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The *Paterson Review of International Affairs*, formally *E-merge*, is a scholarly journal exclusively showcasing the work of graduate students in the field of international affairs and public policy. Managed by students of the Norman Paterson School of International Affairs, the *Paterson Review* is dedicated to publishing articles on a wide range of emerging issues in the theory and practice of international affairs and public policy. Copy requests and submissions may be sent electronically to **patersonreview@gmail.com** or by mail to Paterson Review c/o Norman Paterson School of International Affairs, 5306 River Building, Carleton University, 1125 Colonel By Drive, Ottawa, Ontario, K1S 5B6, Canada.

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Letter from the Editors

The *Paterson Review of International Affairs* is a double-blind peer-reviewed journal that seeks to recognize and disseminate graduate student research in the fields of policy and international affairs. The journal is student run and built on a belief that graduate student research is of great value to the study and practice of international affairs, and thus deserving of a platform whereby it can be shared and discussed.

Based out of Carleton University's Norman Paterson School of International Affairs (NPSIA) in Ottawa, Ontario and published annually, the *Paterson Review* seeks to gather a range of pieces, which are policy-relevant and touch on an array of global issues from security to development, to environment and economics. The review process consisted of three distinct steps. From the entries submitted for review, a blind review was conducted which produced a list of pieces to be published. From there, selected articles were sent to those with a qualified expertise on the subject matter at hand. Their job was to review and provide comments that could further improve the quality of the paper. Finally, the articles were distributed amongst our contributing editors for a final pre-publication round of editing.

This year we are proud to bring you the 13th Edition of the Paterson Review. As always, the quality of the submissions we received from our peers was humbling and challenging to our job as editors. The more than forty entries we received touched on a wide range of pressing topics, and provided tremendous insight into the breadth of valuable research being conducted by our fellow students. With that said, we would like to thank our authors for their patience and dedication as we moved throughout the process from submission to final publication.

We are also indebted to our selection committee, contributing editors, and expert reviewers. These individuals have all contributed countless hours towards ensuring the quality of our final product. Furthermore, we wish to thank the NPSIA staff and faculty for their ongoing support and sponsorship of our project. Without the support of these individuals, this endeavour would not be possible. Their contribution does not go unnoticed.

Shawna-Lynne Brake, Daniel Chomski, Kyle Johnston, Iván Narváez
Editors-in-Chief

Coordinating Trade and Human Rights Policy in the Online Age: Freedom of Expression, Internet Services and the Case of China

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Foreign policy objectives in the areas of trade and human rights are often perceived to be exclusive and conflicting. Increasing trade with non-democratic states is seen to come at the cost of a policy agenda promoting human rights. This has proven a key challenge, for example, for Canada's recent engagement with China. But this need not be the case. The coordinated compliance framework offers alternatives by analyzing the underlying normative foundations of the international trade and human rights regimes to identify linkages and instances of possible convergence in policy. This paper applies coordinated compliance to trade in online services. Specifically it positions trade in Internet services opposite the human right of freedom of expression, in its increasingly online manifestation. Linkages between online freedom of expression and trade in Internet services are identified in both norms and practice, and then applied to the case of China. The result offers policy options that further both online freedom of expression, a human rights policy goal, and trade in the rapidly growing online services sector.

Introduction

In an increasingly interconnected world, the international regimes of trade and human rights frequently appear to be at odds. Indeed, these are often seen as driving mutually exclusive, even conflicting, policy goals. Canada's foreign policy towards China since 2006, for example, has exemplified this acute ambivalence in policy goal prioritization between human rights and trade (Evans 2011). This need not be the case. This paper argues that, in some instances, human rights and trade policy goals can be complementary. It does so by leveraging the coordinated compliance framework (Cottier et al. 2005; Abbot et al. 2006.) that uses commonalities in underlying norms between trade and human rights to investigate applied convergences in practice. A dyad is created consisting of a trade principle, such as transparency in the World Trade Organization (WTO), and a human rights principle, such as labour standards. Linkages between the two are identified, for example promotion of labour standards (the human right) through transparent regulation publication (the trade principle). Such linkages offer convergence in policy agenda and action.

This framework is applied here to the human right of freedom of expression and the WTO trade regime principle of market access in the context of Internet services, and with China as a case study. Linkages within this dyad yield policy recommendations for promotion of both greater market access and increased freedom of expression. The topics addressed sit at the intersection of global trends central to Canada's foreign policy agenda: international economic

integration, the economic rise of China, and the Internet as a growing platform for information access and dissemination.

Globalization has brought closer economic integration. It has also brought international and predominantly liberal democratic norms into contact (and often conflict) with those of other regions and states. China exemplifies both growth from economic globalization and this interplay of local and dominant international norms (Potter 2006). Astride globalization and China's rise sits the Internet as a crucial medium for accessing and disseminating information. Inherently distributed and borderless, the Internet as a platform for digital services is increasingly clashing with the needs of national sovereignty.[1] Freedom of expression is progressively taking on an online dimension. Information is widely sourced and distributed online and Internet access, control, and censorship bear directly on the ability of individuals to exercise their freedom of expression. Many states, including China, employ substantial Internet filtering and censorship regimes that act to limit freedom of expression (Deibert 2001).

Within international trade law, Internet services fall under the General Agreement on Trade in Services (GATS). WTO member states commit to specified market access for individual services and their respective modes of delivery. Filtering and control that limit services beyond these committed levels is allowed under specified exceptions that must be necessary, employ least-restrictive measures, and provide for judicial review. Many states including China, however, do not use the least-restrictive measures for Internet services filtering nor provide for review. Rather Internet service platforms and applications are often blocked in their entirety. In these cases, wholesale blocking of commercial Internet services – such as Facebook, Youtube, or Twitter – violate GATS market access commitments.

This paper seeks to demonstrate the opportunity for coordination between the human right to freedom of expression online and the international trade principle of market access under GATS. It argues that international trade shares a common normative basis with freedom of expression since both depend on access to and dissemination of information. Furthermore, while it does not argue naïvely for elimination of all censorship, it seeks to demonstrate that mechanisms for more fine-grained Internet information filtering would both increase compliance with GATS and enhance freedom of expression online. This can provide common ground for WTO member states, like China, that censor Internet information and for Internet service exporters seeking greater access to controlled markets. For Canada, this offers a middle path in promoting both freedom of expression and online trade. This meets both trade and human rights policy objectives increasing freedom of expression in the process.

This paper proceeds as follows. The first and second sections discuss freedom of expression as a human right and its Internet application. The third section outlines the shared normative basis for freedom of expression and commercial markets resting on information access. The fourth section analyzes the potential for coordination between online freedom of expression and market access under GATS. The paper then applies this analysis to the case of China before concluding with policy recommendations.

Freedom of Expression: An Inherent Human Right

This section provides background on the right to freedom of expression before discussing its application to the Internet. Freedom of expression is defined in the International Covenant on Civil and Political Rights (ICCPR), which together with the International Covenant on Economic,

Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UNHDR), make up the UN Bill of Rights (United Nations 1966; 1948). Regional legal instruments have also defined freedom of expression.[2] ICCPR Article 19 states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (United Nations 1966, art.19). Moreover, these rights "derive from the inherent dignity of the human person" (United Nations 1966, preamble). Crucially these legal instruments lack the enforcement of WTO instruments (below) and hence this paper's motivation for coordinating compliance between trade and human rights law.

The right to freedom of expression is interpreted here on the following dimensions: a discussion of the article wording, the nature of freedom of expression as a negative and individual right, and the boundaries of the right. Several aspects of the Article 19 text are particularly salient to its Internet application. The article covers both access and dissemination of information. While traditional mass media focuses on publishing and broadcast as predominantly one-way information media, newer information communication technologies (ICT) such as the Internet are inherently bi-directional providing both access and dissemination (Shirky 2011). This is particularly relevant as Article 19 explicitly mentions 'any media' and crucial for interpretation to evolving platforms such as the Internet. The definition of media here is therefore interpreted widely. Article 19 concludes with the phrase 'regardless of frontier' and this is interpreted to extend beyond national borders. Freedom of expression thus includes information access and dissemination, current and future media, and a global scope.

Freedom of expression as outlined in Article 19 can be viewed as a negative and individual right. 'Negative' is used here to classify freedom of expression as distinct from 'positive' rights that place a responsibility on states to actively confer a right on citizens (Abbot 2006).[3] As a negative right, the state can act to limit the boundaries of freedom of expression. However, as discussed below, the importance of freedom of expression and information to governance has modified this interpretation in some states to an active right. As an individual right, freedom of expression can be seen as often in conflict with the rights of the collective. This theme has been debated widely in the context of East Asia, with some seeing the East Asian economic development model as dependent on a hierarchy of rights that places communal, economic, and social over the individual, civil, and political (Thompson 2001; Ignatieff 2001; Li 2002; Magnarella 2004). In this version of human rights discourse, individual rights, and Article 19 included, are relegated to secondary status to communal rights. A counterargument has been made that prioritizing communal over individual rights is often simply a defense by and for authoritarianism (Sen 1997). Nevertheless, local normative context leads to differing interpretation of human rights, including freedom of expression (Potter 2006).

The debate of individual versus collective rights has direct relevance to the application of freedom of expression. Does the individual or the collective (read: state) have prerogative to determine the limits imposed on expression? Practical application of freedom of expression is, in fact, always subject to boundaries. Most states, including Canada, place limits on access to and dissemination of information on moral, security, or political grounds (Posner 1986). States actively oppose dissemination of information deemed damaging to their interests, or political or moral ideologies.[4] Online examples include official responses to release of classified US documents, charges against Yahoo in France for selling Nazi memorabilia, and limitations on gender discussion in authoritarian Muslim states (US Department of State 2010; Delta and Matsuura 2008; Howard 2011). There is considerable variance in state interpretation of

responsibilities for and limits of freedom of expression. As a global and distributed information medium, the Internet has served to fundamentally transform the nature of freedom of expression.

Freedom of Expression and the Internet

The Internet has completely altered the communications landscape for freedom of expression. Individuals and states have modified their behaviour in response. This section first looks at how individual freedom of expression has been affected by wide-scale Internet diffusion before discussing how states are seeking to control information online. The evolution of the Internet has undergone several stages, with functionality progressing from primarily passive access to information online, through two-way dissemination, to fully collaborative activity (Cortimiglia et al. 2011). The costs of publishing and distributing information have plummeted allowing individuals to now act as writers, editors, and publishers, roles once reserved for mass media organizations (Shirky 2008). This speaks to both the access and dissemination sides of freedom of expression discussed above; Internet users now have a selection of tools to access information and exercise online expression.[5] Furthermore, the traditional division between mobile and Internet is blurring as applications span both platforms and as hybrid devices emerge (such as smartphones and iPads). With over 2 billion Internet users and 5.3 billion mobile subscribers, freedom of expression is both qualitatively and quantitatively different than in the earlier era of mass media (ITU 2011; Yang 2009).[6] States have correspondingly adopted a range of policy strategies for the Internet age.

The Internet has become such a central medium for accessing and disseminating information that some states have redefined freedom of expression as a positive right. This is premised on the belief that democratic governance necessitates an informed citizenship, and that individuals now cannot participate in economic and political life without online access (Dutton et al. 2009).[7] In this interpretation, "freedom of expression imposes an obligation on all States to devote adequate resources to promote universal access to the Internet" (United Nations UNSRFOE 2005). States focused on controlling freedom of expression, however, have responded differently. Freedom House provides a typology of how states limit freedom of expression online that includes: regulatory or infrastructural barriers to access; limits on content, such as filtering and blocking both directly and through self-censorship; and coercion for online activities (Freedom House 2011). Infrastructural barriers include modifications to Internet architecture that allow for centralizing and controlling information flow (Faris and Villeneuve 2008). Regulatory barriers can include, for example, limitations on operating as an ISP within a state's jurisdiction. Content limitations can take many forms including blocking websites, filtering specific content (for example, search engine key words), or wholesale blocking of platforms and applications (Zittrain and Palfrey 2008). Coercion is playing a growing role in Internet control; more journalists are now jailed for Internet reporting than for any other medium (Committee to Protect Journalists 2011). States control of online content has, in fact, been considered a new type of state capacity (Howard 2011; Faris and Villeneuve 2008) and, in response, several organizations have been empirically monitoring state Internet control levels (Diebert et al. 2008). The Internet has fundamentally transformed the communications landscape and correspondingly freedom of expression in the online age.

Freedom of Expression and Trade: Normative Connections

Compliance between freedom of expression online and the international trade regime governing Internet services rests on a common normative framework. This is premised on the role that freedom to access and disseminate information has in the functioning of markets.[8] The argument here is not that trade leads over time to the promotion of human rights, nor that less-isolated states have better human rights records, although both claims have been made (Sykes 2006). Rather the core argument is that both trade and freedom of expression are based on distributed information flow among actors. To quote Cottier and Khorana (2005, 247), "Markets function efficiently only when human rights…guarantee effective access to resources necessary for individual self-development … Credible and perfect information plays a crucial role in this context."

The role of freedom of expression in markets can be analyzed using Sen's (1987) binary approach to freedom of choice as offering both intrinsic and instrumental benefits. When viewed as an end in itself, freedom of expression has an intrinsic benefit. Individuals benefit when they are allowed to seek, access, and disseminate information as an inherent right, and this is the normative basis for Article 19. The instrumental benefit, however, serves to facilitate individual choice towards other ends. Market purchases are examples of consumer choices based on available information concerning products or services as well as the purchasing transaction itself. Freedom of expression is manifested instrumentally in the ability of consumers to make informed decisions. This instrumental aspect also plays an epistemological role. "Political rights, including freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves" (Sen 1999, 8; Sen 1999b). Freedom of expression thus acts as a "double public good" (Farber 1991, 563) by providing for better economic choices both directly and through its application to political decisions with economic consequences. Freedom of expression provides the underlying mechanism for dialogue and contention between value-laden information crucial for economic (and political) decision-making (Petersmann 2006). Freedom of expression is a foundation for markets.

Economists recognize this relationship between information (and hence its access and dissemination) and markets. Information asymmetries are pervasive in all markets and these act to increase transaction costs for disadvantaged market actors (Stiglitz 2001). Symmetry of information in markets reduces opportunities for rent seeking, and in this respect, information again acts as a public good: "information dissemination produces a positive externality; incomplete information is a negative externality" (Cottier and Khorana 2009, 256). Large information asymmetries necessitate centralized organization as a response. A fundamental role for international trade organizations, such as the WTO, in fact, involves reducing information asymmetries and transaction costs by standardizing rules (Keohane 1984; Martin and Simmons 1998). Domestically, governments vary in their interpretation of this role between poles of full information control and wide dissemination. All states control freedom of expression and information to some extent, but too much control increases information asymmetries and stifles market activity (Sykes 2006; Cottier and Khorana 2009). States that strictly control information and expression incur a corresponding cost measured in loss of the inherent and instrumental benefits of freedom of expression (Posner 1986). No market is free of information asymmetries and freedom of expression is always bounded. Nevertheless, this human right provides the very basis for markets and trade.

Online Freedom of Expression and GATS Market Access

This section shifts from discussing freedom of expression's role in markets to the position of Internet services and hence online freedom of expression in the international trade regime. Within the framework of the WTO, trade through in Internet services falls under GATS (GATS 1994). The implementation of Internet services within GATS sets boundaries to censorship of exported Internet services and the online freedom of expression these provide. The central question tackled here is whether and how online censorship violates GATS rules. GATS requires members to explicitly specify services and modes of delivery (for example, cross-border) included as part of their respective Schedule of Commitments (GATS, art. XX). GATS shares WTO core principles such as non-discrimination and includes a unique specific commitment in the form of market access (GATS, art. XVI).[9] Member states, including China and Canada, must provide market access according to their commitment schedules, barring acceptable exceptions.

The predominant classification system for services is based on the UN Central Products Classification (CPC) system.[10] Internet services, however, are subject to continuous innovation and pose a challenge in matching specific services to out-dated categories.[11] Since service classification determines a member's commitment level for market access this becomes a central point of contention in GATS disputes. Online censorship is often justified on moral, security, or safety grounds (Diamond 2010) and GATS allows these as exceptions to market access (given member commitments) in cases where it is "necessary to protect public morals or to maintain public order" (GATS, art. XIV). However, these are to "be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of [the member's] society" (GATS, art. XIV note 5). Furthermore, these are not to be applied as a "means of arbitrary or unjustifiable discrimination … or a disguised restriction on trade in services" (GATS, art. XIV). Censorship of exported Internet services is therefore a question of allowable exceptions to market access given a member's commitments. Several key WTO cases have established boundaries for market access exceptions. These are instructive in understanding allowable limitations on exported Internet services.[12]

Given member commitments and key past cases, how would an assessment of exported Internet services censorship proceed? The first step would assess whether the service in question is within a category the member has committed to for cross-border delivery, given questions of service classification. If this so, the member may claim conditions for allowable exceptions and these would then be assessed. This would entail determining whether the exception is necessary given the definitions above. If this is found to be the case, the limitations imposed on the Internet services would be assessed on the principle of proportionality (discussed below). Finally, the existence of an appeal mechanism (GATS, art. VI) for market access exceptions would be evaluated. Assuming necessity exists, proportionality and judicial appeal may be central to a ruling on exported Internet services limitations (Hindley and Lee-Makiyama 2009).

Proportionality and necessity were indeed central to past WTO cases with relevance to exported Internet services censorship. In Online Gambling, a US ban on online gambling was deemed a zero-quota tariff barrier (WTO Appellate Body 2005). This ruling introduced the principle that a member accused of unfair market access limitations must not only prove necessity, but also employ a proportional, less-restrictive limitation if one exists given the member's institutional capacity (WTO Appellate Body 2005). Proportionality was also a factor in the Audiovisuals case ruling, which deemed that less-restrictive market access limitations must be employed if "genuine" and "reasonable alternatives" (WTO Appellate Body 2010,

para.34) in fact exist and these are within the "economic and administrative realities" (WTO Appellate Body 2001, 8.207) of the member in question. Judicial review requirements state that "[e]ach Member shall maintain or institute … judicial, arbitral or administrative tribunals or procedures which provide [for] … review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services" (GATS, art. VI(2)). Given the position of Internet services within GATS and the rulings discussed, the potential exists to challenge exported Internet services limitations and hence censorship of online freedom of expression within the WTO's dispute settlement mechanisms.

