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Editorial Note

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Dear Reader,

We proudly present Vol. 18 No. 1 of *Politikon*, the flagship academic journal of the International Association for Political Science Students.

Politikon is open to talented junior scholars regardless of their formal academic status. This is evident from the diversity of backgrounds of our authors, whose papers successfully passed our peer-review process.

Our first paper reinterprets George Orwell's 1984 dystopia to analyse surveillance policies under the Bush and Obama administration, while pointing out the latter's authoritarian tendencies. Although from a different perspective, the second paper also addresses the U.S. domestic context. In particular, it adopts a structural realist view to contend that the power of domestic actors in shaping foreign policy is bounded by international constraints. This argument is illustrated through two case studies: the Kennedy Administration's response to the Cuban Missile Crisis and the Bush Administration's response to the Israeli Operation Defensive Shield. Our third paper uses multilevel modeling with cross-sectional data from the World Values Survey, Freedom House and other sources to examine the relationship between generalized trust and rule of law on a national level. In so doing, it captures an important gap in the literature, which has focused rather on related issues of property rights, economic freedom and corruption. Our fourth paper adopts discourse theory to address a niche yet fascinating topic, namely the domestic debate on shared parenting in Germany, and offers us tools to spot science and advocacy approaches. Our final paper revisits the 2013 Hefazat-e-Islam protests in Bangladesh, a religion-based social movement, through the philosophical lenses on popular resistance by Antonio Gramsci (*Prison Notebooks*, 1948) and James Scott (*Weapons of the Weak*, 1985) as well as Nelson Mandela's autobiographical piece (*Long Walk to Freedom*, 1994).

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We look forward to reviewing your work!

Your Editors

I Always Feel Like Somebody's Watching Me. Understanding the Authoritarian Tendencies of the U.S. National Security State

Elizabeth Wright

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Elizabeth Wright, 22, has a Bachelor of Arts in Political Science from Southwestern University and is a Masters in Security Policy Studies Candidate at George Washington University. Her research centers on the intersection of Constitutional law and surveillance, specifically examining privacy and civil liberties in the public sphere. Outside of academics, she is part time contributor for the online initiative, Middle East Collective, providing monthly commentary on national security and foreign policy.

Abstract

George Orwell's novel 1984 defined authoritarianism as a consequence of overarching surveillance in the modern state. Nearly 70 years later, the threat of tyranny reemerges in the present surveillance state—the U.S. Beyond the Orwellian concept of Big Brother to examine the U.S. national security state, this research examines the expansion of domestic surveillance in the post-9/11 age. Using a within-case comparative analysis of the presidencies of George W. Bush and Barack Obama, it argues that institutional manipulation has forged the U.S. national security state into a surveillance heavy Banopticon (Bigo 2006). Though the latter operates to maintain state and citizen security, it undermines citizens' freedoms through invasive surveillance policies which embolden state repression, despotism, and unconstitutional policy. Such authoritarian tendencies can be seen in the creation of surveillance under Bush and the expansive development of surveillant assemblages, surveillant culture, and surveillance capitalism (Zuboff 2015) during the Obama era.

Keywords

Authoritarianism; Banopticon; Barack Obama; George Bush; National Security State; Orwell; Surveillance

Introduction

*“Do not confuse **sécurité**, the feeling of having nothing to fear and **sûreté**, the state of having nothing to fear.”*

—Marguerite-Marie Dubois

“Modern tyranny is terror management. When the terrorist attack comes, remember that authoritarians exploit such events in order to consolidate power.”

—Timothy Snyder

In a speech to the Muslim Public Affairs Council, Brookings Senior Fellow and Hoover Institute Task Force on National Security, Technology, and Law co-chair, Benjamin Wittes spoke of the role of national security amidst the growing global trend toward authoritarianism. While very understanding of the fear that United States’ surveillance and security techniques are susceptible to the corruption of demagoguery, Wittes ensured the audience that it is the duty of every public servant to protect institutions and individuals from political processes that would seek to abuse them and undermine democracy.

True national security [is] the security of a liberal society that protects individuals and minority groups in the exercise of their freedoms... in the security of a liberal democracy, the security you’re defending is the security of liberalism itself (Wittes 2017).

Here is the primary contradiction that plagues the national security state — if national security is meant to secure liberalism itself, can it ever truly protect the people?

Several scholars (Monahan 2010; Raskin 1976) have made the case against mass surveillance and national security practices, fearing that the lack of legitimate justifications for observation provide an opening for exploitations of democratic power. Few have examined the possible correlation between emerging trends in Western authoritarianism and surveillance-based democracies (Cooley 2015; Morozov 2012). Building off Plato’s concept that “tyranny is an outgrowth of democracy” (Plato 1955: 299), as well as Lyon’s research of intersecting power dynamics between surveillance and bureaucracy (Lyon 1994), this study will explore the role of the modern national security state in shaping current U.S. tendencies toward “new” authoritarianism. In a post-9/11 culture, how does the national security state utilize security and surveillance processes, therefore rendering the United States susceptible to authoritarianism? This text hypothesizes that the U.S. national security state has become a Banopticon — a term coined by Bigo to encompass the current preemptive profiling of citizens which prioritizes the securitization of the majority over the rights of the minority (Bigo 2006) — therefore allowing for surveillance, state repression, and despotism in the face of the War on Terror to foster authoritarianism. By analyzing the elements of

the national security state that are antithetical to liberal democracy, this research will establish the sequence of U.S. authoritarianization, or the “slow and incremental dismantling of democratic systems by democratically-elected leaders” (Kendall-Taylor et al. 2017: 9). In an age of emerging new authoritarianism, this is essential to reforming the relationship between the national security state and liberal democracy, before it is too late.

In order to appropriately consider the ways in which the national security state “both exploits and presupposes the dominance of certain subjectivities,” this research design will feature three theoretical frameworks: structuralism, liberalism, and institutionalism (Belletto 2009: 334-335). According to Blackburn, structuralism encompasses, “interlocking combinations of political, economic, ideological, and theoretical structure and practices [that] form objective determinants of resulting social forces” (Blackburn 2008: 16). In order to grasp the means in which the national security state develops surveillance subcultures within society (Lyon 2007), it is importance to review how political structure can influence public opinion, ideology, and social inequality, potentially resulting in authoritarianism. For the purpose of this research, liberalism will be defined through Freedman’s perspective of modern U.S. liberalism. He defines this theory as “a plastic, changing thing, shaped and reshaped by the thought-practices of individuals and groups... Liberalism is the vehicle best encompassing the dynamic of individual and social life” (Freedman 2005: 20-25). Since this analysis will review national security and surveillance within the context of the United States liberal democracy, it’s necessary to consider how liberalism (and it’s alter-ego, illiberalism) functions within the national security state. Institutionalism, defined by Peters as how “the institution represents more of the individuals themselves — or at least their ideas and discourses — and their patterns of interactions,” offers insight into the relationship between states and constituents within the national security state (Peters 2012: 116). This is essential to understanding how certain bodies, specifically legislative and economic, can redefine democracy through surveillance and security. By analyzing the nature of structuralism, liberalism, and institutionalism in relation to specific administrative actions regarding surveillance, this research intends to develop a course for the United States democracy’s path to a “new” authoritarian national security apparatus.

Conceptualizing Authoritarianism, Democracy, the National Security State, and Surveillance

Contrary to popular belief, surveillance is not merely present at the government level. According to numerous scholars, surveillance techniques have been a staple of the United States’ structure since its conception, often replicated within systems of education, healthcare, criminal justice, and the military to ensure order, classification, and security (Lyon 1994; Moore and Currah

2015). Surveillance will be understood here as modes of systematic monitoring “in which special note is taken of certain human behaviors that go beyond human idle curiosity” (Lyon 2007: 13). Though this definition of surveillance may appear broad or vague, it is meant to reflect the observation, classification, and enforcement techniques used by the state that deviate from perceptions of surveillance that are strictly militaristic entity or rooted in artificial intelligence (Allen and Chan 2017). Systems of surveillance birthed the national security state, a system that he defines as a state that “emerges from war, from fear of revolution and change, from the instability of capitalism, and from the nuclear weapons and military technology” (Raskin 1976: 189). The national security apparatus as it is conceived today originated from the National Security Act of 1947, a statute that would go on to shape the future of the National Security Council (NSC), Central Intelligence Agency (CIA) and various systems within the Department of Defense. A distinct perspective of both domestic surveillance and the national security state, in regards to United States politics, is imperative to understanding shifts from liberal democracy to authoritarianism.

But what is democracy? Schmitter and Karl define democracy as “a system of governance in which rulers are held accountable for their actions in the public realm by citizens... [Even though] no single set of actual institutions, practices, or values embodies democracy” (Schmitter and Karl 1991: 4 & 11). In the case of the United States, which operates within a “liberal” democracy, this term could be further understood as “governments and other democratic institutions [which are] responsive to the majority of the people, rather than only a narrow elite, or markets, unelected bureaucrats, or corporate interests” (Berman 2017: 38). One could argue that these prescriptions for democracy are the foundation for understanding the potential trajectory from democracy to authoritarianism. De Tocqueville noted, “I see clearly two tendencies in equality; one turns each man’s attention to new thoughts, while the other would induce him freely to give up thinking at all...the human spirit might bind itself in tight fetters to the general will of the greatest number” (De Tocqueville 1966: 436). Unlike the authoritarianism of old, which operates under typical totalitarian tropes (terror, indoctrination, social control and movement of the masses) mentioned in Arendt’s *Origins of Totalitarianism* (1979), the “new” digital age of authoritarianism instead functions on the mere threat of terror replicated within the state of surveillance. Hence, new authoritarianism could be branded as a pseudo-Panopticon, a “mechanism, for it automatizes and individualizes power, [and] also a laboratory; used to carry out experiments, to alter behavior, to train or correct individuals” (Foucault 1977: 7 & 8). Using constant visibility, new authoritarianism seduces individuals to modify actions to fit within the confines of surveillance culture.

Methodology

To understand the relationship between authoritarianism and the post-9/11 national security state, this paper will compare surveillance techniques used within the years of George W. Bush's presidency (2001 to 2009) and the era of President Barack Obama (2009 to 2017). Taking a qualitative approach, this research will operate using Mill's method of difference, a system which is essential to, "eliminat[ing] potential sufficient causes to conclude that a given factor is not (by itself) necessary or sufficient for the outcome of interest" (Mahoney and Villegas 2007: 75). While numerous democratic inconsistencies and intelligence infractions exhibited by Presidents Bush and Obama ranged from defensive to preemptive, respectively, both endangered United States' democracy, exploiting institutions and citizens to bolster a tyrannical national security apparatus. Given the most different system determines varying factors which implicitly and explicitly shape outcomes in a case analysis, this research assumes that the presence of Mill's method will reflect how the increase of surveillance within the national security state, through institutional means, has contributed to the authoritarianization of the United States. This paper does acknowledge certain research constraints that stem from the clandestine nature of the topic. It is difficult to operationalize levels of surveillance when the majority of the information regarding covert counterterrorism operations and surveilled citizens is classified. By further examining the processes of domestic surveillance through evaluation of legislation, emergency status, and national security rhetoric within the Bush and Obama administrations, this paper will assess the validity of the causality between the surveillance-heavy national security state and new authoritarianism.

Shifts in Democratic Structure

Proponents of structuralism argue that the expansion of machine learning and social media amidst the digital age has contributed to widespread anti-democratization through surveillance, causing tendencies toward authoritarianism (Giroux 2015; Andrejevic 2007). Not only do technologically advanced means of dataveillance establish a newfound power of the state, the current societal conceptions of surveillance have also shifted, no longer conflated with the past abuses of the national security state and instead romanticized by popular culture (Giroux 2015: 108). There is a present merging of the private and public spheres that can be manipulated for tyrannical advantage. Andrejevic views this as a "refeudalization of the public sphere," noting how online culture is structured to "pervert the political process [by] privileging the vires of established political majorities at the expense of the interests and concerns of those who are already largely excluded" (Andrejevic 2007: 198 & 208). Coupled with consumer culture and the Hollywood-ification of online branding, ratings and mass followings are viewed as a necessity—even at the loss of privacy, factual information, and values. Authoritarianism comfortably fits into this social media structure, especially given the modern manifestation of authoritarian policies are increasingly becoming populist and

personalized in nature (Kendall-Taylor et al. 2017: 9). Citizens are socialized into a regime of security through willing surveillance, eventually succumbing to “regime suppression” through “the most cherished notions of [online] agency” (Giroux 2015: 111-112). Rather than fully adhering to the authoritarian elements presented within the digital age, United States citizens are coerced into conformity, often ignorant to the debilitating effects of online culture and advanced observation.

Several scholars believe that increased technology is essential to the future of democracy (Bryan et al. 1998: 5; Rheingold 1993: 14). These arguments make the case that online culture is more participatory and accessible, effectively streamlining ideas and providing transparency. Monahan argues for modes of dataveillance which assist democracy in universalizing power across varying demographics by providing equal access to information and policing legitimate threats without the assumption of danger based on socioeconomic, ethnic, or gendered means (Monahan 2010: 103). This is faulty logic, however, for it fails to consider the algorithmic disparities riddled within surveillance systems. As Eubanks notes, machine technology can in fact be biased. There are detrimental effects of assuming the objectivity of high-tech programming, especially in the United States where these “impartial” systems replicate current societal cleavages which contribute to democratic instability by “automating inequality” (Eubanks 2018). The modern age of surveillance is structured to encourage various online monitoring techniques which are wholly antithetical to U.S. values. Systems which breed discrimination, encourage censorship, and undermine privacy are weaponized against the general populace, causing many to weigh imperative First and Fourth Amendment rights against the need for national security. It is this “algorithmic authoritarianism” which undermines the political and begins to highlight the threat that surveillance systems pose to the future of U.S. democracy.

Illiberalism & The Decline of U.S. Democracy

Scholars have long debated the authoritarian possibilities of liberalism, or the lack thereof. Within the national security state, the construction of the “ideal liberal citizen”, a liberal democratic model which is fundamentally exclusionary, streamlining national identity through concepts of superior versus inferior, civilized versus uncivilized, and legal citizen versus illegal (Tebble 2006, 15), has been a primary source for democratic inconsistency. The politics of identity profit off of “xenophobic, ethnically exclusionary [and] territorially expansionist” policies (Tebble 2015: 471) similar to that of early surveillance measures which transitioned from the management and profit of slaves to the invasive classification, organization, and punishment, of minorities (Browne 2015; Moore and Currah 2015). Similarly, efforts to authorize the Executive Order 9066 — President Franklin D. Roosevelt’s initiative to remove and intern “any or all people from military areas as deemed necessary or desirable,” specifically, Americans of Japanese ancestry — and its sister

initiative, the modern Muslim Ban — formally known as Executive Order 13769 or Protecting the Nation from Foreign Terrorist Entry, this attempted to suspend entry of Syrian refugees and travelers Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen — have exemplified the many ways in which democracy is exploited and undermined through the juxtaposition of surveillance and identity liberalism. Though the politics of identity are central to notions of democracy, personal and national identity can become too radicalized, often inspiring authoritarianization.

In the post-9/11 era, this has been most glaringly represented through the normalization of exclusionary and nativist national security processes. Following the onslaught of online vetting initiatives, facial recognition programming, and heightened biometric screening, "comfort with increased surveillance [has created] an internalized acceptance of a totalitarian tendency. This normalizing of the totalitarian is one of the more frightening features of willed and willing development of a surveillance society" (Fiske 1998: 86). Still, academics argue that illiberalism is not a direct sign of authoritarianism.

Berman provides an apt analysis for the liberalism and illiberalism presented by democracy, arguing that liberal democracy (as in the case of the United States) is not the model manifestation of democracy (Berman 2017: 30). Therefore, illiberal democratic practices are often the sign of flourishing democracy rather than democracy in decline. The problem with this perspective is that it fails to consider the illiberal to liberal trajectory within United States history. Given that U.S. democracy became "fully democratic" in the 1970s (Mickey et al. 2017), present shifts toward authoritarianism prove regressive, resembling the early illiberal struggles over civil liberties and power dynamics. Olicker writes that illiberalism itself cannot be employed to demolish democracy. Historically, illiberalism uses "democratic institutions to centralize power and limit civil liberties" (Olicker 2017: 7). In harnessing the divisions brought on by illiberal democracy, the national security state assumes a mild authoritarian agenda, prioritizing the repression and surveillance of the few in order to protect the many.

In the post-9/11 national security state, the surveilled are at the will of not simply the security apparatus itself, but the supposedly objective technological programmers which orient machine learning to determine everything from advertisements to defense. The threat of relying on a subset of individuals to create automated systems for political means, especially given the technology sector often reflects a homogenous demography like that of the ideal liberal citizen. There is a "coded gaze" imprinted within various surveillance programs, and "software is only as smart as the data used to train it" (Buolamwini, qtd. in Lohr 2018). Given the 21st century is driven by automated systems, its essential to acknowledge how bias present in developmental stages can shift perceptions and outcomes outside of machine learning. According to Eubanks, "Human bias in public assistance

systems has created deep inequalities for decades. Specifically around the treatment of black and brown folks who have often been either overrepresented in the more punitive systems or diverted from the more helpful systems” (Eubanks, qtd, in Edes and Bowman 2018). While the centralization of internet data may appear harmless and necessary to some, to others it manifests as a virtual stop and frisk or iJimCrow. The expansive and invasive surveillance machine that is the modern national security state, though said to be used as a means to “maintain” the economy, education, healthcare, and beyond, has simultaneously created a pipeline from surveillance to incarceration, deportation, and authoritarianization.

Demolishing “Ironclad” Institutions

Though several scholars maintain that the national security state and democracy are always in opposition (Shetterly 2013, Belletto 2009), there is an assumption that institutions are incapable of corruption, effectively able to restrain abuses and shield democracy from tyrannical leaders. Though it “may be tempting to assume that the United States’ centuries-old democracy is impervious to democratic erosion, such confidence is misplaced. Those pinning their hopes on pushback from the bureaucracy are also likely to be disappointed (Mickey et al. 2017).” Specifically, the intersection of surveillance and national security, citizen and state, and democracy and authoritarianism in the United States is one that often features institutional manipulation within executive, legislative, and judiciary. Though security and surveillance seek to maintain order in the name of public safety, they often operate within political means that are vague, allowing for unmonitored imperialism, secrecy, and illegality (Raskin 1976, 198). Just as foreign policy and intelligence seek to combat external threats, so does the domestic formation of the national security state in relation to internal threats. Using surveillance techniques within the framework of “maximum flexibility,” security measures are justified as a means to diffuse supposed chaos and terror, even if preemptively screening non-threatening actors such as lower class individuals, dark bodies, females, non-gender conforming citizens, immigrants, and opposing political operatives (Raskin 1976: 199). This form of risk-averse surveillance, known as the Banopticon (Bigo 2006), exemplifies the tension between democracy and the national security state.

The militaristic origins of security and surveillance, when coupled with neoliberal aspects of United States democracy, fail to produce effective democratic processes by creating a culture of “surveillance capitalism” (Zuboff 2015). Couldry writes, surveillance-heavy democracy are too “focused on data extraction rather than the production of new goods, thus generating intense concentrations of power over extraction and threatening core values such as freedom” (Couldry 2016). Through the harnessing of societal vulnerabilities, certain citizens are reduced to casualties of the state’s pursuit of security, deprived of many “human, legal and social guarantees and protection

of individuals.” Hence, “those who govern can non-longer rely on the rhetoric of sovereignty [and] citizenship” (Bigo 2006: 8 & 11). The relationship between the state and surveillance poses a direct threat to democracy by actively exploiting the citizenry, subverting Constitutional rights, and minimizing of authoritarian tendencies, all at the institutional level.

Other research argues against the correlation of surveillance-heavy security states and authoritarianism. Weiss rejects the “dichotomy” presented by many critiques of the national security state, contending assumptions that technology, neoliberalism, and capitalism threaten the stability and rationale of the national security state. Her argument arguing is that security and surveillance can transcend democratic inconsistency to remain a strong force of United States democracy (Weiss 2014: 19-21). In contrast, Potter finds that though pervasive surveillance cultures are rarely studied within authoritarian regimes, current authoritarian states are much more vulnerable to the threats of repressive security than democracy (Potter 2016: 2). Both arguments are ignorant to the very real threat of abusive power within democratic states of surveillance. As Jablonsky notes, “the new threat [of 9/11] assures the continued existence if not growth of the national security state and will certainly cause increased centralization and intrusiveness of the US government” (Jablonsky 2002: 18). Lyon agrees, finding that “surveillance enhances the position of those ‘in power.’ Power, in this view, is not a possession, but a strategy” (Lyon 2007: 18). The results from present examinations of the national security apparatus therefore present a significant case for the correlation between surveillance, security, and democratic shifts toward authoritarianism in the United States.

CASE STUDY: The Birth of American Authoritarianization

To chart a trajectory for the authoritarianization of the United States, it’s essential to review the origins of institutional abuses perpetuated by the national security state. Specifically, how has the presence of domestic surveillance under the Bush and Obama administrations signified a shift from liberal democracy to new authoritarianism in the U.S.? Following the events of September 11, the Bush administration was a catalyst for executive oversight and institutional manipulation, launching “the most sustained attack on democratic rights in modern American history. Using the pretext provided by the September 11 terrorist attacks, it systematically constructed, through the USA Patriot Act, the Homeland Security bill and other reactionary measures, the framework for a police state” (Giroux 2014). Enacted only forty-five days following 9/11, The USA PATRIOT Act provided the initial legal validation for the state to monitor citizen communications without a warrant. When questioned regarding the paradoxical rule of law exhibited by the Patriot Act, The Department of Justice expressed the need for Congress to “retrofit” the law in an effort to protect the wellbeing of American citizens (DOJ 2001). Similarly, Congress delegated nearly all powers to the executive, “casting aside longstanding constitutional limits on government investigators [by]

valuing secrecy over deliberation [while undermining the Congressional] ability to identify—let alone stop—serious investigative abuses” committed in the name of national security (Bendix and Quirk 2013: 2 & 13).

