STREAM READINGS

LAW AND DEVELOPMENT

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Law and Development

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Description

This Stream investigates legal reform strategies geared towards inducing economic growth and social welfare in developing countries. We will consider a range of approaches to government and markets and the influence of international legal regimes for trade, investment and human rights. We will explore the role of law in economic and social theories of development, the global and intellectual context that channels the range of development reform, and recent shifts in development theory and state practice. We will focus particular attention on choices: alternate legal arrangements which may open alternate trajectories for development with different patterns of inequality or social justice.

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Some Caution about Property Rights as a Recipe for Economic Development

David Kennedy

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The case for a straightforward link between "clear and strong" property rights and robust growth or development in today's industrial societies is more ideological assertion than careful history. In fact, the developed economies of the modern West have experienced periods of aggressive industrialization and economic growth with a wide range of different property regimes in place. Property regimes differ, sometimes dramatically, among industrialized societies, and all such societies are home to a variety of different formal and informal regimes. Economic growth has often depended upon the erosion or elimination of traditional entitlements, just as it has generated new rights and new forms of property. The enclosure of land once cultivated for food to raise sheep in support of an expanding British textile industry is a familiar historical example. Moreover, we know that property rights sometimes slow growth, contribute to market inefficiencies and help to fuel or magnify economic busts. David Ricardo's observation that the accumulation of agricultural land rents could be an obstacle to growth provided an early theoretical exposition of this possibility. In the recent economic crisis, the role played by the rapid expansion of home ownership, of formal and enforceable mortgage entitlements and mortgage- backed securities illustrates the potential for expanding entitlements to magnify leverage and exacerbate cycles of boom and bust. The idea that clear and strong property entitlements stand as a kind of historic baseline for growth and development obscures this varied history.

The focus on strong and clear rights also obscures the fact that no property law regime is composed solely of *rights*, however strong or clear. There are always also lots of reciprocal obligations, duties and legal privileges to injure. Property law is a complex system of forces pulling in contradictory directions. As such, it offers myriad opportunities for fine-tuning the relationship among economic and social interests in pursuit of a development strategy. Using property as an instrument for development strategy requires choice – among various economic interests and among modes of entitlement. The strategic instrument may well be the *relative* strength or clarity of one, rather than another, legal interest. In any property regime some entitlements will be weak and vague, others strong or clear. The strategic arrangement of a property regime requires careful analysis of the economic impact of rendering some rights strong or some entitlements clear at the expense of others.

Nor do property entitlements stand alone. In developed economies, property rights and obligations have always been embedded in a broader legal fabric which qualifies and complicates their meaning. Moreover, the exercise of property entitlements is set within a complex and dynamic social context that further modifies their meaning and qualifies their enforcement. Economic actors will view entitlements quite differently – what is clear for someone deep within a social network may be quite obscure to someone arriving from far away. The reverse may also be true – to render entitlements "clear" to foreign market participants may

disempower local players for whom the earlier system made complete sense. From a development perspective, what matters is not the "strength" or "clarity" of property rights, but the relationship between legal entitlements and the distribution and use of resources in a particular time and place.

1. Property and the history of struggle over modes of economic life.

Development specialists must understand that in a market economy, "property" has no ideal form separate from social and economic struggle in that society. Property law is everywhere the sedimented remnant of a complex history, full of political and social conflict and compromise over the form of society and the modes of economic production. Before "property rights" can be strong or weak, they must be allocated. In every Western society, the process of allocation has been inseparable from political and social struggle and debate. Who in a chain of investment and production ought to have what claims on the use of which resources or on the revenue from what activities, against which other actors? Who is entitled to use their access to resources in such a way as to harm others or reduce the value of their entitlements, and under what circumstances? Who can call upon the state to compel others to refrain from using – or to share – which resources, and under what conditions?

A pattern of allocation and entitlement may arise slowly out of the long political and social history of a society or may be imposed in a moment of reallocation. In this sense, given the political will and opportunity, one can always start over. The call to "clarify and strengthen" property entitlements is itself a call to start over – to allocate authority with respect to productive assets differently among people and economic actors in the society. Where people have had mixed, informal or unsettled and competing access, for example, a "property owner" will henceforth have the authority to ask the state to enforce a more exclusive claim. There may be reasons to think entitling these people rather than those, in this way, rather than in that, will generate development. It would be unlikely, however, if doing so would have the same effect – or even mean the same thing – across a range of societies, or even within one society. Access to the return on resources is everywhere a far more complex affair and the dynamic impact of various distributional arrangements far harder to assess than the call for strong and clear rights seems to imagine. In any event, the argument for strong and clear rights only makes sense if it is accompanied by a powerful justification for the growth potential to be unleashed by what will be a redistribution of wealth.

2. Property and sovereignty: the fusion of private and public order.

The call for clear and strong property rights is linked to the idea that economic activity in the private market ought to be separated – and defended – from public authority. This has not been the historical experience of the developed world. As we have seen, if anything the opposite is more the case: the economic life of property has been a constant play of forces structured, validated and defended by the state. Moreover, a sharp distinction between a horizontal private legal order among individuals and a vertical public legal order through which the state regulates the activities of private individuals is neither conceptually nor practically plausible.

Nor is it analytically possible to distinguish private legal rules which "support" market transactions from public law rules which "distort" market prices. All prices are bargained in the shadow of the law and reflect the respective legal ability of different parties to mobilize the state for or against their economic interests. In the simplest example, a worker's ability to withhold his or her labor, like the capitalist's ability to withhold capital, is a legal entitlement which can be and has been allocated and defined in various ways. The wage (or interest rate) toward which they negotiate reflects the relative allocation of legal powers between them.