Where member states limit exported Internet services beyond their schedule commitments, they must demonstrate necessity, exercise proportionality, and provide for judicial review. Given proportionality, censorship mechanisms employed need to be 'least-restrictive', and this offers a crucial avenue for narrowing the scope of censorship. A coarse censorship approach blocks complete access to an Internet platform or application (such as Facebook or YouTube), and several states have adopted this censorship strategy (OpenNet Initiative 2009). Less-restrictive approaches are available. Two examples include blocking only problematic content through local Internet service providers (ISP) or country-specific user agreements offered by the service provider that take into account a member state's filtering requirements (Zittrain and Palfrey 2008). These measures address the member state's censorship needs while providing continued access to online platforms or applications. The member state in question would also need to provide judicial review for appeal and transparency against arbitrary market access limitations. Following less-restrictive censorship strategies would allow compliance with necessity and proportionality. At the same time, this would increase access to exported Internet services, applications, and platforms. Information access and dissemination and consequently online freedom of expression would be enhanced.

Case Study: China

The potential framework for compliance between online freedom of expression and Internet services under GATS presented above is applied here to the case of China. This section provides an overview of characteristics that make China a valuable case study for this framework, followed by a brief analysis of its application. First, although China has not ratified the ICCPR (UN 2011), the Chinese Constitution does provide for "freedom of speech, of the press, of assembly, of association, of procession and of demonstration" (PRC 1982, art. 35) and thus offers a basis for application of ICCPR Article 19. Second, China has been a member of the WTO since 2001 and its schedule of commitments under GATS includes market access for exported Internet services (cross border delivery for online processing services) (WTO 2011; Wu 2006). Third, China not only has a considerable online population, but also one of the world's most extensive Internet censorship regimes, measured in both technical and human resources scope, that actively filters complete exported Internet services (ITU 2011; Zittrain and Edelman 2002). [13] Fourth, the proportionality principle discussed above is contingent on a state's institutional capacity and China's Internet censorship bureaucracy demonstrates considerable institutional capacity (Hindley and Lee-Makiyama 2009). Fifth, China has often employed coarse censorship by blocking complete access to platforms and applications rather than less-restrictive and more-targeted filtering (OpenNet Initiative 2009b). Sixth, China does not provide any administrative facility for appeal or review of exported Internet services limitations. Finally,

China's norms of governance and information control differ from those of liberal democracies. This provides a test case for potential overlap between local norms and those dominant internationally (Potter 2006). What is the potential, however, for coordination between online freedom of expression and Internet services market access in the case of China?

China's censorship of exported Internet services has not been challenged under the WTO, despite calls from (and a debate in) industry and governments to do so (US Congress 2010; Farah 2010; Drezner 2010).[14] Given the WTO precedents set by the Audiovisual, Asbestos, and Online Gambling cases discussed above, a challenge to China's limitations on exported Internet services would, most likely, focus on the following aspects. As in the case of Online Gambling and Audiovisual, China would probably claim necessity due to protection of public morals. This claim would most likely be accepted as the cases discussed demonstrate considerable willingness to allow discretion in member states' definitions of 'public morals'.[15] The challenge, however, would come on grounds of proportionality and judicial review. The availability of less-restrictive and more specific online filtering options would combine with China's considerable Internet institutional capacity to offer genuine alternatives to complete blocking of applications and platforms. China may also be called upon to provide some level of judicial review for market access limitations. Given these results, China would be able either to withdraw from its schedule commitments for these services and modes of delivery or provide compensation to affected members.[16] Several factors speak against these options, however. These include the size and growth of the ICT sector in China that involves considerable cross-border activity, as well as China's continued integration into globalized supply chains that depend on Internet services (Winters and Yusuf 2007). Both withdrawal and compensation could be prohibitively expensive. Nor would the costs be solely economic. Withdrawal from commitments due to censorship or refusal to provide appeal that increases transparency may incur a political cost for China's legitimacy-focused regime (Yao 2010). Compliance with less-restrictive exported Internet services censorship may be the least expensive economic and political route for China. This would not only ensure compliance with GATS market access, but in doing so would increase overall online freedom of expression for Chinese citizens.

Conclusion

Policy objectives in the realms of trade and human rights need not be as ships passing in the night. Linkages offer options that can enhance trade while furthering human rights objectives. A key policy recommendation that emerges from the above analysis is that censorship limitations on Internet services exports need not go unchallenged. For WTO member states, as in the case of China, the WTO's dispute settlement mechanism offers an avenue for addressing these market access limitations. Beyond potentially increasing market access for Internet services, challenging censorship limitations can result in greater online access to information. Consequently policy objectives spanning both trade and human rights are fulfilled. Previous WTO cases have paved the way for such action. Furthermore, operating through the multilateral WTO levels the playing field between states. Middle-power countries such as Canada can punch above their weight and gaining leverage for their policy objectives.

This paper has argued that using the GATS market access principle to limit the scope of exported Internet services censorship will enhance freedom of expression. Freedom of expression has been a declared universal human right since the adoption of the ICCPR. The

landscape of freedom of expression, however, has fundamentally altered with the diffusion of the Internet, in addition to mobile and hybrid communication technologies. It is quantitatively different in the number of individuals online. But its effect is not based solely on aggregation. It is qualitatively different in its distributed form that enables individuals to become publishers to their immediate social circle and beyond. Online freedom of expression is inherently transformative. To paraphrase McLuhan's famous dictum, the online media is today's message (McLuhan 1965).

States have recognized this shift in the communications landscape. Some have redefined online freedom of expression as a fundamental human right. Others have responded by limiting the boundaries of online expression through Internet services censorship. Eagerness to limit information deemed sensitive or dangerous has often manifested as overly-restrictive controls. Where these limitations clash with market access commitments under GATS, a challenge to online censorship can act to enhance online freedom of expression. Sceptics abound as to the potential for human rights and trade coordination, and the dyad of freedom of expression and market access is no exception (Drezner 2010). Nevertheless, freedom of expression provides the very basis for trade, and this, as well as past WTO cases, offers a potential bridge to span the divide between this human right and its trade implications. Online censorship will remain for the foreseeable future, but challenging the boundaries of censorship under the framework outlined in this paper will increase export opportunities for internet services while enhancing freedom of expression.

Notes

[1] "Government jurisdictions are geographic. The Internet knows few boundaries. The clash between the two will reduce what individual countries can do. Government sovereignty, already eroded by forces such as trade liberalization, will diminish further" (Cairncross 2001, 177).

[2] These include the EU Convention for the Protection of Human Rights and Fundamental Freedoms, the EU Charter on Fundamental Human Rights, the American Convention under the Inter-American Court of Human Rights, and the African Commission on Human and People's Rights (ECHR 1950; IACHR 2000; ACHPR 2002).

[3] In this sense, and to use Abbot's examples, torture is considered a *negative* right that focuses on state avoidance of action contrasted with a right to housing which would be considered a *positive* right necessitating the state to act towards provide housing.

[4] The ICCPR in fact provides for exceptions to freedom of expression, primarily concerning religious and moral convictions (Steiner et al. 2008).

[5] These are not limited to email, Bulletin Board Services (BBS), and Weblogs, but rather extend to full user-generated content (UGC) platforms such as social networking (ex: Facebook, Renren), media sharing (ex: Youtube, Tudou), and micro-blogging (ex: Twitter applications).

[6] Yang (2009) provides an example of a Chinese citizen journalist whose standard toolkit for covering events includes: laptop, digital camera, mobile phone, memory stick, Gmail account, skype account, video-sharing websites, photo-sharing websites, blog sites, and a selection of chat tools.

[7] Finland, Spain, and France, for example, have defined Internet access as a basic legal right (Finish Ministry of Transport and Communications 2010; Morris 2009; French Constitutional Council 2009).

[8] The argument here follows on work by others such as Petersmann (2006) that provide an economic perspective to human rights and their role in trade.

[9] "Each Member shall accord services and service suppliers of any other Member treatment no less favourable [sic] than that provided for under the terms, limitations and conditions agreed and specified in its Schedule each Member "(GATS, art. XVI para.1).

[10] Internet services are generally considered to be solely Mode 1 (cross-border) delivery and fall under 'online processing services' (CPC 843) (Wu 2006). CPC 843 also includes subcategories for individual services, such as search engines (CPC 843.94) and video streaming (CPC 843.32), but a member's commitment is assessed on the category as a whole (Hindley and Lee-Makiyama 2009).
[11] Wu (2006) terms this problem 'technological translation' and sees it as a general case of how law is interpreted under conditions widely different from those at the time of drafting.
[12] Cases discussed include: Online Gambling, Audiovisuals, and Asbestos (WTO AB 2005; 2010; 2001).
[13] China has occasionally blocked complete services. Examples include Wikipedia, Youtube, Flickr, BBC News, and Google's search engine to name a few (OpenNet Initiative 2009; 2009b).
[14] See also US Congressional Report on Global Internet Freedom (US CRS 2010), the US *One Global Internet Act* (US Congress 2010), and Google's WTO Policy document (Google 2010).
[15] The Appellate Body accepted the US necessity claim in Online Gambling (WTO Appellate Body 2005).
[16] The US chose to provide compensation in *Online Gambling* (WTO Appellate Body 2005).

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Friend or Foe? The Socio-Political Dynamics of Historical Reconciliation

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Group memories, and the sentiments evoked from the "remembering" of historical traumas, tend to be an important variable influencing interstate relations. The absence of conflict and conclusion of peace treaties does not imply that group animosities have disappeared. While considerable attention has been given to reconciliation after ethnic conflicts, successful historical interstate reconciliation continues to elude contemporary international relations. This is all the more pressing in the Asia-Pacific region, where historical issues originating from World War II continue to plague relations between Japan and its neighbours. This paper explores the determinants of successful historical interstate reconciliation. The historical evolution of Franco-German, German-Polish, Sino- Japanese, and Japan-South Korean relations are used as case studies. This paper concludes that reconciliation can only be achieved when top-down political and bottom-up societal pressures converge on a common historical narrative. This conclusion has important implications with respect to the form of governing system and third party interventions. Lastly, given the intricate dynamics between history and group animosity, additional research is required to investigate the influence of cultural values on group narrative discourses.

Introduction

On October 16th, 2010 thousands of Chinese citizens took to the streets in various cities in response to Japanese protests of Chinese claims to the Senkaku / Diaoyu Islands. Minor damage was inflicted on Japanese retail stores, Ito-Yokado and Isetan, before the protesters were disbanded by local police (Anna 2010). Similar incidents have been repeated in the past. In April 2005, more than 10,000 citizens in Beijing and 20,000 in Shanghai protested against a newly approved textbook in Japan, which denied Japan's responsibility for wartime aggression against China during World War II (Shirk 2007, 140). Radical anti-Japanese attitudes have also been aired in Internet chat-rooms through harsh, violent, and derogatory expressions of Chinese nationalism with regards to Japan (Lagerkvist 2005, 125).

Anti-Japanese sentiments in China originated from historical memories of Japanese atrocities committed during its occupation of China in World War II. Despite the conclusion of conflict and the signing of a peace treaty more than half a century ago, the legacy of war continues to mar relations between the two peoples. Sino-Japanese relations represent a case where historical reconciliation has not occurred. Historical reconciliation is a condition where hostilities have ceased and drivers of conflict have

since disappeared, and parties attempt to ameliorate memories of conflict that continue to prejudice the relations between two former enemies (Liu and Atsumi 2008, 327). James H. Liu and Tomohide Atsumi claim the friction between the two parties is mainly symbolic in nature, yet there are tangible consequences resulting from these tensions. Historical grievances have shown that conflict resolution is temporary and fails to address damaged relationships. There is a need to move beyond conflict resolution and towards a redefinition of relationships through acknowledging history's role in identity formation.

Research Question and Hypothesis

This paper explores the question of whether historical reconciliation is top-down or bottom-up process and how the two processes interact. It argues that reconciliation can only be successful when bottom-up and top-down processes converge simultaneously. A top-down approach to reconciliation is a necessary, but insufficient, condition to achieving interstate historical reconciliation. Given the need for bottom-up processes to exist simultaneously, it is logical to hypothesize that reconciliation will be most successful in democracies.

Theoretical Review

The literature on intrastate and ethnic conflicts has drawn attention to the need for reconciliation through mechanisms establishing truth and restitution for victims. However, there has been a lack of attention, or even a lack of necessity, to give attention to interstate reconciliation. Interstate conflicts rarely conclude with reconciliation except in cases where states share a contiguous border (Lingis 2008, 47). This is because states lack the motivation and mechanisms that would allow for the exploration of truth or the application of limited justice in the absence of a shared space. Unlike ethnic conflicts, the ability for belligerents to separate implies that normal relations can be achieved through negotiated bargaining in the settlement of tangible interests (Long and Brecke 2003, 118). This allows interstate state conflicts to become more tractable, even as the relationship between the two parties remains the same. The lack of reconciliation produces latent grievances and perceptions of suspicion, which increases the probability of conflict in future disputes.

Reconciliation methods are intended to break cycles of revenge by redefining relationships to foster cooperative approaches to future conflicts. The notion of forgiveness is essential. Alphonso Lingis (2008, 44) writes that forgiveness involves the re-framing of the other as still being responsible for a misdeed, but in viewing the other as a responsible agent, one is able to understand the other's motivations and needs. The perception that the other is capable of different actions contributes to the development of empathy for the other. This facilitates a shift from attribution bias to situation bias in viewing the other. Herbert C. Kelman (2004, 119) argues that a primary feature of reconciliation change is the removal of negation of the other as a basis for one's identity. Reconciliation occurs when the fundamental relationship between two parties is transformed from an exclusive to an inclusive grouping motivated by mutual understanding.

Collective memory, and how a group perceives its role in historical context, is crucial in intergroup relations since it defines one's in-group. Geoffrey Cubitt (2007, 222) writes that historical memories provide a fulcrum on which collective identity hinges itself. The articulation and commemoration of history exclusive to one's group can be seen as a force for enhancing political and social cohesion. According to Eviatar Zerubavel (1996, 289), all members of any identity groups are also members of "mnemonic communities" who share a common memory of significant events relating to the group. Members of mnemonic communities "remember" events without having personally experienced it as the process of mnemonic socialization allows "mnemonic others" to condition the lens through which we interpret our past, present, and future. The significance of history to historical reconciliation cannot be understated, for if history legitimizes one's point of view then a redefinition of one's relationship necessitates a redefinition of one's history.

This leads to several questions: Who controls the "mnemonic socialization" process? How does history relate to the individual? What is the transmission mechanism in historical discourse between the individual and the collective? The literature on historical discourse suggests that historical definitions within societies are in constant flux. The various interpretations of history, as well as their related political agendas, are always challenging one another for reception among the people. That the socialization process is achieved by rules such as what to remember, what to forget, when to remember, and how to remember, opens up the opportunity for the politicization of the process. Thus, collective memories exist is neither wholly subjective nor objective, but is subjected to the "mnemonic battles" between members of a group to fight over (Zerubavel 1996, 296). This leads Paul A. Cohen (1992, 82) to write that the purpose of historical constructions is to "draw on it to serve the political, ideological, rhetorical and / or psychological needs of the present." A top-down approach to memory emphasizes the role of political elites in the creation of "hegemonic national memory" (He 2007, 47). This view argues that collective memory is created through state institutions such as education and media. These institutions function as propaganda to transmit elite interpretations of history to the individual.

The reception of this top-down approach is debatable. For example, Philipa Rothfield (2008, 20) writes that the "social sphere can never adequately represent the effervescent specificity of human life." Mnemonic socialization cannot be achieved in a vacuum but must fit the cultural context in which it is constructed for it to have appeal. Similarly, Cubitt (2007, 231) argues that memory constitutes a socio-cultural mode of action and that collective identity tends not to rise from elite constructions but as an outgrowth of personal interest in family, local, or ethnic past. Appealing memories can only be created within a bounded realm defined by societal context and the realm of elite propagations. History's link to identity implies that reconciliation will only occur when there is a willingness among the people and political elites to accept a redefinition of one's history.

This competition takes place in the domestic political process where the dominant memory is constantly defending itself against competitive interpretations. This suggests that political systems become an important variable of analysis. Democracy is able to promote reconciliation through introspective analysis of one group's historical mistakes using a common standard. This assists in dispelling historical prejudice by bringing

attention to the common human experience of wrongdoing instead of attributing historical mistakes to a particular group (Yang 2003, 85). Democracy also allow for the genuine voluntary exercise of bottom-up mobilization for reconciliation. Civil society helps to shape the overall political environment by adjusting the space in which political leaders may exercise their decisions (Montville 1991, 163). Despite its potential to contribute to reconciliation, the opposite may be true – democracy also provides a space for other actors to pursue their agenda. Therefore, democracy's influence in reconciliation processes is dependent on the pluralistic competition within society.

Lastly, in an analysis of international relations it is necessary to consider the structure of the international system. A realist assessment of the international system suggests that states having common interests will have an incentive to reconcile to foster cooperation. The quasi-alliance model argues that cooperation occurs when there are fears of abandonment by a common security guarantor (Cha 1999, 200). On the other hand, international hostilities hinder reconciliation between two peoples. A note of caution is that the international structure variable must distinguish between the moral aspect and material element of reconciliation. Both must be present for genuine reconciliation to occur (Gardner-Feldman 1999, 334). Realpolitik may lead to cooperation without changes in perceptions at the socio-psychological level.

Case Studies

The case studies to be analyzed are: Sino-Japanese, South Korean-Japanese, Franco-German, and German-Polish relations.[1] These cases were chosen because of the common origins of historical antagonism in World War II. This comparison may offer substantial insights into the reconciliation process considering differences in current German-European and Japanese-Asian relations. A summary of the case study findings is presented in *Table 1*.

Franco-German Reconciliation

The reconciliation process in Franco-German relations was achieved through the simultaneous existence of top-down and bottom-up pressures. During the occupation period of Germany, the French Director of Public Education, Raymond Schmittlein, prioritized the project of textbook reforms and in the two subsequent years saw the French military government issued ten million textbooks to students within its zone of occupation (Siegel and Harjes 2012, 390). The exigencies of the Cold War increased the pressures for reconciliation, especially those coming from France's foreign allies. There was recognition that German rearmament was essential to the security of Western Europe under the euphemism of "double containment" to keep the Soviets out and to contain German militarism within a multilateral European framework (Ackermann 1994, 237).