The legislature and judiciary’s endorsement of a culture of lawlessness and urgency allowed for the creation of various invasive means of protection such as the Defense Advanced Research Projects Agency (DARPA) Information Awareness Office and the Total Information Awareness Program (TIA). Through a centralized system of information collection and sharing, The Patriot Act served as an extension of FISA, empowering the state to lower legal standards and increase abilities to wiretap, trace, and register citizens. Beyond legislation, the Bush years also emboldened the executive on an international arena, contributing to a mentality of U.S. exceptionalism domestically and abroad. After September 11, the United States embraced the role of a “lone hegemonic superpower” shifting “the mode of political regulation” (Steinmetz 2003: 330). The Bush administration resisted international law abroad while simultaneously enacting invasive and reactionary surveillance programming at home, an early signifier of authoritarianization.

While institutional manipulation enacted during the Bush administration developed the infrastructure for the post-9/11 national security state, the Obama era ushered in a massive expansion of systems of surveillance. During his time in the Senate, Obama openly advocated against reauthorization of the Patriot Act, arguing that it was unlawful for Congress to approve legislation that removed the right for citizen appeal against surveillance. When campaigning for President he maintained this perspective, vowing against the secrecy and intelligence illegalities committed by his predecessor. But by early 2008, the Obama platform was seemingly aligned with the foreign policy and security interests of the Bush administration. While the impression was that the “openly authoritarian” Bush administration undermined the rule of law when enacting post-9/11 surveillance, “the supposedly civil libertarian Obama administration had also aggressively implemented a massively intrusive security regime (Bendix and Quirk 2013: 2). Under Obama, international efforts to counter the War on Terror engaged in the collection of citizen “vulnerabilities” ranging from sexual orientation to medical condition and financial record. In order to enhance the national security state and expose citizen-led terror-related activities, it was assumed that similar efforts could be lucrative for terror prevention within the United States. Eventually, the Obama administration opted to train citizens to serve as an extension of state enforcement and intelligence to minimize dissent, opposition, and inaccuracy. Under the pretext of domestic counterterrorism, DHS launched *If You See Something, Say Something*TM (2010) and *Eye on Awareness*TM (2011) in accordance with DOJ’s *Nationwide Suspicious Activity Reporting Initiative* (2010) in an effort to expand upon the scrutiny of citizen vulnerabilities and threatening behaviors.

Moving beyond Bush's DARPA and TIA programs, data mining under President Obama could obtain information of a financial, medical, and biometric nature without a warrant. Using PRISM, an extension of the Protect America Act of 2007, surveillance also began to take on a new, non-militaristic purpose in the form of surveillance capitalism. The U.S. National Security Agency (NSA) developed PRISM in accordance with several technology conglomerates, namely Google Inc., in order to expand upon its internet monitoring and acquisition of "confidential" information. By July of 2013, the general populace began to learn of the reality of Obama era surveillance. Everything from private communications to facial recognition could be utilized and if deemed necessary to national security, all data could be compiled, shared, and deployed throughout the intelligence community. The global surveillance leaks from Edward Snowden were the first efforts to apply pressure on the Obama administration, eventually shaping the USA FREEDOM Act. The Freedom Act was supposedly unique in that it protected civil liberties by ending bulk collection of data, improved transparency by requiring the publication of FISA decisions, and advanced national security objectives by increasing various means of surveillance and enforcement (Judiciary Committee 2015). However, this bipartisan effort to restrict the NSA and reform domestic surveillance still failed to remedy the tension between the state and citizen (Cohn and Reitman 2015). Though the intelligence community was finally being held accountable for their various unlawful actions, the Act failed to completely eradicate Section 702 of FISA altogether—a reform effort that would symbolize the prioritization of the rights of citizens over the security of liberal democracy.

Building the Banopticon

After a legacy of warrantless spying, the implications of post-9/11 surveillance remain remain in U.S. politics and society, forever creating a strain between state and citizen. "This radical disembedding from the social is another aspect of surveillance capitalism's antidemocratic character. Under surveillance capitalism, democracy no longer functions as a means to prosperity; democracy threatens surveillance revenues" (Zuboff 2015, 86). The trajectory from Bush to Obama, which could be categorized as a transition from the early stage national security apparatus to the Banopticon, is best described by the shift from Bush's reactionary, authoritarian surveillance policy in the wake of September 11 to Obama's full scale shift which had institutional and cultural consequences for the United States. The most unique aspect of Obama era surveillance was the conflation of economy and surveillance, public and private, and citizen and national security state. *Something, Say Something™* (2010) and *Eye on Awareness™* blurred many lines, forming surveillant assemblages who "feel for the state" in an effort to protect democracy. By forging citizen-spies, Obama attempted to "produce [U.S.] subjects who would increase the productivity and efficiency

within structures [while] reproduce[ing] sovereign power rather than resist[ing] its mechanisms” (Ritchie 2015: 181 & 182). But just as Foucault writes of discipline and power, the regulation of U.S. society, even by subtle means, created a disciplinary national security state which was easily susceptible to manipulation.

In building this U.S. Banopticon, rhetoric has also stimulated an ideology of American nationalism that borders on tribalism. Department of Homeland Security (DHS) initiatives contributed to U.S. authoritarianization by making the fight against terror a personal, visceral, and daily pursuit by means of profiling and affective assumption. The “terrorist” became coded not only as an omnipresent entity, but an invisible enemy hiding in plain sight. Bodies were characterized as either transparent or opaque—transparent bodies were perceived as less threatening due to their visible conformity to the national security state’s aesthetics and values while opacity became synonymous with dissent and darkness (Hall 2015). Much like the Anglo-American model that defined early American surveillance systems, the present national security state is inherently gendered and racialized to determine threat level by subjective means. Hall writes,

The capacity to risk and to have one’s risky ventures securitized is a marker of the privilege of transparency...white people are presumed innocent and people of color are presumed guilty...Some enjoy the privilege of being presumed capable of demonstrating (the absence of) the threat of terrorism. Others are presumed incapable, unwilling, or non-compliant (Hall 2015: 75-76).

In this way, rhetoric perpetuates American authoritarianization at various levels of U.S. society. From federally mandated wiretapping of assumed jihadists to the school-to-prison pipeline that often criminalizes black and brown bodies before an actual offense has occurred, the Banopticon encourage unity through division, openly securing a subset of the population in an effort to once again prioritize state before citizen.

This rhetorical nature of security and surveillance is a primary sign of the tension between democracy and authoritarianism. “The national security state’s apparatus needs arbitrary power. Such power has its own code, which is meant to govern or justify the behavior of the initiated—after the fact. It operates to protect the state apparatus from the citizenry” (Raskin, Qtd in Shetterly 2013). Directly following September 11, the reconceptualization of perceptions of security, intelligence, and surveillance occurred in the form of subliminal messaging. Bush often spoke in coded language, or rhetoric disseminated through a reproduction of discourse influenced by institutional power relations in order to justify undemocratic and illiberal actions taken in the name of security and defense. The rhetoric of security and terrorism serves as “the dissolution of the civil relations obtaining within and among nations, particularly liberal nations, and thus portends the dissolution of civilization itself” (Noorani 2005: 13).

For example, consider the nature of the mnemonics used to legalize domestic surveillance. By referring to security policy as a means of patriotism and freedom, instead of spelling out the USA

PATRIOTIC Act and USA FREEDOM Act as “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” and “Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection and Online Monitoring,” respectively, the state has found a means to advertise repression and invasion of privacy as genuine U.S. Americanism. Hall writes, “In this manner, the aesthetics of transparency lend a democratic veneer to sites where radically undemocratic practices thrive” (Hall 2015: 66). The ability to reframe the narrative of national security by propagating the notion that a legislative defense of liberty and democracy is incapable of defying the Constitution is a primary example of the minimization of American authoritarianism.

Beyond rhetoric, states of emergency sustain the constant culture of urgency and chaos needed to foster anxiety and terror within the national security state, an essential element of authoritarianism. The modern fear state is unique in that the mere threat of terror to be continuously replicated, even when no genuine threat exists. Presently, the United States is in twenty-eight states of emergency, but it isn’t new—“this month marks the start of our 39th year in a continuous emergency state” (Padhi 2017). Since their conception, emergency powers have presented a threat to democracy and the rule of law. Upon investigating President Truman’s actions following the 1950 declaration of emergency (a mandate that would eventually lead to the war in Vietnam), a committee report found that emergency powers to the executive “conferred enough authority to rule the country without reference to normal constitutional process” (Padhi 2017). Today, this committee warning is almost altogether ignored. As of 2014, fifty-two states of emergency have been placed into effect and thirty are still “active,” with a majority of them stemming from the Bush era. The immediate reactivation of emergency status is detrimental to democracy, especially given the institutional tendency towards widespread surveillance in the postmodern age. Through emergency status, the national security state weaponizes fear, producing “privatized citizens whose paramount concern is personal welfare, [therefore] rendering individuals particularly vulnerable to the crushing strength of institutions” (Lyon 2007: 19). Through the convergence of states of emergency and surveillant society, paranoia serves as a primary tool of panoptic control.

Though this perpetual fear state is an ineffective means of governance, it contributes to a “crimethink” culture—an Orwellian concept referring to the encouragement of misinformation and post-truth in order to make the populace reliant on the state (Orwell 1949)—which often encourages citizen disillusionment and societal longing for protection by any means. Here, the state of emergency enables authoritarianization from the “new strongmen,” populist autocrats and democratically elected “everymen” who provide a “milder, less openly brutal” reign of tyranny (Case 2017). Given new authoritarianism is much more visibly reasonable than old school authoritarianism

of the twentieth century, liberal societies such as the United States are much more susceptible to its subtle anti-democratization.

Still, the national security state is not a new enemy of democracy. Since its conception, the United States security apparatus has plagued society, promoting “lies and self-deception [that] have broken faith with the essential precondition for constitutional government in democracy” (Raskin, Qtd in Shetterly 2013). However, security policies and surveillance practices alone cannot breed tyranny. Lyon writes, “to detect totalitarian tendencies in specific practices is a far cry from declaring that the ‘surveillance society has finally arrived’” (Lyon 2007: 87). In fact, state observance and management is necessary in that it ensures democratic capabilities — specifically by ensuring equal distribution of rights (Lyon 1994: 31). The relevance of the September 11th attacks in shaping U.S. authoritarianization is also contested. For while, “The events of September 11 catalyzed a break with the established regulatory model [of United States democracy]... the response to September 11 has been a solution with significant precedents in post-1945 U.S. state history...” (Steinmetz 2003: 325 & 335). Research of Bigo (2006), Giroux (2015; 2016), Lyon (2007), Noorani (2005), and others contends this notion, finding that the institutional manipulation of the relationship between citizen and state, surveillant and surveilled, and the rule of law and public safety have heightened tensions in a post-9/11 era. Regardless of twentieth century origins of American authoritarianism, the illiberalism and undemocratic manifestations of the national security state following the attacks of September 11 depict a unique shift toward “new” authoritarianism.

The United States presently operates through “security in the disciplinary” modeled as “domestically authoritarian and geopolitically imperialist” state (Steinmetz 2003: 338 & 341). Looking forward to the future, citizens would do well to “be alert to the use of the words extremism and terrorism. Be alive to the fatal notions of emergency and exception. Be angry about the treacherous use of patriotic vocabulary” (Snyder 2017: 99). Through countersurveillance measures and resistance of the national security state as it converges with capitalism, there is potential to reverse the effects of the authoritarianization of the United States. However, this can only occur given widespread societal pressure on the three branches by imploring reform of FISA 702. Seeing as recent polling (Eoyang, Freeman, and Wittes 2017) suggests a nationwide confidence in the power of the state to protect the people, by any means, there is little hope for a truly progressive and constitutionally sound implementation of the proposed 2017 USA Liberty Act, the most recent extension of the 2001 Patriot Act and 2015 Freedom Act. Future research of public opinion will illuminate additional defenses against the United States’ authoritarianization that allows for increased state power in the name of security.

Conclusion

The legacy left behind by actions taken within the Bush and Obama eras has brought the United States to its present predicament. In an era when the authoritarianism of old appears to be reinvigorated by demagoguery in the face of globalization and violent extremism, the revisionism, perpetual anxiety, and nationalism encouraged by national security rhetoric and states of emergency represents a distinct tendency towards authoritarianism. The blatant threats to U.S. Constitutional values exhibited by legislative loopholes, also indicates this legacy of American authoritarianism. Not only has the national security state enabled a culture of U.S. exceptionalism, giving intelligence agencies and Presidential administrations too much power, it has also created a culture of surveillance, replicated throughout society, which trades heightened citizen visibility for decreased state repression. Bush and Obama's jurisdictive misapplications of surveillance serve as a testament to the underlying United States security narrative that Benjamin Wittes (2017) referenced in his speech.

The national security apparatus is continuously bolstered as the premier defense of liberalism, encouraging the convergence of security, surveillance, and democracy across partisan lines, while asserting that the security of liberalism and the security of U.S. citizens are mutually exclusive. This is the most glaring representation of the legacy of U.S. authoritarianism, for "people who assure you that you can only gain security at the price of liberty usually want to deny you both. You can certainly concede freedom without becoming more secure" (Snyder 2017: 100). Following the attacks on September 11, 2001, the administrations of Presidents George W. Bush and Barack Obama committed many oversights and abuses in the name of national security. In attempting to secure the fate of liberalism through legislative directives, recurrent emergency status, and the overall rhetoric of the War of Terror, institutional manipulation within the national security state has fostered authoritarianization within United States—potentially signaling the end of liberal democracy, as we know it.

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The International Win-Set: Boundaries for Influence

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Abstract

In line with the structural realist school in international relations, this paper argues that while being considerable, the power domestic actors have in the foreign policy sphere is bounded by international constraints. The argument proceeds by extrapolating the concept of a 'win-set' constraint from the Robert Putnam's 1988 two-level model on negotiation onto a decision structure of foreign policy actors. Hence it explains the unusual strength of domestic influence in the U.S., relative to other states. Through the use of applied game theory and the case studies of the Kennedy Administration's response to the Cuban Missile Crisis and the Bush Administration's response to the Israeli 'Operation Defensive Shield', this research attempts to demonstrate how domestic groups exercise influence within the boundaries created by the international power structure.

Keywords

AIPAC; Cuban Missile Crisis; Domestic Actors; International Win-set; Rational Actor Model; Structural Realism; U.S. Privileges

Introduction

There is no doubt that domestic actors influence American foreign policy. Domestic actors, in this sense, refer to organized groups of people within the United States who seek some personal interest in a change of U.S. foreign policy. While some heads of state are more or less isolated from electoral pressures of congress, diplomatic actors within democracies are almost always either elected by the public or appointed by elected officials. This exposure subjects foreign policy decisions made by those heads of state to the ebb and flow of both majority opinion and the financial leverage of strong domestic actors. Even autocratic leaders are still dependent on the financial backing of powerful domestic interest groups (Hill, 2010: 224). However, the extent to which domestic actors have control over foreign policy is contested. It is a radical proposition to say that the strength of a favorable domestic group is the primary determinant of a policy outcome. While domestic groups have considerable, and sometimes concerning, levels of influence, their preferences must still be balanced with those of the state in an international incentive structure. This paper will attempt to investigate this balance by first explaining the calculus of an international win-set, then by discussing the means by which domestic groups operate within this constraint. It will accomplish this by examining unique U.S. privileges and delving into two cases: the Kennedy Administration's response to the Cuban Missile Crisis and the Bush Administration's response to the Israeli 'Operation Defensive Shield'. Overall, I hope to argue that domestic groups exert influence proportional to their economic strength *within the boundaries* created by an international structure.

Review of the Literature

At the core of international relations is the economic assumption of state rationality. Mearsheimer describes a rational state as:

They are aware of their external environment and they think strategically about how to survive in it. In particular, they consider the preferences of other states and how their own behavior is likely to affect the behavior of those other states, and how the behavior of those other states is likely to affect their own strategy for survival. Moreover, states pay attention to the long term as well as the immediate consequences of their actions (Mearsheimer, 2001: 31)

Notable in this definition is both a consideration of both the actor's choice and the resultant choices of other players, as well as endogenized long-term consequences. Waltz's structural realist school suggested a game with several actors, each of whom could make choices bounded by interests and limits of an international 'structure' (Waltz, 2001). The most rational action by each individual would be that within its constraint whose outcome maximized the interests of the state it led. When Kenneth Waltz used the Rational Actor Model to analyze decisions of political actors, he brought with him assumptions from Rational Choice Theory in economics that have been critiqued and re-examined for the latter half of the 20th century (Waltz, 2010).

One of the most popular critiques of the Rational Actor Model came from Herbert Simon, who argued that the translation of theory to reality came with restrictions on the capacity of actors to make ‘theoretically’ rational choices. Because it is almost never possible for an individual to know the full series of consequences created by their decision, they may only act rationally within the boundaries of their limited foresight. A modification of Rationality, Simon’s *Bounded Rationality* sought to find the most rational outcomes within the boundary of limited information (Simon, 1955).

Modern critics, such as Jonathan Kirshner in *The Economic Sins of Rationalist IR Theory*, notice that actors ‘bring’ their cultural backgrounds and individual experiences into their respective models. Contrary to homogenous consumer groups in economics, individual actors in foreign policy dilemmas use *different* economic models from each other (Kirshner, 2014: 169). While Kirshner refers to historical timelines that construct value structures, this complexity can also take place between individuals within the same state. For example, one administration in the U.S. might prioritize preponderance, while another chooses peace. Such a heterogeneity would allocate utility differently. For the pro-preponderance actor, ensured hegemony might increase utility by 100, but for the pro-peace actor, only by 50. Taking these differences into account changes a cost-benefit analysis based on the preferences of the actor, and allow for *a range of optimal outcomes*. Of course, one might extrapolate these values to be rational and irrational decisions themselves. For example, preponderance might be more effective than peace in the satisfaction of U.S. interests. However, the limited capacity of individuals to foresee outcomes, argued by Simon, often causes actors to substitute individual values for the foresight they lack. This paper follows the rationale of Kirshner, assuming that values can allot for diversity *between* actor choices and that those choices *can be* influenced by domestic actors, but that those choices will still fall within the structural constraints initially suggested by Kenneth Waltz. However, because this paper evaluates real-world cases with the restriction of limited information, it relaxes the assumption that actors have, as Mearsheimer described, long-term foresight and certainty of actor responses.

In ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games’, Robert Putnam outlines a two-level bargaining model in which states negotiate agreements in terms of ‘win-sets’, or sets of policy outcomes that either an international opponent or domestic constituency would find agreeable. The negotiator seeks to find viable solutions within the ‘overlap’ between demands by the opposition party and those made by domestic groups at home (Putnam, 1988: 433-459). However, this model is also useful in other foreign policy choice games. Any state action subject to foreign policy consequence operates within a similar, if less formal, constraint. If policy is evaluated in terms of (a) the extent to which it contributes to state interests and (b) the extent to which it imposes costs on the state, there exists a threshold beyond which policy becomes too costly to pursue, no matter

the domestic influence. Therefore, domestic groups exert strong influence contingent on their chosen policy falling within the constraints of a foreign policy ‘win-set’. Within these boundaries, there exist plausible arguments that each of the policy options encompassed best advances state interest.

Considering this bounded constraint, it appears implausible that domestic groups in the U.S. would have as much influence as they do, as their policy choices still must fall within these boundaries. However, U.S. privileges allot it a ‘larger’ range of plausible policy choices than other states. Consequently, proportionally more of U.S. foreign policy is subject to the push and pull of domestic interest than the policy of its international counterparts.

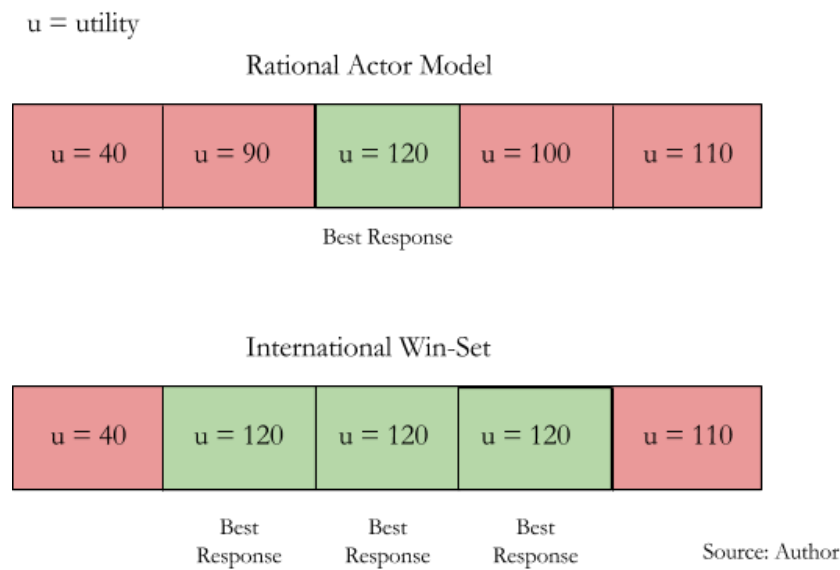


Figure 1. Model 1 of International Win-Set

The top half of the model presents a series of decisions available to an actor in a foreign policy dilemma. Rational options are presented in green, irrational options in red. The second model presents a similar set of options, this time with the assumption that utility is variable, based on pre-existing value differences both of individual belief and cultural background. The volatility of actor preference causes prior ‘suboptimal’ choices to merit utility not before offered by the ‘optimal’ choice, and therefore opens up more than one rational option. The set of all rational options is the international win-set.

