today. Having read your books on the Indian and Chinese markets, *Billions of Entrepreneurs* and your co-authored work with Krishna Palepu, *Winning in Emerging Markets*, it's interesting to see your take on development in emerging markets and the role of local innovation, especially in the Indian case.

Starting out with a discussion of the BRIC countries in general, at the New Delhi Summit earlier this year, a number of people saw the BRIC countries and noted the current efforts among them to achieve unity. What sort of implications do you think this unity has, and what are your thoughts on how the world is currently thinking about this unity?

With respect to some geopolitical issues, I think there could of course be gains from, in a sense, the BRIC countries' coming together and acting in concert. But I rather think the bigger impact would come instead from facilitating intra-BRIC cooperation, as opposed to this notion of the BRICs versus the rest, which is the way that multilateral institutions and those interested in security issues currently tend to interpret the primary function of the BRIC coalition. I rather think that the most interesting aspect of the coalition, to the extent that there are commonalities in the problems faced by individual BRIC countries, is the facilitation of information exchange and experience sharing in a substantive sense – something that might have a long-run effect that's more constructive and that doesn't have to be reduced to the zero-sum separation of us, the BRICs, versus them, the non-BRICs.

For instance, in Brazil, China, and India, there is a sense of a need for what I refer to in my work as "inclusive innovation," the idea that, whatever the fruits of modernity are, they should be made accessible to broad swathes of the population that are currently outside of the economic and political mainstream. So you look at *Bolsa Família* in Brazil, which is an attempt to make conditional cash transfers to poor families – if they do this, then they get this – and it's quite successful. Something like that might work very well in Sichuan, or in the troubled northeastern states of India. Looking at primary health issues as well, some of the solutions that need to be created are common to most developing countries, and certainly the BRIC countries would be in there. Now one talks about the BRICS countries, adding South Africa, and the same reasoning applies. So, in some ways, I think the lasting significance is more in the identification of creative approaches to intractable problems as opposed to the more geopolitical notions that currently tend to dominate the discussion.

Speaking more about these intractable problems, where do you see them most manifesting themselves? Are they specifically problems at the grassroots level, solvable only by bottom-up solutions?

The problems I was referring to are primarily problems of the masses. Assuming, as a rudimentary conceptual device, that the problems of the well-off are mostly taken care of, let's focus on the extreme problems of those who are not so wealthy. There are estimates of 20 million poor in Brazil and 250 million in China; in India, estimates are as high as 700

or 800 million. If you add those up, it's a sizeable chunk of humanity – and this is in those countries alone. So I think that's where those problems are more manifest.

The solutions come from everywhere. I teach a course that is exactly on this topic in some sense, as part of the General Education curriculum at Harvard. It's called "Contemporary South Asia: Entrepreneurial Solutions to Intractable Problems." The idea is that the solutions will come largely, I believe, from grassroots entrepreneurship as opposed to some smart person in Washington or the capital city deciding what the right solution is. Of course, this doesn't mean that the state doesn't play an important role as an overall facilitator of innovation. There are quite a few grey areas and areas of complementarity between the state and the private sector in solving problems.

I was recently editing a Harvard Business School case study for my course on the Unique ID project in India – called *Aadhaar* (meaning "foundation" in Hindi) – an attempt to create a state-of-the-art biometric ID system for 1.2 billion Indians. The completed database will be ten times larger than the biggest biometric database in the world today. And with state-of-the-art access anywhere in the country, it will be considerably advanced in comparison to the US, China, France, or any other country that has spent a lot of time doing biometrics. But the interesting thing about the project is twofold: it's coming from a government department, but it's ultimately going to enable entrepreneurship, and it's championed by an entrepreneur from the private sector who has been embraced by the government. If one can uniquely identify individuals based on a biometric ID, then all sorts of goods and services become possible, including the prevention of fraud or duplication and the targeted use of subsidies whenever necessary, with all sorts of programs becoming incomparably more efficient than they used to be. So that's an example of a state innovation that will help the masses, facilitating private entrepreneurship. And once that sort of system is implemented and accessible to everyone, other governments will copy it and start doing it themselves. Indeed, some already have.

So this sort of process, in its infancy but gathering steam, offers a bigger bang for the buck to the BRIC coalition than does posturing on the world-stage in the "us" versus "them" manner.

And in terms of this idea of progress really coming from private entrepreneurs, what sort of obstacles do you see them facing? Obstacles at the level of government or culture, for example – these bigger problems. Things like corruption in China, or the interaction between the caste system and entrepreneurship in India, for example, which I know you and Professor Lakshmi Iyer have written a paper on.

All of these are extremely serious barriers, which is why my course is called "Intractable Problems." And we can't pretend that some clever kids are going to solve these problems overnight – these are problems that have taken decades, and centuries in some instances, to manifest themselves. But I'm an optimist, even if tempered by realism!

You want to believe in crowdsourcing the solutions, as those in Silicon Valley are putting it today. You want different people to take a crack at solving these problems. As for private enterprise, whether it's for-profit or non-profit, I'm agnostic. What I'm focused on is the idea of individual agency and individuals making choices to improve the well-being of their communities, with the formal structures, of government, for example, changing into a mindset of becoming enablers of grassroots change.

In India, for instance, that change happened very smartly because of massive reforms that have been going on for a while but that really kicked in in the early 90s, in part because of financial distress at the time. Coupled fortuitously with the success of the software industry in the country, this worked to trigger the minds and imaginations of young people. When I was a kid, if you wanted to be well-off, you went into business, which was generally seen as not very clean, or you became a government bureaucrat, by which means you had opportunities to be corrupt. Those were the sorts of jobs you did if you wanted to be rich. Now people want to be entrepreneurs, and that's a change in attitude.

I don't know that such changes have kicked in as much as I would like to see in China. China has done spectacularly well economically, though more by harnessing the individual initiatives of different branches of government. Thus we do see individual initiatives, but this change is less identifiably rooted in the private sector, so to speak. It's a different model of development.

There's a very interesting book written by a scholar at Harvard, several years ago, which I recommend to my students. It's called *Underdevelopment is a State of Mind* by Lawrence Harrison, focused on Latin America as I recall, and I think the title says it all. That is to say, once the mental switch is made, then people begin to do things that they didn't believe were feasible beforehand.

Your first book, *Billions of Entrepreneurs*, also compares the cases of China and India, discussing how

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Tarun Khanna is the Jorge Paulo Lemann Professor at the Harvard Business School, where he has studied and worked with multinational and indigenous companies and investors in emerging markets worldwide. He was named Harvard University's Director of the South Asia Initiative in the fall of 2010. He joined the HBS faculty in 1993, after obtaining an engineering degree from Princeton University (1988) and a PhD from Harvard (1993). During this time, he has served as the head of several courses on strategy, corporate governance, and international business targeted to MBA students and senior executives at Harvard. He currently teaches in Harvard College's General Education curriculum in a university-wide elective course on entrepreneurship in South Asia. He is also the Faculty Chair for HBS activities in India.

China and India are mirror images in a sense. In China, there's a large presence of multinational corporations; in India, the emphasis is on the individual entrepreneur. How, then, do you see multinational corporations factoring into the picture in India?

Because of the legacy of the Indian Independence Movement's leaders' exposure to Fabian socialism, independent India tended to emphasize national self-sufficiency. And so, it embarked on a path that wasn't very receptive to outside economic influence, especially after the distaste of two hundred years of British colonial rule. And unlike China, which sort of fell apart during the Cultural Revolution, India was never forced to question those assumptions. So it sort of puttered along for quite a bit after China had decided to open up with Deng Xiaoping in the late 1970s. The net result was that, until just a couple of decades ago, there was a relatively deep-seated aversion to and suspicion of most multinationals. The only multinationals that did well in India, like the Unilever subsidiary, survived by substantially indigenizing themselves, and by doing it very, very well. But you had to go through this sort of draconian process of self-reinvention to succeed in that environment.

China, on the other hand, rolled out the welcome mat, initially for its own ethnic brethren and the Overseas Chinese community, and eventually opening to everybody. And as my co-author, MIT's Huang Yasheng has written, this appears to have come at the expense of local indigenous entrepreneurs. Something in me says that that's not such a great thing, though looking the numbers – and as an academic, one has to look at the numbers – it's hard for me to say that the Indian model Pareto dominates the Chinese one, or vice-versa. There are plusses and minuses on both sides, particularly when you factor in economic well-being, as well as non-economic indicators of well-being. And that's a one-line summary of my first book that I wrote on China and India, just trying to say that there are very different paths, and I don't see either country being able to adopt the other's path in the future.

As you mentioned, there certainly have been reforms that have taken place over the years. It's also important to note that, as a result of these reforms, the environment is different from what it was several decades ago. In another of your recent papers in the *Harvard Business Review*, "The Paradox of Samsung's Rise," you discuss the paradox that large homegrown corporations face today. Specifically, that driving success at the global level requires doing something very different from what they've done to grow to scale at the national level. Infosys in India is another example. How do you see that factoring into the equation?

I think it's a very important deliberation that entrepreneurs are going through as we speak in the emerging world. In some sense, one way to summarize my first book was that the institutional foundations of modern capitalism are being formulated very differently in different locations. And we have to respect the idea that capitalism is a term that doesn't so perfectly sum up an underlying phenomenon that's much more complex and multi-faceted. China and India, then, is just one meaningful illustration of two proximate large, populous, societies with long civilizational memories that chose to go in fundamentally different directions at the same point in time in human history. As close to a natural experiment as we get, we see that two similar countries went different ways and came up with very different versions of what we would call capitalism, with "Chinese" or "Indian characteristics" as the case might be. My second book, *Winning in Emerging Markets*, with my colleague Krishna Palepu, says that the way you succeed as an entrepreneur is very much a function of your immediate institutional context.

Therefore, the combination of the messages of the first two books that follows is that the way you succeed in China is very different from the way you succeed in India, except at some completely abstract level, which is not very meaningful for a practicing professional if you will – an entrepreneur, manager, or policymaker. At a functional level, you have to do things quite differently, whether it's accessing capital markets, or dealing with intellectual property, or partnering with the government, and a whole laundry list of other issues that entrepreneurs have had to address. And their choices are very different in these countries.

So if you believe that the choices of entrepreneurs are a function of their contexts, then you come to Samsung in Korea twenty years ago, or Infosys in India today. They are each prisoners of their contexts – prisoners of the petri dishes from which they emerged. Thus the conundrum: to be a global player, you have to escape your petri dish. And that's what I think Samsung managed to pull off very well in the last twenty years, which was the subject of that article. The article documents the contours of that very concerted, deliberate, and consistent effort. This is something that I see companies struggling with in Brazil, India, China, Russia, Malaysia, Turkey – the list is endless. It's a common problem, which is why that article is, I think, interesting. It's an example of how somebody went from being a mid-size corporation to being an extremely large one.

That's interesting. And clearly within that, of course, whether or not you've grown within your own petri dish, is the necessity of local innovation in order to get to that point. Of course, this is a theme common within your writing. How do you see education and education policies, then, playing a role in fostering that innovation at the local level?

I think there tends to be one common issue across many developing countries, which is that education policies don't generally appear to foster creative thinking. When concerted policies are formulated, they appear to be fostering more mechanized learning. It's a common problem, and that's one place where the United States has succeeded to a large extent. And so you find that even people from the most educated countries in the world – Korea comes to mind – where parents appear to be fanatically consumed with the idea of having their kids educated here in the US in some

way, or at least at some point. I think that's a testament to the United States' most enduring advantage, which is continuing to be a magnet of talent, as long as our politics don't get in the way. So it's a problem, this fostering of creativity, that I think exists across the board, and I don't know of any magic wand that addresses it other than whittling away at this mindset of there being only one style of learning that works.

The rest of the problems, I think, are location-specific. India, for example, has a very basic problem, which is that teachers don't show up, as some of our academic colleagues have demonstrated. Oh, and before that, we don't even have teachers. So it's true that the issue of incentives for teachers exists everywhere – witness Joel Klein's efforts in New York these days for example – but in countries like India we're talking about a problem that's of a completely different scale. I think China has that problem to a lesser degree. As Pranab Bardhan, one of my colleagues at Berkeley, put it, China is capitalist today because it was communist yesterday. (I'm paraphrasing inexactly, I'm sure!) That is to say that the commitment to communism, socialism, and equality insured that more people were trained in the basics of reading and writing, and so China could have trained people to man the factories that multinationals are putting up today. By contrast, you have trouble doing that in India, except in smaller instances.

In our last issue, actually, Professor Ezra Vogel spoke very specifically about the Deng Xiaoping era and its contribution to where China is today. That's an interesting connection, and certainly an important one. There are a number of interesting parallels to be drawn between the Indian and Chinese cases, but there seems to be less emphasis placed on academic scholarship on India compared to that on China. The South Asia Initiative (SAI), of course, has done much in recent years to address this issue. In talking more about the SAI under your directorship, what role have you envisioned for it in promoting the understanding of South Asia, not only at Harvard but also in the community at large?

I actually think that the first role needs to be at Harvard, because Harvard has, as a community, a self-inflicted problem of neglecting South Asia. In fact, the first chapter of my China-India book talks a lot about why South Asia has been neglected in the US context (more generally than at Harvard). There's a lovely book written by the journalist, Harold Isaacs, in the 1950s, called *Scratches on our Minds*, in which he interviewed lay Americans about their impressions of China and India. It's a magnificent exposition. He says that Americans of the time have deep-seated impressions of China and India, and in many cases, they're completely wrong. So now you superimpose on that mindset the fact that many major universities like Harvard have generally neglected South Asia in favor of East Asia. And you throw in the Nixon-Kissinger efforts to achieve détente with China, and so on and so forth, as well as various geopolitical reasons why Harvard has not focused on South Asia as an intellectual enterprise.

Harvard is now remedying this in a concerted way. To a certain extent I see the South Asia Initiative's task as catalyzing a lot of decentralized effort in South Asia, to build on what is already underway, particularly in Harvard's professional schools, as well as helping the newly constituted Department of South Asian Studies, acting in symbiosis with them to help strengthen offerings at the Faculty of Arts and Sciences (FAS) that are relevant to South Asia. Even judging from the response to my course and some of the other courses on South Asia, the demand is considerable and currently underserved. So I think our primary role at SAI is to contribute to the intellectual environment and the conversation about South Asia at Harvard, and that of course is facilitated by connectivity to all of the countries of South Asia and to all of the schools at Harvard.

What we've also been trying to do is to build the connective tissue that's been missing for the last several decades between the different stakeholders on campus at Harvard, between the School of Public Health, the School of Design, the Business School, the Faculty of Arts and Sciences, the Engineering School, and so on, and also to build connective tissue among India, Pakistan, and Bangladesh, as well as Sri Lanka and the smaller countries in the region. That is primarily the institutional infrastructure that needs to be created to facilitate this sort of work. And I think just a little bit can go a long way.

As for scholarship on South Asia in the academy, what are your thoughts on the direction it will take moving forward? Do you envision a strong South Asian Studies-affiliated core leading efforts to expand the economic, political, and other departmental efforts in looking at South Asia, or do you imagine such efforts coming from all around?

I think we're going to see a general flourishing of South Asian Studies, and just like you see different versions of East Asian Studies having multiple anchors in Economics, or Political Science, or Sociology, or Anthropology, I think you'll see all of that develop in FAS over the next several years, with a lot of it centered around the Department of South Asian Studies, which has new leadership and new support from the Dean of FAS, the Provost, and the President.

Simultaneously, however, I think one area where South Asia in fact leads the university, even compared to East Asia, is in the strength of its faculty in the professional schools. But you certainly look at my own home faculty at the Business School, and you look at the Medical School, the School of Public Health, the Kennedy School, and so on, and you'll see that there are a lot of people doing work on South Asia. And not just people of South Asian origin, but a lot of people doing work on South Asia in general. So somehow, the expertise on South Asia has historically gravitated to the professional schools, and what we're engaged in at this university is both capitalizing on that locus of strength but also building up FAS in a concerted, premeditated fashion over long periods of time, which is exactly what we need moving forward.

THE AFFAIR OF THE GREASED CARTRIDGE:

TRAVELING STORIES, UNRAVELING EMPIRES, AND THE SEPOY REVOLT OF 1857

SANGEETA MEDIRATTA · STANFORD UNIVERSITY

ABSTRACT

This article focuses on Northern US writers' discussion of the Indian Sepoy Revolt of 1857 and the varied ways in which the Sepoy revolt was deployed as a mobile and contested sign in debating a range of national and imperial concerns. Domestic crises and imperial anxieties such as the US Civil War, class relations, the United States' love-hate relationship with Britain, ethnic strife, and racial formations were all mediated through reinterpretations of the Indian Sepoy Revolt. Hence, examining and exploring the international journey of the Sepoy Revolt narratives helps shed light on hitherto obscured but rich aspects of nineteenth-century history, including the way in which the US Civil War, thus far often seen as a domestic conflict, was embroiled in histories of global imperialism and colonial rebellions.

As the recipients of a supply of Havelocks sent by the "Women of the village of Cooperstown," … [we express] our profound gratitude to those ladies for the opportune favor thus derived through their patriotic efforts in a common cause, and desire to assure them that while we will be greatly benefited by having our heads kept cool for action, our hearts have already been warmed by this evidence of interest in the comfort and happiness of the volunteers, on the part of the women of Cooperstown.

Respectfully yours, J. Lafayette Rider, Colonel
To Mrs. Lyman Foote, Cooperstown, N.Y.
New York, June 17, 1861[1]

[1] Marion H. Brophy, "The Town of Otsego: Home Front, 1861–1865 Compiled from The Freeman's Journal and Otsego Town Records," The USGenWeb Project, October 22, 2008, accessed September 24, 2012, http://theusgenweb.org/ny/otsego/military/cwotsego.htm.

The above image, published in L'Illustration Journal Universel in 1857, depicts a battle between the British army and insurgents near Delhi walls during the Sepoy Rebellion.

The kind ladies of Cooperstown may have been the immediate source of the havelocks Colonel Rider praises as having the power to affect soldiers' hearts and heads, but the actual land of origin of this sartorial accessory lay far beyond the seas. First used by British and other European soldiers fighting in Indian heat, havelocks were specially designed headgear combining a neck scarf and cap. Intended both as caps and cap covers, these dual-purpose objects were called havelocks after their inventor, General Havelock of the British army stationed in India. Perhaps when General Havelock designed and ordered special caps for British soldiers, he was only thinking about protecting them from the blistering sun of the tropics. But the resurfacing of this headgear during the American Civil War suggests more oblique exchanges between India and the US by way of their common connection with the British.

The havelock is one of those cultural artifacts that capture the ambiguities and fissures inherent in the historical moment of its inception. Especially intriguing is the havelock's association with the 1857 Sepoy Revolt in India, an event that became a subtle but singularly persistent theme in writings about the American Civil War. Historical records show that havelocks first appeared during this revolt, a series of military and civil campaigns in which General Havelock became a hero from the perspective of the British. The migration of the havelock from the burning plains of India to the US and its reconstruction as a token of ladies' esteem for the gallant Union soldiers is a material counterpart of the fate of the havelock – a fate shared by the sensational narratives surrounding the Sepoy Revolt that shuttled and changed form among these various nodes of empire. In the US context, the Sepoy Revolt became a palimpsest for negotiations of many American anxieties – both imperial and domestic. Studying the migrations of the havelock provides us with an interesting glimpse into the fate of the Sepoy Revolt as a colonial event with metaphorical and metonymic meanings that filtered into the popular imagination and served various social agendas, even across the ocean in the US.

The basic facts of the revolt, at first glance, seem easy enough to identify. In February 1857, a series of incidents began in which Indian Sepoys in the British Army refused to use cartridges rumored to be greased with pig and/or cow fat, substances considered anathema to Muslims and Hindus respectively. The rebellion spread rapidly through North-Central India, and on May 10, a number of Indian Sepoys revolted against the British in the northern city of Meerut. They captured Delhi and proclaimed Bahadur Shah Zafar II emperor of India. By the end of June, Kanpur (Cawnpore) had fallen to the Sepoys of Nana Sahib, a Peshwa prince, and the rebels besieged the city of Lucknow. The battles between the rebels and British forces continued for almost a year

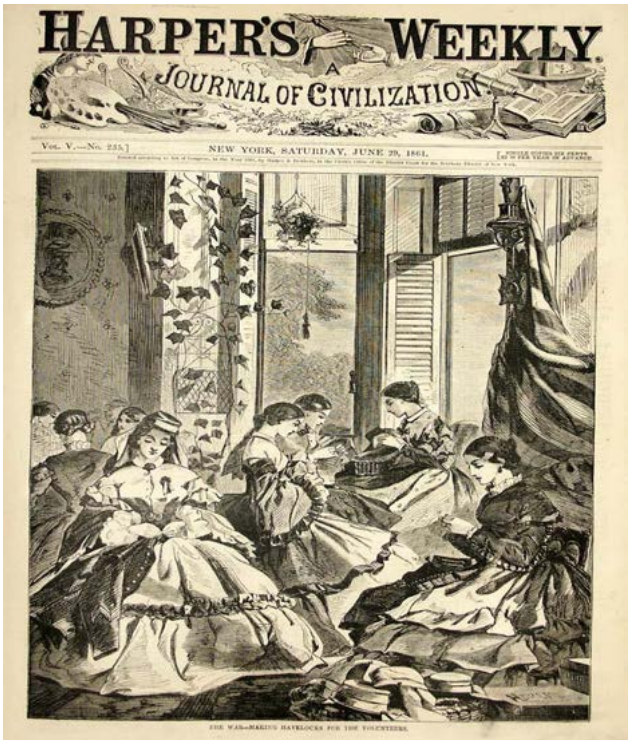
HARPER'S WEEKLY
A JOURNAL OF CIVILIZATION
NEW YORK, SATURDAY, JUNE 29, 1861.

Figure 1: Union women making havelock caps for Union Army volunteers
["The War – Making Havelock Caps for the Volunteers," *Harper's Weekly,* June 29, 1861.]

before the Indian side was defeated in March of 1858. The rebellion was marked by atrocities on both sides, with the British taking savage reprisals for the massacres perpetrated by the rebels.[2]

However, this brief outline of the revolt barely hints at the troubling and complex interpretations of the soldiers' revolt against their imperial masters, and the Sepoy Revolt was characterized by two traits: its deep impact on the Western imagination and the peculiar ease with which it has been appropriated and interpreted by people of different sociopolitical persuasions. For instance, the British, and the Western world in general, discursively constructed the Sepoy Revolt as a "mutiny." The term mutiny usually signifies a minor military skirmish, and such an appellation can be interpreted as diminishing the scale and nature of the rebellion. The revolt was thus portrayed as the irrational skirmishes of a small number of spoiled Sepoys (**Figure 2**),[3] though records from the time testify to a larger disaffection among the populace, both civil and military. In subsequent years, the Sepoy Revolt even came to be understood as India's

[2] See Bipan Chandra, *Modern India* (NCERT: New Delhi, 1971); Biwamoy Pati, *The 1857 Rebellion* (New Delhi: Oxford University Press, 2007).

[3] "The Clemency of Canning," Punch, October 24, 1857, 171.

Sangeeta Mediratta is Associate Director of Stanford's Center for South Asia. She received her PhD in Literatures in English from the University of California, San Diego and came to Stanford as a Postdoctoral Fellow. Prior, she taught English Literature at Delhi University, India. Her research interests include transnational nineteenth-century comparative imperialisms, material and popular cultures, race and gender studies, and South Asian literature and film.

Figure 2: The Clemency of Canning
The Accompanying text reads: "Well, then, we shan't blow him from nasty guns, but he must promise to be a good little Sepoy.

first war of independence. As Karl Marx said in "The Revolt in the Indian Army,"

> On first view, it is evident that the allegiance of the Indian people rests on the fidelity of the native army, in creating which the British rule simultaneously organized the first general center of resistance which the Indian people was ever possessed of. How far that native army may be relied upon is clearly shown by its recent mutinies. … Before this there had been mutinies in the Indian army, but the present revolt is distinguished by characteristic and fatal features. It is the first time that Sepoy regiments have murdered their European officers; that Mussulmans and Hindoos, renouncing their mutual antipathies, have combined against their common masters; that the mutiny has not been confined to a few localities; and lastly, that the revolt in the Anglo-Indian army has coincided with a general disaffection exhibited against English supremacy on the part of the great Asiatic nations, the revolt of the Bengal army being, beyond doubt, intimately connected with the Persian and Chinese wars.[4]

But the reconstructions of the revolt that concern us most here are those that appeared in America in the immediate aftermath of the event and during the US Civil War. This article's primary focus is Northern US writers' discussion of the rebellion of 1857 and the varied ways in which the Sepoy revolt was deployed as a mobile and contested sign in debating a range of national and imperial concerns. Domestic crises and imperial anxieties such as the US Civil War, class relations, the United States' love-hate relationship with Britain, ethnic strife, and racial formations were all mediated through reinterpretations of the Sepoy Revolt. Just as the havelock cap was imported and adopted to answer local needs, so too was the Sepoy Revolt reimagined according to immediate American political exigencies. Studying the international travels of Sepoy Revolt narratives helps shed light on hitherto obscured but rich aspects of nineteenth-century history, such as the way in which the US Civil War, so far often seen as a domestic conflict, was embroiled in histories of global imperialism and colonial rebellions.

While there is plenty of scholarship around British and Indian representations of the Sepoy Revolt of 1857, the fact that the revolt was used by US writers as an important tool to discuss issues relevant to the US remains unexplored. To highlight the cross-pollination of the discourse around the Sepoy Revolt underscores not only its mobility and versatility as a cultural sign but also demonstrates the necessity of understanding domestic conflicts and imperial relations as inextricably linked in this moment. Studying this triangulation of the seemingly unconnected imperial zones of Britain, India, and the US reveals important fissures within the US and the essential hybridity of imperial formations.

Unmooring the Sepoy Revolt's primary historical positioning as a geographically contained colonial event and focusing on its global trajectory and metaphorical career helps underline the need for an imbricated national and global approach to both event and metaphor. Such temporal and geographical "leaping" becomes crucial to the accrual of imperial sensibilities, and indeed also to the rethinking of these imperial sensibilities as witnessed in later US narratives that position the Sepoy Revolt as a testimony to British imperial failure and a touchstone to US imperial exceptionalism. Also, looking at how and why these sensationalized stories of the rebellion travel across continents helps concretize an instance of the endlessly mobile, negotiated, and shifting markers through which the discourses of racial and national identity are articulated in this late imperial moment.

Sensationalism, with its emphasis on lurid details and anguished bodies, works as the key narrative mode in which these stories get told, further highlighting the centrality of the body to emerging discourses of historical imperial sensibilities. The primary type of bodily anguish these narratives focus on is that of mutilation, and I hope to show how, perhaps, there is something distinctive in these sensational narratives of mutilation that make them especially suitable for such travel and adaptation from British colonial contexts to US ones, from empire to slavery and ultimately, to the US Civil War. Sensational discourse, then, emerges at once as rigorously particular and embodied and yet subject to a kind of sympathetic catalyzing by more abstract patterns of exchange and travel. Metonymy, in particular, functions as the primary device underpinning these sensational narratives that help liken and yet keep distinct the budding US empire from the aging British one, the Sepoy and the Southern Rebel, the British woman and the Union soldier.

[4] Karl Marx, "The Revolt in the Indian Army," *New York Tribune,* July 15, 1857.

Figure 3: The British Lion's Vengeance on the Bengal Tiger

MUTINOUS NARRATIONS: THE SEPOY REVOLT AND ITS DISCONTENTS

The story of the Sepoy narratives and their transference to American social and political space begins with the reportage of the Indian event in the British press. When the rebellion began in May of 1857, the British press gave it little coverage. However, once news of the massacres unleashed by the conflict started coming in, newspapers began reporting revolt-related events in lurid, sensational detail. The sensationalism centered mostly on the brutality of the Indian rebels, especially toward British women and children. In an August issue of *Punch* appeared a full-page cartoon, "The British's Vengeance on the Bengal Tiger" (**Figure 3**), showing the Indian tiger killing a helpless woman and child, with the lion of England leaping onto the tiger in revenge.[5] Newspaper reports began covering the event on a daily basis, and a spate of memoirs, journals, and letters, some still in manuscript form, others published, arrived on English shores from India.[6]

However, a little known fact is that these sensational stories were also circulating in the US. While the great transatlantic cable, which improved the speed of communications between Britain and the US, was only laid in 1858 (and not well-established until 1866), the trading of stories, both journalistic and fictional, had long been an established tradition between Britain and the US. This exchange persisted in times of struggle and war between the two nations, as well as in times of political accord. Such transactions were especially common between the popular presses of the two countries. Stories of the Sepoy rebellion in India form an important part of this transatlantic trade and traffic in print. The number of references to and discussions of the Sepoy Revolt in US texts, by figures as varied as popular writers, Union army generals, abolitionists, and Southern clergymen, testifies to widespread interest in the uprising. However, the reasons for this interest seem far more complicated than a mere interest in international events.

The mid-century US was a rapidly expanding and certainly imperial hotspot; it has long been conventional for historians, such as Richard Slotkin, to distinguish between the "continental expansionism" of the mid-century and the overseas empire-building often identified with imperialism, including that of the 1890s – the "New Empire" that depended upon the pursuit of strategic control of widely dispersed foreign markets, military bases, and transportation routes.[7] However, as recent scholarship by Walter La Feber, Amy Kaplan, and Donald Pease has shown us, the distinction

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5 "The British Lion's Vengeance on the Bengal Tiger," *Punch*, August 22, 1857, 76-77.

6 Andrew Ward, *Our Bones are Scattered. The Cawnpore Massacres and the Indian Mutiny of 1857* (New York: Henry Holt, 1996), 10. Additionally, the following accounts are some of the most prominent in British mutiny literature: John Adye's *Defense of Cawnpore, by the troops under the orders of Major General Charles A. Windham* (1858), Charles Wade Crump's *A Pictorial record of the Cawnpore Massacre* (1858), Alexander Duff's *The Indian Rebellion* (1858), and Major Charles North's *Journal of an English Officer in India* (1858) represent a few of the "military" titles. Mrs. Harris, *A Lady's Diary of the Siege of Lucknow: Written for the Perusal of Friends at Home* is among the most famous of the "survivor journals" made so popular by the Sepoy drama. Also see L.E. Ruutz Rees' *A Personal Narrative of the Siege of Lucknow: from its commencement to its relief by Sir Colin Campbell*. Poets and Painters, too, were reacting to the events in India. See Christina Rossetti's famous "In the Round Tower at Jhansi" (1857) and Sir Joseph Noel Paton's *In Memoriam: designed to commemorate the Christian heroism of the British Ladies in India during the Mutiny of 1857, and their ultimate Deliverance by British Prowess* (1858). As Daniel F. Schultz and Maryanne Felter say, "There was such demand for paintings of the Mutiny that dealers knew they could not possibly send their artists to India to paint and have the painting in time to keep up with the news. Both paintings are typical of the period, glorifying the British in heroic battles and sieges in heroic stereotypes, gallant poses, and consummate bravery where as natives are portrayed glowering, wide-eyed in terror, and retreating in disarray" (Ward, *Our Bones are Scattered*, 531).

7 Richard Slotkin, *The Fatal Environment: the myth of the frontier in the age of industrialization, 1800-1890* (New York: Atheneum, 1985).

between the "continental frontier" and "imperial frontier" is merely a tenuous and certainly ideological distinction that promotes an exceptionalist understanding of the US as a largely non-imperialist nation.[8] That residents of a protoempire – US politicians, thinkers, and writers – should in this moment debate in great detail concerns around expansionism, insurgencies both local and global, the management of populations, and ethical imperialism seems but inevitable. The specific and sustained interest in the Indian Sepoy Revolt is surprising still, but perhaps it shouldn't be given the extensive yet often underexplored social, historical, and political linkages between these imperial zones.

The fate of the Sepoy Revolt in the American news media over time provides a fascinating map of domestic disputes and US-Britain relations. Allusions to the revolt run through a gamut of responses and agendas in a decade or two after the event: from evoking an initial sense of solidarity with the betrayed and suffering British population in India, to using it as a lens for interpreting Civil War concerns, to seeing it as an instance of British greed and perfidy that was now being repeated in their attempt to exploit the explosive domestic conflict in the US. Moreover, texts that reference the Sepoy rebellion frequently do so casually, thereby indicating the possibility of widespread knowledge of the event amongst the American public in this moment.

The tenor and content of most of the initial US news reports around the sensational event corresponded almost exactly with prevailing British attitudes. The first reaction seems to have been one of surprise and disappointment that there had been an insurrection in India, one of the few parts of the British Empire that had been deemed secure among Euro-American politicians and the general populace. Only a few years prior to the Sepoy Revolt, famous American unionist George Francis Train had said: "the Sepoy soldier is proverbially true to his salt."[9] Soon after the revolt began, however, the word "Sepoy" became synonymous in the Western world with treachery and barbarity, especially toward innocent white women and children.[10] Sympathy for the British and other Europeans in India underpins the sentiment of these pieces, with few writers, if any, questioning the British right to maintain their presence in India. Therefore, predictably enough, the revolt is perceived not as a national uprising at all but as an irrational outbreak of religious fanaticism and cruelty.

First-person accounts did much to sensationalize the event in the US, with American missionaries penning most of these accounts. These narratives detailed the plight of innocent "Europeans" in India and the fiendishness of the Sepoys. "The Story of Cawnpore" by Reverend William D. Butler, for instance, begins on the following note: "Cawnpore! What lady in any civilized land has not heard of 'the city of melancholy fame,' or learned something of the sad story of fruitless valor and unutterable woe that was there exhibited?" Butler's melodramatic tone and overwrought adjectives continue as he underlines the fact that not only British peoples but also Americans suffered during the revolt: "This story can never die. Wherever and whenever it is read, it should be remembered that England alone did not suffer there. The dire agony of Cawnpore was shared by American gentlemen and ladies: indeed they took precedence in these sorrows."[11]

This text not only emphasizes the loss of American lives in the conflict but also asserts that the Sepoys saw little difference between the British and other white Europeans, and that the conflict had indeed been one of religion and race rather than a struggle between colonizers and the colonized. Indeed, Butler suggests that that such events helped maintain a natural and necessary solidarity among otherwise competing nations such as Britain and the US. Discussing racial differences through his perception of the place of women on either side of the conflict, Butler says, "with closed teeth and bated breath, the Brahmin and the Saxon thus closed for their death grapple… America and Europe have ever forbidden their warriors to point the sword at a female breast. But Asiatics have no such scruples."[12] Butler then charts a harrowing chronology of the brutal treatment meted out by the rebellious Sepoys to European ladies. Reiterating the confluence of American and British interests and loyalties, he remarks:

> American ladies will add their generous tears to those which have been flowing for their sorrows in many an English home during the past twelve years. The writer saw some of them (the women) after the rebellion in their mutilated state – their hands cut off or their noses slit open; one poor girl had lost hands, nose, and ears. The native mode of mutilation was horribly painful, the limbs chopped off with a *tulwar* – a coarse sword – and the stumps then dipped in boiling oil to stop the bleeding.[13]

This spectacle of mutilated female bodies confirms for both the English and the Americans that the Sepoys belong to an utter otherness that is completely irredeemable, and that the only possible response to such brutality is

[8] Walter La Fevre, *The New Empire: An Interpretation of American Expansion, 1860–1898* (Ithaca: Cornell University Press, 1963); Amy Kaplan and Donald Pease, *Cultures of US Imperialism* (Durham: Duke University Press, 1992).