The reconciliation process took off in 1950 with Adenauer's proposal for a political union of Europe with France and Germany as its foundation (Ku 2008, 14). The Schuman Plan eventually developed into the European Coal and Steel Community (ECSC). While the Schuman Plan was functional in nature, aimed at preventing future

[1] Germany will heretofore be used to refer to West Germany during the Cold War period unless otherwise noted.

Franco-German conflicts, it reflected an emerging vision shared among diplomatic and political elites of seeing Europe being a supra-nation with shared values, economies, and sense of justice. The difference in the Monnet Plan to the Schuman Plan reveals the change in thinking among French elites. While the Monnet Plan sought to expropriate German steel and coal for French reconstruction and development, the Schuman Plan envisioned the *sharing* of resources under an international High Authority (Dinan 2004, 37). The role played by The Schuman Plan was a harbinger of future cooperation as the process of European integration continued to deepen with the creation of the European Economic Community in 1957.

Reconciliation at the political level was accomplished with the signing of the Franco-German Treaty of 1963 (Elysée Treaty), which included provisions for cooperation on multiple fronts, and accelerated the development of youth exchange programs between the two countries (Ku 2008, 15). The Franco-German Treaty thus became a pillar of Franco-German reconciliation by institutionalizing the connection between the two countries in all policy areas. One observer claimed that the treaty led to a "fundamentally changed attitude of the French elites toward Germany" (Krotz 2010).

While there was considerable French anger and resentment towards Germany given that the traumatic experiences of war were fresh in the minds of French people (Ku 2008, 14), much of this was allayed by the destructiveness of war and a yearning for peace. The unprecedented destruction and realization among the peoples of Europe of never-before-seen atrocities, most notably the Holocaust, led to a desire among both French and Germans for reconciliation in the hopes that suffering on such a mass scale would not happen again. Furthermore, the general consensus on German war guilt and French shame over collaboration with the Nazi regime under the Vichy regime reduced jingoistic interpretations of history (Siegel and Harjes 2012, 389). The yearning for peace and acknowledgement of war guilt by the German people allowed both the French and Germans to begin the process of mnemonic *re-socialization* and reflect on their shared experiences as a victim of war.

The bottom-up process for reconciliation proceeded in a sporadic fashion through informal contacts by private citizens and some politicians (Ackermann 1994, 238). In particular, religious organizations took the lead on reconciliation as their separation from the state and transnational values provided a common platform for outreach. For example, the Moral Re-Armament Assembly in Caux, Switzerland, in 1947 became the spark for a bottom-up reconciliation process. A Lutheran minister facilitated the assembly and participants were invited from all nationalities, including the French, Germans, and Americans. During the meeting, former French resistance fighter Irene Laure's apologized for her hate towards Germany (Montville 1991, 172). Such examples reveal the depths to which the French were willing to forgive past atrocities in order to build towards a peaceful future.

One key institution in historical reconciliation has been the creation of the International Textbook Institute in 1951, which brought together French and German historians in resolving history textbook problems (Ku 2008, 17). The institutionalized ties in Franco-German relations had a snowball effect: bilateral exchanges and joint-projects led to mutual understanding and the breakdown of hostile perceptions, which created incentives for further cooperation. Similarly, the interaction between the French historian Pierre Renouvin and German historian Gerhard Ritter leading to the conclusion of the

1951 Franco-German Historians Agreement is indicative of the yearning for a reconciliatory peace. Despite being ardent nationalists, both scholars were willing to debate history based on facts alone and considered themselves practitioners of "cultural diplomacy" by reconstituting national myths as shared European history in an attempt to link national identities to a shared European identity (Siegel and Harjes 2012, 391). The result of such a process is evident in European integration with France and Germany at the European Union's core.

German-Polish Reconciliation

The reconciliation process between Germany and Poland was less successful in comparison to Franco-German reconciliation. The international structure was a significant barrier since the creation of NATO and Warsaw Pact had put Poland and Germany in direct confrontation with each other. The Hallstein Doctrine of 1955 prevented Germany from normalization relations because of Polish recognition of East Germany. International tensions mandated a hardline approach in Bonn. Domestically, there was no mood in Germany to address the question of reconciliation when society was facing hardship in rebuilding the destroyed country. Grievances over territory led to the emergence of expellee interest groups such as *Gesamtdeutsher Bund*, which urged for confrontation with Poland in reclaiming land Germans had been evicted from. These expellee organizations constituted an important political force since they accounted for 16 to 18 percent of West Germany's total population. At the same time, the new communist government in Poland sought to maintain its legitimacy through the promotion of nationalism and support for the Soviet Union in foreign affairs (He 2009, 52-62).

The period of détente coincided with West German leader Willy Brandt's policy of *ostpolitik* of engagement with Eastern Europe (Brandt 1968, 480). This policy manifested itself in the form of increased German aid to Poland during its food crisis. German societal discourse was stimulated by the American television show *Holocaust* which brought to the fore the need to address Nazi history. This initiated a process of introspective history seeking including changes to education and school visits to the Dachau concentration camp (He 2009, 70-75). Religious organizations played an important role: in 1965 the Evangelical Church of Germany published a letter urging society to initiate a process of healing through dialogue. Polish bishops replied with a letter to German church leaders offering forgiveness and asked for forgiveness (Phillips 1998, 70). By 1970, the German-Polish Textbook Commission by German and Polish delegates at the UNESCO General Conference. This period of reconciliation was initiated by Germany as a result of Brandt's political leadership and a social awakening of historical consciousness. The period of détente thus culminated in German apology for war crimes and compensation for victims. However, the endurance of the Cold War made it difficult for Polish leaders to acknowledge Brandt's sincerity. Nevertheless, progress in reconciliation was signaled by Polish confidence of a secure environment on which future relations could be built (Philips 1998, 82).

The ties instituted during the period of détente provided a modicum of resilience for German-Polish reconciliation during the resurgence in Cold War hostilities during the 1980s. The political opening created by Solidarity's uprising and truth-telling campaigns

energized Polish intellectuals to search deeper into their collective histories (Philips 1998, 91). The state's monopoly on history was broken. German-Polish reconciliation was cemented with the fall of the Berlin Wall and the democratization of Poland. In 1991, the German-Polish Treaty on Good Neighbourship and Friendly Cooperation was signed. This treaty was similar to the Franco-German Treaty and provided for institutionalized cooperation at all levels of politics and society (Gardner-Feldman 1999, 349). From 1989 to 1995, there was a 57 percent increase in the number of youth exchanges, many of which were modeled after Franco-German programs. The activities of the German-Polish Textbook Commission also expanded to incorporate issues of European history. This had the effect of cultivating a pan-European notion of community within which to German-Polish relations can be furthered (He 2009, 105-108).

Sino-Japanese Competition

Sino-Japanese relations demonstrate the difficulties in achieving reconciliation when top-down and bottom-up processes are divergent. From 1950 to 1981, China sought to downplay historical issues of Japanese atrocities. This was initially due to China's national security interest whereby it attempted to court Japanese affinity to undermine the United States–Japanese alliance and to weaken its support for the Nationalist government on Taiwan (He 2007, 47). Consistent with this policy, China refrained from condemning Japan as a nation but distinguished between civilians and military leaders and pushed for lenient punishments for war criminals during the 1956 war crimes trial. During this time, private memories of victimhood evoked hostile public opinion towards Japan, but the states' control of memory institutions precluded any expression of dissent (He 2009, 167).

In Japan, the structure of the Cold War heightened fears of communism in China, which fostered suspicion in Japan. This perception was cultivated by the United States, which sought to rebuild Japan as a bulwark against communism in East Asia (Lim 2009, 6). However, Japanese nationalism was focused through a shared sense of victimhood under American occupation and the horrors of nuclear attack. The lack of Japanese threat perception can be attributed to Japan's superiority complex as the Asian leader in modernization and cultural affinity with the Chinese. This was reflected in public opinion polls that revealed that 57 per cent of respondents favoured restoring relations with China in 1952 and reached its apex in 1960 when those in support of diplomatic normalization reached 75 per cent (Cho and Park 2011, 272).

The Sino-Soviet split and détente encouraged deeper cooperation between China and Japan. Following Sino-American normalization, China and Japan signed the Sino-Japanese Joint Declaration in 1972, which normalized relations. In exchange for diplomatic recognition, Beijing agreed to renounce its claims to war reparations for the sake of friendship. The Sino-Japanese Peace and Friendship Treaty further reduced tensions and allowed both sides to focus their attention on countering the Soviet threat (Wan 2006, 22). However, the lack of popular input suggests that bottom-up attitudes were against seeking cooperation with Japan as will be evident in the future bursting of anti-Japanese sentiments. In Japan, cooperation with China had the effect of fostering more amicable impressions of China and small-scale exchanges took place. However, this did not generate pressures for reconciliation since there was a lack of mutual

understanding. This was caused by China's censorship of exchange activities and the continually low level of contacts between the two peoples (Wan 2006, 100). Cooperation did not contribute to reconciliation during this period since the history question was taken off the political agenda.

By the 1980s, a reconciliatory attitude towards Japan no longer became useful and the 1982 Japanese Textbook controversy returned history to the fore of Sino-Japanese relations. The failure of the Cultural Revolution left society and the Chinese political system in disarray. In this context, Beijing adopted a hardline policy towards Japan in an effort to stabilize and unite domestic politics. The Communist Party's legitimacy was changed to espouse nationalistic values. This was instituted with patriotic education and a new hardline approach towards Japan. In 1984 Deng Xiaoping revived the history issue by claiming that Japan had a moral duty to assist China's economic development as a form of reparation (He 2009, 228). China's experiment with limited liberalization allowed nationalist sentiments to spread throughout society, with the help of media, based on a shared notion of victimization of the Chinese people. For example, the emergence of the redress movement, which pursued Chinese claims to compensation in the Japanese court system during the 1990s, was embraced by media. It had the effect of mobilizing public opinion by showcasing the ability of Chinese people to stand up against the Japanese (Reilly 2006, 200). The effect of media liberalization was such that "patriotic sentiment is no longer the sole province of the party … nationalism is functioning as a form of consensus beyond the bounds of official culture" (Barmé 1995, 211). This implies that latent antagonism has existed throughout the post-war period at the societal level and fuelled by nationalist education has manifested itself in virulent anti-Japanese attitudes.

Japanese politicians responded to Chinese policies with their own hawkish policies. Prime Minister Koizumi's visit to the Yasakuni Shrine was met with approval by the Japanese people and his successor Abe reduced its developmental aid provisions to China (Shirk 2007, 146). China has also been accused of "playing the history card" by using the issue of history to seek material concessions from Japan (Yang 2003, 68). Japan's policy has also been undermined by internal debates at the political and social levels about what type of apologies were needed. The endurance of the history problem in Japanese politics has led to a mood of "apology fatigue" where the Japanese felt that history became an implacable issue and further efforts to address it is futile (Berger 2010, 196).

Japanese – South Korean Friendliness

Cold War politics necessitated the remilitarization of Japan, which included the reintegration of former war criminals into Japanese politics. The inclusion of former war criminals eliminated the motivation within the Japanese political system to seek reconciliation. The result was the creation of a domestic fissure in addressing historical issues and engaging former victims to seek reconciliation. In South Korea, the political elites and public were vehemently anti-Japanese. In 1952, South Korean President Syngman Rhee declared an exclusionary boundary for Japanese access to Korean territorial waters. Furthermore, South Korea was dependent on the United States for security and economic development, which nullified the need to seek reconciliation (Ku

2008, 20-21). It was not until the 1960s, at a time when the legitimacy of the military government and worsening economic situation in South Korea combined with American preoccupation with the Vietnam War that reconciliation efforts began in earnest.

Nevertheless, throughout the early years of the Cold War, bottom-up pressures for reconciliation were non-existent given the lack of democracy. The majority of non-governmental organizations (NGOs) that existed in Japan were nationalistic organizations, which prevented a policy of reconciliation. Japanese perceptions of victimhood further negated the need for Japan to seek reconciliation. Moreover, Japanese understanding of their colonial experience in South Korea was that of a benefactor who had brought material benefits and enlightenment to the Koreans. This collided with the South Korean national consciousness constructed around colonial suffering and the loss of the Korean people's dignity (Cho and Park 2011, 285).

In 1965, the Basic Relations Treaty normalized relations between the two countries. However, the treaty was the result of South Korean President Park Chung-Hee's need to legitimize his presidency through economic development. Japan granted $300 million and provided a $500 million loan for Park to renounce Korea's demand for Japanese apology and compensation (Cho and Park 2011, 23). Political efforts to seek reconciliation began in 1983 when Japanese Prime Minister Nakasone, who wanted to reframe Japan as a normal state in the international system, visited South Korea. This was followed by a return visit by South Korean President Chun Doo-Hwan in 1984. During Chun's visit, the Japanese Emperor expressed regret at the "unfortunate past" of the two countries – the South Korean media pounced on this expression as evidence of remorse (Sakaedani 2005, 238). However, genuine reconciliation was not possible during the period for two reasons. First, instances of Japanese apologies were not followed with restitution measures including compensation and reforms to historical education. The 1982 textbook controversy highlighted the unrepentant nature of Japan and its apologies were not considered genuine. Second, the treaty was signed by Park despite mass protests in South Korea, which led to the declaration of martial law (Sakaedani 2005, 240). Notwithstanding the notion that cooperation was focused on material interests and not on reconciliation, there was a gap between top-down policies and bottom-up pressures, which prevented reconciliation from occurring.

The end of the Cold War witnessed drastic changes in the Japanese and South Korean political systems. In 1995, official apologies came forth from Japanese Prime Minister Murayama and a Japanese House of Representatives resolution stating that Japan "acknowledges the suffering that our country inflicted on the people of many countries … and profess a deep sense of remorse" (Sakaedani 2005, 238). Murayama came from the Socialist Democratic Party, which broke the relatively conservative Liberal Democratic Party's hold on power in Japan. South Korea's democratization and the election of Kim Dae-Jung contributed to reconciliation. Democratization legitimized government efforts to seek better relations with Japan through the institutionalization of public channels of communication. These channels were open and occurred on a regular basis, which facilitated cooperation and debate between the two parties (Cha 2003, 50). In 1998, South Korea and Japan signed the Joint Declaration of Partnership towards the Twenty-First Century, which called for enhanced cooperation on a mixed-spectrum of issues (Sawada 2007, 196).

Socially, South Korean President Kim lifted a cultural ban on Japanese imports in 1998. Kim also invested in cultural development, which was eventually exported to Japan. The combination of cultural exposure and the joint hosting of the 2002 World Cup increased mutual affinity between both countries. Opinion polls after the World Cup showed that people who thought Japan-South Korea relations were amicable increased by 16.3 percent (Sakaedani 2005, 246). Informal contacts also blossomed. For example, the Japan-Korea Forum facilitates informal contact across the social spectrum to share their views on economic, security, cultural cooperation, population movements and generational changes in Japanese and South Korean society. Furthermore, despite an avoidance of the history issue in politics, both states agreed to create a joint history committee in 2002 to foster constructive and depoliticized dialogue on the history question (Schneider 2008, 117).

However, support for reconciliation within civil society has been contested by nationalist civil society movements in Japan. Societal pressures encouraged politicians to resume their worship of the Yasakuni Shrine to garner votes from conservative elements of society. In Japan, the Japanese Society of Composing New History Textbooks was created in response to historical corrections that the Japanese government had instated. This correction portrayed Japan's role in World War II as being more aggressive. The Japanese Society of Composing New History Textbooks was able to adopt a public smear campaign, which prevented the textbook from achieving a high adoption rate within Japanese schools. The textbook issue has thus become a seemingly insurmountable barrier to reconciliation because of the publication review that occurs every four years – instigating disputes every four years (Ku 2008, 29). The growth of civil society in both countries have produced deadlock over the history question. Conservative and progressive groups continue to contend domestically, and conservative accusations of Japanese intransigence have fuelled the growth of conservative groups in Japan (Schneider 2008, 111). The dynamic of civil society interaction limits the political space in which leaders are able to pursue a reconciliatory policy. The politicized and unresolved issues of historical restitutions and truth telling on issues such as comfort women and forced labor continues to obstruct reconciliation.

The anti-colonial politics of the postwar experience and the geopolitics of the Cold War allowed Japan and South Korea to manipulate national consciousness for domestic consumption while enjoying a robust security relationship under American tutelage. As Cho and Park (2011, 289) conclude in the context of Korea-Japanese relations, the interpretation of the colonial past is a matter of political decision. This political decision has often been moderated by American involvement in the region. With the emergence of China as a regional power and the uncertain future of the American security in Northeast Asia, it remains to be seen how the tensions between geopolitics and national consciousness will play out.

Conclusion

The two successful cases of interstate historical reconciliation support the hypothesis that reconciliation can only occur when top-down and bottom-up processes within a democracy are complementary and is supported by a favorable international environment. Franco-German reconciliation represents the ideal case of reconciliation

where social mobilization enhanced the legitimacy of a reconciliatory policy by political leaders. In the case of German-Polish reconciliation, bottom-up pressures for reconciliation were present since the 1960s. However, the realities of the Cold War prevented Polish leaders from accommodating Brandt's outreach. The end of the Cold War thus removed limitations to reconciliation.

The Asian case studies reveal that reconciliation cannot occur when societies continue to harbor grievances about Japan. The Asian cases offer several conclusions:

- Authoritarian regimes prevented public expressions of anger. Although repression allowed political leaders to pursue politically expedient goals, it produced a pressure cooker filled with latent anger. Political repression eliminated the bottom-up dimensions of reconciliation, which precluded societal reconciliation with Japan.
- Political cooperation does not precede reconciliation. The example of Beijing dropping Chinese claims to reparations and Park's signing of the Basic Relations Treaty reveal that the history question was avoided in order to preserve relations.
- Democracies have an ambiguous impact on reconciliation. An impediment to Japanese-South Korean reconciliation was internal disputes by conservative and progressive interest groups, who limited the policies leaders were able to pursue.
- A nuance understanding of the role of a third party is necessary because they may harm prospects for reconciliation. The United States can be viewed as a culprit to reconciliation because of its reinstatement of Japanese war criminals and cultivation of Japanese victimhood. Also, the presence of the United States as a security guarantor removed the necessity for Japan and South Korea to seek deeper integration.