These privileges date back to the U.S. position of leverage following a military victory in World War II. During the Bretton Woods conference in 1944, Harry Dexter White cemented the U.S. dollar as the reserve currency by tying its value to the gold standard. When the Bretton Woods system fell in 1971, the dollar remained the reserve currency through the twentieth and into the twenty-first century. The international value of the dollar encouraged any state who wished to avoid a liquidity

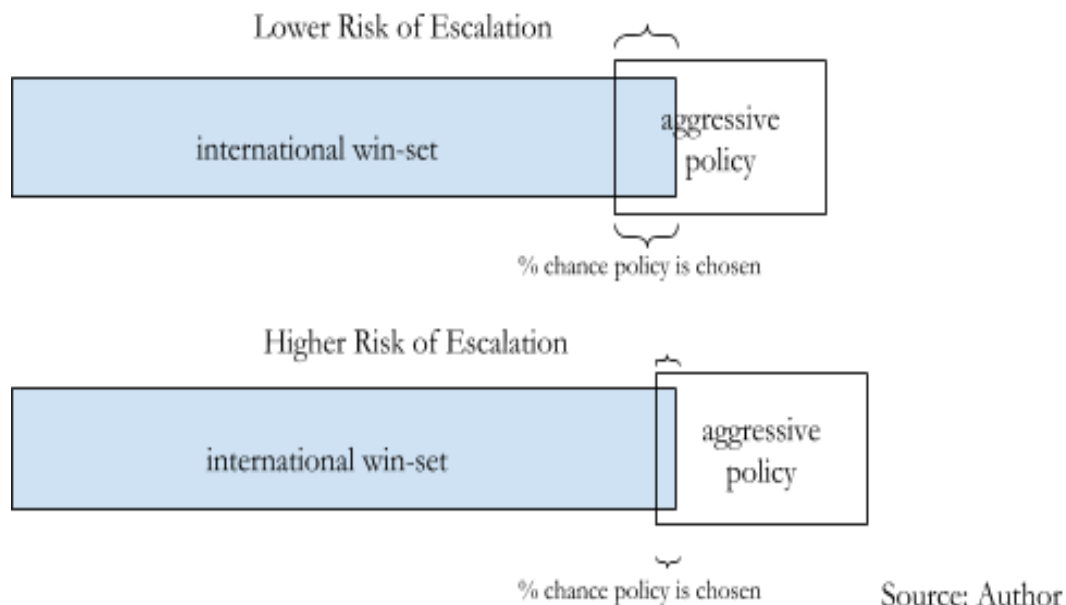
crisis to store reserves of the currency in its national bank. The constant demand for dollars allowed the United States to borrow without concern, passing its adjustment burdens onto allied states in its security apparatus (Mastanduno, 2009: 134). Such exorbitant borrowing privileges allow policymakers to bypass the political cost of austerity, pushing those costs onward to future generations. While future costs already are subject to a discount factor in cost-benefit decisions, the current administration also understands it will likely not be the actor undertaking those costs. This dramatically reduces the disincentive of fiscal cost on the decision-maker.

In addition to economic resources, the cost of policy choices in terms of diplomacy is relatively more crippling for a state which does not enjoy military supremacy. For example, South Africa struggled to negotiate with international partners on the continent during apartheid, the racism underlying the policy not lost on African heads of state (Hill, 2010: 227). The consequences for South Africa of such loss in international opinion, especially from a continent which hosts so many of its trading partners, were of such magnitude to pressure a change in domestic policy, regardless of domestic interests. A similar circumstance for the United States, the loss of international support in response to its 2003 intervention in Iraq, was costly, but relatively less crippling. The U.S. was able to sacrifice international opinion without concern for loss of security and even undertake large economic costs by invading Iraq unilaterally (Schmidt and Williams, 2008: 193). The U.S. is much less dependent on its relationship with Middle Eastern states than South Africa on its African peers. U.S. military supremacy also provides it leverage in many of its alliances because so many states are dependent on its security (Mastanduno, 2009: 133). The decreased cost of many policy endeavors expands the number of 'contestable' policy options for the U.S., and increases the size of its international win-set. Therefore, the job of determining which of the now many policy options in this constraint will be implemented often falls in the hands of domestic interest groups.

The Cuban Missile Crisis exemplifies the pull of domestic interests within the constraint of the international win-set. In October 1962, President Kennedy made a public statement that the United States would not tolerate the presence of 'offensive weapons' in Cuba. Weeks later, intelligence discovered IL-28 bombers on the island, and the president was forced to take action (Graham, 2010: 120).

Stephen Krasner outlines six policy options available to the Executive Committee of the National Security Council (EXCOMM), the secret group of advisors to president Kennedy, in response to the crisis — do nothing, leverage diplomatic pressure, perform a secret approach to Castro, invade, implement a surgical airstrike, or construct a naval blockade (Krasner, 1972: 170). The 'secret approach to Castro' option was abandoned early on because Castro did not have control of the missiles, leaving five alternatives remaining. The diplomatic options were politically unviable

for President Kennedy, who was under political pressure from Republicans to be more assertive, and whose decision to not follow his previous statement would undermine confidence in both him and the democrats who pledged him their loyalty. An upcoming election made this a politically precarious situation (Allison and Zelikow, 2010: 119). However, the assertive options — invasion and surgical airstrike — ran the risk of prompting a response from the Soviet Union in Berlin, and a forced reactionary response of nuclear engagement.



Graph 2. Model 2 of International Win-Set and Aggressive Policy

The Cuban Missile Crisis is an ideal case of U.S. constraint by concrete international interests. Military supremacy and borrowing privileges could not excuse the state from the consequences of a nuclear war — the interest in avoiding escalation was absolute. Yet, there was still debate about whether to perform an airstrike. Why was this the case? The decision about whether to engage assertively was a game of risk in which the worse outcome involved escalation, whereas the better income would mean the ‘backing down’ of the Soviet Union and a grand display of power for President Kennedy. If, alternatively, the case had been that EXCOMM was sure the Soviet Union would escalate the crisis, there would be no room for discussion. An escalation toward nuclear war is against U.S. interests, and no sane leader would prioritize political capital at the expense of nuclear conflict. It was the ambiguity about whether this outcome would play out that encouraged debate. The extent to which the decision was encompassed within the international win-set could be said to have increased as the likelihood that aggressive action would cause escalation decreased.

The top half of the model presents a foreign policy dilemma with a low risk of escalation. In this case, the choice to enact escalation policy is more tempting, as he or she receives absolute gains

in political utility on a low-risk wager. The ‘% chance policy is chosen’ is therefore slightly higher than in the latter model, in which risk of escalation is higher. In this case, the incentives to pursue the policy decrease. An interpretation is that the percentage risk of escalation pushes the policy choice out of the international-win set. The percentage risk of non-escalation remains safely within the win-set. The actor, without information about whether the outcome will or will not remain in the win-set, gambles accordingly.

However, EXCOMM soon decided that the threat of nuclear escalation was too great to perform a surgical airstrike or invasion. The ‘domestic’ interests therefore played within the confines of the three remaining options — do nothing, exert diplomatic pressure, or construct a naval blockade. The domestic incentives for President Kennedy pushed him toward the third option, a naval blockade. Therefore, while domestic pressure certainly guided the president’s actions, he still had to operate within the confines of the international structure.

Another example of a situation in which domestic interest groups had questionable influence to guide policy away from U.S. interests was the push and tug between the American Israel Public Affairs Committee (AIPAC) and the Bush Administration during Operation Defensive Shield (ODS) in 2002. AIPAC’s domestic influence is multifaceted. Its strategic campaign donations make its support a necessity in order to win an election, both for a majority of congressmen and the president. Candidates often compete for AIPAC’s resources, attempting to outdo each other’s enthusiasm for pro-Israel policy. The absolute necessity for politicians to frame their rhetoric in support of Israel also directs the national conversation away from potential criticism (Mearsheimer, 2007: 152). Operation Defensive Shield was a response to a Palestinian suicide bombing on Passover Seder which killed 30 Israelis (Mearsheimer and Walt, 2007: 208). The attack, although condemned by Arafat, undermined any trust Israel had in the Palestinian Authority as a negotiating partner. ODS involved an attempt to create ‘facts on the ground’ and assert ownership of populous territories in the West Bank, including the largest military occupation since the 1967 Six-Day War and the construction of a wall within the territories.

Almost all international actors considered the response vastly disproportionate to the attack. U.S. concern for loss of international favor prompted Secretary of State Colin Powell to depart for Palestine and attempt to reconcile peace terms between Israel and the Palestinian Authority. This decision subjected the secretary to ten days worth of aggressive response from domestic sources. Neoconservatives in the media strongly condemned his actions, members of congress across parties vocalized their lack of support, and a shift in the balance of power within the White House tilted heavily against Powell, who had before enjoyed a position of leverage. Several days later, President

Bush reluctantly vocalized support for ODS, and, three months later, allotted Israel \$200 million to aid in the effort against terrorism (Mearsheimer and Walt, 2007: 210).

It first appears as though domestic politics won against U.S. interests. While the U.S. certainly cares about Israel, the sacrifice of international rapport and the goodwill of the entire Muslim faith seem a heavy cost at which to support its ally unconditionally. Within the policy community, there was near-consensus that support for ODS was against U.S. interests (Quandt, 2005: 398). However, there are plausible arguments that such unconditional support for Israel is in line with U.S. interests. This possibility, combined with the relatively small costs the U.S. endures from unpopularity, mean that radical pro-Israel policy falls within the state's international win-set. In the Rational Actor Model, this outcome would likely have been 'suboptimal', attesting to the failure of the model to account for the complexities that make up real-world decisions. The contestability of a claim that a policy is against U.S. interests ought to contribute to its place within the range of policy choices, even if there is more evidence to the contrary.

Eisenstadt and Pollock argue that there are several ways our alliance with Israel actually upholds U.S. interests, in addition to value-based ideas of supporting a fellow democracy. The primary argument is that a close trade relationship with Israel stimulates innovation in the U.S. because of the relationship between both states' prosperous technology sectors (Eisenstadt and Pollock, 2012: xii). While there is a forced equivalency here between securing a trading partner and unconditional support for an ally, the relative economic benefits of Israel's support relative to that of other Arab allies is still worth taking into consideration. Eisenstadt and Pollock's stronger argument is that many U.S. allies — i.e. Egypt, Saudi Arabia, and Jordan — did not alter their relationship with the U.S. in response to ODS, or to past pro-Israel maneuvers (Eisenstadt and Pollock, 2012: 5). The persistence of U.S. allegiances with Jordan and Saudi Arabia factor into the 'low-cost calculus' of U.S. decision-making. Saudi Arabia and Jordan are both on the lower hand of leverage in their U.S. relationships — Saudi Arabia in terms of economic aid, and Jordan in terms of access to trade agreements. The predicted 'costs' of U.S. controversial support for Israel are therefore, as demonstrated earlier, lower than they would be for a less powerful state. Eisenstadt and Pollock also attribute unfavorable opinion of the U.S. to other policy choices. For example, Anti-American sentiment arises in Iran from the placement of the corrupt and extraordinarily unpopular Shah in 1941, and in other states from support of autocratic rulers and the invasion of Iraq (Eisenstadt and Pollock, 2012: 7). Taking this into account, the consequences of unconditional support are not so drastic.

With this being said, there is still a need reconcile the apparent truth that the Israel lobby was at odds with the preferences of foreign policy actors in the administration — President Bush and

Secretary Powell were both described as ‘reluctant’ to support ODS. Would the U.S. have been able to resist AIPAC influence in a ‘less contested’ case where the calculus of international interests were more absolute? To answer this hypothetical, we can look to the Cuban Missile Crisis — it was not in Kennedy’s domestic interest to pursue a diplomatic solution, and outside the boundary of viable international policy to escalate the conflict with an airstrike. In such a case, Kennedy was pushed into a median position, a reconciliation between structural international interests and domestic influence. Therefore, if the benefits of supporting ODS had *not* been contestable, as was the case in the Cuban Missile Crisis, Powell would likely have been guided to a similar compromised position, perhaps a vocal condemnation of Palestinian terrorism without a \$200 million financial contribution.

It is worth addressing a question which arises from a conclusion that the U.S. win-set is so large — that is, if the international structure has so weak a hold on U.S. policy choice, why even mention international structure at all? There are two reasons why acknowledging the existence of an intact U.S. incentive structure is necessary. The first is that not all cases fall within its boundaries. A choice in absolute conflict with U.S. interests will be unavailable to domestic groups. The second reason is that just because the U.S. is currently so loosely constrained, does not mean it will be so in the future. Privileges the U.S. enjoys are not guaranteed. Eventually, the U.S. will have to make reasonable spending decisions and undergo austerity. It also will not always be facing actors in a relationship of absolute military supremacy. Acknowledging the existence of such restraints is therefore a useful means to evaluate the importance of maintaining such U.S. privileges.

In general, the pressure on President Kennedy to take military action during the Cuban Missile Crisis, and AIPAC’s influence on our foreign policy are some of the most extreme cases of domestic influence. Even such radical examples, while challenging the boundaries of the U.S. international win-set, still remain within it. The ease with which domestic interest groups can dip their toes in policy is a consequence of the U.S. position of power and privileges in the world. However, just because we *can* pursue a policy, doesn’t mean we should. The notion that domestic groups have as much decision-making power as they do means that other parties, such as academic specialists, do not. The conclusion that policy is within the interests of the state should not be the only prerequisite for a policy to be enacted. Other secondary concerns such as whether the policy contributes to a better world, or the values prioritized, should be considered before the satisfaction of powerful minority groups.

Within the Academic Framework

It is of concern, however, that adjustments to the structural realist model which suggest such a diverse array of options for U.S. foreign policy erode the explanatory use of rational choice. Rather, with such an empowered hegemonic leader, rational choice theory provides little predictive power.

The research here presented therefore directs attention to a boundary on rational choice theory's applicability. The array of rational choices that lie within the framework of the U.S. win-set is now vast, including outcomes which provide disproportionate benefits to a single domestic group, even at an overall cost deficit to the state. As such, domestic political theory is necessary to fill the explanatory role which international relations theory cannot. The economic politics of domestic political influence, an economic question in terms of capital, and a sociological question in terms of social appeal, is perhaps now, under hegemonic leadership, a more useful predictor of foreign policy.

In the Trump Era, this trend is even more apparent. The administration's foreign policy, its trade policy in particular, appears to follow little rational choice. The Trump Administration is a vessel which expresses the interests of a key domestic group within the boundaries of a privileged, hegemonic international win-set – the pursuit of protectionist policy for the disproportionate interests of displaced industrial workers. Anyone who wished to predict foreign policy outcomes in the 2010s would have been better suited to look at patterns of structural unemployment and sociological distrust of authority than in the rational choice models of large states. If such variations exist within the rational actor model, what does this now say about Mearsheimer's claim that states "consider the preferences of other states and how their own behavior is likely to affect the behavior of those others states" when the U.S. is not subjectable enough to the actions of its consequences to, in many cases, even other state preferences into consideration? Is the U.S. even a 'rational actor' in the structural realist sense? The U.S. is still acting rationally, but within constraints so flexible that the concerns that typify structural realism no longer predict its policy outcomes. Therefore, while these seemingly irrational U.S. foreign policy choices are in fact rational, the growing number of rational outcomes decreases the usefulness of structural realism to predict outcomes. The integration of other means of predicting policy must be used to evaluate the most likely outcome within a state's international win-set.

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Trust and the Rule of Law. A Multilevel Analysis

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Frederik Gremler, 22, from Dortmund (Germany), is a recent graduate of Zeppelin University Friedrichshafen with a Bachelor's Degree in Sociology, Politics and Economics. His paper "Generalized Trust and Rule of Law" is strongly based on research for his bachelor's thesis. The investigation shows his penchant for the nexus of quantitative methods, sociology and comparative political studies. As of October 2017, Frederik is going to pursue his Master's degree in political science and administration at the University of Konstanz, Germany.

Abstract

This study examines the relationship between generalized trust and the rule of law on a national level. Previous research has often neglected this issue, instead focusing on related issues of property rights, economic freedom and corruption. Employing multilevel modelling with cross-sectional data from the World Values Survey, Freedom House and other sources, this paper finds that the quality of the rule of law negatively affects levels of generalized social trust. I argue that this is due to laws crowding out trust in social interactions as a mechanism of guaranteeing fulfillment of expectations. However, severe restrictions caused by possible endogeneity and validity of the rule of law measure utilized apply.

Keywords

Crowding Out; Generalized Trust; Hierarchical Analysis; Multilevel Analysis; Political Sociology; Rule of Law

1 Introduction

It has become a commonplace to view trust as having beneficial effects for societies. Trust, be it as constituting social capital (e.g. Putnam 1995) or in its oft-cited generalized form (e.g. Nannestad 2008), affects economic growth (cf. Putnam 1995; Fukuyama 2001; Knack and Keefer 1997; La Porta et al. 1997; Glaeser et al. 2000; Bjornskov 2007; Nannestad 2008), health (cf. Jen et al. 2010) and confidence in institutions alike (Sonderskov and Dinesen 2016). Thus, questions about the embeddedness of trust have attracted increasing academic attention (cf. Wang and Gordon 2011; Berggren and Jordahl 2006; Kumlin and Rothstein 2003). These and other scholars aim to predict trust altogether (Bjornskov 2007; Knack and Keefer 1997) or examine the influence of specific aspects. Consequently, the impact of factors like inequality (Uslaner 2002), Gross Domestic Product (Nannestad 2008) and confidence in political institutions (Sonderskov and Dinesen 2016) have received ample attention. However, research on institutional ramifications has remained rare. This relative scarcity leads Nannestad (2008: 425) to state that mechanisms linking trust and institutions “have not been exhaustively tested yet”. This work strives to aid in filling that gap.

Curiously, it is especially the issue of institutional arrangements' objective quality that largely remains untouched by trust research (for some rare examples s. Wang and Gordon 2011; Berggren and Jordahl 2006; Kumlin and Rothstein 2003) – even though this has attracted countless studies in neighboring fields (s. e.g. Acemoglu and Robinson 2013; Lijphart 1984). Driven by this omission, this work examines how the quality of rule of law affects generalized trust. To my knowledge, no study has explicitly focused on this issue. The aspects mentioned above culminate in the following research question: *How does the quality of rule of law affect the level of generalized social trust?*

To answer this question, I utilize the theoretical approach of Rousseau et al. (1998) towards trust relating it to the notion of its generalized form (Section 2). Drawing on recent empirical research, I then develop a hypothesis postulating a negative impact of rule of law on generalized trust as it is crowded out due to institutional settings. I test this hypothesis by employing multilevel modelling (cf. Gelman and Hill 2007: Chapter 4) with recent data from the sixth wave of the World Values Survey (henceforth: WVS6) and various country-level data sources (Section 3). Rule of law data is taken from Freedom House (Freedom House 2017). Various models confirm that high levels of rule of law indeed decrease the probability of displaying generalized trust (Section 5 and Section 6) although several serious restrictions apply (Section 7).

Whereas the topic alone offers a contribution to the academic discussion, this work additionally demonstrates several improvements over past research: In contrast to e.g. Zmerli and Newton (2013) and Bjornskov (2007) I conduct multilevel analysis instead of pooling different countries, thereby accounting for dependent observations within nations. Furthermore, survey years

of WVS6 are matched with corresponding years of national-level data - a procedure presumably not conducted by neither Wang and Gordon (2011) nor Paxton (2007).

While the merits of this work are primarily academical, policy makers may be interested in its implications. If rule of law and generalized trust are negatively related, what are measures to avoid an erosion of trust? Many similar questions arise, sparking relevant questions for further research and political decision making.

2 Theory and Hypotheses

The following section proposes a theoretically derived definition of generalized, social trust. I then turn to defining rule of law relying on the work of Lauth (2001). Finally, an evaluation of current works on related issues culminates in the main hypothesis postulating a negative impact of rule of law on trust. Here, trust is exclusively examined in its generalized form.

2.1 Generalized Trust: A Definition

Any undertaking tackling the concept of trust has to start with a thorough definition. As existing ones are manifold (Nannestad 2008: 414), the following section only presents findings relevant to this research instead of attempting to evaluate and relate the diverse body of work examining trust in itself. Unfortunately, there are no readymade, agreed-upon definitions tailor-made for cross-national trust research. Nannestad (2008: 414) states: "There is still a wide gap between much of the theoretical and conceptual work on trust and the bulk of empirical studies". The following section attempts to bridge this gap - at least for the present investigation. Specifically, this article examines generalized, social trust.

Still: Any definition of generalized social trust necessitates an antecedent definition of trust itself. I turn to this in the next paragraphs. A prerequisite for trust is the existence of two parties: a trustor and a trustee. The latter could, often to a degree, fulfill or disappoint the expectations of the trustor (Skinner et al. 2014 206f.). Thus, trust assumes imperfect control mechanisms or even their absence (Möllering 2006b: 8). Trusting is consequently characterized by uncertainty and implies some vulnerability of the trustor (Möllering 2006b; Williamson 1993; Luhmann 2014: 6, 485f.). If the trustee had nothing to lose, trust could never be placed - it would simply be a calculative gamble with another party fulfilling expectations or failing to do so (Möllering 2006a: 356f.). Presupposing this, generalized trust - loosely speaking - is based on an attitude towards generalized others (Möllering 2006b: 7, 9). This may then induce specific interactions, but not necessarily so. A commonly used definition incorporating all of the abovementioned aspects is the one given by Rousseau et al. (1998):

Trust is a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behavior of another (Rousseau et al. 1998: 395)

This definition elegantly combines the central aspects of trust: it may enable others to inflict harm upon the trustee, nevertheless expectations are that this will not happen. Moreover, trust is not a deed but a state: Trust may be present but never spark any action.

In addition, Rousseau et al. (1998: 397) posit: “microlevel trust relations are constrained and enhanced” - it is most prominently institutions that play a role in this. They bear great importance by embedding the trustor in a setting that largely determines his or her trust levels. Despite this, the nexus of formal institutions and generalized trust remains somewhat neglected in the field of trust research. In contrast, other fields have extensively examined the efficiency of institutions for example by assessing institutions impact on economic development (Acemoglu and Robinson 2013; North 1990). Interestingly, trust research oftentimes analyzes the related topic of trust in political institutions and its connection to social trust (Sonderskov and Dinesen 2016; Rothstein 2000; Newton 1999; Braithwaite and Levi 2003). While this may seem very similar to my research questions, it is a related but different issue as confidence in institutions does not provide evidence of their actual quality. Trust in institutions may arise because of favorable outcomes for one individual in spite of those institutions' overall faultiness. For example, laws favoring specific individuals may increase their trust in legal institutions, but reduce the same institutions' overall quality because they disregard principles of equality by giving this advantage. Moreover, political trust is a subjective evaluation that may be severely flawed. I therefore turn my focus to the objective quality of institutions represented by rule of law and its consequences for generalized trust (Uslaner 2004: 10).

I define this concept as a latent level of trust that individuals commonly display towards others. The individual has the opportunity to decide whether to act upon his trust. However, his general level of trust will constantly be present (Hardin 2002: 59). In contrast to what one may call particularized (intimate) trust, the trustee is not a specific person that must be known to the trustor: it is someone - or a collective group - the trustor could possibly conceive to interact with (Nannestad 2008: 414). Experimental work suggests that this type of trust can indeed be observed (McEvily et al. 2006: 65). This type of trust is then generalized in the sense that it constitutes an implicit level of trust presented towards others. Offering a more intuitive, slightly sloppy definition one could say that it is ‘everyday trust’.

