

To Find or be Forgotten: Global Tensions on the Right to Erasure and Internet Governance

Binoy Kampmark•

Abstract

The decision of the Court of Justice of the European Union (CJEU) in *Google Spain v AEPD and Mario Costeja González* enshrined the “right to forget” in the jurisprudence of the European Union. The judgment caused concern to transparency and open information advocates in terms of pitting a right to forget against the general right of the public to know. This, as this paper will argue, is a false distinction. The Internet is, and has always been, a regulated space. Nor is the right to free expression, even in its American form, absolute. While there are genuine concerns about how the balance is struck, evolving practice is likely to identify what cases deserve deletion, to those that do not. The biggest challenge lies in how, and who, tests that balance as to what is removed from the search engines of the Internet. Finding material is important but forgetting may be just as vital to liberties as well.

“Will citizens around the globe demand laws and technology that protect liberty rather than threatening it? The choice is ours.”

Jeffrey Rosen, *Fordham Law Review*, 2012¹

On May 13, the Court of Justice of the European Union (CJEU) held in *Google Spain v AEPD and Mario Costeja González*² that there was a “right to be forgotten” in the context of data processing on Internet search engines. The case had been brought by a Spanish man, Mario González, after his failure to remove an auction notice of his repossessed home from 1998, available on *La Vanguardia*, a widely-read newspaper website in Catalonia.

• Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He lectures in the School of Global, Urban and Social Studies, RMIT University. Email: bkampmark@gmail.com

¹ Jeffrey Rosen, “The Deciders: The Future of Privacy and Free Speech in the Age of Facebook and Google,” *Fordham Law Review* 80, 4 (2012): 1525-1538, 1538.

² *Google Spain SL, Google Inc. v AEPD and Mario Costeja González* (C-131/12), http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=152065&occ=first&dir=&cid=45442, accessed Oct 22, 2014.

The CJEU considered the application of various sections of Article 14 of EU Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 covering the processing of personal data and the free movement of such data. But importantly, it considered the extent of liability a company such as Google might have for information available through its search engines. The justices found that the operator of a search engine would be responsible for the processing of personal data appearing on web pages published by third parties.

The case posed challenges that, on the surface, reveal a few contentious areas within the law and public policy. Central to that is the idea of being forgotten, where individuals are left, or allowed to be left, in validated obscurity, the violation of which can be legally redressed. The situation is all the more pressing given modern technologies, with their ever increasing emphasis on openness on the one hand, and intrusiveness on the other. While these are all premised on assumptions based on accessing information, such access does come at a price. Smartcards used for transport systems act as a means of monitoring customer behaviour.³ Remote Frequency Identification Devices (RFIDs) are used for clothes labels in department stores. The extent of how important the use of information obtained via various forms of technology is demonstrated by the work of the Space Law Committee and the Human Rights Institute, keen on establishing an international convention covering “the use of data obtained from satellite surveillance.”⁴

Nothing, however, comes close in terms of the sheer scope and impact on individual information as the global memory created by the search facility of the Internet. The question of what it does to individual subjects, and what it means for privacy, is one of the topics of international policy. Different views on the question exist. A running theme about the right to be forgotten is its tension with US laws on the subject of protecting free speech, centred primarily on the First Amendment.⁵ Such laws are deemed inconsistent with transparency regimes, of which Google has been a primary advocate. The distinction, to a large extent, is

³ Electronic Frontiers Australia, “Smart Cards and RFID,” Aug 15, 2006, <https://www.efa.org.au/Issues/Privacy/cards.html>, accessed Nov 1, 2014.

⁴ Lee Van Blerkom, Chair, Intrusive Technologies Review, of the International Bar Association, London, n.d., http://www.ibanet.org/LPD/IP_Comm_Tech_Section/Technology_Law/Intrusive_Technologies/Overview.aspx, accessed Nov 2, 2014.

⁵ See Howard Schweber, *Speech, Conduct, and the First Amendment* (New York: Peter Lang Publishing, 2003).

artificial, though it does point out to different cultural perceptions of where privacy and information fit.

It is certainly problematic in certain common law jurisdictions, where privacy provisions are weak. Practical implications have been considered by Steven C. Bennett. “Foggy thinking” has been a charge levelled at EU regulators by American commentators.⁶ Other comments, notably those from the tabloid brand of journalism, see the ruling as a delight for criminals, notably paedophiles keen to “delete their past.”⁷ The free speech tradition is deemed to trump matters connected with privacy, a principle asserted with an almost unqualified conviction by legal scholars and practitioners. “In the United States, we have a very strong tradition of free speech [and] freedom of expression. We would strongly caution against any interpretation of the right to be forgotten that infringes upon that.”⁸

Such a position may be overly negative. Any right is subject to a range of contingencies. Its total exercise suggests its own negation of purpose. In discussing the right to forget in 2012, Vice President of the European Commission, Viviane Reding, suggested that, “It is clear that the right to be forgotten cannot amount to the total erasure of history.”⁹ It is far from being absolute, though the decision does make it clear that any such removal cannot be made piecemeal. Any deletions should be global, argue advocates such as Johannes Caspar, head of Hamburg’s data protection body in Germany, given “a global environment like the Internet”.¹⁰ Such assertions may well be as idealistic as notions of total free speech.

In September, EU regulators agreed that guidelines were appropriate to assess applications regarding the right to be forgotten. They are set to be finalised by the end of November 2014, using criteria to determine each application. In the words of Isabelle Falque-Pierottin, head of France’s privacy watchdog and chairperson of the pan-European group of data-protection, “We want the toolbox to guide difficult decisions on how to balance the individual’s right to

⁶ Peter Fleischer, “Foggy Thinking About the Right to Oblivion,” Peter Fleischer: Privacy...? Blogpost, Mar 9, 2011, <http://peterfleischer.blogspot.com.au/2011/03/foggy-thinking-about-right-to-oblivion.html>, accessed Oct 19, 2014.

⁷ Steve Hopkins, “Now ‘right to forget’ reaches Japan: Court tells Google to delete links to criminal associate’s past in fresh blow to freedom of speech,” *Daily Mail*, Oct 11, 2014.

⁸ Justin Brookman, Center for Democracy and Technology, Privacy Project.

⁹ Viviane Reding, Vice President, European Commission, *The EU Data Protection Reform 2012: Making Europe the Standard Setter for Modern Data Protection Rules in the Digital Age 5* (Jan 22, 2012).

¹⁰ Julia Fioretti, “Regulators agree on Google’s right to refuse ‘right to be forgotten’ requests,” *Reuters*, Sep 19, 2014.

privacy in the Internet age against the public interest.”¹¹ The issues that still remain unclear are what happens when Google removes articles from search results – is the publisher to be informed about that? The issue of whether links should be removed as well from all versions of Google is also to be clarified.¹²

Rights to Forget: Origins

A body of authority has developed around the notion, pioneered in such writings as those of Viktor Mayer-Schönberger, that a measure of proactive deletion can itself constitute a form of protecting liberties.¹³ Central to this is the idea of forgetting, one that is deemed essential to one’s existence as a human being. The condition is captured, rather strikingly, by Jorge Luis Borges in a fictional story about Ireneo Funes, a boy who is cursed with the means of total memory.¹⁴ By virtue of this, the present is crippled and rendered unlivable by the devouring nature of memory. “Borges suggests that forgetting – that is, forgetting ceaselessly,” argues Aleksander Hemon, “is essential and necessary for thought and language and literature, for simply being a human being.”¹⁵

The terrors of having an immutable memory – one recorded by technological means – is best reflected by such messages as received by David Bartolo of the Australian vocational college system, TAFE. “Dear Mr Bartolo, would you please be kind enough to remove my profile and class related activity from your 2009 Wikispaces group... it is a negative representation of my profile as a productive student, and will reflect poorly in future academic selections.”¹⁶ Traces of one’s seemingly misspent youth may find their way onto Facebook profiles and other social media sites, where employers scour for messages of credit and worth.¹⁷ Mayer-Schönberger writes of the case of Stacy Snyder, a 25-year-old single

¹¹ Fioretti, “Regulators agree on Google’s right to refuse ‘right to be forgotten’ requests.”

¹² Fioretti, “Regulators agree on Google’s right to refuse ‘right to be forgotten’ requests.”

¹³ Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (NJ, Princeton: Princeton University Press, 2009).

¹⁴ Jorge Luis Borges, “Funes El Memorioso,” in *Ficciones – El Aleph – El Informe de Brodie 50* (Biblioteca Ayacuccho, 1986).

¹⁵ Aleksandar Hemon, “Alexander Hemon on Jorge Luis Borges’ ‘Funes the Memorious,” *Daily Best*, Sep 26, 2012; noted in Edward L. Carter, “Argentina’s Right to be Forgotten,” *Emory International Law Review* 27 (2013): 23-39, 23.

¹⁶ David Bartolo, “Haunted by our Digital Past,” TAFE Bytes, Nov 27, 2012, <http://tafebytes.com.au/haunted-by-our-digital-past>, accessed Oct 20, 2014.

¹⁷ Katherine Danks and Melissa Matheson, “Drunken Facebook photos can ruin career,” *The Daily Telegraph*, Nov 17, 2012.

mother who was refused a teaching certificate because she was posing in a picture available through web crawlers that suggested she was consuming alcohol. Her competency to teach was therefore impugned. “The Internet remembered what Stacy wanted to have forgotten.”¹⁸

The balance between memory and recalling, and the necessity of forgetting, has shifted. The presence of digital technology has swung the pendulum the way of memory and notions of recording. “Today, with the help of widespread technology, forgetting has become the exception, and remembering the default.”¹⁹ The emergence of a dominant technosphere involving the publicising of personal details, be they socially or politically relevant, and the contest with the right to privacy, is fundamental to the discussion in this paper.

The entitlement to find information, and the limiting remit of privacy, are some of the great challenges facing lawmakers. Central to this is the idea of personal data, which has become the paramount form of currency on the Internet.²⁰ Processes of collection, storage and use have been facilitated in a myriad number of ways, suggesting a form of panoptical power “beyond anything Bentham ever imagined.”²¹ Indeed, the web itself has been deemed, in its structural makeup, a creation that not merely resists forgetting, but prevents it.²² Given the Internet’s supreme storage facility for information, and its capacity to facilitate searches of the archive, users face the prospect of being “haunted” by information. Such haunting may well be justified in some cases, despite the stress on the autonomous realm of privacy.

Pro-information freedom advocates would be mistaken to assume the right to be forgotten to be a singular European concept, one developed in a culture more resistant to expansive notions of free expression. The right to be forgotten is a response to the echo of totalitarian record keeping, an assertion against governments, and, as time has evolved, non-government entities. Alessandro Mantelero finds variants of the “right to be forgotten” in pre-existing European and US legal frameworks, the offspring of various conceptions of

¹⁸ Mayer-Schönberger, *Delete*, 1

¹⁹ Mayer-Schönberger, *Delete*, 2.

²⁰ Jef Ausloos, “The ‘Right to be Forgotten’ – Worth Remembering?” *Computer Law & Security Review* 28, 2 (Apr., 2012): 143-152, 143.

²¹ Lawrence Lessig, *Code: Version 2.0* (Perseus Books, 2006), 208.

