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## JUSTICE, SOLIDARITY AND EQUALITY OF LUCK

### Why the Encounter with the Absurd Requires Equalising Fortune

*Leonie Hanewinkel*

**Abstract** This paper sets forth a conception of justice as metaphysical solidarity, resulting from the encounter with the absurdness of the world and rebelling against it, by affirming a universal commitment to human nature, as Albert Camus developed it. In part one, I describe why I think that justice is metaphysical solidarity, derived from the rebellion against the absurdness of life, which leads to an affirmation of a core human nature, as described by Camus. In the second part, I argue why solidarity necessarily leads to the distributive principle of equality of luck, and that the true luck egalitarianism developed by G.A. Cohen, equalises access to advantage. Part three consists of responses to criticisms against luck egalitarianism.

*“When he rebels, a man identifies himself with other men and so surpasses himself, and from this point of view human solidarity is metaphysical”.* Albert Camus

# I Introduction

What is the purpose of distributive justice? The reflective equilibrium theory by Rawls (1974) teaches us that political philosophy's aim is to develop principles, which account for our intuitions of what we perceive as just and unjust. Hence, justice elucidates our moral feelings. It occurred to me that I am deeply troubled whenever I come across facts such as "In the United States, the incidence of low birth weight (birth weight less than 2500 grams) is more than three times higher among children of black high school dropout mothers than among children of white college educated mothers" (Gardner, 2013). There is something about the ordeals in which people find themselves without their own wrongdoing that troubles me deeply. When analysing this intuition of moral repugnance, I have discovered that it can be explained by conceiving of justice as metaphysical solidarity, resulting from the encounter with the absurdness of the world and rebelling against it, by affirming a universal commitment to human nature, as developed by Albert Camus. In this essay, I shall explain why I have come to conceive of justice as solidarity and how this leads to the distributive principle of equal access to advantage. The text is divided into three parts. In part one, I describe why I think that justice is metaphysical solidarity, derived from the rebellion against the absurd cruelty of the universe, as Albert Camus described it in his writings on the absurd. In the second part, I argue why solidarity necessarily leads to the distributive principle of equality of luck, and that the true luck egalitarianism developed by Cohen (1989), equalises access to advantage. Part three consists of responses to criticisms against luck egalitarianism uttered, among others, by Anderson (1999). I shall show that the criticisms do not refute the principle of equal access to advantage. I will demonstrate that, even though equal access to advantage might be difficult to implement, this does not touch upon the fact that it still serves solidarity best, and is therefore the just distributive principle.

## 1.1 Justice is Solidarity

Where is the moral ideal of solidarity derived from? Like Albert Camus (1955), I believe that all issues of morality start with the question: "Is life worth living"? The question arises from the encounter with the absurd. People living in modern times have learned from modern science that the universe has no end and no meaning. The question of whether the universe is merely mechanical or whether it has a telos, an end towards which it aspires, has been answered by natural science, refuting the teleological conception of the universe. The fundamental dilemma is thus how humans should conceive of themselves. The widely

accepted dualism of granting a non-teleological science of the natural world while at the same time affirming a teleological conception of mankind, such as religion, does not appeal to Camus and not to me. It is assumed that if man reasons clearly, he finds that no higher power is watching over him and that he does not find himself on earth because of a higher purpose. Thus, as many others have remarked before, the absurd appears to us in the silence of the universe, which does not answer out longing for meaning. If we encounter the world lucidly, we find that “the arrangement between man and the world is not truth but construction” (Landon Thorson, 1964, p. 286). The presuppositions are thus the doctrine of the absurd and the conviction that it is not possible to completely transcend the paradox of the absurd (Kockelmans, 2005).

What are the ethical consequences of the absurdness of human existence, our longing for meaning, the absence of it we find in the world, and the resulting human suffering? Is life “worth the trouble” (Camus, 1955, p. 2)? A possible reaction to this encounter would be suicide. “Dying voluntarily implies that you have recognised, even instinctively, ... the absence of any profound reason for living, the insane character of that daily agitation, and the uselessness of suffering” (Camus, 1955, p. 2). Contrary to the existentialist theory, developed among others by Simone de Beauvoir, Camus establishes that suicide is not an option. Suicide would mean admitting defeat. “Negating one of the terms of the opposition on which he lives amounts to escaping it. To abolish conscious revolt is to elude the problem” (Camus, 1955, p. 7). Thus staying alive is the only coherent philosophical conclusion that can be drawn from the encounter with the absurd. “Suicide, like the leap, is acceptance at its extreme” (Camus, 1955). Similarly, religious hope for salvation is not viable either, because this would amount to philosophical suicide (Kockelmans, 2005). The human being who sees clearly cannot give in to the absurd, but must constantly revolt against it, and this means the absurd has to be lived. This negation of suicide and the affirmation of human life, establish it, human life, as the only good, since it is only living that makes possible this encounter between man, the world and that which relates man and world, and since “without life, the absurdist wager would have no basis” (Camus, 1956, p. 6). From affirming ones own life, according to Camus (1956), stems the affirmation of the value of all human lives. “From the moment that life is recognised as good, it becomes good for all men” (Camus, 1956, p. 6). In other words, rebellion is the only coherent reaction to the encounter with the absurd, and analysis of the rebellion leads to the suspicion that a human nature does exist, because the rebel bases his revolt on the notion that something about him is worthwhile, which he shares with others.

Why rebel if there is nothing permanent in oneself worth preserving? It is for the sake of everyone in the world that the slave asserts himself when he comes to the conclusion that a command has infringed on something in him, which does not belong to him alone, but which is common ground where all men- even the man who insults and oppresses him- have a natural community (Camus, 1956, p. 16).

The most fundamental human action is thus the revolt against the meaningless of life, which by affirming a core human nature gives life meaning and value again (Kockelmans, 2005). Hence, the conclusions Camus draws are that life and human nature are unquestionable values from which moral rules can be derived. Affirming this core human nature, and the value of human life, results in a sense of solidarity, of togetherness: “There is something within each of us, our essential humanity- which resonates to the presence of the same thing in other human beings” (Sagi, 2002, p. 119). The morality of solidarity is metaphysical; it is the very foundation of existence, the basic element that reflects the essential foundation of human existence. The revolting person understands the special way in which humanity is interlinked and the shared responsibility resulting from this interlinking. Thus, I conceive of justice as metaphysical solidarity, and the resulting shared responsibility and consciousness of mutual respect that result from the basic human similarity affirmed by Camus.

## **1.2 Cohen’s Equal Access to Advantage is Solidarity**

What requirements does a principle have to fulfil if it is to endorse metaphysical solidarity? In my eyes, such a principle ultimately has to be egalitarian. Solidarity is based on affirming one common nature to all human beings, and a self-identification with the value of human life. Thus, only a principle that treats human beings as equals can be just, because this is the only class of principles that can account for the core common nature of all humans.

This leaves us with a variety of distributive principles, which all endorse a pattern of equality. It remains thus to justify, in a second step, why only one of those principles fulfils all requirements of solidarity. Firstly, Rawls’s (1985) difference principle presents itself. It holds that inequalities are only just if they benefit the worst off in society. I think this view does not fulfil solidarity because Rawls bases his theory of justice on the incentives argument, which again is justified by the fact that Rawls’s theory is a political one, applying only to institutions. However, solidarity is metaphysical, and the argument that the talented have to be given incentives in order to continue contributing to the common pool, is not a relevant one in the sense of justice as solidarity. Hence, Rawls’s (1985) distributive principle has to be refuted.

Furthermore, some argue that treating people as equals means distributing resources in a way that everyone has equal levels of welfare. I think, however, that this view does not specify the correct distributive principle because it does not draw the right line between luck and choice; hence it is in my view not truly egalitarian. The same argument can be evoked against Dworkin's principle of equality of resources and Anderson's (1999) principle of democratic equality. These principles, even though they all have some desirable features do not prove as satisfactory as the principle I think is most adequate, namely equality of access to advantage, as formulated by Cohen (1989). I shall now briefly summarise the position of Cohen's luck egalitarianism and then explain why it caters best to solidarity.

Cohen (1989) states that the primary egalitarian intuition is to nullify the effect of brute luck and exploitation on distribution, and to eliminate involuntary inequalities. In his eyes, the way to achieve this is by ensuring that all people have equal access to advantage. Access to advantage is, according to Cohen more appropriate than mere opportunity, because it takes into account what capacities people have. This is morally relevant because capacities can "detract from access to valuable things, even if they do not diminish the opportunity to get them" (Cohen, 1989, p. 917). Hence access is more useful to distinguish between the effects of luck and choice. Cohen has himself not fully developed what actually counts as an advantage, but I believe that it suffices for my purpose to state that it is some hybrid between welfare and resources, or, as he puts it "one hopes that there is a currency more fundamental than either resources or welfare in which the various egalitarian responses which motivated my proposal can be expressed" (p. 921). Cohen's version of egalitarianism aims to distribute in a way that not only endowment deficiencies influence a person's access to advantage, but also not his or her utility function. This seems legitimate when considering that also pain and ill fare can impact on access to certain advantages. Thus equality of access to advantage is the true luck egalitarian principle, because it puts forward individual responsibility and genuine choice as the only factors, which could justly influence distribution.

Why then does this principle of equal access to advantage best respect solidarity, derived from the rebellion against the absurd? In my eyes, it does so, because equalising luck is itself a form of rebellion against the absurd meaninglessness we encounter in our longing for the absolute and for unity. We know that we as humans belong to the same species; and natural science has told us that there is no such thing as race, at least not in genetic terms. However, it is impossible to deny that we are all different, we look different, we have different talents and abilities, we are born in different places, at different times, to differ-

ent parents and all these characteristics and circumstances impact on the way we are able to lead our lives. Is it not absurd, that we should have such fundamental intuitions about equality, when it will never be possible to make every human being completely equal in only one single respect? From this point of view, I can also explain why I reject distributive principles based on self-ownership or the market, and even sufficiency or priority. To me, they represent a form of philosophical suicide, taking the easy way out by denying that we do not have intuitions about equality as an intrinsic ideal, or by claiming that these intuitions are not valid. Hence, equalising the influence of luck, of factors, over which we cannot execute control, signifies rebellion against the absurd unfairness of life. I believe that we are equal on a metaphysical level, and that solidarity commands us to extinguish the effect luck has on our capabilities to acquire the things we value.

Moreover, I think that equality of access to advantage draws the right line between what distributive justice should rectify and what not. Inequalities that are due to choice, for which individuals are responsible, are in this way the only inequalities, which distributive justice should not be concerned with. This appears as just because the doctrine of the absurd does not affirm any other absolute values, which could be rightfully imposed on people. Because humans construct the world as it is and consequently also its ideals, justice cannot entail any other political ideals, and humans should be given the freedom to bear the consequences of their choices. By all means, why should we change the situation of a person if she is voluntarily in this situation, if she is responsible for it? The only way to justify this would be by reference to absolute values, whose existence are denied by our encounter with the absurd. Thus justice as solidarity derived from the absurd commands us to respect the choices people make in their own lives. I hope I was able to show why the true luck egalitarian principle is equality of access to advantage and why luck egalitarianism is the true principle that serves justices as solidarity.

### **1.3 Responding to Criticisms and Amending the Principle**

Since luck egalitarianism has been accused and objected to by various sources, I would like to devote this section to responding to these criticisms and amend the theory in the aspects where I deem it impossible to refute the objections. One objection Cohen (1989) deals with himself is Thomas Scanlon's objection of religious beliefs, which are usually not chosen, however, our intuition fails to redistribute because, for example, a person has lower levels of advantage because she adheres to a guilt-inducing religion. The difference, according to Cohen, lies in the fact that religious people usually would, if they could, not choose not to have

these feelings. Hence, Cohen amends the distributive principle to redistribute “if disadvantages are not traceable to the subject’s choice and which the subject would choose not to suffer from” (p. 937).

However, the criticism by Scanlon appears rather marginal compared to the tirade of outrage against luck egalitarianism that Elizabeth Anderson (1999) utters in “What is the point of equality?” Anderson claims that equality of fortune fails in a fundamental way, namely that it does not show equal respect and concern for all citizens. Due to their extensiveness and rhetorical force, I would like to treat two of her objections separately to show that the principle of equal access to advantage can persist as a viable conception of distributive justice as solidarity.<sup>1</sup>

### *The Victims of Bad Brute Luck*

Anderson (1999) states that equality of fortune fails to respect the victims of bad brute luck, people who find themselves in disadvantageous situations without being responsible for them. She maintains that the luck egalitarian position considers victims of bad brute luck as inferior, treats them solely with pity and fails to show how their demands, supposed to be based on envy, could obligate the lucky ones to compensate for the unfortunate ones. She argues that luck egalitarianism cannot be a just principle because firstly it does not express concern for those who are worst off and secondly because the reasons why it offers this help are deeply disrespectful.

I do believe, however, that the first part of this criticism, that luck egalitarianism does not express concern for those who are worst off, does not apply to equality of access to advantage, because Cohen (1989) endorses a hybrid of resources and welfare. Hence, he is not obliged to redistribute from Tiny Tim who would still be happy without his wheelchair to Scrooge, who would be consoled by the money of the wheelchair. He thus avoids the problem of “using private (dis)satisfaction to justify public oppression” (Cohen, 1989, p. 304).

What can be said about the second part of this criticism, that the reasons on the basis of which equality of fortune offers help are disrespectful? I believe that she has a point in evoking that under any luck egalitarian conception of justice that includes welfare, problematic trade-off are possible for the victims of bad brute luck. After all, if a depressed person’s welfare level is significantly higher when he has a new TV set than when receiving therapy, equality of opportunity for welfare might demand the first. However, I believe that this does not defeat

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<sup>1</sup> I do not address Anderson’s (1999) criticism on Cohen (1989) concerning the victims of bad option luck, since I believe Dekker (2009) has solved this issue satisfactorily.

equality of access to advantage. Equality of access to advantage aims at ensuring that people are not hindered from achieving what they value by factors over which they do not have control. And in the first instance, this implies in my eyes, the policies that Anderson (1999) relates to her conception of democratic equality: ensuring that people have equal access to advantage regardless of their involuntary physical condition, can be achieved by constructing buildings free of barriers. Compensating for involuntary expensive tastes or depression demands in my eyes subsidising theatre and arts and including psychotherapy in the health care scheme. Equalising the influence of talents and endowments requires, in my view among others developing a culture where people are not judged according to their looks. Metaphysical solidarity provides in my eyes, a solid justification to implement all the interventions mentioned above. Equality of access to advantage is to be favoured over Anderson's democratic equality, because it has a wider scope, by concerning itself also with the disadvantages that do not impact functioning as an equal citizen. I believe that solidarity requires us to concern ourselves also with the inequalities in resources and welfare due to mere luck if they occur above some functioning threshold. Therefore, equality of access to advantage is not defeated by democratic equality, but is to be preferred over it.

#### *The objection against responsibility*

What is more, Anderson (1999) objects to equality of fortune, because she deems it to make demeaning and intrusive judgments of people's capacities by attempting to ensure that they take responsibility for their choices. Luck egalitarianism dictates to people what the appropriate use of their freedom should be. Hence, according to Anderson (1999), luck egalitarianism "interferes with citizens' privacy and liberty" (p. 310).

In my opinion, however, this is an objection of feasibility. If it was possible for the state, in some way to exactly determine how much people's situations are affected by luck and how far they genuinely chose to be in this situation, the problem would not arise. The fact that in reality, luck egalitarians are forced to choose a theory of social outcomes, where the state has to "pass judgment on how much people are responsible for their expensive tastes or their imprudent choices" (Anderson, 1999, p. 310) does not mean that equality of access to advantage is not what justice as metaphysical solidarity requires. I believe that I was thus able to demonstrate that the criticisms uttered by Anderson (1999) do not refute equality of access to advantage as the correct distributive principle for justice as solidarity.

## 2 Conclusion

In this essay, I have attempted to put forward my own conception of distributive justice. In part one, I have explained why to me following Camus (1955) the encounter with the absurd and the rebellion against the absurd leads to a conception of justice as metaphysical solidarity, affirming a core human nature and a self-identification with human value. In a second part, I tried to show why Cohen's (1989) equality of access to advantage is the true luck egalitarianism, and I have demonstrated why I believe that metaphysical solidarity demands such a distributive principle of equality of fortune. In my view it does so because in the sense that it is egalitarian, it meets the requirement of respecting human nature common to all. Furthermore, equalising luck is solidarity in the sense that it is a form of rebellion against the absurd encounter of egalitarian intuitions and the cruel unfairness of nature. Finally, equality of access to advantage is solidarity because, by placing responsibility and genuine choice outside the realm of egalitarian concern, it denies the state the power to impose absolute values on peoples. Having established my conception of justice, I have set out in a third part, to defend the principle of equality of access to advantage against criticisms and I attempted to show how especially the criticisms of Anderson (1999) concerning the victims of bad brute luck, and the appropriateness of the state to judge on responsibility fail to refute the principle. Nevertheless, the criticisms lead to amendments, and thus I believe that justice as metaphysical solidarity requires equality of access to advantage, concerning only disadvantages that the individual would choose not to have, if she could.

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## THE “RETURN OF THE COLD WAR?!”

### Assessing the Causes of the Russian-Georgian War

*Johanna Bohl*

**Abstract** The Russia-Georgia War of 2008 took the world by surprise; the international community had not anticipated an outright war between two democracies. The Russian attack on Georgia exemplifies Russia’s turn towards a more assertive foreign policy. Additionally, Russia defined the fault lines between itself and Europe in the Caucasus. This article argues that the war’s causes are deeply rooted in developments of the international arena, specifically on the part of the European Union and the United States. Changes in the balance of power, both in the Caucasus and the international community as a whole, spurred the conflict’s escalation and provide insights into systemic influences on war.

## I Introduction

*“Georgia is the frontier; the border between Good and Evil”*

- Mikheil Saakashvili (as cited in Wertsch & Karumidze, 2009, p. 385)

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<sup>1</sup> One of the analogies used in the media to describe the conflict, see Freeland (2008) as cited in Toal (2008)

On 8 August 2008 the world's attention was directed at Beijing and the opening of the upcoming Olympic Games. When broadcasts of the ceremony were interrupted by images of Russian tanks entering Georgia, the Caucasus moved from the periphery of most world leaders' agenda to the center of international politics (Cheterian, 2009). The day before Georgian troops had forcefully intervened in Georgia's secessionist and de-facto independent region South Ossetia and marched onto its capital, Tskhinvali (Asmus, 2010; Felgenhauer, 2009; Popjanevski, 2009). In the early morning of 8 August, only hours after Georgia had opened fire on the paramilitary troops of South Ossetia, the Russian army intervened in South Ossetia and Georgia proper, officially starting a war between the two nations. It marked the beginning of a limited five-day war, which commentators viewed as the culmination of rising tensions between the two nations, originating from the fall of the Soviet Union (Jones, 2009). Simultaneously the Five-Day War between the two democratic states threatened the inviolability of European borders and suggested the possibility of a more assertive Russian foreign policy (Asmus, 2010; Cheterian, 2009; Friedman, 2008).