These conclusions raise several questions for future research. What is the role of culture in the reconciliation process? For example, religious organizations were instrumental in the reconciliation process in Europe and often were the instigators of reconciliation. They opened political space and encouraged political leaders to undertake an otherwise costly act. Also, Germany appeared to be much more reconciliatory following its defeat in World War II which can be contrasted to the enduring nationalism evident in Japan. Does culture affect how ready a society is to acknowledge its past? A possible explanation is the differentiation between the sentiments of "guilt" in western civilization and "shame" in Asian culture. Whereas guilt is an internal feeling that is absolved through making amends to correct wrongs, shame is premised on public disapproval of the individual (Hein 2010, 256). Given the importance of face in Asian culture, this may explain Japan's sensitivity to resolving the history question. Last, what is the role of a third party in the reconciliation process? Is there space for a mediator to assist in the framing and exploring of collective needs (akin to the human needs approach in intractable disputes). The literature on conflict reconciliation has emphasized a needs-based approach in changing the view of the other from one of attribution bias to one of empathy. In the case of individual conflict resolution the notion of needs are, in many cases, rooted in the physical need for security. As has been mentioned, the notion of historical reconciliation requires that actors address deep-rooted intangible factors rooted

in history and collective memories, issues that are not readily addressable in the context of negotiated settlements. Furthermore, since the notion of historical memories cannot be totally dominated by a single narrative, there are serious doubts as to the role of a mediator in bringing competing parties together.

Table 1: Case Study Summary

Case	Time Period	Country	Top-Down Pressure	Bottom-Up Pressure	Structural Pressure	Political Openness	Reconciliation
France – Germany	1945 – 1949	France	Partial	Partial	Neutral	Democracy	No
		Germany	Partial	Partial		Occupied Territory	
	1950 – 2005	**France**	**Reconciliatory**	**Reconciliatory**	**Reconciliatory**	**Democracy**	**Yes**
		Germany	**Reconciliatory**	**Reconciliatory**		**Democracy**	
Germany – Poland	1950 – 1965	Germany	Hostile	Hostile	Hostile	Democracy	No
		Poland	Hostile	Hostile		Authoritarian	
	1966 – 1980	Germany	Reconciliatory	Reconciliatory	Partial	Democracy	Partial
		Poland	Partial	Reconciliatory		Authoritarian	
	1981 – 1990	Germany	Reconciliatory	Reconciliatory	Hostile	Democracy	Partial
		Poland	Partial	Reconciliatory		Partial	
	1990 – 2005	**Germany**	**Reconciliatory**	**Reconciliatory**	**Reconciliatory**	**Democracy**	**Yes**
		Poland	**Reconciliatory**	**Reconciliatory**		**Democracy**	
China – Japan	1950s – 1971	China	Partial	Hostile	Hostile	Authoritarian	No
		Japan	Hostile	Hostile		Democracy	
	1972 – 1981	China	Partial	Partial	Reconciliatory	Authoritarian	Partial
		Japan	Reconciliatory	Partial		Democracy	
	1982 – 1989	China	Hostile	Hostile	Partial	Authoritarian	No
		Japan	Reconciliatory	Partial		Democracy	
	1990 – 2005	China	Partial	Hostile	Partial	Authoritarian	No
		Japan	Partial	Partial		Democracy	
Japan – South Korea	1945 – 1959	Japan	Partial	Partial	Reconciliatory	Democracy	No
		South Korea	Hostile	Hostile		Authoritarian	
	1960 – 1990	Japan	Partial	Partial	Reconciliatory	Democracy	Partial
		South Korea	Reconciliatory	Partial		Authoritarian	
	1990 – 2005	Japan	Reconciliatory	Partial	Reconciliatory	Democracy	Partial
		South Korea	Reconciliatory	Partial		Democracy	

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Between Continuity and Upheaval: Hybridised Global Financial Policy in the Post-Crisis Period

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Two main approaches to understanding reforms of global financial governance have been promoted since the 2008 crisis. A first framework depicts the sustained power and influence of private market actors while a second focuses on the rise of public actors in formerly private governance structures. The central claim of this paper is that neither approach adequately captures the increasing mix of public and private authorities in the post-crisis period. In contrast, a hybrid framework is required to more holistically grasp the full range of post-crisis reforms. This claim is empirically substantiated through an analysis of global policies concerning credit rating agencies.

List of Acronyms Used

BoE = Bank of England
CDO = Collateralised Debt Obligation
CRA = Credit rating agency
ECB = European Central Bank
EMH = Efficient Market Hypothesis
ESMA = European Securities and Markets Authority
FSB = Financial Stability Board
G-20 = Group of Twenty
MBS = Mortgage-Backed Security
IOSCO = International Organisation of Securities Commissioners
NRSRO = Nationally Recognised Statistical Rating Organisation
SEC = Securities and Exchange Commission
S&P = Standard and Poor's Financial Services LLC

1.0 INTRODUCTION

> *The idea of the all-powerful market that must not be constrained by any rules, by any political intervention, was mad. Self regulation as a way of solving all problems is finished. Laissez-faire is finished. The all-powerful [sic] market that always knows best is finished.*
>
> -Former French President Nicolas Sarkozy (2008)

Has the severity and scope of the most recent financial crisis reversed the long-standing trend towards market-driven global financial policy? Is unbridled financial capitalism truly 'finished'? Have alternative approaches guiding global financial policy emerged in the post-crisis period? The central purpose of this paper is to explore whether reliance on private, market-based authority[1] has remained the overarching policy paradigm shaping post-crisis global financial reforms.

Academic investigation in political science, sociology, and economics has illustrated the role of market-based policies in a succession of financial crises, including the most recent one.[2] A large and seemingly ever-growing literature subscribes to the view that unrestrained finance, freed from the restraints of government interference and left to the supposed efficient workings of the free market, was the major cause of the worst financial crisis since the Great Depression.[3] More than just specifically sub-prime mortgages, collateralised debt obligations, or credit default swaps, it was arguably the overarching idea that financial markets should be left to their own devices that led global capitalism to the brink of Armageddon in mid-2008.[4] Yet while this reliance on market-based authority may now be discredited in theory[5], to what extent has it been abandoned in practice?

This paper does not seek to contribute to the extensive literature chronicling the events and origins of the largest financial crisis of our time. Rather the main focus here is on the nature of ideational and institutional[6] developments since 2008. In the past half-decade a flurry of new laws, principles, and regulations have been promulgated with the ostensible purpose of rectifying and constraining the actors and structures responsible for the crisis. In a manner similar to the analysts who examined what was then deemed to be the 'New Global Financial Architecture' following the Asian Financial Crisis[7], the

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[1] Cutler et al (1999), Hall and Biersteker (2002), Graz and Nölke (2008).
[2] Sy (2004), Perry and Nölke (2006), Helleiner and Pagliari (2011), Sinclair (2010), Mügge (2011).
[3] See for instance Chorafas (2009), Gowan (2009), Gamble (2009), Haseler (2008), Johnson and Kwak (2010), Lewis (2010), Morris (2008), Schwartz (2009), Sorkin (2009), Soros (2008), Davies (2010), Stiglitz (2010), McNally (2011).
[4] The extent to which the 2008 financial crisis was truly 'global' is disputed. The severity of the crisis varied greatly across countries and regions (French et al 2009). For Nesvetailova and Palan (2009) as well as Thompson (2009) the crisis was more 'North Atlantic' in scope. Others dispute whether the crisis is truly finished. For instance Underhill (2010) argues that the financial crisis moved to a second phase following the nationalization of private debts. For the purposes of this paper the recent crisis will be limited to the events of 2007-8.
[5] See Cooper (2008) and Fox (2009) as well as pre-crisis accounts of De Goede (2003) and Tooze (1988).
[6] The definition of institutions is a frequent topic of debate in the social sciences. This paper will extend the more traditional definition of institutions (North 1990) to both formal and informal rules and conventions of regimes, associations, and profit-seeking entities.
[7] See for instance Armijo (2003) and Best (2003).

objective of this paper is to investigate the nature of financial reforms following the most recent crisis.

The central argument put forth here is that analyses of post-crisis developments have overlooked the hybridisation of global financial policy reforms. Much of the current debate has been concerned with whether or not public actors have reclaimed authority over markets. Meanwhile, the symbiotic and intertwined connections that increasingly characterise global financial policy-making have not adequately been conceptualised.[8] Through a more nuanced investigation of global policies concerning credit rating agencies this paper illustrates the growing embeddedness and increasing overlaps between the public and private actors that have thus far shaped global financial policy in the post-crisis period.

The remainder of the paper is organised as follows. A first section provides conceptual clarification of the terms global policy as well as paradigm change. The proceeding section outlines two broad frameworks of post-crisis global financial policy developments before expounding a third hybridised analysis. Empirical substantiation is then provided through an examination of the case of global credit rating policy before, during, and since the crisis. A final section summarises and draws conclusions regarding the changing nature of post-crisis global financial policy.

2.0 GLOBAL POLICY AND PARADIGM CHANGE

Prior to investigating the shifting nature of global financial policy reforms, clarification of what precisely is meant by global policy as well as paradigm change is essential. This section explores these oft cited yet infrequently defined terms and presents implications for the examination of post-crisis financial policies.

2.1 Global Policy

Global policy refers to cross-border rules, procedures, norms, routines, practices, and conventions formed through- and applying to- state, semi-state, and non-state actors at multiple levels of authority. Supra-national regulation and supervisory guidelines are linked to official, semi-official, and non-official entities operating at global, regional, national, and sub-national levels. Through overlapping layers of power and influence, global policies originate from the "intersecting membership" (Hooghe and Marks 2003) of both centralised and decentralised "multi-level" (Perraton and Wells 2005) authorities.

Stemming from both state and non-state sources, global policies are best explored through syntheses of "polycentric" and "state-centric" analytical lenses.[9] An ideal balance of these perspectives recognises the significant contributions of dispersed sets of semi- and non-state entities while granting that varying degrees of power persist in key state actors. Rejecting "conceptual favouritism" (Hoffmann and Ba 2005) towards any single group of actors ensures that insights from competing perspectives are not overlooked (Barnett and Duval 2005). More compelling analyses are derived through, for instance, acknowledging the resurgence of the state during the 2008 financial crisis (cf Germain 2009) in addition to the significant "audience expansion" (Drezner 2010: 800),

[8] See Mügge (2010) and Blom (2011) for exceptions.
[9] Koenig-Archibugi (2010). See also Hall (1993).

which increased participation and involvement of actors from local legislatures to transnational activists in post-crisis global financial debates.[10] The dispersed nature of global policy thus requires analytic focus be accorded neither to one particular group of actors nor to a specific level of analysis. Rather, an assortment of multi-level entities must be accounted for in order to comprehensively examine the formulation and implementation of global policies.

2.2 Paradigm Change

Thomas Kuhn's (1999) conceptualisation of paradigm change entails drastic shifts from dominant, "normal", and seemingly universal values, ideas, and practices as a result of the accumulation of unsolvable anomalies. Hall's (1993: 291) extension of this concept to broad shifts in the goals of policy emphasised that dramatic "third order" change entails a "wide-ranging" search for new ideas not "confined in the state itself". Both state and non-state actors are thus essential to understanding the dynamics that shift overarching frameworks guiding global policy.

Paradigmatic change is infrequent and often occurs slowly. A single shift in the overarching framework of global financial policy transpired over the past half century (Helleiner and Pagliari 2011). Despite a series of increasingly severe financial crises since the 1970s, the dominance of market-based approaches has yet to be displaced. The depth and hardships of crises, including the most recent one, may therefore be insufficient to induce shifts away from long-standing policy paradigms. When paradigmatic change does occur, moreover, it is rarely instantaneous. Although often characterised as "dramatic", the earlier shift to market-based financial policies occurred over the course of approximately one decade, unmarked by any single "foundational moment" (Helleiner 2010: 620). A half-decade since the onset of the most recent financial crisis, evidence of genuine paradigmatic change may thus be premature.[11]

This difficulty in identifying and locating paradigm change highlights the necessity of a secondary focus beyond "revolutionary" (cf. Fidler 2010) or radical "third order" cataclysms (Hall 1993). Of additional significance to the examination of the nature of post-crisis global financial policy reforms are the incremental contributions of Hall's "first and second order" changes. First order changes consist of shifts in policy setting while second order changes are modifications of the instruments used to achieve policy goals. Both orders of change result from experiences of past failures and neither fundamentally conflicts with the overarching objectives of current policy frameworks. As such, these lower order changes broadly refer to *adjustments* as opposed to concrete challenges of "the overall terms of a given policy paradigm" (Hall 1993: 279). Yet, while the interplay of ideas and principles guiding new policy instruments and settings do not constitute evidence of shifting predominant frameworks, they nonetheless represent important steps towards the potential emergence of genuine alternative paradigms (Blyth

[10] Froud et al (2012: 44, 48), Cobbett and Germain (2012).
[11] Indeed, Helleiner (2010: 635) predicts that the "neo-liberal globalized" pre-crisis policy paradigm will move only "incrementally" from an "interregnum" phase to a more "constitutive" phase following the recent crisis.

2001).[12] The next section explores conceptualisation of paradigm change in various conceptualisations of post-crisis global financial reforms.

3.0 THEORISING POST-CRISIS GLOBAL FINANCIAL POLICY

This section presents three frameworks for understanding global financial policy in the post-crisis period. Differences between perspectives are explicitly highlighted and internal variations downplayed in order to formulate three simplified, coherent approaches. Although at times resting on overlapping theoretical traditions, the overall depictions of post-crisis reforms in each approach remain broadly divergent.

3.1 The Continuity Approach

A first framework for theorising private authority in the post-crisis period can be labelled the continuity approach. The overarching argument here is that the recent financial crisis has not been a critical juncture.[13] Market authority is alleged to still dominate the post-crisis policy environment. The pre-crisis paradigm of outsourcing the formulation and implementation of financial policy to private control remains well established.[14]

Post-crisis global financial policy in the continuity approach is perceived to singularly reflect the interests of powerful global financial firms. It is alleged that new laws, agreements, and structures developed since the 2008 crisis have principally benefited private actors over the broader public. Reforms in the post-crisis period are characterised by the sustained command of policy-making processes by a transnational community of large private profit-seeking entities, such as elite multinational banks and insurance firms (Carroll 2010). Market-based ideas continue to be transmitted through unaccountable transnational corporate networks that defend vested interests by blocking public interference in and control of self-regulated markets.[15] Scholars in this approach highlight the lasting dissemination of market-based authority through the "intellectual capture" of public sector actors (Tsingou 2010). Ideas heralding that 'the market knows best' persist in demarcating the limited role for the public sector in global financial policy. With little lapse in the belief in the efficient market hypothesis (EMH), the very ideas at the foundation of the crisis continue to provide both diagnoses and policy prescriptions.[16]

This approach portrays the private sector reforms promulgated rapidly following the beginning of the crisis as pre-emptive strikes against public intrusion in self-regulated financial markets. It is maintained that the limited changes contained in these early post-

[12] This is not to assert that first and second order changes necessarily lead to third order change but that just as the emergence of rainclouds often- though not always- anticipates rainfall, the presence of lower order changes *may* signify impending third order change.

[13] For recent discussions of critical junctures in international relations see Fioretos (2011) and in international or global political economy see Farrell and Newman (2010).

[14] The literature referencing this approach is found in Pauly (2009), Johnson (2009), Johnson and Kwak (2010), Nesvetailova and Palan (2010), Nölke (2010), Woods (2010), Grahl (2011), Chima and Langely (2012) and Rothkopft (2012).

[15] Baker (2009), Porter (2005, 2009), Helleiner and Pagliari (2011).

[16] See for instance, Minsky (1986), Cooper (2008), Haseler (2008), Morris (2008), Fox (2009), Gamble (2009), Gowan (2009), Lawson (2009), Baker (2010), Sinclair (2011), Major (2012).

crisis initiatives successfully forestalled more fundamental public reforms by simply tweaking the existing governance framework (Mügge 2011a). In sum, the overarching argument put forth in the continuity perspective is that a paradigm shift has not occurred and that financial reforms remain strictly wedded to the pre-crisis reliance on market authority.

3.2 The Upheaval Approach

The central theoretical claim in the upheaval approach is that there has indeed been a critical juncture in global financial policy since the 2008 crisis. This second framework views states and the public interest as reasserting control over self-regulated financial markets in the post-crisis period.[17] The crisis demonstrated the limits of market-based authority and the ability of the public sector to seize back the initiative in order to "tame" the excesses of unregulated financial market (Griffith-Jones et al 2010).

The upheaval approach stresses the post-crisis rejection of the EMH and renewed state intervention in previously self-regulated financial markets. The claim that financial markets are somehow perfectly efficient and best left unregulated has become a "mythic" and "utopian" idea (Sinclair 2011: 127). As a result, a decisive shift towards more command and control of "managed" financial markets has occurred (Posner 2010: 117). This theoretical framework alludes to Karl Polanyi's (1944) double movement where the ills of the free market lead to a social countermovement. In the aftermath of the turmoil of 2008 scholars in this framework invoke the connection between the hardships of under-regulated markets and post-crisis attempts by society to protect itself through fundamental policy reforms.[18] The assertion is that with market-based ideas thoroughly discredited, states and public organisations have been able to re-exert command as well as control over markets.

At the same time however increased public intervention has led to less globally coordinated approaches to financial policies. This approach identifies a "retreat from global governance" (Germain 2010b) and more "cooperative decentralization" (Helleiner and Pagliari 2011) as the power of transnational market elites has decreased. The "primacy of politics" and disagreements over global one-size-fits-all models has led to much more regional and national variation in financial policies (Mügge 2011b). The post-crisis environment is therefore characterised by varying and uncoordinated public attempts to 'tame' private, market-based authority.

3.3 The Hybrid Approach

A third theoretical framework for analysing the nature of post-crisis global financial policy reforms rejects the dualistic underpinnings of state and market-centric perspectives. The central claim put forward in the hybrid approach is that markets and states are neither dialectically opposed nor engaged in continually antagonistic

[17] The literature referencing this approach is found in Altman (2009), Mosley and Singer (2009), Germain (2010a), Persaud (2010), Helleiner and Pagliari (2011), Rodrik (2012), Véron (2012).
[18] See for instance Burgoon (2009), Caporaso and Tarrow (2009), Dale (2010), Clapp and Helleiner (2012).

relations.[19] Rather, states and markets are furthering dependence on one another in what can be characterised as increasingly intertwined and symbiotic relationships. Elsewhere labelled the "state-market condominium" (Underhill 2003) or "ensemble" (Germain 2004), this framework views private and public authority as merging and becoming essentially fused.[20] As Pauly (2009: 962) puts it, "the evolution of financial markets and the evolution of the underlying authority to supervise them are, so to speak, two sides of the same coin".