²² Jeffrey Rosen, “The Web Means the End of Forgetting,” *New York Times*, Jul 21, 2010.

privacy. Privacy remains a part of US law, urged on by an awareness of impacts posed by modern technology.²³ Common law jurisdictions show a similar, though less sophisticated awareness, typified by a preference for such torts as breach of confidence rather than privacy per se.²⁴ The European basis is the *droit à l'oubli*, one recognised in French law and other European jurisdictions.²⁵ The sanctity of the individual, be it through information conveyed about the person to the world, or the person's being, is very much at the heart of these common assumptions.

Prior to the *González* decision, writers attempted to give the legal principle some shape. An almost modest suggestion is offered by Jef Ausloos. "As such, the right is nothing more than a way to give (back) individuals control over their personal data and make the consent regime more effective."²⁶ Such arguments suggest limiting such 'right to be forgotten' requests to instances where that individual has given his or her consent in certain data processing situations.

On close inspection, it is clear that the push against the open access to material on the Internet is far from recent. In Argentina, a spate of suits coming to some two hundred have been lodged by models, actresses and athletes, many the result of the lawyer Adolfo Martín Leguizamón Peña.²⁷ Context has proven to be everything, with such individuals arguing that the searches revealing past images suggest an association with prostitution or pornography.

The pop star Virginia Da Cunha, as one notable example, successfully sued Google and Yahoo at first instance mandating that they take down suggestive pictures on their sites featuring her when she was young. Google argued that the measure would be technologically unsound and impossible, while Yahoo ventured that such a takedown would

²³ Samuel Warren and Louis Brandeis, "The Right to Privacy," 4 *Harvard Law Review* 193 (1890); William L. Prosser, "Privacy," 48 *California Law Review* 383, 389 (1960).

²⁴ For England, see *Campbell v MGN Limited* [2004] UKHL 22; *Wainwright v Home Office* [2003] 3 WLR 1137. For New Zealand, see *Hosking v Runting* [2004] 1 NZLR 1; for Australia, see *Grosse v Purvis* [2003] QDC 151 and *Kalaba v Commonwealth of Australia* [2004] FCAFC 326.

²⁵ TGI Seine, Oct 14 1965, JCP. 1966, II. 14482, n. Lyon-Caen; TGI Paris, 25 mars 1979, *Dalloz Sirey*, 1988, 198; and others cited in Alessandro Mantelero, "The EU Proposal for a General Data Protection Regulation and the roots of the 'right to be forgotten'," *Computer Law & Security Review* 29 (2013): 229-235, 229.

²⁶ Jef Ausloos, "The 'Right to be Forgotten' – Worth Remembering?" *Computer Law & Security Review* 28, 2 (Apr., 2012): 143-152, 143.

²⁷ Carter, "Argentina's Right to be Forgotten," 23-4.

lead to a blocking of all sites in its search engines referring to Da Cunha.²⁸ The subsequent judgments were privy to the implications of the requests. While winning in the trial, Da Cunha lost on the appeal.²⁹

In 2012, the European Commissioner for Justice, Fundamental Rights, and Citizenship, Viviane Reding, proposed to formalise the right to be forgotten. At its codification, Jeffrey Rosen of Stanford University and Legal Affairs editor for *The New Republic* would argue that it represented “the biggest threat to free speech on the Internet in the coming decade.”³⁰ It would render Google and Facebook liable for anywhere up to two percent of their global income for not removing photos about individuals posted about themselves, even in regret and even after wide distribution. It would also see a clash between “European and American conceptions of the proper balance between privacy and free speech, leading to a far less open Internet.”³¹ The subsequent European Parliament’s approval of the Committee on Civil Liberties, Justice and Home Affairs’ amendments on March 14, 2014 suggest that the right should be considered one of “erasure”.³² Rosen’s arguments may hold some water, but they do, nonetheless, have leaks in them.

Mario Costeja González and reactions

The *González* case focused heavily on the rationale of the EU directive. Legal and policy alarmists may see something significant in essentially generating a rationale for controlling the Internet. But a very specific philosophy underlines one very specific aspect of that control. One is the belief that data systems are human productions, created by humans for humans. Being such a production, human rights are inherent in the exercise. This places pressing responsibilities on those in control of the relevant machinery. In the preamble to Article 1 of Directive 95/46, “data processing systems are designed to serve man; ... they must,

²⁸ Jeffrey Rosen, “The Right to be Forgotten,” *Stanford Law Review Online* 88 (Feb 13, 2012).

²⁹ Carter, “Argentina’s Right to be Forgotten,” 24.

³⁰ Rosen, “The Right to be Forgotten.” See also the overall protests of Rosen against such a right in “The Deciders: The Future of Privacy and Free Speech in the Age of Facebook and Google,” *Fordham Law Review* 80, 4 (2012): 1525-1538.

³¹ Rosen, “The Right to be Forgotten.”

³² Aurelia Tàmo and Damian George, “Oblivion, Erasure and Forgetting in the Digital Age,” *Journal of Intellectual Property, Information Technology and E-Commerce Law* 5, 2 (2014), <http://www.jipitec.eu/issues/jipitec-5-2-2014/3997>, accessed Oct 26, 2014.

whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms notably the right to privacy, and contribute to ... the well-being of individuals.”

Both Google Spain and Google Inc. decided to run an argument regarding the act of processing data. The argument was that such search engines “cannot be regarded as processing the data which appear on third parties’ web pages displayed in the list of search results”. The information is processed without “effecting the selection between personal data and other information.” González, and several governments, disagreed, arguing that the search engine was the “controller” regarding data processing. The Court accepted the argument. It importantly found that the privacy rights of the applicant overrode “not only the economic interest” of Google, “but also the interest of the general public in having access to that information upon a search relating to his name.” As a measure of approval for the verdict, between June and mid-September, Google received 135,000 deletion requests referring to 470,000 links, with most coming from Britain, France and Germany.³³ Applicants within the EU are entitled to seek removal for such grounds as material that is “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed.”³⁴

The critics, including those charged with advising Google on how best to implement the Court ruling, have worries about the routes of accessibility. They fear that the memory bank is being tampered with, with permanent withdrawals being made from its deposits. Information ethics theorist Luciano Floridi, one such specially charged advisor, argues that the decision spells the end of freely available information. The decision “raised the bar so high that the old rules of Internet no longer apply.”³⁵

For Floridi, the Court of Justice ruling might actually allow companies to determine the nature of what is accessible, thereby creating barriers of unacceptable control over data. The other side of the coin, and one Google is wanting to stress, is that such a ruling is a gift to the forces of oppression. A statement from a Google spokesman noted how, “The court’s

³³ *The Economist*, “Drawing the Line,” Oct 4, 2014.

³⁴ Sophie Curtis, “Wikipedia link removed from Google under ‘Right to be Forgotten’,” *The Telegraph*, Aug 4, 2014.

³⁵ Tom Harper and Jonathan Owen, “Google privacy law ‘means total rethink of basic freedoms’,” *The Independent*, May 30, 2014.

ruling requires Google to make difficult judgments about an individual's right to be forgotten and the public's right to know."³⁶ This is a view offered by one of the main inventors of the Internet, Sir Tim Berners-Lee. For Berners-Lee such total information space should be kept away from the controls of government and companies. "It [the Internet] has got so big that if a company can control your access to the Internet, if they can control which websites they go to, then they have tremendous control over your life."³⁷

Floridi makes suggests that an undue transfer of power has been permitted, something distinctly against the public interest. "People would be screaming if a powerful company suddenly decided what information could be seen by what people, when and where." Private companies, in other words, had to become judges of the public interest, an unduly broad vesting of power and responsibility. The result, for Floridi, will be a proliferation of "reputation management companies" engaged in targeting compromising information.³⁸ These reputation managers already exist, offering services that emphasise deletion of compromising or harmful information, going so far as to "define your image".³⁹

Google's Larry Page sees such decisions as boons for despotism. "It will be used by other governments that aren't as forward and progressive as Europe to do bad things. Other people are going to pile on, probably... for reasons most Europeans would find negative."⁴⁰ Notwithstanding that, a seven-city tour of European capitals was organised by the company to discuss the "right to be forgotten" in September 2014, beginning in Madrid. Google Executive Chairman Eric Schmidt explained that, "We need to balance the right of information against the individual's right to privacy."⁴¹ Privacy regulators in Europe have not been convinced, seeing Google's approach as distinctly one of image. "They're trying to buy themselves goodwill," claimed Falque-Pierottin.⁴²

³⁶ Rose Powell, "Google receives 12,000 requests to be 'forgotten' on first day," *Sydney Morning Herald*, Jun 1, 2014.

³⁷ Roland Moore-Colyer, "internet freedom besieged by big businesses warns Sir Tim Berners-Lee," *V3.co.uk*, Sep 29, 2014, <http://www.v3.co.uk/v3-uk/news/2372672/internet-freedom-besieged-by-big-businesses-warns-sir-tim-berners-lee>, accessed Nov 1, 2014.

³⁸ Harper and Owen, "Google privacy law 'means total rethink of basic freedoms'."

³⁹ Ausloos, "The 'Right to be Forgotten'," 149.

⁴⁰ Samuel Gibbs, "Larry Page: 'right to be forgotten' could empower government repression," *The Guardian*, May 30, 2014.

⁴¹ Sam Schneider and David Roman, "Google Seeks Views in Europe on Right to be Forgotten," *The Wall Street Journal*, Sep 9, 2014.

⁴² Schneider and Roman, "Google Seeks Views in Europe on Right to be Forgotten."

Specialist on data law, Christopher Kuner, dredges up another angle on the impact of the case, suggesting that the Court showed a lack of concern for the territorial application, and implications, of such a ruling on available data. It “fails to take into account the global nature of the Internet.”⁴³ Wikipedia’s founder, Jimmy Wales, also on Google’s advisory board, has fears that Wikipedia articles are set for the censor’s modifying chop. “When will a European court demand that Wikipedia censor an article with truthful information because an individual doesn’t like it?”⁴⁴ Similar questions are also asked as to when will, “American victims of revenge porn... not also be able to ask Google to stop linking to such content”?⁴⁵

To that end, Google’s service of removal is only available to European citizens, something that invariably introduces unevenness in the global legal regime. The point, as is discussed later in this paper, is a moot one, since the paradox of Internet freedom remains its inequalities, be it states who seek to control search results and web pages, or those in the private sector who campaign to have pages and links taken down.

Other concerns have also manifested themselves since the “right to be forgotten” decision. According to *Fortune*, scores of European company managers have taken advantage of the ruling by removing links to information “they are required by law to disclose.”⁴⁶ These include 64 reports on UK directors and 56 reports on Spanish directors. An argument has been made that the 1995 EC directive does not cover business information. Important here is the extent of editorial control the particular organisation has over content. Google, in *González*, claimed it exercised none in terms of the links found through its search engine, and for that reason could not claim freedom of expression rights over the prevailing interests of privacy. A data compiling company like Dato Capital, however, is a different type of entity, one which has rights to free expression. For that reason, it cannot be forced to take down reports.⁴⁷

⁴³ Christopher Kuner, “The right to be forgotten and the global reach of EU data protection law,” *Concurring Opinions*, Jun 1, 2014.

⁴⁴ Harper and Owen, “Google privacy law.”

⁴⁵ *The Economist*, “Drawing the Line.”

⁴⁶ Roger Parloff, “Company directors are deep-sixing Google links citing ‘right to be forgotten’,” *Fortune*, Oct 21, 2014.

⁴⁷ Parloff, “Company directors are deep-sixing Google links citing ‘right to be forgotten.’”