Along with the war's implications on international relations, arose numerous academic articles, books, and analysis on the origins of the war (Asmus, 2010; Cornell & Starr, 2009; Jones, 2010). Much of the research has focused on domestic and individual influences on foreign policy-making (Cornell & Starr, 2009; Jones, 2010). However, evidence on the international level – factors outside the concerned states and other countries' behavior that impact the respective states in their choices – suggests that the most prominent and deep causes of the conflict can be found in the international arena. The purpose of this paper is to analyze which conditions influenced both Russia and Georgia in their foreign policy and why the conflict eventually escalated. Instead of focusing solely on one source of decision-making, individual, domestic, and external factors are assessed to give consideration to the complexity of the foreign policy environment. The article claims that the structure of the international system, especially the distribution of power in Eurasia contributed significantly to Russian and Georgian foreign policy, which finally resulted in the outbreak of a war.

The first part of this paper examines the role of individuals and their effect on the conflict. Putin's and Saakashvili's ambitious personalities and their difficult relationship are identified as influences on the conflict. The following analysis of domestic influences establishes Russia's internal unrest and Georgia's upcoming election as precipitating causes of the war. In the concluding section the main contributing factors influencing the start of the Russia-Georgia War and its development are reiterated and emphasis is put on the international system as the strongest source for war and possible mono-causal agent. The finding that both

countries perceived the predominate balance of power as a threat to national security sheds light onto the implications balance of power theory has on global conflict.

## 2 Individual Actors

Mikheil Saakashvili, who acted as Georgia's president from 2004 to 2013, altered Georgian foreign policy and thereby fueled regional tensions, which culminated in the Five-Day War. From the very beginnings of Georgian independence in 1991, Georgia and its presidents experienced varying degrees of tensions with their Russian counterparts. Mikheil Saakashvili, who acted as a leader during Georgia's peaceful pro-democracy Rose Revolution of 2003 and had been educated and trained in the West, prioritized close integration to the West in his foreign policy approach (Antonenko, 2008; Cheterian, 2009; Smith, 2009; Sumbadze, 2010). On the other hand, Saakashvili repeatedly met with both Russian presidents, Putin and Medvedev to improve relations between the two nations (Filippov, 2009; Wertsch & Karumidze, 2009). Especially his relationship to Medvedev was, if not perfect, a vast improvement on the one with Putin (Filippov, 2009; Smith, 2009). Some argue that a return to normal relations between Russia and Georgia was lost once Saakashvili was elected, because his policy of an independent and assertive Georgia clearly clashed with Putin's idea of a reinvigorated Russia (Smith, 2009). Yet, even during the tensest times, Saakashvili remained true to his predecessor's tradition of regular talks with his Russian counterpart (Filippov, 2009). Saakashvili, tailored his foreign policy to a closer relationship with the West, but still honored his predecessor, Eduard Shevardnadze's strategy of normalizing relations with Russia. Therefore it seems that although Saakashvili pursued closer relations to the West, he only abandoned his pragmatic approach to the Russo-Georgian relations once the tensions had already escalated. Nonetheless his foreign policy towards the West worried Moscow and fueled its distrust of Saakashvili (Filippov, 2009).

Putin and his growing anti-Western sentiments on the other hand greatly contributed to the escalation of the Russian-Georgian conflict. Putin, already in office when Saakashvili was elected for his first term in 2004, was wary of the new Georgian president's foreign policy aspirations for NATO membership. In 2008, however, when tensions threatened to escalate, Putin had been succeeded by Dimitri Medvedev and at the time acted as Russian prime-minister. The West, as well as Georgia hoped that the more moderate Medvedev would de-escalate the situation. And indeed when Saakashvili was elected for his second term,

both revived the attempts to harmonize relations between Georgia and Russia and especially Medvedev tried to put past animosities aside (Filippov, 2009). Nonetheless it was ultimately not Medvedev, but Putin, who held power and made the decisions within the Russian government. Putin announced, without the parliamentary authorization stipulated in the constitution, Russia's decision to go to war with Georgia (Antonenko, 2008). His announcement did therefore not only effectively show Medvedev and the Russian people who ruled Russia, but also signaled a growing relentlessness towards the West. For Putin, who was increasingly paranoid of the West's perceived threat to Russian security, it was essential to demonstrate his power and resoluteness (Antonenko, 2008; Filippov, 2009, Pallin & Westerlund, 2009). Putin repeatedly used World War 2 and Nazi Germany analogies to justify the intervention and also demonstrate Russian resolve (Wertsch & Karumidze, 2009). Therefore Putin's anti-Western sentiments and his deteriorating relationship to the West in combination with Saakashvili's policy of Westernization fueled the conflict.

### 3 Domestic Influences

Influenced by Saakashvili's Westernization policy, domestic sentiments in Georgia showed a growing desire for full democratization, which strengthened the opposition and finally contributed to the escalation of the conflict by threatening Saakashvili's power. At the beginnings of his government Saakashvili clearly stated that his primary goals were a stronger, reunified Georgia, with an inclusion of its separatist and de facto independent provinces, tackling corruption and a strengthening the state (Cheterian, 2009; Smith, 2009; Wheatley, 2010). Saakashvili's government often employed expansive rhetoric, which resulted in exaggerated expectations within the Georgian. Once it became clear to the Georgians that Saakashvili didn't have a clear conflict resolution strategy towards South Ossetia and Abkhazia, and his government failed to actually bring about a more democratic system with checks and balances, his approval ratings dropped and the opposition strengthened (Cheterian, 2009; Mitchell, 2010; Wheatley, 2010). With an internally divided Georgia and the threat of losing power, the government decided to undermine the political opposition with a tough foreign policy. In line with the now often-used narrative of an independent and reunited Georgia, Saakashvili initiated an increase in the military budget by 120 percent (Cheterian, 2009; Filippov, 2009; Wentsch & Karumidze, 2009). Saakashvili and his government believed that their tactics of military build-up and an assertive foreign policy would effectively suppress the discontent and

opposition of the public, but it angered Putin and eventually increased tensions between the two nations (Filippov, 2009).

Interestingly, the Russian administration followed a similar strategy; it aimed at suppressing the growing political opposition in Russia, and thereby created a positive climate for war. With growing economic strength, Russia also experienced a new level of global interconnectedness. Supported by mass media the political opposition began to demand Western style democratic reforms and growing civil rights. The Russian government believed that they could only undermine foreign and especially Western influences by discrediting the West (Filippov, 2009). Russian media, influenced by state propaganda, portrayed the Russian-Georgian tensions as a conflict in which a resilient, great power Russia had to stand up against foreign, and especially Western aggression (Antonenko, 2009, Filippov, 2009). According to a study by Mendelson and Gerber (2008), the majority of Russians (64%) perceived the USA and Georgia to be Russia's primary enemies. Additionally, the Russian government sought to reform and enhance the military, but knew that they had little domestic support to do so. Therefore, the government decided to exploit domestic feelings of national humiliation which originated in the fall of the Soviet Union (Blank, 2008; Pallin & Westerlund, 2009; Wertsch & Karumidze, 2009). Medvedev's administration constructed a conflict with the West, with Georgia functioning as proxy, to take advantage of the public's fears for Russian security. They effectively changed the issue from a desire for more democracy to a desire for a "hyper-sovereign Russia" (Mendelson & Gerber, 2008, p. 143). This assertive approach, however, did not only create a willingness to sacrifice democracy for security but also a domestic willingness for war, which made the government less hesitant to go to war with Georgia.

#### 4 International Sources

As previously demonstrated individual actors and domestic influences clearly facilitated the outbreak of the Russian-Georgian War, yet the state of the international system in the years leading up to the war was crucial for tensions to escalate. Since the fall of the Soviet Union and the loss of its satellite states, Russia, which had thereby lost its status as a superpower, experienced a great sense of humiliation (Power, 2008; Tsygankov & Tarver-Wahlquist, 2009; Wertsch & Karumidze, 2009). For this reason it became of particular importance for Russia to at least secure its status as regional hegemon and possibly expand its influence. A series of international events leading up to the August War, however, resulted in the very

opposite and severely undermined Russian power. Starting with Georgia's Rose Revolution in 2003, a wave of the so-called 'Color Revolutions' swept across the former Soviet Union, calling for democracy in Ukraine and Kyrgyzstan. The US and Europe were quick to openly support these as they saw them as the beginning of liberal democracies for former Soviet states (Nilsson, 2009). Yet for Russia, the revolutions as well as the West's involvement symbolized an infringement of Russia's sphere of influence. They did not believe that the revolutions were an expression of public will, but rather a Western conspiracy for regime change and Western expansion (Gordadze, 2009). This was the first incident Russia perceived as a threat to its security and position in the region.

The feeling of Western intrusion into Russia's sphere of influence intensified over the next years and culminated in 2008. In February of 2008, Serbia's breakaway region Kosovo declared independence and Western states recognized Kosovo without a Security Council resolution. Russia had specifically asked the West not to grant Kosovo *de jure* recognition (Antonenko, 2008; Asmus, 2010). The easy disrespect, with which the West treated Russia's request, reaffirmed Russia in its perception that the West did not consider it to be a powerful and respected partner. The final act of estrangement occurred in April 2008. Although Georgia was denied NATO membership at the Bucharest Summit, the possibility of membership for Georgia and Ukraine remained (Illiarionov, 2009). Moscow wanted to finally end Western and especially US involvement in the region as it felt more and more threatened by a potential NATO enlargement. The possibility of a former part of the Soviet Union belonging to NATO was too humiliating and threatening for Russia, to remain inactive. To prevent a change in the distribution of power in Eurasia, Russia decided to teach Georgia a lesson that would deter other states in the region from challenging Russian hegemony.

Moreover, Russia believed the international environment and commitments of other states at the time were favorable to a military intervention in Georgia. Various reports and investigations acknowledged that Russia was preparing for a war with Georgia prior to Georgia's attack on South Ossetia and had waged a covert war since 2004 (Cornell & Starr, 2009; IIFMCG, 2009; Lake, 2010). Yet Russia was not only waiting for a trigger to act but also the perfect time in relation to the international community. Whereas the Western intervention in and eventual recognition of Kosovo supplied Russia with a precedent to act, commitments of other powers allowed Moscow to attack Georgia without fearing interference from the West. At the time of the August War, the United States, as Georgia's most important ally, were not only heavily committed in Afghanistan and Iraq, but also lacked the military capabilities and willingness to attach itself to another conflict. Furthermore, the US needed Russia as an ally in its

Afghanistan and Iran policies. Likewise the European Union did not take a unified stance against Russia, because many of its member states were too dependent on Russian natural resource exports (Friedman, 2008). Thus it was the perfect opportunity for Russia to reaffirm its regional hegemony. Russia showed the world that even after the end of the Cold War it was an important player in the international arena, which could not be easily dismissed (Friedman, 2008; Filippov, 2009). As a result the international environment assured the Russian government that it was not only necessary to intervene and clarify the distribution of power in Eurasia, but also the perfect time.

Similarly, Georgia believed that the international environment forced it to militarily intervene in South Ossetia. The *de jure* recognition of Kosovo set, even though international actors denied it, a precedent for the independence of secessionist regions. Georgia feared that the time for unification was running out and it had to immediately change the status-quo of its two separatist regions before their independence would weaken Georgian power (Friedman, 2008). As mentioned before, the United States was Georgia's closest and most powerful ally, yet Saakashvili feared that the upcoming elections could change US policy towards Georgia, because he enjoyed special support from the neoconservatives within the Bush administration (Toal, 2008). Nevertheless Georgia never doubted that in an intervention in South Ossetia and a potential war with Russia it would be supported by the West. In early 2008, US Secretary of State Condoleezza Rice visited Georgia and reaffirmed the two countries' alliance. Confident of US and general Western support, Georgia decided to solve the South Ossetian problem militarily (Antonenko, 2009; Asmus, 2010; Cheterian, 2009). Guided by its wish to accelerate its integration into the Western alliance system, Georgia's decision was influenced by an overestimation of Western commitment to the region and an underestimation of Russian capabilities. By attacking South Ossetia, Georgia presented Russia with the opportunity to demonstrate that the region's balance of power remained favorable to Russia. Threatening Russian regional security with a deeper integration into the West would result in Russian responses to secure Russian hegemony in the Caucasus.

Some argue (Filippov, 2009; Jones, 2010) that the primary cause for the Russian-Georgian War were domestic factors in both countries, as Georgia was too small a power to be perceived as a threat to Russian security. They further argue that Russia only used Georgia as an excuse to intensify and maintain tensions with the West, so the political opposition would lose influence as Russia was faced with Western expansionism. Although this argument explains how domestic politics contributed to the war, it underestimates the threat Western involvement in Eurasia posed to Russia. As mentioned before, Medvedev was

considered to be more moderate than Putin, both by the Russian public and the international community (Wertsch & Karumidze, 2009). The political opposition had already been strong under Putin. Yet, Russia decided to militarily engage in Georgia after a year of continuous humiliation and encroachment on its interests by the West. Therefore the international environment was predominant and a fundamental cause of the outbreak of the war.

## 5 Conclusion

In the conclusion of its report the Independent International Fact-Finding Mission of the European Union on the Conflict in Georgia, the mission reasons that the causes of the war can be attributed to a plethora of different influences and responsibility cannot simply be placed on one of the two parties (IIFFMCG, 2009). This article has pointed out that the intermediate causes of the war can be found on the individual and domestic level. Putin and Saakashvili were both revisionist in their foreign policy and envisioned a stronger position for their nation. Their respective approaches clashed and were further complicated by mutual distrust; Putin grew increasingly paranoid of the West and hence its Georgian ally whereas the Western-educated Saakashvili sought closer cooperation with the West. Likewise both nations experienced domestic unrest and political opposition prior to the outbreak of the war. To remain in power the Russian and Georgian governments sought to divert their publics' attention away from the shortcomings of the respective government and onto external threats. As a result domestic sentiments were largely in favor of military action and further increased tensions between Russia and Georgia.

Yet, the fundamental and most influential causes of the war can be found in the international environment and in perceived changes in the structure of the balance of power in Eurasia. Tensions and isolated clashes between Russia and Georgia had been brewing since the fall of the Soviet Union, but it was only after numerous international incidents in 2008 that the conflict escalated into war. After the international recognition of Kosovo's independence despite Russia Russian protests and the reaffirmation of eventual NATO membership for Ukraine and Georgia at the Bucharest Summit, Russia felt that the balance of power within Eurasia was shifting towards the United States. To ensure its regional hegemony and set an example for other neighboring states Russia decided that it was time to demonstrate its military capabilities to Georgia and the international community as a whole. Russia and its military were still an important player in international politics and it wanted the world to recognize it.

Georgia on the other hand was equally influenced by the international system. Due to the precedent of Kosovoan independence in early 2008, Georgia believed that it had only little time left to reunite its country with the secessionist regions and thereby strengthen its power in the region before the international community would formally recognize their independence. Because of its alliance with the US, Georgia was assured US assistance in case of war. Georgia did not expect that Russia would actually intervene in South Ossetia and even if it did, the outrage accompanying Russian intervention would only bring Georgia closer to its Western allies. Thus Georgia decided to attack South Ossetia, in the hope of coercing it to reunite with Georgia. Ultimately, the outbreak of the war depended on the structure of the international system, especially the distribution of power. Both countries perceived the distribution of power to be shifting to their disadvantage, which they saw as a threat to national security. As a result, it can be argued that Russia and Georgia were guided by a respective misperception on changes in the international balance of power, as identified in the last part of this article, because each leader interpreted events within the international system to be to their disadvantage.

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## MINDFULNESS MEDITATION AND MENTAL ILLNESS

### How Meditation Reduces the Risk of Psychopathology

*Kiran Hug*

**Abstract** A growing body of evidence suggests that mindfulness-based therapies are effective in the treatment of psychological disorders. In this article, firstly, studies on mindfulness-based prevention of relapse to depression are reviewed. Secondly, a model that proposes emotion regulation (ER) as the major mechanism of the beneficial effects of mindfulness on psychopathology is presented. The model predicts that mindfulness exerts its effects on ER through changes in attentional control and metacognitive awareness. Finally, the model is supported by empirical evidence and neuroscientific findings. The presented evidence supports the meditational role of ER, attentional control and metacognitive awareness.

### I Introduction

Researchers at the University of Wisconsin-Madison have shown that Tibetan Buddhist monks are able to wilfully change their states of consciousness as measured by changes of brain wave activity such as higher gamma synchronicity (Dobbs, 2005). Schizophrenic patients on the other hand, show lowered gamma synchronicity (Dobbs, 2005). Could meditation serve as a treatment for disorders such as schizophrenia? Studies on the effectiveness of mindfulness-based

therapies indicate that mindfulness meditation is an efficient therapeutic tool for depression, as well as for anxiety disorders and suicidal behaviour (Marchand, 2012, Sipe & Eisendrath, 2012).

Meditation is a technique that aims at an alteration of one's mental state (Kabat-Zinn & Hanh, 1990). The mental state change is reflected by changes in brain wave activity (Fell, Axmacher, & Haupt, 2010). Meditation can be broadly defined as a state of contemplation that is characterised by calmness, awareness and concentration (Fell et al., 2010). There are two broad categories of meditation techniques, namely, focussed attention meditation and monitoring meditation. In focussed attention meditation the meditator focuses on an object, such as focussing on one's breath. Monitoring meditation, which is closely linked to mindfulness, is the mere observation of all conscious mental processes, such as thoughts and feelings without judging them and without changing them. The two dimensions of meditation can be combined into a single form of meditation, such as for example mindfulness of breathing, in which one focuses on one's breath while also monitoring one's mental processes (Fell et al., 2010). In this article, the focus lies on mindfulness meditation (MM), which mostly belongs to the monitoring meditation category, but also incorporates aspects of focussed attention meditation. Mindfulness is intentionally paying attention to one's experiences in the present moment, such as thoughts, bodily sensations, feelings and external stimuli, in a non-judgemental way (Kabat-Zinn & Hanh, 1990; Piet & Hougaard, 2011; Singh et al., 2007).