[9] George Francis Train, *An American Merchant In Europe, Asia And Australia: A Series Of Letters From Java, Singapore, China, Bengal, Egypt, The Holy Land, The Crimea And Its Battle Grounds, England, Melbourne, Sydney* (Facsimile Reprint: Kessinger Publishing, 2007), 254. See also Channa Wickremesekera, *Best Black Troops in the World : British Perceptions and the Making of the Sepoy 1746- 1805* (Ann Arbor: University of Michigan, 2002).

[10] Both Jenny Sharpe and Nancy Paxton call attention to the focus on rape of contemporary accounts and fictions of the uprising. See Jenny Sharpe, "The Unspeakable Limits of Rape: Colonial Violence and Counter-Insurgency," *Genders* 10 (1991): 25-46; Nancy L. Paxton, "Mobilizing Chivalry: Rape in British Novels About the Indian Uprising of 1857," *Victorian Studies* 36.1 (1992): 5-30.

[11] Reverend William D. Butler, "The Story of Cawnpore," *The Ladies' Repository: A Monthly Periodical, devoted to Literature, Arts, and Religion* 3.4 (1869): 268.

[12] *Ibid*., 273.

[13] *Ibid.*, 274.

Westerners' unflinching reprisals. In this portrayal, ladies like the gentlewomen of Cooperstown, who lovingly supplied havelocks for their beloved soldiers, have been reduced to a veritable trash heap, their broken bodies mutely asking for justice. The construction of a British-American imperial alliance seems to hinge on the injured white woman's body, which closer to home in the US, had become the battleground on which the debates over slavery were waged. Jenny Sharpe's *Allegories of Empire* discusses how narratives of the rape of white women by Sepoys during the Revolt became one of the key ways in which imperial anxieties were routed and used as justifications for British reprisals against the rebels.[14] While her focus remains on rape as an allegorical trope, the omnipresence of mutilation as punishment and revenge in these narratives remains underdiscussed. Do such spectacular mutilations, such as those staged above, serve an allied yet distinctive purpose in these texts that cross imperial zones, perhaps making them especially suitable for such travel and adaptation? There is something less allegorical, and more metonymic perhaps, in the bodily fragments to which the British women are reduced in the passage above, that lends itself to crossing over not only imperial zones and contexts but also across differently gendered bodies as evidenced in spectacles of mutilated bodies constructed by the Civil War narratives discussed previously. Rape, as Sharpe shows us, "is not a consistent and stable signifier but one that surfaces at strategic contexts," and it aids in the production of normative discourses of race.[15] In what way do fragmented bodies work differently to construct ideologically and administratively normative discourses of race, and it what way do they perhaps allow for greater mutability across time and space? If rape is "a concept metaphor for imperialism," what kind of agendas do the sensationalized descriptions of mutilation serve?

While many early narratives focus on constructing white imperial solidarities, a few years after the Sepoy rebellion, several narratives emerge that complicate the terrain even further – by explicitly using the details of the Sepoy rebellion to constitute and even interrogate local US events and policies, as well as to criticize British imperialism as a failed project. References to the Indian event seem most popular during the US Civil War years of 1861-65. Many Civil War documents attest to the mapping of the local conflict onto the distant, international contours of the British-Sepoy conflict. Several of these accounts use the sensationalized images of treachery, rebellion, and barbarism associated with the Sepoy Revolt to discuss the Civil War. In many Northern narratives, for instance, the South is conjured as a comparatively uncivilized region with its barbaric practice of slavery, which is seen as of a piece with the idolatry and fanaticism of the Indian Sepoys. Famous abolitionist Moncure Daniel Conway says, "The parallel drawn between the warfare of Sepoy and Southerner is not fanciful: all races fight so for their religions, and Slavery is the real and only religion of the South."[16] Images of lawlessness and monstrosity made popular by the news and narratives around the Sepoy rebellion were re-invoked by pro-Union critics of the South. For instance, Victor J. Orville, editor of the famous *Beadle's Dime Novels* series, observes, "The spirit of anger was fast culminating, not in a national, or even sectional resentment, but in a species of inhuman personal malice, which served to ally that revolution to the Sepoy drama. Lawlessness toward government soon begat lawlessness towards society – the dragon's teeth grew with fearful fecundity."[17]

This imagery of dragons with fearful teeth is significant in that it marks a conflation of all things Oriental into one monstrous composite. While dragons were commonly associated with the Far East, and especially China, the image was loosely associated with the perils and attractions of the East in general. The image of fecundity that follows invokes both the famed fertility of Indian jungles as well as the richness of US Southern soil. This superimposition of narratives of the Sepoy Revolt on immediate political agendas of the Civil War is a telling example of the opportunistic appropriation of the Indian insurrection in the American popular and political imaginary.

This sensationalized lurid focus on the body, particularly on mutilation and dismemberment (in Orville's account), as well as others discussed above, demonstrates the stylistic mimicry of Sepoy Revolt accounts by those discussing Civil War violence. The sensationalized and embodied nature of these atrocities crafts a very particular affective response in the primarily Northern audience and works metonymically to liken the Sepoy and Southern rebel through a contiguity in the description of violence, and beneath that, a distinctively sensational mode, simultaneously staging, resolving, and eliding deep social conflicts around gender, race, and empire. In other words, sensational narration seems particularly well-suited to the imbrication of local and national histories, with its capacity to be both excruciatingly particular and yet portable across colonial contexts.

For instance, an interesting contradiction and irony that the passage above stages is as follows: The North, ostensibly fighting for the end of slavery, an institution that naturalized racial discrimination, seems to align itself with the British (white) side of the British-Sepoy conflict. On the other hand, the American South, historic endorser of slavery, is constructed in the image of the wronged and therefore rebellious Sepoy – a colonized figure of color. According to a *New York Times* correspondent in an article entitled "England and America," "Our kind wishes for the people from whom we sprung, caused a general sympathy with England, and a general rejoicing at the suppression of the (Sepoy)

[14] Jenny Sharpe, *Allegories of Empire: The Figure of Woman in the Colonial Text* (Minneapolis: University of Minnesota Press, 1993).

[15] Sharpe, *Allegories of Empire,* 2-3.

[16] Moncure Daniel Conway, *The Rejected Stone; or, Insurrection vs. Resurrection in America. By a native of Virginia* (Boston: Walker, Wise, and Company, 1862), 70.

[17] Victor J. Orville, *Incidents and anecdotes of the war; together with life sketches of eminent leaders, and narratives of the most memorable battles for the Union* (New York: J.D. Torrey, 1862), 239.

rebellion. The South, on the contrary, manifested a great deal of sympathy for the Sepoys and saw itself in the same light."[18] He argues that unlike the North, which naturally feels a racial solidarity with British plight, the South sides with the rebellious Indian Sepoys, ironically being among the first to implicitly recognize the Sepoy Revolt as a war for independence like the South's attempt for liberty from the Union.

These implicit racializations of the South, conceived as Sepoys-in-rebellion, highlight crucial indeterminacies and incoherence in racial thought across the discourses of slavery and empire in the nineteenth century. Racial discourse, as David Theo Goldberg argues, is a protean discourse of changing signifiers, a morphing semiotics replete with such reattachments of racialized meanings. According to Goldberg,

> Conceptually, *race* is chameleonic and parasitic in character. It insinuates itself into and appropriates as its own mode more legitimate and scientific forms of social expression. Racialized discourse is able to modify its mode of articulation. It can thus assume significance at a specific time in terms of prevailing scientific and social theories and on the basis of established cultural and political values. [19]

This is in tension with prevailing nineteenth-century biological models of race, helping us to understand the especially resonant work of the raced and gendered body in the Sepoy Revolt narratives as they travel. As Ann Laura Stoler says, "When historians of the United States look in a transnational direction, it tends to be South, to Latin America ... but comparisons with historical studies from elsewhere emphasize the tactical mobility of concepts."[20]

The debate around the recruitment of black soldiers, in both Union and Confederate armies, lent itself to a similar tactical mobility of concept – here, that of rebellion. Lewis Wallace, decorated Union army General, said in August 1862, "In times of great excitement like the present, a simple prejudice may do an immense amount of evil. A greased cartridge produced the Sepoy Revolt, but notwithstanding some of these prejudices that have been instilled into the minds of some of our boys, … I say, if white men should hear the sweet music of the ride, even though in n***** hands, they would like it amazingly and be wonderfully glad of it."[21] Wallace's comment is significant in its use of the Sepoy Revolt to summon up the specter of racial threat, although he diffuses the danger by metaphorically arming black soldiers with musical instruments instead of guns.

On another note, the obviously Unionist *New York Times* author of "A New and Startling Development: The 'Richmond Enquirer' on Arming Negro Slaves," expresses shock at the Southern newspaper's endorsement of inducting black slaves into the Confederate army: "We confess that this development takes us by surprise." Contemplating the consequences of such an inclusion, the article notes, "If the blacks should succeed in winning Southern independence, after the whites have tried and failed, it will be de facto as well as de jure a negro Republic."[22] Sensational and unwelcome as such an outcome seems to this author, he concludes by conjuring what seems the most frightful of all specters (and yet to the Northern author, also the most hopeful) – that of the Indian revolt:

> There is also another consideration which ought not to be overlooked. Suppose, after the blacks are armed and drilled, and in the field, they should take it into their heads to choose which side they would fight on – what then? Suppose that this great host, after having discovered the secret of their strength, should remember their "paddlings" and "larrupings," remember their scarred backs and stolen wives and children and should for once find the savage instinct of hate hitherto kept down by the yoke of plantation discipline, swelling up within, and should rehearse the great Sepoy mutiny here under our eyes – what then? Three or four years ago there would have been plenty of people to tell us that the "love" of the slaves for their owners would prevent anything of the kind. But now we know better….it would certainly be one of the strangest and most striking events in history, and one bearing the strongest marks of providential retribution, if the final blow to the accursed Confederacy should come from the hands of its own slaves, armed and disciplined by itself.[23]

While the ostensible position of this author is to warn the South of its folly in recruiting as soldiers those it formerly regarded as chattel, it ultimately underscores Northern fears of an expanded Southern army.

As seen above, most references to the Sepoy Revolt are found in the context of various reassessments of racial and national politics. However, the revolt also yielded easily to appropriation by those who wished to make explicit comparisons between Britain and the US. For instance, in October 1862, a *New York Times* article entitled "The Penalty of Patriotism" compares the treatment of English soldiers returning from hard service during the revolt with the treatment of Union Civil War veterans. The barbarity referred to here is not so much that of the Sepoy or the Southerner but that of commercial interests against heroic, primarily working-class, soldiers:

> Everybody remembers the howl of indignation which was raised in England four years ago over the hideous brutality of the East Indian Government's contractors to soldiers returning from Hindostan to England. Brave men, who wore on their breasts

[18] "England and America," *New York Times*, August 30, 1861, 5.

[19] David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (New York: Blackwell, 1993).

[20] Laura Ann Stoler, "Tense and Tender Ties: Comparison in American History and Postcolonial Studies," *The Journal of American History* 88.3 (2001): 829-65.

[21] "The Cincinnati War Meeting: Speech of General Lewis Wallace," *The New York Times*, August 3, 1862, 8. General "Lew" Wallace lived from 1827–1905. He served in both the Mexican and Civil Wars. His famous book, *Ben-Hur* (1880), has been one of the best-selling novels in American publishing history and has been made into several motion pictures.

[22] "A New and Startling Development: The 'Richmond Enquirer' on Arming Negro Slaves," *The New York Times,* October 21, 1864, 4.

[23] *Ibid.*, 4. Emphasis added.

> the medals of Delhi and Lucknow – men who had thrown their lives between Sepoy and prey … How little did we dream that in our own country, and in our own city, we should be called to witness scenes as dark almost and as discreditable as those which gathers in gloom over the closing history of so many of the saviors of British India? ... This is everybody's affair – for in this war of the people, the people feel every suffering of the soldiers as their own.[24]

Thus, the comparisons made between the Sepoy Revolt and the US Civil War center on the tropes of sedition, savagery, and most importantly, the fruits of oppression, colonial in the case of the real Indian rebellion and quasi-colonial in the case of the imagined insurrection of slaves in American uniforms and the maltreatment of working-class soldiers. Furthermore, the above examples of Civil War narratives that construct the local war as a parallel of the Sepoy rebellion in British India testify to the significant stature accorded to the Indian insurrection by the American media and peoples. More crucially, though, it indicates that the narratives of this ostensibly local and domestic conflict were discursively constructed and routed through international events of an imperial register. This is useful in contemplating the international links of local politics and vice versa.

In several other US narratives, the Sepoy Revolt specifically becomes a tool to critique British imperial strategies and policies in India and to make a case for American superiority and exceptionalism. In 1861, a *New York Times* correspondent in "England and America" asserts that American, at least Northern, loyalties had aligned with British interests when the Sepoy rebellion had broken out, even though "we could not justify the means resorted by the Government of Great Britain in acquiring possession of India, nor the administration which has been accorded to that barbarous people." This solidarity with and sympathy for England, he observes, have proven to be misplaced. "What does Slavery-hating England do in this crisis of the American Government? (Civil War) Does she reciprocate our kind sympathies bestowed during the Russian and Sepoy wars?" Answering these rhetorical questions with a flourish, the author claims that while England has feigned sympathies with the Union, "she…perfidiously keeps one ear open to the traitors, and tells them, *sub rosa,* to persevere for a few months, until England will feel justified in acknowledging their independence." Summarizing the reasons for England's treachery, he underlines the hypocrisies of the British imperial state, "This is briefly and substantially the history of English treatment of the American rebellion. It has been a history of hypocrisy and duplicity – of affected concern for the interests of freedom and humanity, but of real concern for the interests of cotton spinning and commerce."[25]

On the same note, Unionist George Train says that England's perfidy is only bested by her hypocrisy.[26] In a speech delivered during a lecture tour of England, he attacks several British journalists who had condemned Union General Butler for inciting his troops to commit acts of violence against Southern women. Evoking yet again the Sepoy Revolt as the parallel of the US Civil War, Train describes an illustration in the English press as an example of English brutality:

> Do you remember a picture in the *Illustrated News* during the Sepoy revolution? I do – and three features were prominent – cannon, English officers, and Sepoy messengers bearing a flag of truce ("Hear"). The picture has another side – the officers consult – the Sepoys are bound on to the muzzle of the guns – and with their flag of truce tied around, they were blown towards the camp from whence they came. (Cries of "Horrible-shame"). Did Mr. Seward get up in his place in the Senate Chamber and protest against this in the name of humanity? The atrocities of your soldiers in India were only equalled in their brutality by Nena Sahib himself ("Oh"). When a British officer enters a Sepoy village and gives the order to his regiment to ravish the Sepoy women, and then level their houses to the earth, humanity shudders for civilization. Compared with such fiends, General Butler is a scholar, a gentleman, and a Christian.[27]

In Train's diatribe, we witness the collapse of the comforting binaries of British heroism and Indian brutality that Americans had initially embraced. His words speak to the endlessly mobile, negotiated, shifting markers through which the discourse of racial and national identity is being worked out in this late imperial moment. The fact that the British can become blackguards in this period, and the Sepoys, fellow victims, tells us something key about the endlessly adaptable uses of the construct of race in national discourse. Moreover, because the Sepoy Revolt once again becomes a handy narrative space to chart out these animosities, popularly accepted historical "verities" about the rebellion suddenly undergo a radical change. If one were to put some of the initial sensationalized accounts of the Sepoy Revolt alongside Train's construction, it would be difficult to believe that they are accounts of the same event. On a similar note, Southern clergyman James McCabe, in "A Comprehensive View of Our Country and Its Resources," vouchsafes the superiority of US wars over those conducted by England: "Our Civil War lasted four years, and was one of the most formidable known to history. It was conducted, however, with less brutality, less violence and pillage than any other internecine struggle the world has ever known … England has had her Irish rebellion of 1798, and her Sepoy Revolt of 1857."[28]

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[24] "The Penalty of Patriotism," *The New York Times*, October 27, 1862, 5.

[25] "England and America," *The New York Times,* August 30, 1861, 5.

[26] George Francis Train was a wealthy Boston businessman. His career achievements included but were not limited to giving pro-Union speeches in England during the American Civil War, traveling around the world in eighty days, and running for President of the US. In fact, Jules Verne's novel *Around the World in Eighty Days* (1872) is reputedly based loosely on Train's adventures.

[27] George F. Train's Union speeches. "'Second Series.' Delivered in England during the Present American War" (Philadelphia: T.B. Peterson & Brothers, 1862).

[28] James D. McCabe, *A Comprehensive View of Our Country*

Hereafter, the Sepoy Revolt remained useful cultural shorthand for British oppression and immorality. Well-known abolitionist Giles Badger Stebbins, in a pamphlet entitled "British Free Trade, a delusion. To the Farmers, Mechanics, Laborers, and all Voters of the Western and North-Western States," condemns Britain's oppressive free-trade policy: "They forced the natives to buy dear and sell cheap," and reinforces British brutality with a sensationalized allusion to cruelties perpetrated by the British during the revolt of 1857: "The Sepoy rebellion, but a few years ago, in which babies were tossed down the mountain gorges of Hindostan from the bayonets of British soldiers, was one of the latest tragedies in that unhappy country."[29] Images of tortured and mutilated babies and children had long been the stock-in-trade of Western depictions of the Sepoy Revolt. But in substituting Indian babies for the British ones, and by locating the British as the perpetrators of inhuman acts of violence, Stebbins shifts the blame entirely onto the British and points toward the Indians as deserving of American sympathy.

Continuing this American trend of critiquing British colonial policies, famous Civil War journalist and author George Alfred Townsend, comments on the brutal taxation of the Indians by the British as well as the forced British trade of opium with China and India: "If the United States would make a monopoly of whiskey, and force the Indians to consume it, we should have a government on the plains very much like that of the British in Asia. Contrast the worst treatment of the savage Indians of our own frontiers with the ordinary behavior of the English to the Hindoos, and we shall have reason to be glad that we have not utterly disgraced our race and age." Townsend follows this observation with a sensational account of British practices in India,

> … torture was there, until 1856, an ordinary means of government … exposure to the sun; putting pepper and chillies in the eyes; searing the breasts with hot irons; nipping the flesh with pincers; fastening the aggravating poolay insect upon the navel – these were alleged to be a part of the system of government, known and acknowledged as an engine for realizing the public revenue.

Underlining the hypocrisy and oppressiveness at the heart of colonial governance, the author of the piece states, "Oppressive as the most oppressive form of despotism, it was strong with all the strength of civilization."[30] Townsend then uses the sensationalized descriptions of torture to distance US empire-building as relatively humane, enlightened, and free.

Thus, writers as varied as editors of dime novels such as Victor Orville, reporters for *The New York Times*, and abolitionists like Moncure Daniel Conway used the Indian insurrection of 1857 as a touchstone for the articulation of various agendas and issues, both local and international, demonstrating not only the evocative power of the event itself but also the sheer heterogeneity of responses generated by it in the West. These instances of colonial transactions in objects, images, and narratives not only serve to underscore the importance of studying imperial contact-zones in greater detail but also, especially for scholars of American culture and history, showcase how imperial comparison served a didactic function in Americans' incipient understanding of themselves as a world power in the late nineteenth century. From handling insurgency to negotiating with former mistress, England, the distant event of the Sepoy Revolt thus becomes a tool for constructing US imperial identity. The US we see here is on the threshold of the global stage, beset by different anxieties and attempting, or at least claiming, to negotiate race differently.

A few years ago, we saw a path-breaking book, *Culture of United States Imperialism,* thoroughly unravel the myth of US exceptionalism as far as imperial ambitions and zeal were concerned. Much of the scholarship following it has tended to focus on US imperialisms in the Americas and East Asia. Referencing the tendency to keep apart British imperialism in India and the US empire, P.J. Marshall observes, "There is a firmly established historiographical tradition that sees these developments as largely unrelated to one another and ... such demarcations are reinforced by the entirely reasonable tendency to stick to their own capacious territories and not to develop foolhardy worldwide ambitions."[31] But as work like Mrinalini Sinha's has recently shown us, by studying "creative events" that manifest broader social transformations and by rearticulating them in alternative interpretive frameworks and intersecting histories, we can crucially draw attention to:

> … the historical role of imperialism in assembling different societies into a system of interdependencies and interconnections and the uneven effects produced by the simultaneous connection and distinctive constitution of societies in a globally articulated imperial system.[32]

Thus, the Sepoy Revolt and its metaphorical travels to the US provide us an interesting lens with which to further complicate the tangled web of nineteenth century imperialism and help showcase the ways these narratives contributed to consolidating an international imperialist vocabulary around race and insurrection. Unpacking the shuttling of these narratives and objects like the Havelock cap among seemingly disconnected imperial zones underscores the case for a comparative, transnational, and flexible framework in studying empires and their histories.

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and Its Resources. Giving a Brief Outline History of the Birth and Growth of the Nation and Each State Separately ... And Following with Graphic Descriptions of the Rivers, Lakes, Mountains, Cities, Soil, Climate, Productions, Minerals, Manufactures, Internal Improvements, Commerce, Finances, Government, Schools, Religious Denominations, Etc., Etc. (Philadelphia: Hubbard Brothers, 1876), 1220.

29 Giles Badger Stebbins, *British Free Trade, a Delusion: To the Farmers, Mechanics, Laborers, and All Voters of the United States,* (Detroit: Stebbins, 1865), 4.

30 George Alfred Townsend, *The New World Compared with the Old* (Hartford: S.M. Betts & Company, 1869), 10-12.

31 P.J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America c. 1750-1783* (Oxford: Oxford University Press, 2005).

32 Mrinalini Sinha, *Spectres of Mother India: The Global Restructuring of an Empire* (Durham: Duke University Press, 2006), 17.

COLONIZATION, TECHNICAL EDUCATION, AND THE BENGALI *BHADRALOK*:

STUDIES ON THE POLITICS OF KNOWLEDGE, 1856-1905

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ABSTRACT

This article attempts to place the contested terrain of technical education within the context of colonial Bengal. The latter half of the nineteenth century was critical with respect to the generation of technical knowledge: in 1856, Bengal Engineering College, among the oldest on the subcontinent, was established, and in 1905, the partition of Bengal represented a pivotal moment in Bengali history. One outcome of the partition was the establishment of institutions with the goal of promoting techno-scientific education, applying the work of the intelligentsia to the building of the province's industrial sector. With these important societal changes as the backdrop, this paper seeks to locate the development and assimilation of technical education in Bengal, from 1856 to 1905.

"… instruction is required upon no subjects in this country more than upon Civil Engineering and architecture. I am anxious to be of some use to an institution in which I have ever taken the highest interest and for this purpose beg to place at the disposal of the Council of Education a sum of Co's rupees 150 per mensem upon the following condition, viz. that a chair of Civil Engineering be established in the Hindu College …"

- Dwarkanath Tagore, 1844[1]

[1] Sidhartha Ghosh, *Kaler Shahar Kolkata* (Calcutta: Ananda, 1991), 71. The statement is addressed to the Secretary to the Council of Education.

The above image, from 1921, depicts Dr. P.C. Ray (1861-1944), chemist, science enthusiast, and proprietor of Bengal Chemical & Pharmaceutical Works. The artist is Gaganendranath Thakur, eminent cartoonist and nephew of Rabindranath Tagore.

This paper owes a great deal to Prof. Deepak Kumar, Prof. Smritikumar Sarkar, and Prof. Ranjan Chakrabarti, who contributed much appreciated support throughout the writing process.

The history of technology in the Indian context has been a relatively underexplored area of historical research. This paper focuses specifically on the development of technical and engineering education, a piece of Indian society still notably traceable to the country's colonial past. The process of colonization is highly complex, and in this context what is important is not simply technology as a tool. More important, and more nuanced, is technology and the ability to access it as a form of knowledge. "Technical education," as often stated in colonial records, thus represents the process by which this knowledge is transferred.

As I argue here, technical education in Bengal was especially shaped by colonial policies, giving rise to several questions: What factors influenced the shaping of colonial policies for technical education and the subsequent establishment of technical institutes in Bengal? What was the response of the Indian people to modern technical knowledge? What were the effects of these institutions of higher learning on society, both then and today? Ultimately, understanding technical education requires that we note its dual nature, as both present- and future-oriented: it represents simultaneously a response to a current demand for technically trained people, as well as a means of developing the economy for the future. And in a colonial setting, education responds to economic and political pressures from both the colonizers and the colonized; these pressures are not cumulative, and often contradictory.[2] The present paper, then, seeks to illuminate these pressures, revealing the forces that initiated the development and assimilation of technical knowledge in Bengal from 1856-1905.

TECHNICAL KNOWLEDGE IN A COLONIAL CONTEXT

In the face of the demand driven by the consolidation and extension of the British Empire in India, the training of local youth in practical branches of science became essential. The consolidation of the Empire fueled construction activities that necessitated a continuous supply of inexpensive but skilled labor, including overseers, assistant engineers, mechanics, and surveyors. The introduction of Western science and technology allowed local labor to meet this demand, and in the process created, through English education, a middle class that acted as an agent of colonial economy and administration.[3]

The types and targets of technical education offered in the colonies depended on a complex mix of factors, including levels of indigenous technology and the respective goals of Europeans and their colonial subjects. Here, of course, the perceptions of the colonizer and the colonized differed sharply. From the point of view of the colonizer, administering a colony and augmenting its production of export commodities required new technologies and new forms of labor, and thus a certain amount of basic technical education. The colonized, however, demanded more than this basic level of technical expertise, seeking an academic education based on a higher understanding of science and technology as opposed to training only in vocationally applicable skills.

A Public Works Department (PWD) was established in 1854, and since its inception, the PWD has an important influence on the growth of engineering education in India. The PWD tended to align its policies with the interests of the colonizers, structuring courses, for example, to meet the immediate requirements of the department rather than providing training for the higher ranks of the engineering profession. As various construction projects were high on their agenda, civil engineering remained the favored subject, and indeed, all colleges established during the nineteenth century were referred to as "civil engineering colleges."[4] Other branches of engineering, including electrical, mechanical, and mining, remained neglected until 1930.[5]

Even in civil engineering, there existed little space for the professional development of Indian engineers; the PWD maintained discriminatory recruitment policies, recruiting its senior engineers from Britain and restricting technical training in India to the lower levels. By the end of the nineteenth century, Indian intellectuals had thus developed a vigorous critique of the colonial discourse on science and technical education, and inherent in the formation of this critique was their realization of the vital link between science, technical education, and industrialization.

TECHNOLOGY, EDUCATION, AND COLONIALISM: BENGAL ENGINEERING COLLEGE

The foundation of Bengal Engineering College on November 12, 1856 was among the significant milestones in the history of Bengal. Until the first decade of twentieth century, Bengal Engineering College was one of four colleges that provided advanced engineering training (the other three being Thomason Engineering College, the Engineering College at Madras, and the College of Science in Poona).[6]

2 Daniel Headrick, *The Tentacles of Progress: Technology Transfer in the Age of Imperialism, 1850-1940* (New York: Oxford University Press, 1988), 316.

3 B.B. Misra, *The Indian Middle Class: Their Growth in Modern Times* (Delhi: Oxford University Press, 1978), 152.

4 *Quinquennial Review on the Progress of Education in India*, Vol. I, (Calcutta: Government Press, 1904), 248-9.

5 *Bulletin, Bengal Engineering College: One Hundred Twenty-Fifth Anniversary Issue* (Calcutta: Bengal Engineering College, 1981), 16.

6 For the history of these colleges, see S.N. Sen, *Scientific and*

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The initial efforts of the organizers were directed towards the framing of suitable regulations, by-laws, and courses of study such that civil engineering could develop into a respectable branch of professional studies. But these hopes were not fulfilled until the early 1860s, with the College continuing to train assistant engineers, surveyors, and overseers for the PWD for the first five years after its founding.

The course of study included mathematics, civil engineering, architecture, surveying and geodesy, astronomy, natural philosophy, mineralogy and geology, chemistry and botany, landscape drawing, geometrical projection, mapping, physical geography, and photography.[7]

From their inception, the three premier universities at Calcutta, Bombay, and Madras awarded university degrees in professional studies. The University of Calcutta first introduced the Degree of Master of Civil Engineering (MCE) and later the Licentiate in Civil Engineering (LCE). The university set very high standards in its examinations for both the MCE and LCE: in 1862, it made a First Arts Examination (FA) the minimum qualification for sitting for the LCE examination. The result was that no candidates were even eligible for the LCE.[8] Thus in November 1864, Bengal Engineering College was abolished, and its classes were transferred to Presidency College.[9]

The Civil Engineering Department of Presidency College functioned for approximately fourteen years, from the end of 1864 to 1879. In 1878, the Bengal government appointed a committee to consider the question of establishing a practical training institution for engineers at Calcutta in connection with the Workshops arm of the Public Works Department. The committee saw the merit of such integrated instruction and recommended the moving of the department to Howrah district of Bengal.

The government accepted the recommendations of the committee, and Bengal Engineering College was restored to its former status of independent existence, this time in association with extended workshop facilities indispensable to its operation. The government had already acquired a large area of land in Sibpur near Howrah for the purpose of constructing the workshops and manufactories of the Public Works Department, and now proceeded to purchase the old premises of Bishop's College for accommodating the Engineering College.[10] On April 5, 1880, the Civil Engineering Department of Presidency College closed its chapter there and moved to the premises of Bishop's College with its new designation, "the Government Engineering College, Howrah."[11]

Four classes of engineering students were integrated into the College: civil engineers, mechanical engineers, civil overseers, and mechanical overseers. The Lieutenant Governor laid special emphasis on the establishment of a small vernacular class for the sons of artisans and *mistris*, master craftsmen, to enable them acquire shop experience and "earn honorable livelihoods in a profession for which they are well adapted."[12]

The courses were revamped in 1882. The civil engineering branch required papers in mathematics, natural science, engineering construction, and drawing. Mathematics included differential calculus, integral calculus, and hydrostatics, while the natural sciences paper concentrated solely on geology, mineralogy, and metallurgy. Engineering construction called for knowledge of the construction of buildings, bridges, roads, canals, and machines, including turbines and steam engines. The mechanical branch involved a paper on machinery in place of the natural sciences, and it dealt with different types of machines and workshop appliances.[13] The entirety of the course spanned four years, followed by one year of practical training.

An apprentice department was also opened to train foremen and overseers. A class of photography was added in 1892, a mining laboratory was sanctioned in 1894, and the very next year a full practical course in electrical engineering was introduced.[14] With these openings, Bengal Engineering College, Sibpur speedily established itself as a reputable engineering institution, while the demand for engineering education at all levels showed marked increase.

THE PUBLIC WORKS DEPARTMENT AND ENGINEERING EDUCATION

Although many surveys had been initiated in the early phase of colonial rule, these projects had been uncoordinated and, more often than not, local administrators had a difficult time persuading the Court of Directors, the executive body of the British East India company, of the benefits of such public works for a trading company. By the mid-nineteenth century, the influence of utilitarian philosophy, structural changes initiated by colonial administration, and imperial perspectives led to the incorporation of state-sponsored public works as an integral aspect of governmental policy.[15] The Public Works Department,[16] as mentioned earlier, was

Technical Education in India: 1781-1900 (New Delhi: INSA, 1991).

7 *Bengal Engineering College Centenary Souvenir* (Calcutta: Bengal Engineering College, 1956), 16.

8 *Directorate of Public Instruction (DPI) Report, Bengal* (Calcutta: Secretariat Press, 1862-63), 10.

9 Established in 1817, Presidency College is among the oldest educational institutions in India. Previously the Hindu College, it was renamed Presidency College in 1855.

10 *Sulav Samachar*, February 7, 1880.

11 *Sulav Samachar*, April 13, 1880.

12 *Bengal Engineering College Centenary Souvenir*, 22.

13 Deepak Kumar, *Science and the Raj: A Study of British India* (New Delhi: Oxford University Press, 2006), 138.

14 *Quinquennial Review on the Progress of Education in India*, 106. To meet the expenses of electric installations, students were levied one rupee each for ten months of the year.

15 Zaheer Baber, *The Science of Empire: Scientific Knowledge, Civilization and Colonial Rule in India* (New Delhi: Oxford University Press, 1998), 206.

16 *Report of the Public Works Reorganization Committee,* Vol. I (Calcutta: Government Press, 1917), 4.

established in 1854, and the creation of the PWD coincided with Wood's educational dispatch of 1854[17] and indicated a fundamental shift in official policy, which had previously viewed public works, as a colonial administrator put it, as "an unavoidable evil, to be undertaken only when it could not be postponed any longer, and not, if possible, to be repeated."[18]

Like other engineering colleges of the time, the Calcutta College of Civil Engineering was to fill posts in the PWD. As early as 1854, Lt. Col. Goodwin, Superintending Engineer of Bengal, advocated a college of engineering at Calcutta "for the general improvement of the Department of Public Works."[19] The College "was to educate youths under 22 years of age both theoretically and practically as civil engineers, for the higher ranks of the Department Public Works."[20] Most of the students enrolled there studied civil engineering, either at the diploma or the degree level. At the Civil Engineering College at Sibpur, the Engineering Department trained civil and mechanical engineers for the PWD and the engineering profession, and the Apprentice Department trained upper and lower subordinates for PWD specifically.

Importantly, until the 1920s, only civil engineering could be studied to degree level. Teaching in electrical and mechanical engineering was introduced at the turn of the century, but remained confined to diploma courses. Even then, these additions were made primarily because civil engineers employed by the PWD required instruction in these fields.[21]

Because of the government's lack of specificity with respect to which department – Education, Industries, or Public Works – held the responsibility of overseeing engineering education, the PWD exercised considerable control over the development over the curriculum and degree programs. The PWD also exercised considerable indirect control over engineering education through examinations, practical training, and the provision of teaching staff, reflecting the degree to which PWD oversight played a role in the origin and growth of engineering education in Bengal.[22]

THE CONTESTED TERRAIN OF TECHNICAL EDUCATION

At the level of higher technical education, there was a strong connection between scientific and technological instruction in India and the designs of the colonial capitalist state. The changing place of Britain in the international economy required that the colonial state be innovative in the founding of formal technical institutes. The College for Civil Engineering was established at Roorkee, India in 1847, predating the Imperial College, London, which was founded in 1889. Interestingly, the shortage of textbooks and teaching materials for engineering schools in England was initially met by the periodically revised lecture notes, examples, drawings, and college manuals circulated among students at Roorkee. These books codified Indian engineering practices and were "hailed as the most complete and satisfactory work on the subject in the English language."[23] Until the end of the nineteenth century, England had no formal institutions imparting technical education, and engineers received their training as apprentices; thus, the engineering colleges established in colonial India provided models for replication in England in the late nineteenth century, directly contributing to the development of technical education in Britain.

At a time when Victorian England itself was lagging behind its continental competitors, including Germany and France, in science and technical education,[24] one may wonder how its government might have prioritized scientific and technical education for its colonies? And indeed, it is true that Germany and America provided greater state support to science and technical education than was the case with England. But England was certainly not oblivious to the need for techno-scientific education: the country saw an enormous growth in the number of British scientific societies in the period from 1770 to 1870, and in the 1860s, the government introduced extensive changes to the university system through Royal Commissions. These changes marked the shift from, as Roach puts it, "polite" to "professional" education.[25] Importantly, however, India did not experience this shift.