Florida's concerns here need not apply if the public-interest exception itself covers such matters as free speech issues inherent in Article 10 of the European Convention on Human Rights. The usual tests of "substantial relevance" when it comes to personal data and "proportionality" (regarding deletion requests) may be ways of tailoring the need.⁴⁸ As the European Commission insists, one should not lose sight of the fact that the right "is about empowering individuals, not about erasing past events or restricting freedom of the press."⁴⁹

A few high profile efforts have been made by individuals in an effort to correct, in a fashion, the record of their crimes. European case law has not been averse to the implications to media freedoms and expression posed by deletion requests. Convicted murderers have attempted to remove references to their crimes under privacy laws, and duly failed. In Germany, Wolfgang Werle and his half-brother Manfred Lauber provided one spectacular example, challenging Wikipedia to remove references to them under the Wikipedia entry on actor Walter Sedlmayr, whom they murdered in 1993.⁵⁰ While the lower Hamburg court did, at first instance, agree in 2008 that naming the two individuals in archived articles constituted a violation of their privacy rights, the 2009 decision of the German Constitutional Court reversed it.⁵¹ The Court found that both Werle and Lauber had to expect a degree of intrusion of their privacy, and that the removal of such Wikipedia material constituted an undue violation of the constitutionally protected freedom of the press.

A different outcome was reached in Japan by the Tokyo District Court, which ordered Google Japan to remove search results hinting at the plaintiff's relations with a criminal organization after he complained of a violation of privacy rights. While the decision was already going to hinge on existing laws of privacy and defamation, counsel for the plaintiff, Tomohiro Kanda, relied on the logic in *González*. "We asserted that Google as a controller of the site had the duty to delete the material."⁵²

⁴⁸ Ausloos, "The 'Right to be Forgotten'," 151.

⁴⁹ Todd, "Will Europe Censor This Article?"

⁵⁰ David Kravets, "Convicted Murderer Sues Wikipedia, Demands Removal of His Name," *Wired*, Nov 11, 2009.

⁵¹ Judith Bruhn, "Does a murderer have the right to be forgotten?" *FreeSpeechDebate*, Nov 16, 2012,

<http://freespeechdebate.com/en/case/does-a-murderer-have-the-right-to-be-forgotten/>

⁵² Yuri Kageyama, "Japan orders Google to 'forget' a user's past," *Associated Press*, Oct 10, 2014.

Confused effects; confused origins

The thrust of the *González* decision is not complicated. It stresses that the desire for privacy should be maintained at the level of the citizen and his or her relations with private information and how third parties may use it, or allow it to be accessed. In terms of whether that privacy can be had vis-à-vis other citizens in their relations regarding social media platforms such as Facebook, Twitter, Instagram is the perennial question.

The critics marshalled from Google's position see such laws of erasure as antithetical to the open Internet. The association here is made between information and openness, that these are the same thing. Peter Fleischer, chief privacy counsel for Google, has suggested three different categories, each providing greater degrees of menace to free speech. These involve the issue of posting material online, and whether one has the right to delete it. (Least of a threat.) The second category entails posting material, with someone else copying it and uploading or reposting the material to own sites. (More of a threat.) There, the onus, in the view of Fleischer and Rosen, dangerously shifts to imposing obligations on Facebook, to take but one example, having an obligation to meddle in the accounts of others who had reposted pictures or material.⁵³ The third is the most problematic: "If someone else posts something about me, should I have a right to delete it?" Fleischer feels that existing standards of libel law and defamation are adequate, even if such "mechanisms are time-consuming and expensive". The conclusion, then, is that "privacy is the new black in censorship fashion."⁵⁴

Much of the confusion arises from the issue of reconciling the concept of free speech with the idea of accessible information. Those facilitating the means of accessing information invariably have obligations as to how that data is accessed. Google's transparency ideal is manifested by the remarks that it should not be left to "censor history", which would be the corporate incentive behind laws on the right to be forgotten.⁵⁵ But an individual's own

⁵³ Peter Fleischer, "Foggy Thinking About the Right to Oblivion," *Privacy...?*, Mar 9, 2011, <http://peterfleischer.blogspot.com.au/2011/03/foggy-thinking-about-right-to-oblivion.html>

⁵⁴ Fleischer, "Foggy Thinking About the Right to Oblivion."

⁵⁵ Georgina Graham, "Google must not be left to 'censor history', Wikipedia founder Jimmy Wales warns," *The Telegraph*, Jul 25, 2014.

history ultimately remains a matter of his or her own. And it is questionable whether Fleischer's faith in existing laws of privacy and libel are sufficient without physical action to remove the incriminating material. What Google's transparency ideal reflects is an unbending notion of information that can itself undermine privacy – that all shall be available, however scurrilous or damaging.

Private citizens are entitled to privacy; governments, within the EU's legal framework, are obligated to abide by the privacy and data protection laws operating within the area. The right to be forgotten tends to get mangled in these discussions, largely because the desire not to have material exposed to the general public is not the same as having material accessed, surreptitiously or otherwise, by the State. Individuals like Page and Wales are strong on the issue of countering government intrusion and uphold a private citizen's privacy in that sense; but they are less so in terms of the individual's right to assert control over information specific to the person which is then published by third parties on the Internet.

It is true that First Amendment followers – if we can term those who believe that such a rule ought to be more broadly applied to the Internet – find it baffling that the *González* case effectively invalidated the use of public records, at least in a fashion. In the words of Wales, “I do not know of a similar case where on the one hand a government publishes information, and on the other hand punishes people where to read it.”⁵⁶

It would, however, be a mistake to presume that US courts are immune from balancing principles. The legal bull of free speech is not always allowed to run unchecked in the china shop. Much of this misunderstanding goes back to a US Supreme Court ruling in 1989 which held that a paper could not be penalised lawfully for publishing truthful, legally obtained information from the public record. In the case of *The Florida Star v B.J.F.* 491 US 524 (1989), it was held that imposing damages on the Star for publishing the details of a victim of sexual assault in the “police reports” section of the paper, even in breach of the paper's own policy, was a violation of the First Amendment.⁵⁷ The justices were careful to

⁵⁶ Matt Ford, “Will Europe Censor This Article?” *The Atlantic*, May 5, 2014.

⁵⁷ *The Florida Star v B.J.F.* 491 US 524 (1989), 530-1.

qualify the scope of their decision. The clash between the First Amendment and privacy interests suggested that the Court take an approach of “limited principles”, one based on “a discrete factual context”. It would be a mistake to assume that truthful publication might never be punished yet be consistent with the First Amendment; nor was it appropriate to suggest “that publication of a rape victim’s name never enjoys constitutional protection”. But in this case, the justices were aware that encouraging punishments of the press in such cases might result in “timidity and self-censorship”.

Nor was the CJEU oblivious to the concerns expressed by such information advocates as Floridi. A “fair balance should be sought in particular between that interest [in having access to information] and the data subject’s fundamental rights under Articles 7 [covering no punishment without law] and 8 [covering privacy] of the Charter.” Whether there could be a justifiable infringement of the data subject’s right to private information would depend on the public interest in accessing that information, and “the role played by the data subject in private life.”⁵⁸

To such qualifications can be added another confusion, one rooted in a distinct ideology about how the Internet is run. The idea of the Internet being a free, unmodified space of emancipating virtue is a form of cyberutopianism that also rapidly transforms into dystopianism at the mere suggestion that a search for information might be frustrated. The idea of absolute freedom inherent in the use of the Internet is itself a contradiction. There are moves in legislatures on a global scale that all have, at their core, a rationale of control. Not all such rationales are to be dismissed. They involve conflicts over the way we use material in cyberspace. As Lee Siegel noted in 2011, they may be parents wanting to shield children from the phenomenon of cyberbullying. Publishers seek to protect content. The law of slander is used as a weapon by public figures and businesses to discredit opponents. Privacy laws are enacted.⁵⁹

Naturally, governments can exploit such sentiments, overreaching their stretch in a paternalistic effort to protect members of the public. Canada’s cyberbullying bill, known as

⁵⁸ *González Case*.

⁵⁹ Lee Siegel, “Twitter Can’t Safe You,” *The New York Times*, Feb 4, 2011.

C-13, extends surveillance and access powers for the police and grants immunity for telecommunications companies that voluntarily surrender private data to the authorities.⁶⁰ Thresholds for such access have been deemed by critics to be too low, while the law itself touching on cyberbullying is said to be too vague.

Such concerns demonstrate the nature of the Internet space, which is deemed, too conveniently, to be a crude division between those who want absolute access to those who want absolute control. A parallel might be drawn about such absolutist designs of the Internet with the notion of a free, unregulated economy (or at the very least the sort that requires minimal planning). This was the central tenet of the Austrian economist Friedrich Hayek, who stipulated the need to ensure that the power of economic choices was one made by individuals rather than governments. The best economic system that delivered the best outcomes in terms of liberty and use of choices was an unplanned one. “The economic freedom which is the prerequisite for any other freedom cannot be the freedom from economic care which the socialists promise us and which can be obtained only by relieving the individual at the same time from the necessity and of the power of choice: it must be the freedom of economy activity which, with the right choice, inevitably also carries the risk and the responsibility of that right.”⁶¹

A similar analogy is one where the Internet space is one with minimal regulation, with service providers enabling the means for the widest distribution of content in an unhampered way. The means of removing content – a form of perceived unwarranted intrusion – should be, if not totally removed, then certainly kept to a minimum. Access to information is thereby guaranteed.

The contrasting view here is that such unregulated forms of behaviour are not only unrealistic but disruptive. They are also based on a fundamental confusion. As Karl Polanyi would note in his 1957 study on market behaviour in history, “No society could, naturally, live for any length of time unless it possessed an economy of some sort; but previously to

⁶⁰ Josh Wingrove, “Cyberbullying bill C-13 moves on despite Supreme Court decision,” *The Globe and Mail*, Oct 1, 2014.

⁶¹ Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944).

our time no economy has ever existed that, even in principle, was controlled by markets”.⁶² Hayek’s assumptions of economic behaviour seem rigid and sterile by comparison. One cannot consider the economy, be it in such terms as possessing goods or assets, without considering the social relationships of the human animal. “The economic system will be run on non-economic motives.”⁶³

The Internet itself, argues Evgeny Morozov in a striking, contrarian study, may itself contain a potential that is far from liberating or free. “What if the liberating potential of the Internet also contains the seeds of depoliticisation and thus dedemocratization?”⁶⁴ The Internet is very much what is made of it, a medium that can emancipate in a sense, but control in others. Policy makers in the West, argue Morozov, have deified the mechanism, seeing it as possessing “nearly magical qualities”. Authoritarianism, in short, can be defeated by means of a “cheat sheet”. Much of this is represented in typical manner by Google, and the “Google doctrine”, something which envisages a belief “in the liberating power of technology accompanied by the irresistible urge to enlist Silicon Valley start-ups in the global fight for freedom”.⁶⁵

But in truth, states have endeavoured to extend their own agendas, push their own programs, and salute their own platforms on the Internet. Platoons of bloggers are employed to push the views of their governments and crowd discussion forums with purposefully slanted commentary.⁶⁶ Internet trolls are hired to target specific individuals and parties.⁶⁷ As *USA Today* reported last year, the Israeli Prime Minister’s office had made it clear via a statement that it was looking to hire university students keen on posting pro-Israel messages on social media platforms. “This is a groundbreaking project aimed at strengthening Israeli national diplomacy and adapting it to changes in information consumption.”⁶⁸

⁶² Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957), 43.