The hybrid approach views post-crisis governance reforms as part of a robust private-public mix. The interactions of states and markets constitute an integral whole and neither private 'capture' of the public nor public 're-claiming' of the private sufficiently conceptualises policy developments since the 2008 crisis. Private sector actors have relied on the state for the legitimate consent of market-based rules while states have in turn depended on markets and market actors for the implementation and supervision of global financial policy arrangements. Similarly, public financial institutions have increasingly functioned as market players while financial firms have acted as public regulators, supervisors, and *de facto* governing institutions.[21] As a result of the blending of markets and governance, the overlapping functions of states and markets as well as private and public interests are difficult to clearly demarcate. Changes in global financial policy arrangements have thus occurred through the collusion of "intimately bound" (Underhill 2010) public and private authorities in a variety of national, regional, and global policy networks (Stone 2008). The following section provides empirical substantiation of such intertwined private-public alliances in post-crisis global financial policy.

4.0 GLOBAL CREDIT RATING POLICY

An analysis of the wide range of financial policy reforms adopted since 2008 evidently remains well beyond the scope of this paper. As such, this section explores the nature of post-crisis global financial policy through the case of credit rating agencies (CRAs). The overview of the functions of these agencies and issues associated with global credit ratings presented in this section depicts how global CRA policies epitomised the pre-crisis reliance of global financial policy on private authorities. Additionally, the first three subsections illustrate how the prominent involvement of the agencies in the worst financial crisis since the Great Depression has made global CRA policies likely targets of post-crisis reform. Due to its market-driven nature as well as its key function in financial instability, global CRA policy forms a fitting case study to investigate the changing nature of global financial policy in the post-crisis period.

[19] Strange (1996), Boyer and Drache (1996), Schwartz (2000). The concept of hybridity has previously been utilised in public policy (cf. Peck 2004), sociology (cf. Frank 2004), and globalisation studies (cf Pieterse 1994), but rarely specifically in regards to global financial policy.
[20] Germain (2010). The approach is also influenced by institutional economics (cf. Krueger 1974; Coase 1992).
[21] Abdelal (2007), Mügge (2010).

4.1 A Brief Overview of Credit Rating Agencies

Credit rating agencies (CRAs) are corporations that evaluate public and private issuers of debt. With the use of primarily alphanumeric grade rankings CRAs inform investors of the capacity and willingness of debtors to repay as well as on the overall possibility of default.[22] Credit ratings greatly influence borrowing costs. Debt-issuers graded with low ratings must compensate for the increased risk of their investments by offering higher rates of return. Conversely, highly rated public and private entities are able to issue debt at much lower interest rates since investment in their securities is comparatively safe.

Originating as information reporting service providers in nineteenth century American corporate bond markets (Sylla 2001), CRAs have vastly grown in importance since the 1970s as a result of three intertwined processes. First and foremost, changing modes of money borrowing have led CRAs to increasingly fill the gap left by banks as risk judgement intermediaries between creditors and debtors (Sinclair 2005). In other words, the trend towards raising funds on capital markets rather than through bank loans has increased the influence of CRAs as objective information arbitrators between borrowers and lenders (Rousseau 2006). Secondly, growing aggregate levels of debt and investor demand for higher returns on so-called 'junk' bonds have increased the volumes of debt necessitating ratings (Kerwer 2005). Third, national and global regulations have prescribed regulatory roles for credit ratings. Industrially advanced countries have increasingly mandated institutional investors such as pension and mutual funds to invest only in the highest rated debt (Partnoy 1999). Meanwhile, at the global level, the Basel II capital adequacy accord prompts small and medium-sized international banks to hold specific levels of CRA-rated financial assets.[23]

4.2 Issues Associated with the Credit Rating Agency Industry Structure

This subsection presents two lists of interrelated concerns that have persistently characterised CRA policy debates before, during, and following the most recent financial crisis. Though a further number of issues affecting the credit rating industry certainly exists, only the eight most vexing, re-occurring, and globally relevant are addressed.[24] A first list illustrates four matters potentially resolvable through market discipline as well as "first and second order" policy changes. A second list then briefly details an equal number of concerns whose systematic nature necessitates holistic third order change from the current policy paradigm to attain comprehensive resolution.[25]

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[22] The definition of what precisely constitutes a formal debt default varies. For some, default consists of a failure to honour an interest payment while for others a small delay in debt repayment does not indicate a full instance of default (Ang and Patel 1975; Citron and Nickelsburg 1987).

[23] In contrast, large global banks have been able to rely on their own internal ratings, see Wood (2005), Abdelal (2007), Claessens et al (2008), Tarullo (2008), Mosley and Singer (2009). This uneven trend has continued with the Basel III accords, see Basel Committee on Banking Supervision (2011) and Lall (2012).

[24] Though for simplicity these issues are presented separately, they are certainly not disconnected from one another or from larger structural concerns.

[25] Following subsections will further elucidate the reasons for which each these issues are categorised as superficial or structural.

'Superficial' Issues Resolvable Within the Market-Based Policy Paradigm

The four issues listed below are considered to be 'superficial' as they can be addressed within the current market-driven policy paradigm. Market actors themselves can undertake solutions to problems of unsolicited ratings, consulting services, transparency, and structured ratings since these issues are not fundamental to the credit rating industry structure. As such, these relatively recent problems do not require a large-scale deviation from the pre-crisis global financial policy framework.

1. Unsolicited Ratings

CRAs are sometimes denied permission to undertake credit rating, yet nevertheless choose to conduct one on a purely voluntary basis.[26] These unsolicited 'hostile' ratings are considered as unfair tactics to expand market-shares since the possibility of receiving a weak rating increases pressure on debt issuers to pay for an official rating (Mollers 2009). As unsolicited ratings are not core functions of CRAs- they do not bring in immediate revenues and thus constitute risky uses of resources- their use could conceivably be minimised through forms of market self-discipline.

2. Consulting Services

CRAs often advise clients on techniques to improve their credit rating. Tremendously profitable for the agencies, these consulting services have led to significant worries concerning the integrity and impartiality of the rating process.[27] However, as these services are not core functions of CRAs- the agencies survived for years without consulting their clients- this issue could plausibly be resolved through market self-regulation.

3. Transparency

The determinants of credit ratings remain closely guarded industry secrets and CRAs actively discourage discussion of their rating methodologies.[28] CRAs maintain that combinations of various political and economic considerations are factored into their

[26] Sinclair (2005), Hill (2010), White (2010). An evaluation of the difference between solicited and unsolicited ratings is undertaken by Poon et al (2009).

[27] CRAs have been very profitable indeed. Moody's Investor Services Inc. (Moody's) for instance posted the highest profit margins of any S&P 500 company in the first five years of the new millennium. Shares in this firm increased by nine hundred per cent over the previous decade, see Jones (2008). Even after the crisis Moody's, with a market valuation of $8.9 billion, and its nearest competitor, Standard & Poor's Financial Services LLC (S&P), enjoy "exceedingly high" profit margins of approximately forty per cent (Gillen 2009).

[28] Biglaiser and DeRouen (2007: 122) note "the secrecy surrounding how bond ratings are determined" as well as how the "specific details about how the categories and subcategories are weighted and determined are proprietary information" (125). Meanwhile, Fight (1999: 109) claims that "none of the agencies explain how [these various factors] are reconciled". Each CRA claims its assessments are "unique" (Archer et al 2007: 343) processes, "superior" to and "more accurate" (347) than those of its rivals.

rating formulas.[29] However, Sinclair (2005) has argued that ratings are derived from a "mental framework" favouring Anglo-Saxon neoliberal worldviews. Nevertheless, neoliberalism also advocates market disclosure signalling that this issue potentially could be resolved within the pre-crisis market-based policy framework (Best 2010).

4. Structured Products

It is alleged that CRAs granted above-average ratings to financial instruments of highly dubious underlying value in the run up to the recent financial crisis. Engelen (2009: 67) contends that the agencies "colluded" with the producers of what later turned out to be highly toxic asset backed securities, such as collateralised debt obligations (CDOs) and mortgage-backed securities (MBSs). Nesvetailove and Palan (2009: 173) assert that CRAs' traditional rating methods "failed most miserably" in their risk analysis of synthetic products, making bad debts liquid in the process. These highly rated assets spread throughout the financial system and contributed to the widespread uncertainty underlying the 'great market freeze' in autumn of 2008.[30] However, CRAs survived for decades without rating structured financial products indicating that this issue could be managed within the pre-crisis market-driven policy framework.

Structural Issues Not Easily Resolvable Within the Market-Based Policy Paradigm

A further four issues are considered 'structural' as they cannot adequately be resolved within the pre-crisis market-based policy paradigm. Rather, the intractable nature of the problems of fees, competition, timing, and accountability necessitates solutions beyond "first and second order" changes to the entire industry structure (Hall 1993).

1. Fees

Ratings are generally conducted for a fee. It is alleged that this "issuer pays" model encourages CRAs to downplay clients' default risks and to inflate ratings. Although it is debatable whether or not CRAs would risk their reputations as neutral information providers for the benefit of any one particular client (Hill 2010), the potential for conflicts of interest inherent in this payment structure are reputed to be strong.[31] Market-based policies alone are unlikely to force CRAs to deviate from such fee arrangements.

2. Competition

National certification regimes and industry concentration have long constrained the ability of new CRAs to effectively challenge the entrenched market leaders (Bruner and Abdelal 2005). Moody's Investor Services Inc. (Moody's) and Standard and Poor's Financial Services LLC (S&P), the leading two CRAs who share an interconnected and

[29] Archer et al (2007), Langohr and Langohr (2008), White (2010).
[30] Engelen (2009), Rom (2009), Hill (2010), Nesvetailova and Palan (2010), Stiglitz (2010), Germain (2010a) and Sinclair (2010).
[31] CRAs have testified that no single client make up more than two per cent of their revenue incomes, see Beaver et al (2006) and the Financial Crisis Inquiry Commission (2011).

"complicated lineage" (Sinclair 2005: 25), issue more than three-quarters of ratings issued globally (Securities and Exchange Commission 2012: 8) and are said to play "hegemonic" roles within the industry (Nicholls 2005: 12).[32] It is thus improbable that market-based policies alone can succeed in breaking up the credit rating industry's entrenched oligarchy.

3. Timing

CRAs look beyond short-term business cycles and analyse the long-term risks of default. The resulting 'stickiness' as ratings remain stable during rapidly fluctuating financial circumstances has been extensively condemned (Woo 2012). Ratings have been equally criticised for overreacting (Abdelal 2007) and intensifying instability by issuing cascades of ratings downgrades during economic downturns (Hill 2010). However, the timing of credit ratings is embedded in the industry structure and, as such, unlikely to be corrected simply through the market-based policies of the pre-crisis period.

4. Accountability

The credit judgements of CRAs have been widely denounced for major inaccuracies in the lead-up to and throughout a number of financial crises, including the most recent one.[33] The rating agencies maintain that their judgements constitute mere 'opinions' and should be exempt from legal standards regarding investment advice. On the strength of these arguments, CRAs have not been held liable for producing misleading or wildly inaccurate ratings (Katz et al 2005). It is therefore plausible that market-driven policies alone will not provide sufficient incentives for CRAs to change the fundamentally editorial nature of their ratings (Kerwer 2005).

4.3 Pre-Crisis Market-Based CRA Policy

Although frequently depicted as prominent examples of unbridled private global authority, the influence of CRAs notably derives from a range of market-driven public policies.[34] Asserting that CRAs are not regulated anywhere ignores the codification of their power in public policies at various levels of authority (Bruner and Abdelal 2005). The purpose of this subsection is to detail how pre-crisis global CRA policies have relied on market mechanisms for their implementation and supervision.

[32] Only recently has Fitch Ratings Ltd. (Fitch) garnered significant market share to be widely considered as the third major global CRA thereby transforming the global duopoly into a triopoly (Utzig 2010). Fitch is majority owned by a French holding company and dual-headquartered in New York and London. Although dozens of other CRAs exist around the world, many are limited to specialised niche financial products, confined to their home markets, and allied with or subsidiaries of the 'Big Three' agencies. As a result, these smaller CRAs have "limited global coverage" (Smith and Walter 2002).

[33] See for instance Sinclair (2005), Hill (2010), Stiglitz (2010). Sy (2009) claims that there has been a credit rating crisis every three years for the past twenty-two years.

[34] As such, some authors refer to CRAs as "quasipublic" entities (Kerwer 2005: 464).

American Pre-Crisis CRA Policy

As the home jurisdiction of the New York-based global CRAs, the United States (US) has long operated as the frontline in the evolution of CRA policies that are frequently replicated in numerous countries around the world.[35] In a series of laws and regulations promulgated since 1975 the federal agency responsible for overseeing national capital markets, the Securities and Exchange Commission (SEC), has mandated that brokerage firms, insurance companies, and investment funds incorporate only the ratings of Nationally Recognised Statistical Rating Organisations (NRSRO). [36] Designed to encourage the use of "credible and reliable" ratings (Abdelal 2007: 168), the requirement that CRAs be widely accepted in national capital markets prior to attaining NRSRO status is generally believed to have prevented the emergence of competing firms (Partnoy 1999). It has consequently been maintained that the reliance on market-based mechanisms for determining official "nationally recognised" CRAs transformed the oligopolistic ratings market into an effective "government sponsored cartel" (Coskun 2008: 265).

Responding to a series of corporate governance scandals where extremely inflated ratings were granted to firms such as Enron and WorldCom days prior to their bankruptcies, the 2006 CRA Reform Act induced only minor first and second order changes to the market-based policy paradigm. The major stipulations of the Act involved increased transparency in the NRSRO certification process, mandated disclosure and retention of data and documentation, and enhanced SEC authority to examine as well as suspend CRAs conducting unsolicited ratings and suspected of conflicts of interest.[37] However this Act neither imposed direct oversight on rating methodologies nor fundamentally altered the concentrated structure of the credit rating industry (Coskun 2008). The 2006 CRA Reform Act amounted to little more than limited changes within the long-running policy framework favouring market-based discipline.

CRA Policy at the Global Level

In response to the above-mentioned corporate scandals as well as growing demand for credit ratings and the increasing interconnectedness of capital markets around the world, a Code of Conduct Fundamentals for CRAs was adopted in 2004 by the International Organisation of Securities Commissioners (IOSCO). A "closely knit" technical forum conceived to harmonise capital market policies, the IOSCO relied almost exclusively on input from private sector actors in the formulation of the Code (Underhill and Zhang 2008: 549). The interests of the largest CRAs were met as the best practices guidelines sought to safeguard the quality, integrity, and reliability of ratings while avoiding more systematic issues, such as accountability and the issuer-pays model (Utzig 2010). The IOSCO Code endorsed only very general suggestions that CRAs disclose ratings

[35] In processes that can be alternatively described as policy learning (Hall 1993), outsourcing, or external regulatory reliance, a host of countries have mimicked US policy arrangements towards CRAs (Sinclair 2005: 47-49).

[36] For lists of the over hundred federal laws and regulations incorporating credit ratings see Cantor et al (2007), Coskun (2008), and Sinclair (2005). It is for instance estimated that two-thirds of American pension funds are mandated to hold investment grade assets (*Economist* 2011).

[37] Hill (2002), Sinclair (2005), Coskun (2008), Sy (2009).

methodologies as well as reveal the existence of any potential conflicting business relationships with clients (Rousseau 2006). Moreover the adoption of the Code was left to a purely voluntary basis with neither the IOSCO nor any other national or international body being granted enforcement capacities (Elkhoury 2008). Elements of the Code were however drafted into the internal codes of conduct of the largest CRAs, illustrating the high degree of dependence on market compliance in global credit rating policy. As such, it is evident that a veneer of public participation, through the national securities commissioners involved in the IOSCO, masked the fundamentally market-driven nature of pre-crisis global CRA policy.

Dissatisfaction and the Lack of Policy Alternatives

Discontent with market-driven nature of global CRA policy failed to stimulate developments of any alternative frameworks in the pre-crisis period. The Japanese government's displeasure at being downgraded prompted symbolic attempts to summon the heads of the agencies to the country's national parliament for explanation but failed to initiate any fundamental policy challenge to the market-based status quo (Sinclair 2005: 142-144). European resentfulness of CRA influence resulted in widespread complaints[38] but only vague contemplations of future "possible measures" combined with a general reliance on a "wait and see approach" consisting of voluntary market adherence to the IOSCO Code (Elkhoury 2008: 16). Meanwhile, European corporate governance scandals such as the 2003 Parmalat bankruptcy failed to instigate legislation comparable to the US Credit Rating Reform Act on the other side of the Atlantic Ocean (Sy 2009). In persisting adherence to the market-driven approach, European CRA policy "relied on very light regulations, or no regulations at all" (Maijoor 2011). Lacking a fundamentally alternative framework, global CRA policy in the pre-crisis period remained reliant on market mechanisms. Policies at various levels of analysis reflected the interests of the powerful oligopoly of CRAs and enshrined the idea that self-regulating markets function best.

4.4 Market Pre-Emption During the Financial Crisis

Major adjustments to global CRA policy were notably absent during the worst financial crisis since the Great Depression. Although at the forefront of blame for instigating and intensifying the crisis (Sinclair 2010), CRAs were left to undertake internal policy reforms in the immediate post-crisis period, reflecting the continued salience of the view that markets are best left to self-regulate.[39] As entrenched market actors with access to vast resources, CRAs sought to establish first mover advantages and pre-empt the formulation of stricter public policies by rapidly developing internal policy reforms (Lall 2011, Mügge 2011). In order to "head off draconian new rules" Moody's introduced a new rating system designed specifically for structured securities while S&P unveiled

[38] For instance, the chief German financial supervisor deemed CRAs to be "uncontrolled world powers" and referred to CRAs downgrades of German banks as a "declaration of war" (Engelen 2004: 67).
[39] The former Chairman of the Committee of European Securities Regulators claimed that "[w]e should give a chance to rating agencies to put their house in order" (Jones 2008) while in the United States the SEC and Treasury Department focused on self-regulatory measures left to be adopted by the CRAs (President's Working Group on Financial Markets 2008).