In contrast to this, definitions in comparable studies seem vague. Sonderskov (2011b) has proposed the definition that generally trusting means that “people in general are trustworthy” (ibid., 53). This seems tautological, especially in light of Hardin’s (2002: 29) critique postulating a “slippage from trust to trustworthiness” (ibid., 31). “The belief that others will not deliberately or knowingly do us harm [...] and will look after our interests if this is possible” is the definition used by Delhey

and Newton (2005: 1): Firstly, defining trust as expecting absence of harmful doing seems crude. Only because individuals are free from harm, they do not trust everyone that does not hurt them. Moreover, others acting in one's interest is perfectly possible without trust because of cultural norms, overlapping preferences and/or institutional control. I will expand on the latter aspect below.

Thus, I deviate from these two insufficient definitions and similar ones. Simply speaking, my abovementioned definition conceives generalized trust as representing a baseline level of trust towards others that may increase or decrease in specific interactions due to certain characteristics of the trustee, the situation's context and historically induced circumstances.

2.2 Literature Review

Summarizing recent research, several authors have attributed differences in trust to phenomena that can very broadly be grouped under the concept of institutions (Helliwell and Putnam 1995; Uslaner 2002; Bjornskov 2007; Levi 1998). For instance, institutions may serve to minimize the risk of being betrayed as this would be appropriately sanctioned (s.a. Cook et al. 2005: 151).

In a similar manner, institutional conditions may influence the routines of trust: Social norms, laws and cultural traits construct stable circumstances that enable trustors to continually engage in trusting relationships (ibid.). Of course, the opposite is equally possible: institutions can also undermine the basis of trust. An example of this is Bjornskov (2007: 4) research on post-communist nations.

I argue that rule of law bears special importance when examining trust and formal institutions. I define the concept as equal and just application of transparent legal norms by an independent judiciary (s. Chapter 3.2 in Lauth 2001). Societal levels of generalized trust are set against the backdrop of rule of law as it greatly determines social interactions (s. e.g. Acemoglu and Robinson 2013).

In conclusion, it has become clear that institutions heavily influence the baseline level of trust a person displays thereby also rendering interactions more or less probable. Nevertheless, the actual quality of rule of law so far only played a minor part in trust research. This study directs its focus towards this previously neglected nexus.

The effect of rule of law on trust has - as of now - not attracted extensive examination through research. In point of fact, oftentimes related and overlapping factors like democratization, security and political trust have been investigated. I use those findings to derive my main hypothesis that higher quality of rule of law results in lower trust.

Wang and Gordon (2011: 4) find that just legal systems have a positive effect on trust. While their measure, namely the Fraser Index, bears some similarity to common rule of law measures, they

are explicitly interested in how fair the legal system is with regard to property rights. Here, they report a significant positive effect (Wang and Gordon 2011: 5). Berggren and Jordahl (2006: 2) apply a similar approach using the abovementioned Fraser Institute's Index assessing economic freedom (s. Fraser Institute 2017). Although mainly concerned with economic liberties, they suppose that their chosen variables also quantify rule of law.

While their findings may indeed hold for economic institutions, this study offers several improvements in form of added variables and a broader focus. I argue to apply a more general sense of rule of law by considering other realms of social life impacted by it. Moreover, with their explicit focus on property rights Wang and Gordon (2011) as well as Berggren and Jordahl (2006) omit other factors like contract law, speediness of legal processes and fairness of courts. Additionally, my analysis offers some improvement by controlling for corruption, post-communist heritage and lagging macro-level variables by one year.

Notwithstanding, Berggren and Jordahl (2006: 4) provide an interesting argument for the emergence of trust in economic systems: "Customers must make it credible that they are able to fulfill their side of the bargain" - rule of law then ensures that "breakers of contracts and rules are brought to justice" (ibid.: 5). I argue that the exact opposite is the case: Strong institutions providing control and enforcing sanctions eliminate the necessity to trust or prove trustworthiness because the fulfillment of expectations is guaranteed by the formal institutional setting.

Berggren and Jordahl (2006: 4) continue in arguing that trustworthiness may offer a comparative advantage for businesses and customers in a free economy where information is readily available: One chooses the actor that seems more trustworthy to buy a product, seal a contract or sell to, all else equal. While this definitely is plausible, I argue that it is even more so the case with strong formal institutions lacking: Business partners need to seem and indeed be trustworthy in order to have successful businesses as customers cannot be certain that potential wrongdoing will be penalized. If actors have no at least relatively reliable guarantee of fulfillment, most interactions simply are not going to take place.

As this argument is economically tinted, I expand it to a more general base: Formal law and its executive as well as judicial implementation affect issues ranging from taxes (e.g. tax evasion) to food (e.g. nutritional information). Thus, if rule of law is feeble, one mechanism to cope with this may be to heavily rely on trust and act accordingly. Consequently, in most cases fulfilling trust will be rational as actors are dependent on it and betrayals may lead to a permanent loss of perceived trustworthiness: Trust results in higher long-term benefits than betrayal.

This line of thinking is not entirely new when considering theoretical and empirical literature on trust. Cook et al. (2005: 155) state: "The backdrop of state-enforced law creates a context in

which individuals feel safe to begin to take risks [...] without having to rely on trust". Following this line of thinking, a strong rule of law reduces the inherent risks of interactions, hence rendering them more likely to take place: be it with or without trust between the parties (Cook et al. 2005: 155f., 187).

Empirical evidence for this does exist: Letki and Evans (2005: 522) find that institutional conditions, in their case democratization of post-communist states, affected levels of trust. The found effect was negative with democratization reducing levels of trust. They then argue that generalized trust drops as soon as nations reach a certain degree of institutional quality: trust is crowded out (Letki and Evans 2005: 524). Institutional inefficiency and high levels of generalized trust consequently go hand in hand because the latter to some extent replaces property rights, contract law and other formal institutional arrangements designed to regulate cooperation. This is in line with the experimental findings of Bohnet et al. (2001) who state: "When contracts are completely specified, interpersonal trust is replaced by institutional trust in the legal system" (ibid., 141). They arrive at this conclusion by investigating contract breaches and trust levels in a laboratory setting with external sanctions for non-cooperation.

2.3 Hypothesis

In conclusion, high quality of rule of law takes up functions of generalized trust. It thereby ensures interactions and processes that would otherwise have been safe-guarded by trust. The concepts and findings presented above lead me to the following hypothesis:

Higher quality of rule of law reduces the probability of generalized, social trust.

I do not maintain that this can be generalized so that more rule of law automatically equates fewer generalized trust. Critics may argue that rule of law renders a positive outcome of the calculative assessment of the trustworthiness of others more likely (cf. Möllering 2006a, Möllering 2006b). Individuals then develop a habit of trusting each other. An example of this could be seen in Sweden and other Scandinavian countries (Delhey and Newton 2005). To refute this, I argue that in those cases other institutional variables like social structure and cultural norms play an important role superseding the influence of rule of law. For example, Sweden's comparably small cities - its capital Stockholm only has around 900,000 inhabitants - and villages may foster generalized trust. Therefore, it is important to control for macro-level factors like population and GDP varying by country as they affect generalized trust and rule of law (s. Chapter 4).

Adding to this, my hypothesis can also be viewed through the eye of transaction cost theory (Williamson 2005; Bromiley and Harris 2006). Trust (and in this case especially trustworthiness) provides a sense of security, thereby reducing the costs of interactions - a function otherwise taken by a functioning legal system. Using a different theoretical perspective, one could argue that trust

and rule of law both help to reduce complexity. If rule of law falls short, trust has to step in (cf. Luhmann 2014).

Naturally, I do not assume that this replacement is characterized by the same high efficiency as an excellent rule of law. For example, interactions between partners that have little knowledge of each other may become more complicated (e.g. in different regions or of different ethnicities). Clearly, rule of law and economic prosperity are generally positively related (cf. e.g. Acemoglu and Robinson 2013). Cook et al. (2005: 151) argues: “rules and institutions [...] may be more successful in eliciting cooperation and compliance from citizens and subjects”. Moreover, a lack of rule of law may still result in a surge in serious trust-breaching behavior like crime.

Corroborating this, the correlation between homicide rates and rule of law is -0.29 in my data. Still, a surge in heavy trust-breaching behavior like crime does not have to correlate heavily with low levels of generalized trust: It is possible to mistrust certain individuals while preserving a general sense of trust for the majority of fellow citizens.

3 Data

I argue that there are at least two levels to my analysis: The micro-level (individual-level data) and the macro-level (national-level data). This requires special attention when choosing the statistical method (s. Section 4) but also when choosing data sources. Hence, this section quickly elaborates on data sources and measurement of the dependent and independent variable of interest. I then turn to succinctly explain important control variables.

Individual-level data is taken from WVS6. The World Values Survey is a widely used source for similar investigations (e.g. Wang and Gordon 2011; Bjørnskov 2007; Paxton 2007) as it offers cross-national comparative data. The sixth wave is the latest round available with the final dataset published on 01.01.2016. Respondents were questioned in the years from 2010 to 2014. In total, 90350 respondents from 60 diverse countries can be found in WVS6. These provide a sample that offers high variance within the dependent variable as well as all covariates.

However, various macro-level variables had to be added from different data sources. An overview of these can be found with the variable list (s. Appendix). These were added manually and then matched according to the survey year in respective countries, mostly employing one-year timelags. For example, individuals in Japan were surveyed in 2011: thus, only country-level data from this year or the year before was used in the analysis. Variables varying by year were lagged by one year as I assume that individuals react to changes of macro-level variables with a certain kind of delay. Nevertheless: As country-level variables values by year are often autocorrelated and only seldom display structural breaks, the discrepancies between analyses with non-lagged and lagged variables are small. Similar research has often ignored this issue which may have led to unreliable

results as individual data is not attributed to the corresponding year (Paxton 2007; Wang and Gordon 2011; Jen et al. 2010).

Almost all country level variables were unavailable for Taiwan, Hong Kong and the West Bank/Gaza Strip. Employment status was not surveyed in Argentina, specific trust questions used for constructing a trust index were not asked in New Zealand (see online documentation at World Values Survey 2016). Therefore, respondents from these countries are not represented in my analysis when the corresponding variables were used.

For a discussion of the control variables used, please refer to Section 7.5: Control Variables. In general, I selected control variables that have been shown to exert a significant effect on my independent variable (Rule of Law) and dependent variable (Generalized Trust).

3.1 Measurement: Generalized Trust

To measure trust, I use the WVS6's question item "Generally speaking, would you say that most people can be trusted or that you have to be very careful in dealing with people?", equaling one if respondents answer that "Most people can be trusted" and zero for the response "Need to be very careful". Virtually all cross-national studies examining generalized trust (e.g. Paxton 2007; Wang and Gordon 2011; Bjornskov 2007) use this measure.

Of course, this question also entails aspects of trustworthiness: It is a truism that respondents are only going to place trust in generalized others if they perceive them as trustworthy. Thus, the item also contains an assessment of trustworthiness. However, this relation is only indirect - at its heart the respondent still has to evaluate his or her own, personal trust level. Keeping this in mind, Hardin's criticism does not apply here (Hardin 2002: 29). Rather, the concepts of trust and trustworthiness are intertwined - neither rendering trustworthiness nor trust empirically useless in this regard (Weibel 2008: 502).

In WVS6 25 percent of all respondents (2427 responses are missing) answered that most people could be trusted. The rates deviate greatly between the different countries with 64 percent of respondents answering positively in Sweden, but only three percent doing so in the Philippines. This study also aids in explaining these stark discrepancies.

3.2 Measurement: Rule of Law

In order to expand on the short definition of rule of law given above (s. Chapter 2), I draw on the fourteen criteria for "Rechtsstaat" outlined by Lauth (2001: 33). These are:

1. General laws (not ad personam)
2. Publicly promulgated laws
3. Prohibition of retrospective laws

4. Understandable and unambiguous laws
5. Absence of contradiction between laws
6. Absence of materially impossible laws
7. Stable process of legislation
8. Proportionality in legislation
9. Equality before law
10. Everyone is subject to legislation
11. Independent and functioning judicial control
12. Existence of due process
13. Existence of indemnity legislation
14. Absence of arbitrary state action

While this list is rather exhaustive, I argue that it accurately represents the concept. Analyzing indicators tackling the concept, Skaaning (2010: 7) finds three empirical core dimensions of rule of law commonly used: “functioning of the legal system, personal integrity rights, and preservation of order”. The latter does not, in my opinion, represent rule of law: Order can very well be preserved without rule of law. Moreover, the definition given by Lauth (2001) does not support the inclusion of this dimension.

I have chosen the rule of law index provided by Freedom House (Freedom House 2017) as it measures most of the criteria mentioned above without going beyond them. The Freedom House rule of law indicator forms part of the larger “Freedom in the World” project. It is one indicator used to assess political rights and civil liberties. According to Freedom House (2017) over 100 internal and external experts assess nations of the world according to criteria largely based on human rights. These scores are based on “news articles, academic analyses, reports from nongovernmental organizations, and individual professional contacts” (Freedom House 2017). The scores given by these experts are reviewed and agreed upon by regional panels. Concerning the rule of law indicator, up to 16 points are awarded. The relevant criteria are an independent judiciary, prevalence of rule of law, absence of political persecution and sufficient minority rights (Freedom House 2017; Skaaning 2010).

Alternative indicators were considered but discarded. Mentioning one prominent example in academic literature, the World Governance Indicator Rule of Law by the World Bank (Kaufmann et al. 2011) was not utilized as it includes assessments of the likelihood of violence and trust in

government (Skaaning 2010: 7). Adhering to the definition above these dimensions do not belong to the concept of rule of law. Instead, they constitute distinct dimensions of general security and political trust. Nevertheless, both of these factors are represented individually as independent control variables in my analysis.

The mean of the Freedom House rule of law indicator is at 8.03 with a standard deviation of 4.63 - Sweden is the only country to score 16 points while two countries (Uzbekistan and Iraq) received zero points. Unfortunately, Freedom House does not publish any information on which criteria remain unmet in individual countries. Thus, only general conclusions on rule of law levels can be drawn. Finally, Figure 1 provides a view of levels of rule of law and generalized trust in different countries.

3.3. Measurement: Control Variables

For reasons of parsimony, I refrain from introducing all control variables used in the analysis. Nevertheless, national-level variables and their underpinnings will be presented concisely so that the reader is able to grasp their relationships in context. For a fairly extensive overview of micro- and macro-level variables commonly used in trust research, I recommend Bjornskov (2007). Using the framework presented above (Chapter 2), these macro-level control variables mostly concern the institutional dimension.

Gross Domestic Product (GDP): There is ample evidence connecting high levels of trust and GDP (Delhey and Newton 2005; Knack and Zak 2003; Knack and Keefer 1997; Helliwell and Putnam 1995).¹⁷ However, for instance Bjornskov (2007: 10-15) does not find any significant effects. For this analysis, I included GDP measures made available by the World Bank (Kaufmann et al. 2011). Correlation between GDP per capita standardized with Purchasing Power Parity (PPP) and generalized trust takes on a modest, significant value of 0.3. This rises to 0.53 when solely using GDP per capita. Avoiding multicollinearity, I use the former version as in Bjornskov (2007). Moreover, average wealth is more accurately depicted when standardized with PPP. Finally, I account for the skewedness of the GDP-variable by taking natural logarithms.

Inequality: Bjornskov (2007: 5f.) states that income (in)equality is “among the most robust cross-country determinants of trust” as equality “reduces the social distance”. Knack and Zak (s.a. 2003); Uslaner (s.a. 2002); Paldam (s.a. 2009); Bjornskov (s.a. 2007) all find that high inequality negatively affects trust. However, these publications use the Gini index as their measure of choice which seems somewhat inadequate as they base their argumentation on trustees' views on inequality rather than the level of equality actually present in a country (Nannestad 2008: 426). Although there is no obvious direct relationship between rule of law, one could argue that it tends to prevent individuals from enriching themselves at the cost of others which in turn reduces social distance.

Therefore, I have included variables measuring inequality in my analysis. However, in addition to its relative inadequateness, the Gini index resulted in a severe drop in observations because data on numerous countries was not available. Mostly, these were developing nations which caused an overrepresentation of industrialized states. Thus, generalization was not possible. To eliminate this issue, I used the most recent years available for various nations. Of course, this process is questionable - surely, inequality levels change over time. Thus, I tested models with and without Gini-values. Generally, there were no drastic changes in coefficients and p-values (s. Chapter 5). Inequality shows a moderate, significant correlation of -0.17 with the rule of law indicator.

Religion: While the findings on the effect of religion are somewhat unclear, they nevertheless point to significant effects (La Porta et al. 1997: 333; Knack and Keefer 1997; Uslaner 2002). Without going into too much detail, the discussion on this factor touches issues of cultural hierarchies (Bjornskov 2008: 6). Often, different religions are associated with different levels of rule of law: In my sample for instance, predominantly Muslim countries on average score 4.15 on the rule of law indicator. This is four points lower than the global average.

Eastern Europe: I include a dummy for Eastern European states - according to Paldam and Svendsen (2000) as well as Paldam (2009) these are shaped by former communist-soviet dictatorship (s.a. Jacob and Tyrell 2010). These former Soviet states are often characterized by high distrust of state institutions (Cook et al. 2005: 165). Nevertheless, for WVS6 nations the average level of rule of law is quite close to the grand mean (7.02). Although China could also be included here, other cultural traits may be more important in its case. These are to some extent captured by controlling for religion.

Corruption: Although corruption highly correlates with rule of law (0.75), I expect a different direction of the effect for corruption: High levels of corruption reduce trust in others as they devalue general impressions of trustworthiness (Uslaner 2002). Due to corruption, trustors assume that others - be it in politics or business - regularly breach trust (Cook et al. 2005: 158f.). Moreover, corruption may be based on so-called particularized or bonding trust creating in-groups which in turn hampers generalized or bridging trust between various groups (cf. Helliwell and Putnam 1995). Recent findings have often confirmed this hypothesis (Paldam 2009; Uslaner 2002; Bjornskov 2007). I measure corruption with the commonly used corruption perception index published by Transparency International where scores within the range from 0 (highly corrupt) to 100 (very clean) are assigned to countries (Sampford et al. 2006; Transparency International 2016).

Several other additional national-level control variables not described below were added and tested. These include ethnic fractionalization (Alesina et al. 2003; Bjornskov 2008: 5f.), social diversity (Okediji 2005) and homicide rates (e.g. Paxton 2007). However, all these variables did not

contribute to my models: They were neither significant, nor did they change significance and direction of the rule of law variable. As a final note, the use of the variables of trust in courts and the police are used to present the notion of political trust (s. e.g. Sonderskov and Dinesen 2016: 188f.): Critics may deem trust in parliament or the ruling party more appropriate. However, the inclusion of nations like the Russian Federation, China, Belarus, Jordan, Qatar and Zimbabwe renders these items somewhat useless as some are monarchies or authoritarian regimes. This is why responses to these items cannot be trusted and/or the political system does not include parliaments.

The results of my analysis may also contribute to the discussion on the variables mentioned above as I am employing multilevel modelling techniques accounting for dependent observations within countries and rely on new data. Nevertheless, I do not extensively consider methodological and theoretical issues associated with these variables.

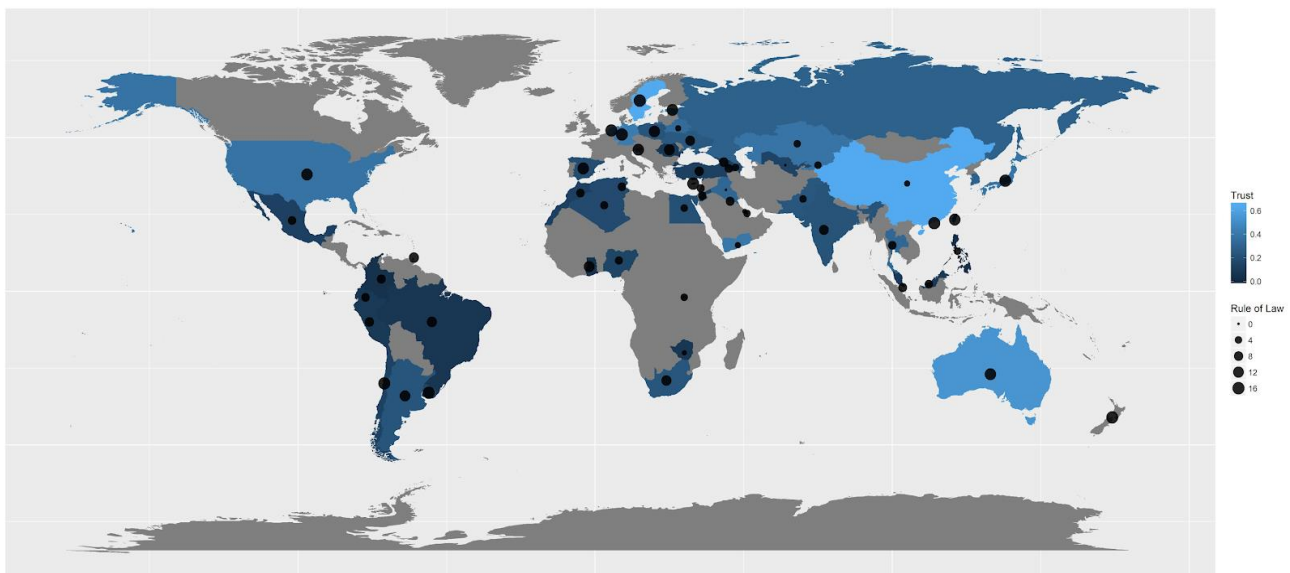


Figure 1: Quality of Rule of Law (World Bank Indicator, bubbles) and Average Generalized Trust by Country (WVS6)

4 Method

As I consider at least two levels of analysis (individuals and nations) I employ multi-level modelling grouping respondents within their countries. Thereby, I take note of having dependent observations. Alternatively, dummies for nations could have been used. However, my interest lies in examining effects on the total population and not country effects on trust. Snijders (2011: 46f.) recommends multilevel modelling in this case.