⁶³ Polanyi, *The Great Transformation*, 46.

⁶⁴ Evgeny Morozov, *The Net Delusion: How Not to Liberate the World* (London: Allen Lane, 2011).

⁶⁵ Morozov, *The Net Delusion*, xiii.

⁶⁶ Tom Philips, “China’s Massive Propaganda Team Has Been Ordered To Spread ‘Positive Energy’ Online,” *Business Insider Australia*, Jan 20, 2013; Olga Khazan, “Russia’s Online-Comment Propaganda Army,” *The Atlantic*, Oct 9, 2013.

⁶⁷ 21st Century Wire, “Paid Gov’t and Corporate Internet Trolls Are Real,” Mar 1, 2014.

⁶⁸ Associated Press, “Israel to pay students to defend it online,” *USA Today*, Aug 14, 2013.

This is the message behind the use of mass technology – the use of radio and widely read press outlets, for instance, became powerful media forms to advance the goals of totalitarian regimes keen on spreading the message of the body politic. George Orwell's *1984* subjects the phenomenon to withering commentary. It can also be said that the sheer pervasiveness of the modern surveillance state has taken *1984* to its next step. "Orwell, argues Marjorie Cohn, "never could have imagined that the National Security Agency (NSA) would amass metadata on billions of our phone calls and 200 million of our text messages every day. Orwell could not have foreseen that our government would read the content of our emails, file transfers, and live chats from the social media we use."⁶⁹ It is axiomatic, in fact, that the creation of new technologies tends to become a matter of use and abuse by specific group or class interests.⁷⁰ It leads to such comments by the British Prime Minister David Cameron that the Internet must not be allowed to become "an ungoverned space".⁷¹

Control and Freedom

The question posed by Rosen is a valid one. What to do with technology, and where to with the rights and duties it affects? There are those like Berners-Lee who see the need for an Internet version of the Magna Carta to be created, one where rights are respected. But such protective principles do invariably intrude upon the territory of the absolute open Internet. Any rights regime will see cases such as *González* as consistent, acknowledging that forgetting is just as important as finding. Its opponents will see it as a recipe for cyber tyranny, or at the very least, cyber manipulation. As Martin Clarke dramatically asserted, "It is the equivalent of going into libraries and burning books you don't like."⁷² For all of that, one should not confuse the remarkable moment of technology with the idea of freedom itself – the creation of the moveable printing press did not spell an end to tyranny. Nor did it suggest that its value was not obvious. As Morozov has convincingly shown, the Internet

⁶⁹ Marjorie Cohn, "Beyond Orwell's worst nightmare," *Huffington Post*, Jan 31, 2014.

⁷⁰ D. Jensen and G. Draffan, *Welcome to the Machine: Science, Surveillance and the Culture of Control* (White River Junction: Chelsea Green, 2004); D. Noble, *Digital Diploma Mills: The Automation of Higher Education* (New York: Monthly Review Press, 2001).

⁷¹ David Cameron, Address to the Australian Parliament, *Sydney Morning Herald*, Nov 14, 2014.

⁷² Martin Clarke, *Daily Mail*, Oct 11, 2014.

itself can be very much a playground for authoritarian and controlled agendas. The medium, in other words, is only part of the message.

There is certainly some point to Rosen's concerns. His position, as is those favouring vast transparency for the means Google and similar search engines operate, tends to regard such rights to erasure as vague and potentially dangerous. Vague rights, it can be said, constitute their own form of mischief. But to suggest that neither the right to be forgotten, or a delicate balancing, has been undertaken by institutions such as the CJEU would be unduly mischievous in itself. What Rosen and those of similar mind are suggesting, is that the structural nature of the Internet, much like an economy, must be free and untrammelled. They are the Hayekians of the World Wide Web – the open Internet must be a given if we are to be free. But such a position seems as erroneous as that of Hayek's open economy, ignoring the basic fact that the Internet itself is a ground of contested governance and manipulation. None of this suggests that all regulation is ipso facto destructive.

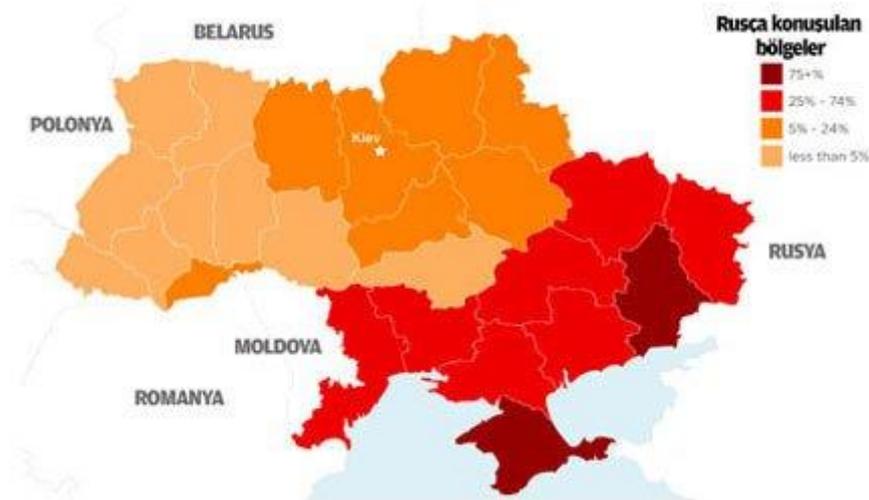
The very existence of a legal and social contract, even those taking place through the medium of the Internet, require the delicate act of balancing and in some cases, basic modification. The ironic point to draw out here is that the First Amendment advocates may well see the Internet as holy, open ground, even as the National Security Agency, with the aid of its allies, seeks to target personal records, user history and habits. While individual privacy is being violated by governments who have embedded sophisticated forms of unchecked surveillance in their machinery, the concern from Rosen is similarly focused on what individuals might be able to do regarding their own history.⁷³ Absolute freedom, however, can imply its own negation. The Internet is a space governed by values that stem from outside its own function. One of them is the value of forgetting itself. To deny that is to gift the machine and a process with a primacy over human values.

⁷³ Henry A. Giroux, "Totalitarian Paranoia in the Post-Orwellian Surveillance State," *Cultural Studies* (2014): 1-33.

Lessons from Ukraine

Bulent Gokay⁷⁴

Rather than a struggle between democracy and authoritarianism, the ongoing conflict in/over Ukraine is much more a typical conflict of geopolitical interests, based on the country's importance as a large agricultural and industrial region, plus its crucial position in an important gas transportation network, its proximity to the key oil resources in the Caspian basin, and its general geo-strategic location as a border country to Russia. In this sense, it represents a conflict between Ukraine's pro-American west, supported by money, arms and advisers from the EU and the US, and the pro-Russian east, traditionally linked to Russia by economic, military and cultural bonds both before and during the Soviet eras. With its geographic location north of the Black Sea, the Ukraine is close not only to the oil of the Caspian region, but also between it and the key oil importing states of central and northern Europe.



Zbigniew Brzezinski, former US national security advisor under President Carter, noted in his 1997 book, *The Grand Chessboard: American Primacy and its Geostrategic Imperatives*, that neither the West nor Russia can afford to lose the Ukraine to its geostrategic and geoeconomic adversaries. According to Brzezinski, the Ukraine is one of the most important geopolitical pivots in Eurasia and control of the Ukraine is critical to the

⁷⁴ Bulent Gokay is Professor of International Relations and Head of School of Politics, International Relations Philosophy and the Environment, at Keele University.

interests of the US and Europe. For the West, the Ukraine offers a potentially lucrative market and a critical transportation route for oil and gas, but as Brzezinski points out, ‘if Moscow regains control over Ukraine, with its 52 million people and major resources as well as access to the Black Sea, Russia automatically again regains the wherewithal to become a powerful imperial state, spanning Europe and Asia.’[\[ii\]](#)

It should come as no surprise that Putin’s Russia have always wanted to pull Ukraine closer into the Russian sphere of influence. Prior to the election, relations Russia were improving following the ratification of the 1998 bilateral Treaty of Friendship and Cooperation. Under this treaty, the Ukraine committed itself foregoing any military alliances for the duration of Russia’s 20-year lease on the naval base in Sevastopol, and the two sides also signed a series of agreements on the final division and disposition of the former Black Sea fleet. In the years immediately preceding the treaty, Russia has increased its influence in Ukraine through various political, economic and military agreements, and through the operations of Russian natural gas and giant gas monopoly, Gazprom, and Russian electricity and energy complex, UES. In September 2003, Ukraine signed an Agreement on a Common Economic Space with Belarus, Kazakhstan and Russia, which foresaw closer economic relations between the four signatories, eventually leading to the formation of an economic union.[\[iii\]](#)

The US administration, on the other hand, sees the Ukraine as part of a framework of energy-rich states in the Eurasian corridor, where the US has aggressively pursued a militarised foreign policy since the end of the Cold War. It’s aim is to favourably position itself in the Ukraine and absorb it into a US dominated sphere of influence. This has already begun through the organization of five western-oriented former Soviet states into a regional organization, GUUAM (Georgia, Uzbekistan, Ukraine, Azerbaijan and Moldova), which has been financed in part by Western/ NATO military aid and Anglo-American oil interests. As a founding member of GUUAM, the Ukraine has become part of the effort to exclude Russia altogether from the oil and gas resources of the Caspian basin.[\[iv\]](#)

“Revolution in Civilian Affairs” and Post-modern James Bond

The emphasis on the use of new communication technologies to rapidly deploy small groups suggests that what we are seeing is a civilian application of what the US military leaders call the 'Revolution in Military Affairs' doctrine, which depends on highly mobile small group deployments 'enabled' by 'real time' intelligence and communications.

Speaking at the 'Secretary's Open Forum' at the State Department on June 29, 2004, in a speech entitled 'Between Hard and Soft Power: The Rise of Civilian-Based Struggle and Democratic Change', Dr Peter Ackerman, a supporter of the Bush Administrations 'regime change' objectives elaborated on the issue involved. He proposed that youth movements, such as those used to bring down Serbia, could be used to also bring down the governments in Iran and North Korea, and could have been used to bring down Iraq, thereby accomplishing all of Bush's objectives without having to rely on military means. He further reported that he has been working with Lawrence Livermore Laboratories, a top US weapons designer, to develop new communications technologies that could be used in other youth movement insurgencies. 'There is no question that these technologies are democratizing,' he stressed in reference to their potential use in bringing down China, 'they enable decentralized activity. They create, if you will, a digital concept of the right of assembly.' Dr. Ackerman is the founding chairman of International Center on Nonviolent Conflicts in Washington D.C, of which former US Air Force officer Jack DuVall is President. Together with former CIA director James Woolsey, DuVall also directs the Arlington Institute of Washington D.C., which was created by former Chief of Naval Operations advisor John L. Peterson in 1989 'to help redefine the concept of national security in much larger, comprehensive terms' by introducing 'social value shifts into the traditional national defense equation.'[\[xiii\]](#)

The long history of the CIA argues that the creation and deployment of political coups requires agents on the ground. The main 'manager' for CIA coups on the 'street side' has been the [Albert Einstein Institution](#), which was formed in 1983 as an offshoot of Harvard University under the leadership of Dr. Gene Sharp. The Institution specializes in 'non violence as a form of warfare'. Dr. Sharp had once been the executive secretary for A.J. Muste, the famous U.S. Trotskyite labor organizer and pe acenik. George Soros and the NED, with Col. Robert Helvey, a former US Army officer with 30 years of experience in South East Asia acting as President, now fund the group.