"more than two dozen reforms", such as new committees to focus solely on structured financial products (*Economist* 2008). Yet as attention to their pre-crisis failures grew, it became clear that these "stabs at self-healing" (*Economist* 2008) were insufficient and that further changes would be required.

The initial post-crisis reforms undertaken by the IOSCO also remained distinctly within the market-based policy paradigm. In 2008 the IOSCO released an updated version of its Code of Conduct Fundamental for CRAs. Responding to the blatant failures of MBS and CDO ratings in the lead up to the crisis, the revised Code addressed issues pertaining primarily to structured financial products (IOSCO 2008a). The Code suggested CRAs avoid involvement in the design of structured securities and proposed differentiated ratings of synthetic and traditional financial instruments. Yet these policy proposals had already been largely introduced by the global CRA oligopoly and the IOSCO Code update merely constituted an "incremental adjustment" that largely preserved the pre-crisis status quo (Porter 2010: 71). Systemic issues involving conflicts of interest, accountability, and industry concentration were mildly tweaked or unaddressed while the non-binding code was left to the market for implementation. The lack of formidable policy reform led then European Commissioner for Internal Market and Services Charlie McCreevy to regard the entire Code revision as a "toothless, useless, and worthless" enterprise (McCreevy 2008). In short, rather than proposing alternatives, the IOSCO continued promoting market-based solutions in the immediate post-crisis period.

At the same time, the IOSCO became increasingly concerned with the worldwide adoption of its Code of Conduct. Besides its superficial re-working of best practice guidelines for CRAs, the IOSCO's main initial response to the financial crisis was to encourage rapid global convergence on the market-driven Code. Country and company compliance reports demanding "comply or explain" responses were increasingly issued in order to both promote market-driven policies and pre-empt the emergence of more sound policy alternatives (Porter 2010: 70). The necessity for quick adoption of market-based policies is captured in a ominous 2008 statement from the international organisation which "*urges* legislators to consider the regulatory *consensus* represented by the IOSCO Code of Conduct when framing legislation as *any fragmentation runs the risk of recurrence of problems with product ratings*" (IOSCO 2008b, italics added).

In sum, rather than developing a set of bold new policy prescriptions to respond to the worst financial crisis since the Great Depression, the IOSCO promoted the entrenchment of market-driven solutions outlined in its Code. These findings suggest that the continuity approach best conceptualises initial global CRA policy responses to the outbreak of worldwide financial crisis. The following subsection establishes whether or not this view can be maintained in the years following the initial passing of the great financial storm of 2007-8.

4.5 The Post-Crisis Hybridisation of Global CRA Policy

While the continuity framework appropriately illustrates the persistence of the market-driven paradigm during initial post-crisis responses, the period following the immediate aftermath of the financial crisis corresponds more closely with the hybrid approach outlined above. In contrast to the expectations of the continuity framework, public actors

have become increasingly involved in global CRA policy. Yet the rejection of market-driven policies projected by the upheaval approach has not taken place. Post-crisis global CRA reforms have not been marked by the command and control policies envisioned in the upheaval framework. As such, the relative shift in power envisaged by either the private 'capture' of public policies or the public 'reclaiming' of private financial markets has failed to materialise. This sub-section details the increasingly intertwined and entangled nature of public and private authority that has characterised CRA policy arrangements in the aftermath of the 2007-8 financial crisis.

Post-Crisis Developments at the National and Regional Levels

The primary post-crisis policy development in the home jurisdiction of the global CRA oligarchy has been the 2010 Wall Street Reform and Consumer Protection Act, generally referred to as the Dodd-Frank Act following its Congressional sponsors. An all-encompassing attempt to restructure major sectors of the American financial industry and prevent another crisis, the Act inscribed greater public involvement in the national credit ratings market. The SEC was ordered to create an Office of Credit Ratings for increased policing of the agencies, to subject ratings of asset-backed securities to civil liability, to outlaw consulting services, to eliminate references to credit ratings in investment regulations, and to increase the disclosure of data and methodologies used in producing ratings (United States Congress 2010).

Though the impressive range of issues listed in the Dodd-Frank Act initially suggests the presence of major policy reversal, a closer investigation reveals that the sole structural issue addressed is that of accountability. Despite tremendous lobbying on behalf of the major CRAs (Braun 2011), the inclusion of bans on consulting services and increased disclosure requirements suggests renewed public intervention and the unsuitability of the continuity explanation. However, like its 2006 predecessor, the 2010 Reform Act avoids stipulating alternatives to the issuer-pays model or proposals to decrease the 'stickiness' of ratings (United States Congress 2010). The continued adherence to market-driven policies despite greater public intervention defies the expectations of both the continuity and upheaval approaches.

A more accurate analysis suggests that post-crisis American CRA policies reflect a moulding of private and public authority. The intertwined nature of post-crisis policymaking is most clearly illustrated by the removal of credit ratings from investment regulations. While federal rescue programmes initially further entrenched the use of credit ratings[40], the SEC has since eliminated a number of references to credit ratings from national investment laws (Protess 2011). Of key importance to note is the support this policy received not only from both lawmakers eager to appear tough on CRAs, but also from the major agencies themselves who sought to reduce their entanglement in public regulations (Sharma 2010). The removal of ratings from investment requirements exemplifies the blending of public and private authority in post-crisis policy reforms. Further public-private alliances are apparent in the postponed creation of the Office of Credit Ratings as a result of both CRA opposition and the SEC's lack of resources, as well as in the combination of private opposition and public unwillingness to enforcing a

[40] For instance, the Federal Reserve required the use of two credit ratings in order to borrow funds from the Term Asset-Backed Loan Facility (Alexander 2009).

stricter liability regime for errors committed in the rating of synthetic financial products.[41] As such, the *de jure* imposition of stricter compliance regimes combined with the continued *de facto* reliance of market-driven processes reflects the blending of private and public authority in American post-crisis CRA policies.

The hybrid approach also helps to understand the development of CRA policies following the immediate aftermath of the financial crisis in the European Union (EU). Mirroring the mutual interests in removing ratings from investment regulations in the US, the European Central Bank (ECB) as well as the Bank of England (BoE) have increasingly integrated metrics beyond those of credit ratings into their lending decisions (*Economist* 2010). CRAs have championed the use of these new metrics as their business portfolios have expanded to include many of the short-term risk valuation companies that Central Banks have come to rely on (Alexander 2009). Meanwhile in 2009, following a lobbying campaign by a coalition of CRAs and other financial firms, the EU developed pan-European oversight over the credit rating market.[42] Regulation (EC) No 1060/2009 on Credit Rating Agencies compels foreign-based CRAs to set up working subsidiaries within the Union and to work within a EU-wide credit rating code of conduct. CRAs are also required to divulge the models and assumptions used in their ratings methodologies, to distinguish ratings on structured products, to cease consulting, and to publicly disclose any conflicts of interest involved in their rating processes (Journal of the European Union 2009). This regulation was amended two years later to designate authority over CRAs to the Paris-based European Securities and Markets Authority (ESMA). Echoing the 2006 US reform measures, the ESMA was granted powers to conduct on-site inspections of CRAs as well as the capacity to issue fines up to €1.5 million, withdraw certification, and pursue criminal prosecution in cases of non-compliance (Official Journal of European Union 2011). A further EU amendment requires all CRAs with over €10 in annual revenues to pay "all the costs related to their supervision" (Official Journal of European Union 2012).

The sum of post-crisis EU policies on CRAs certainly represents broad public interventions in a hitherto self-regulated sector. In the words of one commentator, "the new rules cannot be regarded as market-friendly" since they have "undermined some of the key assumptions of the market-making regulatory paradigm in the EU" (Quaglia 2010: 14). As a result, the "aggressive" (McVea 2010: 729) post-crisis EU regulations clearly diverge from the continuity approach.

Yet these seemingly radical policy changes fail to address the more fundamental issues underlying the lack of competition and accountability in the supranational ratings market. Continued adherence to market mechanisms is underlined in article 23 of the 2011 EU regulation, which stipulates that public authorities should "not interfere with the content of credit ratings or methodologies" (Official Journal of European Union 2011). While post-crisis EU CRA regulations do address a number of central problems

[41] The experience of states like Georgia has suggested that the imposition of a federal legal liability regime would provoke CRA backlash and be tremendously costly, see Morgenson (2011) and Stocker and Lindsley (2011). The lack of a liability regime has contributed to the failure of successions of lawsuits against CRAs by pension funds, attorney generals and stockholders, see Segal (2009), Stempel (2012).

[42] Representing over 650 securities firms, investors, and asset managers, the Securities Industry and Financial Markets Association sponsored the Global Credit Rating Agency Task Force which "aggressively" lobbied against the stricter policy proposals presented by the European Commissions in 2008, see Porter (2009: 9).

confronting the market-based supranational ratings market, they nevertheless continue to largely rely on the discipline of the market. These new regulations manage to combine the public desire for a more "managed" approach with the market-based approach favoured by the largest CRAs.[43] The overlapping functions of EU post-crisis CRA policies thus underline the mutual dependence and symbiotic nature of reforms in the aftermath of the financial crisis.

New CRA policies developed in other jurisdictions further illustrate the hybridised nature of post-crisis financial reforms. Since the immediate aftermath of the crisis, CRA registration and disclosure requirements have been imposed in Australia (Australian Securities and Investments Commission 2009), India (Securities and Exchange Board of India 2011), Canada (Canadian Securities Administrators 2012), Japan (Financial Services Agency 2010), and South Korea (Financial Stability Board 2009). On the one hand, this flurry of new constraints of varying degrees of strictness highlights the resurgence of the public sector and the decentralisation of global policy envisaged in the upheaval approach (Rodrik 2009).[44] On the other hand, these new policies have failed to usurp the market-based framework of global CRA policy. Worldwide policy reforms have greatly relied on the disclosure of information, data, and conflicts of interests, all which are issues resolvable within the market-driven paradigm. Meanwhile, these developments have generally "refrained from using the visible hand of regulators to interfere with and correct the [rating] methodologies" (Pagliari 2012: 56). As new policies continue to rely on CRA internal risk assessments, the issuer-pays model, and legal liability exemptions, it is apparent that increased public action has not challenged the market-based paradigm. For instance, fees and industry concentration issues have remained market-driven as exhibited by the alternative business models that are emerging in spite, and not as a result, of public reforms.[45] As a reflection of the continued prominence of the market paradigm, "regulators in Europe and in the U.S. have not severed the link between raters and issuers nor supported the emergence of alternative business models" (Pagliari 2012: 57). It is thus apparent that first and secondary order changes at the national and regional levels, which do increase public intervention in credit ratings market, have not led to major shifts from the pre-crisis policy framework. The continuity of the market-based paradigm within an expanded public agenda is best illustrated by the hybrid approach.

[43] Posner (2010: 117), see also Nesvetailova and Palan (2009). It remains to be seen how strictly the EU will enforce the new CRA regulations. In a first report on CRAs following on-site examinations, the ESMA noted "several shortcomings" and called for substantial improvements in CRA compliance with the newly imposed transparency and disclosure requirements (ESMA 2012: 15).

[44] Véron (2011) emphasises how the "increasingly material risk of different regulators imposing different standards resulting in a reduction of cross-border ratings comparability" is not in the interest of the CRA oligarchy.

[45] A number of new CRAs have entered the credit ratings market including Kroll Bond Rating and R&R Consulting, the latter charging *investors* to use their ratings, see Alden (2011) and Slater (2011). A further number of competitors are also being established. For instance, there are plans to create a privately funded, non-profit Frankfurt-based European Rating Foundation by 2014 (Rose 2012, Weisbach and Suess 2012) while a trio of CRAs from the United States, China, and Russia intend to create a Universal Credit Rating Group based in Hong Kong (Rabinovitch 2012).

Post-Crisis Developments at the Global Level

The emergence of the Group of Twenty major economies (G-20) and its interventions in global CRA policies further exemplifies the hybridised nature of post-crisis financial reforms. At its inaugural leaders summit in Washington, G-20 leaders committed to strengthening CRA governance. Despite CRA protests, the G-20 strongly denounced the IOSCO's market-driven policy approach. As Utzig (2010: 9) reports, "market participants' appeals to continue to rely on the ability of CRAs to regulate themselves were *partially* taken on board by those in positions of political responsibility" (italics added). The final report of the working group on global regulation reported that "a self-regulatory framework does not appear sufficient to ensure compliance with the IOSCO Code" and recommended "robust supervision" with "rigorous but proportionate rules" (G-20 Working Group 1). G-20 involvement in turn provoked the IOSCO to rapidly "strengthen the capacity of its members to monitor the compliance of regulatory agencies" with its principals through the creation of a common monitoring module, a college of regulators, and a permanent Standing Committee on Credit Rating Agencies (Pagliari 2013: 30-31).

On the surface the upheaval approach appears to appropriately illustrate the politicisation of global CRA regulation in the G-20. Yet G-20 intervention in IOSCO policy has not produced a shift to more rigorous command and control policies. Rather, the 2008-updated Credit Rating Code of Conduct endures and despite calls for more robust supervision, the IOSCO continues to rely primarily on voluntary market disclosure. The emphasis on document and data disclosure to increase transparency of rating methodologies reflects growing public oversight without greatly constraining the market-based foundations of pre-crisis CRA policies. It is important to point out that increased data disclosure does not reduce the importance of credit ratings. As a result of resource and time constraints, the "investing public tends to focus on ratings as the final product of the rating process, rather than the appended disclosures" (Woo 2012: 63). The global policy focus on transparency remains a *quid pro quo* market-based solution benefiting both public actors who are perceived to be increasing oversight of CRAs without, at the same time, greatly constraining CRA business models (Best 2010). The on-going focus on transparency thus exemplifies the private-public alliances at the centre of hybridised CRA policy in the post-crisis period.

Meanwhile, like the US Congress, the ECB, and the BoE, the G-20 has equally sought to remove credit ratings from global financial regulations (*Economist* 2011). During its second summit in London, the G-20 instructed the newly minted Financial Stability Board (FSB)[46] to publish a set of principles for diminishing the presence of credit ratings in global standards such as the Basel bank capital adequacy accords (Financial Stability Board 2010, 2012). As at the national and regional levels, the FSB and G-20 worked with major CRAs who acquiesced to reducing the presence of credit ratings in global regulations as they stood to benefit from the use of alternate instruments to measure credit risk (Sharma 2011). As indicated above, the largest CRAs have expanded their range of businesses and have become "leading players" in the very short-term risk valuations companies that stand to be used in any regulatory diversification

[46] The Financial Stability Forum was the predecessor of the FSB.

away from credit ratings.[47] The hybridised nature of post-crisis CRA policies is thus exemplified through the private and public sector alliances working to- and mutually benefitting from- the removal of credit ratings from global financial regulations.

The involvement of the G-20 in global CRA policies following the immediate aftermath of the financial crisis has prompted reforms that sit uncomfortably within both the continuity and the upheaval frameworks. Public actors have gained a greater presence and influence in the development of policy, discarding the notion that private transnational networks entirely formulate global policy. Yet policy reforms remain wedded to the pre-crisis market-based paradigm, implying that a full shift away from the pre-crisis policy framework has not taken place. As Katz et al (2009) pointed out early in the post-crisis period, "no consensus has formed around a single set of reforms". Rather, a range of second and primarily first order policy changes demonstrates the fusion of private and public authority consistent with the hybridisation of CRA policies in the post-crisis period. Table one below summaries the changes, and lack thereof, in regards to the specific issues outlined in section 4.2 concerning global CRA policy.

Table One: Summary of the Evolution of Global CRA Policy

	Issue	***Pre-Crisis Problem***	***2008 Changes?***	***Post-Crisis Changes?***
Superficial Issues	***Unsolicited Ratings***	Unfair market-expanding tactics	Not addressed; earlier US ban (2006)	Not addressed in other jurisdictions
	Consulting Services	Potential for conflict of interest	Mild mention but no action taken	Outlawed in the US and the EU
	Transparency	Opaque data, methodology	Primary focus of IOSCO	Primary global focus on disclosure
	Structured Products	Collusion, rating failure	Internal changes, followed by inclusion in IOSCO Code	Distinctions with ratings on 'standard' financial products
	Regulatory Embeddedness	Hard-wired in investment regulations	Not addressed	Primary global focus
Structural Issues	***Fees***	Issuer-Pays in Force	Not addressed	Left to market: new models emerging
	Competition	Industry Concentration	Not addressed	Not addressed
	Timing	Rating 'stickiness'	Not addressed	Not addressed
	Accountability	Liability-free	Not addressed	In Dodd-Frank, yet to be addressed by SEC

[47] See for instance the work of Moody's Analytics (Alexander 2009).

5.0 CONCLUSIONS

Prominent attempts to conceptualise the nature of post-crisis financial policy developments fail to sufficiently account for the hybridisation of public and private authority. Attention has too often been placed on either the 'capture' of public actors or the public 'reclaiming' of private markets. This paper has provided a more nuanced account highlighting how intertwined private-public connections increasingly characterise global financial policy as well as how a hybrid framework provides more adequate understanding of post-crisis financial policies.

The examination of global CRA policies has granted empirical substantiation to the claim that public and private actors have become increasingly entangled in mutually beneficial alliances. Prior to the 2008 financial crisis, global CRA policy was primarily left to the discipline and efficient workings of the market. Despite widespread accusations of functioning as a root cause of the deepest financial crisis since the Great Depression, immediate post-crisis CRA policies avoided the imposition of command and control policies proposed in the upheaval approach. Rather, CRAs were left to undertake internal policy reforms while the IOSCO promoted greater convergence on its market-based Code of Conduct. However with the increasing politicisation of finance at the national, regional, and global levels CRA policy has been increasingly shaped by a blend of private and public authority. Cooperation and coordination between public and private actors has resulted neither in the continuance of pre-crisis policies nor in a complete overturn of the market-driven policy paradigm. Focus has primarily been placed on policies resolvable within the market-based framework, and only minor attempts have been made to resolve more the fundamental issues not easily resolvable within the pre-crisis paradigm. The overlapping functions of global CRA policy now benefit both the agencies and their public overseers, largely at the expense of other market actors as well as the general public.