The curriculum, instruments, and very organization of its engineering colleges were solely geared to meet the requirements of subordinate ranks. For the recruitment of

[17] The president of the East India Company's Board of Control, Sir Charles Wood, declared his educational policy in 1854. An important milestone of British educational policy in India, Wood's dispatch recommended the establishment of universities with the model of London University in the three Presidency towns of India. Suresh Chandra Ghosh, *The History of Education in Modern India, 1757-1986* (New Delhi: Orient Longman, 1995), 87.

[18] Col. Chesney, cited in Russell Dionne and Roy Macleod, "Science and Policy in British India, 1858-1914: Perspectives on a Persisting Belief," in *Proceedings of the Sixth European Conference on Modern South Asian Studies* (Paris: CNRS, 1979), 55-68.

[19] J. Richey, *Selections from Educational Records*, 1850-1859, Part II (Calcutta: Government Press, 1922), 339.

[20] *Souvenir of 125th Anniversary of Bengal Engineering College* (Calcutta: Bengal Engineering College, 1981), 3. See also *Selections from the Educational Records of the Government of India, 1859-1871*, Vol. I (New Delhi: National Archives of India, 1960), 26.

[21] See Arun Kumar, *Engineering Education and Public Works Department, 1906-1947* (PhD diss., University of Delhi, 1989).

[22] *Report of the Public Service Commission, 1886-87* (Calcutta: Government Press, 1888), 7.

[23] K.V. Mital, *History of Thomason College of Engineering* (Roorkree: University of Roorkee, 1986), 98.

[24] Margaret Gowing, "Science, Technology and Education: England in 1870," *Oxford Review of Education* 4.1 (1978): 3-17.

[25] J.P.C. Roach, "Victorian Universities and the National Intelligentsia," *Victorian Studies* 3.2 (1959): 131-150. By the second half of the nineteenth century, Britain gradually realized the need for higher technological education to compete with other highly industrialized countries in order to retain her place in the world economic order.

superior ranks, the graduates of Cooper's Hill College in England were preferred. The college was established in 1870 by the British India Secretary without consultation with the Indian government, and in fact, the missions of the college were hardly aligned with Indian interests.[26] For Indians, the college represented the imposition of a "super" class of engineers, salaried by the Indian government without Indian students benefitting from this education. Moreover, the practical aspect of training at Cooper's Hill was found to be ineffectual in Indian conditions, with lessons and principles failing to translate across different geographical settings. The college was finally abolished in 1903, but its more than thirty-year existence nevertheless symbolized the supremacy of metropolitan institutions over colonial ones like those at Roorkee and Sibpur, which also offered meager scientific and technical provisions and demonstrated little sensitivity to the specific and highly localized needs of the Indian economy.[27]

BENGALI PERCEPTIONS AND RESPONSE

The acquisition of modern scientific and technical knowledge in colonial India was not purely a question of transferring British knowledge to Indian minds. The transmission of science can be seen as one component in the process of political and logistic domination, in which it was necessary "to convince the colonized that knowledge, whether in the sphere of culture, science or technology, could be acquired only through the mediation of the colonial rulers."[28] But Western science and technology, viewed as a cultural import, were actively redefined by the recipient culture. The continued display of new technology by the British, though mainly aimed at the consolidation of power in India and the increase of its productive resources, also evoked a considerable amount of interest among Indians. Their response to the scientific and technical education arranged for them by the British thus testifies to their awareness of the new phenomenon, and the *bhadralok*[29] community of Bengal had become especially aware of the role of scientific and technical knowledge in transforming Indian society.[30]

The nineteenth century offers a glimpse into a specific instance of the introduction of a new set of British technologies in India. As for the adoption of these technologies by Indian workmen, colonial relations offered little room for such a development.[31] In fact, almost all machinery was brought in from the outside, often with technicians to handle it. Indians took little part in the process, engaged mostly in lower-level works and without even an adequate level of technical expertise to manage them independently.

Opportunities for Indians to advance in the colonial educational and scientific services were limited. Indians were appointed to positions in the provincial and subordinate services, while the prestigious imperial services were reserved for Europeans. Whatever information Indians gathered regarding the making of some new description of technology was, therefore, a result of their quest for it.[32] *Grambarta Prakashika*, a well circulated Bengali journal in the *mofussil* areas, observed:

> We came to know that Babu Krishna Chad Bandopadhyay stood first in the final examination of the Roorkee College. He is the first person among Bengali students to achieve this distinction. Babu Umesh Chandra Mukhopadhyay, who went to England to study medicine, secured the first place at the Glasgow College among two hundred British students. These are the proof that Bengalis can also master European science and technology. But our government is still skeptic about the intellect of the Bengali students. The common argument is that due to caste prejudice, the Bengali people cannot perform well in the arena of Western science and technology. But after the achievements of these students, the government is now saying that Bengali people are not efficient in various higher-level jobs. Passing an examination does not lead to success in professional life where one has to deal with various kinds of responsibility. These are actually excuses on the part of the government to exclude Bengalis from the higher-level jobs.[33]

Even in the unfavorable atmosphere of medical and engineering education, Bengal's performance on the whole was impressive, and even high-caste youths were willing to study practical engineering and undertake mechanical work.[34] But the prospects were hardly lucrative, and native subordinates, however intelligent they may have been in

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[26] Anil Kumar, "Colonial Requirements and Engineering Education: The Public Works Department, 1847-1947," in *Technology and the Raj*, ed. Roy Macleod and Deepak Kumar (New Delhi: Sage, 1995), 227.

[27] *Royal Indian Engineering College Committee Report* (Simla: Government Printing, 1903), 13.

[28] G.G. Joseph et al., "Eurocentrism in the Social Sciences," *Race and Class* 31.4 (1990): 1-26.

[29] There is no precise translation of *bhadralok* in English. This refers to the new class of "gentlefolk" that arose during colonial times in Bengal. Most, though not all, belonged to the upper caste, mainly Brahmins, Baidyas and Kayasthas.

[30] "Practical mechanics or engineering forms no portion of native education. From the *pathshala* to the college they have no more practical idea of manufacturing than they have of the old women in the moon. The end and aim of their education is to make them either accounts or letter writers. India is full of raw materials which are mouldering in neglect for want of men to work them into forms and fashions. The resources of the country will never be developed unless the children of the soil learn the way to develop them." *Hindu Patriot*, April 6, 1854.

[31] See Ian Inkster, "Colonial and Neo-Colonial Transfer of Technology: Perspectives on India before 1914," in *Technology and the Raj* (New Delhi: Sage Publications, 1995), 25-50.

[32] Satpal Sangwan, "Indian Response to European Science and Technology 1757-1857," *The British Journal for the History of Science* 21.2 (1988): 211-32.

[33] *Grambarta Prakashika*, September 9, 1876. In April 1863, Harinath Majumdar, headmaster of a Bengali *pathshala*, started this journal as a way of making the government aware of the miserable condition of poor villagers.

[34] B.R. Tomlinson, "Colonial Constructs and Technical Education in India, 1880-1914," paper presented at the *20th Conference of International Association of Historians of Asia*, Jawaharlal Nehru University, New Delhi, November 14-17, 2008.

engineering matters, had little chance of rising above the subordinate ranks.

Bengali resentment of the preferential treatment Europeans received had grown since the second half of nineteenth century. This resentment, fostered by several highly publicized instances of transparent discrimination in appointments to governmental services,[35] had two effects: it led to demands for greater self-sufficiency in scientific and technological training and research,[36] and it also increased the growing resentment of educated Bengalis towards British rule, thereby aiding the cause of Indian nationalism.[37] By 1900, Bengali intellectuals had developed a vigorous critique of the colonial discourse on scientific and technical education, with many Bengali enthusiasts for technical education linking the issue directly to the larger one of India's industrial backwardness.

INDUSTRIALIZE OR PERISH

From the early nineteenth century, the spokesmen of the Bengali *bhadralok* community were in continuous search of the causes of the industrial backwardness of their province. Throughout the century, the timidity of Bengali entrepreneurs was a recurrent topic of Bengali press.[38] One of the important factors hampering the growth of industry in Bengal was the dearth of adequately trained technicians. Consequently, one of the important and oft-repeated demands of the Bengali leadership was for the opening of technical schools, colleges and research institutes in order to spread technical knowledge far and wide in the land.[39]

Much of the Indian intelligentsia was influenced by the Baconian program – the optimism that scientific knowledge brought about wealth. They tried to revive the missing link between science and industry. Pramatha Nath Bose, among the first Indians recruited to the Civil Service, superintendent of the prestigious Geological Survey of India, and later an important figure in the founding of Tata Iron and Steel Works, was probably the first to speak about science-based industries and the need to remodel the university curriculum accordingly. In 1886, he published a pamphlet on technical and scientific education in Bengal that is said to have inaugurated the movement for technical education in Bengal.[40] He wanted science subjects to be taught with an eye for their applications to industry. The Indian Industries Association was thus formed in 1891, its principal members including P. N. Bose himself and Trailokya Nath Mukherjee, renowned Bengali author and advocate of industrialization.[41] They arranged a series of popular lectures and experimented with indigenous raw materials, though without much success.

Prafulla Chandra Ray endeavored to make science directly relevant to the immediate needs of society. In 1892, he started Bengal Chemical and Pharmaceutical Works Ltd., which sought to put scientific knowledge to immediate industrial use. Ray felt the existing educational system was out of touch with practical needs and driving students disproportionately towards clerical and legal jobs. These favorite destinations were furthermore becoming overcrowded, with declining chances for further absorption. For Ray, the remedy was thus a close coordination among science, technology, and industry in order to bring the education system in line with present industrial demands.[42]

Many also felt that scientific and technical education was a necessary prerequisite for industrial growth.[43] The technical institutes were envisioned as providers of skilled workmen who would become the agents of industrial progress. The task was to initiate an "industrial regeneration of India" by educating the "Indian artificer" with the skills of modern science and technology.[44] The first decade of the twentieth century would thus prove important for science and technology in Bengal from the perspective of institutional construction, as by this time unemployment was a major problem for educated Bengali youths and society as a whole. The partition of Bengal in 1905 was ultimately a final blow to an already troubled Bengali society. Prompted by rising unemployment and territorial partitioning, the *bhadralok*

[35] Deepak Kumar, "Racial Discrimination and Science in Nineteenth-Century India," *Indian Economic and Social History Review* XIX (1983): 63-82.

[36] "We are sorry to say that all the initiatives of the government to impart education are confined mainly in the field of literary education. Science and technical education remain the stepchild of the government's educational policy. The only effort for advanced level of scientific research has been taken by Dr. Mahendra Lal Sircar. After him nobody is interested in this regard. For advancement in the realm of science, rigorous research is necessary. But unfortunately there is no such scientific research conducted in this country." *Somprakash*, April 16, 1883. The journal was first published in 1858; Dwarakanath Vidyabhusan was the editor. Iswar Chandra Vidyasagar, too, was closely associated with *Somprakash*.

[37] Aparna Basu, "The Indian Response to Scientific and Technical Education in the Colonial Era, 1820-1920," in *Science and Empire: Essays in the Indian Context*, ed. Deepak Kumar (New Delhi: Anamika Prakashan, 1991), 131.

[38] For example, *Sambad Purnochandradaya*, January 13, 1853, reported on the necessity of higher-level technical education, which would in turn facilitate industrialization. *Purnochandradaya* appeared as a monthly journal in 1835 with Harachandra Bandopadhyay as the editor. This nineteenth-century journal circulated for almost 73 years.

[39] "To strip naked the disguised truth, the English want to reduce us all to the condition of agriculturists ... let us receive a commercial and industrial education." Bholanath Chandra, "A Voice for the Commerce and Manufactures of India," *Mukherjee's Magazine*.

[40] P.N. Bose, "Technical and Scientific Education in Bengal," in *Essays and Lectures on the Industrial Development of India* (Calcutta: Newman & Co, 1906), 59-74. Bose observed in despair: "In regard to higher technical education, progress during the last two decades has, I regret to say, been practically nil in Bengal."

[41] Kumar, *Science and the Raj*, 210.

[42] See P.C. Ray, *Life and Experiences of a Bengali Chemist*, Vol. I (Calcutta: Chuckvertty, Chatterjee & Co., 1932), 112-23.

[43] *Somprakash*, July 30, 1883, demanded better facilities for technical education.

[44] G. Subramanya Iyer, "Our Artisans and Mechanics: or Indian Arts and Crafts," *The Dawn* VII (1904): 272.

community started thinking in terms of self-sufficiency as a way of severing the province's ties to the colonial economy. Ultimately, they perceived modern industrialization and technical education as the final solution to their problem.

In November 1905, in the wake of the partition of Bengal, The Dawn Society, established in 1902 by Satish Chandra Mukherjee, was transformed into The National Council of Education (NCE) and included the cream of the intelligentsia and the most prominent Bengalis of the time.[45] The Council was intended to be a national university, free from European control and aid, and aimed at fusing the best of East and West. The plan for the university was ambitious, touching upon all aspects of education – literary, scientific and technical.[46] But issues with the plan soon began to emerge.

Influential figures like Taraknath Palit, Neelratan Sarkar, and P. N. Bose wanted the Council to confine itself to only scientific and technical education; this proposition did not receive the support of a majority of council members. As a result, on the very day the NCE was officially registered, June 1, 1906, a second rival organization, called the Society for the Promotion of Technical Education (SPTE), was established. The SPTE created Bengal Technical Institute (BTI) on July 25, 1906, while the NCE established the Bengal National College and School two weeks later.[47]

Ultimately, with respect to the institutionalization of technical education, BTI played the more prominent role.[48] Its principal objective was to impart scientific and technical education to Indians to further their industrial progress, and the institute aimed to provide industrial education largely ignored by the University of Calcutta and Directorate of Public Instruction (DPI), which were confined mostly to literary education. The intellegensia became aware of the significance of investment in human capital and recognized the necessity of addressing industrial imperatives through the stimulation of higher technical education. When the existing scope of technological training failed to meet their demands, they created their own models. In the first decade of the twentieth century, the institute began offering degree courses in various branches of engineering, and it emerged as the key to fulfilling India's demand for higher-level technical education.

CONCLUSION

A constant in the history of technical education in British India was the contrast between the government's oft-repeated policy of educating Indians in western science and technology and its hesitation to carry it out. The latter half of the nineteenth century was a period of consolidation and institution building. These institutions not only "imported" knowledge, but they also imparted and, to some extent, generated knowledge. Here, one question arises: were these institutions built to spread *new* knowledge, and if so, to what extent?

Let us consider the case of telegraphs and railways, the exemplary high-technology fields of nineteenth-century India. Telegraphs were entirely government-operated, while the railways, raised on guaranteed profits, depended upon wholesale imports from England.[49] Thus both operated in a vacuum: even repair workshops remained isolated from rest of the country, and no technological diffusion could take place in the vicinity of a railway colony.[50] The technological enterprises of nineteenth-century Bengal were essentially technology projects with specific aims, and not technology systems that represented parts of a bigger picture with bigger goals. While the geographical movement of technology was certainly achieved, as in the case of railways, the cultural diffusion of technology was both different and difficult. Colonial officials preferred geographical relocation to cultural diffusion, to the extent that each introduction of a new technological innovation was accompanied by European experts sent to set up and handle it. The colonial government encouraged technical training for natives to a certain level, but restricted the spread of knowledge beyond it. Ultimately, then, to a certain extent one may speak of the transfer of knowledge and technology, but in the case of India this transfer was ultimately restricted, confined to achieving certain predetermined goals.[51]

Despite such adverse conditions, many Bengali intellectuals saw western technology as their key to power and prosperity, and they continuously sought more machinery and knowledge than the British Raj offered them. They trenchantly criticized the official policy of confining technical education to the improvement of the work of carpenters, smiths and other handicraftsmen, pointing out that Bengal already had enough trained artisans. What the province needed were modern engineers. The main goal of technical education was thus not the revival of dying industries but

[45] Satish Chandra established the Dawn Society as an example of self-reliance in education and became its secretary. Its aims included providing Bengali students with an ideal of education, imparting religious and moral lessons to them, extending their intellectual capacities, and building their character. Moreover, it also believed in imbuing students with a sense of nationalism and patriotism while imparting practical technical education and developing indigenous industries.

[46] Haridas Mukherjee and Uma Mukherjee, *The Origins of the National Education Movement* (Calcutta: NCE, 1957), 40-41.

[47] See Dhruv Raina and S. Irfan Habib, *Domesticating Modern Science: A Social History of Science and Culture in Colonial India* (New Delhi: Tulika, 2004), 83-147.

[48] See Benoy Kumar Sarkar, *Education for Industrialization: An Analysis of Forty Years of Jadavpur College of Engineering and Technology, 1905-45* (Calcutta: Chuckervertty, Chatterjee & Co., 1946). Through this institute, Sarkar called for mistrification (training of the artisans), factorification, and industrialization.

[49] "Bharatbarsha Railway," *Amrita Bazar Patrika*, September 16, 1869. The journal appeared in 1868, with Sisir Kumar Ghosh as the editor.

[50] Fritz Lehmann, "Great Britain and the Supply of Railway Locomotives to India: A Case Study of 'Economic Imperialism'," *Indian Economic and Social History Review* 2 (1965): 297-306.

[51] Ian Inkster, "Colonial and Neo-Colonial Transfer of Technology," 35.

rather the establishment of new, large-scale industries that would produce goods that were then imported.[52] Hence, the British model was seen as inadequate for future independent development, and as one contemporary journal observed:

> The system of university education, such as it exists in India at the present day, has not been altogether the success which it was expected it might be. … Foreign education has not enabled us to be self-reliant, self-dependent, self-sacrificing, patriotic. The present system of mere examinations has failed to bring to the front the stamp of men who can hold their own in the great industrial struggle which is the marked feature of the great civilizations amidst which we live.[53]

The new watchword of the erudite was rapid industrialization based on modern techno-scientific knowledge. P. N. Bose, in his Presidential Address at the Bengal Industrial Conference (1891), thus remarked:

> Yes, technical education is very badly needed in this country. … In order to settle what kind of technical education is specially wanted, we must find out what industries are capable of special development. Now industries may be grouped under two heads: (1) Art-Industries, … and (2) Science-Industries, industries more or less dependent upon some branch or other of natural science … [And ultimately,] it will be apparent that it is the science and not the art industries that require to be specially developed.[54]

A figurehead among the intelligensia, Bose's statement thus emphasizes the role of science within industrialization and the role of industrialization in economic development. Nothing could describe the needs of the time better than this statement, and technical education controlled by Indians for a future directed by Indians was a critical part of this movement.

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[52] R.C. Dutt, in his presidential address at the first Indian Industrial Conference, stated that a shift in emphasis from cottage crafts to urban industries was inevitable. See *Industrial Conference: Full text of the papers held at and submitted to the Industrial Conference held at Benaras in December, 1905*, (Benaras: Industrial Conference, 1905), 1-5.

[53] *The Dawn* I.11 (1898): 334.

[54] P. N. Bose, *Essays and Lectures on the Industrial Development of India*, 11.

JUDICIAL INDEPENDENCE IN PAKISTAN:

A BRIEF HISTORICAL ACCOUNT

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ABSTRACT

Fundamental rights, rule of law, and judicial independence are closely connected, with the absence of one serving to negate the others. The independence of the judiciary is thus a matter of global concern. Specifically, this paper will discuss the plight of judicial independence in the constitutional courts of Pakistan. Though Pakistan has produced three constitutions since its independence, all of which having touted the doctrine of judicial independence, the practical application of this doctrine has yet to be realized in a substantive way. The Pakistani judiciary has come under attack from both military dictators and democratic governments, with each new government attempting to appoint higher-court judges in line with their governing ideals. Regardless of the type of regime, democratic and authoritarian alike, judges failing to adhere to the ideologies of the ruling elite have been attacked, both individually and institutionally. The judiciary of Pakistan thus faces a complex reality, with no single dictator, democratic ruler, or judge who can be held wholly accountable for undermining its judicial independence.

INTRODUCTION

Generally speaking, constitutions of contemporary democratic states emphasize the protection of their citizens' fundamental rights through the strict observance of the rule of law. The independent judiciary establishes this rule of law and protects citizens against the arbitrary use of power by the executive branch.

Pakistan adopted a parliamentary system of government after its independence but has been unable to sustain democracy in the face of multiple martial law regimes. Constitutional courts have played a significant role in this game of regime changes, and each time Pakistan has been confronted with a constitutional crisis, the courts have been called upon to mediate the situation. Often, the courts have sided with the commanding executives, as military dictators have attempted to subjugate the judiciary

The above image, provided kindly by Iram Nayab Aslam, depicts the Supreme Court of Pakistan.

in order to avoid challenges to their own unconstitutional actions. Furthermore, these regimes have often abrogated or suspended existing constitutions, introducing their own, or they have added amendments through provisional constitutional orders. They have required judges to take new oaths under their provisional constitutional orders, with resistant judges being forced to step down from their positions, and they have also appointed new judges of their own choosing. Whenever the judiciary has tried to challenge this arbitrary use of executive power, the relationship between the executive and the judiciary has become strained, regardless of whether these regimes have been democracies or dictatorships. As such, the role of the constitutional courts has been controversial, with the judiciary being blamed for supporting the unconstitutional actions of military usurpers and powerful executive heads rather than acting in line with parliament and the constitution.

THE MEANING AND IMPLICATION OF JUDICIAL INDEPENDENCE

According to Wallace, judicial independence means that a judge is free to dispose of cases and administer the affairs of the court without any intervention from outside the court.[1] This definition, however, covers only one aspect of judicial independence: the individual, in reference to the power of the judge himself. The Supreme Court of Pakistan, in the case of Government of Sindh v. Sharaf Faridi (1994), stated:

> The independence of the judiciary means (1) every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reasons; and (2) that the judiciary is independent of the executive and the legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.[2]

In the case of Pakistan, therefore, judicial independence is best understood in terms of two categories: the individual and the institutional. Individual independence means that the judge is secure in terms of tenure of service, compensation, and appointment, and that he is free to decide cases without any pressure from outside or inside the institution. Institutional independence, on the other hand, stems from the doctrine of the separation of powers, meaning that the judiciary is among the vital organs of the state and that it must be separated from other organs with respect to its constitutional powers and responsibilities.[3] Institutional threats are more realistic and realizable than individual threats, for in spite of constitutional insulation, the legislature is often able to exert pressure on judiciary processes.[4]

Thus, the judiciary can avert governmental crisis only when judicial review has already been established in a particular country.[5] Members of the judiciary are required to demonstrate high moral character and integrity in utilizing the tool of judicial review for the preservation of fundamental rights.[6] Hamilton defends the power of judicial review and suggests that it does not imply the judiciary is superior to the other pillars of state, but rather that it guarantees the supremacy of the people of a state when their constitutional rights are breached by the executive or legislature.[7] While modern democratic states do generally have independent judicial systems, the debate on the actual independence of the judiciary itself has yet to be fully resolved.

JUDICIAL INDEPENDENCE DURING DICTATORIAL REGIMES

The Objectives Resolution, a substantive part of all constitutions of Pakistan, declared, "Wherein the independence of the judiciary shall be fully secured."[8] However, the judicial history of Pakistan reveals that judicial independence has been compromised several times. The factors affecting judicial independence are intricately linked to Pakistan's legal and political history, as the trends set by actual practice have dominated constitutional guarantees.[9] Military coups have been a part of Pakistan's history, and it has been routine practice for each dictator to introduce

1 J. Clifford Wallace, "Judicial Administration in a System of Independents: A Tribe with Only Chiefs," *BYU Law Review* (1978): 52.

2 PLD 1994 SC 105 [Government of Sindh v. Sharaf Faridi].

3 Deanell Reece Tacha, "Independence of the Judiciary for the Third Century," *Mercer Law Review* 46 (1994): 645.

4 John Ferejohn, "Independent Judges, Dependent Judiciary: Explaining Judicial Independence," *Southern California Law Review* 72 (1998): 360.

5 J. Clifford Wallace, "An Essay on Independence of the Judiciary: Independence from What and Why," *NYU Annual Survey of American Law* 58 (2001): 244-245.

6 Wallace, "An Essay on Independence," 345.

7 Alexander Hamilton, "The Federalist No.78," 1788.

8 Constitutions of Pakistan, 1956, 1962, and 1973.

9 "A Long March to Justice," International Bar Association Human Rights Institute Report, September 2009, accessed September 20, 2012, http://pages.shanti.virginia.edu/uspakistan/background-information-on-the-web/files/2010/02/Pakistan-Report_Sept094.pdf, 33-39; Anja Seibert-Fohr, "Judicial Independence – The Normativity of an Evolving Transnational Principle," in *Judicial Independence in Transition*, ed. Anja Seibert-Fohr (London: Springer, 2012), 1348.

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his own law and constitutional order, forcing judges of the superior courts to take oath under these laws instead of the Constitution.[10]

The first Constitution of Pakistan (1956) insulated the independence of the judiciary, thereby granting security of tenure and the powers of judicial review.[11] Just two years after the inception of this constitution, a power struggle began between the executive and the legislature, resulting in the annulment of the Constitution and the dissolution of the federal and provincial legislature by the President, Major-General Iskander Mirza. As a result of this military coup, the Constitution was abrogated, martial law was imposed, and General Ayyub Khan was appointed Chief Martial Law Administrator.[12] Mirza issued the Laws (Continuance in Force) Order (LCFO) in an attempt to remedy the abrogation of the Constitution and to avoid a situation of no law for the country. The LCFO declared that the pre-existent laws would remain valid unless and until amended by martial law. This imposition of martial law, the LCFO, and the annulment of the Constitution were called in question in the Supreme Court of Pakistan in State v. Dosso, challenging the Supreme Court to show moral courage in protecting the Constitution (though it ultimately chose to side with the powerful executive).[13] In the Dosso case, the appellant's claim that their rights should be decided according to abrogated constitutional provisions gave rise to conflict between the Constitution and the LCFO. The Supreme Court of Pakistan relied on Kelsen's "legal positivism"[14] theory and declared that the military coup was legitimate in its revolutionary success.[15] Ultimately, the credibility of the courts relies upon their decisions; impartial decisions beget credibility in the eyes of people, while skewed and unconvincing judgements undercut public confidence in judicial institutions.[16]

In 1962, General Khan introduced the new Constitution of Pakistan, which stipulated the addition of the Supreme Judicial Council. The Supreme Judicial Council consisted of senior members of the Supreme Court and the High Courts, with a mandate to hear the complaints of misconduct against members of the higher judiciary.[17] Indeed, this measure was a positive step for judicial independence. Nonetheless, due to Khan's appointment of judges on the basis of personal preferences, public confidence in the judiciary began to decline.[18] The loss of public confidence was detrimental; as Justice Breyer states, "The judicial system, in a sense, floats on a sea of public opinion."[19] Thus, in 1968, the public displayed its resentment of the Khan dictatorship, concentrating on his resignation rather than on the independence of the judiciary and other political institutions.[20]

General Yahya Khan, who succeeded Ayyub Khan as Chief Martial Law Administrator, made the first overt effort to subvert the judiciary.[21] Yahya Khan renounced the Constitution of 1962 and issued a Legal Framework Order and a presidential order mandating that all judges declare their full assets before the Supreme Judicial Council. He abridged the independence of courts, barring the courts from hearing petitions against martial law authorities or tribunals.[22] These measures resulted in the resignation of one judge from the Lahore High Court, along with the removal of another judge from the High Court.[23] Once Yahya Khan was no longer in power, however, the validity of his regime was called into question by the Supreme Court, which for the first time declined to provide judicial support to a military coup and declared Yahya Khan's actions unconstitutional.[24]

The army of Chief General Zia-ul-Haq took control of the state on July 5, 1977 by abrogating the constitution and imposing martial law.[25] The coup was, as other coups had also been, shouldered by the superior judiciary as four chief provincial justices agreed to serve as governors of their provinces.[26] In spite of the full cooperation of the judiciary, Zia amended the Constitution of 1973 to avoid any unforeseen challenge from judges, appointing a new

10 "A Long March," International Bar Association Human Rights Institute Report, 5.

11 Art. 150, 151, 156, Constitution of Pakistan, 1956.

12 Richard Blue et al., "Pakistan Rule of Law Assessment – Final Report" United States Agency for International Development, November 2008, accessed May 1, 2012, http://pdf.usaid.gov/pdf_docs/PNADO130.pdf, 1.

13 T.K.K. Iyer, "Constitutional Law In Pakistan: Kelsen In The Courts," *American Journal of Comparative Law* 21 (1973): 761.

14 "In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits." John Gardner, "Legal Positivism: 5*1/2* Myths," *American Journal of Jurisprudence* 46 (2001): 199.

15 "It sometimes happens, however, that the Constitution and the national legal order under it is disrupted by an abrupt political change not within the contemplation of the constitution. Any such change is called a revolution, and its legal effect is not only the destruction of the existing constitution but also the validity of the national legal order ... For the purpose of the doctrine here explained, a change is, in law, a revolution if it annuls the constitution and the annulment is effective ... Thus the essential condition to determine whether a constitution has been annulled is the efficacy of the change ... Thus a victorious revolution, or a successful coup d'état is an internally recognized legal method of changing a constitution." PLD 1958 SC 533 [State v. Dosso].

16 Peter J. McCormick, "Judicial Independence and Judicial Governance in the Provincial Courts," Canadian Association of Provincial Court Judges, April 2004, accessed September 15, 2012, http://www.judges-juges.ca/en/publications/pub-docs/JudgeBook.pdf, 6.

17 Constitution of Pakistan, 1962.

18 Hamid Khan, *Constitutional and Political History of Pakistan* (Lahore: Oxford University Press, 2009), 407.

19 Stephen Breyer, "Judicial Independence: Remarks by Justice Breyer," *The Georgetown Law Journal* 95 (2007): 903.

20 Sheila Fruman, "Will the Long March to Democracy in Pakistan Finally Succeed?," United States Institute of Peace, July 2011, accessed April 30, 2012, http://www.usip.org/files/resources/Democracy_in_Pakistan.pdf.

21 Khan, *History of Pakistan*, 292.

22 T.K.K. Iyer, "Constitutional Law In Pakistan," 762.

23 PLD 1971 SC 585 [President v. Justice Shaukhat Ali].

24 PLD 1972 SC 139 [Asma Jillani v. Government of Punjab].

25 Fruman, "Will the Long March to Democracy," 6.

26 Khan, *History of Pakistan*, 444.

Supreme Court Chief Justice after shortening the tenure and forcing the retirement of the incumbent justice. Afterwards, using the doctrine of state necessity, the Supreme Court declared the military takeover by Zia and his constitutional amendments to be lawful and justified.[27] The Supreme Court denied Zulfiqar Ali Bhutto's death sentence appeal, and Bhutto was hanged in 1979. Later, a member of the bench that had rejected the appeal acknowledged that they had been forced to deny Bhutto's appeal, including through threats on some of the judges' lives.[28] Zia also introduced a new constitutional amendment that restricted the courts' powers of review against the actions of the military government; similarly, his Provisional Constitutional Order (PCO) of 1981 served to limit judicial independence by forcing judges to take a new oath and by allowing the transfer of High Court judges and cases from province to province, which Dakolias and Thachuk found as well to be injurious to personal judicial independence.[29, 30] With this order, only selected judges were invited to take the new oath, unlike when all judges had been allowed to in 1977. For Verkuil, this arbitrary removal of judges who deviate from the aspiration of the executive is contrary to the very notion of judicial independence; ex-Pakistani Chief Justice Cornelius described it as "the rape of the judiciary."[31, 32]

On October 14, 1999, General Musharraf overthrew Sharif's democratic government, announced a state of emergency, and imposed a Provisional Constitutional Order.[33] He suspended provincial and federal parliaments, held the constitution in abeyance, debarred the Courts from issuing orders against these measures, and forced judges to take a new oath under the Oath of Office (Judges) Order (2000). Six justices of the Supreme Court, including the Chief Justice and a number of High Court judges, either refused or were not offered the new oath and were thereby forced to retire.[34] In line with precedent, the Supreme Court legitimized the coup of Musharraf on the grounds of state necessity and granted him effective free rein with the Constitution for three years.[35]

In 2005, Iftikhar Muhammad Chaudhry was appointed Chief Justice of Pakistan and promptly initiated proceedings of cases involving corruption, misconduct, and abuse of power by the Musharraf Government.[36] In the case of Watan Party v. Federation of Pakistan (2006), he declared the privatization of Pakistan Steel Mills unconstitutional.[37] He summoned police and security officials, against whom there were allegations of illegal confinement in cases of missing persons, and ordered judicial investigations in these cases. Musharraf threatened Chaudhry and forced his resignation, but Chaudhry refused, continuing his judicial activism.[38] Musharraf passed an order declaring Chaudhry to be on compulsory leave from March 9, 2007, until the Supreme Judicial Council submitted a report to Musharraf and, based on the report, action could be taken.[39] The Supreme Court unanimously declined Musharraf's order and Chaudhry was reinstated as Chief Justice on July 20, 2007.[40]

On November 3, 2007, Musharraf declared a state of emergency, promulgated his new PCO, and demanded a new oath under it from all judges of the higher judiciary.[41] The same evening, a seven-member bench of Supreme Court judges, each of whom refused to take the oath, attempted to declare the state of emergency unconstitutional; consequently, the armed forces attacked the Supreme Court, and these judges were placed under house arrest.[42] Musharraf alleged, while mentioning the grounds of emergency, that some of the judges were working against national interests by diverting the course adopted by the executive and legislature in the war against terrorism.[43] Musharraf attempted to shield his actions against judicial review by mentioning Section 3(1) of the PCO, which declared that no court would be allowed to challenge the validity of the orders.[44] He also amended the Constitution in adding Article 270AAA,[45] which validated

27 PLD 1977 SC 657 [Begum Nusrat Bhutto v. The Chief of the Army Staff and Another].

28 Khan, *History of Pakistan*, 467.

29 Khan, *History of Pakistan*, 494.

30 Maria Dakolias and Kim Thachuk, "Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform," *Wisconsin International Law Journal* 18 (2000): 382.

31 Paul R. Verkuil, "Separation of Powers, the Rule of Law and the Idea of Independence," *William & Mary Law Rev*iew 30 (1988-1989): 331.

32 Khan, *History of Pakistan*, 497.

33 Thomas Houlahan, "An Independent Assessment of Lawyers Movement and Independence of Judiciary," South Asia Forum for Human Rights, May 21, 2008, accessed May 3, 2012, http://www.safhr.org/index.php?option=com_docman&task=cat_view&gid=135&Itemid=578, 7.

34 Adeel Khan, "Pakistan in 2007: More Violent, More Unstable," *Asian Survey* 48.1 (2008): 148; Aqil Shah, "The Transition to 'Guided' Democracy in Pakistan," in *The Asia-Pacific: A Region in Transition*, ed J. Rolfe (Honolulu: Asia-Pacific Centre for Security Studies, 2004), 214.

35 PLD 2000 SC 869 [Zafar Ali Shah v. Pervez Musharraf].

36 Michael B. Hyman, "Heeding History's Trail of Messages: The Judiciary's Role In Preserving Democracy," *The Judges' Journal* 47.2 (Spring 2008): 22.

37 PLD 2006 SC 697 [Watan Party v. Federation of Pakistan].

38 "A General State of Disarray," *The Economist*, May 17, 2007, accessed December 11, 2011, http://www.economist.com/node/9189311?story_id=9189311; Rahimullah Yusufzai, "Missing Persons," *News International Pakistan*, September 8, 2007, accessed December 13, 2011, http://s14.invisionfree.com/PorchlightEast/ar/t475.htm.