Col. Helvey's identity provides important clues as to the real purpose of the Institution. Initially, he was an officer in the Pentagon's Defence Intelligence Agency and served in Vietnam, and during his Army career he was the US Defence Attaché in Yangon, Myanmar from 1983 to 1985, when Myanmarese students were clandestinely organized to work with Aung San Suu Kyi and in collaboration with Bo Mya's Karen insurgent group. Later, in the mid-1980s he moved on to train student leaders from Beijing in Hong Kong in the finer points of mass demonstration techniques, and it was these tactics that were subsequently used in the now famous Tiananmen Square confrontation of June of 1989. Currently, this group is now believed to be working with the Chinese Falun Gong teaching them similar civil disobedience techniques. Col. Helvey's theoretically resigned from the Army in 1989, but his work with the Institution and the George Soros' group began before his retirement. Since 1999, he has served as their case officer supervising youth groups in the Balkans and Eastern Europe, where he and his colleagues created *Otpor*, *Kmara*, and *Pora*, and other clones that are replicating themselves as other groups in virtually every corner of the former Soviet Union, as well as Africa and South America.[\[xiv\]](#) The work of the Institution appears to be aimed at achieving for the US in civilian form what had been militarily difficult in the 1980s.

Col. Helvey isn't the only foreign agent working covertly to advance Western interests in the Eastern European region. Geert-Hinrich Ahrens, the head of the OSCE's vote monitoring operation in Ukraine, was German Ambassador to Colombia in the late 1990s when German secret agent Werner Mauss was arrested for working closely with the narco-terrorist ELN, whose bombings were financed by the cocaine trade. Ahrens was also nearby in Albania and Macedonia as the narcotics smuggling Kosovo Liberation Army (KLA) was being formed with US and German patronage. Similarly, Michael Kozak worked closely with the cocaine-smuggling Contras before he became the US ambassador whose 2001 effort to overthrow Belarus' government failed.[\[xv\]](#)

In a December 11, 2000, *Washington Post* article titled 'U.S. Advice Guided Milosevic Opposition', Michael Dobbs publicly revealed the networks and methods used in Serbia by the US to manipulate events there, including the role of Col. Helvey:

While the NDI [National Democratic Institute] worked closely with Serbian opposition parties, IRI [International Republican Institute] focused its attention on Otpor, which served as the revolution's ideological and organizational backbone. In March, IRI paid for two dozen Otpor leaders to attend a seminar on nonviolent resistance at the Hilton Hotel in Budapest, a few hundreds yards along the Danube from the NDI-favored Marriott. During the seminar, the Serbian students received training in such matters as how to organize a strike, how to communicate with symbols, how to overcome fear and how to undermine the authority of a dictatorial regime. The principal lecturer was retired U.S. Army Col. Robert Helvey, who has made a study of nonviolent resistance methods around the world, including those used in modern-day Burma and the civil rights struggle in the American South.[\[xvi\]](#)

As Helvey worked among the Otpor activists he introduced them to Gene Sharp's ideas and theories, whom he describes as 'the Clausewitz of the nonviolence movement,' referring to the renowned Prussian military strategist.[\[xvii\]](#) But, as Dobbs observed in his article, 'Regarded by many as Eastern Europe's last great democratic upheaval, Milosevic's overthrow may also go down in history as the first poll-driven, focus group-tested revolution.'

Tim Marshall, a reporter for the Britain's Sky TV, published a book in Serbia covering the period 1998-2000, which included the NATO bombing of Yugoslavia in 1999 and the overthrow of Milosevic. Marshall is very proud of his connections with Secret Services, and in particular his associations with the British ones. His book, *Shadowplay*, is a detailed account of their activities, which are presented as the key factors in the political events that he describes. Marshall's primary focus is Milosevic's fall from power and its orchestration from behind the scenes, and especially on the role played by British and American intelligence. He is openly supported the overthrow of the Milosevic regime and generally supports the US 'New World Order', as do many of his colleagues. He carefully documents the role of the main intelligence players, and his account is thick with references to 'an M16 officer in Pristina', 'sources in Yugoslav Military Intelligence', 'a CIA man who was helping to

put together the coup', 'an officer of the US naval intelligence', and so forth. He quotes secret surveillance reports from the Serbian secret service, knows who the Minister of Defense desk officer is in London who draws up the strategy for getting rid of Milosevic, knows that the Foreign Secretary's telephone conversations are being listened to, knows who the Russian intelligence officers are that accompanied Yevgeni Primakov, the Russian Prime Minister, to Belgrade during the NATO bombing, knows which rooms are bugged in the British Embassy and where the Yugoslav spies are who listen to diplomats conversations, knows that a staff member on the US House of Representatives International Relations Committee is, in fact, an officer of US intelligence, seems to know that secret service decisions are often taken with a very minimal ministerial approval, describes how the CIA physically escorted the KLA delegation from Kosovo to Paris for the pre-war talks at Rambouillet where NATO issued the official delegation of Yugoslavia with an ultimatum it knew that it could only reject, and he refers to very high-level secret negotiations, and people sought to betray one another as Milosevic's power collapsed.[\[xviii\]](#) All of this detail contributes to the authenticity of what he says and underscores the unnatural character of the public telling of the story.

In the aftermath of the so-called Serbian revolution, after the fall of Milosevic, the National Endowment for Democracy, Albert Einstein Institution, and other related outfits all contributed to the establishment of self-proclaimed youth groups for democracy throughout the rest of Eastern Europe.[\[xix\]](#) Commenting on that expansion in a report on his 2001 trip to Serbia, Albert Einstein staffer Chris Miller found on the group's website, reports:

Since the ousting of Milosevic, several members of Otpor have met with members of the Belarusian group Zubr (Bison). In following developments in Belarus since early this year, It is clear that Zubr was developed or at least conceptualized, using Otpor as a model. Also, [Albert Einstein's report] From Dictatorship to Democracy is available in English on the Zubr website at www.zubr-belarus.com Of course, success will not be achieved in Belarus or anywhere else, simply by mimicking the actions taken in Serbia. However the successful Serbian nonviolent struggle was highly influenced and aided by the availability of knowledge and information on strategic nonviolent struggle and both successful and unsuccessful past cases, which is transferable.[\[xx\]](#)

The terms of struggle in the Ukraine described here are framed by the Western press in the same polarized language that characterized the Cold War and that currently defines the 'war on terrorism'. The democratic claim of the US and its Western allies is entirely hypocritical. After an election condemned by international observers as blatantly fraudulent, Ilham Aliyev was inaugurated as president of the former Soviet republic of Azerbaijan in October 2003. When the opposition launched protests in the streets of Baku, the Azerbaijani capital, authorities responded with a nation-wide crackdown in which more than 1000 people were arrested, including key opposition leaders and election officials. Human Rights Watch documented cases of torture and threats of rape in prison against senior opposition leaders. When the US Secretary of Defense Donald Rumsfeld visited Azerbaijan in December 2003, electoral fraud was not even an issue as Rumsfeld congratulated Mr. Aliyev on his 'victory'.^[xxi] More recently, the US and its Western allies similarly accepted the outcome of the Afghan elections, which were marked by widespread allegations of vote fixing and intimidation, and in which large parts of the country were unable to take part as a consequence of the continuing chaos in war torn Afghanistan.

As should be evident, the purpose of these 'regime changes' is not to promote democracy but to secure US strategic interests. By encouraging an uncompromisingly partisan position and initiating extensive covert intelligence campaign on part of the Yushchenko camp, the US has increased the danger of a civil war or partition of the Ukraine along ethnic and religious lines – between the majority Russian-speaking Orthodox Christian east and the mainly Ukrainian-speaking Catholic west. The US seems to be narrowly committed to a very anti-Russian agenda in the region that still is suffering from a Cold War hang-over. Eventually, this becomes a policy that demands 100% loyalty to Washington's geo-strategic vision for the region and zero-tolerance for any cooperation between former Soviet republics and Russia.

In order to achieve regime change in the Ukraine, the CIA ordered that exit polls be presented as definite even before the counting of the votes began, sent thousands of observers, recruited through the intermediary of Eastern European associations, to the country to complain about election fraud, and paid thousands of dollars to opposition members and trained them in street demonstrations. The richest revolution in the world was conceived as a spectacle for Western television,^[xxii] and in the end, the US-sponsored

candidate Yushchenko won the elections with a small margin! Ukraine has been democratised!

Sometimes such tricks work. But there are limits to what can be achieved in this way. For most of the time, it was the balance of wider historical geopolitical forces which determine the direction of political events, not media campaigns imposed from outside. Since the 'Orange Revolution', the events of 2004 have proved to be no revolution at all. Today, Ukraine's economy is the worst performing in Europe. Tens of thousands have lost their jobs in the country's main metals, mining and chemical complexes as a result of a sharp decline in global industrial demand. Unemployment in the country is expected to rise from 6.9 percent in 2008 to around more than 10 percent by the end of this year. For the tens of thousands who took to the streets after the 2004 presidential election, the current sad state of the country is a bitter disappointment. Most of these developments, however, have been barely reported by most of the US media. This silence marks a response to a serious ideological and geopolitical embarrassment for the US administration. [\[xxiii\]](#)

ENDNOTES:

[\[ii\]](#) *Foreign Affairs*, November/ December 1997; <http://hir.harvard.edu/articles/?id=627>

[\[iii\]](#) <http://www.ji-magazine.lviv.ua/conf-nov2003/progr-eng.htm>

[\[iv\]](#) <http://www.guuam.org/>; <http://www.ukraineinfo.us/guuam/guuam.html>

[\[xiii\]](#) Jonathan Mowat, 'Coup d'État in Disguise: Washington's New World Order "Democratization" Template', 9 February 2005,
<http://www.globalresearch.ca/articles/MOW502A.html>

[\[xiv\]](#) For the text of the interview with *Robert Helvey* who was sent by the *International Republican Institute* to teach seminars in nonviolent strategy for a group of *Otpor* students in the spring of 2000, see <http://www.pbs.org/weta/dictator/otpor/ownwords/helvey.htm>, *Belgrade, January 29, 2001.*

[\[xv\]](#) *Sydney Morning Herald*, September 27, 2001.