The findings presented here provide support for the claim that paradigm shifts may be slow and unpredictable affairs. While policy changes enacted following the immediate aftermath of the crisis did not result in an overhaul of pre-crisis market-based paradigm, the culmination of second and first order changes listed in table two below may, in combination with further future reforms, lead to a coherent of package policy alternatives. In other words, the policies examined here could conceivably prompt an eventual shift in the broader ideational and institutional framework guiding global financial policies.[48] However, as the findings of this paper reveal, the alternative paradigm that could ultimately form may not tend towards the command and control framework envisaged by the upheaval approach, but is rather more likely to constitute a hybridised blend of public and private authority.

[48] Indeed, following European Parliament hearings on CRAs in January 2012, the European Commission is reported to be drafting a number of proposals for a further round of CRA regulation, see Ross (2012).

Table 2: Change and its Limits in Post-Crisis Global CRA Policy

		Ideational	Institutional
Changes	First Order	Shift from reliance on American policy initiatives as new CRA policies promulgated at the EU and global levels as well as in wider array of countries	Shift from reliance on American regulation as new CRA policies promulgated at the EU and global levels as well as in wider array of countries (Australia, Canada, India, Japan, South Korea)
	Second Order	Increased onus on transparency and disclosure of data, methodologies, and conflicts of interest	Consulting outlawed, removal of ratings from regulations, creation of Office of Credit Ratings at the SEC, Standing Committee on CRAs at the IOSCO while ESMA granted power to issue fines and conduct inspections, prosecutions
Continuity		Voluntary market disclosure	No interference in methodologies
	Third Order	EMH and industry self-discipline persist	Industry concentration, fee and liability structure endure

The further theoretical refinement of the hybrid framework remains an important task for future research. Hybridisation may not simply represent a simple Pareto optimal middle ground. Rather, the continuum between continuity and upheaval is undoubtedly characterised by varying points upon where power ultimately resides more fully in either the public or the private sphere.[49] In other words it may be just as unusual for private and public actors to share equal governing power and authority as it is rare for such influence to remain entirely confined to either end of the continuum. Uncovering the precise degree of blended private-public authority is essential to more fully comprehend the hybridisation of global financial policy in the post-crisis period. A key undertaking going forward concerns the in-depth examination of actors that may yield more influential forms of power in hybrid policies. A central research question is towards which end of the continuum do policy arrangements rest, and, most importantly, why? Of additional relevance to further development of this framework is the extent to which patterns of hybridisation shift as new policy paradigms arise. How do hybrid policies evolve over time and how dramatically are they transformed in response to the accumulation of policy failures as well as crises? Historically oriented scholarship could usefully investigate the presence of hybrid policies over capitalism's boom and bust cycles. This line of enquiry could, for instance, explore the extent to which market innovations disrupt symmetries between private and public sector actors, leading to instabilities and crises that yield in turn policy hybrids. Such research could also aid in ascertaining whether the hybrid framework is best conceived as an "open-ended and revisable framework" rather than a well organised, coherent and "fixed blueprint" (Brassett et al 2012: 378-9). Finally, relevant insights from analogous conceptualisations of emerging governance trends such

[49] I am grateful to Stephen McBride for pointing this out to me.

as public-private "bricolage" (Engelen et al 2011) or regulatory "assemblage" (Overdevest and Zeitlin 2012) could be identified and, where appropriate, further incorporated into the hybrid approach.

More fully establishing the character of hybridisation may enable the application of this framework to a broader range of global policies. A strengthened understanding of hybrid policy could lead to research exploring whether blends of public and private authority are significantly different across a variety of issue areas, at varying levels of authority, and over time. As such, a key set of issues for on-going research includes: whether hybridised policy significantly differs between areas of finance as well as in issues beyond finance; whether the precise nature of the public-private mix varies vertically at the global, regional, national, and local levels as well as horizontally across levels of authority and between regions; and whether current hybrid policies are similar to those of earlier periods. While it remains a useful starting point for conceiving financial policy change in the post-crisis period, further refinement of the hybrid approach is certainly required to more fully construct a framework depicting the evolving nature of a range of global policies.

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Global Energy Governance: Making a Case for a World Energy Organization (WEO)[1]

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Given the dire energy security crisis the world currently faces, can the creation of a World Energy Organization (WEO) contribute to governing the global energy sector? This article examines the necessity for such an organization as part of a regime complex in the global energy sector. The current state of global energy governance is reviewed and the possible contributions of a WEO are explored. This article argues that because of the narrow-interest-based responsibilities of organizations such as the International Energy Agency (IEA) and the Organization of Petroleum Exporting Countries (OPEC), the need to coordinate the broader issues of global energy security and sustainable human development makes the creation of a WEO necessary, albeit as part of a regime complex characterized by continuities, discontinuities and change.

Introduction

Humanity's management of global common problems, especially in the fields of human rights, finance, environment and security, among others, evolved from a situation of complete self-help in earlier centuries to one of global governance in the 21st century. Defined as "the sum of the many ways individuals and institutions, public and private, manage their common affairs" (Commission on Global Governance 1995, in Karns and Mingst 2004, 4) global governance has become a means of managing international issues in modern times. Global problems are now addressed by one of several international regimes (rules, laws, norms, and structures – formal and informal) and by state/or and non-state actors, from the local to global levels. The existence of international organizations such as the various United Nations bodies, the International Monetary Fund, the World Trade Organization, among others, and the policy processes of each, is evidence of the way problems are addressed on a global scale in the present day

However, despite its importance to human civilization, energy – unlike finance, health, human rights, security or the environment – lacks an international organization with far reaching global membership to regulate this area that touches all areas of human activity. At best, its governance remains at local, national, and regional levels, with varying degrees of emphasis on different energy resources, especially oil and natural gas. As such, despite the existence of organizations like the International Energy Agency (IEA), Organization of Petroleum Exporting Countries (OPEC), United Nations Energy (UN Energy), Renewable Energy and Energy Efficiency Partnership (REEEP), the International Renewable Energy Agency (IRENA), and the Group of Eight's (G8) policy work in the energy sector, there still lacks an organization with truly global membership mandated to address the entire universe of issues related to the global energy issues.

Given the dire energy security situation the world currently faces (rising global energy costs driven by growing demand for the dwindling supply of conventional energy sources, as well as concerns over sustainable development and climate change ; see for instance, Bradshaw 2010), it is important to ask if the creation of a World Energy Organization (WEO) could positively contribute to global energy sector governance? At a broad level, this article examines the

necessity for such an organization in the framework of a global "regime complex" in the global energy sector. A regime complex is "a collective of partially overlapping and even inconsistent regimes that are hierarchically ordered. And which lack a centralized decision maker or adjudicator" (Raustiala and Victor 2004, cited in Yu 2007: 13-14The article argues that due to the narrow mandates and interest-based responsibilities of the existing organizations in the global energy issues field (most notably the International Energy Agency (IEA) and the Organization of Petroleum Exporting Countries (OPEC)) there is a need to create a WEO with global responsibilities, membership and functions. The WEO envisioned by this paper is necessary to (i) refocus the energy security debate, (ii) coordinate the various energy governance initiatives, and (iii) provide technical assistance and information dissemination to state and non-state actors on energy efficiency and technology. However, these functions will be done as part of a regime complex characterized by continuities, discontinuities and change. The article proceeds in three sections: the first section provides a brief overview of the current state of global energy governance; the second section discusses the role of a WEO as part of a regime complex; and, the third section makes the case for a WEO and puts forward policy recommendations for global energy governance.

The Global Energy Problem

Although there is debate as to what exactly energy security means, Bochkarev and Austin (2007) define the phenomenon as, "being able to get the energy products or inputs one needs for home use, business, or national services and infrastructure, including hospitals, schools, police and the armed forces." The current global energy security crisis - characterized by rising demands and falling supplies of conventional non-renewable resources (especially for oil and gas) as well as the slow progress on diversifying to renewable sources like hydro, wind, and solar energies - have increasingly raised concerns about how to respond to the challenges of growing world population, amongst other problems.

Alarmingly, the world's current energy scenario is heavily dependent on fossil fuels (such as oil, coal and natural gas) whose supply will one day be exhausted (Lesage, Graaf and Westphal 2010). Oil and gas alone account for approximately 30% and 21% of total worldwide energy use, respectively (Goldthau and Witte 2010). "Peak oil" – the general idea that one day a threshold will be crossed wherein the world will no longer be able to economically extract oil from the ground (Roberts 2005) - poses a great danger to global standards of living, given the centrality of hydrocarbons to 21st century industrial society. For example, a sudden sharp and permanent rise in energy prices could make basic energy consumption (such as to hear a house) financially unfeasible for many people all over the world (Shapiro 2008; Scrase and Mackeron 2009).Discouragingly, not even the efforts of powerful market players like the multinational corporations or the state-owned national oil corporations have been able to adequately manage the demand and supply problems of the last two decades. A further challenge is that the dominance of oil and gas means other non-fossil fuel and renewable sources are still largely underutilized despite ongoing energy security challenges and the glaring climate change problems caused by fossil fuels.

In addition to the problems faced by those societies with regular access to energy supplies, many parts of the developing world still lack basic access to energy services. As such, "energy poverty" - which refers to the non-existent or unreliable access to electricity and fuel - remains a reality for over 1.6 billion people, mainly in Africa and South Asia. Furthermore, some 2.6 billion people are estimated to rely solely on traditional biomass for cooking (UN Energy 2005). It is well understood that energy poverty is a major impediment to socioeconomic development (Department for International Development 2002; United Nations Development Programme 2005a, 2005b; Modi et al. 2005; World Energy Council 2010).

In particular, Africa's energy situation presents a paradox. Despite possessing large quantities of hydraulic, geothermal and solar energy that could be used to provide adequate

electricity for its people, the continent remains energy poor (Kauffman 2005; Global Energy Assessment 2008). This is partly because these resources are only exploited and exported in their raw state to the rest of the world and or wasted in the process of production, transportation and distribution. Thus, many Africans rely on biomass in the absence of electricity and other fuel resources (Kauffman 2005). It is estimated that about two-thirds of Africa's population (around 600 million) make use of traditional biomass like agricultural waste, fuel wood, charcoal, and animal dung in order to meet their daily energy needs (GEA 2008). Unfortunately, given the current state of affairs in the global energy governance arena, this imbalance in production, distribution and exchange of energy resources persists.

Previous Energy Governance Institutions

The literature on global energy governance is scant compared to the breadth of literature on global governance in other issue areas like the environment, security, and human rights., where well-developed global governance institutions already exist. In the existing literature on global energy governance, the scholars' focus has been on providing for energy securitythrough three means: market mechanisms (Bochkarev and Austin 2007; Verdonk et al 2007; Goldthau and Witte 2009, 2010)energy efficiency and conservation (Gupta and Ivanova 2009), and the activities of the G8, IEA, UN, and REEEP (Kirton 2007; Florini and Sovacool 2009; Schrumm 2006).

Some scholars believe that the market is sufficiently capable all by itself to provide energy security. According to proponents of the market approach, the market provides energy security by the way that market forces balance consumer demand with producers supply. A major goal from this perspective is to forma global energy market with common "rules of the game" (Goldthau and Witte 2009). The market therefore aims to provide stable prices and predictable access to energy for both consumers and suppliers (Konoplyanik 2005). According to Goldthau and Witte (2009), strengthening existing markets and institutions will satisfy all sides in the energy game, thus creating a win-win situation in which energy security is achieved.

The problem with relying n the market alone as a global energy governance mechanism is that although the market can generate incentives for energy suppliers, guaranteeing energy security is a broader concept whose provision is simply beyond market forces (Shaffer, 2007). For Shaffer, energy security is comprised of three elements: supply must be reliable; resources have to be affordable; and the environment should be friendly. According to her, the last two are not provided by the market. What is more, Florini and Sovacool (2009: 5239) maintain "price signals in these markets are distorted by national government policies on both the supply and the demand side and investment in future energy supply is often inadequate and fails to serve the public interest, leading to extreme price volatility."

The limitations – but not total inability – of markets to provide some form of stable governance should nonetheless be acknowledged. It is still possible to still have some form of small-scale local transactions in energy resources governed by market forces. As an example, a long-term agreement between two or three countries on an energy resource like liquefied natural gas whose international market is not yet fully developed can still be conditioned by mutual benefits based on some market considerations. However, the challenge is higher when a large number of countries are involved. Fluctuations in global oil prices nevertheless highlight the challenge of leaving global energy governance entirely in the hands of market forces. However, for various reasons, governments were not satisfied with a pure market-based approach, and have periodically come together where they could find partners with similar views to address the pressing energy issues of the time.

The activities of leading energy agencies such as the IEA, OPEC, the UN Energy (UN Energy), and the efforts of the G8 have also been employed as a means of providing global governance to certain aspect of global energy issues., the juxtaposition of the Organization of Petroleum Exporting Countries (OPEC) and the International Energy Agency (IEA) demonstrates the interest of the respective organizations in advancing their members' own parochial interests.

OPEC was created in in 1960 to oversee the interests of oil producing nations, mainly in the Middle East, but also some in Latin America and Africa. Middle Eastern members capitalized on their large oil production monopoly to use as a strategic foreign policy instrument to punish western countries for their support of Israel during the Arab-Israeli War in 1973, and again in 1979. In support of the Arab nations, the OPEC member states intentionally withheld oil exports to western countries supporting Israel, thereby causing a tremendous shock to global energy prices and severe energy shortages in the advanced industrial economies. The creation of the IEA in 1974 by oil-consuming countries, mainly those developed countries that were members in the Organization for Economic Cooperation and Development (OECD) most strongly affected by the OPEC Oil Embargoes, was intended to counter what was perceived by them to be the undesirable influence of OPEC. I As Florini and Savacool (2009: 5242) put it, "at its creation, the IEA's founders (wealthy oil-consuming nations) intended it to enable them [to] coordinate effective responses to oil price volatility, following the spikes during the 1973 Arab–Israeli war." The IEA's original responsibility therefore was to advance the interests of oil consumer countries versus those of the OPEC producer countries. Essentially, IEA and OPEC are involved in the narrow responsibilities of protecting the interests of their members in relation to the major energy resource of the world, oil, a non-renewable hydrocarbon resource that is partly responsible for emissions that cause climate change. In fact, accusations of organizational bias in favour of hydrocarbons remains one of the criticisms often levelled against the IEA and its energy governance activities in addition to complaints about the accuracy of some of its energy statistics and projections (Florini 2011).

The G8 has also been identified as playing some energy governance roles. As Kirton (2007) observed,

> The issues of energy security, climate change and their connection have been subjects of G8 governance since the very start. At the conclusion of the first summit at Rambouillet, France, on November 15-17, 1975, the six leaders there collectively declared "Our common interests require that we continue to cooperate in order to reduce our dependence on imported energy through conservation and the development of alternative sources" (G7 1975). In 1976, now with Canada, they noted the need for the "rational use" of energy resources (G7 1976).

Though the G8's efforts in the energy arena are notable, the organization's limited and exclusive membership (comprised mainly industrialized countries in the global north) makes its activities in relation to energy and climate change susceptible to criticisms of bias in in favour of rich countries over the poorer ones. Furthermore, in the case of sustainable development, most G8 members are considered Annex I countries to the Kyoto Protocol because of their high emission rates. Presently, countries like the United States, Canada, Japan and some European Union countries still emit considerable amounts of carbon dioxide. As in OPEC and the IEA, the G8 is unsuitable for global energy sector governance as its; membership represents only one half of a debate with global importance. Another possible consideration for global energy governance can be found in UN Energy, an interagency mechanism with the purpose of creating a coherent approach to developing a sustainable energy system in developing countries. UN Energy was created at the World Summit on Sustainable Development (WSSD) in 2002 following discussions about the links between energy and poverty and the need to solve the unsustainable patterns of global energy consumption and production (UN Energy 2006). Its activities have been limited to assisting developing countries gain greater access to energy resources with a view to reducing poverty. Although it is made up of several UN bodies with different energy related programmes, UN Energy, as Schrumm (2006) notes, is not equipped to perform the function of a fully-fledged energy agency as its secretariat services are provided by the UN Department of Economic and Social Affairs.

The UN also developed the Sustainable Energy for All (SE4All) initiative with the objectives of ensuring universal access to energy resources, improving energy efficiency in developed and developing countries alike and increasing the use of renewable energy.[1] Increasing the use of renewable energy is an important policy issue and merits some consideration. Organizations such as the Renewable Energy and Energy Efficiency Partnership (REEEP), a non-profit partnership agency seeking to catalyse the market for non-renewable energy resources, have emerged though they are dwarfed by the enormous functions that need to be performed in the non-renewable energy governance arena.[2] The International Renewable Energy Agency (IRENA) was also created – ostensibly following German dissatisfaction with the IEA tardiness on promoting the use of renewable energy resources – to encourage the development of renewable energy technology.

From the above discussion, the limited memberships of the various agencies on the one hand, and distortions in market prices owing to national government policies amongst other reasons on the other, shows that neither institutions like the IEA, OPEC, REEEP and IRENA or market forces alone can govern energy at the global level. At its best, however, the current global energy arena acquires some significance when it is viewed as a regime complex comprising markets, institutions, various initiatives and mechanisms, the importance of having an agency to coordinate the different aspects of energy production and consumption.

A World Energy Organization and the Regime Complex of Global Energy Governance

Krasner (1983: 2) defines international regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations." However, sometimes "regimes" can also be used to refer to "institutions" which North (1992) explains as "consisting of formal rules, informal constraints (norms of behaviour, conventions, and self-imposed codes of conduct), and the enforcement characteristics of both." As such, it is not uncommon to find international relations scholars using institutions interchangeably with regimes (cf. Krasner 1981; Keohane 1984; Oye 1985; Keohane and Martin 1995; Abbott and Snidal 2000; Wendt 2001; Johnston 2001). Nevertheless, Raustiala and Victor (2004 cited in Yu 2007: 13-14) define a "regime complex" as "a collective of partially overlapping and even inconsistent regimes that are hierarchically ordered. And which lack a centralized decision maker or adjudicator."