In the present article, two hypotheses are examined. It is hypothesized that MM is an effective therapeutic tool for reducing the risk of mental disorders, such as depression (Hypothesis 1). Furthermore, it is argued that these risk-reducing effects are mediated by attentional control, metacognitive awareness and emotion regulation (ER; Hypothesis 2). In order to investigate the first hypothesis, studies on mindfulness-based prevention of relapse to depression are reviewed. Subsequently, the model by Corcoran, Farb, Anderson, and Segal (2009) is presented in order to show that ER could be a major mechanism of the beneficial effects of MM. This mediating role of ER in the effects of MM on psychological health is in line with the second hypothesis, in which attentional control, metacognitive awareness and emotion regulation are proposed as mechanisms of MM. The model and its relation to psychopathological outcomes are discussed with support by empirical evidence. It is shown that the proposed relationship between MM and ER may be mediated by attentional control and metacognitive awareness and that ER has a crucial role in various psychopathologies. Furthermore, the cognitive mediators of mindfulness meditation (MM) are explained by neurophysiological changes in the amygdala and prefrontal cortex (PFC). The cognitive and neurophysiological findings lend support to both the

hypothesis that MM reduces the risk for mental illness (hypothesis 1), as well as to the mediation model (hypothesis 2). Thus, MM may be an effective alternative to CBT or even medication.

## **2 Does meditation reduce the risk of mental illness?**

### **2.1 Mindfulness-based cognitive behavioural therapy**

The fact that MM has been successfully incorporated into psychotherapy and supplements cognitive behavioural therapy (CBT) suggests that MM may be effective in reducing the risk for mental illness (Farb et al., 2007). Two established mindfulness-based therapeutic approaches are mindfulness-based stress reduction (MBSR) and mindfulness-based cognitive behavioural therapy (MBCT). The latter has mainly been developed for the treatment of depression (Teasdale, Segal, & Williams, 2003) and has been shown effective for the prevention of relapse of depression and the prevention of suicide (Sipe & Eisendrath, 2012). Furthermore, there is evidence for the effectiveness of MBCT in residual unipolar depression, treatment-resistant unipolar depression, bipolar disorder, generalized anxiety disorder, panic disorder, social phobia, and hypochondriasis (Marchand, 2012).

MBCT includes elements of CBT, such as psycho-education, but it is different from CBT in that it does not have the aim changing dysfunctional thoughts and feelings, but rather to accept thoughts and feelings as they are (Sipe & Eisendrath, 2012). It has been shown that cognitive-behavioural approaches of changing thought content can be counterproductive, as they may communicate to the patients that there is something “wrong” with them and thereby increase distress (Sipe & Eisendrath, 2012). In MBCT, patients learn to enhance their meta-cognitive awareness by practicing awareness of thoughts and feelings, as well as the perception of thoughts and feelings as changeable, not necessarily reality-congruent mental processes (Sipe & Eisendrath, 2012). Thereby, thoughts and feelings that are related to mental illness can lose much of their threat and power. Instead of changing thought content, in MBCT one tries to change the way one relates to one’s thought processes. In other words, MBCT works on a meta-cognitive level (Chambers, Gullone, & Allen, 2009) by inducing psychological distance (Corcoran et al., 2009).

### **2.2 Relapse prevention in depression**

A meta-analysis by Piet and Hougaard (2011) showed that mindfulness-based cognitive-behavioural therapy (MBCT) is effective in reducing the risk of depression relapse. In their study, data from six randomized controlled trials with a

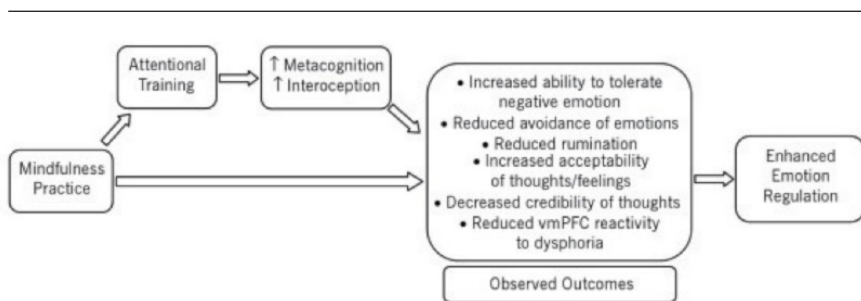
total of 593 participants was analysed. Their results showed that throughout the six studies, group-based MBCT significantly decreased the risk of relapse to major depression. In the treatment groups, MBCT was administered additionally to treatment as usual (TAU). Compared to TAU and placebo controls, MBCT treatment led to a relative risk reduction of 34%. While in the control groups (TAU and placebo groups), 58% experienced relapse in depression in the 14 to 18 weeks follow-up periods only 38% of the patients who received MBCT had a relapse. Hence a therapeutic approach that incorporates mindfulness meditation (MM) seems to be more effective in preventing relapse than traditional care with antidepressant medication (AD) and CBT. Two of the six studies in the meta-analysis (Piet & Hougaard, 2011) compared MBCT without AD treatment to TAU and found that MBCT was as effective as AD treatment for preventing relapse. The results of their meta-analysis indicate that a limitation of MBCT may be ineffectiveness for preventing relapse that is induced by stressful life events in patients with less than three prior episodes. Conversely, with a relative risk reduction of 43%, MBCT was especially effective for the subgroup of participants with three or more previous episodes of major depression (Piet & Hougaard, 2011). These results suggest that MM, as practiced in MBCT, successfully reduces the risk of relapse to depression, especially in patients with three or more prior episodes of major depression. Hence there is substantial support for the first hypothesis, in that MM decreases the risk for depression. However, that there is a lack of studies on active depression (Mathew, Whitford, Kenny, & Denson, 2010), and other disorders. Given the apparent effectiveness of MM, the question arises how these reducing effects on the risk for mental illness such as depression are exerted.

### **2.3 Self-control of dysfunctional cognitive styles**

Mental illness is characterised by dysfunctional cognitive styles, such as rumination. The aim of CBT is to change such dysfunctional cognitions into more functional ones. However, as already mentioned, in some disorders, this corrective approach may be counter-productive. As the above results indicate, MM may be more effective in treating such dysfunctional cognitive styles. For example, it has been argued that MM reduces the risk for mental illness by enabling self-control of states of consciousness (Sipe & Eisendrath, 2012). But how does mindfulness enable the control of dysfunctional states of consciousness and why does it do so more effectively than CBT and TAU?

While relaxation has been shown to be a beneficial side effect of MM rather than a core mechanism (Baer, 2003), several mechanisms of how mindfulness improves cognitive processes crucial for the wilful alteration of cognitions have

correspondingly been suggested. These mechanisms encompass attentional training, metacognition, interoception, and emotion regulation (ER). In the following section, a model by Corcoran et al. (2009) is presented which shows the hypothesised relationship between those mechanisms (Fig. 1).



*Figure 1 According to the model by Corcoran et al. (2009), attentional training and metacognition partially mediate the effects of mindfulness on emotion regulation*

#### 2.4 Towards an emotion regulation model of mindfulness

According to the model by Corcoran et al. (2009), mindfulness meditation (MM) enhances emotion regulation by attentional training, which in turn increases metacognition and interoception. Metacognition and interoception are thought to reduce dysfunctional cognitive biases, which are expected to improve emotion regulation (ER) capacity. In the following, evidence for the model is reviewed. First, MM functions as attentional training and enhances attentional control (AC; Corcoran et al., 2009). Research confirms the assumption that MM enhances attentional control (Sipe & Eisendrath, 2012). AC is the ability to intentionally deploy one's attention and to intentionally guide it away from threatening stimuli. This enables patients to reduce their dysfunctional cognitive biases. AC in turn depends on several other executive cognitive functions, such as memory (WM). In line with that, empirical studies have shown that MM enhances WM capacity (Sipe & Eisendrath, 2012). WM is needed to wilfully guide behaviour, which may be important in the modification of dysfunctional behaviours associated with psychological disorders (Nolen-Hoeksema, 2008). If a person is better able to wilfully guide her behaviour, she is more likely to change dysfunctional behaviours. Similarly, MM has been shown to enhance various aspects of attentional

control, such as sustained attention, and attention switching (Chambers et al., 2009). These attentional functions are thought to play an important role in ER, which in turn has proved important in several mental disorders, such as depression and anxiety disorders (Chambers et al., 2009). As suggested by Chambers, Gullone, and Allen (2009), ER may thus be a useful framework to integrate findings that link MM to improved attentional control.

Second, enhanced metacognition and interoception are thought to mediate the effect that MM induced changes of attentional control have on ER (Corcoran et al., 2009). Interoception is the wilful and conscious perception of internal bodily responses (Lutz, Slagter, Dunne, & Davidson, 2008). Metacognition refers to cognitions about cognitions and is closely linked to metacognitive awareness. Metacognitive awareness has been previously referred to as decentering (Chambers et al. 2009) and can be defined as the recognition of cognitions. Metacognitive awareness enables the identification of thoughts and emotions as changeable and not necessarily reality-congruent mental processes (Sipe & Eisendrath, 2012). Chambers et al. (2009) suggest that metacognitive awareness enhances cognitive flexibility. Cognitive flexibility is characterised by an increase in range and adaptability of cognitive response options to challenging events, thoughts or feelings (Chambers et al., 2009). This increase in cognitive flexibility is important in the therapy of mental disorders, as psychopathology is often characterised by a narrowed and maladaptive range of response options (Chambers et al., 2009).

Thirdly, mental contents that are related to psychopathology can lose much of their threat and power by enhancing metacognitive awareness. For example, meta-cognitive awareness can help to interrupt rumination. Research lends support to the rumination reducing properties of mindfulness meditation (MM; Corcoran et al., 2009). Rumination is a cognitive process in which one repetitively thinks about specific thought contents and has difficulties disengaging from these objects of thought. Rumination is an important aspect of mental disorders and is associated with increased levels of depression and anxiety (Corcoran et al., 2009). In depression, people tend to ruminate about past events, whereas anxious patients tend to ruminate about future threats, such as in anxiety disorders and phobias (Nolen-Hoeksema, 2008). Corcoran and colleagues (2009) report a study in which participants were compared before and after two months of mindfulness training. After the training, subjects scored significantly lower in rumination. The extent of rumination was predicted by the number of hours of MM practiced (Corcoran et al., 2009). Correspondingly, Chambers and colleagues (2009) showed that after a ten-day Vipassana MM retreat, participants reported significantly lower levels of rumination and depressive symptoms. Vipassana is a meditation technique that involves mindfulness

techniques such as body scan. Additionally, their study supports the proposed links between attentional training and emotion regulation (ER) outcomes such as rumination, in line with the model by Corcoran and colleagues (2009). In other words, Chambers' (2009) subjects showed enhanced performance measures of working memory (WM) and sustained attention after the intense ten-day mindfulness training as compared to the control group. MM-induced enhanced attentional functioning is thought to play an important role in emotion regulation (ER), which in turn has proved important in several mental disorders, such as depression and anxiety disorders (Chambers et al., 2009). Therefore, based on these findings, I suggest ER as the main mediator of MM's effect on improved mental health. I hypothesise that, in line with Corcoran's model, MM has both a direct, as well as an indirect effect on ER, and that the indirect effect is mediated by attentional control and metacognition.

Fourth, MM is thought to improve emotion regulation (Sipe & Eisendrath, 2012). ER is the modulation of one or more aspects of emotional experience or reaction (Chambers, et al., 2009) and may operate both on a conscious and on an unconscious level.

Mental health is not a function of achieving as much positive emotionality as possible, but it is a balance between hyper- and hypo-arousal that is established by ER. Neither is it the goal to have as much ER as possible, but a balanced, flexible degree. ER deficits are closely linked to mental disorders and various mental illnesses are associated with emotional instability and dysregulation (Chambers et al., 2009). Correspondingly, over half of the Axis 1 and Axis 2 disorders are associated with deficits of emotion regulation (ER). Links between ER and depression, as well as ER and anxiety are well established. Furthermore, there is a growing body of evidence for deficits in ER or a protective/ curative role of ER in several other disorders, such as Posttraumatic Stress Disorder, borderline personality disorder and several developmental disorders (e.g. oppositional defiant disorder, autism spectrum disorder and attention-deficit/hyperactivity disorder), are currently being studied. CBT aims at enhancing emotion regulation in order to achieve a reduction of unpleasant and maladaptive emotion and cognitions.

To sum, it has been shown that the model of the effects of mindfulness meditation (MM) on emotion regulation (ER) is supported by empirical evidence. First, it was shown that there is an indication of an association between MM and attentional control. Second, the link between attentional control and metacognitive-awareness was explained and it was shown that meta-cognitive awareness increases cognitive flexibility, which is important in the therapy of mental illness. Third, the link between metacognitive awareness and dysfunctional

cognitive biases could also be supported by empirical evidence. It was shown that enhanced metacognitive awareness is associated with reduced rumination, which is an important for the treatment of affective disorders, such as depression and anxiety. Finally, evidence for the correlation of MM and ER was presented and the link of ER and psychopathology was explained. Hence there is a growing body of evidence for the model by Corcoran and colleagues (2009). However, the presented studies are mostly correlational and do not allow inferences about causal relationships. Furthermore, evidence linking attentional control and metacognitive awareness, as well as metacognitive awareness and MM is needed to further support the model. It is assumed here that altered states of consciousness are accompanied by altered state of neurophysiology (Fell et al., 2010). Therefore, the neural correlates of cognitive changes in MM practitioners will be examined in the following section.

### **3 Neurophysiological correlates of mindfulness related enhancement of emotion regulation**

#### **3.1 Neurophysiology of ER**

The enhancement of emotion regulation in general has been correlated with improved cortical regulation of the limbic system (Sipe & Eisendrath, 2012). Pathways between the limbic system, and more specifically the amygdala, as well as the PFC seem to be crucial in ER (Chambers et al., 2009). The amygdala is implicated in negative emotions such as fear and anxiety, whereas the PFC is important in attentional control (Corcoran et al., 2009). Correspondingly, dysregulation of amygdala-PFC pathways has been observed in affective disorders such as depression, in personality disorders, as well as in symptoms of anxiety and aggression (Chambers et al., 2009). An increase in amygdala activation has been associated with responses to emotional stressors, or stimuli that have a negative emotional meaning (Nolen-Hoeksema, 2008).

More specifically, medial PF cortices, the rostral anterior cingulate cortex, medial PF cortices, the dorsolateral PFC, and the ventrolateral PFC play their specific roles in the attentional control of the limbic system by the PFC (Corcoran et al., 2009). Medial PF cortices are thought to regulate the flow of information from memory and the senses to internal concepts of the self and one's goals. The rostral anterior cingulate cortex is involved in maintaining attention to the self and one's emotions. The dorsolateral PFC is proposed to maintain information in awareness or to keep things in mind, whereas the ventrolateral PFC seems to do the opposite, namely inhibiting attention to distracting stimuli or keeping things

out of mind (Corcoran et al., 2009). Another area, which seems to be especially important in the connection of the PFC with the limbic system, or the link between attentional control and emotion, is the ventromedial PFC (vmPFC). This area has been associated with higher order cognitive functions such as self-referential thought, or thought about oneself, voluntary memory recall, and effortful emotion regulation, and is thought to connect the limbic system with the PFC (Corcoran et al., 2009).

To sum, pathways between the limbic system and the PFC, which are connected by the vmPFC, appear to be crucial for emotion regulation (ER). MM may exert its positive effects on ER by reducing dysfunction of this pathway.

### **3.2 Mindfulness Meditation and ER**

Evidence from studies on the effectiveness of mindfulness-based cognitive-behavioural therapy (MBCT) and the underlying neural correlates of mindfulness meditation (MM) supports the notion that MM enhances ER. Rather than directly enhancing ER, MBCT indirectly improves ER by training mindfulness skills. Firstly, corresponding to the proposed model of cognitive mechanisms of the relationship between MM and ER, MM has been shown to enhance ER and attentional self-control (Kabat-Zinn & Hanh, 1990). Secondly, in line with the enhancing effect MM can have on ER, MM was correlated with greater tolerance toward negative emotions and lesser emotional reactivity (Corcoran et al., 2009).

On a neurophysiological level, MM may be useful to reduce dysfunction of the pathway involved in ER. As already mentioned, the hypothesised function of the vmPFC is the cognitive control of emotions, or ER by enabling the regulation of the limbic system. There is evidence on the effectiveness of MM in enhancing ER (Feldman, Greenson, & Senville, 2010; Jha, Stanley, Kiyonaga, Wong, & Gelfand, 2010; Ortner, Kilner, & Zelazo, 2007). Correspondingly, MBSR is thought to lower neural firing on the pathway between limbic system and vmPFC. In one study (Creswell, Way, Eisenberger, & Lieberman, 2007) it was shown that MBSR did not lower limbic activation itself (actually the patients who did MBSR had higher limbic activation compared to controls), but rather disengaged the automatic connection between the limbic system and the vmPFC, when completing a task that involved self-reflection. Hence the automatic link of dysfunctional emotions to self-reference, memory retrieval and verbal elaboration was weakened, which could mean that the depressed mood is not automatically connected to depressive cognitions such as negative self-image and negative memories of the self. For example, Lazar and colleagues (2000) found cortical deactivation and limbic and hippocampal activation during MM. Correspondingly, in another study they (Lazar et al., 2005) found that gray matter volume in the right anterior

insula and in the PFC was positively associated with hours of meditation practice in advanced meditators with more than four years regular meditation practice.

Summarizing, these findings support the assumption that an altered state of consciousness is accompanied by an altered neurophysiological state, as they show that changes in neural connectivity are associated with MM-induced enhancement of ER. In order to further confirm the hypothesised relationship between MM, ER and psychopathology, in the following I show that emotion regulation (ER) dysfunction is associated with psychopathologies such as affective disorders.

### **3.3 Psychopathology and ER impairment**

Neurophysiological research supports the notion that ER dysfunction is associated with psychopathology, especially with affective disorders such as depression and anxiety. In one study, patients and people at risk for affective disorders were compared to healthy controls (Corcoran et al., 2009). Patients and people at risk for affective disorders showed an altered activation of ventral frontal networks, namely mPFC, orbital frontal, and subgenual cingulate cortices in response to a sad mood provocation. Well in line with the model, this finding was interpreted as reflecting a dysfunctional attentional control of emotion (Corcoran et al., 2009). In another study (Johnstone et al., 2009), depressed patients showed a reduced connectivity between limbic system and PFC through the vmPFC compared to healthy controls. On a cognitive level, the authors explained the results by reduced ER. Those and other studies have established the link between ER and affective disorders such as depression. To further corroborate the hypothesis, neurophysiological evidence for the improvement in affective disorders by changes induced by mindfulness meditation (MM) in ER will be presented and evaluated in the following section.