39 "A Long March," International Bar Association Human Rights Institute Report, 24.

40 "Short Order of the Supreme Court - CoP No. 21 of 2007, " Chief Justice of Pakistan, July 20, 2007, accessed May 12, 2012, http://www.pakistani.org/pakistan/constitution/events/cjp_ref_2007/sc_ref_order.html.

41 "A Long March," International Bar Association Human Rights Institute Report, 26.

42 Supreme Court of Pakistan, "Supreme Court Annual Report April 2009 to March 2010," accessed September 20, 2012, http://www.supremecourt.gov.pk/Annual_rpt_ap09mar10/10.pdf.

43 Khan, "Pakistan in 2007," 149-151.

44 Provisional Constitution Order No. 1 of 2007.

45 "Article 270AAA(1): Validation and affirmation of laws, etc. The proclamation of Emergency of 3rd November, 2007, all President's Orders, Ordinances, Chief of Army Staff Or-

his actions and provided absolute immunity against judicial review for himself and his office holders. The Supreme Court of Pakistan, comprised of judges who took the new oath under the PCO, validated the proclamation of emergency, as well as the issuance of the PCO itself.[46]

Nonetheless, Musharraf's actions gave birth to a strong movement against his regime, with the leadership of eminent lawyers and retired judges and public support from the political parties, civil society, and electronic and print media.[47] Vowing to protect the rule of law and to restore democratic institutions, the nation was united against dictatorship – a unique moment in the history of Pakistan, which had never before seen public pressure for the protection of judicial independence.[48]

JUDICIAL INDEPENDENCE DURING DEMOCRATIC REGIMES

The legitimacy of judicial institutions is rooted in strongly built social and political norms of respect for justice and rule of law. The judiciary is thus dependent on the support of civil society for its independence. If society does not develop a culture of respect for judicial independence, then constitutional guarantees become invalidated.[49] In opposition to this principle, Pakistani political rulers attempted to curtail the powers of the judiciary just as the country's military dictators did, pulling the judiciary into political conflict and leading the country toward martial law and the suspension of the Constitution.[50]

With Pakistan's independence, the first constituent Assembly was formed under an "interim constitution,"[51] with the dual task of serving as a federal legislature and drafting the constitution of the country.[52] Although Pakistan had not ratified its own constitution at the time, the courts derived their power and legitimacy from the inherited constitution.[53] Pakistan faced its first constitutional crisis in 1955, when Governor General Ghulam Muhammad dissolved the constituent assembly in retaliation for its attempt to abolish his power to dismiss its ministers. The Federal Court validated this measure, setting the precedent for the aforementioned doctrine of state necessity.[54] This Federal Court judgment provided the basis for future constitutional and judicial crises and proved to be the cornerstone of future military coups.[55]

In 1973, the Constituent Assembly led by Zulfiqar Ali Bhutto, then elected as Prime Minister, passed the third constitution in 1973. This constitution provided for the jurisdiction of the courts and ordered that the judiciary be separated from the executive within fourteen years from the date of its announcement.[56] Bhutto later introduced the 5th Constitutional Amendment, in which the contempt powers of judges were reduced and the term of service for Supreme Court and High Court chief justices was fixed for five years, except in the case of first reaching retirement age. The transfer of High Court judges from one province to another for a period of less than 1 year, even without the consultation of Chief Justice of the High Court, was also allowed.[57] In this way, Bhutto exercised his executive power in creating further control over the judiciary, and these amendments were seen by many as an attack on judicial independence by a democratic government.[58]

After the death of General Zia in 1987 and the restoration of democracy in Pakistan, the High Courts and the Supreme Court seemed rejuvenated as they began to pass judgments to clarify the constitutional provisions relating to the appointment of judges. Problems first emerged during the Government of Sindh v. Sharaf Faridi case, in which the Supreme Court commented that the High Courts and the Supreme Court should be provided with financial autonomy in order to ensure judicial independence, including courts' complete control over their budgets.[59] The executive again interfered with judicial independence, with former Prime Minister Benazir Bhutto's violation of the principle of seniority in her appointment of Chief Justice.[60] The same was repeated with High Courts chiefs and a number of ad-hoc

ders, including the Provisional Constitution order No.1 2007, the Oath of Office (Judges) Order, 2007, the amendments made in the constitution through the Constitution (Amendment) Order, 2007, and all other laws made between the 3rd day of November, 2007 and the date on which the Proclamation of Emergency of the 3rd Day of November, 2007, is revoked (both days inclusive), are accordingly affirmed, adopted, and declared to have been validly made by the competent authority and notwithstanding anything contained in the Constitution shall not be called in question in any court or forum on any ground whatsoever." Constitution (Amendment) Order, 2007, President's Order No. 5 of 2007, November 21, 2007.

46 PLD 2008 SC 178 [Tikka Iqbal Muhammad Khan v. General Pervez Musharraf].

47 K. Alan Kronstadt, "Pakistan's Political Crisis and State of Emergency", CRS Report for Congress, November 6, 2007, accessed April 28, 2012, http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA474873&Location=U2&doc=GetTRDoc.pdf.

48 Justice (r) Dr. Javid Iqbal, "The Independence of Judiciary," accessed September 20, 2012, http://www.pc.gov.pk/vision2030/approach%20paper/t6/theme%206-Javed%20Iqbal-1.pdf, 4.

49 Vicki C. Jackson, "Judicial Independence: Structure, Context, Attitude," in *Judicial Independence in Transition*, ed. Anja Seibert-Fohr (London: Springer, 2012), 40.

50 Iqbal, "The Independence of Judiciary," 3.

51 The Government of India Act (1935) and the Indian Independence Act (1947), with some amendments, were adopted as the provisional constitution of Pakistan.

52 Tahir Kamran, "Early Phase of Electoral Politics in Pakistan: 1950s," *South Asian Studies: A Research Journal of South Asian Studies* 24.2 (2009): 257-282.

53 Iqbal, "The Independence of Judiciary," 1.

54 PLD 1955 FC 240 [Federation of Pakistan v. Maulvi Tamizuddin Khan] and PLD 1955 FC 435 [Reference by H.E. Governor General].

55 "A Long March," International Bar Association Human Rights Institute Report, 33.

56 Constitution of Pakistan, 1973, Art. 175.

57 The Constitution (Fifth Amendment) Act, 1976.

58 Khan, *History of Pakistan*, 411.

59 PLD 1994 SC 105 [Government of Sindh v. Sharaf Faridi].

60 Richard et al., "Pakistan Rule of Law," 2.

judges, each appointed based on their political affiliation with Bhutto.[61]

These actions resulted in the decision of the Al-Jehad Trust case, in which the Supreme Court declared twenty Lahore High Court judge appointments unconstitutional, establishing rules for future superior court appointments by the executive.[62] The Supreme Court set a milestone with this judgment: based on its interpretation of Articles 177(1), 193(1), and 203-C(4) of the 1973 constitution, the Supreme Court mandated compliance with the advice of the Chief Justice, leaving no room for the executive to maneuver the process of appointments.[63] The executive's resistance to these orders resulted in the second Al-Jehad Trust case,[64] which added that the President was legally bound to accept the advice of the Prime Minister in the appointment of judges.

In 1996, President Farooq Laghari dismissed the government of Benazir Bhutto. Bhutto had allegedly presented a bill in the National Assembly granting power to send superior-court judges on forced leave. The bill also provided the National Assembly with the authority to permanently remove a judge by passing a vote of no confidence against him, thereby limiting the judges' ability to rule against the ruling party. Bhutto challenged the dissolution of her government in the Supreme Court, but the court ruled in favor of Laghari.[65]

Ferejohn argues that the judiciary is secure from politicians only because politicians cannot gather the support of the majority in limiting the constitutionally protected independence of the judiciary; instances in which politicians do gather a majority, however, are especially threatening.[66] Nawaz Sharif succeeded the Bhutto government with a two-thirds majority in 1997. He too attempted to subvert the judiciary by making appointments based on his own preference, neglecting the rulings of the Al-Jehad Trust case. Relations between Sharif and the Chief Justice of the Supreme Court, Sajjad Ali Shah, were strained as a result of issues surrounding Anti-Terrorist Laws.[67] There were also tensions within the judiciary, with some judges accusing Shah of being biased in his treatment of other judges regarding the provision of fringe benefits and the constitution of benches.[68] The Sharif government exploited this tension, and Shah was subsequently removed from his post by his fellow judges. This was a unique and unprecedented incident in the judicial history of Pakistan.[69] Also unprecedented was the attack on the Supreme Court by Sharif's supporters during his contempt proceedings, which carried the potential of resulting in his dismissal. This attack is thus indicative of public sentiment toward judicial institutions at the time, reflecting the dependence of the judiciary on public support.

The situation was normalized with the appointment of Ajmal Mian as Chief Justice, but the conflict between the judiciary and the Nawaz government had taken its toll, giving rise to the military coup of General Musharraf. In 2007, Musharraf issued the National Reconciliation Ordinance (NRO) to grant Benazir Bhutto amnesty from cases of corruption.[70] The ordinance was challenged in the Supreme Court and later played an important role in the political and judicial crisis of the post-Musharraf era.[71] In 2008, the Pakistan People's Party (the party led by Bhutto until her death) reformed the government but hesitated to restore the judges, who had been forcefully retired following the emergency proclamation of November 2007, despite the late Bhutto's promise to bring them back.[72]

The PPP feared these judges would decline to grant sanctity to the NRO, but when opposition parties and lawyers launched a long march in support of the judges in March 2009,[73] the PPP government was left with no option but to issue an executive order for their reinstatement. After reinstatement, the independent judiciary led by Chaudhry

61 "A Long March," International Bar Association Human Rights Institute Report, 37.

62 PLD 1996 SC 324 [Al-Jehad Trust v. Federation of Pakistan].

63 These Articles of the Constitution of 1973 are prior to the 18th Amendment; the procedure for the appointment of High Court and Supreme Court judges mentioned in these articles was changed under the 18th and 19th Amendments. Art. 177(1): The Chief Justice of Pakistan shall be appointed by the President and each of the other Judges shall be appointed by the President after consultation with the Chief Justice; Art. 193(1): A Judge of a High Court shall be appointed by the President after consultation (a) with the Chief Justice of Pakistan; (b) with the Governor concerned; and (c) except where the appointment is that of Chief Justice, with the Chief Justice of the High Court; Art. 203-C(4): The [Chief Justice] and a [Judge] shall hold office for a period not exceeding three years but may be appointed for such further term or terms as the President may determine, provided that a Judge of a High Court shall not be appointed to be a [Judge] for a period exceeding [two years] except with his consent and [except where the Judge is himself the Chief Justice] after consultation by the President with the Chief Justice of the High Court.

64 PLD 1997 SC 84 [Al-Jehad Trust v. Federation of Pakistan].

65 PLD 1998 SC 388 [Mohtarama Benazir Bhutto vs. President of Pakistan].

66 Ferejohn, "Independent Judges," 382.

67 Fayyaz Ahmad Hussain and Abdul Basit Khan, "Role of the Supreme Court in the Constitutional and Political Development of Pakistan: History and Prospects, Comparative Study of Begum Nusrat Bhutto (1977) and Syed Zafar Ali Shah Case (2000)," *Journal of Politics and Law* 5.2 (2012): 88.

68 Amir Mir, "Bitter Memories of 1997 Contempt Case Against Sharif," *The News International*, January 19, 2012, accessed September 20, 2012, http://www.thenews.com.pk/Todays-News-13-11847-Bitter-memories-of-1997-contempt-case-against-Sharif; Ajmal Mian, *A Judge Speaks Out* (Karachi: Oxford University Press, 2004), 248.

69 Hasan Askari Rizvi, "Civil-Military Relations in Contemporary Pakistan," *Survival* 40.2 (1998): 108-109.

70 Azmat Abbas and Saima Jasam, "A Ray of Hope: The Case of Lawyers' Movement in Pakistan," in *Pakistan: Reality, Denial and the Complexity of its State*, ed. Heinrich Böll Foundation (Berlin: Heinrich-Böll-Stiftung, Schumannstr, 2009), 14.

71 PLD 2007 SC 76 [Dr. Mubashir Hassan v. Federation of Pakistan].

72 Aitzaz Ahsan, "The Struggle Continues," *Newsweek, Pakistan*, July 29, 2011, accessed May 12, 2012, http://www.newsweekpakistan.com/features/363.

73 Mohammad Waseem, "Judging Democracy in Pakistan: Conflict between the Executive and Judiciary," *Contemporary South Asia* 20.1 (2012): 20.

made rulings in high-profile cases out of line with the interests of the PPP. The government thus attempted to impair the effectiveness of these judgments with delaying tactics, sometimes interpreting the judgments in accordance with their own standards.[74] The Supreme Court then declared the NRO unconstitutional, and ordered for the corruption cases to be reopened, creating panic among PPP leadership.[75] The Supreme Court ordered the government to contact Swiss officials to reopen its money-laundering cases, but the government blatantly refused.[76] The Chief Justice called for a bench to examine the implementation of the NRO judgment, and the bench ruled that Yousaf Raza Gillani, then Prime Minister, had violated his constitutional oath.[77]

The Supreme Court later initiated contempt proceedings against Gillani for his willful refusal to implement the NRO judgment, eventually convicting him for contempt of court and sentencing him to imprisonment until the rising of the court. His imprisonment thus lasted no more than one minute, but, under the constitution, the potential consequence of his conviction might have been disqualification from membership in the National Assembly.[78] Opposition parties demanded that Gillani resign from his office, but he refused. The issue of implementing the NRO judgment is still pending as of this writing, with the government appearing determined not to implement the judgment.

In 2010, Parliament introduced the 18th Amendment to the Constitution, which transferred authority for the appointment of judges from individuals to institutions. The power of the President to appoint judges was awarded to a parliamentary committee, and the power of the Chief Justice to nominate candidates was passed to a judicial commission.[79] This constitutional amendment was challenged in the Supreme Court, which maintains that this amendment bears serious questions[80] about the independence of the judiciary and referred the matter back to Parliament for reconsideration.[81] Some see this amendment as an attempt to bring the judiciary under parliamentary control,[82] but these recommendations were nonetheless accepted by Parliament and the 19th Amendment was passed accordingly.[83] Such was the chain of clashes between the executive and the judiciary in the post-Musharraf democratic regime.

CONCLUSION

All military dictators required judicial support of their coups. To eradicate impending judicial challenges, military governments snubbed judicial independence by forcing the judges to take oaths under so-called Provisional Constitutional Orders. Judges who refused were dismissed, and, in the absence of security of tenure, judicial independence was threatened.[84] Judges were forced to deliver rulings aligned with the objectives of the ruling parties, bruising the reputation of the judiciary in the eyes of the public and marginalizing this element crucial for the legitimacy of judicial institutions.

The political elite of Pakistan, responsible for ensuring the independence of the judiciary, also failed to accomplish this vital task. Though judicial independence was insulated in the constitutions, they attempted to subvert the judiciary when it challenged their arbitrary use of power. They violated the principle of seniority set by judicial precedent in the appointment of chief justices of High Courts and the Supreme Court, opting instead to appoint judges from their own political camps and striving to remove independent judges. The judiciary must be protected against the interventions of the powerful political elite, lest it have negative impact on the potential of judges to deliver just and independent decisions.[85] Judges could deliver judgments but lacked the power to enforce them, and with the executive and legislature determined to defuse the judgments of the courts, the notion of judicial independence in Pakistan was severely undercut.[86]

Nevertheless, politicians and military dictators alone cannot be blamed for the decline of judicial institutions, the judiciary itself having played a perilous partisan role by legitimizing the unconstitutional changes of governments

74 Waseem, "Judging Democracy in Pakistan," 27.

75 PLD 2009 SC 879 [Sindh High Court Bar Association v. Federation of Pakistan].

76 "E-Paper: Daily Express," *Express News*, April 20, 2012, accessed September 20, 2012, http://www.express.com.pk/epaper/index.aspx?Date=20120420.

77 Crl. M. A. 486 of 2010 in Criminal Appeal No. 22 of 2002, etc., accessed September 20, 2012, http://www.supremecourt.gov.pk/web/user_files/File/NROCaseDt.10.01.2012.pdf.

78 Criminal Original Petition No. 06 of 2012 in Suo Motu Case No. 04 of 2010, accessed May 8, 2012, http://www.supremecourt.gov.pk/web/user_files/File/Crl.O.P.6of2012.pdf.

79 "Eighteenth Amendment to the 1973 Constitution," ed. Dr. Noor Ul Haq, May 27, 2011, accessed September 20, 2012, http://ipripak.org/factfiles/ff134.pdf; Waseem, "Judging Democracy in Pakistan," 25.

80 Veto power to reject the nominations of the judicial commission given to parliamentary committee, dominance of the executive members in the parliamentary committee, and limitations on the consultation powers of the chief justice were considered to be an attempt to subvert the judicial independence guaranteed in the constitution. Constitutional Petition No. 08 of 2009 [Nadeem Ahmed Advocate v. Federation of Pakistan and Others].

81 Constitutional Petition No. 08 of 2009 [Nadeem Ahmed Advocate v. Federation of Pakistan and Others]; 18th Amendment Order, accessed May 14, 2012, http://www.supremecourt.gov.pk/web/user_files/File/18TH_AMENDMENT_ORDER.pdf.

82 Rizwan Ghani, "Supreme Court & 18th Amendment," *Pakistan Observer*, accessed May 14, 2012, http://pakobserver.net/detailnews.asp?id=58855.

83 "Text of 19th Amendment Bill," *The News International*, December 21, 2010, accessed March 15, 2012, http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=21434&Cat=2.

84 Bernd Hayoa and Stefan Voigt, "Explaining De Facto Judicial Independence," *International Review of Law and Economics* 27 (2007): 279.

85 See Kevin M. Esterling, "The Cornerstone of Judicial Independence," *Judicature* 82.3 (1998): 113.

86 Owen M. Fiss, "The Right Degree of Independence," in *Transition to Democracy in Latin America: The Role of the Judiciary*, ed. Irwin P. Stotzky (San Francisco: Westview Press,1993), 61.

in the face of limited judicial independence. Guardians of the Constitution and duty bound to keep state institutions within its boundaries, judges are called upon to deliver judgments to protect rule of law and judicial independence without fear of reprisal.[87] The dilemma, however, is that this task can only be accomplished when the judiciary enjoys overall independence.[88]

The role of civil society has been especially important in Pakistan's struggle for the restoration of democracy.[89] However, the general public did not show its rage over attacks on the judiciary, except when Musharraf attempted to dismiss Chief Justice Chaudhry. The mere presence of constitutional guarantees for judicial independence, in the absence of social commitment, lacks teeth. Judges, as members of society, need both public and political support, without which they lack the power to implement their rulings.[90] Conversely, public antipathy against attacks on the judiciary is necessary to preserve the judiciary's ability to protect the rule of law in the face of attacks by military dictators and political rulers alike.[91] Again, the dilemma is that public confidence in the judiciary arises from its performance and provides the basis for its legitimacy and independence; however, the performance of the judiciary is also a function of the level of independence it possesses.[92]

Judicial independence can only be guaranteed in Pakistan if politicians, judges, and the general public realize its importance and leave no stone unturned in their attempt to secure it, regardless of personal preference or political affiliation. Judicial independence is the problem of many, and all of the political, legal, and social players in Pakistan will have to play their respective roles in its preservation.

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87 Wallace, "Independence from What and Why," 243.

88 "Access to Justice: The Independence, Impartiality and Integrity of the Judiciary," United Nations Office on Drugs and Crime, 2006, accessed April 30, 2012, http://polis.osce.org/library/f/2700/531/UN-AUS-RPT-2700-EN-The%20Independence,%20Impartiality%20and%20Intergrity%20of%20the%20Judiciary.pdf.

89 Fruman, "Will the Long March to Democracy," 10.

90 Owen M. Fiss, "The Limits of Judicial Independence," *University of Miami Inter-American Law Review* 25.1 (1993): 64.

91 See Wallace, "Independence from What and Why," 241.

92 Marc Bühlmann and Ruth Kunz, "Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems," *West European Politics*, 34.2 (2011): 317-318.

THE TRIAL OF ERRORS IN BANGLADESH:

THE INTERNATIONAL CRIMES (TRIBUNALS) ACT[0] AND THE 1971 WAR CRIMES TRIAL

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ABSTRACT

Bangladesh was born of bloodshed and violence in 1971 with its secession from Pakistan. To date, there have been several attempts to prosecute the perpetrators of war crimes during the period of secession, culminating in the present Awami League-led government's proclamation of its plan to hold a war crimes tribunal for the 1971 criminals under the International Crimes (Tribunals) Act. This paper will first offer context for the legislation with a discussion of the 1971 war and will follow with an examination of the legislation itself and the key legal issues arising from it. The paper does not, however, attempt to analyze the trial that has already commenced.

"Remembrance restores possibility to the past, making what happened incomplete and completing what never was. Remembrance is neither what happened nor what did not happen, but, rather their potentialization, their becoming possible once again."

- Giorgio Agamben[1]

INTRODUCTION

War crimes tribunals have two primary responsibilities: punishing the perpetrators of crimes against humanity and establishing the truth. Whether or not reconciliation is the stated objective to be achieved through the judicial process of the establishment of truth, the latter becomes imperative

[0] Drafted in 1973 and amended in 2009.

[1] Giorgio Agamben, Potentialities: Collected Essays in Philosophy (Palo Alto: Stanford University Press, 1999): 267.

for achieving eventual reconciliation, healing the nation, and helping it come to terms with its past. Truth, justice, and reconciliation are intricately linked in rebuilding shattered societies.[2] War crimes trials can create an aura of fairness, establish a public record, and produce some sense of accountability by acknowledging the losses that victims have suffered and punishing the perpetrators for the harms inflicted.[3] It is therefore essential that Bangladesh, a country that now resolves to deal with the horrors of its secessionist past, must adhere to strict standards of creating fairness in justice by developing a comprehensive, coherent, and principled strategy for dealing with that very past.[4]

Bangladesh was born of bloodshed and violence in 1971 with its secession from Pakistan. The war, which lasted nine months and is remembered as the "Mukti Juddho" or "Liberation War" by Bangladeshis, resulted in the death of an estimated three million people[5] and the rape of between two hundred thousand[6] and four hundred thousand women.[7] There have also been accounts of torture, maiming, and the extermination of intellectuals. To date, there have been several attempts to prosecute the perpetrators of war crimes during the period of secession, culminating in the present Awami League-led government's proclamation of its plan to hold a war crimes tribunal for the 1971 criminals under the International Crimes (Tribunals) Act. This paper will first offer context for the legislation with a discussion of the 1971 war and will follow with an examination of the legislation itself and the key legal issues arising from it.

Bangladesh, in attempting to work through the wounds of its past with an arguably lopsided trial procedure, is likely to open a can of worms and potentially damage the fabric of Bangladeshi society. Reiterating this, Brad Adams, the Asia Director of Human Rights Watch, said that this is a highly politically charged subject in Bangladesh, which makes it even more important to have a judicial process that can withstand all challenges. Otherwise, some may argue that the trials are political in nature and that their aim is revenge rather than justice.[8] Ironically, the response to the trial proceedings from Bangladesh's civil society and opposition political parties, as well as from international jurists, has framed the trials as an attempt at political score-settling – and not without reason. At the heart of the critique is the legal framework of accountability, Bangladesh's International Crimes (Tribunals) Act, 1973, as amended by the Amendment Act, 2009 and hereinafter referred to as the ICTA, parts of which are outdated and have fallen behind the practices of more recent international tribunals and parts of which are likely to threaten the international standards of fair trial, both in the identification of the accused and the conduct of the investigation and trial process.

LIBERATION WAR, WAR CRIMES, AND THE ICTA

A critique of the ICTA must begin with its contextualization within the framework of a post-colonial history of Bangladesh, its secession from Pakistan, and the continuing violence amidst which the nation was formed. After World War II and the liquidation of the British Empire, independence trickled down to colonial India in 1947; parts of it were carved out and stitched together to form a Muslim-majority Pakistan and a Hindu-Majority India. Outside South Asia, the partition of India evokes little recognition.[9] Yet it has perhaps been responsible for a significant proportion of the most notable events in the history of the subcontinent. The birth of the two nations was also responsible for the largest human migration in recorded history. Post-1947 Pakistan was comprised of West Pakistan on the Punjab border of India and East Pakistan to the eastern side of India on the border of Bengal. In the formation of Pakistan, Islam was the foundation of nationhood that sought to unify two disparate regions, separated not only by geographical distance but also cultural and linguistic differences. East Pakistan, carved out of the Bengali speaking region of India, was the stepchild in the Pakistani family, not adequately represented in political and economic life. Many in East Pakistan believed themselves to be a colony of West Pakistan. And although its jute

2 Michael Ignatieff, "Articles of Faith," *Index on Censorship* 25 (1996): 118.

3 Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in the Hague* (Philadelphia: University of Pennsylvania Press, 2007).

4 Suzannah Linton, "Completing the Circle: Accountability for the Crimes of the 1971 Bangladesh War of Liberation," *Criminal Law Forum* 21 (2010): 191.

5 The official estimate in Bangladesh is three million dead. See *AP* 30, December 2000; *Agence France Presse*, October 3, 2000; Rounaq Johan, "3,000,000," in *Century of Genocide: Eyewitness Accounts and Critical Views*, ed. Samuel Totten (New York: Routledge, 1997).

6 Elizabeth D. Heineman, *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (Phildelphia: University of Pennsylvania Press, 2011): 157.

7 See interview of Dr. Geoffrey Davis in Bina D'Costa, "1971: Rape and it's consequences," *bdnews24.com*, December 15, 2010, accessed September 24, 2012, http://opinion.bdnews24.com/2010/12/15/1971-rape-and-its-consequences/.

8 "Bangladesh: Upgrade War Crimes Law," Human Rights Watch, July 8, 2009, accessed April 24, 2012, http://www.hrw.org/en/news/2009/07/08/bangladesh-upgrade-war-crimes-law.

9 Vinay Lal, "Partitioned Selves, Partitioned Pasts: A Commentary on Ashis Nandy's Death of an Empire," MANAS, accessed April 24, 2011, http://www.sscnet.ucla.edu/southasia/History/Independent/Partitionselves.html.

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industry contributed significantly to the Pakistani economy, East Pakistan received only 35 percent of the funds spent on development projects.[10] Furthermore, Bengali, the language spoken by its majority, was not identified as a national language until 1956. Finally, the perceived domination and racial and linguistic exploitation by West Pakistan primed the ground for a more direct confrontation between East and West Pakistan.[11]

The political crisis of 1971 was triggered by two events in late 1970. The West failed to respond adequately and promptly to a cyclone that hit the East in November 1970 and caused a massive flood that devastated much of the region. In the election[12] that followed, the Awami League of East Pakistan, comprised of a Bengali majority, won in a landslide victory. The Awami League captured 167 of the 169 constituencies in East Pakistan and won the majority of seats in the Pakistani National Assembly. Legally, the Awami League was to head the new government in Pakistan; Western military elites resisted, however, and President Yahya Khan cancelled Parliamentary session.[13] What followed was a five-day general strike (colloquially, "*hartal*") called by the Awami League.[14] The mass outrage of the East Pakistanis at the delay and subsequent cancellation of Parliamentary session was couched in the realization that the fruits of electoral victory would be denied to the Awami League by the West.

On March 7, 1971, Sheikh Mujibur Rahman's historic speech predicted the fate of East Pakistan:

> The struggle now is the struggle for our emancipation; the struggle now is the struggle for our independence. Hail Bangla! ... Since we have given blood, we will give more blood. God willing, the people of this country will be liberated ... Turn every house into a fort. Face [the enemy] with whatever you have.[15]

Operation Searchlight

The violence unleashed under the guise of "Operation Searchlight"[16] by the West Pakistan forces to quell what they viewed as an insurgency effectively drove the last nail into the coffin of negotiations. On March 25, 1971, Sheikh Mujibur signed an official declaration proclaiming Bangladesh a sovereign and independent country.[17]

The violence of Operation Searchlight resulted in the world's largest influx of refugees fleeing civil war, persecution, and genocide into neighboring India, posing significant economic, political, and social problems. When the provisional Bangladeshi government escaped to India, it was allowed by the host nation to continue functioning. India started to build up its forces on the borders of East Pakistan, while repeatedly calling the international community to intervene in the East Pakistan crisis. Finally, war was officially declared when Pakistani Air forces preemptively struck eleven Indian airfields. While strikes continued on its western border, India invaded East Pakistan on its eastern border as a matter of what was termed "humanitarian intervention." Pakistan eventually surrendered to India; the last few days before the surrender saw the war's most horrific mass killings in Dhaka, with the execution of intellectuals and professionals.[18]

The human cost of the Bangladeshi proclamation of independence was staggering. Estimates of the death toll vary considerably,[19] but frequently cited numbers derived from Bangladeshi sources put the number of deaths at three million, the number fleeing to India at ten million, and the number of women raped between two and four hundred thousand, leading to twenty-five thousand births. Low estimates place the death toll at three hundred thousand, including the

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[10] Anthony Mascarenhas, *The Rape Of Bangla Desh* (Delhi: Vikas Publications, 1972).

[11] Willem Van Schendel, *A History Of Bangladesh* (Cambridge: Cambridge University Press, 2009).

[12] The 1970 elections were the first in Pakistani history to be held on a one-person, one-vote basis and, therefore, a party that could sweep East Pakistan was in a position to dominate the national government. See Donald Beachler, "The Politics of Genocide Scholarship: The Case of Bangladesh," *Patterns of Prejudice* 41.5 (2007): 467-92.

[13] On March 1971, Zulfiqar Ali Bhutto, head of Pakistan Peoples Party, who won eighty constituencies in the elections, announced that his party would boycott the assembly. Yahya Khan delayed the convening of the assembly.

[14] Bina D'Costa, "1971: Rape and it's consequences."

[15] Mohammed Ayoob and K. Subramanyam, *The Liberation War* (New Delhi: S. Chand & Co. Pvt. Ltd, 1972).

[16] Operation Searchlight was led by General Tikka Khan and involved a full armed assault. The account of armed conflict is derived from various sources: *ICJ East Pakistan 1971 Report*, 1971; Van Schendel, *A History of Bangladesh*; Mascarenhas, *The Rape Of Bangla Desh*; "Hamoodur Rehman Commission Report (Unofficial Version)," 2007, accessed October 4, 2012, http://boltapakistan.files.wordpress.com/2007/08/hamood_ur_rehman_commission.pdf.

[17] Sheikh Mujibur Rahman's Speech available at http://www.fhiredekha.com/gallery/albums/userpics/7th_march_Sheikh_Mujib_full.mp3 (accessed April 24, 2011); Text of official declaration: "Today, Bangladesh is a sovereign and independent country. On Thursday night, West Pakistani armed forces suddenly attacked the police barracks at Razarbagh and the EPR headquarters at Pilkhana in Dhaka. Many innocent and unarmed have been killed in Dhaka city and other places of Bangladesh. Violent clashes between the EPR and police on the one hand and the armed forces of Pakistan on the other are going on. The Bengalis are fighting the enemy with great courage for an independent Bangladesh. May God aid us in our fight for freedom. Joy Bangla."

[18] See "Bangladesh Genocide: Dhaka University Massacre," *Youtube*, October 24, 2007, accessed April 24, 2011, http://www.youtube.com/watch?v=sMg9Ly9nK0g.

[19] A.M.A. Muhith estimated about three million Bangladeshis were killed between March and December 1971. A.M.A. Muhith, *Bangladesh: Emergence Of A Nation* (University Press, 1992); The number is close to three million as well in Rounaq Jahan, "Genocide in Bangladesh," *Century Of Genocide: Eyewitness Accounts And Critical Views,* ed. Samuel Totten et al. (New York: Garland Publishing, 1997); some claim it to be close to 1.5 million [R.J. Rummel, *Death By Government* (New Brunswick: Transaction Publishers, 1994)]; *The New York Times* also reports the number as close to three million [Sydney Schanberg, "'Bengalis' land a vast cemetery," *The New York Times*, January 24, 1972, accessed April 24, 2011, http://www.docstrangelove.com/uploads/1971/foreign/19720124_nyt_bengalis_land_a_vast_cemetery.pdf.].

number killed by the Pakistani army as well as *Razakars*, local Bengali collaborators, Biharis[20] killed by Bengalis, and Mukti Bahini[21] forces.

The sexual violence of the war seems to indicate that Pakistani forces used rape as a weapon of war. While two hundred thousand women were raped according to official figures, other accounts vary between three and four hundred thousand. Historical accounts of rape published soon after the war show that women from all socio-economic backgrounds encountered sexual violence.[22] After the war, the Bangladeshi government referred to the raped women as *birangonas* (war heroines) to prevent them from being socially ostracized and in an attempt to integrate them into mainstream life.

While many of these numbers are contested, including by Pakistan, it is no surprise that an equally contentious debate exists in regards to the application of the term "genocide" to the killings. While American political scientists like Richard Sisson and Leo E. Rose[23] and Pakistani sources deny[24] the term "genocide" to the widespread communal violence that occurred in the nine months of the war, political scientist Donald Beachler concludes that the political and ideological circumstances leading to the secession of East Pakistan were conducive to the occurrence of religious, cultural, and ethnic genocide.[25] Using the distinction presented by Robert Melson,[26] Beachler calls the Bangladeshi genocide a partial genocide and not a total genocide.[27] American diplomats in Dhaka, frustrated by the lack of response to the events in East Pakistan, which they viewed as genocidal, sent a strongly worded telegram to the State Department in April 1971:

> Our government has failed to denounce the suppression of democracy. Our government has failed to denounce atrocities. Our government has failed to take forceful measures to protect its citizens while at the same time bending over backwards to placate the West Pak[istan] dominated government and to lessen any deservedly negative international public relations impact against them. Our government has evidenced what many will consider moral bankruptcy … But we have chosen not to intervene, even morally, on the grounds that the Awami conflict, in which unfortunately the overworked term genocide is applicable, is purely an internal matter of a sovereign state. Private Americans have expressed disgust. We, as professional civil servants, express our dissent with current policy and fervently hope that our true and lasting interests here can be defined and our policies redirected.[28]

The International Commission of Jurists released a report shortly after the formation of Bangladesh. The report,

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[20] Indian non-Bengali-speaking Muslims who migrated to East Pakistan during the partition. They were ostensibly the linguistic minority in East Pakistan.

[21] Translated as "liberation army." Also defined as the Freedom Fighters who collectively fought against the Pakistani army during the Liberation War.

[22] Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, *1975)*; Anthony Mascarenhas, *The Rape Of Bangla Desh* (Delhi: Vikas Publications, 1972; Jillura Rahamana, *Literature of Bangladesh and other Essays* (Dhaka: Adorn Publications, 1982).

[23] Richard Sisson and Leo E. Rose, *War And Secession: Pakistan, India And The Creation Of Bangladesh* (Berkeley: University of California Press, 1990).

[24] For instance, Sarmila Bose uses the term "civil war" to describe the Bangladesh war in her article "Anatomy of Violence: Analysis of Civil War in East Pakistan in 1971," *Economic and Political Weekly* 40.41 (2005): 8-14. In her critique of Bose's article (Nayanika Mookherjee, "Skewing the History of Rape in 1971: A Prescription for Reconciliation," *Economic and Political Weekly* 41.36 (2006): 3901-3), Nayanika Mookherjee states that most Bangladeshis denounce the use of the term "civil war" in reference to the Bangladesh war because it deflects attention from its genocidal connotation. "Instead they semantically and politically distinguish the Bangladesh war as either *mukti juddho* (liberation war) or *sadhinotar juddho* (independence war)."