[xvi] <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A18395-2000Dec3-Found=true>

[xvii] Given in <http://www.globalresearch.ca/articles/MOW502A.html>

[xviii] J. Laughland, 'Techniques of a Coup d'Etat', *Sanders Research*, January 12, 2004, <http://www.sandersresearch.com/>

[xix] A Gene Sharp, Senior Scholar-in-Residence, The Albert Einstein Institution, explains in detail how a non-violence resistance should be organised.
(<http://www.creativeresistance.ca/toolkit/2002-sept05-from-dictatorship-to-democracy-chapt9.htm>)

[xx] Given in <http://www.globalresearch.ca/articles/MOW502A.html>

[xxi] October 22, 2003,

<http://www.foreignaidwatch.org/modules.php?op=modload&name=News&file=index&catid=&topic=16>

[xxii] Thierry Meyssan, 'Subversion Ukraine: The Street Against the People', <http://signs-of-the-times.org/signs/rv-ukraine.htm>

[xxiii] <http://www.csmonitor.com/Commentary/the-monitors-view/2010/0208/Ukraine-election-result-a-balancing-act> [accessed in February 2010]



SPECIAL SECTION: DEBATE ON “ISLAMIC STATE (ISIS) AND REGIONAL SECURITY”

The Language and Actions of States and Non-states

Lily Hamourtziadou⁷⁵

Islamic State insurgents in Iraq have carried out mass executions, abducted women and girls as sex slaves, and used child soldiers in what may amount to systematic war crimes that demand prosecution, the United Nations said on Thursday,

reported the UN, on October 2, adding

In a report based on 500 interviews with witnesses, also said Iraqi government air strikes on the Sunni Muslim militants had caused "significant civilian deaths" by hitting villages, a school and hospitals in violation of international law.⁷⁶

The latest 'new' actor to enter the conflict this year is the so-called 'Islamic State', previously known as Al Qaeda in Iraq. The violence it has brought is hardly new in Iraq; in fact, the violence against the civilian population did not cease, even for a day, since Shock and Awe. This year, however, as the Islamic State joins the battleground, closely followed by the return of US and UK air forces, among others, Iraq is making headlines again.

The new force is calling itself a state. It is, at least, aspiring to be a state. It certainly feels as entitled as the Iraqi state, as entitled as the American state, as entitled as the UK and now also France and Jordan and Canada and the Gulf states and others, entitled and justified to be there, to seek power, to pursue its own interests and to kill for them. How entitled are they, any of them, to be there, to seek power, to pursue their own interests and to kill?

International boundaries are a distinctive social relation between human beings organized as sovereign states.

And just like the states themselves, the boundaries between them are social constructions: they can be instituted, they can be defended, they can be disregarded,

⁷⁵ Dr. Lily Hamourtziadou is the Principal Researcher for the Iraq Body Count (*IBC*) Project. *IBC* records the violent civilian deaths that have resulted from the 2003 military intervention in Iraq. Its public database includes deaths caused by US-led coalition forces and paramilitary or criminal attacks by others.

⁷⁶ "Islamic State committing "staggering" crimes in Iraq' -UN report," *Reuters*, 2 Oct 2014. Available at: <http://www.trust.org/item/20141002110819-knnw1/?source=spotlight>

they can be violated, they can be dismantled, they can be moved, and their significance and uses can be changed. The map of Europe of 1400 was different from that of 1700, which was again different from the map of the present time.⁷⁷

If boundaries are violated, moved, defended and created all the time, why wouldn't the Islamic State believe it had the right to be there, challenging those boundaries and trying to create new ones, by drawing a line around themselves and constituting a sovereign state? Why wouldn't they believe they had the right to pursue their lives in accordance with their own ideas, free from external intervention, in the territory they demarcate as their own? Much like Western states have done for centuries, in Europe, in the Americas, and much of the colonised world. Always with heavy civilian casualties. The fact that the Islamic State is currently a non-state, a terrorist group, is used to contrast it with those who kill legitimately, the states. In international law state violence can be legal, whereas non-state violence cannot.

In other words, 'state' is good, 'state' is legal, while 'non-state' is bad and illegal. History, however, indicates that the bloodiest wars with the highest death toll, in terms of soldiers and civilians, in the last 100 years, have been fought by states. The second world war, in the space of 6 years, led to the deaths of an estimated 20,000,000 people. A state used nuclear power to not only kill, but also to maim and make future generations suffer the effects of the atom bomb; another state executed millions of civilians in concentration camps; yet another state committed atrocities using chemical and biological weapons, used women as sex slaves, tortured and buried people alive.

Words are not neutral. Language helps make the world, it affects our cognition and our emotions. It makes us perceive a 'hero', or a 'terrorist'; it helps us describe an act as 'legal', another as 'illegal', to express our approval or disapproval of it, to declare it 'right', or 'wrong'. Language is used to create a sense of outrage, fear, pride, compassion. Worlds and realities are constantly being constructed, where state violence appears reasonable and non-state

⁷⁷R.H. Jackson, 'Boundaries and International Society', in Robertson, *International Society and the Development of International Relations Theory*, Pinter, 1998, p. 157.

violence does not, where good battles evil, where 'war on terror' appears rational and imperative.

The Islamic State uses similar tactics:

Islamic State and allied groups have attacked and destroyed places of religious and cultural significance in Iraq that do not conform to its "takfiri" doctrine, the U.N. report said, referring to the beliefs of Sunni militants who justify their violence by branding others as apostates.⁷⁸

They justify their violence using religious language and divine entitlement. Their killings are done according to 'God's will', their public beheadings of Westerners the fault of the West. The question of legitimacy and illegitimacy, when it comes to the use of force, is not one that has an easy answer. Everyone claims to be justified in using their forces and weapons and all sides kill civilians. States and non-states. Iraq, the US, the UK, the IS, Al Qaeda, the Mahdi Army and many others over the years. The principle of universality is never entertained, as each side believes it and only it is justified in its actions, it and only it has been provoked to act in this way, it and only it has the right to strike, to kill, to defend, or to change the status quo. To apply the same logic to the other side is inconceivable.

In the midst of all the legitimations, the justifications and divine references, the innocents are blown up and gunned down every day. Mortared, shot, beheaded. Young, old, infant, male and female. Over 13,000 since the start of this year. When looking for those barbarians, we may want to remember that we are all capable of barbarism, the legal and the civilised included.

Every day the reports from Iraq come in:

13 Bodies found dumped in a farm south of Tikrit

http://www.ninanews.com/english/News_Details.asp?ar95_VQ=HHFJIE

⁷⁸ 'Islamic State committing "staggering" crimes in Iraq', UN report, Reuters, 2 Oct 2014. Available at: <http://www.trust.org/item/20141002110819-knnwl/?source=spotlight>

Iraqi journalist executed in Mosul <http://www.iraqtradelinknews.com/2014/10/new-iraqi-journalist-executed-in-mosul.html>

39 citizens killed, injured in Kadhmiya suicide bombing
<http://www.alliraqnews.com/en/index.php/security-news/59293-39-citizens-killed-injured-in-kadhmiya-suicide-bombing.html>

17 Civilians killed by missile strikes in the north and east of Tikrit
http://www.ninanews.com/english/News_Details.asp?ar95_VQ=HHEMKE

Baghdad car bombs kill 43 in Shia neighbourhoods
<http://edition.cnn.com/2014/10/11/world/meast/baghdad-car-bombs/index.html>

A journalist, an activist, a grandmother with her grandchildren, brothers, husbands and wives, police officers, the families of militia, farmers as they work, women as they shop. People like you. People like us. But whose blood is being spilt on someone else's battlefield, on someone else's path to empire.

The Islamic State in Context

Kamran Matin⁷⁹

Mainstream accounts of the 'Islamic State' (IS) tend to highlight either the group's Islamic fundamentalist ideology construed as the most extreme expression of an internally generated rejection of Western modernity, or the contradictions of the colonial imposition of a national-secular state-form upon its ethno-religiously fragmented populations, a circumstance for which the Sykes-Picot agreement is a byword.

The first type of explanation is marked by an essentialist conception of Islam and Muslim societies whose orientalist premises are readily falsifiable. This cultural essentialism is attenuated in the second type through a focus on the legacy of western colonialism. However, the concrete ways in which western colonialism, and subsequent international relations of the region more generally, have shaped the current crisis are often neglected in the materialist mainstream commentaries on IS.

What follows is a highly tentative and necessarily incomplete attempt at addressing this neglect. I suggest that the phenomenon of IS can be better understood as the product of the conjunctural intersection of three main processes: the end of the Cold War and the neoliberal transformation of the international environment, the US-led dismantling of the Iraqi state, and the differential unfolding of the 'Arab Spring'. The historical efficacy of these intersecting processes is causally linked to the peculiarities of colonial state-formation in Iraq and Syria.

Analysing this historical context and the sequence of events reveals how ultimately these societies, with their existing internal structures, were caught in the vortex of a wider international process of 'uneven and combined development', which was first conceptualised by Leon Trotsky in relation to Tsarist Russia as the paradoxical site of the first proletarian revolution. The theory of uneven and

⁷⁹•Dr. Kamran Matin is senior lecturer at Sussex University.

combined development posits that the interactive coexistence of multiple societies (unevenness) enters into the constitution of the individual societies (combination) and vice versa. This ontological circumstance renders all processes of development intrinsically interactive and multilinear, which involve the production of novel composite socio-political phenomena with emergent properties. IS is an instance of such phenomena.

British and French rule over mandatory Iraq and Syria – new territories carved out of the Arab provinces of the Ottoman Empire by imperial fiat - were shaped primarily by wider colonial and geopolitical concerns rather than by the explicit requirements of the League of Nations mandate they purportedly enforced, i.e. laying the administrative and institutional groundwork for full independence that amounted to de facto state-building projects.

This functional and externally determined approach to state-building involved the adoption of a series of pragmatic-tactical measures that ensured the reproduction, even intensification, of personalised forms of authority and communitarian social relations and identities. Consequently, the development of social foundations for the rise of a modern sovereign state based on the upward concentration of the citizens' primary political loyalty in the nation was pre-empted. As a result, the formal-bureaucratic organs of the modern state were in effect superimposed upon a colonially inflected tributary social formation in a classic case of the wider process of uneven and combined development. The dynamic contradictions of this internationally constituted sociological amalgamation have underlain and animated the overall patterns of socio-political developments of Iraq and Syria ever since.

Britain's 'indirect rule' in Iraq, for example, involved the dramatic empowerment of tribal sheikhs, landed classes, and rural notables whose expanded authority and influence elicited the reinforcement of communitarian bonds and ethno-religious identity of their constituents.

At the same time, various organs of the modern state were also built to secure and maximize British interests and influence and minimize its costs. Thus, the most powerful institution of the new state, the army, was staffed with the predominantly Sunni Ottoman-era officers and new recruits from the Sunni Arabs so that the army was strong enough to maintain internal security and order and weak enough to be unable to challenge British rule. Under the new centralised state that was being built this 'divide and rule' strategy politically charged the Shi'a-Sunni sectarian difference beyond what had been the case under the comparatively much more decentralised Ottoman system.

After independence, the army emerged as the most organised and powerful political force in the country. It challenged the colonially valorised political hegemony of the conservative landed classes and tribal sheikhs as part of a rapid state-led developmental project. But this process itself involved the further consolidation of the 'dominance without hegemony' of a predominantly Sunni Arab state-class over a diverse population where Sunni-Arabs formed only a minority.

A similar process took place in Syria. In building a new army the French colonial rulers disproportionately recruited from religious minorities, the Alevis in particular. This strategy was meant to ensure the army's relative dependence on the French colonialists and limit its social base in order to undermine its ability to challenge the French colonial rule. This pattern of disproportionate presence of the Alevis in the military's officer class continued even after the independence as the army provided one of the very few avenues for upward socio-political mobility open to religious minorities, which had historically been marginalised.

The Alevis' prominence in the new army and their relatively superior political coherence – reinforced by their compact and geographically concentrated communities – goes some way towards explaining the longevity of the Alevi rule in Syria and its political-military resilience in the current conflict.

The reproduction of the colonially constructed minority rule in Iraq and Syria progressively charged the erstwhile ethno-religious difference into chronic sectarian tension and involved the exercise of systematic violence, the hallmark of Ba'ath regimes in these countries. Recognising this antecedent condition is central to understanding the sectarian form of the current civil wars in these countries.