### **3.4 The effectiveness of mindfulness in depression**

According to Mayberg's model (Mayberg, 2012), depression is correlated with dysregulation of the amygdala. It has been observed that depressed patients show increased baseline amygdala activation in response to negative emotion (Corcoran et al., 2009). The amygdala usually shows increased activation when a person is confronted with a threat or when stimuli have some other negative emotional meaning. In one study (Way, Creswell, & Eisenberger, 2010), healthy subjects who scored high on a mindfulness questionnaire showed lower activation in the right amygdala. In the same study, as amygdala activation decreased, depressive symptoms decreased as well. Results of an affect labelling task (Creswell et al., 2007) suggested that such a decrease of amygdala activity may be caused by several regions of the prefrontal cortex (PFC).

Another potential neurophysiological mechanism of how mindfulness lowers the risk to depression may be a shift in PFC activation. An fMRI study showed a mindfulness related shift from activation in the medial PFC (thought to be associated with narrative self reference) to a right lateralised network (involved in somatic and visceral sensation) and fewer depressive symptoms (Farb et al., 2007). These findings show that mindfulness is associated with changes of activity in the amygdala as well as in the PFC, which may thus explain the decreasing effect that mindfulness can have on depressive symptoms.

### **3.5 Mindfulness-related enhancement of emotion regulation**

Evidence from studies on mindfulness meditation (MM) and ER suggest that MM is effective in improving ER. CBT has been shown to be effective in enhancing ER (Chambers et al., 2009). There are three main areas of dysfunction in disorders that involve dysregulated ER: 1.) maladaptive behavioural responses associated with emotion, 2.) experiential avoidance of emotions, which is an anxiety-based avoidance of unpleasant stimuli, and 3.) cognitive appraisal of emotion (Chambers et al., 2009). Traditional ER interventions address those problems in two ways: reappraisal and suppression (Corcoran et al., 2009). Reappraisal is a reinterpretation of the context in which an emotion-inducing stimulus is viewed, or a cognitive re-evaluation of the emotional experience, whereas suppression is characterised by limiting or exaggerating emotional representations (Corcoran et al., 2009).

If CBT is effective in improving ER in affective disorders, then what is the additional value of MM? Suppression and reappraisal have been shown to be associated with what has been interpreted as ineffective ER on a neurophysiological level, specifically the dysfunction of PF regulation of the limbic system (Corcoran et al., 2009). Research indicates that the traditional approach of ER interventions fosters an aversive stance to one's feelings. In depression, this aversive approach has been shown to "perpetuate the depressed state in what is called a depressogenic cycle" (Teasdale, Segal, & Williams, 1995, p. 348). Experiential avoidance, such as avoiding appraisals by suppression has been shown to have negative consequences for mental health (Hayes, 2009). In mindfulness-based cognitive-behavioural therapy (MBCT) on the other hand, an accepting attitude is encouraged. Similarly, MM was correlated with greater tolerance toward negative emotions and lesser emotional reactivity, and increased acceptance of one's experiences (Corcoran et al., 2009). The latter was associated with a decrease in experiential avoidance, meaning that when exposed to unpleasant stimuli, participants showed lower levels of anxiety (Chambers et al., 2009). This effect can be explained by the accepting approach of MM towards one's subjective experience.

## 4 Conclusion

To conclude, the findings corroborate the first hypothesis that mindfulness meditation (MM) is effective in reducing the risk for affective disorders such as depression. Furthermore, there is substantial empirical support for the proposed cognitive mechanisms, namely attentional control, metacognitive awareness and ER. In line with the first hypothesis, MBCT successfully reduces the risk of relapse to depression, especially in patients with three or more prior episodes of major depression. Given the lack of studies on active depression more research is needed to allow for generalization of the observed effects to a broader range of psychopathologies. As the second hypothesis predicts, the ER model of MM's effects on symptoms of psychopathology is supported by empirical evidence. Research shows that the proposed relationship between MM and ER may be mediated by attentional control and metacognitive awareness, and that emotion regulation (ER) is crucial in various psychopathologies.

First, research showed that MM is correlated with attentional control. Second, meta-cognitive awareness can increase cognitive flexibility, which is important in the therapy of mental illness. Third, researchers found an association of metacognitive awareness and dysfunctional cognitive biases. Enhanced metacognitive awareness is associated with reduced rumination, which is one dysfunctional aspect of affective disorders such as depression. Finally, evidence shows that MM and ER are associated and that ER impairment is an important aspect of psychopathology. Hence there is substantial evidence for the model proposed by Corcoran et al. (2009). However, the studies presented are mostly correlational and do not allow for a definite conclusion about causal mechanisms. Moreover, evidence linking attentional control and metacognitive awareness as well as metacognitive awareness and MM is needed to further support the model.

Furthermore, it has been shown that the mediating effects of attentional control and ER are explained by neurophysiological changes in the amygdala and prefrontal cortex (PFC). The neurophysiological findings further corroborate model and the hypothesis that MM reduces the risk for mental illness. Pathways between the limbic system and the PFC, which are connected by the vmPFC, seem to be crucial for ER. Research shows that changes in neural connectivity are associated with MM-induced enhancement of ER. Hence, findings support the assumption that an altered state of consciousness is accompanied by an altered neurophysiological state. In addition, findings show that mindfulness is associated with changes of activity in the amygdala as well as in the PFC, which may explain the decreasing effect that mindfulness can have on depressive symptoms, as depression is associated with dysregulation of the amygdala. To con-

clude, there is a growing body of evidence that mindfulness meditation is effective in reducing the risk for affective disorders such as depression and there is substantial empirical support for the proposed cognitive mechanisms, particularly attentional control, metacognitive awareness and ER.

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## COMPARATIVE FEDERAL EVOLUTION IN NORTH AMERICA

### Constitutional Frameworks and the Evolutionary Development of Federalism in the United States and Canada

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**Abstract** The United States was constitutionally framed as a strong federation. Dissimilarly, Canada was designed as a weaker almost “quasi-federation” with a powerful federal government. However, comparing their respective federal evolution, Canada has moved towards decentralisation, whereas the United States has moved towards an increasingly centralist policy. Explaining this divergence, Lens’ theory of judicial strength, power, and supremacy is ill fitting. However, Grewal’s theory of incomplete contracts, holds explanatory power. The language of power politics is parsimonious when applied to the divergent development of the United States and Canada, and supported by evidence in written constitutional documents and case law.

#### I Introduction

Two large federal states, Canada and the United States, dominate the North American continent. Yet despite geographical proximity, their federal schemes differ, both in terms of concrete constitutional content, and in their evolution-

ary direction. Where the United States constitution safeguards decentralization, Canada's shows a commitment to more centralized governance. Furthermore, the realities of governance in these states juxtapose these stated positions. In the United States, the power of the federal government has increased since its inception; in Canada, governmental power is increasingly decentralized to sub-national entities. This paper explores this paradoxical relationship. First concrete constitutional content is analyzed. How were these federations first formulated by their constitutional framers? Second, how have these frameworks evolved over time? What showcases this constitutional drift?

The latter half of this essay scrutinizes explanations for contrasting federal evolution. Lens' theory studies judicial strength and the impact of judicial interpretation upon development. Under this theory the strength of the judicial branch of government predicts wider centralist or decentralist policy (Lens, 2001 ). Yet, despite offering a partially parsimonious explanation of American evolution, this theory fails to account for the situation in Canada. Grewal's theory of incomplete contracts and differing fiscal federal schemes has better explanatory validity. This theory implies that the dependency of sub-units upon the federal government determines the power scheme between a federal and sub-national government. This theory accounts for the divergence between Canada and the United States, linking Canadian fiscal autonomy links to decentralization, and American dependency to centralization (Grewal, 2010 ).

This analysis asks key questions about the changeable nature of a dualistic state. Constitutional evolution signifies the dynamism of internal relationships. Even in the face of a rigid and comprehensive constitution, federal components are engaged in an ongoing power dynamic. These relationships impact realities. Federal strength impacts national identities. The prevalence of regionalism affects how populations experience fundamentals like democracy and justice. The explanatory mechanisms behind federal evolution also have wide ramifications. The ramifications of Lens' theory undercut the fundamental equality of the trias political system. Lens (2001) infers that the judicial branch alone has the power to shape the nature of a state. Equally, the theory of incomplete contracts adds a provocative component to the debate on fiscal decentralization (Grewal, 2010 ). This is pertinent within both federations and quasi-federations, such as the European Union. For example, in EU debate, fiscal centralization has dominated discourse.

## 2 The Comparative Federal Character of the United States and Canada

The Constitution of the United States stipulates the federal character of the state. This is reflected across all three branches of government, each state has an independent state judiciary, presidential system of government, constitution, and bicameral parliament (Heringa & Kiiver, 2012). At the federal level, the Senate represents states equally, irrespective of population size, within the (again bicameral) parliament. The House of Representatives cannot overrule the Senate, allocating key power to the Senate to blockade the legislative process (U.S. Const. Art. III, 3). Scholars have repeatedly declared the Senate's position as the most powerful second chamber worldwide (Gill, 1970 ). Key prerogatives compound this power, the conclusion of international treaties demands Senate approval (U.S. Const. Art, II, § 2), and the Senate tries impeachments (U.S. Const. Art, I, § 3, Art II, § 2 and Art, III, § 1). The Senate enjoys the power of initiative regarding all federal competency areas except tax bills. Herein, the House of Representatives maintains an exclusive right to initiative (U.S. Const. Art. I, § 7).

Moreover, in terms of the constitutional balance of power between the state and federal government, residual power lies with the state legislature (U.S Const. amend. X). The constitution explicitly enumerates federal legislative competencies (U.S. Const. Art, I, § 8). This denotes state supremacy and a high level of autonomy. The explicit constitutional framework bounds the federal government's competencies; comparatively, the state government has competency over every other area, and any area that could be conceived in the future. This infers that state power is relatively high when compared to central federal power. Equally, this shows how the constitution is dedicated to federal ideas, safeguarding the power of states whilst limiting the power of the central federal government.

However, analysis of the evolutionary changes in the federal structure of the United States shows that the power of the federal government is strengthening; the power of the state governments are therefore diminishing (Lens, 2001 ). This appears counterintuitive; an unconstrained body should have a greater ability to grab power than one working within clear boundaries (Kincaid, 2008 ). Landmark judgments reveal the areas wherein the federal government's power has increased at the expense of state autonomy (Gangi, 1988 ). For example, the case of *McCulloch v. Maryland* expanded upon the enumerated powers, granting "implied powers" and affirming that federal legislature could not infringe on federal law. This was achieved by utilizing the necessary and proper clause (Const. Art. I, § 8 cl. 18) (*McCulloch*, 1819). Equally, in *Gibbons v. Ogden*, the United States Court expanded upon the power of the federal government, infer-

ring greater competency from the commerce clause of the constitution, by redefining interstate commerce (Gibbons, 1824). Judges have since reduced the tenth amendment, affirming and safeguarding the power of the state governments and enshrining them residual power, as a truism. *United States v. Darby* (1941) declared “the [tenth] amendment states but a truism that all is retained which has not been surrendered” (United States, 1941).

Analysis of the central power of the federal government in the United States cannot ignore the power of judicial decisions, and the evolutionary nature of federal relations. Since the constitutional framework came into force, the power dynamic between the federal subunits (the states) and the central federal government has changed (Elliott, 2004 ; Lens, 2001 ). A theoretical comparison of competencies based on the rigid constitutional document concludes that the central government has relatively little power. However, due to imperfect substantive rigidity, a contemporary analysis of the power dynamic reveals a much more centralized system, and a stronger federal government.

Comparatively in Canada, governmental power appears increasingly decentralized when comparing the constitutional federal foundations to the real power dynamic (Rohr, 1997 ). Similarly, to the United States there is both a horizontal separation of powers between the legislative, executive, and judicial branches, and a vertical separation between the central federal government and the governments of the territorial sub-units (Field, 1992 ). In Canada, this separation is between ten provincial governments and the countrywide federal government (Rohr, 1997 ). The Constitution Act of 1867 enumerates this fundamental separation (Constitution Act, 1967 s. 30). Unlike in the United States, no single constitutional document entrenches Canada’s entire dedication to constitutionalism. The Constitution Act of 1867 (previously the British North America Act 1867) is a part of a series of legal documents, conventions, and customs, which constitute the working constitutional framework. However, for the purpose of this analysis, the Constitution Act of 1867 enumerates the majority of federal and provincial powers that are relevant for an analysis of the vertical distribution of power.

The preamble of the Act establishes the “Dominion of Canada,” as an autonomous body under British sovereignty (Constitution Act, 1967 pmbl). Similarly to the United States, a bicameral parliament splits the legislative institutions between provincial and federal powers; the Senate, as an upper house, represents the people on a provincial basis, whereas the House of Commons represents the people as a nation (Rohr, 1997 ). Equally, this second chamber enjoys the right of initiative in all legislative areas excluding tax and revenue bills as the American Senate does (Constitution Act, 1967 s. 53). Diverging from the American model however, state (or provincial) representation is unequal. The four main prov-

inces are represented equally (with 24 seats each); however, the remaining districts receive between one and ten seats based on their relative size (Constitution Act, 1967 s. 22). As a legislative institution, comparatively to the United States Senate, there is less power enumerated to the Canadian Senate both in the constitutional legislature and through constitutional convention. Substantively, the Canadian senate has no absolute veto, involvement in international treaties, or role in the impeachment procedure. Constitutional conventions reinforce this weaker position. For example, by convention the Senate will generally agree with the House of Commons (Rohr, 1997). Overall, in the United States, both houses are equal bodies. Conversely, in Canada, the House of Commons is generally accepted as the primary house, wherein most Canadian legislature is initiated (Field, 1992).

In terms of the varying competencies, sections 91 to 95 of the Constitution Act 1867, divide legislative powers between the federal and provincial governments. The clearest difference between the American Constitution and Canada is apparent here. In the Canadian Constitution Act, the provincial governments are denied residual power; the competencies for the provincial government are clearly enumerated in the 29 clauses of section 92. The competencies enumerated are similar to those implied through the American Constitution to the U.S. state governments, in Canada however, they are explicit. These 29 competencies include “direct taxation”, “management and Sale of the Public Lands”, “Hospitals”, “Charities” and “Asylums” (Constitution Act, 1967 s. 92). When compared to the United States, it should be inferable that the provincial governments of Canada have less power than the state governments of the United States, precisely because the provincial competencies in Canada are bound. However, tracking the evolution of the federal scheme of Canada since the promulgation of the Constitution Act, defies this hypothesis (Watts, 1987).

The constitutional framework of Canada is comparatively dynamic when compared to the United States, which is more formally rigid, and shows a system of increasing decentralisation. Case law has reinforced the doctrine of provincial importance. In *Canada Western Bank v. Alberta*, the Supreme Court of Canada took a limited view on the doctrine of federal paramountcy. The court sided with the provincial court of Alberta (*Western Bank*, 2007). This represents key case law regarding the evolution of Canadian federalism. The case highlighted a commitment to provincial structures and the maintenance of province friendly power relations. This case also contrasts with the outcome of *McCulloch v. Maryland* which expanded upon the American federal government’s enumerated powers, through the necessary and proper clause (*McCulloch*, . Comparing the two cases shows a clear evolutionary divergence. This is further reinforced by more continu-

ous and progressive changes in Canadian institutional structures. Provincial tax powers have increased across Canada from 37% in 1961 to 51% in 1990 (Grewal, 2010 ). The role of federal transfers, to equalize incomes across provinces, have also been reduced. This shows growing decentralization and recognition of the individuality and autonomy of provinces(Smith, 1988 ).

Evaluating the two systems, it can be seen that the constitutional frameworks of Canada and the United States show both key similarities and differences. Firstly, there is a different constitutional character to the “constitutions” of both countries. Where the United States strictly adheres to a written constitution, in Canada, the constitutional framework is more flexible and dynamic. Within these systems, both Canada and the United States have incorporated a federal element into the setup of the central federal government by means of an upper chamber. However, in terms of the power enumerated to the state or provincial government, there are key substantive differences. Comparatively the American Senate has a greater level of power and role, though the Canadian Senate still plays an active role, unlike some other global upper chambers. In terms of the division of enumerated powers between the federal and provincial governments, the Canadian constitution shows less dedication to federalism and a federal structure. In contrast, the United States, by granting and constitutionally safeguarding the residual power of states shows a dedication to the national federal structure. That said, looking at the realities and case law, which complement the main constitutional documents, shows differing federal evolution and movement. *McCulloch v. Maryland* and *Gibbons v. Ogden*, signify American movement towards centralization. Dissimilarity, *Canada Western Bank v. Alberta* shows national decentralization and increasing decentralization.

Therefore, it can be concluded, that the federal evolution of states differs, even between states considered largely similar. The examples considered in this paper, the United States and Canada are generally perceived as being similar in their political and legal cultures, especially when compared on the macro scale. Therefore, the relationship must be associated with a level of complexity that exceeds superficial differences (Elliott, 2004 ). This mystery has resulted in the development of a plethora of theories, attempting to discern causal and explanatory mechanisms, aiming at a predictive and explanatory validity. This paper will consider two of these theories and analyses their fit with these two divergent cases. Firstly, based upon the work by Lens, this paper will consider the premise that judicial activism and judicial supremacy can be associated with the trajectory of federal evolution. Secondly, the theory of incomplete contracts within the field of comparative fiscal federalism will be considered, and the fit for Canada and the United States compared.

### 3 Lens' Theory of Judicial Power and Federal Evolution

Contemporary theorists such as Elliott Douglas, Patrick McGinley, and Peter Shane have correlated the judicial system set out within the national constitution and changes in the federal scheme (McGinley, 1992 ). This paper will focus on one particular explanatory model, developed by Vicki Lens. Lens' theory focuses on the importance of a centralized, separate judicial system, with inferred supremacy. This judicial setup results in increased centralization across the entire state structure. According to Lens, in terms of power politics, a strong independent judiciary will result in an increase in the power of the federal government (Lens, 2001 ). This is because a system with a particularly strong central judiciary revolves around an uppermost, central court with the ability to pass judgment on any national case. Lens infers that a strong central court will inevitably come to interpret all legislation, therefore state law becomes by definition, that which the Supreme Court decides it is. Therefore, Lens attributes the direction of federal evolution with the setup of the judiciary elucidated in the constitution (Lens, 2001 ).

Application of this model to the United States shows adequate fit. The constitution details "one supreme court," the Supreme Court. This is a central, powerful court. Equally, article three, section two, gives judiciary the power to decide "cases" and "controversies" that may arise (U.S. Const. Art. III, §2 cl.1). This fits Lens criteria; a strong, independent central court exists in the United States. According to Lens this explains the increasingly centralist tendencies of the United States. However, that said certain case law, as highlighted by Field, suggests the Supreme Court, despite showing its power in other ways, as declined from interpreting state law. For example in *Memphis v. Murdock*, the Supreme Court explicitly only interpreted state law as the state had. This case has been described as one of the "cornerstones of the federal system" (*Memphis*, 1875) (Field, 1992 ).