[25] Donald Beachler, "The Politics of Genocide Scholarship."

[26] Robert Melson, "Modern Genocide in Rwanda: Ideology, Revolution, War, and Mass Murder in an African State," *The Specter of Genocide: Mass Murder in Historical Perspective,* ed. Robert Gellately et al. (Cambridge: Cambridge University Press, 2003). Melson characterizes the Rwandan genocide of 1994, the Armenian genocide, and Holocaust as total genocide.

[27] In total genocide, the attempt is to eliminate the entire class of victims; in partial genocide, there are mass murders "in order to coerce and to alter the identity and politics of the group, not to destroy it." See Robert Melson, *Revolution and Genocide: On the Origins of the Armenian Genocide and the Holocaust* (Chicago: University of Chicago Press, 1992). Beachler avers that there was no attempt to eliminate the entire class of victims. The army's ultimate goal was to crush the movement for autonomy. Beachler also states: "The circumstances of the Bangladeshi genocide were similar to those of several other genocides. The Bengalis were ethnically and linguistically distinct from West Pakistanis. A minority, in this case Hindus, was thought to be undermining national unity. This minority was identified with a foreign power, India, a nation that had fought two wars against Pakistan. The extent to which Pakistani political and military officers actually believed the ethnic and religious arguments directed at the Bengalis, and the degree to which such statements were cynical attempts to motivate soldiers, is impossible to determine. Either way such sentiments have accompanied many genocides and they were present in Bangladesh in 1971" (480).

[28] Available at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB79/BEBB8.pdf (accessed April 24, 2011). Earlier, the Consul General had warned of the selective genocide occurring in East Pakistan in another cable. He said: "1) Here in Decca we are mute and horrified witnesses to a reign of terror by the Pak[istani] Military. Evidence continues to mount that the MLA authorities have list of AWAMI League supporters whom they are systematically eliminating by seeking them out in their homes and shooting them down. 2) Among those marked for extinction in addition to the A.L. hierarchy are student leaders and university faculty. In this second category we have reports that Fazlur Rahman, head of the philosophy department, and a Hindu, M. Abedin, head of the department of history, have been killed. Razzak of the political science department is rumored dead. Also on the list are the bulk of MNA's elect and number of MPA's. 3) Moreover, with the support of the Pak[istani] Military, non-Bengali Muslims are systematically attacking poor people's quarters and murdering Bengalis and Hindus."

titled "The Events in East Pakistan, 1971,"[29] is valuable as a contemporary testimony of the Bangladeshi genocide. It provides the facts and background of the "genocide" that occurred and answers some questions related to humanitarian intervention in East Pakistan. It is limited by the fact that only two of the three states involved had cooperated with the ICJ to obtain evidence. The ICJ found that both sides violated international law, although the extent of the violation was disproportionate, and it thus found that there was a strong case for the identification of crimes against humanity, war crimes, and breaches of Common Article 3; importantly, it also found that acts of genocide against Hindu groups were committed.

Although, in principle, the ICJ Report argued for an international trial for the war crimes committed, it did not campaign for the establishment of a war crimes tribunal, nor did the international community or the domestic government.[30] The hope for a war crimes trial and tribunal has thrived in the Bangladeshi memory since then. Despite talks of handing over prisoners of war to Bangladesh by India for a trial,[31] as well as of the categories[32] of tribunals that should be set up for the trial, the politics of political recognition and population exchange ultimately sealed the fate of the accountability project in Bangladesh.[33] Thus in the light of a deep resolve to forgive and forget the mistakes of the past, the Foreign Minister of Bangladesh stated that the Government of Bangladesh had decided not to proceed with the trials as an act of clemency, and it was agreed that the 195 prisoners of war would be repatriated to Pakistan.[34] In this way, international criminal responsibility became entrenched in global politics and post-war diplomacy.

In her critique of the ICTA, Zakia Afrin[35] mentions a published report[36] that claims that by April 19, 1971, there were 1975 individuals who were arrested for war crimes in Bangladesh and 752 who were convicted. Eleven thousand of the detainees originally held under the 1972 Collaborators Order, suspected of crimes to which the amnesty did not apply, were to have been tried; however, all work on this issue ceased with the assassination of Prime Minister Sheikh Mujibur Rahman and his family members on August 15, 1975 by forces aligned against the liberation movement. Four of the leading politicians held in detention in the Central Jail were murdered on November 3, 1975. Subsequently, the new regime repealed the 1972 Collaborators Order, stopped prosecutions, and released all detainees.[37]

The war crimes trials are the most topical political and legal issue in Bangladesh today. In October 2007, the Sector Commanders Forum of the Liberation War reportedly said that the war criminals committed fifty-three types of crimes in Bangladesh, including genocide, crimes against humanity, and serious breaches of the 1949 Geneva Convention. Around five thousand killing fields were operated in the country.[38] And by 2008, the War Crimes Fact Finding Committee published a list of 1597 suspects,[39] including the names of people belonging to two major political parties in Bangladesh. In 2009, Parliament, led by the Awami League, adopted a resolution to try war criminals under the ICTA.[40]

CRITIQUE OF THE AMENDED INTERNATIONAL CRIMES (TRIBUNAL) ACT OF 1973

The two most detailed critiques of the ICTA have come from the International Bar Association's War Crimes Committee's report[41] and Suzannah Linton's comprehensive essay on the subject.[42] The Human Rights Watch, in its letter to the Prime Minister of Bangladesh, has also addressed at some length the drawbacks of the existing legal framework on which the prosecution of the accused will take place.[43] My critique of the ICTA arises primarily from my reading

29 Niall MacDermot, "Events in East Pakistan, 1971," globalwebpost.com, June 1972, accessed April 24, 2011, http://www.globalwebpost.com/genocide1971/docs/jurists/1_preface.htm.

30 The government was primarily focused on rehabilitation and rebuilding the country. International assistance was needed from countries, many of who were allies of Pakistan. India and the Soviet Union were strategic allies of Bangladesh, but they did not push for the establishment of a war crimes tribunal.

31 Sydney H. Schanberg, "India Opens Way for Dacca Trials," *New York Times*, March 17, 1972, accessed April 24, 2011, http://www.docstrangelove.com/uploads/1971/foreign/19720318_nyt_india_opens_way_for_dacca_trials.pdf.

32 "Dhaka will try Yahya and others for War Crimes," *Hindustan Times*, February 23, 1973.

33 Suzannah Linton, "Completing the Circle," 203.

34 "Bangladesh-India-Pakistan Agreement on the Repatriation of Prisoners of War and Civilian Internees," Bangladesh Genocide Archive, March 2, 2008, accessed April 24, 2011, http://www.genocidebangladesh.org/?p=196.

35 Zakia Afrin, "The International War Crimes (Tribunal) Act, 1973 of Bangladesh," *Indian Yearbook of International Law and Policy* 1 (2009): 342-9.

36 *Daily Shamokal*, January 27, 2008. Posted from Ain O Salish Kendra (ASK), "Human Rights in Bangladesh, 2008" (Dhaka: Ain O Salish Kendra, 2009), 56.

37 Suzannah Linton, "Completing the Circle," 207.

38 "War Crimes Trial in Bangladesh under the International Crimes (Tribunal) Act, 1973," Peace & Collaborative Development Network, accessed April 24, 2011, http://www.internationalpeaceandconflict.org/profiles/blogs/war-crimes.

39 "List of 1597 War Criminals Released," *Daily Star,* April 4, 2008.

40 "Cabinet Approved the International Crimes Tribunal Bill 2009," *Taza Khobor*, July 6, 2009, accessed April 24, 2011, http://tazakhobor.com/bangladeshi-news-views/1-bangladeshi-news-views/22-crimestribunalbill; see also "Government Approved 1971 War Criminal Tribunal," *Taza Khobor*, March 25, 2010, accessed September 27, 2012, http://tazakhobor.com/bangladeshi-news-views/1-bangladeshi-news-views/122-war-criminal-tribunal.

41 "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards," IBA War Crimes Committee, 2009, accessed April 24, 2011, http://www.corporateaccountability.org/dl/1971/standards/ibareportdec09.pdf.

42 Suzannah Linton. "Completing the Circle."

43 "Letter to Prime Minister Sheikh Hasina Re: International Crimes (Tribunals) Act," Human Rights Watch, July 8, 2009, accessed April 24, 2011, http://www.hrw.org/en/news/2009/07/08/letter-prime-minister-sheikh-hasina-re-international-crimes-tribunals-act.

of the above three sources coupled with my attempt to restructure the thirty-seven year old legislation. It is indeed remarkable that Bangladesh chose to adopt such a law, which must have been progressive by contemporary standards when it was adopted in 1973.[44] It is also true, however, that the law is thirty-seven years out of date. The 1973 legislation, with its 2009 amending text, provides a framework which is "broadly compatible with current international standards" but seems to have fallen behind the more recent practices in international tribunals, including in its definition of certain crimes as well as the penal provisions for them.[45] The second notable shortcoming of the 1973 Act lies in the outlined rights of the accused. On several counts, the provisions set out in the ICTA fall short of the standards of fair trial set out in the International Covenant on Civil and Political Rights,[46] and there is also the question of the "international" character of the tribunal: whether Bangladesh should deal with war criminals in an international forum, a hybrid one, or in a domestic setting. Bangladesh is only to prosecute the local collaborators (*Razakars*) of Pakistani war criminals, and not the war criminals of Pakistan themselves. Considering this, a domestic tribunal as set out in the ICTA would be better equipped to fulfill its objectives. However, the framework in which the domestic tribunal is to operate is highly flawed: recourse to domestic laws to establish the guilt of the accused was more likely to improve the ICTA's chances of passing, and thus the ICTA was passed not as standalone, but rather as linked to other legislation, including the Army Act, 1952 and the Air Force Act, 1953. Through Section 23 of the act, however, it effectively ousts the provisions of the Evidence Act, 1872[47] and the Criminal Procedure Code, 1898,[48] specifically by clarifying that they shall not apply to any proceeding under the act itself.

The legal complexity of the ICTA can be better understood in terms of the jurisdiction and definition of crimes, the liability of crimes, the fairness and impartiality of the tribunal, and self-incrimination, among relevant points.

1. Jurisdiction and Definition of Crimes

In Section 3(1), the ICTA provides that the tribunal shall have the power to try and punish any person, irrespective of his nationality, who, being a member of any armed, defense, or auxiliary forces, commits or has committed a crime listed under the act in the territory of Bangladesh, either before or after the commencement of the act. Although the act uses the term "irrespective" of nationality in determining who shall be tried, this is further complicated by the fact that Bangladesh has made amply clear that no Pakistanis will be tried under this law, which shall be applied only to Bangladeshi nationals. This official stance has its genesis in the East Timor Special Panels for Serious Crimes process of accountability, which had a similar approach of not trying foreign nationals with arguably greater responsibility. Notably, it might be said that trying domestic suspects can instigate a wider movement for accountability outside Bangladeshi borders.

Section 3 of the 1973 Act defines the crimes that fall under the jurisdiction of the tribunal. These are crimes against humanity [3(2)(a)], crimes against peace [3(2)(b)], genocide [3(2)(c)], and war crimes [3(2)(d)].

The definition of crimes against humanity in the act is a direct adaptation of the Charter of the IMT Nuremberg, with a few additions and alterations. The jurisprudence of crimes against humanity has undergone many changes post-

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[44] Suzannah Linton. "Completing the Circle," 309.

[45] "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards."

[46] Article 14 of ICCPR: 1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. 2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. 4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

[47] Evidence Act, Act I of 1872. (Bangla.)

[48] Code of Criminal Procedure 1989, Act V of 1898. (Bangla.)

Nuremberg and Tokyo, and while it is true that crimes against humanity are prohibited as international crimes, there are differences between the major definitions, none of which are identical to the definitions used at Nuremberg.[49] The Report of the Group of Experts for Cambodia established pursuant to General Assembly Resolution 52/135 considered these factors and stated that "the trends that have now solidified were well in place by 1975, so that a prosecution of Khmer Rouge leaders for such violations would not violate a fair and reasonable reading of the *nullum crimen* principle."[50]

Article 3(2)(a) of the 1973 Act defines Crimes Against Humanity in the following manner:

> Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated.

The ICTA definition of crimes against humanity is substantially different from the standard international definitions[51] in the statutes of the ICTY, ICTR, and ICC in that the text of the ICTA does not embrace the concept of "systematic or widespread attack" against the civilian population, which forms the basis of other definitions of crimes against humanity, making ordinary but serious crimes extraordinary specifically because they are committed against the civilian population. The "widespread and systematic attack" against the civilian population came into the statute books for the first time in the ICTR in 1994, and the requirement that the crimes be part of a widespread and systematic attack against the civilian population formed an inseparable part of the jurisprudence by the Tadic decision.[52]

It is also important to note that there must be some connection between the acts of the accused and the "widespread and systematic" attack on civilians. This brings in the knowledge quotient: the accused must have committed the act with the knowledge that it fit into the wider frame of a "widespread and systematic" attack. The notion of "attack" is broader than that commonly used in international humanitarian law and encompasses any ill treatment of civilian population.

Noting the danger of an inconsistent definition, the IBA also recommended[53] that the definition in ICTA be amended to read:

> Crimes against Humanity means any of the following acts when committed as part of a widespread or systematic attack, with knowledge of the attack: murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated.

The second problematic definition is the definition of crimes against peace in Section 3(2)(b). The definition of crimes against peace, or more commonly "crimes of aggression," is itself a subject of controversy, as there is no standard definition of the crime in international law. The Rome Statute has listed it as one of the most serious crimes falling under ICC jurisdiction, but there has been no attempt to define it officially, nor has it been included in the ICTY, ICTR, Special Courts for Sierra Leone, or the ECCC. Article 6(a) of the Nuremberg Charter defined, over sixty years ago, crimes against peace in terms similar to those used in the ICTA.

> Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

The ICTA defines crimes against peace using the IMT Nuremberg provisions but omits the words "or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing." Linton credits this omission to the continental lawyer's traditional distaste for this notion of criminality that is prevalent in the common law system and the notion of "common plan" which was quite controversial at Nuremberg.[54] The ICTA definition for crimes against peace is as follows:

> Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of

[49] Suzannah Linton, "Completing the Circle," 232.

[50] Report of the Group of Experts for Cambodia established pursuant to General Assembly Resolution 52/135, – 71, U.N. Doc. A/53/850-S/1999/231, Annex (Feb. 18, 1999). Also note, that the IMT made new law, in the assessment of Professor Jescheck [Hans-Heinrich Jescheck, "The General Principles of International Criminal Law Set Out in Nuremberg, as Mirrored in the ICC Statute," *J Int Criminal Justice* 2.1 (2004): 38, 42]. In other words, it was ex post facto law in violation of the fundamental principle of *nullum crimen*, *nulla poene sine lege*, although Professor Jescheck asserts that most of it was in line with domestic law.

[51] Article 7 of the Rome Statute of the ICC reads: "'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

[52] Prosecutor v. Tadic, Case No. IT-94-1-A, Appeal Judgment (July 15, 1999).

[53] "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards," 6.

[54] Suzannah Linton, "Completing the Circle," 240.

international treaties, agreements or assurances…[55]

One complication that arises with respect to the inclusion of crimes against peace in the ICTA is that, according to international law, the State of Bangladesh did not come into being until after the war. The Unilateral Declaration of Independence was not valid in international law in 1971, as evident from the International Commission of Jurists' study of the war. The liberation war, as East Pakistan called it, or Operation Searchlight as West Pakistan called it, was a non-international armed conflict until India's involvement. Considering the United Nations Declaration on Friendly Relations between States and the Declaration on the Definition of Aggression, it can be reiterated that it was not aggression or a crime against peace by a sovereign state, in this case Pakistan, to attempt to quell East Pakistan's secession from its internationally recognized territorial boundaries. This highlights the fact that crimes of aggression or crimes against peace are inter-state matters and not intra-state ones, and thus that they could not have been committed at a time when Bangladesh was not formed and recognized as a nation internationally.[56] It is certainly a matter of concern that the 1973 Act proposes to prosecute, using outdated statutory language, a crime that remains undefined in most recent statutes of international criminal law.[57]

Compared to the definitions of crimes against humanity and crimes against peace, the definitions in the ICTA for genocide and war crimes in subsections 3(2)(c) and 3(2)(d), respectively, are more consistent with the standard definitions in the statutes of the ICTY, ICTR, and ICC. However, one of the distinguishing features in the definition of "genocide" in the ICTA is that "political groups" are added, something that was deliberately excluded from the ambit of the crime of genocide in the Genocide Convention.[58] There is also the danger of turning the list of core crimes in the ICTA to a mere illustrative list by the use of the term "such as" as opposed to "as such," which emphasizes the prohibited targeting of protected groups, a critical part of the concept of genocide. This was also reiterated in the Bosnia v. Serbia judgment where the tribunal noted that genocide requires intent "to destroy a collection of people who have a particular group identity."[59]

[55] Section 3(2)(b).

[56] The International Commission of Jurists also asserted that no question arises of a crime against peace in Bangladesh. See Tanweer Akram, *A Critical Evaluation of the ICJ Report on the Bangladesh Genocide,* April 14, 2007, accessed October 4, 2012, http://ssrn.com/abstract=981254.

[57] "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards," 5.

[58] Prosecutor v. Jelisic, Case No. IT-96-10-T, Judgment, – 69 (December 14, 1999); Prosecutor v. Akayesu, Case No. ICTR-6-1-T, Judgment, – 516 (September 2, 1998); William Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000) 179–189.

[59] International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia), February 26, 2007, access September 24, 2012, http://www.icj-cij.org/docket/files/91/13685.pdf. (Hereinafter Bosnia v. Serbia 2007 Judgment.)

2. Liability for Crimes

Particular provisions of the Bangladesh Penal Code, although not expressly left outside the purview of the ICTA in determining modes of responsibility, do not apply. Section 3(1) of the ICTA details the personal jurisdiction of the tribunal, although it does not detail the types of crimes committed, and fails to address direct perpetration as a crime. Linton summarizes the problem aptly:

> Article 25(3)(a) of the ICC Statute, which criminalizes the acts of a person who "commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible." In terms of individual responsibility, the following are provided in the 1973 Act. Section 3(2)(g) criminalizes "attempt abetment or conspiracy to commit any such crimes." Strangely, "commission" of crime is not included among the enumerated list of modes of responsibility. One could of course stretch to argue that Joint Criminal Enterprise (JCE) is a form of conspiracy or even abetment under the Bangladeshi law, but if one were to rely on the international cases, there will have to be an evaluation of whether JCE existed in 1971, and what its content was. Also, the ICTY jurisprudence on JCE roots it in the notion of "commit," which is not in the relevant provisions, namely Sections 3(2)(g) and (h). Section 3(2)(h) criminalizes "complicity in or failure to prevent commission of any such crimes." Subject to Section 4(2) below, there is no provision on ordering. There is also nothing on planning, instigation or incitement. However, embedded in the definition of the crime against peace are: "planning, preparation, initiation or waging a war of aggression…" Under Section 4(1), "When any crime as specified in Section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone." This underlines in the individual nature of criminality, a person will be judged by his or her own conduct.[60]

The definition of "command responsibility" or superior responsibility included in Section 4(2) of the ICTA is not entirely in line with the definition of the same adopted in international statutes. Section 4(2) of ICTA defines command responsibility in the following words:

> Any commander or superior officer who … fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.

This is different from the corresponding definition[61] provided in the Rome Statute:

> (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to

[60] Suzannah Linton, "Completing the Circle," 274-275.

[61] Article 28 of Rome Statute. Emphasis added.

exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The difference in the two definitions lies in the "failure to punish," which is missing from the ICTA. According to the Rome Statute, a military commander or superior may be held criminally liable for certain crimes committed by his subordinate. This liability arises not only for failing to prevent such crimes but also for failing to punish the crimes after they have been committed. This doctrine of Joint Criminal Enterprise (JCE), as written in Section 4(2) of the ICTA, is somewhat lacking in force. The IBA report also argued in the same vein noting that, although the phrase "fails or omits to discharge his duty to maintain discipline" in the 1973 Act carries some of the same meaning, it does not clearly require the superior or commander to take corrective or disciplinary action after the crime has occurred. Moreover, although the 2009 Amendment of the ICTA extends jurisdiction to civilian and military commanders alike, the definition of "superior" does not include civilian superiors.[62] There is also no reference to the "mental element" of superior in the ICTA as found in the Rome Statute. It is a matter of urgency that Section 4 of the ICTA be amended to bring it in line with acceptable definitions of superior responsibility; the same should also be extended to civilian superiors for consistency. The doctrine of JCE is able to capture the bigger picture of criminality within which the commander operates.

[62] Section 4 of the ICTA, 1973 provided only for military commanders and superiors to be held responsible for the criminal conduct of subordinates. The 2009 Amendment Act extended the same jurisdiction to civilians as well.

3. Fairness and Impartiality of the Tribunal

Section 6(5) and 6(8) of the ICTA need to be trimmed to make way for a free and fair trial of the accused.[63,64] Section 6(5) asserts that if, in the course of a trial, any of the members of the tribunal is unable to attend a sitting of the trial, the trial may continue before the other members. This is very much at odds with international practice. By standard practice, in the absence of a tribunal member on any day of the trial, the trial is usually adjourned, because a trial continued without all the members present may affect the credibility of the process. Similarly, the provision of immunity of the chairman and the members of the tribunal from challenges to the constitution of the tribunal is likely to compromise the fairness of the tribunal. A different chamber (preferably a Court of Appeal) should adjudicate challenges to the Tribunal members within a fixed timeframe to ensure a speedy trial.[65]

4. Self-Incrimination

Article 14(2) of the ICCPR mandates that every person charged with a criminal offense shall have the right to be presumed innocent until proven guilty. Article 14(3) goes a step further and asserts that in determining the guilt of a person, no person shall be compelled to testify against himself, a right that has been recognized globally and that forms an integral part of the international criminal jurisprudence.[66] The ICTY, ICTR, and ICC recognize the right to remain silent at the investigation stage. The ICTA makes critical slips from recognized international norms when addressing the question of self-incrimination in Section 11(2):

> (2) For the purpose of enabling any accused person to explain any circumstances appearing in the evidence against him, a Tribunal may, at any stage of the trial without previously warning the accused person, put such questions to him as the Tribunal considers necessary:
>
> Provided that the accused person shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Tribunal may draw such inference from such refusal or answers as it thinks just;

Again Section 8(5)[67] stipulates that a person is

[63] Subsection 6(5) of the 1973 Act: "If, in the course of a trial, any one of the members of a Tribunal is, for any reason, unable to attend any sitting thereof, the trial may continue before the other members."

[64] "Neither the constitution of a Tribunal nor the appointment of its Chairman or members shall be challenged by the prosecution or by the accused persons or their counsel."

[65] "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards," 8.

[66] Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment, Art. 15, Dec. 10, 1984; ICC Statute, Art. 67.

[67] "(5) Such person shall be bound to answer all questions put to him by an Investigation Officer and shall not be excused from answering any question on the ground that the answer to such question will criminate, or may tend directly or indirectly to

bound to answer questions from investigation officers and that they shall not be excused from answering any question on the grounds that the answer to such a question will be incriminating, provided that such answer does not subject that person to arrest or prosecution, or be used against him in any criminal proceeding. Section 8(7)[68] goes further by stipulating that any person who fails to answer questions by investigation officers be punished with imprisonment, fine, or both. Similarly, Section 18[69] of the ICTA is critical because it concerns the rights of witnesses to protection from self-incrimination. The International Bar Association, too, recommended that sections 8(5) and 8(7) of the ICTA be removed for being unworkable and unnecessary, that Section 11(2) be amended to consider the non-interrogation of silence, and that Section 18 be removed as well.

5. Right of the Accused to Representation

The right to counsel is universally acknowledged as a critical component of a fair trial.[70] A defense counsel's presence during pretrial custodial questioning is essential to prevent intimidation and ill treatment. Article 14 of the ICCPR lays down a list of fundamental principles protecting the rights of individuals in a trial, which have been incorporated by various tribunals in their legislations. The ICTA does not contain in any of its provisions the right to counsel. The relevant section in the ICTA, Section 12, uses the term "may" instead of "shall" or "must" and implies that the tribunal's power to provide the accused with legal representation is discretionary. There is also no provision entitling the detained person to seek legal counsel or representation, nor is there a requirement stipulating that investigation officers inform the detained person that he has a legal right to representation. In what may pose an obstruction to the fair process of administration of justice, Section 11(2) provides for a "trial by ambush in the form of a surprise judicial questioning,"[71] discarding the common law tradition of the right to silence and protection against self-incrimination:

> For the purpose of enabling any accused person to explain any circumstances appearing in the evidence against him, a Tribunal may, at any stage of the trial without previously warning the accused person, put such questions to him as the Tribunal considers necessary: provided that the accused person shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Tribunal may draw such inference from such refusal or answers as it thinks just.[72]

The ICTA should be adequately modified to add the principles of protecting the rights of accused as laid down in the ICCPR and Convention against Torture. At the very least, mandatory language should be introduced to Section 12 of the Bangladesh Act to make way for a fair trial.

6. Rights of Appeal

The IBA recommended that the ICTA be amended so that convicted persons are provided the right to appeal to an appellate court, with the legitimacy of the process increased if the appellate court is situated outside the framework of the regular judicial structure. Section 21 of the ICTA, however, provides for an appeal from the tribunal only to the appellate division of the Supreme Court of Bangladesh. This needs to be brought in line as well.

7. Procedure and Evidence

The Bangladesh Code of Criminal Procedure, 1898, the Evidence Act, 1872, and the Collaborators Order used in 1972 were excluded from the ICTA in 1973 and also from the Amendment Act in 2009. Section 19(1) of the ICTA states that:

> A tribunal shall not be bound by technical rules of evidence; and it shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value.

The use of the term "technical" is "potentially prejudicial, implying that the rules of evidence are details of little importance or value."[73] The legislation allows the Tribunal to admit evidence it deems to have "probative value," notwithstanding the technical rules of evidence.

The legislation tends to assume that the judges

criminate, such person: Provided that no such answer, which a person shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding."

68 "(7) Any person who fails to appear before an investigation officer for the purpose of examination or refuses to answer the questions put to him by such investigation officer shall be punished with simple imprisonment which may extend to six months, or with fine which may extend to Taka two thousand, or with both."

69 "A witness shall not be excused from answering any question put to him on the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind: Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence."

70 Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states that "everyone shall be entitled to the following minimum guarantees, in full equality: to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

71 Suzannah Linton, "Completing the Circle," 301.

72 ICTA, Section 11(2).

73 "Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards," 13.

will adopt the rules of procedure and evidence. Excessive concessions to the prosecuting authority to facilitate convictions do not aid in a free or fair trial; these are some of the provisions Bangladesh must amend before it moves ahead with the trials.[74]

Article 19 further relies on judicial notice of "facts of common knowledge" and removes many of the common law safeguards for the accused. While this may expedite the proceedings for the victims, it does so at the expense of the accused.

Section 22 of the act gives the tribunal the power to regulate its own procedure, subject to the provisions of the act itself. The result is self-defeating: on the one hand, the ICTA ousts the procedural laws of Bangladesh, meaning that extensive rules of procedure need to be adopted to ensure due process; on the other hand, this is contradicted by the fact that many of the matters of investigation in the pretrial stage fall outside the ambit of the tribunal's "own procedure."

The ICC, in Articles 54 and 55, elaborates on the duties and powers of the prosecution and the rights of a suspect during the investigation stage, thereby providing fair trial protections. The ICTA affords the state enormous power to potentially disregard these protections. Section 7 mandates that the government appoint one or more persons to conduct the prosecution before the tribunal on the terms and conditions that the government determines. Section 11(5) again stipulates that any member of the Tribunal shall have the power to direct, issue a warrant for the arrest of, or to commit to custody any person charged with any crime specified in Section 3. There is no provision that states in clear terms that, upon arrest, the suspect shall be informed of his rights and a copy of the warrant will be made available to him. There is also no provision that details how long the person will be detained or the minimum time period by which he will appear before a judge, let alone that he shall "promptly" appear before a judge. Similarly, there is no provision stating that such promptness even applies to the notification of the accused of his charges, deviating from Article 14 of the ICCPR. Critical pretrial matters are not incorporated into the statute, giving rise to the suspicion that the framework of the investigation stage may promote a culture of obtaining confessions and actively relying on them.[75]

8. The Death Penalty

The 1973 Act retains the death penalty as a punishment, despite the fact that all international courts and tribunals have rejected the retention of the death penalty, even in cases when the country concerned has retained it.[76] There is also a clear trend toward the non-usage of death penalty in international trials.[77] Given the concerns raised previously regarding the various provisions of the ICTA, it is important that the death penalty not be retained in the legislation.

CONCLUSION

The wording of the legislation suggests that the tribunal will have extremely broad powers of prosecution. The framework of the trial that the legislation purports to construct seems to be fallible to partial justice. Bangladesh should observe the experience of fellow countries and tribunals that have prosecuted war criminals in the recent past and learn from their successes and failures to ensure that it does not repeat the mistakes of others.

Despite the existence of political will and the support of civil society in prosecuting the perpetrators of the 1971 war crimes, the topic remains politically charged in Bangladesh. Increasingly, the proposed war crimes tribunal has become an object of scrutiny for the international community due to legislation that could potentially result in unfair proceedings and retributive justice. While initiating a trial for war crimes with domestic tribunals is extremely commendable, it is of vital importance that this initiative not be threatened by weak legislation that undermines the effort to seek justice.

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[74] The IBA War Crimes Committee Report ["Consistency of Bangladesh's International Crimes (Tribunals) Act 1973 with International Standards."] also stipulates that "special evidentiary provisions regarding proof of historical facts should be added to the legislation."

[75] Section 14 of the ICTA states that "The Magistrate shall, before recording any such confession, explain to the accused person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the accused making it, he has reason to believe that it was made voluntarily. Although this acts as a partial safeguard, it does not allow the Magistrate to order an investigation should he find that the confession was obtained under coercion."

[76] The International Tribunal at Iraq rejected the use of the death penalty even when the country retained it.

[77] See William A. Schabas, *The Abolition of the Death Penalty in International Law* (Cambridge: Cambridge University Press, 2002), 5–6.

"BRAND INDIA" OR "*PAX INDICA*"?

THE MYTH OF ASSERTIVE POSTURING IN INDIA'S POST-1998 FOREIGN POLICY MAKING

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ABSTRACT

Commentators have long insisted that India's 1998 nuclear tests mark an important juncture in the country's international affairs. This paper therefore offers a much-needed discursive assessment of India's post-1998 foreign policy. The claim is that the country's international outlook is largely shaped by the domestic discourse on national insecurities. Foreign policy statements thereby become discursive platforms both for the manifestation of national self-positioning on the international arena and the re-contextualization of historical narratives. Yet, despite the strategic assertiveness of these narratives, New Delhi has failed to provide a viable *Indian* vision for world order. Instead, there appears to be a palpable uncertainty about what "*Pax Indica*" stands for and whether it should be pursued through the paraphernalia of "Brand India." As a result, New Delhi's international image has few appealing attributes that other countries might be tempted to emulate.

INTRODUCTION

The nascent international agency of regional powers with global intentions has become a dominant topic in the study of world affairs. This recent focus on the emergent dynamics of international interactions was facilitated by the break-up of the Cold War order, which allowed a number of regional actors to extend their international roles and outreach. India features prominently among those actors and its agency in global life is subject to a growing public, policy, and scholarly scrutiny. Yet, regardless of this attention, surprisingly little consideration has been accorded to the domestic narratives that frame India's foreign policy making.

The suggestion of this paper is that the discourses of India's foreign relations offer insights into the country's strategic frameworks and the modes of international interactions that it envisages. Thus, it has to be noted from the outset that this investigation offers an assessment of the narrative construction of India's foreign relations. The point

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of departure for this investigation is the qualitative shift in Indian foreign policy articulations as a result of the nuclear tests of May 1998. These tests reveal a discursive overhaul of India's international relations premised on a much more assertive (if not aggressive) foreign policy stance. The foreign relations attitudes uncovered by those detonations expose the very bedrock of India's strategic culture – the conviction of the inevitability of India's rise to global prominence.

Such an overview provides the context for this analysis of the "logic of mythmaking" framing New Delhi's international outlook. The claim here is that India's post-1998 foreign policy making reflects a particular contextualization of the country's foreign relations within the domestic articulations of national insecurities. Foreign policy statements thereby become discursive platforms both for the manifestation of national self-positioning on the international arena and the re-contextualization of historical narratives. The suggestion that a state's foreign policy behavior draws on "mythmaking" might sound outlandish to some; yet, according to Jack Snyder, this proposition reflects the dependence of international strategies on "stable belief systems [that] protect against the mental burden of constant fundamental reassessment."[1]

Myths, therefore, are not only means of expression, but also modes for the organization of hopes and fears. Almost invariably, mythmaking underwrites a deeply entrenched belief that a country's security can be safeguarded only through aggressive posturing.[2] In this view, the premium on military power (especially first-strike advantage) belies the confidence that threatening behavior makes other states compliant. Illustrating this proposition, Ashok Kapur reveals that the "power politics" of post-1998 Indian foreign policy displays the strategic "capacity to first inflict harm and then to negotiate restraint."[3]

As the following sections reveal, the logic of mythmaking suggests that the formulation of India's post-1998 foreign policy has morphed into a powerful ideology for the consolidation of a conflict-ridden domestic political stage. In this respect, mythmaking becomes a mode for the discursive downplaying of the insecurities, tensions, and constraints that plagued New Delhi's foreign relations in the immediate post-Cold War period. Yet, these narratives have failed to provide a viable *Indian* vision for world order. Instead, there appears to be a palpable uncertainty about what "*Pax Indica*" stands for and whether it should be pursued through the paraphernalia of "Brand India," the brands and culture through which India's image is promoted abroad.

This investigation concludes with some inferences on the future trajectories of India's international outlook. The contention is that because of the strategic confusion between the notions of "*Pax Indica*" and "Brand India" in India's foreign policy parlance, the country has little influence in international life. Consequently, despite its assertive posturing, New Delhi's international image has few appealing attributes that other countries might be tempted to emulate.

DOMINANT PATTERNS IN INDIA'S POST-COLD WAR FOREIGN POLICY

Some observers have claimed that the "seesawing foreign policies" of India in the immediate post-Cold War period attest to the "infinite malleability" of India's international identity.[4] Others have interpreted the perceived affliction with "a general ambience of indiscipline and lack of national purpose" as an indication that in its international relations India acts "like a lady who has powerful suitors but is determined not to marry [any of them], because it is not in her interest to do so. A lady in this position has to play the game with considerable skill because every suitor is likely to feel that she is too inclined to the other party."[5]

Such statements offer a smattering of the cacophony of voices involved in the interpretation of India's diplomatic formulations. They also reveal the contradictions at the heart of India's strategic culture that turn its international stance into a confusing mixture of *realpolitik* and idealism held together by a wobbly normative framework.[6] For most of the 1990s, Indian foreign policy making experienced a "post-Cold War blues" provoked by the contending demands of repositioning the country's strategic outlook as a result of (1) the dissolution of the Soviet Union; (2) the need to acknowledge the failure of non-alignment; and (3) the increasing tension between "militarism" (i.e., coercive international stance) and

1 Jack L. Snyder, *Myths of Empire: Domestic Politics and International Ambition* (Ithaca: Cornell University Press, 1991), 14.