I examine individuals observed in various nations. Assuming that the respondents were subject to specific country-effects, I cannot assume that pooling all observations, i.e. considering them independent, is appropriate. As an example of this, respondents in Russia may all be influenced

by the country's communist past - this is definitely not the case for Sweden with its democratic history. As this violates basic assumptions for common linear estimators like Ordinary-Least-Squares, I utilize multilevel analysis for my analysis. Statistically speaking, considering all observations as independent would in most cases lead to an overestimation of significance levels and R^2 -values, as well as an underestimation of standard errors (Bickel 2008: 34). This is because data will suffer from heteroskedasticity as standard deviations of the error terms will not be constant but collectively influenced by country-level variables. Bickel (2007: 33) calls this "nesting-engendered intraclass correlation". While heteroskedasticity is not an issue when conducting logistic regression, the dependence of observations still is (Hosmer et al. 1991: 1632). As explained above, the data used for this investigation is indeed nested and accordingly will display these conspicuities.

Multilevel regression allows for random parameters in the regression model: these can be either intercepts or slopes varying by certain groups - in my case nations. The simplest case is a model including only random intercepts. This entails the assumption that observations in groups generally have different levels of the dependent variable to begin with (Snijders 2011: 46). The intercept then denotes the value of the dependent variable within a group with all independent variables' value at zero. Still, this model assumes that the relationship between the dependent and independent variables is the same for each group. In my case, random intercepts thus implicate a different level of trust in nations. Adding random coefficients, i.e. varying slopes in groups for certain parameters, then assumes that specific variables' effects differ between groups. Of course, random slopes cannot be added for variables measured at the highest hierarchical level as there will be no variance within those groups.

Hence, in my case random slopes are of limited use and I focus on random intercepts as rule of law is measured at the highest-level, namely the national-level. Still, models fit with random slopes for various micro-level variables could improve model fit and may lead to different conclusions. However, at some point they become computationally expensive with model estimation times becoming extremely long. Accounting for the fact that individual level variables are not the main interest, I limited my models to two random slopes (always combined with random intercepts) at most.

As the dependent variable is binary (1 = "Most people can be trusted", 0 = "Cannot be too careful") logistic multilevel models were estimated using the statistical open-source software R (R Core Team 2017). In particular, multilevel models were estimated using the package „lme4“ (Bates et al. 2015) sometimes using optimizers contained in the package "optimx" (Nash et al. 2011).

Model specification was done by fitting the full model with all available, relevant variables. Insignificant control variables were then dropped in order to achieve parsimony checking for

changes in significance and direction of the relevant rule of law coefficient. This process was done using only random intercepts. Random slopes of various micro-level variables were then tested (the strategy resembles the one proposed by Hox 2010: 51f.). Following, Likelihood-Ratio-tests provided evidence for keeping or dropping the specific random parameter. Eventually, several different specifications did not result in salient changes in the parameter of interest.

Finally, Barr et al. (2013) recommend using “maximal” models with all random slopes possible. Although Bickel (2007: 165) considers them of limited use due as they use up degrees of freedom and are computationally expensive, I included them into my analysis.

Convergence initially failed for some model specifications. Thus, several optimizers were compared observing convergence and parameter values. Coefficients varied very little between different optimizers, even if those optimizers did not converge. Moreover, no changes in direction of coefficients were observed for the different optimizers. For the models presented, I use lme4's default combination of Nelder-Mead and Bobyqa optimizers (Bates et al. 2015).

5 Results and Interpretation

The results of several models reported in Table 1 support my main hypothesis: Rule of law, measured with the Freedom House Index, does indeed show a significant, negative effect on generalized trust. Interestingly, the coefficient does not vary greatly oscillating around 0.32. Converted into odds, this means that with every increase of the rule of law variable by 1, the odds of generally trusting increase by 1.6, all else equal.

Table 1 presents several models: Model 1 is the full model, with all variables included. Model 2 is the same model, only that the inequality measure (Gini) is excluded as some of the values rely on time points falling before the WVS6. Model 3 was stripped of insignificant variables (except gender which was determined to be demographically important). Only random intercepts were estimated for these three models. Model 4 then shows the results of a three-level regression: individuals nested in religious groups nested in nations. However, this model did not present a significant improvement in comparison to Model 3.

Random coefficients for educational level were added in Model 5. For Model 6 this was done with income. Finally, Model 7 presents random slopes for both education and income (s.a. Wang 2011). This model was determined, via Multiple-Likelihood-Tests, to be superior to the ones with only one random coefficient. For reasons of clarity, the nominal variables of employment and marital status are not reported as they did not contain any notable results differing from previous works. Moreover, marital status was excluded from all models except Model 1 and 2.

Model fits were examined using the Akaike Information Criterion (henceforth: AIC), the Bayesian Information Criterion (henceforth: BIC) and Likelihood-Ratio-Tests to test the usefulness

of different random slope configurations (s. Snijders 2011). Evidently, the full model (Model 1) fits the data best. As this is not an exercise in accurate prediction of trust levels, however, I eliminated insignificant, non-essential variables. This greatly increased the number of observations and nations that could be used for estimation. Moreover, models considering a medium level of religions (subdivided into Catholic, Orthodox, Protestant, Muslim and Other) did not achieve any improved results as AIC scores were higher and Likelihood-Ratio-Tests insignificant.

Interestingly, the coefficient of corruption consistently stays positive. Although rule of law and corruption are highly-correlated (0.75), excluding corruption from the analysis did not produce any different results concerning the rule of law indicator. High levels of corruption do indeed negatively impact generalized social trust (s. Appendix: Control Variables).

The random coefficients for income varying by country in Model 4 range from -0.18 (Thailand) to 0.13 (Uzbekistan). I speculate that this can be attributed to different security situations in nations: If theft and robbery become more probable, wealthier individuals may consider trusting costlier as they fear to lose their property. Still, generally the fixed parameter is positive and highly significant. A possible reason could be that individuals have developed a successful habit of trusting. While this relationship has not been a focus of this study, further investigations could lead to interesting results as other lines of thoughts can be devised.

GDP does not seem to have a clear effect. In Models 3 and 6 the coefficient is significant at the 10 percent level - however, the strongest models contradict this. Thus, my analysis supports Bjornskov's findings that GDP does not seem to predict trust levels. The general wealth of nations does not affect the propensity of trusting one's compatriots in general. The same goes for income inequality: The coefficient only reaches significance at the 5-percent level in Model 4. Still: For both coefficients the direction of effects remains stable with the expected direction.

At first sight, Eastern Europe's post-communist heritage does indeed still seem to affect trust levels: Only the models with religious groups as a third meso-level do not show significance. However, the effect is reversed. Instead of reducing the propensity to trust, as previous literature has found (s. Chapter 2), belonging to an Eastern European state increases the probability of trusting when considering these models. It does not lie within the scope of this work to delve into reasons for this, but I speculate that this is due to other common features that are often shared by Eastern European states. These factors then are unwittingly included in the dummy-variable.

Table 1: Regression Results

	<i>Dependent variable:</i>						
	Generalized Trust						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Gender	0.142*** (0.018)	0.111*** (0.016)	0.142*** (0.016)	0.143*** (0.016)	0.137*** (0.016)	0.137*** (0.016)	0.133*** (0.016)
Age	0.040 (0.027)	0.031 (0.024)	0.038 (0.023)	0.038 (0.023)	0.049** (0.023)	0.033 (0.023)	0.044* (0.024)
Feeling of Safety	0.005*** (0.001)	0.005*** (0.001)	0.006*** (0.001)	0.006*** (0.001)	0.005*** (0.001)	0.005*** (0.001)	0.005*** (0.001)
Education	0.223*** (0.017)	0.186*** (0.015)	0.236*** (0.015)	0.237*** (0.015)	0.228*** (0.015)	0.229*** (0.015)	0.224*** (0.015)
Citysize	0.055*** (0.006)	0.049*** (0.006)	0.053*** (0.005)	0.053*** (0.005)	0.065*** (0.015)	0.053*** (0.005)	0.063*** (0.014)
Importance of Religion	-0.007 (0.006)	-0.013** (0.005)					
Income	0.041*** (0.014)	0.061*** (0.013)	0.037*** (0.013)	0.037*** (0.013)	0.031** (0.013)	0.039*** (0.013)	0.033*** (0.013)
Community Organization Membership	0.061*** (0.006)	0.042*** (0.006)	0.065*** (0.005)	0.065*** (0.005)	0.063*** (0.006)	0.069*** (0.013)	0.066*** (0.012)
Number of Kids	0.319*** (0.031)	0.261*** (0.027)	0.301*** (0.027)	0.300*** (0.027)	0.294*** (0.027)	0.284*** (0.027)	0.283*** (0.027)
Trust in Police	0.021** (0.010)	0.010 (0.009)					
Trust in Courts	0.129*** (0.018)	0.121*** (0.016)	0.133*** (0.016)	0.133*** (0.016)	0.134*** (0.016)	0.133*** (0.016)	0.134*** (0.016)
GDP (logged)	0.339 (0.210)	0.148 (0.168)	0.321* (0.193)	0.242 (0.224)	0.234 (0.193)	0.292 (0.195)	0.143 (0.190)
Income Inequality	-0.023 (0.019)		-0.024 (0.016)	-0.031** (0.015)	-0.021 (0.016)	-0.025 (0.016)	-0.020 (0.015)
Corruption	0.085*** (0.011)	0.084*** (0.010)	0.079*** (0.010)	0.082*** (0.009)	0.077*** (0.009)	0.079*** (0.010)	0.078*** (0.009)
Rule of Law (FH)	-0.348*** (0.041)	-0.325*** (0.038)	-0.329*** (0.037)	-0.343*** (0.035)	-0.325*** (0.037)	-0.314*** (0.037)	-0.311*** (0.036)
Eastern Europe	0.757** (0.362)	0.929*** (0.334)	0.663** (0.325)	0.480 (0.319)	0.689** (0.314)	0.771** (0.338)	0.856*** (0.318)
Predominant Religion: Catholic	-0.001 (0.493)		-0.317 (0.391)		-0.234 (0.376)	-0.442 (0.394)	-0.474 (0.377)
Predominant Religion: Muslim	0.398 (0.614)		0.049 (0.496)		0.332 (0.514)	-0.056 (0.489)	0.301 (0.489)
Predominant Religion: Orthodox	0.145 (0.605)		-0.223 (0.522)		-0.091 (0.515)	-0.417 (0.533)	-0.324 (0.508)
Predominant Religion: Other	1.321** (0.625)		0.749 (0.496)		1.000* (0.521)	0.447 (0.536)	0.663 (0.517)
Intercept	-7.804*** (1.940)	-6.208*** (1.436)	-7.178*** (1.853)	-6.272*** (2.025)	-6.554*** (1.816)	-6.927*** (1.877)	-5.787*** (1.769)
Observations	48,489	58,080	61,142	61,142	61,142	61,142	61,142
Log Likelihood	-21,860.690	-26,785.430	-28,253.160	-28,256.120	-28,154.530	-28,184.990	-28,110.080
Akaike Inf. Crit.	43,785.380	53,624.860	56,560.330	56,560.230	56,367.050	56,427.980	56,284.160
Bayesian Inf. Crit.	44,066.630	53,867.040	56,803.890	56,776.740	56,628.660	56,689.580	56,572.830

Note:

*p<0.1; **p<0.05; ***p<0.01

Finally, the predominant religion of a country (with the reference level of Protestantism) does not seem to play a very important role. Only the category “Other” is significant in the full model (Model 1). However, this is insubstantial, since the category collects a great variety of countries. The conclusions by Delhey and Newton (2005) concerning religious groups thus cannot be confirmed.

6 Conclusion

This study is the first to address the impact of rule of law on generalized trust. The effect is found to be significantly negative and consequently supports my hypothesis. As a reason for this, I suppose that efficient and fair laws as well as regulations can surrogate trust. The process behind this could be described as crowding out (s. e.g. Meidert and Wiemann 2016). As rule of law safeguards societal transactions, trust between different parties is no longer necessary. Consequently, this study contributes to the current debate on the nexus of (in)formal institutions and trust (e.g. Nannestad 2008) buttressing findings and results by Letki and Evans (2005); Bohnet et al. (2001) and Cook et al. (2005). Additionally, the models presented here provide further empirical indications on the effect of various indicators of interest to contemporary trust literature (e.g. Bjornskov 2007). Finally, the use of current data in the form of the World Values Survey 6 and national-level data constitutes an improvement over past research - as is the case for the chosen method of multilevel modelling which accounts for observational dependency within countries.

Despite these consistent results, I do not claim that a high level of rule of law impairs societal interaction just because it reduces the probability of trusting. Governments should not reduce rule of law just to reap the benefits of high levels of trust - on the contrary: As was curtly argued in Chapter 2, rule of law may be more effective in eliciting cooperation than trust is. Moreover, the two concepts are not mutually exclusive. The example of Sweden scoring one of the highest values in rule of law and trust at the same time makes this clear. Instead, this research poses a challenge to explanations that in some cases almost have become commonplace: Maybe the sup-posed loss of trust in the United States and other developed countries (cf. Putnam 1995) is not that precarious when accompanied by similar mechanisms that negate trust's necessity (s.a. Cook et al. 2005: 164f.)? Here, further investigation, into the interplay of different factors and causal mechanisms is appropriate. This research may also uncover if and how mediating and confounding variables may produce cases like Scandinavia where both measures are very high. Comparative methods like case studies, qualitative comparative analysis and time series are especially suitable for this.

Nevertheless, some restrictions apply and the results of my analysis should be taken with caution. These limitations mainly concern questions of endogeneity and validity of the rule of law indicator. I address these objections in detail in the appendix. These limitations could be resolved by

using different rule of law indicators, panel data and adequate instrumental variables. Moreover, a different set of countries could lead to more robust assertions.

7 Appendix

The following paragraphs will assess criticism that applies to the chosen design. This includes both the validity of rule of law and trust measures, as well as problems of endogeneity. Moreover, I present robustness checks using linear models with an index measuring generalized trust.

7.1 Validity: Rule of Law

While the results presented above hold for a broad range of model specifications, this is not the case when employing different indicators measuring the rule of law. As reported in Table 2 the same models with the rule of law indicator published by the World Bank as part of the World Governance Indicators achieve different results (Kaufmann et al. 2011): Albeit insignificant, the coefficient is consistently positive. Interestingly, the correlation coefficient for both measures is 0.8 and highly significant. This may also be due to the World Bank Indicator using Freedom House as one of its sources. Nonetheless, the regression results in Table 3 show opposite effects - if linear models are used the results are significant.

However, the validity of rule of law measures in general is contested. Davis (2004) states two basic objections. Firstly, indicators could include items that do not necessarily measure only legal aspects. Moreover, often indicators include variables that describe “products of interaction between both legal and non-legal factors” (Davis 2004: 146f.). An example of this can be found in the measure published by the World Bank which includes survey questions like “Have you been a victim of a crime?” and similar ones (World Bank 2017). This concerns absence of harm and violence - an aspect which according to the definition given above (Chapter 2) is excluded from rule of law. Moreover, the World Bank has faced criticism for advancing Western (business) interest and a bias for neoliberalism (Skaaning 2010: 4, Uvin 2002: 4, Moore 2007). Although this criticism in itself seems somewhat ideologically tinted, it may reflect a bias towards liberal countries.

Furthermore, contradictory results with different indicators are fairly common. Nannestad (2008: 425) states: “One reason for these somewhat contradictory results from studies on the relationship between institutions and generalized trust might well be that different researchers are relying on different operationalizations”. This may very well be the case for the Freedom House and World Bank indicators: Not only do the measures vary in their composition, the definition of the World Bank is broader than what is measured by the Freedom House indicator:

“Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society” (World Bank 2017)

Thus, including enforcement of laws, confidence in executive and judicial branches as well as the absence of violence and crime, the World Bank indicator is extremely broad. My analysis includes these factors as control variables where they consistently show expected effects (e.g. higher feelings of security lead to more trust). With these measures aggregated in the World Bank Indicator, it becomes inaccurate. This then may explain the differing results: With security, political trust and other items obscuring rule of law, it is no wonder that coefficients may become positive.

While the criteria provided by Freedom House are more precise, the organization does not provide a definition of rule of law. Nevertheless, their evaluation criteria is easily combined with existing definitions (s. Chapter 2). Still, the available data on methodology provided by Freedom House is sparse (cf. Freedom House 2017). How exactly ratings were determined each year and by whom is not made available. In contrast, the World Bank indicator publishes almost all primary data. Examining the sources, the use of enormously diverse indicators supports the thesis of relative vagueness as a smorgasbord of indicators is utilized. For instance, one indicator examines access to water for agriculture and another the cost of organized crime. The total number of representative indicators combined amounts to eight, rising to 22 with non-representative sources (World Bank 2017).

Skaaning (2010: 5, 13) states that the Freedom House measure “reflect[s] the practices of the government/state and its agents” (ibid, 5) in contrast to the World Bank Indicator which provides a general estimate of the condition taking into consideration crime levels and obedience towards the law. He is able to prove his theoretically grounded views via factor analysis. While crime and law-obedience of course are also relevant to questions of trust, I argue that the aspect was covered by including items of political trust (trust in courts, trust in police²⁸) as well as controlling for homicide levels. Furthermore, the World Bank indicator will combine, due to its aggregative nature, different sets of indices for different countries depending on availability. This raises doubts concerning the comparability of scores - which is precisely important for my work (Kaufmann et al. 2008: 5f., Knack 2006: 18).

Nevertheless, Freedom House has been criticized for its liberal bias exaggerating levels of rule of law in countries politically close to the United States (Skaaning 2010: 4, Barahona 2007). To some extent, this can be used to criticize the results presented in this paper as for example the United States typically displays relatively low levels of trust (Putnam 1995).²⁹ Furthermore, the codebook of the Freedom House Indicator resembles a checklist only listing criteria to fulfill. Still: This is not any different for most indicators except the World Bank Indicator which I have discarded for the reasons mentioned above (Skaaning 2010: 11).

Hence - while the above shows that most rule of law indicators seem to be flawed - alternative measures could invalidate or support the found results. Since extensive evaluation of different rule of law indices was not within the scope of this work, this opens up possible avenues for future research. Furthermore, changing results with different indices unfortunately seem to be normality and not rarity as Skaaning (2010: 14) demonstrates.

A final limitation could be that measuring the quality of institutions as a whole may simply be too broad: Trust levels may very well depend on the type of institutions. Various theoretical schools could be examined here, ranging from Lijphart's "Worlds of Welfare" to Acemoglu and Robinson's extractive and inclusive institutions. This is supported by the results of Kumlin and Rothstein (2003): They find that trust in Sweden increases if subjects had contact with institutions related to universal welfare and decreases if subjects had contact with institutions related to means tested welfare. Thus, it could be the case that contact with types of institutions may lead to more nuanced results than simply measuring the quality of institutional contexts.

7.2 Endogeneity

One key limitation to this work may be constituted by issues of endogeneity, i.e. intertwined relationship between the independent and dependent variable. Nannestad (2008: 419) has criticized this in the context of trust research. Thus, the relationship between trust and rule of law may not be as clear as supposed: The existence of high levels of trust may impede the creation of strong institutions. Similar relationships can be thought of when considering other variables like association membership (Sonderskov 2011a), inequality (Bjornskov 2008: 5f.) as well as political trust (Sonderskov and Dinesen 2016; Uslaner 2004). For institutions, Uslaner (2002: 218f.) argues that "trusting societies develop strong legal systems that gain the confidence of citizens. The opposite dynamic - strong legal systems leading to greater trust - does not hold". Although this study does not offer any evidence on the emergence of legal systems, the catalyst of high trust remains doubtful. Still, the statement that strong legal systems do not lead to high trust stay valid in light of the findings presented above (Chapter 2): The converse is true. The issue of trust conditioning rule of law rests unsolved in this regard.

Tackling the endogeneity problem, instrumental variables and controlled experiments may provide a remedy (Nannestad 2008: 416). In a similar study by Berggren and Jordahl (2006), this was attempted by using instrumental variables in cross-country regressions. Future research could investigate the issue further thereby improving the reliability of subsequent models.