In addition, this line of argumentation fails to account for the extreme differences we see in the constitutional and federal evolution witnessed in Canada; the Canadian experience refutes the relationship inferred by Lens. Similarly to the United States, the Canadian constitution creates a central, independent, strong judiciary. Initially, this court was the Judicial Committee of the Privy Council; in 1949, this position was transferred to the Supreme Court of Canada. The functions of the Canadian functions are constitutionally, and in practice, largely similar to the American Supreme Court. The key difference is that the Supreme Court in Canada also actively interprets Canadian provincial law, unlike in the United States. This blurs the lines between national and provincial law, denying provin-

cial courts a separate sphere of operation (Field, 1992 ). According to Lens, this should mean Canada is increasingly centralized. However in practice, Canada is increasingly decentralized.

#### 4 Incomplete Contracts Theory

The theory of incomplete contracts better explains the opposing trajectories of Canada and the United States. Grewal (2010) focuses on fiscal autonomy as the predictor of evolutionary direction. The fiscal dependence or independence of sub-units upon the federal government determines the uncertainty within their relationship, and thus the power scheme between the federal and sub-national government. This scheme establishes evolutionary direction in federations based on the continuing renegotiation of incomplete contracts.

In a market system entities interact through the language of contracts, on a plane of uncertainty. The future and all possible contingencies are unknown. Thus, contracts cannot be comprehensive; they are referred to as “incomplete contracts”. Both parties perceive this uncertainty, that the contract is “incomplete”. Thus, contracts are dynamically revised and renegotiated. This renegotiation is based on the power dynamic between these entities. Under Incomplete Contracts Theory perceived uncertainty reduces relative power.

Federal constitutions and intergovernmental arrangements are such incomplete contracts, due to complex interdependent relationships. These result in unknown eventualities. In a democratic system there is a single vertical relationship between the central government and voters. The government will appease voters in exchange for its own survival. In a federal system there is another vertical relationship between the sub-national government and its voters, as a subset of the central governments voters. This is interdependent; provincial performance will affect the national vote and vice versa. Therefore, there also exists a third vertical relationship between the central government and the sub-national governments. This results in great uncertainty. Thus, entities enter a dynamic renegotiation process. This can grant increased power either to the federal government or to the sub-unit, based on their relative power.

According to Grewal, this relative power is determined by the dependence or independence of sub-units upon the federal government and vice versa. This determines the uncertainty within their relationship. Fiscal autonomy becomes the key power source as the counterpoint to uncertainty. Any power gains are at the expense of another body; federal fiscal control is at the expense of the power of the sub-national governments and vice versa. This power translates into leg-

islative, judicial, and executive control. This augments the direction of federal evolution; the entity with greater fiscal power is more certain. This means they can better renegotiate contracts, resulting in evolutionary direction in their favor (Grewal, 2010 ).

Application of this scheme to Canada and the United States shows much better parsimony and explanatory power than the theory developed by Lens. Canada has an increased fiscal federalist scheme, in that Canadian provinces were initially and continue to evolve to be more independent than their American counterparts (Field, 1992 ). This correlates with the evolution of the two states. In the United States, the individual states are relatively fiscally dependent on the federal government, and this has resulted in an increased centralized federal scheme. Comparatively, the Canadian provinces enjoy a high level of fiscal autonomy and thus a low level of dependence (Smith, 1988 ). According to Grewal, the fundamentally different fiscal schemes set out in the respective constitutional frameworks, result in equally fundamental differences in the direction of federal evolution.

Constitutionally, Canadian provincial fiscal autonomy is enshrined in section 92 of the Constitution Act. Clauses 13 and 16 infer exclusive provincial right to legislate in “Property and Civil Rights in the Province” and “[g]enerally all Matters of a merely local or private Nature in the Province” (Constitution Act, 1967 s. 13; s.16). The addition of section 92A in 1992, extended fiscal autonomy by enumerating provincial control over natural resources (Constitution Act, 1967 s. 92A). Comparatively, in the United States, regulation of “interstate commerce” results in “allow[ing] Congress to regulate any economic activity it wishes(Field, 1992 ). Equally constitutionally, the lack of enumerated state power means fiscal dependency can be inferred from the flexibility of the federal competencies. In addition, one big difference is that the American federal government maintains the exclusive right to collect taxes, creating dependency, whereas the Canadian provinces enjoy independent taxation (U.S. Const. Art. I, § 8 cl. 1). As inferred by Grewal’s theory, the power balance between the federal and state government in the United States, fiscally, is weighted towards the federal government (Gill, 1970 ; Grewal, 2010 ). The result is that the federal government wields significant leverage (Gill, 1970 ). This has resulted in an increasingly strong federal government.

## 5 Conclusion

When comparing the American and Canadian federal schemes there are constitutional and evolutionary differences. This initially appears paradoxical. It showcases the changeable nature of a federal state according to complex power dynamics, the United States was initially framed as a strong federation with residual power lying with the state rather than federal government. Dissimilarly, at conception, Canada was designed as a weaker almost “quasi-federation” with a maintained strong federal government. The competencies of the provinces were bound into 29 clauses, rather than inferred through a residual power clause, like the tenth amendment. In terms of similarities, both incorporated a federal level into their bicameral parliaments, with representation from all sub-units. Equally, a minimum level of federal autonomy was enumerated through the creation of separate sub-national judicial, legislative, and executive bodies. Comparing their federal evolution, Canada has moved towards decentralization, with increased provincial powers, whereas the United States has moved towards an increasingly centralist policy, which can be seen through key case law such as *McCulloch v. Maryland* and *Gibbons v. Ogden*. Explaining this divergence, Lens’ theory of judicial strength, power, and supremacy was found to be ill fitting as cases such as *Memphis v. Murdock*, falsified the claim that a strong central judiciary lends itself to a reinterpretation of state law, diminishing state power and increasing the power of the federal government. This theory was also resoundingly refuted by Canadian evolution. The theory of incomplete contracts, developed by Grewal, was found to be better fitting. The language of power politics was parsimonious and had an explanatory validity when applied to the divergent development of the United States and Canada, and is supported by evidence in the written constitutional documents and case law. In the United States, a greater level of fiscal interdependence on the horizontal plane, and dependence between the state governments and the federal government on the vertical plane, accounted for an increasingly centralist policy, with increasing fiscal power at the federal level being reflected in the legislative and other branches. Equally, in Canada, the comparative provincial autonomy meant the level of interdependence and federal dependence was lower; the theory of incomplete contracts was supported, as Canada is increasingly decentralized. Overall, a comparison of the federal schemes in Canada and the United States brings forth the conclusion that federalism is an evolutionary rather than static concept, which differs hugely between states. Such federal evolution represents the deep structural evolution to the very fundamentals of a state, its founding principles as enshrined in its unique variant of constitutionalism.

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## THE END OF THE GERMAN DUALISM

### A Systemic Approach to the Austro-Prussian Conflict of 1866

*Jonas Knatz*

**Abstract** The Austro-Prussian War of 1866 constituted not only the second German reunification war but also marked the end of German dualism and left Prussia with a hegemonic position in Europe. This article will analyse the outbreak of the war by applying James Fearon's Bargaining Model of Warfare to the conflict and thereby highlights the importance of misperceptions on the Austrian side as well as the non-negotiable nature of the problem for the start of the fighting. Moreover, the misperceptions about Prussian strength in the wider European context will be pointed out and therewith it will be explained why the balance of power mechanism did not prevent warfare in the centre of Europe.

*Politics is the art of the possible.*

(Minister President of Prussia Otto von Bismarck)

## I Introduction

Only two years before the Austro-Prussian war broke out, in 1864, the two European powers fought side by side against Denmark in the Second Schleswig War. The *casus belli* was the Danish control over the duchies of Schleswig and Holstein, which was not approved of by the German confederation. The victory of the German states, however, would be the last victory for the Austro-Hungarian Empire (from now on referred to as Austria) and it provided the precipitating cause for the war between Austria and Prussia in 1866. After the joint victory, Prussia and Austria could not agree on how to divide the annexed duchies of Schleswig and Holstein. Even though the Gastein Convention of 1865 was designed to settle the conflict between the two biggest German states by declaring Holstein Austrian and Schleswig Prussian territory, the agreement only delayed the struggle for supremacy in the German confederation (Stadelmann, 1933). After forming an alliance with Italy, which had interest in the Austrian province Venetia, Prussian troops marched into Holstein and provoked military clashes with Austrian troops in April 1866. In response, Austria asked the German diet to penalize Prussia for its belligerent behaviour and, in turn, Prussia declared the Diet dissolved and war on every country, which sided with Austria (Moul, 2005 ; Nipperdey, 1998 ). Against all expectations, the Prussian army swiftly defeated the Austrian troops and the peace agreement of August 1866 allowed Prussia to annex the Kingdom of Hanover, the Electorate of Hessen-Kassel, the Duchy of Nassau and the Free city of Frankfurt as well as the duchies of Schleswig and Holstein. Thereby, Prussia won more than five million German citizens and twenty-eight thousand square miles and laid the foundation of what later on would become the Norddeutsche Bund [North German Federation] (Schmitt, 1975).

While many historians and international relations theorists focus merely on the person of Bismarck and the mediocrity of the Austrian leaders, this paper takes on a systemic approach and argue that by applying James Fearon's Bargaining Model of War to the conflict it becomes obvious that war between Austria and Prussia was inevitable as the matter at stake was indivisible and Austria as well as other European countries had considerable misperceptions about Prussian strength. First, Fearon's theory is briefly introduced. Second, the development of Austro-Prussian relations from cooperation to conflict is traced back. Third, Fearon's Bargaining Model of War is applied to the case and it is demonstrated why the countries ended up fighting. Four, the Prussian-Austrian conflict is analysed in the European context and it is explained why Prussia's attack against Austria was not deterred by a balancing coalition.

## **2 An economic approach to understanding war- James Fearon's Bargaining Model of War**

The American political scientist James Fearon (1995) rests his Bargaining Model of War on the assumption that war is a costly enterprise and countries always prefer a less costly negotiated settlement. Thus, actors are rational as well as risk neutral or risk averse and try to avoid gambling on war. Even though he acknowledges that some wars are fought due to the personalities of leaders or for diversionary purposes, Fearon identifies only three instances in which rational actors end up fighting a war against each other. First, states fight each other when the issue itself is indivisible and thus a negotiated agreement is impossible. This leaves the countries with no other alternative than fighting a war in order to achieve their goals. Second, when states lack trust in each other's incentives and have a commitment problem. This is related to the (neo-) realist notion of an anarchic international system that lacks an authority bigger than states. Third, when only one state has information that affects the outcome of the war and thus the expectations about a negotiated settlement are profoundly different. In this case, states estimate the costs of war very differently and, therefore, have very different perceptions on how a possible agreement could look like (Fearon, 1995). The Seven Week's War between Austria and Prussia exemplifies how different sets of information and indivisible issues can lead to warfare between two states. This also shows that these instances can occur separately from each other. The roots of the conflict, however, can only be understood by tracing back the history of the German confederation from the Congress of Vienna in 1815.

## **3 From cooperation to conflict**

In 1815, the leaders of the five European great powers, namely Prussia, Austria, Russia, Britain and France, gathered in Vienna in order to set up a new system to prevent future major wars in Europe, as they were horrified at the devastation caused by the Napoleonic Wars. The result of these talks was a system known as the Concert of Europe, which was based on shifting alliances to balance possible aspiring hegemonies and a policy of compensation, which was supposed to ensure approximately equal distribution of power between the five countries. Thus, the five leading European powers met regularly to redistribute population as well as territory to balance the distribution of power between them. Without the certainty of fixed allies, every aspiring hegemon had to face the probability that the four other states would form a balancing coalition against the aggressor (Craig &

George, 1995 ). In addition to these mechanisms, Germany was split up into 39 individual states, which were organised in a loose confederation, in order to prevent a hegemonic power in Central Europe and thereby solve the “German question” (Ramage, 1899 ). This confederation was dominated by Austria, with only Prussia possessing the potential to challenge Austria in terms of economic and military power (Moul, 2005 ). This Austrian supremacy reflected the power relationship between these two countries until the mid-1840s and Prussia mostly accepted Austrian supremacy in the German confederation (De Mesquita, 1990).

The European balance of power system was heavily undermined in the 1840s and 1850s when politically ambitious newcomers, such as Otto Bismarck in Prussia, Camillo di Cavour in Piedmont and Karl Schwarzenberg in Austria took over and pursued *realpolitik* (Craig & George, 1995 ; Nye & Welch, 2011 ). Moreover, nationalism made the policy of compensation increasingly more difficult to apply and the European countries were again caught in a struggle for supremacy (Craig & George, 1995). *Realpolitik* meant a clear change in how politicians perceived the structure of the system. It set aside the collaborative attitude, which had dominated the Congress in Vienna, and prioritized narrow national policies to maximize power (Craig & George, 1995 ; Nye & Welch, 2011 ).

*Realpolitik* also had a profound impact on the relationship between Austria and Prussia. While the pre-1848 period was marked by stable cooperation between the Austrian House of Habsburg and the Prussian House of Hohenzollern, this relationship deteriorated because of nationalism and *realpolitik*. Both powers were increasingly dissatisfied with the German confederation and the constraints it placed on the hegemonic ambitions of both countries. In Austria, the ambitious statesman Schwarzenberg abandoned the cautious foreign policy of his predecessor Metternich and made plans for a unification of Germany under Austrian leadership (Katzenstein, 1976; Sondhaus, 1991 ). Similarly, the equally ambitious Prussian statesman Otto von Bismarck aimed at regional hegemony in Northern Germany and envisioned a German state without Austria (Ramage, 1899 ). A battle had begun over the leadership of the German federation in which both sides had contradicting ideas about the structure of the German state. From this moment onwards the two biggest German states had conflicting interests (De Mesquita, 1990).

According to Fearon’s (1995) bargaining theory of war, there is always a negotiated settlement which both sides prefer to a costly war. In case of the Austro-Prussian conflict, however, such a negotiated agreement was doomed to fail. In the following analysis it is demonstrated that Austria had wrong informa-

tion about Prussia's strength and thus was not willing to negotiate an agreement, which would have reflected the true balance of power between both countries. In the second part, it is illustrated why a negotiated settlement proved impossible in the Austrian-Prussian struggle for supremacy in the German federation.

#### **4 Misperceptions about Prussian's power and the indivisibility of leadership**

When in 1815 the European statesmen created the Concert of Europe and the German confederation, the system reflected the power relationship between Prussia and Austria. Austria was stronger in military as well as in economic terms and thus its supremacy in the German Confederation was not questioned by Prussia (De Mesquita, 1990 ). From the mid-1850s onwards, however, the power in the German confederation shifted away from the Austrian House of Habsburg to the Prussian House of Hohenzollern. While Austria was considered one of the richest states in Europe in 1815, its state finances were poorly managed in the following years and Austria became increasingly dependent on international loans (Stadelmann, 1933 ). At the same time, Prussia underwent rapid development and in 1865, both countries were approximately equal in their economic and military power (De Mesquita, 1990 ; Stadelmann, 1933). Thus, the distribution of power became dissonant within the system of the German confederation and Prussia was no longer willing to be the junior partner of Austria. Instead, Prussia increasingly perceived the German Confederation as constraining its rise and developed an alternative model for the German confederation (Katzenstein, 1976).

In January 1866, three months before the war started, Bismarck offered to negotiate a settlement about the role of Austria and Prussia in the German Confederation as well as about the control of the duchies Schleswig and Holstein, which he believed to be both Prussian territories. The Austrian leader Francis Joseph, however, refused to talk to Prussia as "he still believed he could manage a two-front war [against Italy and Prussia] if only Russia and France kept out of it" (Crankshaw, 2011, p. 201 ). Thus, Austria still perceived Prussia as a weak state and lacked the incentive to reconsider the relationship between Austria and Prussia.

This misperception of Prussia's strength perfectly fits Fearon's (1995) Bargaining Model of War. As stated by Levy and Thompson (2012), adversaries are always likely to reach a negotiated settlement if they share the same expectations about the outcome of the war. In the Austro-Prussian War, however,

Austria significantly underestimated Prussian strength and, therefore, assumed that it could pressure Prussia to comply with Austria's rule and did not have to give in to any of Prussia's demands (Crankshaw, 2011; De Mesquita, 1990 ). Prussia, however, was aware that it was approximately on the same level as Austria in terms of military and economic power. Therefore, Prussia tried to negotiate a settlement which reflected this shift in power. As clearly stated by many scholars, Bismarck preferred such a 'cheap' negotiated settlement to a costly war (Crankshaw, 2011 ; De Mesquita, 1990 ; Showalter, 1974 ). However, both parties regarded the behaviour of the other side as unacceptable and therefore a negotiated settlement became impossible.

Prussia's increasing military and economic power was not the only thing that the Austrian House of Habsburg was not aware of. The American Civil War was the first war, which was fought with massive firepower on both sides. Both Prussia and Austria, however, drew very different conclusions about the effect firepower would have on future warfare. While the Austrians thought that the needle gun would undermine the unit cohesion and the strength of an army as soldiers needed to retire to the rear in order to reload their needle guns, the Prussians, in contrast, felt emboldened by their mass employment of the needle gun (Showalter, 1974 ; Smith & Stam, 2004 ; Wawro, 1997 ). The divergent perceptions on the power of the needle gun were another factor that led the Austrians to overestimate their chances in a war with Prussia and Prussia to perceive a war over supremacy in the German confederation as a feasible alternative. Ironically, it was exactly the firepower of the needle gun that proved a decisive factor in the most important battle in Koeniggratz and gave Prussian troops a decisive advantage over the Austrian army (Craig, 1964 ).

According to Fearon's (1995) Bargaining Model of War, there is a second mechanism that prevents states from settling conflicting interests in negotiations. This second mechanism is activated when countries argue about indivisible issues. In the Austro-Prussian War the matter at stake was the leadership in the German confederation (De Mesquita, 1990 ). Leadership constitutes such an indivisible issue as it can only be achieved by one country. The Austrians developed schemes for the establishment of a *Mitteleuropa* or *Grossdeutschland*, in which Austria would lead a unified Germany with Prussia being merged into the Austrian empire (Sondhaus, 1991 ). In contrast to these Austrian plans for supremacy, the Prussian statesman Otto von Bismarck envisioned a unified Germany without Austria, which he did not consider to be German but rather Slavic (Ramage, 1899 ). In this so-called *Kleindeutschland* Prussia would take the lead and rise to be a strong power in Europe (Mork, 1971 ). These contradicting plans could not be reconciled as either Prussia or Austria would emerge

as a leading power in Europe. It needed a war between the two countries to decide on this indivisible issue and with the end of the War in 1866, Prussian *Kleindeutschland* trumped Austrian plans for *Mitteleuropa* (De Mesquita, 1990).