2 Snyder, *Myths of Empire*, 31.

3 Ashok Kapur, *India: From Regional to World Power* (London: Routledge, 2006), 3.

4 Andrew Latham, "Constructing National Security: Culture and Identity in Indian Arms Control and Disarmament Practice," *Contemporary Security Policy* 19 (1998): 134-154.

5 Ravinder Basu, *Globalization and Indian Foreign Policy* (Jaipur: Vital Publications, 2007), 213.

6 Radha Kumar, "India as a Foreign Policy Actor: Normative Redux," in *Who is a Normative Foreign Policy Actor? The European Union and Its Global Partners*, ed. Nathalie Tocci (Brussels: Centre for European Policy Studies, 2008), 255.

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"moralism" (i.e., cooperative international stance) during the re-evaluation of India's foreign relations.[7]

The 1998 nuclear tests were designed to put an end to the ambivalence defining this "post-Cold War Blues" by offering an emphatic projection of India's self-confidence and foreign policy independence. This assertiveness seems to have been borne out of a long-standing frustration with New Delhi's marginalization in the international system. In this respect, India's post-1998 foreign policy stance indicates a qualitatively different interpretation both of the country's role in international life and the character of the international system. At the same time, it also reveals the logic of mythmaking backstopping India's adjustments to the altered realities of the post-Cold War world order.

THE LOGIC OF MYTHMAKING IN INDIA'S POST-1998 FOREIGN POLICY

The testing of nuclear weapons is never a small affair. However, the actual event tends to grow in magnitude when the state undertaking the test has refused to formally accede to the nuclear non-proliferation regime and is in a nearly permanent state of attrition with one of its (equally armed) neighbors. The five nuclear devices detonated by India during May 11-13, 1998 at the Pokhran range confirmed this point. The tests set off widespread criticism and, at the same time, prompted concerns about a nuclear arms race in South Asia. Seemingly unfazed by the international censure (and in stark contrast to its coy external stance during the early 1990s), the brazen geopolitical stance of India's nuclear detonations indicated a marked departure from its previously non-committal and largely conciliatory attitude. In a nutshell, *they were aimed to provoke*.

By flaunting its capacity for "pre-emptive response," New Delhi publicized its ability to independently chart the course for the ship of state in global politics.[8] The 1998 nuclear tests were therefore a watershed moment in India's post-Cold War development. It is rarely observed, however, that the 1998 nuclear detonations also gave rise to the myth of aggressive posturing, which spins the story of India's rise to global prominence as a direct outcome of its nuclear capabilities. Thus, the benchmark for foreign policy effectiveness set up by such mythmaking is that India should, as Kapur puts it, "be taken seriously as a player who could inflict unacceptable military and diplomatic costs."[9] And as Lak writes, it is assumed that its nuclear capabilities enhance India's "rightful place in the world."[10] Such foreign policy articulations encompass three narrative attributes – (1) a surmounting of India's perceived geopolitical weakness; (2) a settlement of domestic political contestation; and (3) a narrative of self-aggrandizement.

Surmounting of Perceived Geopolitical Weaknesses

Analyses of the post-1998 period have tended to take the nuclear tests as an indication of the emergence of more confident and coherent international policy. For instance, many observers have noted that the nuclear tests "are emblematic of a new kind of aggressive and belligerent Indian foreign policy."[11] In this context, it would be useful to think of the mythmaking underpinning New Delhi's post-1998 international stance as geopolitical prescriptions for the foreign policy imagination that envisage aggressive posturing as the only viable strategy for India's foreign relations.

A central feature of the post-1998 foreign policy stance has been a criticism of the perceived "softness" of Nehru's "pseudo-secularism," which "twisted India's strategic culture into all kinds of absurdities" and ultimately led to "enfeebling a once fierce nation."[12] In this context, the post-1998 assertiveness of India's forward foreign policy approach represents not merely a break with Nehruvian principles of international relations, but also with Gandhi's commitment to the imperatives of non-violence. The assertion is that "a country with non-violent values has little chance to enter the major-power system."[13] Such a radical shift has been enabled by the emergence of a particular form of Hindu nationalism, whose discourse cast the formulation of foreign policy "in the realist mode of power politics."[14]

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7 Emilian Kavalski, *India and Central Asia: The Mythmaking and International Relations of a Rising Power* (London: I.B.Tauris, 2010), 21-46.

8 Basu, *Globalization*, 207-222.

9 Kapur, *India*, 199.

10 Daniel Lak, *The Future of a New Superpower* (New York: Viking, 2008), 248.

11 Achin Vanaik, "Making India Strong: The BJP-Led Government's Foreign Policy Perspectives," in *Hindu Nationalism and Governance*, ed. John McGuire and Ian Copland (New Delhi: Oxford University Press, 2007), 381.

12 Sreeram S, Chaulia, "BJP, India's Foreign Policy, and the 'Realist Alternative' to the Nehruvian Tradition," *International Politics* 39 (2002): 220.

13 Baldev Raj Nayar and T.V. Paul, *India in the World Order: Searching for Major Power Status* (Cambridge: Cambridge University Press, 2003), 105.

14 Rita Manchanda, "Militarized Hindu Nationalism and the Mass Media: Shaping Hindutva Public Discourse," in *Hindu Nationalism and Governance*, ed. John McGuire and Ian Copland (New Delhi: Oxford University Press, 2007), 361.

Although originating in the pre-Independence period and associated with the life and work of Vinayak Damodar Sarvakar, Hindu nationalism burst on the post-Cold War Indian political stage with the destruction of Babri Masjid in Ayodhya on December 6, 1992.[15] According to Sreeram Chaulia, Hindu nationalism reveals an agenda for the rediscovery of "India's Hindu genius and restoring the nation to its superior Hindu glory."[16] The contention is that such discourses reveal an "assimilationist program in which all non-Hindus are to be 'brought back' into the Hindu fold. This is not considered as conversion, but as a 're-conversion', the assumption being that everyone in India is naturally Hindu."[17]

The significance of Hindu nationalism is evident in the framing of the 1998 tests as "the Hindu nuclear bomb."[18] The appropriation of such nationalism in foreign policy becomes a platform for the domestic discourses on national greatness that help dispel the perception of India's weakness on the world stage. Such aggressive posturing has also set in motion the myth of India's ability to overcome the uncertainties of globalization by shaping the dynamics of international affairs. At the same time, the nuclear tests attest to India's idiosyncratic understanding of *realpolitik* – one that intimates that national security can be achieved in "essentially unilateral terms."[19] In this respect, the mythmaking of post-1998 Indian foreign policy reaffirms the *national* ramifications of New Delhi's foreign relations.

Foreign Policy Assertiveness as a Tool for the Settlement of Domestic Conflicts

A motivating element for mythmaking has been the ambition to put an end to the fragmentation of a polemic domestic political scene. According to Snyder, political formations supporting aggressive foreign policy posturing (because of their more concentrated interests and narrow agenda) tend to be more capable of utilizing state propaganda for "selling their myths;" at the same time, the environment of fragmentation and uncertainty makes voters less receptive to the messages of groups with more diffuse interests.[20] The contention is that the decision of the Bharatiya Janata Party (BJP) to undertake nuclear tests during 1998 was part of such a strategy for asserting its authority over its coalition partners and imposing its dominance over the domestic political arena.

In fact, the settlement of domestic conflicts has been

proffered as an explanation for India's 1974 nuclear test. Pankaj Mishra reveals, "India's first nuclear test in 1974 came in handy for Indira Gandhi when she was facing a crippling railway strike (the first of the political challenges that eventually led her to suspend civil rights in 1975)."[21] According to Daniel Lak, however, the timing of the 1998 nuclear tests was to a significant degree motivated by "the worsening situation within the government."[22] Confronted with the task of keeping together a disparate coalition of conflicting interests, then Prime Minister Atal Bihari Vajpayee resorted to foreign policy making as a tool for reinforcing the BJP's agenda on the political impulses of his coalition partners. Thus, "striving to expand its social and geographic base and refurbish its image dented by bickering among the alliance partners, the BJP hopes to stoke the 'nationalistic' feelings across different sections and buttress its political strength."[23]

Such a strategy was facilitated by the general disinterest in "the foreign policy and security domain" (as opposed to the preoccupation with the patterns of domestic politics), which has tended to turn the debate on foreign relations into a "perfunctory" rhetoric with little substance on the "tactics," "conceptualization," and "operationalization" of India's international affairs.[24] In this context, by exercising the nuclear option, the BJP has politicized the formulation of foreign policy – that is, it has entered the discourses in "the electoral and public domain as never before" – which has assisted the narrative constructions of the opponents of aggressive posturing "as timorous and unpatriotic for 'bending under pressure' to neighboring countries and big powers."[25] At the same time (perhaps paradoxically), it might have been the very instability of Vajpayee's coalition that permitted him "to act decisively without risking the survival

[15] A.G. Noorani, *Sarvakar and Hindutva* (New Delhi: Manohar, 2003).
[16] Chaulia, "BJP, India's Foreign Policy," 220.
[17] Nivedita Menon and Aditya Nigam, *Power and Contestation: India since 1989* (London: Zed Books, 2007), 37.
[18] Rajmohan Gandhi, "Understanding Religious Conflicts," in *Searching for Peace in Central and South Asia: An Overview of Conflict Prevention and Peacebuilding Activities*, ed. Monique Mekenkam et al. (Boulder: Lynne Rienner, 2003), 291.
[19] Latham, "Constructing National Security," 137.
[20] Snyder, *Myths of Empire*, 36-37.
[21] Pankaj Mishra, "A New, Nuclear India," in *India: A Mosaic*, ed. Robert B. Silvers and Barbara Epstein (New York: Nyrev, 2000), 228.
[22] Lak, *Future of a New Superpower*, 248.
[23] John Cherian, "The BJP and the Bomb," *Front Line*, April 24, 1998, accessed September 20, 2012, http://www.frontlineonnet.com/fl1508/15080040.htm.
[24] B.M. Jain, *Global Power: India's Foreign Policy* (Lanham: Lexington Books, 2008), 204.
[25] Chaulia, "BJP, India's Foreign Policy," 216.

of his government."[26]

At the same time, the BJP endorsed an aggressive foreign policy not merely for political expediency, but also as a result of the internalization of (cultural) narratives, which have impacted their assumptions about world politics and the appropriate mode for pursuing India's interests in international affairs.[27] For instance, Rita Manchanda ascertains that the notion and practices of *appeasement* register as of negative quality in "the Hindutva lexicon" (and are usually associated with "the failures of a 'soft state'").[28] Such interpretations demonstrate that in consolidating a fragmentary domestic stage, the mythmaking involved in foreign policy formulation requires the validation of assertive proclamations.

"Chosen Glory" – Narratives of Self-Aggrandizement

Perhaps the most enduring reverberation of the 1998 nuclear tests has been the proliferation of exalted discourses on India's nascent rise to global significance. The self-exalting narratives of Indian foreign policy indicate a *discursive capturing* by the myth of aggressive posturing.[29] Confirming these propositions, some commentators have suggested that the mythmaking narrative of New Delhi's foreign policy making can be extrapolated from India's "exaggerated sense of self and unrealistic desire to be acknowledged as a leading nation," which seem to be detached from the posers plaguing the country's "political stability" and "economic development."[30]

Allegedly, such self-aggrandizing discourses boost the national esteem by shattering the perception of "an international order which confines India to an inferior position."[31] A critical aspect of the message sent by the 1998 nuclear tests is that "Indians are finally emerging from the mindset of dominated people, staking a claim to their rightful place in the global village."[32] Such assessments reveal that foreign policy myths act as potent narratives, framing the nuclear tests as an articulation of a *chosen glory* – a reactivating and (potentially endlessly) reactivated discourse bolstering a group's national self-esteem through the reproduction and re-articulation of historical representation (i.e., the "'verification' of history") as a means of asserting the coherence and validity of a unifying collective identity.[33]

This understanding indicates that nuclear weapons are being invested in with enormous cultural capital. The myth of aggressive posturing narrates the expectation that India is destined to play a dominant role in global politics only (1) if it is military preponderant (i.e., maintains a decisive military edge); and (2) if it is committed to a maximalist military posture entailing "a three-full-and-three-half-war capability."[34] Thus, although primarily (and initially) it was "the Indian leadership [that] viewed their country as a

[26] James Chiriyankandath, "Realigning India: Indian Foreign Policy after the Cold War," *The Round Table* 93 (2004): 204.
[27] Latham, "Constructing National Security," 130.
[28] Manchanda, "Militarized Hindu Nationalism," 356-357.
[29] Emilian Kavalski, *Central Asia and the Rise of Normative Powers: Contextualizing the Security Governance of the European Union, China, and India* (New York: Continuum, 2012), 125-147.
[30] Basu, *Globalization*, 213.
[31] Pratap Bhanu Mehta, "India: The New Clear Politics of Self-Esteem," in *South Asia*, ed. Sumit Ganguly (New York: New York University Press, 2006), 21.
[32] Vinay Rai and William L. Simon, *Think India: The Rise of the World's Next Superpower* (New York: Dutton, 2007), 242.
[33] Catarina Kinnvall, *Globalization and Religious Nationalism in India: The Search for Ontological Security* (London: Routledge, 2006), 56-60.
[34] Latham, "Constructing National Security," 142-149.

potential great power and has, therefore, begun to articulate the type of regional and international order that *it* would like to exist within," these narratives have trickled down to the publics at large and have animated popular (and populist) imaginations and fervor.[35] In this setting, the message of the nuclear tests aims to demonstrate India's willingness to insert its national interest on the global agenda (regardless of the opinions and expectations of other international actors). Thus, it is in this respect that the 1998 nuclear tests have become a symbol for the tectonic shift in India's post-Cold War foreign policy making.

CONTENDING TRENDS IN INDIAN FOREIGN POLICY

Regardless of the mythmaking logic underpinning New Delhi's international assertiveness, Indian policy makers and pundits appear constantly frustrated by the ongoing disregard of the country at major international fora. A significant reason for this is that, despite the proliferation of New Delhi's assertive foreign policy discourse, India still lacks the state capacity to deliver on the messages that its aggressive stance projects. In other words, while the 1998 nuclear tests resolved some of the predicaments of India's post-Cold War international outlook by providing a dominant narrative for framing the country's international identity, their logic of mythmaking failed to provide a distinct *Indian* vision for the organization of international life.

In particular, there appears to be an important confusion between the notions of "*Pax Indica*" and "Brand India" in India's foreign policy articulations. In fact, very often the latter is used to imply the former. "Brand India" (as the term suggests) refers to the brands that export India's image abroad, from the cultural products of Bollywood to the entrepreneurial endeavors of Bangalore. Too often, therefore, analysts take as their point of departure the assertion that India has "earned *international respect* and *influence*" through its booming economy, IT revolution, and nuclear weapons.[36] "Brand India," therefore, is taken not only as a shorthand for the "awakening of a slumbering elephant,"[37] but also as a label for a unique "unshackling of the imagination"[38] that ushers in an "India unbound"[39] onto the global stage.

"*Pax Indica*" stands for the model of world order that India would like to develop. The uncritical attempt to frame "*Pax Indica*" through "Brand India" has reinforced the hiatus between the external and domestic perception of India's international agency. Thus, Indian commentators very often allege that their country has significantly impacted international trends, while external observers barely take notice of New Delhi's agency.[40] Pratap Bhanu Mehta traces the origins of this phenomenon to the 1919 Paris Peace Conference, at which some of the leading Indian intellectuals at the time argued for the independence of their country on the premise that, if free, India would inevitably become a great power, but its power would not be projected outward (i.e., it would not be used to dominate others). Mehta interprets these arguments as an early indication of the absence of a "global objective" and a "big idea" in the Indian strategic outlook.[41] This attitude appears to have been suffused in the narratives of non-alignment that produced a peculiar sense of autarky in India, which was understood as independence *from* the rest of the world, rather than a particular way of engaging others.

Such a mode of international relations underpins India's post-1998 foreign policy. Owing to the want of vision in India's foreign relations, "commercial development and security seem to connect accidentally more often than purposefully."[42] This absence of an overarching "big idea" in India's external outreach leads to an unusual style of international interactions – one in which New Delhi does not attempt to establish relationships with other actors by deliberately engaging them in shared practices. Instead, as Rodney W. Jones demonstrates, New Delhi seems determined "to wait the opponent out," rather than initiate interactions that might lead to a pragmatic compromise. Jones argues that such an approach to security governance is embedded in the profound sense of entitlement, superiority, and presumed deeper knowledge about the correlation of forces that distinguish India's strategic culture. In turn, these traits engender an outlook of inevitable success, as "India cannot help but prevail in the long run."[43]

Not surprisingly, therefore, India's policy-making lacks a "culture of bargaining."[44] Thus, rather than deliberately engaging other actors in the practices of interaction for the establishment of shared expectations, India seems intent on hedging its bets in order to avoid the risks associated with compromise. The implication then is not only that India might remain a "rising power" for longer than its pundits portend, but also that the analysis of the cognitive framework of its strategic culture puts it in "the class of countries that are always emerging but never quite arriving."[45] This suggestion points to the issue of entrapment accompanying the strategic culture of any country.

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35 Amit Gupta, "The Reformist State: The Indian Security Dilemma," in *Strategic Stability in Asia*, ed. Amit Gupta (Farnham: Ashgate, 2008), 105.

36 Lak, *Future of a New Superpower*, 260. Emphasis added.

37 Rai and Simon, *Think India*, ix.

38 Menon and Nigam, *Power and Contestation*, 85.

39 Gurcharan Das, *India Unbound* (New Delhi: Viking, 2000).

40 Kavalski, *India and Central Asia*, 75.

41 Pratap Bhanu Mehta, "Still under Nehru's Shadow? The Absence of Foreign Policy Frameworks in India," *Indian Review*, 8 (2009): 213-225.

42 S. Enders Wimbush, "Great Games in Central Asia," in *Asia Responds to Its Rising Powers: China and India*, ed. Ashley J. Tellis et al. (Washington, DC: National Bureau of Asian Research, 2011), 269.

43 Rodney W. Jones, *India's Strategic Culture* (Carlisle: Defence Threat Reduction Agency), 10-14.

44 Mehta, "Still under Nehru's Shadow," 228.

45 Kumar, "India as a Foreign Policy Actor," 255.

Strategic entrapment – like a ghost chasing its victims down a pre-ordained path – directs policy making into already scripted terrains. Therefore, as Naunihal Singh asserts, it should not be surprising that "despite foreign policy failures and much debate over tactics, the Indian elite holds fast to *a vision of national greatness*."[46] The historical memory of great Indian civilizations has practical impact on the underlying logic of the country's international relations. Indian officials believe they are representing not just a state (or an emerging power), but a great civilization. Thus, few "state-civilizations" are perceived to be India's equal. Hence, believing that India should be accorded deference and respect because of its intrinsic (and superior) civilizational qualities, many Indian diplomats and strategists are wary of having to depend upon states that do not appreciate India's special and unique characteristics. In fact, Nehru can be credited as one of the initiators of this narrative of exceptionalism with his statement that India has "*special* rights and duties in the management of international society based on the status as one of the world's major civilizations."[47]

Furthermore, Indians are convinced that India as a *civilization* has "something unique to offer to the rest of the world."[48] The expectation therefore is that others will follow New Delhi's lead without the provision of inducements, reinforcements, or credible commitments. In this respect, India's strategic adjustments in the post-Cold War period appear constrained (rather than enabled) by the cognitive frameworks of its strategic culture. While the language and practices of foreign policy emerge in order to overcome the restrictions imposed by strategic cultures, New Delhi's foreign policy articulations remain constrained by the ramifications of the very myths they intend to overcome. Commenting on this trend, some observers have suggested that India suffers from a "post-dated self-image" – i.e., the palpable confidence among many in India that the country is destined for great power status, and a confidence that leads them to "want others to treat them as if they had in fact already arrived."[49] As a result, New Delhi's international image has few appealing attributes that other states might either be able to perceive as part of a nascent "*Pax Indica*" or be tempted to emulate.

IN LIEU OF A CONCLUSION: THE LACK OF INFLUENCE IN INDIA'S POST-1998 FOREIGN POLICY

The preceding discussion has engaged the implications of the logic of mythmaking of India's post-1998 foreign policy. The assertiveness of these strategic discourses intimates that "India cannot wait until the rest of the world comes to its way of seeing things or at least acknowledges India's right to do things its own way" – the implication being that "*in a more perfect world*, [New Delhi's] importance would be self-evident [because in] such a world each major power [would] act responsibly to keep order and promote justice in *its part of the world*."[50]

Such articulations reveal a proclivity towards a narrative projection of India as a blueprint for international development. However, this discursive desire is not backstopped by a deliberate practice that can turn such diplomatic rhetoric into reality. New Delhi's discursive and policy inability to link its self-image of a rising power to a strategy that can translate this perception to the outlook of other actors attests to the absence of a readily available Indian vision of global politics – a "*Pax Indica*," if you will. Thus, while India has a number of influential individuals and businesses, as an international actor the country does not have an influential vision of world order that could establish New Delhi as an alternative to the existing patterns. Of course, such an assertion should not be misinterpreted as an allegation that India does not have a respected and significant history and cultural heritage.

However, the international recognition of this legacy (just like the recognition of its nuclear capabilities) does not amount to political influence. The discussion of New Delhi's agency demonstrates that despite the visibility of "Brand India," the narrative construction of India's current external affairs does not project a specific (if any) vision of world order that would distinguish it from the other actors on the world stage. Thus, the question that emerges from the discussion of New Delhi's external agency is whether India can "offer an alternative vision of a new world order."[51]

In other words, the analysis of India's foreign relations still does not seem to offer a convincing response to the query of whether India "*can change enough*" to become a pole of attraction in an international environment marked by "extreme turbulence."[52] The current setting seems to suggest that India will retain its relative position of limited influence for some time to come. Change will require an overhaul of New Delhi's international stance and a serious interrogation of the mythmaking underpinning the country's post-1998 assertive foreign policy stance. The claim here is that if India is indeed to become a "great power," it first needs to develop a distinct vision of global order, despite – and not because of – its overt nuclear capabilities.[53]

[46] Naunihal Singh, *India: A Rising Power* (New Delhi: Authors Press, 2006), 48-49.

[47] Chris Ogden, "International 'Aspirations' of a Rising Power," in *Handbook of India's International Relations*, ed. David Scott (London: Routledge, 2011), 5.

[48] Singh, *India*, 48-49.

[49] Nayar and Paul, *India in the World Order*, 47.

[50] Singh, *India*, 50-52. Emphasis added.

[51] Mira Sinha Bhattacharjea, "Does China Have a Grand Strategy?" in *China and the Indian Ocean Region*, ed. Ravi Vohra and P.K. Ghosh (New Delhi: National Maritime Foundation, 2008), 10.

[52] Upendra Kachru, *Extreme Turbulence: India at the Crossroads* (New Delhi, Harper Collins, 2007), 14.

[53] Kavalski, *Central Asia and the Rise of Normative Powers*, 126.

MIDDLE POWERS AND THE DYNAMICS OF POWER SHIFT:

CONCEPTUALIZING THE ECONOMIC AND GEOPOLITICAL IMPLICATIONS OF *PAX SINICA*

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ABSTRACT

In 2003, China first articulated its national strategy for explaining the potential implications of a geopolitical power shift brought about by its rise. In line with characterizing the rise as a peaceful ascendance, needed to "build a more harmonious world for the new century," China has insisted that its rise would bring "no harm and only good to global and regional affairs, as a stable and more confident China is more of a stabilizing than a destabilizing force." However, there exists international concern as to whether China will be true to its claims of a peaceful rise in its quest to establish itself in its "rightful place" in a "harmonious world." Against the backdrop of the debates stated above, this paper aims to analyze and prognosticate through a conceptual framework what *Pax Sinica* could mean in terms of economic and geopolitical implications at the regional and global levels. In doing so, the article explores foreign policy options as well as economic and geopolitical roles of middle powers at both the systemic (global) and sub-systemic (regional) levels.

INTRODUCTION

At both the systemic and sub-systemic levels, China has been a strategic dilemma for many countries for quite some time now. On one hand, the Chinese "pragmatism" in dealing with various economic and geopolitical issues has demonstrated, among other things, its adherence to existing international rules and norms in the economic arena, and China has been welcomed by its Asian neighbors.[1] On the other hand, perceptions of a "China threat" still persist as the political leadership and foreign policy analysts of some countries, especially Australia, the US, and Japan, are still concerned by the implicit meaning behind China's newfound assertiveness, particularly in the context of Taiwan.[2]

[1] For details of this view based on an Asia-wide survey, see David C. Kang, *China Rising: Peace, Power, and Order in East Asia* (New York: Columbia University Press, 2007).

[2] For a glimpse of such views, see Hugh White, "The Limits to Optimism: Australia and the Rise of China," *Australian Journal of International Affairs* 59.4 (2005): 469-80; Quan-

The modernization of China's military, its impressive position in the world economy, and its nuclear proliferation practices make some regional leaders understandably concerned.[3] Scholars, including Mearsheimer[4] and Wei-chin Lee[5], see behind China's professed motto of a "righteous, peaceful rise in a harmonious world" a grand strategy of "*taoguang yanghui"* (韬光养晦, meaning to hide one's capability and bide one's time) for enhancing its geopolitical status at both the global and regional levels. This is, incidentally, among Deng Xiaoping's three crucial policy dictums, namely: "Economic development is overriding" (经济是基础), "Never take the lead in international affairs" (不当头), and "Hide China's capability and bide for its time" (韬光养晦).[6]

China's economy has been growing exponentially, with a stable annual growth rate of 9 percent over the last two-and-a-half decades. The trepidation of a "rising China" propelled by its strong economy has been further exacerbated by China's ongoing innovative applications of new technologies in its military hardware and in its command and operational structures. Since 2003, when China articulated its national strategy for "rising peacefully in order to build a more harmonious world for the new century,"[7] many mainland Chinese scholars and policy-makers have argued that "the rise of China would bring no harm and only good to global and regional affairs, as a stable and more confident China is more of a stabilizing than a destabilizing force."[8] However, there exists international concern as to whether China will be true to its claims of a peaceful rise in its quest to establish itself in its "rightful place" in a "harmonious world."[9] Against the backdrop of the debates stated above, this paper will try to critically analyze the economic and geopolitical implications of the rise of China by exploring the foreign policy options and economic and geopolitical roles of middle powers at both the systemic and sub-systemic levels. This conceptual exploration can begin with analyzing the dialectical situation that middle powers often face with respect to their ambitions and capabilities.

THE MIDDLE POWERS AND THE DYNAMICS OF A POWER SHIFT AT THE SYSTEMIC AND SUB-SYSTEMIC LEVELS

The geopolitical role of any state is generally a functional outcome of its hard power – economic or military capability, or a combination of both at any given time – as often reinforced by its soft power – enhanced international stature rooted in promoting cultural relations and closer edu-

sheng Zhao, "America's Response to the Rise of China and Sino-US Relations," *Asian Journal of Political Science* 13.2 (2005): 1-27; Thomas J. Christensen, "Fostering Stability or Creating a Monster? The Rise of China and US Policy toward East Asia," *International Security* 31.1 (2006): 81-126; Christopher W. Hughes, "Japan's Response to China's Rise: Regional Engagement, Global Containment, Dangers of Collision," *International Affairs* 85.4 (2009): 837-56.

3 See Peter Hartcher, "Back US over China: Clinton," *The Sydney Morning Herald*, November 9, 2010, accessed November 9, 2010, http://www.smh.com.au/national/back-us-over-china-clinton-20101108-17kis.html; Kevin Rudd, *Speech at Caixin Summit: China and the World – The third Way*, by the Hon. Kevin Rudd MP, Australian Minister for Foreign Affairs, Beijing, November 5, 2010, accessed July 17, 2012, http://www.foreignminister.gov.au/speeches/2010/kr_sp_101105.html); Czeslaw Tubilewicz, "Research Note: The 2009 Defence White Paper and the Rudd Government's Response to China's Rise," *Australian Journal of Political Science* 45.1 (2010): 149-57; Jae H. Chung, "Korea and China in Northeast Asia: From Reactive Bifurcation to Complicated Interdependence," in *Korea at the Center: Dynamics of Regionalism in Northeast Asia*, ed. Charles Armstrong et al. (Armonk: M.E. Sharpe, 2006), 200-13; Gerald Segal, "East Asia and the 'Constrainment of China'," *International Security* 20.4 (1996): 107-35.

4 John J. Mearsheimer, "China's Unpeaceful Rise," *Current History* 105.690 (2006): 160-62.

5 Lee Wei-chin, "Long Shot and Short Hit: China as a Military Power and Its Implications for the USA and Taiwan," *Journal of Asian and African Studies* 43.5 (2008): 523-42.

6 " … We should now strive for a relatively long time of peace, make good use of this time and grab this time to build our own country," Deng explained while contextualizing his three dictums. See Deng Xiaoping, *Chronicles of Deng Xiaoping*, Vol. 1 (Beijing: Central Literature Press, 2004), 533.

7 Chinese Prime Minister Wen Jiabao first mentioned this new strategy during a lecture at Harvard University on December 11, 2003. This was the first time that a Chinese leader publicly discussed China's foreign policy priorities for the new century.

8 For a representation of such views, see Li Hua, "*Li Jie Zhong Guo De He Ping Que Qi Zhan Lue: Yi Zhong Li Lun Fen Xi*" (Understanding Strategies for China's Peaceful Rise: A Theoretical Analysis), *Journal of Nanjing Party Institute of CPC and Nanjing Administration Institute* 1 (2007): 38-42; Lin Tao, "*He Xie Shi Jie: Zhong Guo He Ping Jue Qi De Guo Ji Zhan Lue Zhu Zhang*" (On the International Strategic Proposal of China's Peaceful Rise), *Journal of Xinjiang University (Philosophy, Humanities and Social Sciences)* 35.6 (2007): 25-30; Zheng Bijian, "*He Ping Jue Qi De Zhong Guo Shi Wei Hu Shi Jie He Ping De Jian Ding Li Liang*," in *Lun Zhong Guo He Ping Jue Qi Fa Zhan Xin Dao Lu* (China on Peaceful Rise: A Stabilizing Force for Maintaining World Peace), in *Peaceful Rise—China's New Road for Development*, (Beijing: Press of Central Party School of CPC, 2005), 160-169; Yan Xuetong, "The Rise of China in Chinese Eyes," *Journal of Contemporary China* 10.26 (2001): 33-44.

9 See, for example, Lee, "Long Shot and Short Hit," 523-42; Zheng Yongnian and Sow K. Tok, *China's "Peaceful Rise,"* Working Paper, China Policy Institute (Nottingham: University of Nottingham, 2005); David Zweig and Bi Jianhai, "China's Global Hunt for Energy," *Foreign Affairs* 84.5 (2005): 25-38.

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cational cooperation across the globe. A dominant role at the systemic level often requires a combination of both hard and soft powers. Both the *Pax Britannica*, the peak period of British global dominance after the industrial revolution,[10] and the *Pax Americana*, the US-dominated, post-World War II bipolar, and subsequent unipolar, order can be cited as examples.[11] Like the *Pax Britannica's* dependence on British economic, maritime, and cultural powers, the *Pax Americana* has also come to depend on the economic, military, and cultural power of the United States.[12]

On the basis of a continuum reflecting the distribution of both hard and soft power in the global system that determines the systemic or sub-systemic role of any given state, we can roughly categorize states as: (1) the superpower, (2) middle powers, or (3) bottom-level states. In contrast to the superpower's capability of imposing its decisions on both middle powers and bottom-level states, middle powers and bottom-level states lack the capability to impose their decisions on the superpower. It can thus be said that a superpower always maintains the dynamic of a "subject" status as opposed to "object" status in interstate relations.

Middle powers, meanwhile, have an object status with respect to the superpower and a subject status with respect to bottom-level states and, at times, even tier-two middle powers.[13] While the superpower, as a subject state, has a system-wide or global influence, middle powers, as relatively independent centers of power within a sub-system, are preeminent if not dominant in a certain region.

Bottom-level states, having object status with respect to both the superpower and the middle powers, are normally at the extreme receiving end of decisions made by both the superpower and the middle powers. Generally speaking, bottom-level states have limited foreign policy autonomy and, as the prevailing relations among the superpower and the middle powers often dictate their margins of maneuverability, they have little choice but to adapt, as best as possible, to the decisions made by the subject states.

The primary goal of a middle power, under normal circumstances, is to maintain the status quo. However, the main dilemma it faces in this regard is how it can keep the status quo compatible with its goal of maintaining the global and geopolitical relevance needed for preserving its status as a middle power. One solution is to align closely with the superpower, thereby benefitting from the accompanying "prestige." Under Prime Minister John Howard, Australia, as a "Deputy Sheriff" of the US in Asia, proposed to do just this.[14] Of course, because of possibility of domination by the superpower, or even by other middle powers, alignment with the superpower is often not only related to gaining status or prestige but also a practical strategy for ensuring national security and survival. The alternative strategy is to remain active as a global player, as in the case of the European Union, by robust participation in various international and intergovernmental organizations

[10] This refers primarily to the period from 1760 to 1914 in world history when Britain, against the backdrop of its rise as the world's dominant military power, particularly maritime, and its conquest of large chunks of territories in Asia, Africa, and the Americas, was able to integrate the European hemisphere into a worldwide economy. Britain managed to dominate this economy by virtue of it being the world's industrial and investment capital. However, British global dominance, particularly its conquest of India, the "jewel of the crown," also gave rise to an "imperial patriotism" that called for conducting "civilizing missions." The ostensible purpose of the missions would be to bring in "modernity" and "liberty" in "areas of darkness" in the British Empire supposedly ruled by standard bearers of "oriental despotism." However, the actual purpose of this imperial patriotism was to cast London in the light of a new imperial Rome and as the bearer of law and order overseas so as to provide legitimacy to its imperial conquests. Education became an important element of this endeavor in portraying colonialism as an essentially "pedagogic" enterprise. In the wake of decolonization, the task of exporting the UK's educational opportunities and maintaining its cultural relations has been taken over by the British Council. For further details, see Sanjay Seth, *Subject Lessons: The Western Education of Colonial India* (Durham: Duke University Press, 2007); Guido Abbattista, "Empire, Liberty and the Rule of Difference: European Debates on British Colonialism in Asia at the End of the Eighteenth Century," *European Review of History – Revue européennes d'Histoire* 13.3 (2006): 473-498; Robert Travers, "Ideology and British Expansion in Bengal, 1757–1772," *Journal of Imperial and Commonwealth History* 33.1 (2005): 7–27; Albert H. Imlah, *Economic Elements in the Pax Britannica. Studies in British Foreign Trade in the Nineteenth Century* (Cambridge: Harvard University Press, 1958); Gregory P. Marchildon, "From Pax Britannica to Pax Americana and Beyond," *The ANNALS of the American Academy of Political and Social Science* 538 (1995): 151-68.

[11] A serious systemic cleavage, particularly in the European theater, sprung up during the heyday of the Cold War when the *Pax Americana* order was challenged by a counter order, *Pax Sovietica*, creating two vast alliance structures grouped around the nuclear superpowers. However, with the eclipse of the *Pax Sovietica*, the world moved to a unipolar order at the systemic level.