Table 2: Models with Rule of Law Indicator by World Bank

	<i>Dependent variable:</i>						
	Generalized Trust						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Gender	0.041 (0.027)	0.031 (0.024)	0.037 (0.023)	0.037 (0.023)	0.048** (0.023)	0.032 (0.023)	0.043* (0.023)
Age	0.005*** (0.001)	0.005*** (0.001)	0.006*** (0.001)	0.006*** (0.001)	0.005*** (0.001)	0.005*** (0.001)	0.005*** (0.001)
Feeling of Safety	0.210*** (0.017)	0.175*** (0.015)	0.225*** (0.015)	0.225*** (0.015)	0.218*** (0.015)	0.218*** (0.015)	0.213*** (0.015)
Education	0.053*** (0.006)	0.047*** (0.006)	0.051*** (0.005)	0.051*** (0.005)	0.068*** (0.015)	0.052*** (0.005)	0.066*** (0.014)
Citysize	-0.005 (0.006)	-0.011** (0.005)					
Importance of Religion	0.048*** (0.014)	0.067*** (0.013)	0.044*** (0.013)	0.044*** (0.013)	0.037*** (0.013)	0.046*** (0.013)	0.039*** (0.013)
Income	0.061*** (0.006)	0.042*** (0.006)	0.064*** (0.005)	0.064*** (0.005)	0.062*** (0.006)	0.069*** (0.013)	0.065*** (0.012)
Community Organization Membership	0.342*** (0.030)	0.280*** (0.027)	0.319*** (0.027)	0.319*** (0.027)	0.312*** (0.027)	0.302*** (0.027)	0.301*** (0.027)
Number of Kids	0.017* (0.010)	0.008 (0.009)					
Trust in Police	-0.135*** (0.018)	-0.127*** (0.016)	-0.138*** (0.016)	-0.138*** (0.016)	-0.139*** (0.016)	-0.138*** (0.016)	-0.139*** (0.016)
Trust in Courts	-0.142*** (0.018)	-0.110*** (0.016)	-0.142*** (0.016)	-0.143*** (0.016)	-0.137*** (0.016)	-0.137*** (0.016)	-0.133*** (0.016)
GDP (logged)	1.617*** (0.345)	0.997*** (0.289)	1.084** (0.503)	1.143*** (0.394)	1.181** (0.515)	0.968*** (0.289)	1.063** (0.419)
Income Inequality	0.007 (0.025)		-0.006 (0.023)	-0.007 (0.021)	-0.010 (0.022)	-0.009 (0.019)	-0.011 (0.020)
Corruption	-0.556* (0.309)	-0.162 (0.220)	-0.312 (0.317)	-0.332 (0.283)	-0.302 (0.305)	-0.177 (0.256)	-0.213 (0.285)
Rule of Law (WB)	0.453 (0.464)	0.284 (0.359)	0.470 (0.383)	0.255 (0.416)	0.519 (0.391)	0.607 (0.386)	0.604 (0.395)
Eastern Europe	-1.101* (0.621)		-0.968** (0.457)		-0.853* (0.468)	-1.080** (0.446)	-0.971** (0.472)
Predominant Religion: Catholic	-0.342 (0.747)		-0.055 (0.580)		-0.290 (0.633)	-0.207 (0.545)	-0.320 (0.607)
Predominant Religion: Muslim	-1.313* (0.740)		-1.070* (0.599)		-1.154* (0.621)	-1.297** (0.597)	-1.286** (0.611)
Predominant Religion: Orthodox	0.560 (0.764)		0.455 (0.608)		0.181 (0.640)	0.070 (0.617)	-0.003 (0.644)
Predominant Religion: Other	-17.292*** (3.393)	-11.823*** (2.753)	-12.250** (5.143)	-13.083*** (3.929)	-13.087** (5.089)	-10.985*** (2.925)	-11.911*** (4.112)
Observations	48,489	58,080	61,142	61,142	61,142	61,142	61,142
Log Likelihood	-21,914.740	-26,839.220	-28,313.360	-28,318.580	-28,211.810	-28,244.410	-28,168.420
Akaike Inf. Crit.	43,891.490	53,730.430	56,678.720	56,683.160	56,479.610	56,544.820	56,398.840
Bayesian Inf. Crit.	44,163.950	53,963.640	56,913.270	56,890.640	56,732.200	56,797.400	56,678.490

Note:

*p<0.1; **p<0.05; ***p<0.01

7.3 Validity: Generalized Trust

Survey items measuring generalized trust have often, and rightfully so, been criticized. Respondents' interpretation of the binary survey question used for the analyses presented here is prone to vary across time, culture, groups and even individuals (Nannestad 2008: 417, Glaeser et al. 2000: Ahn et al. 2003). Moreover, skepticism is raised as to whether it is really generalized trust respondents think of and not trust within a homogenous community they are embedded in when answering the question (Nannestad 2008: 417f.). Finally, the question does not address the level of trust: I would trust almost everyone to refrain from stealing ten eurocents but be very prudent with a hundred euros (Nannestad 2008: 418). The binary responses to the trust item do not allow for this differentiation. However, there is also ample support for the validity and reliability of the item (Holm and Danielson 2005; Knack and Keefer 1997; Bjornskov 2007; Nannestad 2008). These authors mention the high correlation (0.67) between the return of planted wallets and the level of generalized trust in nations (Knack and Keefer 1997: 1257).³³

Cook et al. (2005: 165) suggests an improvement: "Instruments should reveal the domain-specificity of both 'trust' and 'distrust'". However, his criticism stems from a different definition of trust that very strictly examines trust with respect to the specific parties and the interaction in question. As outlined above, I utilize a different definition. Nevertheless, more nuanced results could be achieved by examining this "domain-specificity" (Cook et al. 2005: 165) of trust. Here, the WVS6 offers trust in family, acquaintances, the neighborhood, people first met/of another religion/of another nationality. These items can indeed help to examine the impact of certain factors of trust on specific trust relationships.

In consequence, the used trust measure may indeed be somewhat inadequate. All the same, while not perfect, I consider the measure to be sufficiently robust to allow for general conclusions. Nonetheless: taking into account the heavy criticism it has attracted I present a slightly more varied approach supporting my results in the next section.

7.4 Robustness Checks

Accounting for the criticism addressing the measurement of generalized trust with the operationalization utilized above, I constructed a scale similar to Zmerli and Newton (2013: 71-74) as well as Yamagishi and Yamagishi (1994: 144-150) measuring the concept of generalized trust. However, I dropped trust in family members and neighbors as these are not generalized others but very specific others. More-over, some of the items used by Yamagishi and Yamagishi (1994) were not available in WVS6. This procedure was also rooted in exploratory factor analysis which confirmed the adequacy of the chosen scale, assuming correlated factors oblique rotation with Promax achieved factor loadings ranging from 0.53 to 0.85. However, it has to be noted that the

item “How much do you trust people you first meet?” still showed 63 percent unexplained variance. With the definition given above, this should actually be the item that best fits the concept. As an explanation, trusting people of another religion or another nation probably reflect trust in what one may call strangers rather than generalized others. Accordingly, cautionary interpretation of the results and the developed index is appropriate.

Despite this, the quasi-metric nature of the index allowed for linear multilevel models. This allowed me to check the same configurations presented above with a different dependent variable measuring the same concept. For these models, the significance and direction of coefficients only differed in few cases from those reported above. This provides evidence for the validity of the binary variable and presented outcome above (s. Table 1 and Table 3). Nevertheless, some of the criticism discussed above may also apply to the index constructed.

In Table 3 linear models with the following specifications are presented: Model 1 is the same full model as in Table 2 with the Freedom House rule of law indicator, Model 2 uses the World Bank indicator. Models 3 and 4 show the full model without inequality and the Freedom House indicator and World Bank indicator respectively. Models 5 and 6 compare the indicators with insignificant variables dropped. As before, all these models estimate random intercepts by nation. Model 7 is a model with varying slopes for income and education. As the correlation coefficient of corruption and rule of law is at 0.95, corruption is excluded from all models using the World Bank indicator in order to avoid multicollinearity. Due to missing responses in items contained in the built trust index, the number of cases is considerably lower than in the logistic models presented above (Table 1).

Remarkably, the rule of law coefficient for Freedom House remained consistently negative and significant across the linear models. This is also true for corruption. For the World Bank measure the picture is not as clear which also triggered the investigations reported in Section 7.1. Yet, Model 2 shows that the measure can also be negative. Having said this, the coefficient is only significant at the 10-percent level in all models.

Table 3: Linear Regression Results with Index of Trust

	<i>Dependent variable:</i>						
	Generalized Trust (Index)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Gender	0.053*** (0.020)	0.053*** (0.020)	0.037** (0.019)	0.038** (0.019)	0.039** (0.018)	0.039** (0.018)	0.049*** (0.018)
Age	0.010*** (0.001)	0.010*** (0.001)	0.010*** (0.001)	0.010*** (0.001)	0.008*** (0.001)	0.008*** (0.001)	0.008*** (0.001)
Feeling of Safety	0.119*** (0.012)	0.118*** (0.012)	0.121*** (0.011)	0.113*** (0.011)	0.139*** (0.011)	0.131*** (0.011)	0.140*** (0.011)
Education	0.067*** (0.005)	0.067*** (0.005)	0.062*** (0.004)	0.061*** (0.004)	0.079*** (0.004)	0.077*** (0.004)	0.091*** (0.013)
Citysize	0.027*** (0.004)	0.027*** (0.004)	0.021*** (0.004)	0.022*** (0.004)			
Importance of Religion	-0.101*** (0.011)	-0.099*** (0.011)	-0.104*** (0.011)	-0.098*** (0.011)	-0.098*** (0.010)	-0.093*** (0.010)	-0.106*** (0.010)
Income	0.054*** (0.005)	0.054*** (0.005)	0.045*** (0.004)	0.045*** (0.004)	0.056*** (0.004)	0.056*** (0.004)	0.057*** (0.011)
Community Organization Membership	0.106*** (0.023)	0.109*** (0.023)	0.160*** (0.022)	0.175*** (0.022)	0.110*** (0.021)	0.123*** (0.021)	0.112*** (0.021)
Number of Kids	-0.036*** (0.007)	-0.036*** (0.007)	-0.029*** (0.006)	-0.031*** (0.006)			
Trust in Police	0.217*** (0.013)	0.219*** (0.013)	0.217*** (0.012)	0.221*** (0.012)	0.205*** (0.011)	0.208*** (0.011)	0.202*** (0.011)
Trust in Courts	0.107*** (0.013)	0.108*** (0.013)	0.092*** (0.012)	0.092*** (0.012)	0.104*** (0.011)	0.105*** (0.011)	0.105*** (0.011)
GDP (logged)	-0.015 (0.257)	4.849*** (0.535)	-0.066 (0.184)	0.404** (0.159)	0.157 (0.212)	0.707*** (0.189)	0.316 (0.195)
Income Inequality	0.006 (0.022)	0.143* (0.076)			0.005 (0.018)	0.017 (0.016)	-0.003 (0.016)
Rule of Law (FH)	-0.246*** (0.037)		-0.224*** (0.031)		-0.228*** (0.033)		-0.210*** (0.031)
Rule of Law (WB)		-1.635* (0.884)		0.269* (0.149)		0.015 (0.197)	
Eastern Europe	0.579 (0.403)	0.578 (1.426)	0.727** (0.312)	0.263 (0.255)	0.380 (0.358)	0.231 (0.315)	0.444 (0.329)
Corruption	0.083*** (0.011)		0.077*** (0.009)		0.069*** (0.009)		0.065*** (0.009)
Predominant Religion: Catholic	0.116 (0.547)	-1.640 (1.901)			0.033 (0.428)	-0.477 (0.377)	0.164 (0.393)
Predominant Religion: Muslim	0.416 (0.682)	-0.178 (2.320)			-0.054 (0.544)	-0.276 (0.462)	-0.168 (0.499)
Predominant Religion: Orthodox	0.686 (0.666)	-1.073 (2.275)			0.268 (0.570)	-0.478 (0.492)	0.211 (0.523)
Predominant Religion: Other	0.712 (0.691)	1.123 (2.358)			-0.038 (0.543)	-0.355 (0.472)	-0.215 (0.499)
Intercept	-1.006 (2.424)	-47.230*** (5.404)	0.114 (1.581)	-2.663* (1.513)	-1.662 (2.028)	-5.595*** (1.917)	-3.031 (1.867)
Observations	45,903	45,903	54,635	54,635	57,633	57,633	57,633
Log Likelihood	-95,150.750	-95,185.050	-114,528.900	-114,568.600	-119,358.100	-119,397.600	-119,141.400
Akaike Inf. Crit.	190,367.500	190,434.100	229,113.900	229,191.200	238,772.200	238,849.100	238,348.900
Bayesian Inf. Crit.	190,655.700	190,713.600	229,363.300	229,431.800	239,023.100	239,091.100	238,644.600

Note:

*p<0.1; **p<0.05; ***p<0.01

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The debate on shared parenting in Germany

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Abstract

Science versus Advocacy looms large in the debate on shared parenting in Germany as it touches a topic widely regarded to be one of the most contentious in the country today. Discourse theory spells out the conditions for a fruitful debate and provides a methodological framework for describing the characteristics of the German discourse on shared parenting. The paper analyses secondary sources of key participants in the debate against the backdrop of the presuppositions of an ideal communicative structure of rationality, reflection, inclusiveness, and truthfulness. Where these communicative structures are missing to a large extent advocacy will dominate science and policy makers, legal professionals and practitioners in family policy will be shielded from the 'best information available'. Since decisionmakers need scientific expert opinion to guide policy making and the application of law, the paper concludes with a proposal to equip them with the tools to discern science from advocacy.

Keywords

Communicative Structures; Discourse Theory; Family Policy; Germany; Policy Advice; Science vs. Advocacy; Scientific Standards; Shared Parenting

Introduction

In the beginning of the new Millennium a trend towards overnights of infant and toddlers at their separated fathers' homes began to take up momentum in the United States. Until in 2011 a series of contributions spearheaded by an article of the psychologist J. McIntosh sought to put an end to this practice by claiming that overnights of small children away from their mothers would jeopardise the mother – child relationship (Fabricius and Suh 2016: 3-4; Warshak 2017: 180-183).

The reaction by the academic community to the attempted resurrection of so called blanket restrictions was unambiguous. The child psychologist R. Warshak united scientists and practitioners worldwide to endorse a consensus report on shared parenting and overnighting (110 scientists and practitioners) which reflected the common understanding of the child's best interest in science and child practice to "stem the tide of misinformation" (Warshak 2014: 46-67). Distinguished scientists in the field of developmental psychology and pedagogy were quite clear in their opposition. L. Nielsen spoke of prejudices and fiction (Nielsen 2008; Nielsen 2015: 123-127), L. Drozd of unacceptable research (Kuehnle and Drozd 2012: 27-32) and W. Fabricius of obvious contradictions (Fabricius and Suh 2016: 4). In the wake of the debate on shared parenting a new metaphor for describing the distortion and misuse of research by advocacy groups – the so called woozling was coined in the global scientific discourse. The term woozle or to woozle is borrowed from the childrens' novel Winnie the Pooh, who is misled by his own footprints to believe in a scary beast he and his friends dubbed „woozle“. Emotionally charged debates which often center around the well-being or purported well-being of the weak or disenfranchised members of society are prone to woozling (Hutchins 2014; Nielsen 2014: 164-180; Nielsen 2015: 84-86). Woozles, especially as they seemingly reinforce traditional views of family and common gender-stereotypes (so called anchoring), play a detrimental role in the German debate on shared-parenting, which the Psychologist S. Rücker has recently dubbed the „central battle in family policy of our times“ (Menkens 2017).

In this paper I shall explore which mechanisms are at work and which communicative structures are in place that serve advocacy rather than science. The aforementioned parallel struggle for scientific standards in the Anglo-Saxon scientific community may be understood as a contrasting (positive) example. The intriguing question of *why* the debate on shared parenting in Germany remains at a rather low scientific level I cannot answer at this point. A voluntary immunisation of part of the German academic community against the global scientific discourse certainly plays a role. Especially in matters of family policy this detachment is actively sought by decision makers who more often than not claim that most empirical scientific evidence is not transferrable to Germany. The contributions cited in this paper are exemplary for the debate on shared-parenting in Germany.

The experts mentioned are widely regarded as the main authorities in the field of family policy in this country (Oberlandesgericht Jena 2016: RZ 43; Bundesgerichtshof 2017: RZ 31).

It is, alas, not family policy alone, which suffers from political advocacy in the guise of science. The initial idea for this contribution was sparked by an essay of a courageous historian in one of the leading German newspapers (Frankfurter Allgemeine Zeitung). In her article the young scientist delineated the mechanisms of political advocacy by academics in the debate on migration and integration in Germany. The analogies to the debate on shared parenting are striking (Richter 2016).

Science versus Advocacy and Communicative Structures

The decision making bodies in a democracy have an inherent interest in an independent and truthful academic discourse as the grand dame of political theory Hannah Arendt did not tire to emphasize (Arendt 1958: 345; Arendt and Nanz 2006: 56-58). Furthermore, science in its present shape has undergone an evolution that reaches back to classical antiquity and the writers Homer and Herodot (reflection of the opponent's side) and that has taken up momentum in modern times with the rise of the natural sciences and the demystification of our natural environment. From a mere delivery of anecdotal evidence science has come to be understood as a complex process of deliberation of what the intellectual strata of society understands to be true (Peirce 1934: 268).

The scientific deliberation is based on the core values of truthfulness, hard work and success (Arendt 1958: 329-388; Arendt and Nanz 2006: 60; Bronowski 1956). Modern philosophers and political theorists have elaborated further on the process of deliberation in their endeavour to reflect the evolution of science and ground truth and reason in a more process oriented pragmatic (and therefore less transcendental) framework than classical and modern thinkers before them (e. g. Kant) have done (Hoy and McCarthy 1994: 38-40; Habermas 1996: 287-387). Prominent among the post-war era discourse theorists is Jürgen Habermas who postulates like other fellow philosophers and political theorists that only the structure of the debate itself can safeguard that the *best information* and reasoning available is being taken into account and will prevail (Habermas 2001: 48). He spells out four conditions or presuppositions that need to be met in an *ideal communicative act* i.e. a contribution to a debate: a public and non-exclusive forum for debate, equality among the participants of a debate (each one has the opportunity to make herself/himself heard), truthfulness and the absence of coercion (Habermas 2002: 61-64). These presuppositions apply contrafactually, i. e. even when discourse participants wilfully neglect some of them for example for strategic reasons they still accept them to apply in principle. No discourse participant will openly question the *prima facie* validity of the presuppositions on an ideal communicative act without compromising her or his own position (Reese-Schäfer 2001: 84-85). The postulation of a universally applicable norm of a *communicative rationality* or *communicative reason* (Habermas 1992: 119-130) is important for the following analysis of

the debate on shared parenting. It allows to measure the contributions of the main discourse participants against the pre-suppositions of an *ideal communicative act* that can be assumed to be universally accepted by all contributors. As described in the introduction: For the debate on shared parenting the quality of the discourse is of paramount importance as the topic is strongly contested and a generally accepted state of what is currently believed to be true is therefore difficult to establish. Almost legendary is the quote of the former US presidential candidate Hillary Rodham Clinton regarding one of the most controversial aspects of family policy – the child's best interest – from her time as an assistant professor of family law: "Best interests operates as an empty vessel into which adult perceptions and prejudices are poured." (Rodham, 1973) Against this backdrop it is the more crucial for policy makers and legal professionals to have access to the 'best information available'. While a more thorough discussion of discourse theory in respect to law and democracy is unfortunately beyond the scope of this paper and decision makers will in any way mostly not have the time to delve into discourse theory the paper will conclude with practical policy recommendations on how to support the lay observer in distinguishing science from advocacy. In the run up to these recommendations the paper will focus on the pre-suppositions of a meaningful debate – rationality, scientific rigour, inclusion (or non-exclusion) and truthfulness.

Strategic Communication: Arbitrariness, the negation of scientific standards and argumentative gaps

The main contributors to the debate on shared parenting in Germany are highly educated distinguished academics in the field family policy. It is needless to say that their contributions are not stray comments but follow (in the examples under review) a rational of partisan influence. Before we turn to the pre-suppositions of inclusion and truthfulness, it is important to remember that rationality (next to a basic common understanding of the world) is the foundation on which meaningful communication rests. This rationality has to be mutually afforded to and by all participants in a debate in order to make communication worth their while in the first place (Habermas 2001: 25-31). In this respect, we have to recall that actors do respect the presuppositions of an ideal communicative act in principle even though in a particular case they may neglect them (partially) for example for strategic reasons. An incentive to do so may be strong for key contributors to the debate as can be seen from the German case.

The psychologist J. Salzgeber who is a renowned expert in the field of family law runs a business for family court appointed expert opinion (GWG) (Kammholz 2008). Litigation that requires expert opinion does per se increase turnover. From a business point of view, it cannot be in the best interest of Mr. Salzgeber to be entirely bi-partisan towards legal reform that helps to successfully limit litigation in front of family courts. This would happen if the legislative body chose

to prescribe a standard or ideal parenting plan that became the desired outcome of any court hearing. This applies independent of what this ideal parenting plan might be. The opposite and the status quo in Germany are case-by-case decisions with no guideline as to what should be the desired outcome. A missing presumption of what is *prima facie* in the child's best interest leads to conflict with high emotional stakes on the sides of both litigating parties; especially as the preferences of each parent are usually quite opposite (in most litigation mothers are against shared-parenting and fathers pro).

The pedagogue K. Kostka, another well-known expert voice in Germany, has won academic merits conducting research and writing extensively on domestic violence against women and children. The theme of the father and/or male partner as a threat and disturbance to family life is prevalent in many of her contributions (Kostka 2005: 36-39; Kostka 2012: 56-75; Kostka 2014b: 57-61). From this very narrow perspective on dysfunctional family relations the standard prescription for parenting plans after separation can only be to distance children from their fathers as much as possible.

With the described rational for advocacy in mind an observer of the debate may be little surprised to learn that “although many studies have been undertaken science may not deliver clear results concerning the best interest of a child given divorce and separation. Since no study can comprise all possible variables one can always find a study that bolsters one's own position” (Salzgeber 2015: 2019, 2024). Ms. Kostka seconds by writing: “Given the heterogeneity of the definition [of shared parenting, (added by the author)] the empirical data is based on very different [parenting] models and delivers for this reason alone very different results.” (Kostka 2014a: 147)

This purported Fuzziness and Arbitrariness can clearly not be aligned with commonly accepted scientific standards. In her review of literature on shared-parenting the law professor H. Sünderhauf employs a quality taxonomy by the German Medical Quality Assurance Board (*Ärztliche Zentralstelle für Qualitätssicherung – ÄZQ*). This quality taxonomy clusters scientific contributions into so called evidence classes (*Evidenzklassen*) on an ordinary scale from highest evidence for meta-analyses of several randomized and controlled empirical samples to lowest evidence for mere expert opinion and descriptive studies (Sünderhauf 2013: 262-263). In essence; a contribution carries the more weight the more high-quality data it is based upon.

The value of scientific contributions is usually augmented by the review of a scientist's findings by peers, i. e. fellow experts in the field of study. In the course of the peer review results are often first presented and discussed at an international conference of experts in the specific topic and – if the results are found to be satisfactory – in a second step submitted to reviewers of a scientific journal who decide on a possible publication (Faigman et al. 2014: 459; Nielsen 2015: 101). There exist to

the best knowledge of the author no German contributions to the debate on shared-parenting that meet these quality criteria. It cannot be the language barrier alone, as the smaller European neighbours present themselves more able and willing to meet them.

Specific quality criteria apply to meta-analyses. Firstly an unbiased and representative base of primary analyses needs to be ensured by stating the filter criteria (for example in research networks/databases) and by being transparent about other selection criteria. Secondly the methodology of data-aggregation needs to be thoroughly discussed. All available information is ideally used for the analysis (i.e. not only individual effect sizes but also their variation). Alternative explanations shall be controlled for. The more details are given the better, i.e. not only the effect size and the level of significance but also the underlying means and standard deviations of the empirical data (Bausermann 2002: 94, 97-99; Nielsen 2015: 101-103).

Broad meta-analyses of peer reviewed papers that are transparent as to the selection criteria and the method of aggregation rightly possess the highest scientific validity. It is very unlikely that with one or several of these studies all possible positions may be backed as has been unduly claimed in the aforementioned statement.

But even the negation of scientific standards does not necessarily ensure the availability of a supporting study. This can be seen from the argumentative gaps that more often than not beleaguer German language publications on shared parenting. It is common to stumble across positions that are seemingly coming out of the blue being little or not at all backed by evidence or reasoning. In the debate on parenting plans after separation for example it is often claimed that shared parenting is not suited for infants and toddlers and that a shared physical custody is a demanding endeavour that is only rather sporadically realised in practice.