It has now become clear why war between Austria and Prussia broke out. As stated in Fearon's (1995) Bargaining Model of War Theory, one side had more information about the war than the other side. Therefore, both sides could not find an agreement, which they perceived to be less costly than fighting a war. Austria assumed that it could swiftly put down Prussian aspirations and uphold its supremacy in the German confederation without giving in to Prussian demands for more power. Prussia, in contrast, tried to avoid the conflict by offering peace agreements, which reflected the shift of power between the two German states and was offended by the Austrian arrogance towards its proposal. It now perceived war a less 'costly' alternative than the status quo. Furthermore, a war between the two powers had to find a solution for the problem of diametrically opposed plans for the German Confederation. While Austria demanded a unified Germany under Austrian leadership, Prussia wanted to form a Northern German Confederation without Austria as a way to become a bigger player in Europe.

It would be incomplete, however, to analyse the Austro-Prussian War in a vacuum. As stated by Kenneth Waltz (1979) and other realists, it is a top priority of states to prevent other states from establishing hegemony. The probability of a balancing coalition could have deterred Prussia from attacking Austria by increasing the costs of warfare to such an extent that Austrian supremacy in the German Confederation would have been the better alternative. Therefore, an analysis of the Austro-Prussian War in 1866 also has to explain the lack of balancing by other states.

## **5 The lack of balancing – An open door for Prussian expansionism**

While Fearon's (1995) game-theoretical approach towards warfare models the outbreak of war as a simple two-player game and is perfectly applicable to the Austro-Prussian conflict, the European reality was more complex and also significantly contributed to the outbreak of war in 1866. Following Waltzian neo-realism, from the Congress in Vienna onwards it had been the top priority of European states to prevent another hegemonic struggle similar to the Napoleonic Wars (Craig & George, 1995). This was still the case in 1866 and Russia, France and Britain would not have allowed a German state to pursue a hegemonic agenda (Christensen, 1997). Thus, the possible interference of other states into the Austro-Prussian conflict could have prevented the war between the two

German states. The years 1865 and 1866, however, provided the Prussian statesman Otto von Bismarck with a unique opportunity to attack Austria as possible balancing states focused on other actions outside Europe and, similar to Austria, they also had wrong information about Prussia's strength.

Britain was occupied with the new realities after the American Civil War and concerned that its colonial holdings in Canada, Ireland might secede and thus its status as a world-wide trading power could be threatened by the victory of the North against the Confederacy of the South (Stadelmann, 1933 ). Likewise, Russia faced considerable economic difficulties and was not interested in exacerbating domestic problems by fighting a war in Central Europe (Stadelmann, 1933 ). France was focusing on French expansion in Mexico and the problems in Belgium after the death of King Leopold (Stadelmann, 1933 ). Therefore, all the other European states faced other problems than the German struggle for supremacy and paid no attention to Prussia's increasing aggression towards Austria (Christensen, 1997 ).

Moreover, also the other European states lacked crucial information about Prussia's probability of winning against Austria and the leaders and populations in the four European countries did not expect that Prussia's attack on Austria could end with a hegemonic Prussian position in Europe. Therefore, forming a coalition with Austria would have been bandwagoning with Austria instead of balancing the aspiring hegemon Prussia (Christensen, 1997 ; De Mesquita, 1990 ). This is perfectly exemplified by France's attitude towards the Austro-Prussian tensions. France had a lively interest in a war of attrition between the two German states and therefore declared its neutrality towards Prussia as well as towards Austria (Christensen, 1997 ; Derndarsky, 1982 ). It thought that Austria was superior to Prussia and therefore welcomed the Italian-Prussian alliance as a mean to prolong the war and thus weaken Prussia as well as Austria and improve its situation on the European continent (Christensen, 1997 ).

Thus, the European system offered the Prussians an opportunity to reveal their strength by attacking Austria. Before, there had always been the possibility of a balancing coalition against the aggressor, which had deterred the Prussians from demanding a re-evaluation of the German confederation with force (Stadelmann, 1933 ). Also Bismarck feared that this opportunity would not last very long and therefore pressured a Prussian attack after the last attempt of solving the conflict peacefully had failed (De Mesquita, 1990 ) and the Prussian statesman was certainly right. Already in the peace agreement in August 1866, Prussia had had to act very moderately and cautiously in order to not provoke a balancing coalition by France, Britain or Russia against its new powerful position in the European system of states (De Mesquita, 1990 ).

Moreover, the behaviour of the other European states demonstrates remarkably well that Fearon's bargaining Model of War is not only limited to the dyadic level of state interaction. As Russia, France and Britain also had wrong information about Prussia's strength, they made war between Austria and Russia more likely by not paying attention to the conflict or actually encouraging it as in the French case. If they had known about Prussia's strength before the war, they might have predicted a Prussian hegemonic position after the war and then sided with Austria in order to deter Prussia from attacking. This would have made war less likely. However, by underestimating Prussian power they allowed it to overturn the status quo and lay the foundations for Prussian hegemony (De Mesquita, 1990).

## 6 Conclusion

The analysis of the Seven Week's War between Austria and Prussia demonstrates the applicability and validity of James Fearon's bargaining model of war. The foundation of the conflict was the Prussian rise and the Austrian ignorance towards the new Prussian strength. This led to very different perceptions about which country should be allowed to lead the German Confederation. This conflict was exacerbated by fighting for control in the duchies of Schleswig and Holstein. A peaceful settlement, which could have been accepted by both sides, was made impossible as Austria did not know about the increase of Prussian power and therefore was not willing to make concessions. On the other side, Prussia was not willing to follow Austrian leadership anymore. Moreover, both countries had fundamentally different plans for the German confederation, which could not be reconciled. Thus, the Seven Week's War meets Fearon's model in two ways: one side lacked crucial information and the issue was indivisible. Therefore, war had become less 'costly' than giving in to the other side's demands. This paper, furthermore, argues that the distraction of the other European states as well as their wrong perceptions about Prussian strength further lowered the 'costs' of a Prussian attack as there was no possibility of a balancing coalition. This also demonstrates the applicability of Fearon's Bargaining Model of War to the European level.

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## SEXOLOGY IN GERMANY

Dr. Richard von Krafft-Ebing's and Magnus Hirschfeld's  
Contribution to the 'Science of Homosexuality'

*Alexandra Brandt Corstius*

**Abstract** This paper considers the birth of the 'science of homosexuality' in late nineteenth-century Germany. In particular, it highlights the important contributions of two often-overlooked pioneers to the medicalization of homosexuality, Dr. Krafft-Ebing (1840–1902) and Magnus Hirschfeld (1868 – 1935). Dr. Krafft-Ebing, an esteemed German psychiatrist was mostly known for his classic work *Psychopathia Sexualis*, for which he conducted extensive research on what he termed 'perversions'. Magnus Hirschfeld on the other hand, was an early campaigner for the emancipation of homosexuals, and founded the *Wissenschaftlich-humanitäre Komitee* (Scientific-Humanitarian Committee). The efforts of Krafft-Ebing and Hirschfeld are explored as part of the social construction of homosexuality, as laid out by Foucault. This article argues that both Krafft-Ebing and Hirschfeld were pioneers ahead of their time, and that their efforts in the founding of the *scientia sexualis* have been grossly underestimated.

In the aftermath of the Enlightenment rhetoric, and during a time period that encountered a significant number of social changes brought on by urbanization, one specific kind of discourse reigned in late nineteenth-century German medical science (Bullough & Bullough, 1997). In a time-period that ran parallel to the Victorian *Zeitgeist*, sexuality and gender became the dominant discourse in Germany. As noted by Hill (2005), the late nineteenth-century represented a transitional period in the conceptualization of sexuality. No form of sexuality has received as much attention and has been the subject of as many intensive investigations as homosexuality, although the word itself did not come into being until the late nineteenth-century (Bynum, 2002; Prince, 2008). An often-neglected and underrated pioneering figure in the emancipation of homosexuals is Magnus Hirschfeld (1868-1935), the German physicist and gay rights activist *avant la lettre*, who founded the first Institute of Sex Research (Beachy, 2011; Brennan & Hegarty, 2007). An equally often overlooked and controversial figure that preceded Hirschfeld in the field of sexology is the late German psychiatrist Dr. Richard von Krafft-Ebing (1840–1902), who is most famous for his classical compendium *Psychopathia Sexualis*, that came to define late nineteenth-century sexual science (Amidon, 2008). He was one of the first psychiatrists to medicalize the sexual orientation of homosexuality in an attempt to decriminalize it, which was also Hirschfeld's predominant goal (Brennan & Hegarty, 2007; Wahlert, 2012). While Hirschfeld is widely applauded for his efforts in political activism and is credited with the coining of the terms 'transvestite' and 'transsexual'—which enabled the distinction between these groups on the one hand, and men and women with same-sex desires on the other hand—, it is outside of the scope of the present paper to fully address these topics (Beachy, 2011; Prickett, 2008; Prince, 2008). Instead, the biological theories that underpinned Hirschfeld's emancipatory stance are addressed.

The focus of this paper is on the medicalization of homosexuality, in the light of both Dr. Krafft-Ebing's and Magnus Hirschfeld's contributions to the science of homosexuality. First, the dominant views towards the homosexuality of the late nineteenth century shall be outlined by providing a brief historical background on the social construction of homosexuality, as laid out by the French philosopher Michel Foucault. Second, Krafft-Ebing's ideas and work shall be discussed, with particular focus on his views contained in his theory of hereditary degeneracy. Finally, an account shall be given concerning the scientific theories underlying Magnus Hirschfeld's efforts to emancipate homosexuals.

Quoting Foucault (1990): "The psychological, psychiatric and medical category of homosexuality was constituted from the moment it was characterized – Westphal's famous article of 1870 on 'contrary sexual sensations' can stand as

its date of birth – less by a type of sexual relationship than by a certain quality of sexual sensibility, a certain way of inverting the masculine and feminine oneself. [...] The sodomite had been a temporary aberration; the homosexual was now a species” (p. 43). It might at first seem counterintuitive to take as one’s basic assumption that homosexuality is historically and socially constructed. However, throughout history, it becomes clear that sexuality, and subsequently homosexuality, became understood as a particular form of discourse (Drazenovich, 2012). In the years preceding the late nineteenth-century, religion and the institution of the church had had as their task to define morally acceptable behavior. In the latter half of the nineteenth-century however, the task of defining morally acceptable (sexual) behavior moved towards being that of physicists, psychiatrists in particular. The taxonomy by which sexual behavior is defined – which in many cases, has persisted until today – was invented by sexologists of that era. A distinction was carefully drawn between sexual behaviors that were perceived as acceptable (monogamous, heterosexual sexual intercourse aimed at procreation), and ‘perversions’, that deviated from normative behavior (Hart & Wellings, 2012).

The fin-du-siècle discourse on homosexuality was embedded in the idea that homosexuality was a pathology. Dr. Krafft-Ebing for instance often referred to homosexuality as being the ‘pathological character of contrary sexual feeling’ (Mildenberger, 2007). Homosexuals, who until then had been considered criminals or sinners were now labeled as ‘ill’ by psychiatrists and the like (Bullough & Bullough, 1997). The use of pathological labels can be considered a replacement of the formerly used categories of sin and crime. Foucault (1978) argues that the Western procedure for telling the truth about sex was rooted in the practice of confession. While until approximately 1900, homosexuals and other individuals suffering from ‘abnormal’ sexual inclinations engaged in religious confessions, at the turn of the century the confession shifted from confessing one’s sins to a priest to being medicalized as therapeutic operations (Foucault, 1978). According to Foucault, the adaptation of the traditional religious procedure of confession to the rules of scientific discourse produced something he termed as ‘scientia sexualis’.

One of the most influential German psychiatrists of the time and practitioner of the scientia sexualis who is said to have engaged in rites of confession with his patients was Dr. Richard von Krafft-Ebing. In his book *Stepchildren of Nature: Krafft-Ebing, Psychiatry and the Making of Sexual Identity*, Dutch historian Harry Oosterhuis (1997) argues that although the core of Krafft-Ebing’s work consisted of confession-like rituals in which ‘patients’ revealed their secrets, the process was not as entirely one-sided as had been previously assumed. Oosterhuis

(1997) notes that the exchange of letters that took place between Krafft-Ebing and his laymen/patients highlight the presence of something closer to a dialogue than a simple confession. The wealth of material he had extracted from his letter exchange subsequently formed the basis of his best-seller oeuvre *Psychopathia Sexualis*, which was published in 1886 (Rosario, 2002). Krafft-Ebing's primary interest was homosexuality, however he investigated all the existing 'perversions', including 'sadism' and 'masochism', two terms whose existence he is credited with. He furthermore classified other forms of 'inversions' separately from homosexuality, such as androgyny and gynandries, and effeminacy (Krafft-Ebing, 1937). Krafft-Ebing was indeed one of the first to systematically classify and define sexual pathologies based on phenomological criteria, as he did in his encyclopedia *Psychopathia Sexualis* (Rosario, 2002). During the majority of his medical career, Krafft-Ebing insisted on the fact that he considered homosexuality to be pathological, and not simply a natural form of sexuality that had physiological causes, as was being advocated by Karl Heinrich Ulrichs, the early German homosexual emancipator and theorist (Kennedy, 2008). Oosterhuis (1997) notes several times that Krafft-Ebing believed that tainted heredity and degeneration formed the basis for all forms of perversions and inversions, including homosexuality. His core pathophysiological concept that homosexuality was a form of hereditary degeneration remained until the end of his career. This stance is clearly illustrated in Krafft-Ebing's (1937) quote 'je genauer man nämlich die sogenannten erworbenen Fälle von Homosexualität erforscht, um so deutlicher zeigt sich, wie ausschlaggebend und entscheidend hier stets die Veranlagung ist' (p.263), by which he meant that when researching the so-called cases of acquired homosexuality, the finding of predisposition being an invariably decisive factor became ever more distinctive. It therefore seems rather logical that Krafft-Ebing (1937) was convinced that homosexuality that was 'acquired' at a later stage of an individual's life was a form of latent homosexuality, brought to expression by such vices as an overactive sexual imagination – masturbation, in particular (Bullough & Bullough, 1997). Rosario (2002) notes that in the eyes of Krafft-Ebing, homosexuality was a pathology that presented itself as a form of mental insanity. His theory of hereditary degeneracy implied that any "unhealthy behavioral or environmental impact could damage the organism and its offspring", which then would lead to a hereditary accumulation of "degenerate stigmata" (Rosario, 2002, p. 81). This view on homosexuality echoed the views of the leading German psychiatrists of his time, who generally named sexual behavior, heredity, crime and degeneration in one breath. Alongside Krafft-Ebing were famous psychiatrists such as Forel, Eulenberg, Leopold Löwenfeld and a number of other leading psychiatrists and physicians who all argued that sexual pervers-

sions were primarily a consequence of degeneration (Amidon, 2008). Following from Krafft-Ebing's theory that homosexuality was a degenerate neuropsychiatry condition stemmed the assumption that Krafft-Ebing was opposed to homosexuality (Rosario, 2002). Oosterhuis (1997) however convincingly argues that instead, Krafft-Ebing can be seen as a supporter of homosexual rights, despite his - what can nowadays be considered radical - biological theories on homosexuality. Oosterhuis notes that Krafft-Ebing desired the abolition of antisodomy laws, and argued in the defense of individuals accused of sodomy. Additionally, he was a loyal supporter of Magnus Hirschfeld, the most outspoken gay-rights activist in Weimar Germany (Rosario, 2002).

It is the encounter of psychiatrists such as Krafft-Ebing and advocates for emancipatory rights such as Magnus Hirschfeld that led to the birth of sexology, or in Foucault's terms, *scientia sexualis*, in Germany (Amidon, 2008). Mildenerger (2007) states that whereas psychiatrists had dominated the discourse on sexuality until the turn of the century, Hirschfeld's work transformed the discourse. Indeed, Hirschfeld's works and emancipatory efforts in the field of homosexuality can be perceived as particularly significant in the light of the rise of sexology in the late nineteenth century (Brennan & Hegarty, 2007; Bullogh & Bullogh, 1997). Hirschfeld's notoriety began in 1907, when he founded the *Wissenschaftlich-humanitäre Komitee* (Scientific-Humanitarian Committee) together with the publisher Max Spohr, Eduard Olberg, a civil servant, and the writer Franz Josef von Bülow (Amidon, 2008; Brennan & Hegarty, 2007). The motto of the WHK (as well as Hirschfeld's own) was 'per scientiam ad justiciam' - meaning 'through science to justice' in English (Brennan & Hegarty, 2009; Prickett, 2005). The WHK had as one of its primary goals to bring about the amendment of law (§175) of the German penal code that criminalized homosexuality. Additionally, he is credited with establishing the first Institute for Sexual Science [*Institut für Sexualwissenschaften*] in the liberal atmosphere of the Weimar Republic (Brennan & Hegarty, 2009; Prickett, 2005). Hirschfeld was convinced that using scientific arguments was the most effective method to try to change the prevalent discourse on homosexuality that reigned among physicians, the public and lawmakers alike (Mildenerger, 2007). While most present-day scholars recognize that Hirschfeld was a key player in the early emancipatory efforts of homosexuals, Bauer (2005) argues that many fail to recognize Hirschfeld's avant-garde ideas regarding the nature of sexuality. Hirschfeld, who was referred to as the Einstein of Sex (as appears in the movie by Rosa von Praunheim, with the same title), argued for biological models of the hereditary and hormonal basis of congenital homosexuality (Rosario, 2004). However, he differed from psychiatrists like Krafft-Ebing mainly in two regards: he did not label homosexu-

ality as a pathology, nor did he examine patients who stayed in asylums for the insane, or individuals who referred to themselves as being 'sick' (Mildenberger, 2007). As part of his work on homosexuality, Hirschfeld used a different research method, namely, he distributed surveys on homosexuality using a 'psychobiologischer Fragebogen' among students and factory workers (Brennan & Hegarty, 2007; Mildenberger, 2007). The results of these studies were published in his professional journal *Jahrbuch für sexuelle Zwischenstufen* [Yearbook for the sexual intermediates]. They were revolutionary for their time. By conducting the survey, Hirschfeld and his colleagues from the SHC (Scientific-Humanitarian Committee) had found that 1.5% of the 6600 respondents were homosexual and 4.5% bisexual (Brennan & Hegarty, 2007).