[12] US cultural power originated to a large extent from the intellectual migration out of Europe, particularly out of Germany during the 1930s and 40s in the wake of Nazism. It was consolidated by the Americanization of higher education and the export of American popular culture around the globe in the form of, among other things, fast food and soap opera. For details, see R. Wagnleitner and E. T. May, "Here, There, and Everywhere: The Foreign Politics of American Popular Culture," *American Historical Review* 105.4 (2000): 1445-60; Richard R. Nelson and Gavin Wright, "The Rise and Fall of American Technological Leadership: The Postwar Era in Historical Perspective," *Journal of Economic Literature* 30.4 (1992): 1931-64; Lewis A. Coser, *Refugee Scholars in America: Their Impact and Their Experiences* (New Haven: Yale University Press, 1984); Laura Fermi, *Illustrious Immigrants: The Intellectual Migration from Europe, 1930-41* (Chicago: University of Chicago Press, 1968); Jean-Jacques Servan-Schreiber, *Le Défi Américain* (Paris: Seuil, 1967).

[13] Nayar first introduced the subject-object dichotomy in the context of analyzing the dynamics of the middle powers. See Baldev R. Nayar, "A World Role: The Dialectics of Purpose and Power," in *India: A Rising Middle Power*, ed. Mellor (Boulder: Lynne Rienner, 1979), 117-45.

[14] Tow has analyzed this in greater detail in William T. Tow, "Deputy Sheriff or Independent Ally? Evolving Australian-American Ties in Ambiguous World Order," *Pacific Review* 17.2 (2004): 271-90.

and through extensive economic and investment interdependence and an established and well-entrenched mechanism for collaboration in the realms of foreign policy, security, and defense.

Situated between the subject-state superpower and the object-state bottom-level states at each end of the continuum, middle powers can feel tempted to move towards the upper rung. Often, such an attempt is driven by the augmentation of elements of hard power, such as economic and military strengths, complemented also by elements of soft power.[15] In the given circumstance, if the hard power of a superpower becomes attenuated, creating a power imbalance at the systemic level, it then becomes imperative for middle, or regional, powers to become "revisionist" in order to establish preeminence, if not hegemony, at the systemic level. This systemic-level preeminence need not be militarily aggressive, based instead on economic domination as well as productive and technological superiority.[16] Specifically, it can be achieved through ensuring economic stability in the region and providing trade benefits to various regional and external client states.[17]

Preeminence at the systemic level can serve revisionist middle powers a dual purpose: (1) it can enhance their bargaining capabilities, including veto powers, during transactions with the superpower and other middle powers; and (2) it can elevate their prestige vis-à-vis other middle powers, aspiring middle powers, and even the bottom-level states.[18]

However, whether or not the success of a middle power in establishing preeminence, preponderance, or hegemony at the systemic level can lead to a systemic power shift will depend primarily on both the space and nature of the reconfiguration of existing hard and soft power dynamics at the systemic level, as well as the process of renegotiating power relations between the superpower, the revisionist middle power, and other middle powers at both the sub-systemic and systemic levels. Those factors associated with reconfiguration of existing power dynamics and the renegotiation of power relations may also determine the extent and nature of the power shift, if there is any, as well as the possible course of action for the revisionist middle power in relation to the superpower under such a scenario. The same factors are also likely to shape the possible response of the superpower to the revisionist middle power.

CHINA AND THE DYNAMICS OF POWER SHIFT

The conceptual parameters discussed earlier may help us to properly understand China's transition in its proper historical contexts, from a status quo-oriented middle power to a revisionist one; such an understanding is necessary for both critically analyzing the economic and geopolitical dynamics of a *Pax Sinica* and for prognosticating its possible future orientation. These contexts relate not only to China's economic and geopolitical isolation immediately after its emergence as the People's Republic in 1949 but also to the processes associated with attaining and consolidating its middle-power status since then.

The initial isolation was imposed on China partly by the US and its allies under the gathering clouds of the Cold War storm spreading from the western horizon to the east; this isolation was also caused in part by China's own policy directions. As the US and its European and Asian allies by and large took side with the Kuomintang regime during the civil war, and as Communist-Party China had diplomatic relations with only the socialist countries, the government soon came out with a new combative foreign policy[19] with two distinct goals: (1) "starting anew," highlighting its clear break with the pro-western foreign policies of the Kuomintang government, and (2) "leaning to one side," implying that China saw the world as split into two camps – one of friends and the other of foes – and that it would always side with communist and socialist friends in their battles with ideological adversaries. However, China continued to struggle to establish a status quo as a middle power, as very few regional and global stakeholders were willing to recognize its status.

China's initial quest for establishing its status quo as a middle power was through actively supporting the "struggles" of the "Intermediate Zone" of the global structure, the new

[15] Though it is an important elementary component of power, "soft power" alone is not enough to lift the status of a state to the upper rung of the middle powers. The same can be said about the perceptions of the elites in regards to the regional and global influence and power of their states unless those are matched with actual economic and geopolitical achievements that are recognized by other stakeholders. India can be cited as a case in hand, described by Nayar and Paul as a "status-inconsistent power," in that there is discrepancy between its perceptions of its own achievements and its ascribed status at an international level. See Baldev R. Nayar and T. V. Paul, *India in the World Order: Searching for Major-Power Status* (New York: Cambridge University Press, 2002), 23.

[16] For various views on how regional and/or global hegemony is attained, see Christopher Chase-Dunn and Peter Grimes, "World-Systems Analysis," *Annual Review of Sociology* 21 (1995): 387-417; Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), 13-15; Immanuel Wallerstein, "The Three Instances of Hegemony in the History of the Capitalist World-Economy," in *The Theoretical Evolution of International Political Economy: A Reader*, ed. Crane and Amawi, 2nd Ed. (New York: Oxford University Press, 1997), 242-45.

[17] For a systemic level example, one may refer to the post World War-II *Aequilibrium Americanum,* which was established by the Bretton-Woods system under the "benevolent" American hegemony.

[18] For an elaboration on this issue in the context of India, see Shamsul I. Khan, "The Sub-Systemic Divergence in an Unstable International System: Dynamics of Indo-Nepal Relations," in *Bangladesh. South Asia and the World*, ed. Emajuddin Ahamed and Abul Kalam (Dhaka: Academic Publishers, 1992), 102-12.

[19] Then-Prime Minister Zhou Enlai had clearly defined the parameters of communist China's new foreign policy when, during a speech at the foundation laying ceremony of the newly established Chinese Ministry of Foreign Affairs, he said "When we pioneer diplomatic space now, it's necessary to distinguish friend and enemy firstly"; for details see, Zhou Enlai, *Selected Diplomatic Writings of Zhou Enlai* (Beijing: People's Press, 1990), 3.

configuration of power created by emerging post-colonial states of the Third World, and, in turn, relying on and receiving support from this Intermediate Zone.[20] This foreign policy approach was then expanded to adopting a flexible strategy[21] of "collusion yet contention" that allowed China to exploit the existing contradictions and rival interests among adversaries by switching sides whenever necessary – i.e., aligning with the Soviet Union to counter the US threat, aligning with the US to counter the Soviet threat, and then aligning with Russia and India to counter the US threat. This strategy thus aided China in consolidating its status as a rising middle power.

Since then, China has striven to become a systemic power, a revisionist gesture that it has justified by highlighting the need to "multi-polarize and democratize" international relations (世界多极化和国际关系民主化, *shijie duojihua he guoji guanxi minzhuhua*) as a way of avoiding the faults of "unilateralism and hegemonism."[22] The main message that China has tried to convey through this narrative is that it fully understands its "responsibilities" as a new player in an emerging multi-polar world.

As a part of this revisionist strategy, China began to invest heavily in its economic and military strength. In the same vein, it also improved its economic relations with important Southeast and East Asian countries on the premise that "relations with surrounding countries are primary, relations with the great powers are the key, and relations with developing countries are the foundation, while multilateral relations constitute the superstructure."[23] China also signed, without much persuasion on the part of the ASEAN countries, the Treaty of Amity and Cooperation (TAC) and the Joint Declaration on the Strategic Partnership for Peace and Prosperity with ASEAN in 2003, as well as the Declaration on the Conduct (DOC) of Parties in the South China Sea in 2002. These agreements oblige the parties not only to cooperate on various regional and international matters but also to resolve disputes through only peaceful means. This, in fact, marks a sharp contrast to the posture of India, another rising middle power, towards its South Asian neighbors, including Bangladesh, Nepal, and Sri Lanka. Unlike China's posture towards its Southeast Asian neighbors, India's image of itself, its power, its hegemony over its smaller neighbors, and the distrust syndrome that governs relations between India and Pakistan, have created an uncomfortable feeling among the small South Asian states akin to "sleeping with an elephant."

Presently, as China moves ahead to become "a pole of the multi-polar system," as Deng Xiaoping once envisioned, in order to fill in the vacuum created by the collapse of the Soviet Union that led to "unilateralism and hegemonism" two decades ago, it is likely to follow a risk-aversive non-military strategy for this purpose. One reason is that Chinese leadership is being careful not to repeat the mistake made by the former Soviet Union when it engaged in a costly arms race with the US and its allies. Another reason may be – given the long-held Chinese apprehension, first raised by Deng Xiaoping in 1993,[24] that the US remains determined to bring about a so-called "peaceful evolution of the socialist system towards capitalism" – China's unwillingness to give the US any excuse to intervene within its regional hemisphere. President Obama's stated intention[25] of keeping increased US military presence in waters bordering China and his call for enhanced US military ties with China's neighbors seems to have heightened the apprehension.

In light of the aforementioned conceptual and contextual parameters, an effort will now be made to critically analyze the hard- and soft-power dynamics of *Pax Sinica*.

PAX SINICA: THE HARD- AND SOFT-POWER DYNAMICS

There is a general agreement that China is emerging as one of the great powers in a new world, geared towards an "Asian century." According to former World Bank President James Wolfensohn, the world is heading towards a radical transformation in which China, India, and the rest of Asia would account for 60 percent of the world economy by

[20] See Mao Tse-tung, *Selected Works of Mao Tse-tung* (Peking: Foreign Language Press, 1967), 98-100. For further elaboration, see also Greg O'Leary, *The Shaping of Chinese Foreign Policy* (London: Croom Helm, 1980), 181-230.

[21] Despite attempts by the current political leadership of China to come out of Mao Zedong's shadow, the origin of this strategy actually goes back to Mao's ideas in relation to formulating a revolutionary strategy in a semi-colonial situation. Mao argued that in times of imperialist aggression, the contradiction between imperialism and China was the principal contradiction, therefore overshadowing other contradictions including the one between feudalism and the Chinese masses. For details, see John Gittings, *The World and China, 1922-1972* (London: Eyre Methuen Limited, 1974), 38.

[22] Cited in Jae Ho Chung, "Decoding the Evolutionary Path of Chinese Foreign Policy, 1949-2009: Assessments and Inferences," *East Asia* 28 (2011): 178.

[23] "*… Zhoubian Shi Shouyao, Daguo Shi Guanjian, Fazhanzhong Guojia Shi Jichu, Duobian Shi Wutai.*" See Qingmin Zhang, "*Liu Shi Nian Lai Xin Zhong Guo Wai Jiao Bu Ju De Fa Zhan – Dui Dang Dai Hui Zheng Zhi Bao Gao De Wen Ben Fen Xi*" (Diplomatic Composition of China in the Last Sixty Years – A Text Analysis of the Political Reports to the CPC National Congress), *Foreign Affairs Review* 26.4 (2009): 32-42. For a detailed analysis of this new strategy of economic diplomacy, see Emile Kok-Kheng Yeoh, "China and Malaysia: Bilateral Relations, Global Linkages and Domestic Nexus," in *China and Malaysia in a Globalizing World: Bilateral Relations, Regional Imperatives and Domestic Challenges*, ed. Emile Kok-Kheng Yeoh and Hou Kok Chung (Kuala Lumpur: Institute of Chinese Studies, University of Malaya, 2006), 3-11.

[24] Deng Xiaoping termed it as analogous to "staging a Third World War without a smoking gun." See Deng Xiaoping, *Selected Deng Xiaoping Works*, Vol. 3 (Beijing: People's Press, 1993), 344.

[25] This was articulated during Obama's address to the Australian Parliament on November 17, 2011. See "Text of Obama's speech to Parliament," *The Sydney Morning Herald*, November 17, 2011, accessed February 22, 2012, http://www.smh.com.au/national/text-of-obamas-speech-to-parliament-20111117-1nkcw.html.

2050.[26] This transformation is taking place at a time when the world's only remaining superpower, the United States, is struggling to recover from the fallouts of disastrous military involvements in Afghanistan and Iraq and a massive financial crisis originating from turmoil in subprime mortgages and the bursting of the housing and technology bubbles. As a result, the unparalleled military and economic dominance that the US has enjoyed and utilized, since World War II, to construct and manage various global intergovernmental institutions, supposedly for its own economic and geopolitical interests, is coming under serious threat.[27]

In Asia, China's own subsystem, the US had already lost its economic leverage during the Asian Financial Crisis of 1997 because of its inability and unwillingness to help even when IMF bailout packages further complicated problems for the affected countries, some of which were US allies. It is interesting to note in this context that most Chinese commentators see the Asian financial crisis of 1997 as an unexpected catalyst for the enhanced subsequent economic and trade cooperation between China and ASEAN that paved the way for economic integration and free trade agreements between the two. China initiated this process by providing the worst hit ASEAN countries, Thailand and Indonesia, with $4.5 billion in urgent assistance.[28] It is this "Good Samaritan" role that most Chinese scholars believe helped to change perceptions about China. There appears to be some merit in this argument, as it seems that it is only after the 1997 financial crisis that many ASEAN leaders became convinced that China's economic growth was not only sustainable but also unstoppable, and holding enormous promises of benefits and opportunities for ASEAN itself.[29]

As the world's major "reserve currency," the US dollar had always enjoyed a unique status in the Asian economy. It is, however, currently facing a worsening crisis of confidence both in the US and abroad, particularly in view of the US government's growing dependence on treasury bonds.[30] Such bonds are financed heavily by Chinese dollar assets, funding large US budget deficits and keeping interest rates low at home in order to shield the American electorate from the real burden of budget deficits.[31] This situation has contributed to a further decline in US economic influence in Asia.

It is in these contexts of diminishing US geo-economic and geopolitical power, at both the systemic and sub-systemic levels, that one needs to analyze the issues related to the rise of China as an emerging economic power with enhanced military capabilities and the economic and geopolitical implications thereof.

China's economic footprint as a hard power is impressive by any standard. Ever since Deng Xiaoping launched the celebrated "Third Revolution" in 1978 for transforming China through economic reforms,[32] the real gross domestic product (GDP) of China has been growing at an average rate of almost 10 percent annually. Keeping pace with this astronomical growth in GDP, China's annual per capita income has been doubling every ten years[33] and has grown faster than that of any other country in recent history. For more than a decade, China has consistently been the fourth-largest economy in the world after the US, Japan, and Germany. If future growth rates in both the US and China are consistent with recent trends, China can be expected to surpass the US as the world's largest economy by 2035.[34]

China has also cemented its powerful position in international trade by virtue of being one of the world's leading importers and exporters. This provides China with enormous economic clout to actively engage countries from both within and without the Asian region in a structure of "complex interdependence," whereby economic and geopolitical interests of various competing regional and extra-regional countries can be traded off in order to suit Chinese national and geopoliti-

[26] Wolfensohn has advised Australians and the rest of the rich world to wake up to the implications of this emerging "momentous change." See Michael Stutchbury, "Prepare for Asian Era: Wolfensohn Tells Mates," *The Australian*, October 29, 2010, accessed September 20, 2012, http://www.theaustralian.com.au/news/nation/prepare-for-asian-era-wolfensohn-tells-mates/story-e6frg6nf-1225944900546.

[27] For divergent perspectives, see Andrew Hurrell, "Hegemony, Liberalism and Global Order: What Space for Would-Be Great Powers?," *International Affairs* 82.1 (2006): 1-19; Charles A. Kupchan, "Life after Pax Americana," *World Policy Journal* 16.3 (1999): 20-28; G. John Ikenberry, "Institutions, Strategic Restraint, and the Persistence of American Postwar Order," *International Security* 23.3 (Winter, 1998-1999): 43-78, and Susan Strange, "The Persistent Myth of Lost Hegemony," *International Organization* 41 (1987): 551-74.

[28] Zhang Lianfu, "*Leng Zhan Hou Zhong Guo Yu Dong Meng Guan Xi De Kuai San Bu Ji Qi Yuan Yin He Te Dian*" (The Reasons and Characteristics of Rapid Development of China-ASEAN Relations in the Post-Cold War Era), *Journal of Ideological & Theoretical Education* 8 (2004): 49.

[29] For an elaboration, see Alice D. Ba, "China and ASEAN: Renavigating Relations for a 21st-century Asia," Asian Survey 43.4 (2003): 622-47.

[30] See Francis E. Warnock, "How Dangerous Is U.S. Government Debt? The Risk of a Sudden Spike in U.S. Interest Rates," *Council on Foreign Relations*, accessed July 30, 2012, http://www.cfr.org/financial-crises/dangerous-us-government-debt/p22408.

[31] See Robert J. Samuelson, "China's Dollar Deception," *The Washington Post*, April 6, 2009, accessed September 20, 2012, http://www.washingtonpost.com/wp-dyn/content/article/2009/04/05/AR2009040501724.html.

[32] Deng calculated that China would need at least twenty years of peace to concentrate on domestic development, during which period it not only would have to maintain its steady economic growth but also would have to invest heavily in education and technological innovations, particularly in military hardware. See Deng Xiaoping, *Chronicle of Deng Xiaoping 1904-1974*, Vol. 1 (Beijing: Central Literature Publishing House), 622.

[33] See "Remarks to the Asia Society and Houston Society of Financial Analysis, Houston, Texas, on April 7, 2006 by Timothy D. Adams, the US Treasury Under-Secretary for International Affairs", accessed Nov 10, 2011, http://www.ustreas.gov/press/releases/js4172.htm.

[34] C. Fred Bergsten et al., *China: The Balance Sheet* (New York: Public Affairs, 2006), 9. See also Thomas G. Moore, "China as an Economic Power in the Contemporary Era of Globalisation," *Journal of Asian and African Studies* 43.5 (2008): 497-521.

cal interests. From a Chinese perspective, this can be attained through economic diplomacy[35] revolving around rapidly improving and cementing its "neighborly relations" with important Southeast Asian countries. Inherent in this diplomacy are two objectives: (1) upgrading China's comprehensive national strength (综合国力富强, *zonghe guoli fuqiang*) by increasing the two-way volume of trade and foreign direct investment (FDI) for stabilizing the socio-economic structures of China's rural peripheries and for laying a solid groundwork for the regionalization of its currency as the first step towards its ultimate internationalization; and (2) ensuring that while China claims its "rightful place" in the global theater by virtue of its national strength, as reflected through its rapid economic growth, modernization of its military might, and its cultural expansion, its "peaceful rise" (和平崛起, *heping jueqi*) is not construed as a threat by its neighbors.

It is, therefore, no wonder that China's rising profile as a global and geopolitical actor has been matched with a parallel improvement in its relationship with its Southeast Asian neighbors, culminating in the signing of the China-ASEAN free trade agreement (CAFTA) in 2010. Within a short time after signing the agreement, CAFTA has helped in substantially increasing the volume of trade between China and ASEAN.[36] This volume is expected to be further enhanced with the planned network of Pan-Asia high-speed rail, connecting China with the majority of the Southeast Asian capitals,[37] and with the *Renminbi* (RMB) becoming an important medium of trade settlements and investment in Southeast Asia.[38]

Both in China and in the ASEAN countries, there is growing optimism that a dynamic CAFTA, with a massive combined population of 1.9 billion and a vast internal market, along with enhanced monetary cooperation, will help these countries to ensure fiscal stability by insulating the economies of their respective countries from externally induced financial volatilities. This will come about when the ASEAN countries gain access to the vast Chinese reserve in times of crisis, which, in turn, will provide an extra layer of security to the Chinese economy. It is sobering to note that China now holds more than $3 trillion US in foreign exchange reserves, the largest store in the world, and that any volatility of foreign exchange or quantitative easing of the dollar (commonly viewed as depreciation) can pose a serious threat to the security of China's wealth.[39]

China's hope is that as CAFTA's far-reaching economic benefits for Southeast Asia become increasingly evident over time, (1) public perceptions about China will continue to change; and (2) instead of seeing China as a potential threat, Southeast Asians will see China as an invaluable partner in prosperity and, in turn, will be less inclined to judge China on the basis of its capabilities and more on the basis of its intentions. From a Chinese perspective, these perceptions

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[35] Chinese Prime Minister Wen Jiabao first used the tem "economic diplomacy" *(*经济外交, *jingji waijiao*) in 2004. Since then, it has been part of the Chinese diplomatic vocabulary to describe the employment of both official (Track 1) and unofficial (Track 2) channels of diplomacy for advancing China's economic development through various means, such as gaining access to foreign markets as well as the use of trade, investment, and finance in support of China's diplomatic goals. Currently, the three main objectives of this economic diplomacy are (1) strengthening China's economic relationship with developing countries as demonstrated by China's increasing involvement in Africa and South America; (2) attaining China's diplomatic objectives, such as China's increasingly proactive role in G20; and (3) diversifying China's export markets and sources of energy and raw materials. See http://2010.cqvip.com/onlineread/onlineread.asp?id=27413720.

[36] It is estimated that CAFTA should boost China's exports to ASEAN by 55.1% and ASEAN's export to China by 48%, which should increase the GDP growth in ASEAN and China by 0.3% and 0.9% respectively. See "ASEAN Remains the Biggest Trading Partner of Guangxi for 10 Years," *Xinhua*, January 23, 2011, accessed July 26, 2012, http://www.yn.xinhuanet.com/asean/2011-01/23/content_21933818.htm, and "Yunnan Radically Increases its Trade with ASEAN as a Result of the Favourable Policy of CAFTA," *Xinhua*, February 10, 2011, accessed July 26, 2012, http://www.yn.xinhuanet.com/newscenter/2011-02/10/content_22030291.htm.

[37] As part of the Chinese government's plan to build an "economic development zone" on Chinese borders, Chinese companies from Yunnan are constructing the Kyaukphyu port and building the Yunnan-Kyaukphyu economic corridor. Entrepreneurs in Yunnan hope that the Kyaukphyu port will act as a "contact point" for enhanced China-ASEAN trade with Myanmar. China has also agreed to build a high-speed rail link connecting China with Singapore via Laos, Thailand, and Malaysia. When completed, this rail link would not only increase the volume of trade between China and ASEAN but also tourism. For details, see "China Railway signs Agreement with Myanmar on Rail Project," *Xinhua*, May 28, 2011, accessed August 3, 2012, http://news.xinhuanet.com/english2010/china/2011-05/28/c_13899120.htm.

[38] The Special Administrative Region of Hong Kong, by virtue of its sophisticated financial network, has already emerged as the regional financial center for trade settlements using RMB. During the first quarter of 2011, 7% of China's international trade was settled in RMB. This marks an upward swing from almost zero two years ago. Singapore has already shown keen interest in becoming the first overseas hub for trading in RMB. The decision by the *Bank Negara Malaysia*, Malaysia's Central Bank, followed by the *Bank Indonesia*, Indonesia's central bank, to buy bonds in RMB as their reserves is seen by many financial analysts as a significant step. According to a recent survey conducted by the Hong Kong and Shanghai Banking Corporation (HSBC), more than 16% of the enterprises based in Southeast Asia plan to use RMB in trade settlements, compared to the 3% of enterprises planning to use the British pound sterling. See "Indonesia's Central Bank Delves into RMB Bonds," *The Asia Asset Management*, July 25, 2012, accessed July 31, 2012, http://www.asiaasset.com/news/news_0725RMBbonds.aspx; Xiao Gang, "Boosting China's Financial Power," *China Daily,* December 3, 2010, accessed September 20, 2012, http://www.chinadaily.com.cn/cndy/2010-12/03/content_11645955.htm; Kevin Brown, "Singapore Aims to be Renminbi Hub," *Financial Times*, April 19, 2011, accessed September 20, 2012, http://www.ft.com/intl/cms/s/0/64bac520-6a4f-11e0-a464-00144feab49a.html#axzz27AxKZ4hh.

[39] See "China's Foreign Reserves Exceed $3 Trillion," BBC, April 14, 2011, accessed May 6, 2012, http://www.bbc.co.uk/zhongwen/simp/business/2011/04/110414_brief_china_reserves.shtml.

will make it difficult for China's only peer competitor on the global stage, the US, to co-opt ASEAN countries in any strategy of "pacifying" China.[40] By the same token, China's extensive trade relations with Australia, in terms of both exports and imports, may also make it almost impossible for Australia to actively side with its closest military ally, the US, in the event of a military conflict between China and the US over Taiwan. The polite, yet blunt, assertion by Richard Armitage, a former US Assistant Secretary of Defense, is a reaffirmation of Australia's predicament: he said, during the tenure of no other than Prime Minister John Howard, who once wished for Australia to act as the "Deputy Sheriff" of the US in Asia, that if Washington found itself in conflict with China over Taiwan it would expect Australia's support, and that the absence of such support would mean the end of a US-Australia alliance.[41]

Given the widely held suspicion that China's actual annual military expenditure is much higher than that revealed in its defense budget, there will always be an element of guesswork concerning its real military expenditure. Nevertheless, by all reasonable accounts, China's defense spending has been growing rapidly over the years in conjunction with its economic growth. Between 2000 and 2005, China is estimated to have spent more than $11 billion US in purchasing superior military equipment, including fighter aircrafts, destroyers, and submarines from Russia alone.[42]

China seems to have undertaken a calculated strategy for reducing its apparent weaknesses in naval warfare by upgrading its nuclear submarines with long-range ballistic missiles (Type 094 SSBN) and introducing new stealth frigates (Type 054 *Jiankai* and Type 054A *Jiankai-II* with features similar to the French *Lafayette* frigates).[43] The stealth frigates can be extremely useful in asymmetrical naval warfare with a superior enemy, such as the US.

China has also leapfrogged into cyber reconnaissance and attack through, what China's 2006 white paper on national defense calls, the "*xinxihua*" (信息化, or informationization of the military. Specifically, "informationization" is a code word referring to the ability of the People's Liberation Army (PLA) to use the latest technologies in command, intelligence, training, and weapon systems. New automatic command systems linked by fiber-optic internet, satellite, and new high-frequency digital radio systems allow for more efficient joint-services planning and command while also enabling a reduction in the layers of command of the PLA hierarchy.[44]

Importantly, however, China's attempts to achieve its goal of shifting categories and becoming a systemic power are not restricted to enhancing its hard power. Rather, China is also investing in a systematic soft-power approach in the fields of education, sports, and socio-culture for winning the hearts and minds of skeptics who still see China's rise as a threat. Through the overseas promotion of Chinese culture and language, China is also endeavoring to enhance its global visibility as an emerging systemic power.[45]

Having understood the vital importance of the cultural dimension for elevating its power status, China's Confucius Institute is following in the footsteps of the British Council, Alliance Française, and the Goethe Intitut, which popularized the national languages and cultures of UK, France, and Germany respectively. Though many western and developing-nation universities, particularly in their departments of modern languages, had already been offering courses in Mandarin language and Chinese culture, China decided to roll out an expansive language promotion program in 2004 to popularize Mandarin and the Chinese culture through its Confucius Institute and its large international network of interactive classes. Given the denting of China's public image resulting from print, electronic, and social media coverage of news of human rights abuses and political dissension, recasting Confucius as a "promoter of peace and harmony"[46] seems to be a strategic move. The hop for Chinese policymakers is that publicizing the timeless wisdom and teachings of Confucius, alongside the history of China's glorious past and ancient civilization, will help China to improve its popular image. In fact, the official Chinese news agency *Xinhua* has been quite forthright in explaining the strategic reason for choosing Confucius, ar-

40 See Xia Liping, "*Mei Guo Chong Fan Dong Nan Ya Ji Qi Dui Ya Tai An Quan De Ying Xiang*" (The USA's Return To Southeast Asia And Its Impact On The Security In The Asia-Pacific), *Contemporary International Relations* 8 (2002): 18-22; Zhang Wenzong, "*Chong Gou Zhong Mei Jun Shi Guan Xi, Yin Dui Mei Guo Zhan Lue Dong Yi*" (Reshaping the Sino-US Military Relationship to Deal With the Eastward Shifting of the US Strategy), *Chinese Social Sciences Today* 191 (2011): 13.

41 Cited in Greg Sheridan, "What if bluff and bluster turn to biff?," The *Australian*, March 10, 2000.

42 "China's Military Might: The Long March to be a Superpower," *The Economist*, August 2, 2007.

43 See Lee Wei-chin, "Long Shot and Short Hit," 523-42; Jason Fritz, "How China Will Use Cyber Warfare to Leapfrog in Military Competitiveness," *Culture Mandala* 8.1 (2008): 28-80.

44 Jason Fritz, "How China Will Use Cyber Warfare," 28-80.

45 It is important to mention in this context that China is not alone in aspiring to combine hard power with soft power for attaining preeminence, if not hegemony, at both the subsystemic and systemic levels. Historically, all great powers in their quest for regional and/or global supremacy have tried to impose their own cultures and languages over others alongside military and/or economic expansion. France and Britain, the most powerful countries at the turn of the last century, used their languages as powerful tools for exporting their cultures and imposing their values over others as part of their colonial conquests. On the part of France, while Cardinal de Richelieu created the *Académie Française* in 1635 to keep the French language "pure," the *Alliance Française* was launched in 1883 primarily to spread the French language and culture around the globe. Britain followed the same path in the early 1930s by setting up a *British Committee for Relations with Other Countries*, later renamed the *British Council* in 1934, for promoting the teaching of the English language and culture not only throughout its colonies but also in other parts of the non-English-speaking world.

46 "A Message from Confucius: New Ways of Projecting Soft Power," *The Economist*, October 22, 2009, accessed May 15, 2012, http://www.economist.com/node/14678507.

guing that Confucius is "the most prominent thinker, statesman, educator in Chinese history," and that "Confucius has been in the center of traditional mainstream Chinese culture for more than 2,000 years, having far-reaching influence for people of Chinese origin worldwide."[47]

CONCLUDING REMARKS

As the above discussion suggests, it is little surprise that a *Pax Sinica* model is now emerging in the global system by virtue of China's acquiring the same economic, military, and cultural wherewithal that once helped propel erstwhile global power Britain and the current superpower, the US, to a systemic power status. Just as France and Britain did during the early twentieth century[48] and the US did after World War II,[49] China is also using finance and trade as a means of diplomacy in order to enhance its regional and geopolitical status. And like Britain and the US, China is also trying to combine its economic power with military and cultural powers as a means of altering the status quo.

The pathway to a possible *Pax Sinica* looks much like those of *Pax Britannica* and *Pax Americana*. Perhaps the only significant difference lies in the constraints faced by China in the post-Bretton Woods international economic order. Compared to Britain and the US in previous international economic orders, China has less of a margin of maneuverability in the realms of finance, production, and knowledge in relation to international corporate enterprises, as well as other states of both the system and sub-systems.

Consequently, in view of China's demonstrated pragmatism and cautiousness, it can be concluded that it is less likely that a possible *Pax Sinica* would be characterized by hegemony of military aggression. Rather, more likely will be a power akin to the "benevolent hegemony" of *Pax Americana* as a means of expanding its sphere of geopolitical and economic influence. This may, in turn, open the door for the BRIC countries in general to take more active roles in bringing about plurality in decision-making on the global stage.

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47 "Chinese Learning Centre Launched in Kenya," Xinhua, November 21, 2010, accessed May 15, 2012, http://www.China.org.cn/English/culture/99027.htm.

48 See John Keiger, "Wielding Finance as a Weapon of Diplomacy: France and Britain in the 1920s," *Contemporary British History* 25.1 (2011): 29-47, accessed August 3, 2012, doi: 10.1080/13619462.2011.546098; Jean-Noël Jeanneney, *François de Wendel en République : L'Argent et Le Pouvoir (1914-1940)* (Paris: Seuil, 1976), 195-96.

49 See: Robert W. Cox, "Multilateralism and World Order," *Review of International Studies* 18/2 (1992): 161-80.

ALTERNATIVE INSTITUTIONAL ARRANGEMENTS:

MANAGING TRANSBOUNDARY WATER RESOURCES IN SOUTH ASIA

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ABSTRACT

It has been widely acknowledged that transboundary water resources are an issue of importance in northern South Asia and that water sharing is contentious both between and within the countries of the region. However, while much has been written about relations between the governments of the region and the various water-sharing treaties that have been enacted at different points in time, there has been little analysis devoted to alternative institutional arrangements that might enhance the effectiveness of regional cooperation. While the ongoing political fragmentation of the Indian subcontinent presents significant obstacles to the formation of such institutions, this article argues that a new, transparent regionalism will contribute to a more just and equitable distribution of these water resources.

INTRODUCTION

The South Asian region has had a fraught and tangled political history associated with hydropower development. Particularly, this conflict results from the fact that nearly all major rivers and tributaries in the northern part of the subcontinent are transboundary; they begin in the glaciers of the Himalayas or the Tibetan Plateau, crossing national borders from China, Nepal, or India, then flowing to the plains, often again crossing national borders, including into Pakistan or Bangladesh. A wide-ranging literature has documented earlier attempts to cooperate over these resources, some successful and others troubled. Settlements between India and its neighbors have come with political backlash and feelings of enmity in these latter countries.[1]

[1] D. Mustafa, "Hydropolitics in Pakistan's Indus Basin," *United States Institute of Peace Special Report* No. 261 (Washington,

The above image was taken by the author. It depicts the site of the West Seti Hydropower project in Doti district, Nepal.

India has consistently refused to countenance multilateral discussions on the issues of transboundary water sharing,[2] and indeed, water-sharing negotiations are conspicuously absent from discussions at the South Asian Association for Regional Cooperation (SAARC), the regional body that would otherwise seem to be an obvious forum for such multilateral coordination.

At the same time, it has been widely noted that all nations of the Hindu-Kush Himalayas have extensive plans for constructing dams for power, irrigation, and flood control in the near future. In discussing these attempts in China, South Asia, and Southeast Asia, Kenneth Pomeranz argues that they may collectively constitute the most significant modification of the natural environment in human history.[3] Certainly, whether or not one agrees with the intent of these plans, there can be no denying that the scale of the endeavor is breathtaking in its ambition. Given that attempts to modify the environment have effects both upstream and downstream of a project site, a real assessment of the extent of these changes thus requires analysis on a regional scale, as well as an examination of how the quest for harnessing hydropower from the Himalayas is exacerbating tensions, both within and outside of these countries.