Oil rents in Iraq and geopolitical rents in Syria lubricated the reproduction of Ba'athist party-states by increasing their relative autonomy. The rentier economy, however, also enabled the introduction of a kind of authoritarian welfare-state that involved the exchange of socio-economic provisions for political acquiescence. Combined with the formal secularism of pan-Arab nationalism, this authoritarian welfare-state allowed Ba'ath parties in Iraq and Syria to acquire varying degrees of active or passive support from the population including the members of other Arabic speaking ethno-religious communities. This was particularly the case in Syria during the Cold War when Hafiz Assad sought to counterbalance Sunni landed classes and the urban bourgeoisie through appeasing the peasantry and rural population.

The exception to this dynamic was the Kurds who could not be assimilated into the Ba'athists' chauvinistic Arab nationalism and therefore remained subject to constant socio-political suppression and marginalisation. This policy approached genocidal levels in Iraq during the 1980s and in Syria it involved aggressive assimilation and the denial of citizenship.

The collapse of this authoritarian welfare regime was a key cause of the rapid transformation of political contestation over the state into open sectarian conflict, which was, and remains, fuelled by a complex set of regional and international forces.

In Syria the end of the Cold War removed the basis for the extraction of geopolitical rents from the Soviet Union and forced it to turn Westward. This attempted international realignment involved among other things the introduction of liberal economic reforms that severely undermined public

services and gave rise to a corrupt form of crony capitalism that exacerbated the Ba'ath state's crisis of legitimacy.

Iraq's protracted war against Iran during the 1980s, in which it was supported by the US and many European countries, had already deepened the Shi'a-Sunni divide domestically. The collapse of the Soviet Union and comprehensive economic sanctions following the 1991 US-led war against Iraq severely limited the ability of the Ba'ath regime to continue its pre-war authoritarian welfare-regime as an instrument of political pacification. The 2003 US-led invasion of Iraq that began with the abolition of the Iraqi army and the introduction of the most extreme privatisation programme completely dismantled the Iraqi state and therewith brought the Sunni political ascendancy to a sudden end.

The initial reaction of Iraq's Sunni-Arabs to their political and economic marginalisation was an armed insurgency that increasingly involved the indiscriminate targeting of the Shi'a population seen as the supporters of the US-led occupation forces. The American counter-insurgency strategy involved large-scale arrests, widespread torture, and collective punishment. It also increasingly relied on the Shi'a militia, which intensified Shi'a-Sunni conflict.

This context provided an exceptionally fertile ground for extremist Salafist groups. The Islamic State of Iraq (ISI), the predecessor of IS, was formed in 2006 from the merger of a number of Al-Qaeda affiliated groups. However, the holding of the parliamentary elections and the hope of at least some sections of the Sunni population for a more favourable power-sharing arrangement through constitutional politics delayed a broad Sunni-Arab support for ISI.

However, the widespread sectarianism of the main Shi'a political forces, the government of Nouri al-Maliki in particular, progressively pushed large sections of the Sunni-Arab population towards now extremely sectarianized Sunni insurgency.

Regional interventions exacerbated the already dire situation. Seeking to pre-empt the return of Sunni power in Iraq, Iran backed and manipulated Shi'a forces. On the other hand, fearing Iran's growing regional influence, Saudi Arabia and some other Arab states supported the Sunni insurgency.

Meanwhile, the US 'surge' strategy and the formation of Sunni-Arab 'Awakening Councils' tribal militia put ISI on the back foot from 2006-2007 onwards. This was followed shortly by the outbreak of the 'Arab Spring' in 2010. The genealogy of the 'Arab Spring' itself is closely entangled with the international conjuncture of neoliberal dismantling of the state-led developmentalism in the Middle East and North Africa, the US 'war on terror', and the 2008 financial crisis. In Syria the revolution was quickly transformed into armed conflict following the regime's systematic use of violence against peaceful protesters. The influx of western and regional support for the proliferating armed opposition groups and the strategic backing of Iran and Hizbullah for the Assad regime transformed the conflict into a full-fledged sectarian war.

ISI seized the moment and shifted its military centre of gravity to Syria and renamed itself 'The Islamic State of Iraq and Levant' (ISIL) to reflect its expanded sphere of operation. But it soon clashed with other armed opposition groups, including Al-Qaeda's Syrian branch Jabhat al-Nusra, over the leadership of the opposition to the extent that it was renounced by Al-Qaeda.

With the completion of the withdrawal of US forces from Iraq in 2011 and some military setbacks in Syria, ISI increased its operations in Iraq seeking to secure logistical routes for its Syrian front. This led to the capture of several towns such as Ramadi and Falluja in early 2014. Meanwhile, maximalist position of Iraq's Sunni-Arab political parties, the open sectarianism of the ruling Shi'a government, and the ambiguity of some key articles of Iraq's new constitution continued the political deadlock in Baghdad. The violent suppression of popular demonstrations in a number of Sunni-Arab areas following the formation of Maliki's third government in April 2014 dashed any remaining hope for

Shi'a-Sunni power sharing. This pushed considerable sections of Iraq's Sunni Arab population, including former Ba'athists, towards ISIL, which was central to the spectacular victory of ISIL's June 2014 *blitzkrieg* that led to the capture of Mosul and nearly a third of Iraqi territory, followed by the declaration of an IS-led caliphate. In this context the US intervened through aerial bombardment of IS in support of local anti-IS forces on the ground in a replay of the 2001 anti-Taliban war in Afghanistan.

IS's military momentum seems to have been considerably blunted in recent months. However, irrespective of the fate of IS, Iraq and Syria are being radically and irreversibly transformed away from the status-quo-ante. And just like their original formation, their future will also be shaped by the dialectics of uneven and combined development.

Crisis on Turkey's Southern Borders: What's at Stake?

Robert Lowe⁸⁰

The Significance of Kobane

Kobane is the Kurdish Stalingrad. The Castle of Resistance for the four parts of Kurdistan. These statements from Kurdish leaders illustrate that the defence of Kobane is massively significant for Kurds in Syria. The Kurds have been fighting the Islamists in and around Kobane and other towns since 2012 but the current siege of Kobane creates a narrative with remarkably potent ingredients: the hundreds of thousands of Kurdish refugees fleeing the city, the 70 day heroic defence of the town by the lightly armed Kurdish forces against the powerfully armed IS which had previously been all-conquering, the Kurdish martyrs including women fighters, the Turkish state refusing to help from across the border (or allow others to help), the Kurds on the Turkish side gathering to watch their brethren desperately defending, the peshmerga convoy from Kurdistan-Iraq reaching the city with heavier weaponry, celebrating pan-Kurdish fraternity. And then the turning of the tide against IS and the prospect that Kobane will become a famous Kurdish victory. It's a heady brew.

Kurds in Syria have a weaker history of nationalist mobilisation than the other three major Kurdish populations. The movement has lacked powerful symbols of its own national struggle, it has no Halabja chemical attack or Mahabad Republic. It now has Kobane. Most of the momentous events in the wider Kurdish nationalist struggle are tragic failures – Kobane could turn out to be a victory.

Kobane was also the first Kurdish town 'liberated' by the PYD, the dominant Kurdish party, in July 2012 and it forms one of the self-governing areas Western Kurdistan. It is also a stronghold of PYD support.

⁸⁰ Robert Lowe is the Manager of the Middle East Centre, London School of Economics.

There is wider significance for Kurds - despite the diversity across greater Kurdistan, Kurds identify with the sufferings and successes of Kurds living in other states. It is rare for a development in Syrian Kurdistan to have such impact (the serhildan in 2004 did) but the siege of Kobane, and the earlier establishment of autonomous Kurdish administration in Syria, are highly significant for Kurds elsewhere, most particularly in Turkey.

The Emergence of Rojava

The vacuum of civil war allowed the PYD, the largest and best organised Kurdish party, to take control of three pockets of territory in 2012; Jazira, Kobane and Afrin, all with large Kurdish populations. By 2014 the PYD had styled these as cantons of local administration under the collective name Rojava (West) to represent West Kurdistan and held elections to local assemblies.

This is a rare experiment in local self-government by Kurds. Mahabad and the KRG are other examples. It is remarkable in Syria because the concept of Rojava was barely discussed before 2011, let alone asked for, and this reflects the sharp opportunism and strong organisation of the PYD.

This is also the first attempt at government based on the political theories of Abdullah Ocalan and the PKK - Democratic confederalism or democratic autonomy - the argument being that nation-state and capitalism have failed and there needs to be a direct system of bottom-up government. There should be equality for women and minorities and the separation of religion and state. It is described as a 'third way', and is highly experimental and its progress is very relevant for models of local government for the Kurds in Turkey. It is notable that the offshoot sibling movement of the PKK is attempting to implement Ocalan's ideas before the big brother.

Turkey

Turkey is massively important in Syrian Kurdish politics. The Kurdish parts of Syria all sit tight against the Turkish border and the bond to Kurdish society and politics in Turkey is

very strong. Indeed, in the emotional mind of many Kurds in Syria, the border is irrelevant, they are one people and they feel the struggle of Kurds in Turkey to be theirs also.

Turkey appears to view the Kurds in Syria purely through the lens of its determination to defeat the PKK. Its hostility to further gains for Kurds in the region and conviction that the PYD is purely the PKK in Syria makes Turkey strongly opposed to the PYD and to the existence of Rojava. Indeed Turkey chooses not to distinguish between the PYD, which undoubtedly is very close to the PKK, and the many other Kurdish parties, which are not.

Syrian Kurds have accused Turkey of sponsoring attacks on them from 2012. Turkey called for a buffer zone inside the Syrian border and real fears among Kurds that the Turkish military would cross the border. Accuse Turkey of actively supporting IS. An AKP official stated, 'What's going on in Kobane is a war between two terrorist organisations'. The result is that Turkey's position during the siege of Kobane confirmed the view that the Turkish state is a serious enemy. It is no exaggeration to say some on either side view the other as a more profound and dangerous enemy than IS.

Conclusion

Is this the Kurds' golden moment or are they going to get stitched up again?

It is possible to argue both. It is certainly a golden moment for the PYD strain of the Kurdish movement in Syria with the establishment of Rojava and the heroic defence of Kobane. It is less of a golden moment for the non-PYD factions of the Kurdish movement.

Whatever the outcome in Kobane, the future of Rojava is highly uncertain, given the deep instability of its existence, the extremely hostile environment it sits within and the massive challenges of war, displacement, poverty, resources and government. In terms of being stitched up, the Kurds in Syria are short of friends. The Asad government would not remain passive if it were able to act against Rojava, the Islamists are committed to its destruction and the non-Islamist parts of the Syrian opposition retain Arab nationalism and do not support Kurdish autonomy, the Turks are opposed and the international community is unsure how to deal with it.

The only two supporters of Rojava, the PKK in Turkey and the KRG in Iraq, see and use Rojava largely within the framework of self-interest and indeed their wider struggle for the soul of the pan-Kurdish national movement. The deployment of peshmerga to Kobane is interesting because of the frosty relationship between the PYD and the KRG.

If the Kurds in Syria do get stitched up again, Turkey will play a major part in this. The course of the war in Syria is of course critical. For the Kurds, the development of relations between the Turkish state and the PKK is also critical. Either way, the establishment of Rojava and the accompanying cultural and relative political freedoms, mean that a return to Syrian Kurdish quiescence in the face of discrimination and repression is unlikely.