The idea that homosexuality is innate, as had been previously theorized by Ulrichs, was central to Hirschfeld's theory (Herness, 1998). He asserted that human beings are inherently bisexual in the sense that they develop with traces of the anatomical characteristics of both the female and male sex, and that therefore the psychological traces of both sexes are also present (Brennan & Hegarty, 2007). In Hirschfeld's view, all humans were uniquely intersexual, meaning that they possessed proportions of both masculinity and femininity, albeit to a different extent. From this assumption that the proportions of both sexes present vary per individual stemmed Hirschfeld's idea that it is impossible to postulate discrete sexual categories (Bauer, 2005). Bauer (2005) notes that Hirschfeld developed his 'doctrine of sexual intermediaries' [*Zwischenstufenlehre*] as a solution to the theoretical issue of sexual binarism. Hirschfeld's main achievement was to deconstruct the fundamental Western ideology of sexual dimorphism (Bauer, 2005). Indeed, the rejection of the possibility to maintain discrete sexual categories can be interpreted as a rejection of the, at the time, prevalent theory that sex was exclusively dimorphic (male/female). In 1914, Hirschfeld published *The Homosexuality of Men and Women*, a magnum opus heavily influenced by Darwinism, in which he explored homosexuality through the lens of his doctrine of 'sexual intermediaries' (Amidon, 2008). In this 1914 work, Hirschfeld used a number of (mostly phenomenological) categories to define how one could discriminate between heterosexuals and homosexuals. The categories used reflect his idea that individuals contain characteristics of both sexes in the physical as well as nervous system and mental life. They thus included the genitals, secondary sexual characteristics such as voice and speech, hair growth and development of mammary glands, and characteristics as banal as handwriting or lifestyle (Brennan & Hegarty, 2007). In retrospect, it is clearly apparent that Hirschfeld's research, although pioneering, was also historically bound. Brennan and Hegarty (2007) state that the findings reflected the artifact of the assump-

tions on what was considered ‘masculinity’ and ‘femininity’ in the early 20<sup>th</sup> century. Hirschfeld’s ideas however, can be considered revolutionary in times where homosexuality was considered a crime.

Unfortunately, the rise of the NSDAP (c.f. Nazi party) brought to an end the more liberal spirit of Weimar Germany. Bauer (2005) notes that the Nazis had attempted to murder Hirschfeld as early as 1920, and his Institute for Sexology was destroyed in pre-Nazi Germany. It is in the light of these facts that it can be considered probable that Hirschfeld would have suffered a painful death, incarcerated in a concentration camp which, as it turned out, would be the fate of many of his fellow Jewish, gay and leftist contemporaries, had he not suddenly died of a heart attack on his sixty-seventh birthday, 14 May 1935, in his apartment in Nice (Haeberle, 1981; Beachy, 2011; Brennan & Hegarty, 2009). He was, so to speak, spared the knowledge of the Nürnberger laws, as well as the experience of the subsequent Second World War and the sexually repressive atmosphere of the Cold War (Haeberle, 1981).

By the turn of the century, Hirschfeld had succeeded in convincing Dr. Krafft-Ebing that homosexuality was inborn and consequently natural, and that therefore punishing homosexuals was not just (Mildenberger, 2007). Although Krafft-Ebing did not entirely reject his theory of hereditary degeneracy, at the end of his career, his views grew closer to those of Hirschfeld, whom he admired very much. In his last published article in Hirschfeld’s *Jahrbuch für sexuelle Zwischenstufen*, he stated that homosexuality was an unfortunate biological and psychological condition, rather than a pathological and therefore anomalous form of mental degeneracy (Rosario, 2002).

Both Richard von Krafft-Ebing and Hirschfeld were pioneers ahead of their time. Whereas Krafft-Ebing (1840-1902) might easily be mistaken for an enemy of homosexuality, his extensive research – and importantly, continuous adaptation of his work *Psychopathia Sexualis* in light of the conversations with his patients –, as well as his efforts in supporting the reigning anti-sodomy laws, demonstrate quite the opposite. Magnus Hirschfeld (1868-1935) on the other hand, is generally recognized for his efforts in the emancipation of homosexuals. His avant-garde ideas concerning the nature of sexuality however are grossly underestimated. As the first public advocate of human rights for homosexuals, he had a considerable impact on homosexuals of his time. Unfortunately, his efforts were mostly eradicated due to the rise of the Nazi party in pre-War Germany.

From studying the works of both Krafft-Ebing and Hirschfeld, it becomes clear that both figures drew conclusions, which although precocious, were strongly influenced by the prevailing attitudes of their time and which might therefore appear somewhat radical and stigmatizing to the modern-day reader, par-

ticularly in the light of current research. Nevertheless, both Krafft-Ebing's and Hirschfeld's contributions to the field of sexology must not be underestimated – in particular, those of Hirschfeld, who continue to be relevant in the present day.

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## RUMOUR HAS IT

### Modelling the Spread of Rumour within Maastricht University

*Anne van der Put*

**Abstract** This paper examines the spread of rumours within the student city of Maastricht using a social network model. Particular attention is paid to the problem of solving the lack of information (or “information gaps”) by using the concept of information diffusion in a small-world type of network. The study finds that the relation between the originator and victim of the rumour as well as the newsworthiness of the rumour are the most influential factors. Moreover, the findings reveal that that information gaps mainly emerge from the fact that not every person in the network is connected to all others, as is the case in Maastricht University.

### I Introduction

In a city such as Maastricht which is full of students who interact with each other in multiple ways – both inside and outside university – rumours are bound to emerge. In fact, spreading rumours is even said to be fundamental to human society (Shaw, Tsvetkova, & Daneshvar, 2010). Rumour is described as “an unofficial interesting story or piece of news that might be true or invented, which quickly spreads from person to person” (Cambridge University Press, 2013). Students often find themselves in situations that may give rise to rumours.

While this may be due to the fact that students are still trying to discover their identity, it can also be due to the variance of student life with all its parties and extracurricular activities,. The difference between rumours and gossip lies in the fact that gossip tends to target a person's private life, whereas for a rumour this is not necessarily the case, and thus a rumour might spread further than gossip (Lind, Da Silva, Andrade Jr., & Hermann, 2007).

The spread of rumours has often been modelled, and is associated with the internet, epidemics, earthquake prediction and immunological defences, among others (Lind et al., 2007). Most often, a network model has been used to model the spread of rumours in which the emphasis was placed on how quick the information spread. However, there has been little research on why certain information only reaches particular people. It is nevertheless important to understand this, because on a wider scale knowledge about information diffusion can help to solve problems arising from information gaps. A network model is specifically applicable to the phenomena of "rumouring", for it shows the relationships people have but also how strong they are and in what directions information flows. The rumour serves as the information that is spread, and the network model including the strength of ties can indicate when information lacks occur. This paper focuses specifically on the lack of information or "information gaps" that occur during the process of rumouring. This paper addresses the following questions: [1] how can the spread of rumours within Maastricht University be modelled and [2] why does this kind of information not reach everyone? To answer these questions, first an explanation is given of how rumouring can be analysed in a network model. This general model will then be applied to evaluate rumouring among students at Maastricht University. Finally, the model is discussed in terms of utilisation, strengths and weaknesses.

## 2 Rumour in Maastricht: A network model

When discussing the spread of rumours as a flow of information, one first needs to understand how this works. As already mentioned, a rumour is a piece of interesting information that spreads on a large scale in a short time through chains of communication (Lind et al., 2007). These chains of information consist of personal contact, whether direct (i.e. face-to-face) or indirect (using social media like Whatsapp or Facebook). For the purposes of network analysis, it is not relevant whether the rumour is actually true or not, or what it is about. Rather, the amount of people a rumour manages to reach is of most importance (Zhang & Zhang, 2009).

In order for a rumour to emerge, there must be a victim whom the rumour is about. The rumour is made up, or observed by the originator, which is then passed on to the spreader<sup>1</sup> (Shaw et al., 2010). These three people must have some sort of relationship. It must be assumed that the tie between the originator and the victim is weak, as two people with a close tie have no intention to spread information about one another which is dubious in terms of its truthfulness and most often has a negative connotation (Aertsen & Gelders, 2011). The originator and spreader either have a strong tie, or their tie is strengthened as a result of the information exchange. This is because the sharing of information implies that there is a certain level of trust between them.

Concerning the spread of rumours, another assumption must be made, namely that the rumour will initially only be spread to people that are in some way acquainted with the victim, for otherwise the information will be of no interest to them. In the case whereby the rumour spreads to someone who does not know the victim, it will stop from spreading at that point, unless it is a unique and very interesting piece of information. It should also be taken into account that not everybody likes to talk about other people, so that there is a chance that one person does not pass on the rumour to the next and the spread of information stops (Lind et al., 2007).

The relationships between originator and spreader, and the flow of information, are the fundamental/essential elements of a network model (Aertsen & Gelders, 2011). A network consists of nodes, in this case people that are connected through relationships which structure the flow of information that is exchanged between them. Individuals can have multiple relationships, for instance through family, work, friendship etc., which together form ties. These can be strong ties, when there are more intimate ties between people and who have a strong motivation to share information, or weak ties, when two people know each other but meet infrequently. However, these weak ties are also important for the exchange of new information; for people whom you infrequently meet are more likely to tell you something you did not know yet or offer an original perspective (Haythornthwaite, 1996).

Having established what makes up a network model, it is possible to create a network representing Maastricht University. There are six main faculties within this university, which each have their own building, apart from the Faculty of Humanities and Sciences that houses programmes at different locations (Maastricht University, 2011). Figure 1 shows how the faculties are distributed

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<sup>1</sup> Note that Shaw et al. (2010) use the term *gossiper*, but that this is changed into *spreader* as this latter term applies better to the case of rumours.

over the city. It should be noted that the amount of students per faculty varies, depending on the number of programmes offered at that faculty and the allowed number of students at those programmes (Maastricht University, 2013).



*Figure 1 The locations of the different faculties of Maastricht University (Maastricht University, 2012)*

What becomes clear in figure 1 is that there is a clear distinction between the inner-city faculties and Randwijck, which lie apart about two kilometres and are separated by the river Maas. It also strikes that the inner-city faculties are not connected through the same building, whereas this is largely the case in Randwijck. However, there are other ways through which students are connected, which is through the several associations. In Maastricht, there are many different kinds of students associations, ranging from student sports associations, fraternities, sororities but also associations focussed on international students, culture or religion. Though the different associations are interfaculty, it seems as though the members of sports associations tend to study more often at Randwijck, while the other associations are more popular among inner-city students<sup>2</sup>.

<sup>2</sup> Note however, that this is an observation made by the author, and may be a generalisation due to the fact that there are no figures known about associations and study programmes.

The above stated information will help to establish an ideal type network model, as shown in figure 2. It is expected that most students are acquainted with a large number of students in their own faculty, since they meet them on a day-to-day basis whilst studying or during tutorials. They thus have strong ties to these students. In addition, students also have contact with students from other faculties, which results from their participation in associations. However, as these interactions occur on a less frequent basis, the ties resulting from this are less strong. There are thus large clusters in which many nodes are connected with each other through few other nodes, but there are only some interconnections between these clusters. The 'six-degrees-of-separation' concept can be seen here, meaning that there are only a few people that separate one person from the next (Moreno, Nekovee, & Pacheco, 2004). The characteristic of large clusters and low interconnectivity between these clusters is important for the spread of information, especially with respect to whom information is spread.

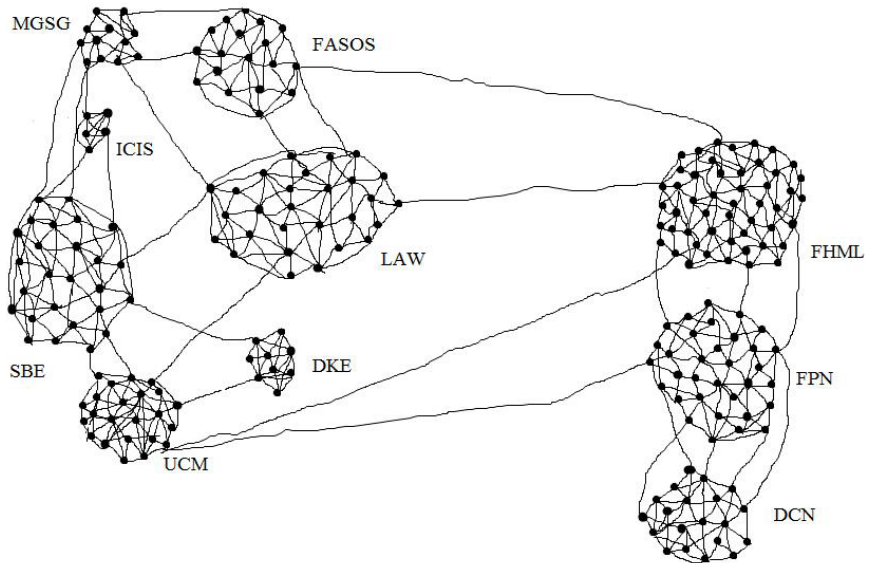


Figure 2 The (simplified) network model representing Maastricht University

### 3 From Maastricht to the wider world: small-world typology

When looking for a general model, the best network model that would apply is one with a small-world typology. This entails/consists of a few clusters with many connections but few interconnections between these clusters (Wang & Chen, 2003). The literature shows that small-world models are also often scale-free; meaning that there is an indefinite number of nodes that can be connected. Furthermore, new nodes can be added at any given time if and when new relations are formed (Barabasi & Bonabeau, 2003). A model that is often used to analyse the spread of rumours is the Watts and Strogatz (1998) (WS) small-world model. This model fits somewhere between a regular network model, in which each node has an equal amount of connections with other nodes, and a random network model, in which nodes are randomly connected with an arbitrary amount of nodes (Wang & Chen, 2003). The WS small-world model assumes that there is a fixed number of nodes. Each node is connected to other nodes (“ $k$ ”), so that at first a regular network is created. Then, each connection is rewired at random with probability (“ $p$ ”), so that it may or may not be connected to any other node. A node cannot be connected to itself, nor can it be connected to the same node twice. The network that emerges has many nodes with sparse connections, but not in such a way that it runs the risk of becoming disconnected. As a result, the model has a high degree of clustering, but simultaneously a small average path length (Watts & Strogatz, 1998). This is illustrated by the fact that there are a few faculties which represent the clusters. However, as most know a lot of other students within their faculty, there are thus small average path lengths. For example, student A in the Law faculty knows student B in the Psychology faculty, and through that ensures that the Law students that are acquainted with student A have only a short link with student B, namely through student A only.

The typology of the network, as well as the way in which information is spread is an important element of the model. Information diffusion, which is a type of social contagion that would occur in social networks rather than in biological ones, is the process whereby information, goods, opinions etc. travel from one person to its neighbours through social ties and relations. Important in this process is the time dimension. Each type of network, whether random, scale-free or small-world, has its own degree of diffusion, which defines “the ratio of information adopters to non-adopters through a diffusion process at consecutive penetration levels” (Safar, Mahdi, & Torabi, 2011, p. 199). Important in this process is innovation. In the early stages, the innovation is adopted by a few people. Then, the number of “infected” people increases relatively fast, as more and more

people are adopting this new innovation. In the late stages, the percentage of adopters decreases rapidly until the diffusion process stops completely. Figure 3 shows this. In a small-world the increase of the diffusion degree is almost linear, meaning that the spread of information happens at a slower rate than in random and scale-free networks. The maximum adaptation level is reached quite quickly (Safar et al., 2011).

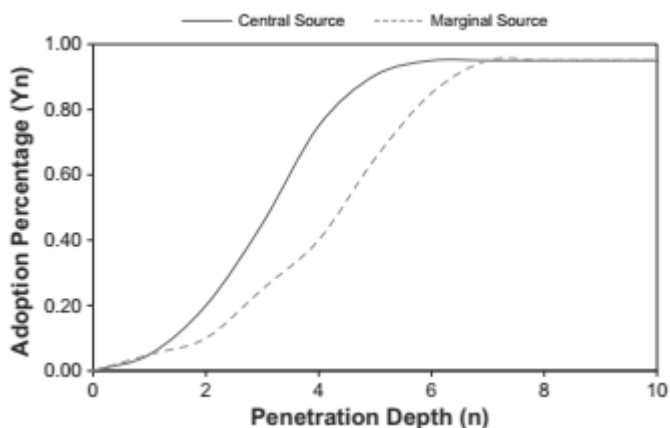


Figure 3 The different stages of the diffusion process (Safar et al., 2011)

#### 4 It is a small-world after all

It is important to recognise that the small-world network model as described by Watts and Strogatz (1998) can be applied to Maastricht University and its students. Just as in the model, Maastricht University has several clusters, which are the faculties, in which students know a lot of other students or are closely connected to other students through their peers. In addition, they are connected to students in other faculties through associations, but these connections are both fewer and weaker as there is less contact between students in associations compared to students in faculties. There is thus a large clustering coefficient and small average path length.

Several factors that limit the spread of rumours within any situation will also restrict the spread of information within Maastricht University. As mentioned, it is important for the spread of a rumour that the receiver of the rumour - is also

acquainted with the victim the rumour is about. Otherwise, the receiver will have no interest in spreading it any further unless it is very interesting. as in the case of diffusion, if the rumour is about a person that is not very popular, the rumour will not spread fast. This could be considered the case for everybody, since in a university of 15,000 students there can be no students that are known by every other student (Maastricht University, 2013). For example, a student in the inner-city Law faculty will most likely not be known to all the students in the Psychology faculty in Randwijck, so that there is a limited number of nodes that are connected within the model of Maastricht University. Generally, the more nodes are connected with one another, the faster a rumour spreads, yet there spread of faculties over the city seems to restrict the ability of all students to connect (Watts & Strogatz, 1998).

Another determining element is the different roles people can take on in rumour models. Each person can take on three different roles, namely that of ignorant, spreader or stifler. Ignorants have not heard the rumour and are still susceptible to it, spreaders are actively spreading the rumour and stiflers are aware of the rumour but no longer spreading it. When there are many ignorants or stiflers in the model, the information spread stops quickly. This also affects who will get the information and who will not, for a person that is related to many stiflers is less likely to be made aware of the rumour (Moreno et al., 2004). For example, there may be a few Psychology students that know a Law student whom is rumoured about. However, if other Psychology students that are made aware of the rumour do not know the particular Law student they might be told the rumour, yet have no interest in spreading it any further. In that case, they act as stiflers and will not contribute to spreading the rumour. Since each student has only a certain group of other students he or she has contact with, stiflers ensure the rumour will not reach everyone.