J. Salzgeber states that „at the moment there exists no clear recommendation as to how much time is needed at least to establish a positive parent-child relationship. The most beneficial arrangement for children after divorce or separation, however, is a moderate time albeit engaged involvement of the father.” He further claims without presenting evidence that “in sum one can justly say, that from the standpoint of attachment studies up to the age of five shared physical custody may pose risks to the development of a child.” (Salzgeber 2016: 43) The *Kinderrechtekommission des Deutschen Familiengerichtstags* (Commission on Childrens' Rights at the German Board of family courts) calls the shared physical custody even a „risky model“ and goes on to claim apodictically (without going into any explanation) that „from a child-centered view it can be ruled out as a standard model for parenting-plans.” (Kinderrechtskommission des deutschen Familiengerichtstags e.V. 2014: 1166). S. Walper and U. Lux put forward that „especially in a conflict afflicted parental relationship ... the chances of children to benefit from shared parenting are very slim”; unfortunately without furnishing

any proof of their claim (Walper and Lux 2016: 15). Finally K. Kostka muses that the “results of current international studies ... with their more refined methodology back the findings of older studies” according to which “shared physical custody poses a big challenge for parents and children and demands of parents a high degree of co-operation, communication, empathy, flexibility as well as the willingness to afford the ex-partner a new life.” (Kostka 2014a: 156; Kostka 2016: 36). The actual results of the current international studies, however, the author withholds from the reader.

Exclusion: Detachment from the global scientific debate

The international debate on shared parenting is fuelled by recent empirical studies that feature large comprehensive data-sets and that mainly conclude that on average shared-parenting benefits children after divorce and separation (compared to single-parenting). It is thus becoming increasingly difficult to ignore the empirical evidence as *best information available* even in the German debate that centers around the question of the best interest of the child in general and of very small children and of children in conflict situations in particular and is by and large shielded from the international discourse.

The following tables (1 and 2) provide a short overview of the main international publications on shared parenting and the wellbeing of children (in general) as well as shared parenting for very small children (in particular). The listed studies comprise an excerpt of the state of the art scientific contributions to the debate and have been assembled according to the following criteria: timeliness, scope of the empirical basis or scope of support by the scientific community, methodological rigour, and for literature reviews the quality criteria described in the preceding chapter.

Table 1 empirical studies on shared-parenting and the wellbeing of children

Year	Authors	Title	Journal	Empirical Basis
22009	E. Spruijt, V. Duindam	Joint Physical Custody in the Netherlands and the well-being of children	Journal of Divorce and Remarriage	3,561 children and adolescents
22010	T. Bjarnason et al.	Life Satisfaction among children in different family structures: A comparative Study of Western societies	Children and Society	184,496 children and adolescents
22011	L. Nielsen	Shared Parenting after divorce: A review of Shared Parenting Research	Journal of Divorce and Remarriage	Review of the literature
22013	M. Bergström et al.	Living in two homes – a Swedish national survey of well-being in 12 and 15 year olds with joint physical custody	BMC Public Health	164,580 children and adolescents
22014	M. Bergström et al.	Mental health in Swedish children living in joint physical custody and their parents' life satisfaction: A cross-sectional study	Scandinavian Journal of Psychology	1,297 children and adolescents

22015	L. Nielsen	Shared Physical Custody: Does it benefit most children?	Journal of the American Academy of Matrimonial Lawyers	Review of the literature
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Source: Author.

Table 2 Studies on overnighting of small children with their fathers (excerpt)

Year	Authors	Title	Journal	Empirical Basis
22013	I.W. Sandler et al.	Relations of Parenting Quality, Interparental Conflict, and Overnights with Mental Health Problems of Children in Divorcing Families with High Legal Conflict	Journal of Family Psychology	141 children and adolescents
22014	R.A. Warshak	Social Science and Parenting Plans for Young Children: A Consensus Report	Psychology, Public Policy and Law	Consensus Report
22015	L. Nielsen	Shared Physical Custody: Does it Benefit Most Children?	Journal of the American Academy of Matrimonial Lawyers	Review of the literature
22016	E. Fransson et al.	Why should they live more with one of us when they are children to us both: Parents' Motives for practicing equal joint physical custody for children aged 0 - 4	Children and Youth Services Review	46 parents of small children
22016	W.V. Fabricius and G.W. Suh	Should Infants and Toddlers Have Frequent Overnight Parenting Time with Fathers? The Policy Debate and New Data	Psychology, Public Policy and Law	230 students and their parents
22017	R.A. Warshak	Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting	Journal of the American Academy of Matrimonial Lawyers	/

Source: Author.

In their most recent contributions on the debate on shared parenting J. Salzgeber and K. Kostka take none of the above listed publications into consideration. S. Walper considers at least some but almost completely ignores the international discourse on shared parenting of infant and toddlers. Of the publications listed in table 2, as far as they could be known at the time, she mentions not a single one. She resorts instead solely to the repudiated studies of Jennifer McIntosh et al. that were mentioned in the introduction (Kindler und Walper 2016: 822; Walper and Lux 2016: 11-12).

The omission of a sizeable part of the relevant literature necessarily slims the number of available sources. K. Kostka and J. Salzgeber consequently base their main arguments concerning shared-parenting and the well-being of children to a great extent on studies from the decade early 1980s to early 1990s that by now date back a generation. These older studies are only punctually supplemented by newer publications of low validity (compare the preceding chapter) (Kostka 2014a: 156; Kostka 2014b: 15; Kostka 2016: 36; Salzgeber 2016: 42).

One of these newer studies constitutes an interesting endeavour by a group of British scientists led by Jane Fortin dating back to 2012. By then the first broad international empirical studies on shared parenting and the well-being of children had been published that came almost unanimously to the conclusion that shared parenting benefited children after separation (Nielsen 2013; 61-72). The authors of the Fortin et al. study frankly describe it as politically motivated; as a response to the change in perception of shared-parenting (Fortin et al. 2012: X, XIX). The authors chose the somewhat unusual approach of trying to prove that single residence did not harm children. It has been reviewed and cited extensively in Germany by K. Kostka in her (near identical) contributions from 2014 and 2016 (Kostka 2014a: 149-151; Kostka 2016: 29-31).

The study is based on interviews of a core group of 114 young British adults of which a mere total of five had actually experienced shared parenting (Fortin et al. 2012: 10). It is informative that already in the 1990s the Stanford Child Custody Study (1984 – 1990), a longitudinal study on shared parenting, was based on a total of 1,124 families that were interviewed in great detail and whose life circumstances had been thoroughly evaluated (Maccoby et al. 1990; 141-152).

Despite the limited amount of data Fortin et al. come to broad conclusions. Among others that the amount of time spent together and the nature of contact do not play a significant role in determining the parent-child relationship and that obstruction of contact is a rare phenomenon (Fortin et al. 2012: XIII-XIV). The data itself, however, tells a different story:

- solely regular overnights at the non-resident parent's home seem to have an unambiguous positive effect on the parent-child-relationship (Fortin et al. 2012: p. 80, Table 6.11)
- sporadic and delayed contact to the non-resident father is highly correlated with an eventual termination of contact (causality not clear); this sadly proved to be the case independent of how strong and close the relationship was before separation (Fortin et al. 2012: 25, Table 2.17, 112, Table 7.21)
- around eight percent (of 270) of the resident parents (mainly mothers) obstructed contact to the other parent; in even 18 percent (of 270) of the cases contact was at least significantly delayed and a total of 36 percent (of 22) of the young adults interviewed in detail stated, that they terminated contact among others because the resident parent wished for them to do so (Fortin et al. 2012: 26, Tables 2.19-2.20, 34, Table 3.9)

The conclusions that the authors draw from the interviews stand in starkest contrast to the thoughts and beliefs of the young adults themselves (312) who stated that contact to the non-resident father was practically never too much and who to a great extent would have therefore wished (even if contact was already frequent) more time with him (Fortin et al. 2012: 69, Table 5.16). The longing

of the children for mother and father is described in detail in some of the transcribed interviews (Fortin et al. 2012: 151-156).

The Fortin et al. study is mentioned at length as an example of an empirically and methodologically weak descriptive paper whose content is in part contradictory and incoherent to say the least. It will most probably not receive much attention anywhere. In the German debate on shared parenting from which most of the renowned scientists are excluded, however, it was reviewed extensively and exploited as a counterargument to shared parenting.

Truthfulness - The numbers' game

While bias and exclusion are rather easy to identify as a strategy and violation of the presuppositions of an *ideal communicative act* the lack of truthfulness is more difficult to detect and attribute to discourse participants. The misrepresentation of figures is one of the more common instruments of misinformation that may actually be analysed and taken as a proxy for the truthfulness of contributors. Total and relative numbers if put out of context may be effectively presented to either belittle or magnify a development. The reader will not be surprised to learn that the numbers' game plays a role also in the German debate on shared parenting.

Proponents of the status-quo, the predominance of the single residence, do not tire to stress that shared parenting and shared physical custody play but a minor role when it comes to parenting plans after divorce and separation. They claim that even in countries where shared parenting is strongly supported by society only few parents actually practice it.

Sweden is one of several countries in which shared parenting is strongly anchored in the value system of society. But seemingly startling even in progressive Sweden the number of children who live in shared physical custody reach only four percent; in most of the other OECD countries this figure reaches a mere one percent (Salzgeber 2015: 2019). These percentage figures, however, only reflect the relevant fractions among a select group of 11, 13 and 15-year olds and relate to the entire national population of this age (Bjarnason and Arnasson 2011: 877). The relevant comparative figures (fraction of shared physical custody of all post separation custody arrangements) amount in Sweden to a stunning 60 percent, for Belgium to 33 percent and for the other Nordic countries to around 20 – 25 percent (Fransson et al 2016: 155).

One of the biggest OECD countries whose society supports shared parenting already for more than a decade is Australia. In down-under J. Salzgeber claims, the fraction of shared parenting arrangements has despite a custody law reform not significantly increased in the decade 2002 – 2013. It has purportedly risen only slowly from 9 to 16 percent (of all Australian children?), which constitutes in effect a percentage increase of a remarkable 78 percent (given the same basic population).

The number of court mandated shared parenting arrangements have in Australia allegedly even decreased from 2007 to 2011 (6 percent 2007 vs. 3 percent 2011). The reader is left guessing however of how the total number of shared parenting arrangement have developed in the same time span. After all, do the court mandated ones constitute but a fraction of all parenting arrangements (Salzgeber 2015: 2020). If the total number of shared parenting arrangements has tripled during the five years under consideration than 3 percent of the three-times higher amount would constitute a higher absolute number than 6 percent of the starting value.

In Australia attempts have also been made to establish a link between an increase of shared-parenting and the level of parental conflict. J. Salzgeber denies any positive effect of shared parenting on the conflict level. He bases his assessment on a comparison of the distribution of “cooperative”, “distant” and “conflictual” parents before and after the Australian custody law reform in 2006. The corresponding figures in 2006 amount to 51 percent (cooperative), 32 percent (distant) and 17 percent (conflictual), whereas the distribution is reported to have been 59 percent (cooperative), 19 percent (distant) and 21 percent (conflictual) in 2009 (Salzgeber 2016: 42). Even the alleged change in percentage points in the relatively short time-span of three years is remarkable, unless it is simply a manifestation of an already long-established trend. If this is the case or if changes have indeed been sparked by the custody law reform one does not learn, however. But even if the isolated time span of three years is indeed the right focus of attention the comparison of percentage point values is not the right measure. Rather the status quo ante (2006) should be taken as the basis for quantifying the changes; especially as the total number of separations is not reported. The corresponding relative changes (from 2006 onwards) amount to 16 percent more “co-operative” parents, 68 percent less “conflictual” parents and 24 percent more “distant” parents within a time-frame of three years. Not so bad for a custody law reform.

In Germany in 2016, major public media outlets coined the headline “50 percent of fathers do not support their children”. What had happened? In a study of the Bertelsmann Foundation the authors stated that around half of the ex-partners did not pay child-support to the resident parent (Lenze and Funke 2016: 10, 36). This result was based on a micro census on families in Germany that the economist B. Hartmann had already published in 2014. The data, that purposefully overrepresented poor households and single-parents provided the child-support-information exclusively for single-parent-households; explicitly not for all households which ought to receive it (Hartmann 2014: 5-7; Schröder et al. 2013: 4). How many children entitled to financial support by one of their parents live in single-parent-households had not been assessed.

B. Hartmann, therefore, posed already in 2014 the more relevant question of why child-support had not been paid (Hartmann 2012, 15). The authors of the Bertelsmann study merely

reiterate that same question in 2016. Two years after the original paper had been published they have not taken the trouble to search for answers, although the Hartmann study had delivered already interesting hints (Lenze and Funke 2016: 36). The author established that child-support was strongly correlated to the income of the resident parent. Those with higher income also received higher transfer payments (Hartmann 2012: 12-13). If we assume that the income of the payer corresponds with the income of the receiver of transfer payments (e. g. because both are students) it is not unlikely that age, education or social strata play a significant role in determining whether child support is paid or not. It would further have been easy to determine the share of resident parents who were simply unable to claim child support from the non-resident parent because they did not know him or had claimed not to know him.

In light of the almost haphazard way numbers seem to be often interpreted one is tempted to add to the dictum of J. Salzgeber that a suitable research paper may always be found: It may also be fabricated.

Resume

The debate on shared parenting after separation in Germany is in dire need of higher quality standards that ensure that the basic and most pragmatic norms of an ethical discourse are met. Only a truly deliberative democracy ensures that the best information available will inform decision makers and produce a legal framework that actually codifies societal norms (Habermas 1996: 222-237). Some of the most cited contributions suffer shortcomings when it comes to comprehensiveness (inclusion) and objectivity (truthfulness). Higher Quality empirical analysis in English but also in German is readily available. This high-quality literature ought to be brought to the attention of decision makers in politics and law who on their part need to display a certain willingness to consider it.

To this end the decision makers need to be equipped with easily comprehensible criteria by which they can discern science from advocacy.

For this is not difficult. In most cases four questions suffice:

- Coherence: are central claims of the authors backed by a coherent set of arguments?
- Completeness: do the authors cite the key publications on shared parenting listed in tables 1 and/or 2 of this article?
- Comprehensibility: is the base of trends and relative figures given and do the authors distinguish between percentage points and percent (25 percent – 50 percent → increase of 25 percentage points but an increase of 100 percent)
- Validity: are the authors experts in the field of shared parenting and independent researchers who deliver a piece of genuine scientific work?

The opposite of an open and fruitful debate on shared parenting would be a small quasi-cartel of opinion leaders who succeed in establishing and entrenching a low-level separate German discourse. The German Federal Ministry of Family, Elderly, Women and Youths (BMFSFJ) is presently experiencing how counterproductive it can be to neglect high quality international scientific work. It has commissioned a German study on the well-being of children in separated families (so called PETRA study) that from the outset has been heavily criticized. The resistance against the study is mainly founded in the believe of many societal forces that scientific studies are per se instruments of advocacy.

To remedy this widespread perception a first step should be to task a committee of enquiry for example of the German Research Foundation (DFG) with evaluating the quality of the scientific debate on shared parenting in Germany and to produce an easy to handle quality check list for political and legal decision-makers.

Just how difficult the distinction between science and advocacy often is can be seen from a passage in a recent publication of S. Walper and U. Lux. The authors cite a study of the distinguished US American child psychologists Sandler, Wheeler and Braver on shared parenting. Walper and Lux claim, that Sandler et al. showed that children with separated parents profited from overnights with the non-resident father only if he possessed good parenting skills and was therefore able to compensate for the absence of the mother (Walper and Lux 2016: 15). What Sandler et al. indeed found out was actually the other way round. They concluded that children may only profit from the high-quality parenting of either mother or father if they do spend a substantial number of overnights with each of them. They therefore called for a distribution of overnight-time as equal as possible between both parents as the norm (Sandler et al. 2013: 922).

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Uprising's Dialectic Pedagogy: Gramsci, Scott and Mandela against the 2013 Hefazat-e-Islam Movement in Bangladesh

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Helal Mohammed Khan, from Brahmanbaria (Bangladesh), shares wide-ranging interests in politics, anthropology and religion. Upon return to academia after stints of government service in Bangladesh, Helal graduated in Islamic & Middle Eastern Studies at the University of Edinburgh under Chevening scholarship and since then has been studying sociocultural anthropology at the University of Leuven. Previously he served in the Bangladesh Army (taught special warfare), attended Command & Staff College, and participated in peacekeeping duties with the United Nations in Congo. These experiences provoke Helal to explore the 'below politics' concerning contemporary people and societies; at the International Research Initiative Bangladesh (www.iri.bd.com), as a researcher and director, he also tries to bring some of them into perspectives.

Abstract

This essay revisits the 2013 Hefazat-e-Islam protests in Bangladesh, a religion-based social movement that infused activism in a people that were rather shying away from activist tendencies, and seeks lessons thereof. The first angle of inquiry looks into the Gramscian counter-elite that acts against the hegemony of the powerful as well as the powers-to-be in Bangladesh during that period and compares analytics with the autobiographical experiences of Nelson Mandela in South Africa. The wider lens developed helps to explain why despite initial success—evident in the speedy formation and flare-up of the movement among various social strata in Bangladesh—the Hefazat gave way to the traditional, and the demands for alternative cultures petered out. The second string recognizes the movement as social activism, observing how protests from mundane, Scottian, 'everyday resistance', turn into mass revival.

Keywords

Bangladesh; Hefazat-e-Islam; Hegemony; Mass Activism; Popular Resistance

Introduction

The language and the tone of the title will need clarifying first. They propose re-reading, if not redefining, the provocative term that ‘uprising’ is, and introduce to the anthropological readers newer narratives of a phenomenon which in itself remains confrontational. The scholastic references that the title bears, refer to two major contributions on popular resistance made in two separate halves of the twentieth century, by Antonio Gramsci (*Prison Notebooks*, 1948) and James Scott (*Weapons of the Weak*, 1985), respectively; and a third, which is an autobiographical piece from Nelson Mandela (*Long Walk to Freedom*, 1994), composed during Apartheid era. While Gramsci and Scott expound on the mass culture—and especially Scott on the ‘culture of resistance’—Mandela, arguably the most successful politician and resistance leader from that century, sees through the political and the very acts and styles of resistance. In considering them together, the paper attempts to link between sociology and anthropology in its political commentary of resistance (distinction between these social sciences being as much blurred in the previous century as they are today, and accordingly the lateral shifts come rather easy).

My ultimate object of inspection here, however, is the 2013 Hefazat-e-Islam protests in Bangladesh, whose formational as well as representational details, as I propose, can be unpacked through a combination of perspectives from these writings rather than considering them in isolation. Such an approach is important, since, as the discussion will also make evident, deploying entirely a neo-Marxist lens or resorting to simplistic narratives of class struggles in unmasking resistance paradigms of twenty-first century can be unhelpful. Thus, in the case of the Hefazat-e-Islam protesters (henceforth, HI, or simply Hefazat) this paper will trace their formation to a religious zeal that was previously unreported in Bangladesh, home to a people known more for their practice of moderate Islam rather than one of a revivalist kind (Lewis 2011; Riaz 2010 & 2016; Mohsin 2004); also, the local political parties will be understood as wavering between their ideologies and approaches to power, creating thus murky analytical grounds for their scholastic exploration. The behaviour by the ‘hegemon’ (relatedly, here, the ruling party and coalition in Bangladesh) will further complicate the analysis; for indeed, despite a spectacular start, the Hefazat movement was forced to an abrupt end through a ‘massacre’ act committed by the security forces deployed by the state, understandably launched against unarmed Hefazat protesters, under-aged madrasah students, and general supporters of the Islamic movement—in a brute intervention that may have allowed Sheikh Hasina (Bangladesh’s Prime Minister, then and until now) a rapid quelling of the uprising on the one hand and a clear run to the next parliament on the other (Desh Rights 2013; International Crisis Group 2015; Khan 2016a; The New York Times, 28 July 2017).

Thus, the paper is also an attempt to see through the structural and behavioral dynamics involving the agents and entities active surrounding the 2013 events and their decisionmaking. I follow qualitative reasoning, using both primary and secondary sources. The primary include policy papers, news reports and blogs (from Bangladesh as well as from outside) that explicate on the Hefazat incidents. The secondary literature, while geographically diverse, is mostly read comparatively, while aiming at drawing relevant (anthropological) lessons from the Bangladesh incidents. The discussion is offered in three sections. The first gives out briefly what happened in that volatile period in Bangladesh, starting roughly from the month of April 2013 and leading to the finale on May 5/6th that year, and explains why it is important to study them. The section also impresses upon the representational aspects of the Hefazat events, focusing on the pedagogic experience surrounding this popular Islamic movement that was, quite remarkably, ‘disowned’ by the international media (given the visible politicization of the media inside Bangladesh, I do not bring myself to question the national media in this paper). A historical reading of the secondary literature on Bangladesh is also briefly offered, before taking to analyzing the titular authors in the second section. The final section, still dealing with Bangladesh, recognizes the HI movement through its temporal and spatial characteristics, thus positing that uprising and resistances while will be investigated for their unique appeals, will need to be read in history.

1. Background: The 2013 incidents and their representation

A series of popular protests took place in Bangladesh in April and May 2013. Agitated by the incumbent Awami League’s questionable policies and arguably anti-Islam stances, several Islamic parties united to form an unprecedented coalition without allegiance to major parties—in Bangladesh which are the Bangladesh Nationalist Party (BNP) and the Awami league (AL), who shared power in monochromatic consistency since the formal restoration of democracy in 1991—and declared non-cooperation. Mass gatherings were called in April under the banner of the HI at a number of districts across the country which left at least one dead. In the following days, the Islamic coalition came up with a 13-point demand list (Aamra24 2013), which the government declined to consider, and instead, when the coalition decided to convene a mass gathering at the capital on the 5th of May (from where further programs would be announced), the government decided to go the hard way. On the day of 5 May, there were sporadic clashes between the police and the protesters at various parts of Dhaka who gathered at Motijheel for address by Mufti Ahmed Shafi, the HI leader, eventually deciding for a night halt in and around the thoroughfare (Mustafa 2013). The brute intervention followed right after. At late night, at about 2am, the members of Bangladesh Police, Border Guards and Rapid Action Battalion were ordered to take on unarmed people—a thousands of them, in fact, who had toiled to the capital following marches from various parts of the country

(many of them elderly people or under-aged students without any political affiliation). There are differing accounts of what followed, and a good part of it cannot be traced back for confirmation. What can be confirmed, however, is that live ammunition were fired on civilian people, unknown numbers of people died (their bodies being allegedly ‘removed’ from the streets by ‘government forces’), and unspecified measures were taken by the state toward subsequent cover-up (Aamra24 2013; The Brethren of Black Lotus 2013; The Desh Rights 2013).