What's at stake? For the Kurds in Syria, the stakes could not be higher – if we consider two outcomes at either end of the spectrum - a highly optimistic vision of long-awaited cultural freedom and perhaps democratic representative local government to a grim scenario of greater loss of life and displacement. Turkey will play a major role in determining the outcome.

Reflections on Turkish Foreign Policy under Davutoglu: From Status Quo to a “New” Grand Strategy?

Bulent Gokay⁸¹

The basic principles that guided Turkey’s foreign policy since the founding of the Republic in 1923 were caution and pragmatism. The lessons emerged from the way the Ottoman Empire ended at the end of the First World War convinced the leaders of young Turkish Republic to be cautious – they believed that there was very little to gain and much to lose from entering into the unfriendly and unpredictable conflicts in Turkey’s immediate neighbourhood. For most of the period until the last 10- 15 years Turkish foreign policy was almost always cautious, and merely reactionary to the events happening within its close neighbourhood, and from the end of the Second World War onwards strictly followed the lead of the US and NATO.

In the past decade, however, Turkish foreign policy appeared to have undergone an important transformation putting Turkey in the map of nations as a relatively more influential actor. In this recent change towards a more active, even pro-active, foreign policy most of the credit has been given to Ahmet Davutoglu, Turkey Foreign Minister from 2009 to last month, and currently Tayyip Erdogan’s chosen Prime Minister. Davutoglu had previously served as Chief Advisor to both the Prime Minister and Foreign Minister ever since the AKP came to power in 2002, and was considered the architect of Turkey’s new foreign policy activism. A policy, which popularly came to be known as “zero problems with neighbours”, has been the centrepiece of Davutoglu’s so-called new foreign policy agenda. This policy was welcomed widely in the region. Accordingly, Ankara first developed relations with the Syrian government to the level of a strategic partnership. Also closer economic and political ties with Iran and Russia were being cultivated. Davutoglu’s long-term aim was explained, in his masterpiece *Strategic Depth*, as making Turkey a central

⁸¹ • Bulent Gokay is Professor of International Relations and Head of School of Politics, International Relations and Philosophy, at Keele University.

player in world politics, within a stable regional atmosphere and a pluralist international order. Strategic Depth calls for an active engagement with all regional systems in Turkey's neighbourhood, the Balkans, the Middle East, the Caucasus, and Central Asia. Based on Turkey's geostrategic position, its size and history, Davutoglu argues that Turkey should act as a "central state" in all these regions and become a global actor as a result. His formulation of principles and mechanisms of foreign policy provided him with recognition as a man of vision in shaping Turkey's foreign affairs.

Even though Davutoglu managed to pronounce the new more active foreign policy and sharply increased confidence in foreign affairs more explicitly and analytically in detail, probably because of his academic background, the change in Turkey's foreign relations had started long before Davutoglu appeared in the picture, even before the AKP government's initial electoral success in 2002. Indeed, building regional influences of the type to which Davutoglu aspires is a long process that takes place gradually and incrementally over decades, and obviously not just as an immediate result of Davutoglu's so-called new vision, and hyperactive diplomacy. One can identify certain building blocks put in place under Turgut Ozal leadership from 1983 to 1993, and also under Ismail Cem's long career as the country's Foreign Minister from 1992 to 2002. But more than anything else, all this new activism and increased confidence could only be possible within a significantly changed regional and global environment.

The end of the 1980s not only witnessed the end of the Cold War, but also the early indications of a global shift in the power positions in the world, with very significant long-term consequences, happened around the same time. In the words of Joseph Nye, "wealth and power" started to be "shifting from the West to the rising economies of the East". In a world of complex interdependence, this power shift has hugely significant consequences, even though it is still too early to clearly identify all these.⁽¹⁾ In political economy terms, this is a shift from a unipolar dollar-based system to a multipolar system. This was explained in 2010 in the pages of *Foreign Affairs* in the following words: "The dramatic growth of Brazil, China, and India – and the emergence of middle-tier economies such as Indonesia and Turkey – is transforming the geopolitical landscape and testing the institutional foundation of the post-World War II liberal order." ⁽²⁾

All this shows us that there are more models and roads to development than the model represented by the post-Second World War Western system. The success of the so-called BRIC (Brazil, Russia, India and China) countries and the MIKT countries (Mexico, Indonesia, South Korea and Turkey) shows that the West is now declining and that the world is changing rapidly. It is no longer up to a handful of countries in the northern hemisphere to decide what the world looks like. (3) The emerging countries are, however, by no means an undifferentiated mass. There are huge differences between them and these differences shape not only the pace of their progress, but also the way they locate themselves in the global map regarding recent conflicts.

Turkey's economic growth has been extraordinary during the last 10 years by historic standards. As Europe's, and US's, economy contracted Turkey's economy has expanded to nearby markets. So, it was this increased economic strength which made a more active and dynamic foreign policy possible. The significant trade and investment linkages characterised Turkey's foreign relations with all neighbouring countries, which enabled Turkey to deploy its soft power resources much more effectively.

Therefore, it should be recalled that the course of Turkish foreign policy followed the growth of Turkey's economy and its increasing role and space in the world economic map. The way the policymakers responded to this also started long before Ahmet Davutoglu. First with Turgut Ozal and continued with Ismail Cem. Even under the AKP regime, it was first Tayyip Erdogan and Abdullah Gul, two dominant leaders after 2002, who share some responsibility for steering Turkey into new waters of more active foreign policy and diplomacy.

Probably the turning point in Turkey's foreign affairs came in 2003 when the Turkish Parliament refused to allow the US to use Turkish territory to stage an invasion of Iraq. In retrospect, this opting out of the invasion of Iraq came to constitute a transformation moment for Turkey. With that decision Turkey demonstrated to its neighbours and the world, and even to itself, that Turkey could and would think and act for itself when it comes to foreign policy, and that the hierarchical alliances of the Cold War period were over, and that the US should no longer take Turkey's collaboration for granted. Yet, the significance of

this step shouldn't be exaggerated; it shouldn't be interpreted as a complete u-turn toward Islam and away from the Western security arrangements. Even during the Iraq War, Turkish government allowed the Incirlik Air Base to be used by American combat aircraft for bombing missions.

During the initial years of the AKP government, there were some success in achieving the position of a significant regional power contributing to peace and stability in the region. Turkey encouraged peace talks between Syria and Israel. Turkey also played or attempted to play a constructive role as a peacemaker in the Balkans and the Caucasus, bringing Bosnia and Serbia together and taking some steps towards normalising relations with Armenia. In a more ambitious way, Turkey collaborated with Brazil, as late as May 2010, to persuade Iran to accept an arrangement for the storage of a large portion of Iran's enriched uranium in Turkey, thus providing a practical, peaceful and more sensible alternative to the sanctions and warmongering of the US/ Israeli positing against Iran. Even with Israel, Turkish leadership did its best to restore normalcy to the Turkish-Israeli relations.

But then Turkey lost its way, first in Libya and then in Syria. Erdogan and Davutoglu initially opposed UN sanctions on Qaddafi regime and rejected calls for NATO operations. They eventually approved the NATO operations, with some reservations, and called for Qaddafi's resignation. The Libyan fiasco, however, was short-lived even if no less traumatic for the Libyan people. The situation in Syria proved much more complicated and difficult for Ankara to handle. Soon Turkey's Syria policy has become an unmitigated disaster, and Davutoglu's nicely drafted analysis turned into a mess: strategic depth turned into a great strategic mess.

When Turkish Prime Minister Erdogan quite aggressively took sides with the opposition forces against the Assad government, Turkish authorities provided the so-called rebels in Syria an unchecked and poorly overseen support base in Turkey. It provided space for the mobilisation of armed men crossing the border to kill Syrian soldiers and civilians, and backed the establishment of the Free Syrian Army and the so-called Syrian National Council. In this way, Turkey has effectively become a side in the bloody civil war in Syria. As long as the rebels can count on the unconditional support of Ankara, as well as Saudi Arabia and

Qatar, they could keep fighting a war that has become increasingly more brutal. In reality the gap between so-called moderate Syrian opposition and Islamist extremism is much more limited than presented by Turkey's policy makers. (4) As a whole, the Syrian crisis has exposed weaknesses in Davutoglu's, and Erdogan's, initial claims of presenting Turkey as a significant regional power for peace and stability. So-called new turn in Turkish foreign policy in the Middle East simply corresponded to joining a Sunni axis together with Qatar and Saudi Arabia as opposed to the Shiite bloc led by Iran.

Just over two years ago, Ahmet Davutoglu had famously declared that Esad was about to fall in a matter of weeks. More than 100 weeks passed, Esad did more than just holding his ground and even gained the upper hand in the civil war. And now we have the so called Islamic State on Turkey's borders. In Syria, Turkey has become a prisoner of its enmity towards the Assad regime. Turkey is one of the countries with primary responsibility for the existence, growth and spread of the IS. Radical Islamic fighters have been used as proxy forces against Bashar al Assad's regime. The Turkish state now faces a Frankenstein's monster, as the growth of IS in Syria and Iraq is increasingly seen by the Turkish state as a potential threat to its internal stability. Within such a charged situation, an atmosphere of looming unrest predominates. While a return to open armed conflict between the PKK and the Turkish army still remains unlikely at this stage, as none of the parties would gain from such a course, events can take on logic of their own. All this is putting, once again, the credibility of the regime's, in particular Davutoglu's, foreign policy under serious strain. In a situation of increasing desperation and fears on the ground, repeated calls for the West and Turkey to 'intervene' militarily are understandable, but the supposed 'humanitarian' motivation of the West to intervene militarily in the region is just not convincing. It is, of course, true that IS is a deeply reactionary force. The US-led military strikes launched on IS targets, however, rather than assisting the Kurdish population under the threat of IS have only made matters worse. In fact, more than anything else it was the US-led interventions of the last 20 years that provoked current sectarian fighting both in Iraq and Syria.

"Since March 2003, when 'we supported' the Iraqis in overthrowing Saddam Hussein, 140,768 Iraqi civilians have lost their lives in bombings and shootings. ... As for this year, 7,665 civilians have been killed since January, 617 of them killed in Falluja by government

forces. They are the victims of our support. Direct victims, killed by our military, or indirect, killed by the insurgency and the terrorism that followed the invasion and occupation of Iraq, as well as the ‘democratic elections’ also held with our support. More recently, direct victims of Iraqi government forces.”(5) The most likely future is a prolonged civil war, in both Iraq and Syria, for the foreseeable future, thanks to “our support”.

To conclude this brief overview of the foreign policy of the last 12 years under the AKP, first point one can observe is that there are too many contradictions to claim that there is a clear new direction. In other words, a simple doctrine such as Davutoglu’s strategic depth cannot describe the direction of Turkish foreign policy as the policies put forward in practice do not point out a clear new direction even though the official propaganda makes this claim. Many Turkish initiatives have been less well-prepared, suggesting a top heavy approach rather than serious and realistic planning. A second point to mention is that there has been a clear continuity in the foreign policy, at least since 1983, rather than a strong new direction under Davutoglu as claimed by many pro-AKP sources. Finally, the general direction of Turkey’s foreign policy has changed very little in this period. It has been Western-oriented and closely linked to the US interests in the region, as it always has been since the end of the Second World War.

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