In the case of the Indus basin to the West, the political climate within Pakistan has become strained by India's endeavors to undertake more projects in the upper reaches of the basin's eastern rivers, and water sharing is increasingly tied to broader disputes over issues such as Kashmir. Such disputes are also implicated in tensions within Pakistan over water allocation between provinces, particularly between politically and economically dominant Punjab and its neighboring provinces. In Nepal, the majority of proposed hydropower projects involve India, either in the sharing of water or the sale of electricity. The "New" Nepal era, following the abolition of the monarchy, has brought these contests into stark resolution, not least because the Maoists have built a sizeable constituency on a platform that includes a distrust of any hydro-development involving India. At the same time, it is undoubtedly the case that India is an important potential partner, with hydroelectricity from Nepalese dams linked to the north Indian grid representing a significant source of export revenue generation. In Bangladesh, water-sharing agreements with India consistently fuel political mileage for opposition parties, creating the perception within Bangladesh that any transboundary project necessarily generates negative effects for the downstream riparian country. Also significant, then, is the Bangladeshi distrust resulting from the Indian government's building of the Farraka barrage many decades ago, which had the goal of diverting water from the Ganges River into the Hooghli tributary before the water crossed the border into Bangladesh.[4]

Clearly, then, the geopolitics of water sharing is an issue that is important to all governments of northern South Asia. However, this is not to say that such an examination should be confined only to examining how various governments negotiate the terms of water sharing. This paper argues that, in thinking through how a more just and equitable distribution of South Asia's water resources may occur in the future, it is vital – both as an analytical and a practical task – to escape the "territorial trap"[5] of thinking about transboundary water resources solely in terms of relations between nation-states. Indeed, the discussion of the future of transboundary water resources offers the potential for alternative regional organizations, including transnational networks of civil society organizations, to have positive impact in ways that can engender a more sustainable and just future. Thus, while much has been written about the relations between the governments of the region, there has been little attempt to study transboundary networks. And while much has been written about the role of India's civil society in contesting large-scale dams,[6] there are few well-functioning networks of pan-South Asian civil society organizations that work to contest similar issues when they occur outside of India's borders. Track II and, to a lesser extent, Track III initiatives have proliferated in recent years, but there is little sense

USIP, 2010); D.P. Hill, "Boundaries, Scale and Power in South Asia," in *Water, Sovereignty, and Borders in Asia and Oceania*, ed. D. Ghosh et al. (New York: Routledge, 2009), 87-103; S. Brichieri-Colombi and R.W. Bradnock, "Geopolitics, Water and Development in South Asia: Cooperative Development in the Ganges-Brahmaputra Delta," *The Geographical Journal* (2003): 43–64; D. Gyawali and A. Dixit, "How not to do a South Asian Treaty," *Himal* (2001); A.K. Biswas, "Indus Waters Treaty: The Negotiating Process," *Water International* 17.44 (1992): 201- 9.

2 D.P. Hill, "The Regional Politics of Water Sharing: Contemporary Issues in South Asia," in *Water First: Issues and Challenges for Nations and Communities*, ed. K. Lahiri-Dutt and R.Wasson (New Delhi: Sage, 2008): 59-80.

3 K. Pomeranz, 'The Great Himalayan Watershed: Agrarian Crisis, Mega-Dams and the Environment," *New Left Review* 58, (2009): 5-39.

4 I. Ahmed, "Teesta, Tipaimukh and River Linking: Danger to Bangladesh-India Relations," *Economic and Political Weekly*, April 21, 2012, 51-53; A. Nishat, "Development and Management of Water Resources in Bangladesh: Post-1996 Treaty Opportunities," in *Sustainable Development of the Ganges-Brahmaputra-Meghna Basin*, ed. A.K. Biswas and J.I. Uitto (Tokyo: United Nations Press, 2001): 80–90; I. Hossain, "Bangladesh-India Relations: The Ganges Water-sharing Treaty and Beyond," *Asian Affairs* 25.4 (1998): 131-50.

5 K. Furlong, "Hidden Theories, Troubled Waters: International Relations, the 'Territorial Trap', and the Southern African Development Community's Transboundary Waters," *Political Geography* 25.4 (2006): 438-58.

6 See S. Khagram, *Dams and Development: Transnational Struggles for Water and Power* (Ithaca: Cornell University Press, 2004).

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that they have been able to significantly reduce the culture of distrust that is evident in the region over water sharing. Certainly, this is partly because the politically fragmented and divided nature of the Indian subcontinent makes the formation and sustaining of these networks challenging.

The first section of the paper provides an outline of some of the challenges associated with present and future developments. It then discusses some specific instances of water sharing and why these have become so contentious between and within the countries of the region, focusing in particular on the Indus basin. The final section discusses the role of existing institutions for managing these transboundary water resources and analyzes proposals for alternative institutional arrangements. This paper concludes with a discussion of the need to enhance the role of civil society networks in such future institutions, as well as an examination of the prospects for such changes occurring in South Asia.

CONTEXTUALIZING THE CHALLENGES OF WATER SHARING IN SOUTH ASIA

Large-scale dams have come to symbolize both the promise and violence of the modernist development that is implied in South Asia's hydro-geographies; consequently, a large literature has developed that represents both votaries and opponents of this infrastructure. The proponents of large-scale dams can point to their contribution to the agricultural and industrial growth of the post-colonial period, which has certainly benefitted some groups within the region. In the modern era, advocates suggest that such dams mean that surface water can be transferred when and to where it is most needed, while also offering flood protection. Many of those who support such projects acknowledge the potential costs to ecosystems and livelihoods, but would argue that the worst of such outcomes can be mitigated by the application of best-practice scoping and impact-assessment measures.[7]

To their opponents, these projects primarily benefit only a small fraction of those living in the region and should more properly be seen as a new form of enclosure.[8] Whether one looks at large-scale hydro-developments in Nepal, Pakistan, or Northeast India, a common theme is that Environmental and Social Impact Assessments are rarely transparent or publically available.[9] In all cases, the level of genuine public participation is low and guidelines established by the World Commission on Dams or donor agencies are frequently ignored.[10] Exact estimates of displacement are difficult to come by, although it has been estimated that between 16 and 38 million people have been displaced by large-scale dams in India alone,[11] a large majority of them being Scheduled Castes and Scheduled Tribes.[12] The Tarbela dam in Pakistan encapsulates many of these issues. As one of the world's biggest dams, at its peak it provided 28 percent of Pakistan's total electricity, while also resulting in large-scale loss of forest cover and fish diversity. The construction of the dam displaced 96,000 people, of which 20,000 were never resettled.[13] Long delays also meant that compensation lost half its value by the time it was finally received. And while the dam is highly valued in Punjab, where most benefits are enjoyed, in lower riparian Sindh province it is viewed with hostility, often cited as an example of the polity's biases towards its more politically and economically powerful upper riparian neighbor.

The pressures on water resources will undoubtedly increase in the future, with population growth, climate change, and economic growth among the most significant challenges facing the region.[14] Groundwater has been the driver of agricultural growth in many parts of the region, but it is quickly becoming over-extracted, particularly in the wheat belts of Pakistan and northwest India.[15] There are a variety of strategies for supplementing and regulating the use of water resources in South Asia, with civil society typically favoring participatory irrigation management and rainwater harvesting,[16] while bureaucracies continue to focus on technocratic solutions based on augmenting supply by increasing the capacity for storage in dams and reservoirs.[17]

7 M.P McCartney et al., "Ecosystem Impacts of Large Dams," Background Paper No. 2 Prepared for IUCN / UNEP / WCD (International Union for Conservation of Nature and Natural Resources and the United Nations Environment Programme, 2001).

8 R. D'Souza, "Framing India's Hydraulic Crisis: The Politics of the Modern Large Dam," *Monthly Review* 60.3 (2008): 112-24.

9 J.K. Panigrahi and S. Amirapu, "An Assessment of EIA system in India," *Environmental Impact Assessment Review* 35 (2012): 23-36; S. Dharmadhikary, *Mountains of Concrete: Dam Building in the Himalayas* (Berkeley: International Rivers, 2008).

10 Dharmadhikary, *Mountains of Concrete*.

11 World Commission on Dams, *Dams and Development: A New Framework for Decision Makers* (London: Earthscan Publications, 2000): 17.

12 Scheduled Castes refer to those social groups who are historically at the bottom of the caste hierarchy. They are sometimes referred to as the "Untouchables" or *Dalits*. Scheduled Tribes refer to the indigenous groups, also referred to as *Adivasis*. Both these groups are referred to as '"Scheduled" because there is recognition within the Indian Constitution of their disadvantaged status.

13 World Commission on Dams, *Tarbela Dam and related Aspects of the Indus River Basin Pakistan Final Draft Report* (World Commission on Dams, 2000), accessed May 24, 2008, www.dams.org/kbase/studies/pk.

14 U.A. Amarsinghe et al., "India's Water Future to 2025-2050 Business-as-Usual Scenario and Deviations," *IWMI Research Report* No. 123 (Colombo: International Water Management Institute, 2007).

15 T. Shah et al., "Some Aspects of South Asia's Groundwater Irrigation Economy: Analyses from a Survey in India, Pakistan, Nepal Terai and Bangladesh," *Hydrogeology Journal* 14 (2006): 286–309.

16 P. P. Mollinga, "Water, Politics and Development: Framing a Political Sociology of Water Resources Management," *Water Alternatives* 1.1 (2008): 7-23.

17 A. Jaitly, "South Asian Perspectives on Climate Change and Water Policy," in *Troubled Waters: Climate Change, Hydropolitics, and Transboundary Resources*, ed. D. Michael and A. Pandya (Washington, DC: The Henry L. Stimson Center, 2009): 17–31.

Indeed, throughout South Asia most of the bureaucracies charged with this task continue to place the greatest emphasis on medium- and large-scale dams and on increasing the canal system to facilitate inter-basin transfers, though such measures are contentious within broader society. For example, India's National Water Development Agency (NWDA) continues to support large-scale inter-basin water transfers, which will deliver water from water-surplus areas to water-deficit ones, as the most effective way to achieve increased agricultural production in the future.[18] Involving thirty inter-river links, thirty-six large-scale dams, ninety-four tunnels, and 10,876 kilometers of canals, the Indian River Linking Project (IRLP) envisages the transfer of 334 billion cubic meters of water from "water-surplus" to "water-deficit" regions.[19]

Amplifying the potential for contestation is the fact that harnessing the greatest potential for hydropower from the descent of the Himalayan Rivers involves some of the region's most troubled frontier regions and some of the world's mega-biodiversity hotspots. The northeast of India, for example, is the region of the country which is likely to have the greatest hydropower development in the future, but the debate has too often been stifled, frequently by recourse to military intervention, and it has been the catalyst for what activists in the region view as arbitrary arrests. An example of this is the 1,500- megawatt Tipaimukh Multipurpose Project site in Manipur. Since July 2008, the Manipur government has authorized the militarization of the main service road for the dam, with central and state government forces stationed every seven kilometers along the ninety-nine kilometer road.[20]

While divisions within these countries over large-scale projects have been evident for many years, it is perhaps the controversial transboundary projects arising in the Himalayas that can best illustrate broader issues of uneven development and human insecurity across a range of spatial scales. While conflicts over transboundary water resources have arguably always been a central component of the tumultuous history of post-colonial South Asia, with project proposals year after year becoming the focus of protests by civil society groups. Tipaimukh and the Lower Subansiri scheme in Northeast India[21] and West Seti in Nepal[22] are examples of contentious hydro-projects that have become rallying points in the current era. The continued oppression of marginal groups within India's borders that are likely to be affected by these projects is matched by a suspicion of those in other parts of South Asia, particularly Pakistan and Bangladesh, where India is frequently portrayed as a regional hegemon that has and will continue to disregard the potential impacts on lower riparian communities.

TRANSBOUNDARY WATER RESOURCES AND INDIA-PAKISTAN RIVALRIES

While suspicions exist in both Nepal and Bangladesh toward India's intentions in building these projects, it is in Pakistan where the political climate has arguably become most hostile to India's endeavors to undertake more projects in the upper reaches of the basin's eastern rivers. The partition of the subcontinent gave India the eastern rivers (Ravi, Beas, and Sutlej) and Pakistan the western rivers (Jhelum, Chenab, and the Indus itself), but left Pakistan in a vulnerable position with India as the upper riparian for those western rivers. Further, as a country that is largely dependent upon a single river basin, the Indus, and its tributaries, Pakistan is in precarious position for a number of reasons. Firstly, its economy is almost entirely dependent upon water-hungry sectors, including the textile, sugar, and wheat industries, and secondly, its aging and poorly maintained water infrastructure leaves the country prone to worsening power shortages. Both result from an extensive canal system that has India in control of the headwaters.

In this scenario, the development of hydropower in Kashmir, on both the Indian and Pakistan side, has become an increasingly significant issue. In fact, some have argued that water resources have actually been an important component of the disputes historically, albeit to some extent unacknowledged in the public discourse on the region.[23] The culmination of these events has increasingly given rise to the questioning the validity of the Indus Waters Treaty (IWT) in some quarters. Signed in 1960 to regulate the conditions under which the rivers are accessed and utilized by India and Pakistan, with the World Bank uniquely included as the third signatory, this Treaty has often been heralded as a success despite the ongoing series of conflicts between the two countries involved.[24] In recognition of the fact that India has been the upper riparian country for the western rivers allocated to Pakistan, restrictions are placed on its capacity to modify the flow of these rivers in order to prevent infringing upon Pakistan's lower riparian rights. Among these provisions is that India is able to build storage facilities only of limited capacity on rivers that flow into Pakistan. In recent years,

[18] National Water Development Agency, *The Need* (New Delhi: NWDA, 2006).

[19] N. Islam, "IRLP or the Ecological Approach to Rivers?," *Economic and Political Weekly* 41.17 (2006): 1693.

[20] D. Buhril, "Enquiring Tipaimukh Dam: Development or Destruction?," 2009, accessed February 2, 2012, http://panossouthasia.org/pdf/Enquiring%20Tipaimukh%20Dam%20Development%20or%20Destruction%20%20David%20Buhril.pdf.

[21] I. Ahmed, "Teesta, Tipaimukh and River Linking: Danger to Bangladesh-India Relations," *Economic and Political Weekly* 47.16 (2012): 51-53.

[22] M. Shrestra, "China Agrees to Invest in Nepal's Biggest Project," *Times of India*, February 29, 2012, accessed September 20, 2012, http://articles.timesofindia.indiatimes.com/2012-02-29/south-asia/31110403_1_west-seti-nepal-government-nepal-electricity-authority; R.S. Shresta, "West Seti Hydroelectric Project: Assessment of its Contribution to Nepal's Economic Development," *Hydro Nepal* 5 (2009): 8-17.

[23] R.G. Wirsing and C. Jassparo, *Spotlight on Indus River Diplomacy: India, Pakistan and the Baglihar Dispute* (Honolulu: Asia-Pacific Centre for Security Studies, 2006).

[24] M.A.S. Salman and K. Uprety, *Conflicts and Cooperation on South Asia's International Rivers: a Legal Perspective* (Washington, DC: The World Bank, 2002).

this provision has consistently been tested by India as it has sought to expand its number of projects in the upper reaches of the western rivers, which India argues is part of a broader project to decrease the marginalization of troubled Jammu and Kashmir region.

Thus, one now must wonder about the extent to which the relative lack of conflict in the past may give way to greater disquiet now, with India intent on constructing projects on the headwaters. Despite the array of contentious projects over time, including the Salal Dam on the Chenab, and the Wullar Barrage/Tulbul Navigation Project on the River Jhelum, for many it is the Baglihar Barrage that has marked the change in public opinion within Pakistan. The Indian project in Jammu and Kashmir was originally scheduled for completion in 2007, but its construction was delayed by Pakistan officials' claims that the project was in violation of the Indus Waters Treaty. Despite repeated meetings, the World Bank was unable to broker a solution satisfactory to both parties; hence, as is their right under the Indus Waters Treaty, Pakistan asked the World Bank to appoint a neutral arbiter to mediate on the legality of Baglihar.[25] Ultimately, the neutral arbiter, Raymond Lafitte, decided that India should be allowed to proceed with its construction with minor modifications. Certainly, this decision has prompted further discussion of how the provisions of the Treaty might be interpreted. And perhaps more significantly, this decision has caused groups within Pakistan to argue that the World Bank cannot be trusted to act on behalf of both parties, questioning the IWT as an effective and legitimate instrument for mediating between the two countries.

Today, the dispute between the competing claims of the Indian 330-megawatt Kishenganga hydropower project dispute and the 969-megawatt Neelum-Jhelum Hydropower project in Pakistan has become a rallying point for aggrieved parties on both sides. Both projects are to be constructed on the same river; some argue that the upstream construction of Kishenganga, including a twenty-one kilometer tunnel that will divert water into Wullar Lake, will interfere with the Neelum-Jeelum, specifically in diverting water in a magnitude greater than that which is allowable under the Indus Waters Treaty. Wasi suggests that this will impact Pakistan's water supply by 8-9 percent, with significant impacts on the lower riparian Azad Kashmir.[26] Within Pakistan, Kishenganga has become a staple for the most prominent voices calling for militant nationalism – most notably Hafiz Saeed, the leader of Jamaat-u-Dawa, the charity wing of Lashkar-e-Taiba, one of Asia's largest and most active Islamic militant groups.[27]

Furthermore, it is not only radical voices that are questioning the direction of water sharing in the Indus Basin. John Briscoe, who for ten years was Senior Water Advisor for the World Bank in South Asia, has gone so far as to describe the on-going processes associated with the Indus Basin as a "looming trainwreck."[28] In an article published in the widely read Indian journal *Economic and Political Weekly*, Briscoe laments the fact that the World Bank – his former employer – has retreated from its former role as an active, neutral mediator between India and Pakistan. For him, most disappointing have been that the concerns of Pakistan over its worsening water situation, as well as India's potential role in exacerbating these issues, are seldom aired by Indian media. Briscoe also identifies the role of the Ministry of External Affairs in India in shaping the media's editorial lines. One month later, former Secretary, Union Ministry of Water Resources, and now leading commentator Ramaswamy Iyer published a riposte in the same journal,[29] in which he emphasizes the contention over Briscoe's accusations that India's proposed storage facilities are in breach of the IWT.

Whichever of these positions one chooses to take, what cannot be disputed is that Kishenganga has indeed become a symbol of disenchantment within Pakistan. Indeed, the proliferation of protests, social media sites, and articles from within Pakistan leaves little doubt of this. Further, my own review of newspapers covering this issue suggests that while some center-left outlets in India such as *Tehelka* give what might be regarded as a balanced coverage of Pakistani grievances, it is also true that Briscoe is essentially correct in asserting that the Indian media rarely acknowledges Pakistan's vulnerability with regards to water sharing amidst a worsening economic, demographic, and ecological climate in the country. In this respect, the national coverage of the issue reveals a significant contrast to international media's increasing engagement of it, articles appearing in the *National Geographic, The Economist*, the *New York Times* and the *Guardian.*[30] Perhaps most influentially, the US Senate Committee on Foreign Relations released a report in early 2011 arguing that while one of India's planned projects would not necessarily be significant, the cumulative impact of all planned projects would pose potential danger to Pakistan.[31] Again, while the discourse employed amongst many of these outlets of an imminent "water war" is routinely dismissed amongst those who study

[25] H. Gazdar, Baglihar and Politics of Water: A historical perspective from Pakistan," *Economic and Political Weekly*, February 26, 2005, 813-17.

[26] N.Wasi, "Harnessing the Indus Waters: Perspectives from Pakistan," *IPCS Brief* 128 (New Delhi: Institute of Peace and Conflict Studies, 2009): 3.

[27] L. Polgreen and S. Tavernise, "Water Dispute Increases India-Pakistan Tension," *The New York Times*, July 20, 2010.

[28] J. Briscoe, "Troubled Waters: Can a Bridge Be Built over the Indus?," *Economic and Political Weekly*, December 11-17, 2010, 32.

[29] R.R. Iyer, "Briscoe on the Indus Treaty: A response," *Economic and Political Weekly*, January 15, 2011, 68-71.

[30] I. Jack, "'Cricket diplomacy' is fine, but India and Pakistan will need more than that," *The Guardian*, April 2, 2011; W. Wheeler, "India and Pakistan at Odds Over Shrinking Indus River," *National Geographic News*, October 12, 2011; "South Asia's Water: Unquenchable Thirst," *The Economist*, November 19, 2011; Polgreen and Tavernise, "Water Dispute Increases India-Pakistan Tension," *The New York Times*, July 20, 2010.

[31] Committee on Foreign Relations, *Avoiding Water Wars: Water Scarcity and Central Asia's Growing Importance for Stability in Afghanistan and Pakistan*, A Majority Staff Report One Hundred Twelfth Congress.

transboundary water resources, whether it be in South Asia or elsewhere,[32] there can be no doubt that there exist good reasons for why we are now analyzing the legacy of dividing the Himalayan rivers between India and Pakistan to such an unprecedented degree.

Among the most significant of the emerging concerns is the potential impact of global warming. A 2011 Committee on Foreign Relations report suggests the emerging consensus is that the Himalayas are likely to be adversely affected by climate change earlier and more severely than other similar mountain regions. The focus on shared water resources assumes greater significance in such a scenario and the greater short-term discharge into perennial rivers will be accompanied by greater occurrences of glacial outbursts, flash floods, and the sedimentation of dams. Taken together, all of these factors suggest that water resource contestation will assume more significance, arguably demanding a reevaluation of the potential management options moving forward.

A factor having the potential to further complicate these matters is Chinese expansion into the hydropower industry in countries such as Nepal and Pakistan. While still at an early stage and very much a work in progress, given the size, expertise, and access to capital of the Chinese hydropower sector, Chinese expansion may become even more significant a factor in South Asian hydro-politics in the future. Chinese companies are beginning to invest in Pakistan, including the Neelum-Jhelum project, and this support may alter the balance between India and Pakistan in the Indus. Similarly, in February 2012, China Three Gorges Corporation (CTGC) signed a Memorandum of Understanding with the government of Nepal for the development of the 750-megawatt West Seti project. Situated in a far western part of the country, the project has been rescheduled ten times over sixteen years, during which the Snowy Mountains Engineering Corporation, the Australian company with the mandate to build the dam, tried and failed to successfully procure the funds necessary for completing the project. In 2012, the CTGC agreed to facilitate a soft loan with the Chinese EXIM bank for $1.6 billion US. The dam is now scheduled for construction beginning in 2016, with a projected completion date of 2020.[33]

Still, it would be premature to suggest that Chinese intervention is likely to definitively alter the complexities within and between the countries of the region. Indeed, the West Seti deal has subsequently been caught up in a range of political debates in Nepal, with accusations that the government signed without an appropriate tendering process such that the Pokhara airport upgrade might occur. Maoists MPs now argue that previous agreements to sell electricity to India were anti-national and pro-India, while Nepali Congress members of Parliament argue that Maoists favored Chinese companies in ways that lacked transparency and due process.[34] Similarly, while Pakistan is growing closer to China and is actively seeking its support in implementing these kinds of projects, its continuing dependence upon the US means that it is constantly engaged in a delicate balancing act. If anything, the potential of greater proliferation of large-scale hydropower does not lessen the potential range of issues, but instead increases the necessity for regional bodies that can adequately mediate between these competing claims.

INSTITUTIONAL ARRANGEMENTS FOR THE MANAGEMENT OF TRANSBOUNDARY WATER RESOURCES IN SOUTH ASIA

There is considerable divergence of opinion over the effectiveness of current institutional arrangements for the management of each of the major transboundary regions. There are river commissions in each of the major basins, including the Indus Basin Commission (Pakistan-India), Mahakali Commission (India-Nepal), and the Joint Rivers Commission (Bangladesh-India), each of which have mandates to incorporate the views of each country involved and each of which have been operating for many years. Zawahiri feels that these commissions operate reasonably effectively in general.[35] In contrast, however, much of the commentary dismisses the importance of these river commissions, suggesting that relations between the basin countries are marred by India's political and economic dominance. In the case of Bangladesh and Pakistan, it is claimed that India's status as the upper riparian strengthens its advantage. In the case of Nepal, many within that country claim that its small population and dependence upon India for transit trade means there is little potentially to substantially challenge India's perspective. There is an emerging literature that seeks to overcome these historic difficulties; Crow and Singh, for example, argue for a regional organization that they call the Himalayan Authority for Water Services and Environmental Cooperation, and for them, it is only through such a body that genuine regional cooperation is possible. [36] The World Bank and a number of donor countries have attempted to foster momentum for such a regional organization through the South Asia Water Initiative (SAWI), including the sponsorship of the "Abu Dhabi Dialogues'" (ADDs), which bring together Afghanistan, Bangladesh, Bhutan, China, India, Nepal, and Pakistan for the purposes of promoting dialogue. The ADDs have thus far met on five occasions and also feature small

[32] Furlong, "Hidden Theories, Troubled Waters"; C. Sneddon and C. Fox, "Rethinking Transboundary Waters: A Critical Hydropolitics of the Mekong basin," *Political Geography* 25.2 (2006): 181–202; U. Alam, "Questioning the Water Wars Rationale: A Case Study of the Indus Waters Treaty," *The Geographic Journal* 168.4 (2002): 341-53.

[33] "MoU signed for West Seti Hydel Project," *The Kathmandu Post*, February 29, 2012.

[34] "West Seti gets House Committee's Nod," *Nepal News*, March 29, 2012.

[35] N.A. Zawahiri, "India, Pakistan and Cooperation along the Indus River System," *Water Policy* 11.1 (2009): 1-20.

[36] B. Crow and N. Singh, "The Management of International Rivers as Demand Grows and Supplies Tighten: India, China, Nepal, Pakistan, Bangladesh," *India Review* 8.3 (2009): 306-39.

grants projects for non-governmental organizations.[37]

Clearly, given the opaque nature of many of the bureaucracies in the region, a key component of a regional body for coordinating Himalayan rivers must be that it goes well beyond Track I diplomacy and creates space for networks of civil society and people's movements across the region. It also must be acknowledged that civil society itself has its own limitations in different parts of South Asia. Too often, NGOs in the region are preoccupied with donor related developmentalism (as in Bangladesh and Nepal) rather than advocacy,[38] or are constrained by the extent to which they can express dissent (as in Pakistan). Further, while India has among the most significant civil societies in the world, Indian scholars and activists traveling outside of India to speak about their objections to large-scale dams often face problems from their own government.

Certainly, there are signs of alliances forming between groups drawn from across the region, but these alliances are fairly nascent and their influence on broader policy debates remains difficult to discern. South Asian Solidarity on Rivers and Peoples (SARP) is an example of attempts by regional networks of civil society organizations to forge a common position. SARP arose out of Sargamartha Declaration, adopted in Kathmandu in 2002 after an international consultation process organized by Water and Energy Users' Federation-Nepal (WAFED) in cooperation with Narmada Bachao Andolan (NBA), South Asian Network for Dams, Rivers and Peoples (SANDRP), and many other national and international groups and movements. Similarly, several prominent think tanks, including the Sustainable Development Policy Institute in Islamabad, have attempted to promote regional networks of organizations such as the Imagine New South Asia (INSA), which, among others things, examines issues concerned with regional cooperation over transboundary water resources.[39] Further attempts at strengthening these networks took place at the South Asia Social Forum in Dhaka in 2011, including resolutions on ensuring greater transparency from all government- and private sector-led large-scale hydro-development in the region. Part of the difficulty in these networks operating effectively is the politically fragmented nature of the subcontinent, which means that it is very difficult for pan-South Asian networks to meet and take up issues associated with transboundary water resources on a regular basis.

CONCLUSION

Transboundary water resources will continue to be a significant issue in South Asia. As demand for water increases for both electricity and irrigation, and as supply becomes more problematic, cooperation and transparency are essential. However, as one of the least integrated regions in the world, there are certainly no guarantees that this will occur in South Asia. And indeed, cooperation among all states for the benefit of the region's citizens is arguably less likely than continual division and enmity. Further, even in those instances when governments have cooperated to share water across borders, there exists inequality in usage rights in all countries. Where mega-projects have been implemented, they have entailed the usurpation of land and livelihood, widespread displacement, and the destruction of heritage and ecology. These are due to a polity that, in each of these countries, consistently favors privileged groups while failing to ensure the basic needs of its poorest citizens. If they are to strive for a just and sustainable future, institutions devised for the future dynamics of water sharing must therefore also include greater openness to these disempowered and disenfranchised groups from throughout the region.

[37] SAWI, *South Asia Water Initiative Annual Report 2011* (New Delhi: World Bank for the Annual Donors Meeting, 2011).

[38] D.R. Dahal, *Civil Society in Nepal: Opening the Ground for Questions* (Kathmandu: Centre for Development and Governance, 2001).

[39] Action Aid International, *Asia Natural Resource Management in South Asia: Imagine a New South Asia* (New Delhi: Pearson Education, 2011).

KUMBH MELA: MAPPING THE EPHEMERAL MEGA-CITY
AN INTERDISCIPLINARY RESEARCH PROJECT

The SOUTH ASIA INITIATIVE at Harvard University

The Kumbh Mela is a Hindu religious fair that occurs every twelve years at the confluence of the Ganga and Yamuna rivers on the plains of northern India. The next festival will take place from January 14 to February 25, 2013 in Allahabad. Since its inception early in the first millennium CE, the Kumbh Mela has become the largest public gathering in the world. Today, it draws tens of millions of pilgrims over the course of a few weeks. On the three "main bathing days" in 2001, the crowd was estimated at some thirty million. The Mela provides a forum for both individual and collective expressions of faith as pilgrims, religious teachers, and followers of monastic orders converge from all parts of India.

On the broad sandy flats left after the rainy season by the receding waters of the meeting rivers, a temporary city is created for the Kumbh Mela. This "pop-up" mega-city will house the Kumbh Mela's many short-term pilgrims as well as the Hindu faithful and the working personnel who stay for the duration. This city, laid out on a grid, is constructed and deconstructed within a matter of weeks. Creating this huge encampment entails multiple aspects of contemporary urbanism: city planning and management, engineering and spatial zoning, an electricity grid, water lines and sanitation systems, food and water distribution plans, hospitals and vaccination centers, police and fire stations, public gathering spaces, and stages for entertainments and plays. Most important are the many encampments of religious teachers and monastic orders in neighborhoods that include devotees as well as volunteers who work on their behalf to provide services and sustenance to the crowds.

Because of its size and complexity, the Kumbh Mela inspires interdisciplinary research in a number of complementary fields – urban studies and design, religious and cultural studies, environmental science and public health, technology and communications. In January 2013, an team of faculty from across Harvard University, as well as undergraduate and graduate students, will travel to Allahabad to engage with this "pop-up mega-city." The research team will gather throughout the Fall semester 2012 to further develop research questions and strategies. Outcomes will be presented by students and faculty at a university-side symposium hosted by the SAI in the Spring semester of 2013, and will be submitted for a final visual and textual publication.

Learn more here: southasiainitiative.harvard.edu/kumbh-mela/.

The South Asia Initiative at Harvard University is the administrative umbrella for the Kumbh Mela project, in collaboration with the Harvard Global Health Initiative.

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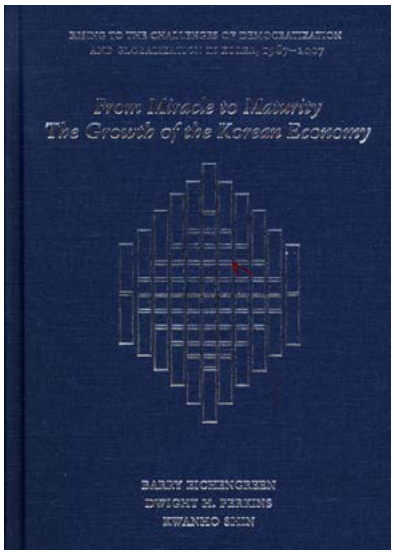
The above image was provided kindly by Lisa Kristine.

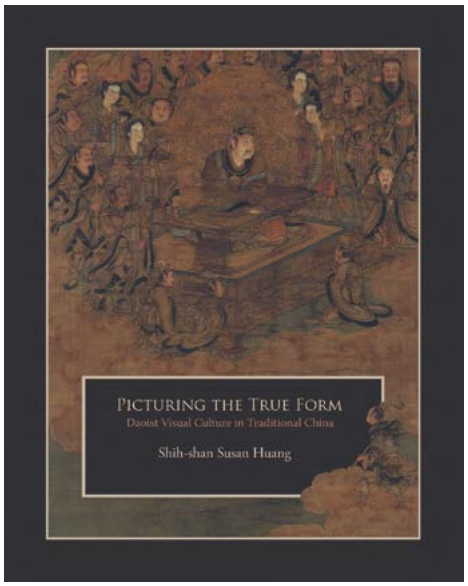
FEATURED TITLES FROM THE HARVARD UNIVERSITY ASIA CENTER



FROM MIRACLE TO MATURITY: THE GROWTH OF THE KOREAN ECONOMY
Barry Eichengreen, Dwight H. Perkins, and Kwanho Shin

The economic growth of South Korea has been a remarkable success story. After the Korean War, the country was one of the poorest economies on the planet; by the twenty-first century, it had become a middle-income country, a member of the Organization of Economic Cooperation and Development (the club of advanced economies), and home to some of the world's leading industrial corporations. And yet, many Koreans are less than satisfied with their country's economic performance given the continuing financial volatility and sluggish growth since the Korean economic crisis of 1997–1998.

From Miracle to Maturity offers a comprehensive qualitative and quantitative analysis of the growth of the Korean economy, starting with the aggregate sources of growth (growth of the labor force, the stock of capital, and productivity) and then delving deeper into the roles played by structural change, exports, foreign investment, and financial development. The authors provide a detailed examination of the question of whether the Korean economy is now underperforming and ask, if so, what can be done to solve the problem.



PICTURING THE TRUE FORM: DAOIST VISUAL CULTURE IN TRADITIONAL CHINA
Shih-shan Susan Huang

Picturing the True Form investigates the long-neglected visual culture of Daoism, China's primary indigenous religion, from the tenth through thirteenth centuries with references to both earlier and later times. In this richly illustrated book, Shih-shan Susan Huang provides a comprehensive mapping of Daoist images in various media, including Dunhuang manuscripts, funerary artifacts, and paintings, as well as other charts, illustrations, and talismans preserved in the fifteenth-century Daoist Canon. True form (*zhenxing*), the key concept behind Daoist visuality, is not static, but entails an active journey of seeing underlying and secret phenomena.

This book's structure mirrors the two-part Daoist journey from inner to outer. Part I focuses on inner images associated with meditation and visualization practices for self-cultivation and longevity. Part II investigates the visual and material dimensions of Daoist ritual. Interwoven through these discussions is the idea that the inner and outer mirror each other and the boundary demarcating the two is fluid. Huang also reveals three central modes of Daoist symbolism — aniconic, immaterial, and ephemeral — and shows how Daoist image-making goes beyond the traditional dichotomy of text and image to incorporate writings in image design. It is these particular features that distinguish Daoist visual culture from its Buddhist counterpart.

THE ASIA CENTER PUBLICATIONS PROGRAM

The publications program of the Harvard University Asia Center oversees three series: the Harvard Contemporary China Series, active since 1985 and now nearing 20 titles; Harvard East Asian Monographs, initiated in 1956 and now totaling more than 340 published titles; and the Harvard-Yenching Institute Monograph Series, with over 75 titles.

Since the beginning of the 2011–2012 academic year, the program has published twelve new titles in various areas of Chinese, Japanese, and Korean studies. These and other titles can be purchased through Harvard University Press.

NEW TITLES

Barry Eichengreen, Dwight H. Perkins, and Kwanho Shin, *From Miracle to Maturity: The Growth of the Korean Economy*

H. Mack Horton, *Traversing the Frontier: The Man'yōshū Account of a Japanese Mission to Silla in 736–737*

Shih-shan Susan Huang, *Picturing the True Form: Daoist Visual Culture in Traditional China*

Kee Heong Koh, *A Northern Alternative: Xue Xuan (1389–1464) and the Hedong School*

David B. Lurie, *Realms of Literacy: Early Japan and the History of Writing*

Patricia L. Maclachlan, *The People's Post Office: The History and Politics of the Japanese Postal System, 1871–2010*

Bruce Rusk, *Critics and Commentators: The Book of Poems as Classic and Literature*

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