Happening largely in Dhaka, but concurrently also, to a lesser degree, in other districts of Bangladesh, the Hefazat incidents offer a classic case of conflict representation where government, political parties, protesters, and media outlets, all take part. While these representational details vary extensively, their triggers also come to be heterogeneous. For example, some cultural performers, in the spirit of championing secular values, may have targeted the madrasah community for humiliation in their plays, a concern that featured in the Hefazat’s 13-point demands (Aamra24 2013). Also, while the Hefazat objectives were peaceful and non-violent (which their central leaders spelt out time to time prior to the confrontations), their local leaders and protesters often expressed them aggressively—a part that was often highlighted by a section of the media. And such reportage continued not only before and during but also after the government clampdown on the protesters on the 5/6th of May (2013), undermining the widespread allegation of huge civilian casualties in the hands of the security forces (a few of these reports have been referred to in this essay).

A reading of secondary literature of Bangladesh’s independence history also alludes to a great variety of perception regarding the country’s religio-secular fault lines. Ali Riaz (2016), for instance, holds that the current political impasse in Bangladesh may be a result of Islamic empowerment in the hands of the traditional political parties (a Brussels-based South Asia Democratic Forum (2017) also came up with similar views). According to this narrative, Bangladesh inherited secular ideals in its inception, which will also have been instrumental in its secession from Pakistan in 1971 (Riaz 2010, 10). Such a view, however, has been duly contested by an array of scholars. Mohammed Yunus, for one, holds that all accounts of Bangladesh’s independence are ‘agreed upon to the point that the reason for the split had nothing to do with religion’ or, for that matter, secularism (Yunus 2003, 244; cf. Hashmi 2010). Dealing with Bangladesh’s history of independence, Craig Baxter lists out linguistic and cultural divides (with current Pakistan, then West Pakistan) as the prime movers for its independence (Baxter 1997, 62). Willem van Schendel also points out to the language issue, and do not consider religion, as having created ‘a more general cultural and political divide within the fledgling state’ (Schendel 2013, 179). Rehman Sobhan (2013, 187) brings economy into the debate, putting blames to the economic inequalities in pre-1971 Pakistan for fueling mass discontent in its Eastern province. David Lewis, on the other hand, acknowledges a ‘longstanding tension’ between

the religious and the secular in Bangladesh, but believes that the country has remained a moderate, Muslim majority, and its people an important antidote to Samuel Huntington's civilizational clash theories (Lewis 2011, 2–6; Guhathakurta and Schendel 2013; Venkatachalam 2016; Huntington 1993, 22–23).

I recognize this variety in the scholastic conception of Bangladesh's socio-political contours to be playing out even outside the realms of academic imagination. It is likely that these interpretational frameworks would also affect the individual as well as group behaviour dynamics of the Bangladeshi citizens, whether or not they govern their social and political structures. In considering the 2013 uprising thus the pronounced mesh of the Islamic with the quasi-democratic political block in Bangladesh must be realized and revealed. The confrontations between the religious and the secular (in the guise of the political) indicate added layers of multiplicity within Bangladesh's political milieu, and the media representations of the uprising may only be its external manifestation.

Thus, the Hefazat incidents were widely covered in the media, but only for a brief span of time. The way both local and international media added to the pedagogic experience surrounding this popular Islamic movement, introduces a particular dimension to the study of the mass, which involves a curious—and convenient—broad-brushing of Islamic political events first as *Islamist actions*, and eventually *terrorism*. Bülent Kenes calls such misrepresentation as 'international injustice,' and Khalid Sultan, a 'negative signifier' (Sultan 2016); Javier Rivera sees this within a symbiotic relation where the mass media is keen to 'capitalize from the confusion and consternation caused by terrorist attacks to produce the kind of dramatic news that draws attention,' i.e. by convoluting terrorism with non-terrorism (Rivera 2016). Considering the various representations of the HI incidents would have to be an exercise without end, since the Hefazat events are still alive in Bangladesh in the popular talks, media and political debates. The varied representations of the Hefazat incidents are thus only a pointer to the complicated nexus between the political, the religious and the secular in the country. One would, however, do well not to ascribe to them similar weights; rather, as the forthcoming section will hold, the religious and the political in Bangladesh have for long coexisted; while the secular only saw itself enacted time to time by people either too close to the power block, or by parties too much on the political fringe (Khan 2016b, 19–24). The secular is, thus, largely non-representative of the majority Bangladeshi society.

2. Contextualizing resistance: A probe in Gramsci, Scott and Mandela

A comparative reading of Gramsci, Scott and Mandela may reveal certain sociopolitical dynamics relating to the Hefazat incidents. Scholastic attentions to Antonio Gramsci although often hovered over the latter's adoption of Marxian concepts, their relevance has not always remained

unchallenged. Donald Kurtz (1996), for instance, holds that the use of ‘working class lens’ in examining twentieth century struggles has often been unhelpful, and, at times, superficial. The topicality of Gramscian theories with regard to popular movements has also been questioned by John Gledhill, who found it ‘peculiarly difficult to understand Gramsci without paying any regard to the fact that he wrote as a political strategist who dedicated his life to the working class’s conquest of state power’ (Gledhill 1996; Gramsci and Buttigieg 2002). In analyzing the Hefazat movement in Bangladesh, therefore, it would be difficult to place its various demands within simplistic class narratives; throughout the movement’s buildup, the working class were as involved as the middle class (on-site news reports often showed protesters in the capital and in other major cities representing both social strata); more so, the movement was supported by a section of the elite as well (although, notably, only during the later stage when it rose to prominence already), who came mostly from the opposition political block (cf. Allchin 2013; Burke and Hammadi 2013; Molla 2013; Prio TV 2013).

Some classification were observed, however. The Madrasah students and teachers in Bangladesh, many of whom joined the HI protests, recognized themselves as different from those following the general education track—a ‘difference’ that was, in fact, forced upon them through non-recognition from past. Despite having developed for themselves a standard educational curriculum (which was although officially recognized by the state, often unrecognized by the employers or public universities), the graduates from madrasah and Islamic colleges (also known as Alia Madrasahs) would not be granted access to appropriate job market or to further education (some universities would use own statutes to disqualify their credentials). And yet—and I find this significant to note—throughout the months of April and May 2013, no claims of intra-party feud or inter-class conflicts were reported from within the HI platform. The movement did not forward demands for any change of power at state level either. In fact, the HI leadership had stated at some point that they would be satisfied if the current (AL) government agreed to sustain their 13-point propositions, to the apparent unease of the BNP, who would rather be happy to see them calling for an early election or resignation of government (Burke and Hammadi 2013; Molla 2013; cf. Riaz 2016).

The narratives of popular resistance and mass struggle, rather than class struggle, may unveil more important resistance paradigms concerning the Hefazat resistance; and in this James C. Scott would be helpful. In *Weapons of the weak* (1985), Scott makes an engaging commentary of popular resistance in alternative forms that is launched against hegemonic power in Malaysia. The peasant and ‘slave’ societies there use creative styles of resistance, channeling them through mundane and often unobserved—yet, effective—corridors of protest, as they strive to thwart domination by the

local rich. The men and women of Sedaka village (under Kedah state of Malaysia) is seen to sidestep direct confrontations with the powerful, using passive techniques like ‘combine harvesters’, petty theft, and killing of their oppressors’ animals. Scott describes these acts within the expressions of cultural resistance and as a ‘non-cooperation over a prolonged time-period’ (266-273; see also Yee 1994).

In Bangladesh also we witness efforts to achieve a symbolic balance of power by the underrepresented groups; however, different from those Malaysian examples, Bangladesh’s protesters—madrasah students, teachers and general participants of the HI movement—do not strive for economic or hard power; instead, they aim to salvage prestige, recognition and respect (take, for instance, the fact that at least 7 out of 13 points put forward by the HI leadership to the government related to various claims of soft power; see, Aamra24 2013). The scholars and students from the Madrasah (collectively known as the *ulama*), who represent the traditional in the country, indeed waited for decades for recognition by the state in education, social power and policy participation, and had sustained prolonged domination by the so-called ‘modern’ within a political and educational system that may not have left much for them ‘to flourish’. More so, post-2009, with a newfound secularism under the aegis of Shiekh Hasina and several other leaders of the ruling coalition, these people may have been pushed to feeling vulnerable and unsecured (Ahmed 2014; Baxter 1997; Burke and Hammadi 2013; Dutton 2014).

Uprising’s uniqueness may also be sought in its history as in undertones, both affecting their scholastic perception. In Scott’s Malaysia, the rich rationalize their exploitation by claiming to be poor themselves, while the poor justify their commitment of petty thefts against the rich (both thus showing interests in economic gains). In Bangladesh, the HI (as a campaigner of traditional Islamic values) places more concern with the issues of ‘free mixing’, or ‘equal share of property between men and women’, or simply on the question of ‘respect for the religious lot’ (Aamra24 2013; cf. Allchin 2013); despite drawing inspiration from religion, these demands fail to appeal to the people who may be keen on political or other claims. However, unlike in Malaysia, where the poor villagers blame their richer neighbours for what is happening, without laying claims of obligation to their Chinese landlords or to the Malaysian government (Yee 1985), in Bangladesh it is the government who must be held responsible and protested against (which has a lot to do with people’s historic lack of trust on their administrators), although, notably, its removal is not sought. The Hefazat protests, at least to begin with, shows ‘strategic non-violence’ (Stephen and Chinoweth 2008); and whether with the ‘hideous’ protesters in Malaysia, or with the ‘angry ones’ in Bangladesh, the so-called menacing face of revolution remains absent (the latter, however, draws more scholastic interest,

whose reasons Scott ascribes to ‘academic romance with wars of liberation’) (see also, Vinthagen 1995).

Thus, at a first glance, the protests in Malaysia or Bangladesh may not look like posing a significant threat to the hegemon (whether directed against the rich and exploitative social agents in Malaysia, or an arrogant, oppressive, state in Bangladesh); however, as the resistance consolidates—which happened in Bangladesh, as it did in other global examples, with Mandela and the ANC in South Africa, for instance, that we shall read subsequently—the threat assessment changes. The spectacle that gets created by the arrival of thousands of oppressed from village (often who are poor, peasants, and rugged in their appearance), alongside the ‘disgruntled lot’ from the city, makes that threat appear not only real, but also ‘menacing’. This unnerves and unsettles the hegemon, and produces unimagined reactions (which explains Sheikh Hasina’s remorseless response to the Hefazat protesters, and the excesses by the security forces during their night assault on the 5th of May, 2013).

In Nelson Mandela’s (1994) reflections from South Africa one locates further dichotomies, since they involve not only ‘the rebel against the state’, but also ‘the rebel as state’. Mandela’s reading of resistance and that of the hegemony of the state and international order and how they may interact within a single platform is, to encapsulate in one phrase, history-driven:

The idea that history progresses through struggle and that change occurs in revolutionary jumps was similarly appealing [to the ANC]... Our problems, while distinctive and special, were not unique, and a philosophy that placed those problems in an international and historical context of the greater world and the course of history was valuable (Mandela 1994, 138).

Despite this visible insistence for resistance’s historical reading—which Mandela identified as essential for ANC’s policy making during the apartheid—the media and political commentaries on the Hefazat incidents in Bangladesh may have hurried into their analysis. Thus, the stick-wielding and pebble-throwing protesters who were visibly defending themselves from a viciously-engaging and intimidating police and border guards on May 5 were dubbed as ‘terrorists’ and ‘radicals’ (Bouissou 2013; Mahmud 2017; cf. Mustafa 2013). Following from actions and retaliatory actions involving both sides during day hours, when the protesters had announced night halt in Motijheel, things were visibly calm and no immediate threats to law and order could be discerned. And yet, with most of the protesters asleep at night, the security forces were ordered to launch their *Operation Flush Out*—whose nomenclature is particularly revealing of the hegemonic intention, which was, to remove the protesters from the capital using brute force (BBC 2013; Bdnews.com 2013).

Returning to the South African example, the MK (*uMkibonto we Sizwe*), ANC’s armed wing co-founded by Mandela following the Sharpeville massacre, engaged in a number of subversive acts, one of which included a car bombing in Pretoria in May 1983 that left nineteen people dead and more than two hundred injured. Interestingly however, this evidently terror action received certain

endorsement from Mandela in his memoir, described simplistically as an act of ‘selective foray’ intended to ‘scare away foreign capital’, and, to ‘frighten’ National Party supporters (336):

Our strategy was to make selective forays against [...] targets that not only would hamper the military effectiveness of the state, but frighten National Party supporters, scare away foreign capital, and weaken the economy. [...] The killing of civilians was a tragic accident, and I felt a profound horror at the death toll. But as disturbed as I was by the casualties, I knew that such accidents were the inevitable consequence of the decision to embark on a military struggle. Human fallibility is always a part of war, and the price for it always high (617-18).

When considered the possibility that Mandela may have authorized the MK for using ‘any means necessary’ in order to ‘speed up the erasure of human prejudice and the end of chauvinistic and violent nationalism’ (138), the analysis complicates. Surely, in apartheid South Africa Mandela and the ANC were representing a people that had their democratic and civil rights in the balance, one that they had no choice but to defend; however, continuing with the current analysis, and using a different—and hopefully meaningful—twist here, let me make a second proposition: let us look at Mandela not as one only representing ‘resistance’, but also as one who, at least on that occasion, was valourizing the ‘acts of terror’ over the ‘acts of war’, and, in the process, confounding both. This is significant, since Mandela’s explanations of ANC actions in Pretoria resonate more as a technique that a hegemon or oppressor would usually employ, trying to justify coercion or violence not a-priori, but post-priori (Mandela’s memoirs were published only after he had risen to power, and thus at least some of his comments may represent a statesman than a rebel).

This way of a representation may be understood as retro-justification of violence (Goodin, Pettit and Pogge 2007, 268), although, in this case, employed by none other than Nelson Mandela. In Bangladesh, while the protesters flouted law by carrying sticks, hurling stones and setting fires on tyres in the middle of a capital thoroughfare; the state took over the role of the ‘valourized terrorist’—the role-reversal here should be noted, compared to the South African case—and launched a night assault on unarmed, sleeping, protesters, and killing and injuring them en masse. The hegemon here (the government, or rather the ruling party in Bangladesh) went on to abuse its clout over the media and international partners and made efforts to establish an alternative version of ‘truth’ as well as engaging in ‘selective execution of the oppressed’ (Appadurai 1998)—detailed in several reports concerning the state of extrajudicial killings, tortures and judicial excess in Bangladesh since 2013 (Amnesty International 2013; Odhikar 2016; cf. Khan and Eqbal 2014).

3. Through time and space: The shifting dynamics of Resistance

The temporal or spatial boundaries that uprisings tend to cross necessitate their appropriate regional and local inspection. And at any rate, any analysis of Islamic political events in Bangladesh

would need to grapple with varied local realities, and consider popular characteristics that impact not only the political parties' planning and agenda, but also animate their followers' imaginative spheres (Khan 2016b). Geographically also, Bangladesh's location outside the traditional Middle East or its physical separation from other Muslim majority nations may at times keep its citizen Muslims physically apart—if not ideologically removed—from some of the direct effects of global Islamic politics (Khan 2016b; Ullah 2014; Ahmed and Nazneen 1990). Despite the pervading effects of global terrorism (of which the IS-motivated attacks at a restaurant in Dhaka in July 2016 would be a grim reminder), the Islamic politics in Bangladesh mostly continued along a moderate and compromising track for greater part of the last two decades (cf. Venkatachalam 2016; Islam 2016). Swiveling between traditional and revivalist ideas while playing second fiddles to stronger and quasi-democratic political parties, Bangladesh's Islamic politics learned to adapt to the country's institutional structures rather than trying to oppose them (notably, the Jamaat-e-Islami (JI), the largest Islamic party was known for long for its intra-party democratic practices, in contrast to the traditional pro-democratic parties, which were often beset by authoritarian practices; see Islam 2015; cf. Ahmed 2005).

Despite this atmosphere of conformance, it may be said that the political activism that the Bangladeshi citizens displayed under the banner of the HI was long coming. The movement itself may have grown as a consequence of the ruling party's (AL) anti-Islam stances, evident from its questionable or non-participatory decision making on Islamic issues (despite having existed since 2006, the HI was only able to organize sizeable protests starting 2010 or 2011, having gathered momentum during the AL's second mandate that commenced from 2009). The Sheikh Hasina government's decision of the removal of the Islamic phrase *Bismillah* (meaning, 'I start by the name of God') from Bangladesh's constitution and political promotion of secularists within the AL-led coalition also point toward the possibility that the religious status quo in the country was abruptly tipping to the favour of a smaller number of people brandishing secular slogans (cf. Jahan 2014). This understandably unnerved the more pious section of the general mass as well as the Islamic revivalists, from where the Hefazat leaders only needed to steer the people toward making specific claims, whether treading religion, or politics. That they failed to chart a sustainable political agenda or display inclusive ideological stances in order to bag greater (national or international) support will be blamed to their indecisiveness and lack of political insight, while the major guilt for the security and humanitarian situation can possibly be ascribed to the rogue measures employed by the state in trying to wipe out the protesters altogether (cf. Gellner 2010).

Also will be notable how in the gradual shaping up of the political scene in Bangladesh, the 2013 uprising found its inspiration. The 'war crimes trial' that was launched in 2011 by the ruling

AL-government came to be testing the JI's top echelon through mass imprisonment, and threatened several of its top leaders for life sentences or even execution. In fact, the execution process of some six JI leaders had already begun by 2013 (the first taking place in February that year, only three months prior to the May incidents with Hefazat). These measures had the JI's political performance greatly hampered, to the extent that the party members were hardly visible in the street, creating an Islamic political vacuum in the country. In such a backdrop Hefazat-e-Islam's rise to prominence by championing popular (religious) demands does not come as much surprise (Dutton 2014; cf. Progress Bangladesh 2015). As the literature review of Bangladesh's post-independence history in Section 1 will have implied, recovering from a religion-based divide from the British India in the 1940s and a culture and language-based further divide from Pakistan in the 1970s, the political thoughts of the Bengali people came to be shaped by the discourses of democracy, equal rights, and social justice (Baxter 1997, 62). Islam's perceived role in this formation may be a mixed, but undeniable, one. It is with these practicalities in mind that the Hefazat movement's appeal to popular imagination will need perceiving.

Conclusion

Who sings the people-song? Possibly none. And yet people's voices may be found through studying their acts of resistance, whether silent or tumultuous. It is in this backdrop that this essay delved into exploring the 2013 Hefazat-e-Islam (HI) movement, and considered academic expositions that may be helpful in unveiling the state-people nexus in political anthropology. Thematically it did not embark on any exploration of 'facts' surrounding the 2013 HI movement; the goal was not to determine *what exactly happened* in Bangladesh in the months of April and May 2013 centering those protests (or in what ways the state-sponsored atrocities were delivered), but rather their *representation* and how representation itself had a cognizable role in shaping discourses before and after. Specifically I looked for, on the state's side, the probable key reasons for handling the uprising with an iron-fist, one indeed of a rather preposterous, brutal, kind; and on the protesters' side, their likely political, religious, and social triggers.

My principal argument was that the 2013 uprising in Bangladesh under the banner of the Hefazat-e-Islam has multiple narratives, and they call for multiple theoretical viewpoints. While resistance elsewhere—for example, the 2011 Tahrir movement at Cairo or the Occupy Movement at Ljubljana—may bear similarities with those protests at Dhaka (in terms of popular passion or motivation, if not in the aim or media coverage, which, for the Bangladesh events was rather paltry), the analytics ought to be different. Theoretically, a comparative reading of Gramsci, Scott and Mandela may meaningfully engage with the Bangladesh incidents, although any broad analysis

without epistemological caution may be misleading (for instance, a normative adoption of Gramsci or Marx to explain the Dhaka events will likely miss out on the futility of the working class lens in a situation where pressing ideological issues make people to sidestep class differences). While class differences have indeed been the hallmark of the Bangladeshi societies since independence (Mondal 2014, 343), they came to be overcome by the state's oppressive measures to the HI movement, bringing the protesters, organizers and funders at the same interacting platform. This also proved to be crucial for the Hefazat movement's initial success, although, eventually, came short when meted with further repression.

The study also sketched out the possibility of alternative political acts by the leaders within Islamic communities. The madrasah-based ulama in Bangladesh, facing repressive governments, display a struggle for assertiveness in predominantly Muslim societies through their alternative practices—which, with the HI in picture, came to assume a pseudo-political form in Bangladesh in 2013. This may explain why or how the orthodox finds a due place in the Muslim imagination and in their religious aspirations in twenty first century. With regard to the individual Hefazat members or protesters in Bangladesh, again, they may have fallen also victim to the HI leaders' naiveties (which resulted from the latter's lack in political experience and the movement's ideological mismatches compared to traditional political currents in Bangladesh). Considering how such a lack may have been key to the movement's tragic end, this will be of interest in further scholarly studies.

The Hefazat experiences may also be a poignant reminder to the fact that secularism as a trend never had easy sailing in Bangladesh before or after its independence—a status that may not have radically altered in the new century. The story of Bangladesh has apparently been one *with* religion, than *without*. This may also be reason why, despite their apparent removal from the political scene in 2013, the HI has shown signs of return lately (Prothom Alo 2017). At these backdrops, the enthusiasm by the international media or political commentators to brand Bangladesh's Islamic as 'Islamist' (which is often used derogatively with terrorism-inclined activism) will be questioned. In fact, if this essay will be any lesson, a truer representation of the rise and fall of a political movement like that of the Hefazat-e-Islam may be traced beyond their official or readily found narratives: through historical interrogations, or by taking into fold their in-house, and often informal, background tales.

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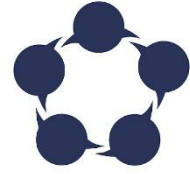
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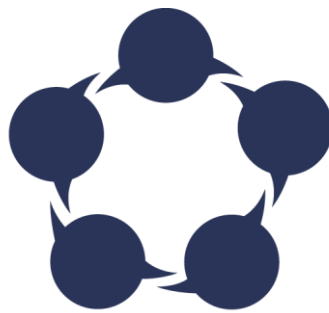
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