The use of regime complex analysis in international relations in general and global governance in particular has become increasingly visible in the past two decades. For instance, while Yu (2007) examined the international regime complex of intellectual property rights, and Keohane and Victor (2011) explored the climate change regime complex, Prantl (2011) explained the regime complex of energy security in East Asia. To be sure, although this approach has gained popularity as many scholars believe a regime complex allows for better management of international affairs, some others such as Drezner (2009) have pointed out the difficulties involved with the use of overlapping institutions in the international arena. Hence, there exist mixed reactions to the idea of global governance as regime complex.

However, given the myriad activities in the global governance arena, understanding how states and non-state actors engage in the international community is perhaps best achieved through the regime complex approach. The energy sector is one of such area where a regime complex approach is beneficial to understanding the interaction of the numerous regimes that currently exist. Consequently, in order to fix the current patchwork in global energy governance, understanding how various regimes and agencies operate together will be crucial (De Jong 2011). A major contribution in this work is Colgan, Keohane and Van de Graaf (2012). According to Colgan, Keohane and Van de Graaf (2012), one way to view the

energy regime complex is through the concept of "punctuated equilibrium" which relates to the imperative of having changes in international regimes at times of stasis and during innovative periods. This, however, requires the efforts of hegemonic forces whose interest will be promoted through the creation of institutions or mechanisms to manage their energy preferences. While it is challenging to envision the constellation of hegemonic forces that can push for the creation of a WEO as part of the current energy regime complex, when "energy" is seen as a global public good (Karlsson-Vinkhuyzen, Jolland and Staudt 2012), the feasibility of a WEO can be promoted amongst a coalition of states and non-state actors. For this reason, not only will the market play a role in governing energy resources, but states, agencies and institutions with their numerous and at times varying interests will need to cooperate on the issues pertaining to global energy production and consumption. The challenge of coordination which so far besets the global energy arena is what the WEO would confront head-on in a bid to serve as a centre that collaborates with other agencies and mechanisms currently dotting the global energy regime complex.

Fundamentally, coordinating the energy regime complex will involve cooperating with actors and institutions (Ciambra 2011) such as OPEC and IEA as well as forums such as the International Energy Forum (IEF). More so, engaging charters like the Energy Charter Treaty whose members are drawn from different countries in addition to the several other institutions will be important. In addition, the aligning of the activities of the UN agencies that contribute to the governance of energy globally is equally necessary. It is to this end that the WEO will locate itself as a major coordinating organization that functions through its specialized departments or units within it on various energy resources to combine the concerted efforts of various actors and solve the current global energy security crisis. Hence, in viewing global energy governance as a regime complex, it would be important to see a situation that despite several overlapping regimes, and institutions, some common patterns of cooperation and progress between and amongst various institutions can be achieved. Yet, creating such an institution must be contingent on the numerous challenges that must be overcome as well as having clear objectives before such an organization can become effective

World Energy Organization: to be or not to be?

The debate over the necessity of creating a central coordinating agency for an issue of global importance is not unique to the energy sector. In fact, the raging controversies over the need (or not) of a Global Environmental Organization (GEO) has been ongoing for two decades now. Indeed, advocates for a GEO have over the years debated the possible contributions of a GEO to international environmental governance. Sometimes drawing on the various efforts that are already in place, scholars like Charnovitz (2002) and Bierman (2001, 2011) have gone so far as to explore possible models for such an international environmental agency. Interestingly, the connections between the global environment and energy utilization, especially in the context of efforts aimed at achieving sustainable development, make the arguments for both global environmental and energy organizations similar.

However, when discussing the state of energy governance, paying attention to the peculiarities of the energy as a 'global public good' makes the case for a WEO poignantly urgent and crucial if the world is to make significant progress on issues of sustainable development and climate change. This is to argue that support for a GEO should not be encouraged as much as arguments for a WEO. Nevertheless, unlike the environment, which currently benefits from a number of mechanisms and arrangements designed to govern it, energy governance so far has not benefited from a coordinated approach. Hence, in the words of Mohammed El Baradei, former Director of the International Atomic Energy Agency (IAEA);

> We have a World Health Organization (WHO), two global energy agencies (OPEC and IEA), the Bretton woods financial institutions and organizations to deal with everything from trade to civil aviation and maritime affairs. Energy, the motor of development and economic growth is a glaring exception….Although it cries out for a holistic, global approach, it is actually dealt with in a fragmented, piecemeal way. A number of institutions focus on energy, but none with a mandate that is global and comprehensive and that encompasses all the energy forms. (*The Financial Times* 2008)

While El Baradei's position on the lack of a WEO effectively summarizes the state of affairs in relation to energy governance, Bradford (2007) advanced an argument for establishing a Global Energy Council (GEC) to be located within the OECD secretariat in Paris. According to Bradford, the GEC comprising of energy ministers of the seven industrialized countries currently in the G8 and six emerging market economies, namely China, India, Russia, Brazil, South Africa and Mexico would have the responsibility of performing the functions of energy governance at a global level. However, the arguments for the creation of a WEO or GEC as El Baradei and Bradford suggest is not entirely shared by some scholars despite the acknowledgement of a fragmented global energy governance architecture. For instance, Lesage (2009: 2) argued, "the current institutional fragmentation is likely to persist, but this is not necessarily a fundamental problem." Our aim he maintains "should not be creating a 'World Energy Organization.'" For Lesage, what we need instead is a "G20 Energy Task Force," that directly reports to world leaders and can strategically engage in global energy governance.

According to Lesage, it is possible for the G20 to play a leadership role in global energy governance. In a similar line, Lesage says that the IEA too "can become the *primus inter pares* institution in global energy governance if it expands to China, India, Russia and possibly other major emerging economies" serving as an adviser to governments. Lesage notes that,

> As a principle, for each topic of global energy governance (e.g., energy efficiency, renewable, nuclear safety,…) one single institution should be recognized as the leader....The UN, GEF [Global Environmental Facility], World Bank and regional developing banks should play a key role in promoting energy efficiency and clean energy in developing countries....Governments should invest heavily in global collaborative frameworks for diffusion of expertise and technology. Kyoto-like binding multilateral agreements on energy efficiency and clean energy are preferable, but politically speaking not likely in the short- and mid-term. (2009: 2)

Lesage position raises the question of what would a WEO achieve outside the current state of affairs in the energy regime complex? Put differently, what contributions can a WEO make to avert a global energy (and climate security) stalemate in the present and prepare us for the challenges of the near and distant future that current efforts cannot? Three possible contributions are identified and briefly explained below: contributing to the setting of the energy governance agenda and refocusing of the energy security debate as a human problem; coordination of different energy governance initiatives; and provision of technical assistance and information dissemination to states and non-state actors when necessary in dealing with energy related issues such as development of renewable resources and finding solutions to lingering energy poverty problems. But first, while the model for such an organization remains open for deliberation on whether or not it should be organized as an institution separate from the operations of the UN following the World Bank or IMF models, or it should be designed as a specialized agency of the UN like the World Health Organization (WHO), World Trade Organization (WTO), or International Labour Organization (ILO), it is suggested here that the organization follow the WHO model as a specialized agency of the UN.

As an UN specialized agency, the WEO would have amongst other immediate responsibilities, bringing the energy related functions of several UN agencies under the purview of the organization. Although UN Energy is supposed to monitor the activities of all of the UN agencies covering energy issues, it has so far been unable to do so effectively because of its simple mandate as a monitoring "mechanism". Thus, a WEO will ensure that the function of collapsing the activities of the existing UN agencies into one recognized institution with global reach is effectively attained. However, the functions of such an organization will go far beyond the activities of the UN, as it would serve as a centre for organizing the global energy related efforts of state and non-state actors. From a functionalist perspective (Mitrany 1948; Groom and Taylor 1975), creating a WEO to perform specific energy related functions would enhance the ability of the international community to combat the current energy security debacle.

Agenda setting and refocusing the Energy Security debate as a Human problem

Designing international organizations with specific functions is a common practice in global governance. As mentioned earlier in the introduction above, many areas of international affairs have one international organization or another. However, "international organizations – both intergovernmental and non-governmental – produce changes in identities and interests as well, and ultimately lead to new structures" (Weiss and Kamran 2009). International organizations are crucial to the global multilateral governance system of the 21st century. Yet, the arguments on energy security have been about individual countries' (in)ability to secure access to energy resources anywhere in the world, while the failures to combine efforts to arrest the crisis remain. One of the reasons for this is the lack of a clear agenda on how to resolve the current problems of energy security at a global stage.

Even when countries such as China, with its increasing demands for energy from Africa, are able to secure some new sources for their oil supplies, the current state of affairs does not guarantee their energy security. Indeed, despite China's growing investment in Africa's energy resources in Angola, Sudan and Nigeria, it has yet to catch-up with Western investments in Africa's energy sector, which continue to keep growing. In addition, fluctuations in global oil prices and serious concerns over future supplies continue. The peak oil debate seems to increase the anxiety of nations to view the problem as an emerging crises in which "might will be right". Moreover, the debate seems to have been divided along the lines of energy producers and energy consumers. The already visible divisions between OPEC and their IEA counterparts place the discussion in a "we against them" context. A problem that the Bradford's (2007) suggestion of a "Global Energy Council" located within the OECD headquarters in Paris and Lesage's (2009) "G20 Energy Task Force" recommended above will probably deepen and not resolve given that the proposed membership of these organizations is exclusive.

To be sure, Bradford's call for the creation of a GEC with oil ministers of the Group of 7 countries and those of China, India, Russia, Brazil, South Africa and Mexico is similar to Lesage's call for a G20 Energy Task Force to oversee global energy governance. The exclusive membership of these institutions undermines El Baradei's call for a holistic and global approach to the world's energy problems. The creation of an exclusive club of countries will not aid global energy governance in a way that locates it beyond a consumer-producer debate. This is because not only does the current energy crisis extend further beyond a simple framing of the problem as a a consumer-producer issue, but it also because the current global energy system is not sustainable, as Orttung, Perovic and Wenger (2009: 3) rightly note.. Addressing this problem will be a source of change in the larger international political system and reflect larger changes in that system. In addition, most countries of the G8 and a majority of the G20 countries are major oil consumers whose primary interests appear to be in competition with those of emerging economies such as China and India. Furthermore, considering that the agreement between China, India, Brazil, and South Africa and the western countries in Copenhagen was interpreted by the rest of the less developed world as a betrayal to the latter on the climate change negotiations, having an exclusive

club that includes China, India, Brazil and South Africa will further generate animosity between them and the developing countries. Hence, any global governance initiative that excludes the rest of the world, but includes these four countries, the United States and the European Union alone will be seen as serving the parochial interests of its members and not the entire world. The narrow membership base of these proposed organizations could affect their effectiveness as global energy organizations much the same way as it afflicts the IEA (Florini 2011)

The implication of the above reality is that the agenda for global energy governance needs to be collectively deliberated and set by all countries of the world in partnership with other stakeholders in the energy debate, ranging from NGOs to business corporations and individuals.

The issues captured by global energy governance are numerous. They include, but are not limited to, the supply and demand of energy resources, their prices, incentives for production, security and management, the sources and uses of capital, growth, efficiency, investments, and the environment (for more items, see Burton 1980). Given the breadth of the topics affecting this issue at a global level, there is need to gather and organize this knowledge in order to have a clear and coherent agenda on the table. While states will have a crucial role in ensuring the political will for getting the agenda right, non-state actors and indeed citizens all over the world will be relevant in the process of building this agenda through a WEO.

Also, it is important that the discourse on global energy governance is framed as a problem confronting the human race as a whole. In this way, the problem is presented as a challenge to everyone, developed and developing countries alike, with emphasis on the possibility of cooperation that seeks to engage every nation as both a consumer and producer at the same time. It is often overlooked that every nation consumes and produces one form of energy or the other. Producers are consumers, and vice versa. Energy is crucial for development in all countries and every nation of the world should be considered as requiring energy security regardless of their stages of socio-economic advancement. Energy security and development therefore are seen as eternal works in progress. Yet, the challenge posed to humanity is how to ensure energy security and sustainable development in harmony with nature and preserve human and natural resources for future generations. The task of any WEO is therefore to create a channel or forum where the problem is redefined. Here Lesage, Van de Graaf and Westphal's (2010) suggestion of "sustainable development as a normative framework" can be relevant even though their recommendation of an exclusive multipolar approach involving the major powers falls victim of the representation dilemma and the attendant problem of addressing the issues from the perspectives of the big players only.

Coordination of different Energy Governance Initiatives

The list of institutions or agencies that presently perform one energy function or the other is a long one (see UN Energy 2006 and Lesage, Van de Graaf and Westphal 2009 for examples of these agencies). Hence, as Florini and Sovacool (2009) note in concluding their examination of the global energy governance activities of the IEA, G8, Asian Development Bank, and the REEEP, any comprehensive coverage of the global energy governance arena would require examinations of agencies ranging from OPEC to the energy related activities of the World Trade Organization. They maintain that "not only multi-sector hybrids like REEEP, but the vast array of international Non-Governmental Organizations (NGOs) on energy and environment issues as well as the entire sector of multinational corporations in the energy field would need to be covered" (2009: 5246). This recognition of the various existing efforts highlight the level of fragmentation that currently pervades global energy governance. Essentially, no single agency that currently exists in the energy area can claim to reach all stakeholders in the system. Although, the World Energy Council (WEC) has a myriad of members in several countries all over the world, it only operates as a charity organization registered in the United Kingdom to "promote the sustainable supply and use of energy for the greatest benefit of all people."[3] Thus, while its activities have involved both state and non-state actors, its abilities to coordinate global energy governance

between all stakeholders are limited to the mandate it holds. It nevertheless plays a part in the regime complex of global energy governance.

The lack of coordination in a highly fragmented global energy field poses a great challenge to achieving meaningful cooperation where necessary. However, with a WEO, this challenge can be overcome as it would serve as the central coordinating organization that seeks to "inform the left hand of what the right is doing" while fostering cooperation between members. To be sure, it is important to understand the strengths and weaknesses of the global energy system in order to attempt formulating solutions that are comprehensive and global in reach. As things stand, most agencies that exist only focus on national or regional interests without adequate understanding of what exist in other areas or regions. Cooperation has been hampered due to lack of interaction between several institutions that focus on either specific energy resources or regions. The development of alternative energy resources would require an understanding of what is possible and how it can be achieve with the available resource and cooperation from all sides.

Provision of technical assistance and information dissemination to states and non-state actors

When it comes to sharing information amongst agencies in the global energy sector, much work still needs to be done. Many agencies are working at cross-purposes even in places where they could be cooperating. The importance of information sharing cannot be overemphasized given the multiplicity of activities involved in governing energy globally. The energy poverty scenario of many developing countries in Africa and South Asia is also due to the inability of these countries to access the appropriate technology for electricity generation and fuel processing for their domestic consumption. To solve this problem, cooperation on energy has to be forged between countries, working through a globally agreed template, regulated and supervised by the WEO, in order to ensure that results are achieved within specified guidelines. In addition, it is widely recognized that some countries are more efficient in the use of energy resources than others are. In fact, it could be argued that a way out of the present stalemate in the environmental negotiations in the post-Kyoto years is system of proper energy management. This system can come about if countries agree to share information on energy efficiency. For instance, some countries in the Nordic region are advanced in the development of renewable energy resources that can be used in the generation of electricity rather than reliance on the use of non-renewable resources for same reason as done in several other countries.

Likewise, as the energy priorities of countries differ depending on the purposes they are required for, the need to share information on how to eliminate the energy poverty and inefficiency of many countries of the world, while suggesting solutions to more environmentally friendly ways of meeting global energy needs, is crucial. The contribution of a WEO in this respect is thus to serve as a bank of energy information that can be made available to countries and other actors when necessary.

Combining these objectives, the following policy recommendations are put forward for a WEO:

- That a WEO be created by states for addressing the current global energy security crisis. This organization will have the responsibility to set the agenda for the world's efforts at resolving the energy security crisis, coordinate collaborative activities of the various institutions that currently exist, and provide technical assistance to state and non-state actors when necessary on energy related matters.
- A comprehensive understanding of global energy governance as regime complex should be used as a way of designing such an organization in order to ensure an all-inclusive organization with truly global reach and functions.
- All states of the world should be eligible to participate in the deliberations over the way forward on solving the energy crisis. The contributions of small and big states

would be a basis of constructing a formidable alliance against the global challenges that we currently face in the energy sector.

Conclusion

This article argued for the creation of a world energy organization to (i) refocus the energy security debate as a human problem, (ii) coordinate the different energy governance initiatives, and (iii) provide technical assistance and information dissemination to states and non-state actors when necessary in dealing with energy related issues such as development of renewable resources. More inclusive global energy governance agency with broad-based membership is a much needed corrective to the existing landscape of international organizations in the energy policy field, which features many bodies with narrowly-focused functions representing parochial interests of its members, most prominent seen in IEA and OPEC. Given the lack of a global energy governance agency parallel to those that exist in other areas of global governance, the creation of such an agency would provide the functions mentioned above as well as contributing to efforts aimed at tackling the ensuing global energy and climate security concerns. Such an organization, however, must function as part of a regime complex in the energy governance arena.

Hence, in order to govern the global energy sector, a more inclusive agency is needed. The necessary refocus towards a low-carbon world economy requires necessary institutions such as the envisioned WEO. What is required is not an elimination of any of these other governance mechanisms, but rather a coordination by an effective WEO of the various activities that currently exist in the global energy policy domain. In addition, information sharing in this context is in disarray and is perhaps non-existent, and thus actors in this area would benefit from a WEO focused on addressing this deficiency. Despite the various publications of some energy agencies such as the IEA's annual World Energy Outlook and OPEC's World Oil Outlook, information regarding the various energy aspects is still considered inadequate.

Finally, while the energy needs of countries are similar, it is important not to overlook the variance in energy security priorities and levels of development in areas such as electricity and fuel consumption. The importance of a WEO in coordinating activities in the global energy sector is imperative for ensuring a balanced approach to solving current global energy challenges. However, a WEO should not be created to compete with existing agencies. Rather, it should form part of a regime complex where no single agency or mechanism supervises all energy related activities, but one in which the existing lack of governance coordination can be enhanced through the WEO.

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[1] For details of the UN SE4All, visit http://www.sustainableenergyforall.org/ accessed 17/9/2013.
[2]See http://www.reeep.org/ for details of REEEP activities. Accessed 20/9/2011.
[3]See http://www.worldenergy.org/about_wec/22.asp. Accessed 20/9/2011.

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