The different stages of information spreading can also be observed. As mentioned, this is determined by innovation. In the case of a rumour, it spreads fast at first as the rumour is new and interesting, and if everybody is talking about it, people do not want to be left behind and share in it. In the late stages, the percentage of adopters decreases rapidly until the diffusion process stops completely, for most people are already aware of the rumour or it is no longer in their interest. This is the same as is displayed in figure 3. Thus, if a person does not hear the rumour early in the process, the chances of hearing it at all are limited. In Maastricht, for example, if two students make out at a party on Monday night, this is still very new on Tuesday morning and likely to be talked about. However, when there is another party on Wednesday and something similar appears, the newsworthiness of the event on Monday night is not as interesting anymore. As a

result, the former rumour will be talked about less or reaches people that already know it, and so eventually it will stop spreading at all.

Apart from applying to the situation model, the general model can also be applied to other situations. An example of this would be the spread of other kinds of information throughout the university, such as new information on the programme. However, the model can also be applied to a wider situation, such as the spread of informal news, throughout any community or town. Being a social network model, the model could also be applied to other cases such as epidemics.

## 5 Evaluation

As seen, the general model can be applied to the specific model of Maastricht University. It should be noted that there are strengths and weaknesses of this application. A first strength of the model in general is that the model is robust against accidental attacks, meaning that if one person is removed this will not have strong consequences for the spread of information, as people still have plentiful connections (Moreno et al., 2004). In addition, the fact that not everyone is directly connected means that harmful information does not necessarily reach everyone, for there are too many blockades that need to be taken.

However, the fact that not everyone could be reached could also be seen as a limitation. Since full infection of the entire population is improbable, it should be taken into account that not everyone will be reached. This is especially the case for Maastricht University, which has several large clusters with low interconnectivity, so that a rumour will never reach everyone. Thus, once the rumour spreads someone who does not know the target, the rumour will stop spreading, resulting in an information lack.

Another limitation is that two assumptions were made, namely that the ties between victim and originator and that rumours only spread initially to people who are acquainted with the victim. These assumptions might not be true, for if the rumour is very interesting or newsworthy, it might spread further than only those originally acquainted with the victim. Additionally, the fact that this network model is a representation of reality rather than reality itself is a limitation. This might mean that not all variables have been taken into account, since a model is always less complex than the real world. Nevertheless, creating a model of this phenomenon helps to understand the way in which the spread of rumours operates, especially as often so many people are involved that it would be hard to create a real representation of it. This specific model also deals with the problem that not everyone gets access to the information; a problem not adequately

addressed in literature. Future research could thus be done to supply empirical data to fill this gap and to test whether or not the model explains this correctly.

This paper has explored the question of how the spread of rumours within Maastricht University can be modelled as well as why this kind of information does not reach everyone. It has been shown that the clusters and low interconnections between these clusters are responsible for this. Additionally, also the diffusion level and the different roles people take on with respect to spreading rumours have an effect on this. Despite its limitations, the model is nevertheless effective in explaining the phenomenon within in Maastricht. However, since Maastricht University is just one example of a context with large groups that are divided in clusters, the model could also be applied to similar situations, such as other universities, different company locations, or deal with other kinds of information rather than rumours to examine information gaps in those situations.

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## DRAWING THE LINE

### Disentangling Humanitarian and Human Rights Law in the Case of Drone Strikes

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**Abstract** The chief aim of this paper is to elucidate the legal aspects of drone warfare, which remains, at best, opaque and dangerously unclear as the use of drones expands. As such, this paper identifies the three main types of international law and attempts to first, distinguish them in a meaningful manner such that they may be individually applied with no undue conflation of the, already complex, law. Second, the analysis picks apart the each legal framework in order to get a grasp of their application in terms of drone strikes. Finally, the paper passes judgment, not on the legality or morality of drone strikes, but what law should govern their use.

### I Introduction

Unmanned Aerial Vehicles or, colloquially, drones, have caused much debate since the armed variety first appeared on the battlefields in the Global War on Terror (Etzioni, 2013). In fact, the debate over their use and alleged abuse is often so emotionally charged that the legal aspects of drone strikes get muddled and misunderstood in the public debate (Etzioni, 2013). The international law surrounding drone use is at best opaque, which further adds to the confusion

regarding the overall legality of their use (McNab & Matthews, 2010-2011). The three kinds of applicable international law are humanitarian law, human rights law and the UN Charter. The main difference between them is that humanitarian law governs how states use force and treatment of people during armed conflict; human rights law governs the treatment of people by states in peace time and the UN charter governs the legitimate use of force (Hampson, 2008). It might seem like a subtle difference, but their inconsistent and even incorrect invocation over the use of drones does a great disservice to all three bodies of law, in that it unduly conflates the laws of war with the laws of peace.

As such, it is the aim of this paper to disentangle and prevent further conflation of humanitarian, human rights law and the UN Charter in the case of drone strikes and determine which is more applicable. Hence, as the use of drones proliferates and drone strikes become standard operating procedure on a global, de-territorialized scale where battlefields melt seamlessly with civilian life, it is simply too dangerous to leave their use ungoverned and at the whim of governments themselves. The clarification of the law is necessary because there is no hard and fast legal procedure or consistent application of international law governing the use of armed drones. In order to do so, the following structure necessitates itself. First, this paper moves to provide the background of drone strikes and their history. Second, the essentials of international humanitarian law, international human rights law and the UN Charter's Article 51 on the inherent right to self-defense are delineated and make the crucial differences between the three explicit. Third, the legal concepts are applied to the case of drones to fully elucidate which body of law applies and why others do not. In conclusion, the main points of the paper are summarized and put in context.

## **2 These are not the Drones you are looking for**

Over the past decade since the first drone strikes in 2002, the use of drones has become a ubiquitous element of American warfare and the centerpiece of its counter terrorism efforts abroad (Boyle, 2013). The allure of the drone strike as a tactical response to perceived threats abroad is obvious. The low cost and near zero risk to American personnel, while being able to engage targets half a world away, is a dream come true for military strategists and politicians catering to a war weary electorate (Corin, 2013). In addition to the strategic and political advantages that have popularized drones with policy makers, civilian and military alike, the drone program enjoys near total insulation from public scrutiny and accountability (Stanford & NYU, 2012). Moreover, the current areas of

operation in the outer reaches of Pakistan and the deserts of the Middle East and North Africa make it supremely difficult to report and uncover the exact effects of drone strikes and verify their efficacy (Stanford & NYU, 2012).

The evolution of drone warfare has been quite dramatic since its first appearance on the battlefield (Indyk, Lieberthal, & O'Hanlon, 2012). From a seldom used tool of the Bush administration to the weapon of choice under President Obama (Bergen & Braun, 2012). As mentioned earlier, the ramping up of drone strikes was, in part, a method of avoiding the large-scale troop deployments of the Bush era and assuage the war weariness of the American public (Corin, 2013). By keeping strikes secret while incurring no troop losses, the Obama administration proceeded to assiduously hunt the Al-Qaeda leadership in Central Asia, the Middle East and North Africa (Byman, 2013). As the drone program matured into a full-fledged, global effort of targeted killings shrouded in secrecy, so did the growing chorus of critics against the clandestine use of force.

It is this clandestine use of force, which stirs the debate of drone legality. Because the reports that actually do get filed by governments or drone reporting groups are often skewed or lacking in data, the public is often misled into certain views of drone strikes and subsequently apply incorrect bodies of international law (Byman, 2013). This paper is not attempting to answer the question of the morality of drone strikes or their alleged collateral damage, but rather trying to make the case for international legal aspects of drone strikes, forgoing emotive arguments of the debates and scholarship, which is unhelpful in determining the legal status of drone strikes.

That being said, the attention surrounding drone strikes is definitely predicated on both the questions of the ethics of war and the efficacy of drone strikes as a counter terrorism tool (Etzioni, 2013; McNab & Matthews, 2010-2011). Whereas the ethical aspect might seem clear cut for some observers, decisions regarding the types of law that are actually applicable is where the things get murky and mistakes are made (Roth, 2013).

### **3 The Law of Drones**

The current legal nebulousity is problematic enough in an environment where the American military has a near monopoly on drone use, but as more and more governments announce their intention to acquire drone capabilities, it is more urgent than ever to clarify the law governing their use (Roth, 2013). If not, the wide spread use of drones to eliminate targets anywhere in the world could become a legal maze in which the concepts of national sovereignty, human rights and

humanitarian law get blurred beyond recognition and utility (Roth, 2013).

As such, the first legal aspect that must examine is the law that governs war and acts of war – international humanitarian law (IHL). In war, the rules, rights and protections afforded under human rights law do not apply (Hampson, 2008). The cornerstone of the body of law, which takes its place, is the Geneva Conventions and their optional protocols (McNab & Matthews, 2010-2011). In addition to a range of protection for the sick, wounded and prisoners of war in the conventions, the first optional protocol also contains a specific precept stating that civilians “shall not be the object of attack” (ICRC, 1977). What is important to note is that because of the overwhelming consensus on the Geneva Conventions and their optional protocols, they are held to be part of international customary law and thus universally applicable regardless of state ratification (McNab & Matthews, 2010-2011). I.e. all states, in wartime, must abide by these laws.

A further distinction to be made in IHL is the *Jus Ad Bellum* and *Jus In Bello* principles<sup>1</sup>. The basic distinction is that the former principle dictates what constitutes an act of war, while the latter pertains to warfare (Banta, 2011; Brunstetter & Braun, 2011). Both principles are important when examining issues, which appear to be in the gray zone, from an international law perspective. While civilians may not be the objects of attack under IHL, it does account for civilian casualties, *Jus In Bello*, making war just so long as civilians are not specifically or indiscriminately targeted (Brunstetter & Braun, 2011).

The caveat on specific targeting of civilians or non-combatants is interesting in the case of drone strikes because it can appear to be a violation when a lawful combatant or unlawful combatant, i.e. regular military personnel or civilians engaging in hostilities, is specifically targeted knowing that the individual might be in the proximity of unwitting civilians (Boyle, 2013; ICRC, 2011). It is worth dwelling on the lawful combatant versus unlawful combatant distinction, because a terrorist would fall in the former category “If civilians directly engage in hostilities, they are considered ‘unlawful’ or ‘unprivileged’ combatants or belligerents” (ICRC, 2011, Section 1). In this case unlawful combatants are fair targets for strikes because the US technically declared war, but on a non-state actor in a de-territorialized conflict. In short, the global war on terror might be an abstract form of war with no defined theater, but wherever it, or any aggression, manifests itself between two states, IHL applies (ICRC, 2011).

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<sup>1</sup> *Jus Ad Bellum*: dictates the conditions under which a state may resort to the use of force  
*Jus In Bello*: controls the means and methods of force a state may legally employ. I.e.  
The former determines the right to use of force and the latter regulates how that right  
is executed (McNab & Matthews, 2010-2011, p. 665).

Yet, the most important *Jus in Bello* legal concept is that, civilian casualties, i.e. non-combatants as opposed to unlawful combatants, as an unwitting result of a drone strike are a regrettable, but justifiable action and the cost of war (Heller, 2013). Some human rights scholars and advocates have lobbied for using international human rights law (IHRL) as the legal framework under which to regulate drone strikes. The argument is mainly derived from the International Convention on Civil and Political Rights (ICCPR), in which article 6(1) prohibits the arbitrary deprivation of life and enshrines the inherent right to life (ICCPR, 1966). This does not however mean that states are never allowed to deprive their citizens of life, but cannot arbitrarily do so i.e. not without just cause or due process (Hampson, 2008). What is central to IHRL is that unlike *Jus In Bello*, it only applies to peacetime (Hampson, 2008).

IHRL also imposes a certain restraint in the use of force and its judicious application. Further, IHRL is not in direct opposition to the targeting of individual combatants, if said strikes can be argued to uphold principles of proportionality and necessity (Heller, 2013). It is, however decidedly more difficult to argue for drone strikes using IHRL than IHL. An important point in deciding which body of law applies to drone strikes is that neither IHRL nor IHL necessarily require a ban on drone programs, but imply that constraints should be imposed on their use in accordance with international law (Roth, 2013).

Another legal concept that has been frequently employed is Article 51 of the UN charter on the inherent right to self-defense by states (Heller, 2013; McNab & Matthews, 2010-2011; Roth, 2013). The article prescribes that the use of force is not legitimate unless there is an imminent danger facing a country, which requires an immediate reaction (Roth, 2013). The argument is often employed by the US as a justification of the so called 'signature strikes' where a combatant is believed to be plotting an attack against the US and there is a certain urgency to prevent the alleged plans from coming to fruition (Corin, 2013; Roth, 2013). In an instance of a grave threat to a country the usual *Jus ad Bellum* principles are suspended i.e. the previous authorization of the UN Security Council is not a condition for employing force (McNab & Matthews, 2010-2011). The legal thinking on this argument has been accused of stretching the limits of the article's utility and misconstruing its original intended application (Brunstetter & Braun, 2011; Heller, 2013).

## 4 Setting the Record Straight

So far we have explored the essential legal concepts driving the debate around drones and touched upon drone strikes. Now we must turn to their application to drone strikes themselves and clarify which bodies of law delineated above are most applicable.

Starting with IHL, it is important to place drone strikes in either the *Jus Ad Bellum* or *Jus In Bello* family. Given that drone strikes often occur in countries with which the US, or other armed drone operating countries, are not officially at war with, the use of armed force on foreign sovereign soil would usually constitute a *Jus Ad Bellum* act (Banta, 2011). However, nation states have proven unwilling to take any concrete action to prevent drone strikes from taking place in their air space, or persecuting the case as *Jus Ad Bellum* (Corin, 2013). Hence, in terms of the legal justification, drone strikes often get couched in the *Jus In Bello* language of warfare (Brunstetter & Braun, 2011). This is because, in the case of American drone strikes, the targets are seen as combatants and enemies of the state, for whom human rights law does not apply (Boyle, 2013). As the US waged the war on terror, the theater of war was global and targets were globalized from a single highly geographic cluster, to anywhere at any time (Bergen & Braun, 2012). As such, the US viewed itself as being at war with an enemy that was not tethered to one location, but roaming and transnational, as a consequence, signature strikes were seen as a legitimate use of force for eliminating credible threats in highly dangerous environments (Byman, 2013). Here the case for using IHL and making the case for just war under the Geneva Conventions was to a large extent a logical choice. By pursuing the *Jus In Bello* angle, it is clear that drone strikes are legitimate means of dispatching an enemy (McNab & Matthews, 2010-2011). The controversy, of course, arises when one factors collateral damage into the calculations, i.e. the killing of civilians in drone strikes. If we recall the first optional protocol of the Geneva conventions (specifically Art. 51(2)), it is clear that such targeting is justified so long as the civilians are not the objects of the attack (ICRC, 1977). Legally speaking, the loss of civilian life is regrettable, but it is not indiscriminate in the way it serves no military purpose or is disproportionate (ICRC, 1977).

For proponents of IHRL it is exactly this loss of life by unwitting bystanders that drives their argument (McNab & Matthews, 2010-2011). Article 6(1) clearly prohibits any arbitrary deprivation of citizen's lives by states (ICCPR, 1966). The argument being made in the case of the collateral damage surrounding drone use is that for civilians, it is arbitrary deprivation of life given that they are, presumably, guilty of nothing more than being in the wrong place at the wrong time

(Roth, 2013). Moreover, that it does not comply with the principles of necessity and proportionality (Heller, 2013). IHRL is more difficult to apply because the circumstances under which drone strikes take place is often a bit of a blur in the case of when it can be considered a civilian matter or when Jus In Bello principles apply (Brunstetter & Braun, 2011). The attraction of IHRL to activists and scholars propagating the human rights angle are the more restrictive constraints on the use of force and a more judicious selection of targets going to greater length to ensure minimal civilian casualties.

As for the UN charter argument invoked by the US it perhaps lends itself to the broadest interpretation of the use of force because it assumes a clear and present danger to the concerned country and circumvents any checks and balances on the use of force (Roth, 2013). The categorizing of combatants, being killed by drones in far off locations, as imminent threats is a clearly stretching the article to the breaking point. The level of abstraction required to conceivably make the imminent threat point valid also defeats the entire argument at the same time, as self-defense is an instinctive reaction that leaves little time for reflection or abstraction, because the threat is clear and present (Roth, 2013). By having virtually no constraints on the use of force under this article, it moves drone strikes into dangerous territory, which sets precedents for other states and their burgeoning drone programs (Roth, 2013).

The scope of the problem, and the issue of agreeing on the scope itself, is illustrated by the number of civilian casualties and that general statistics on drone strikes are both contested and conflicting (Stanford & NYU, 2012). According to US officials, the number of civilian casualties are in the “single digits” whereas projects like the Long War Journal and the New America Foundation put numbers between 400 and 800 civilian deaths since 2004 (Stanford & NYU, 2012). That translates into percentages fluctuating between 26.5% to 20.8% and 2.5% (Etzioni, 2013). Hence, it is nearly impossible to say with a degree of accuracy how many civilians actually die, but according to a joint Stanford and NYU study, the discrepancies betray a political agenda by some governments to downplay the collateral damage while hiding the actual numbers (Stanford & NYU, 2012).

## **5 The law to rule them all**

As we have examined the legal concepts and how they apply to drones we must now turn to which legal body is applicable and why as well as disentangle the laws in the process. Considering the evidence above, the most appropriate body

of law applicable to govern drone strikes is IHL. The fighting manifests between two nations and thus the rules of international warfare apply (Banta, 2011). IHL, although it was not designed for this kind of warfare is still the best option, by both putting forward clear guidelines on the use of force and the rights of civilians whilst being most attuned to the complexities of war and difficult operating environments and imperfect information used to make decisions on the use of lethal force (Heller, 2013). While it may be a regrettable outcome, states can justify civilian casualties, in attacks, where civilians were not the objects of the attack (ICRC, 1977).

## 6 Conclusion

As has been demonstrated above, IHL is by far the best-suited body of law to govern the use of drones. Because the use of drones quite clearly falls under Jus In Bello jurisdiction it does not make any legal sense to force an IHRL application. This is mainly because it would weaken IHRL and the important role it performs in the numerous situations where wars are not being fought, but people are suffering at the hands of their governments. In this case however, there is a war being fought, not one foreseen by the Geneva Conventions, but nonetheless it is better suited to deal with legal problems that arise from the use of armed drones. Unlike the UN charter solution, The Geneva Conventions impose rules and guidelines, which are important as the use of drones expands. The argument presented above did not include an ethical or moral argument, which is an important part of the discussion and context of drone strikes. It is, however, not helpful in making the legal analysis of drones clear. Hence, further research is necessary in order to provide a full spectrum of analysis: legal, ethical and political alike. Lastly, as the use of drones expands, so does the legal scholarship on the subject, this paper should be viewed as part of a larger body of work in international law attempting to clear up the relationship between drones and the law, whilst contributing to the larger debate on drone strikes.

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