3. Property as distribution: regulating relations among people with respect to things.

One reason the "strong and clear property rights" idea continues to seem innocent of any allocative public policy commitment is the lay notion that property rights concern the relationship between an individual and "his property." Strengthening and clarifying that relationship does not seem to implicate anyone else. It seems merely to empower *him* to participate more effectively in the economy. For a legal professional, however, property is not about the relationship between persons and things. Rather it concerns the relationship between people with respect to a thing. The difference is crucial.

When we say that I own my home, what we mean is that I can enforce a series of rights against other people – to "quiet enjoyment" of the home, to exclude others from the land, to remove a trespasser, to contract for the sale of the home, prevent others from selling or renting it without my permission, and so on. This might seem to suggest a dramatic new role for the state, the expert, the planner, in property management. Once we think of a property right as a relationship between two people, it is clear that the state also has a role as the enforcer – and definer – of the rights of one against the other. Where rights and duties are parceled out among numerous entities, both individual and collective or corporate, the position of the state as arbiter and enforcer is all the more pronounced. Thought of this way, the distributional dimension in routine enforcement of property rights is quite visible. For every right, someone is under a duty, and we will want a good explanation when we bring state force into play to force him to live up to that duty. In this sense, property law analytics can bring issues of social and economic choice to the surface. These are allocative questions, distributional questions, and no property law regime can be erected or maintained without resolving them. Doing so requires a political or economic or social choice – rooted in a conviction about why doing it that way rather than that will be a good thing.

4. Ownership and use: property duties and the social productivity of assets

The idea that rights and duties ought to be arranged with a view to the economic and social consequences for the society as a whole is not new. Throughout the West, there has always been struggle over the relationship between property entitlement and the obligations to use assets productively or for social benefit. The idea that ownership brings obligations for productive use played a role in many significant historical disputes, over church lands, indigenous title, obligations of colonial occupation and more. One result has been recognition that property law is

about duties as well as rights. Not only the correlative duties of *others* not to trespass and so on, but also the many duties of owners in different periods: to cultivate, to allow tenancy, to prevent dangerous conditions, provide light and safety, support the poor, and so on. Indeed, the details of every property law regime reflect decisions about social uses and obligations as much as they liberate owners to use or waste property as they wish.

The idea of property as a source for communal and civic obligations has a wide range of legal expressions. Property may be subject to forfeiture if not maintained or cultivated. Members of the public may have access rights, including the right to squat, cultivate, even to take title by adverse possession in certain circumstances. Indeed, in England, the ability to dispose of land by testament upon death of the "owner" begins only with Henry VIII and remains everywhere restricted. Where property is held in "trust," trustees who may possess or use the property will do so subject to various fiduciary obligations towards the beneficiaries of the trust. Trustee relationships have often been created by implication or judicial construction, as in the case of marital property pending divorce. As a form of private social welfare to prevent slaves, servants, children or spouses from becoming wards of the state, family law has often been a site for the emergence of property duties to protect widows and children. This communal element in the property system is often expressed as a limit on alienability – perhaps precluding sale of the "family home" in divorce or preventing its seizure in bankruptcy.

More broadly, property ownership is often accompanied by obligations arising from other areas of law. Tax obligations are the most ubiquitous and familiar. In the United States property taxes are routinely used as the primary source of financial support for local government as well as primary and secondary education. These could, of course, be otherwise financed – just as other social purposes might well be financed by property taxes of various kinds. Taxes on transfer of property, including value added taxes and sales taxes, also impose social obligations on property owners and may restrict the speed with which property changes hands. Moreover, the use of property tax for these local purposes has all manner of policy implications, among other things on the distribution of (at least non-stigmatized) commercial property, shopping malls, office complexes and so forth. We might also think of property taxation as a mechanism to encourage dispossession when property is not used productively, akin to very familiar doctrines of adverse possession.

Finally, every Western property system permits the imposition of obligations to sell or relinquish ownership of property for public purposes. Property may be condemned as uninhabitable or unsafe or expropriated. Temporary use by others may be compelled for safety or other public purposes, with or without compensation. Although taxation is generally distinguished from a public taking requiring compensation, at some point, given an owner's use preferences and rates, any tax burden may become confiscatory. Moreover, regulatory changes often alter property values or eliminate property rights altogether. In a dramatic example, when slavery was abolished in the United States, owners were not compensated. Similarly when the right to nominate priests was eliminated from the entitlements of property ownership, when public consumption and sale of alcohol was banned during prohibition, or when restrictions are placed on the sale or use of guns, tobacco or other products.

5. Initial allocation and the subsequent rearrangement of entitlements.

Property law – and private law more generally – is a particularly important site for thinking about social, political and economic strategy in a developing society at moments in which the legal and economic order is being reorganized in what is likely to be a once-in-a-generation way. Property rights truly are foundational for economic life and how you set them up powerfully inflects the development trajectory in a society like China which has, over the last generation, substantially transformed the rules about who can do what to whom and with what. At such moments in particular it is useful to strategize carefully about the dynamic relationship between modes of property allocation and economic performance. The economic analysis of law has much to offer in comparing the potential consequences of various rule changes. We need to be careful, however, to understand the limits of economic analytics – or to notice the moment when the analytic is transformed into a looser rule of thumb, default suggestion or hunch. This is particularly true when the opportunity arises to establish a new property regime.

Economic analysis offers a variety of analytics for assessing the efficiency of resource allocation within a society. Much law and economics literature frames efficiency in static terms, focusing in one or another way on the economy's ability to maximize productivity within constraints. An initial allocation of factors and institutions is treated as exogenous or given, and analyses focusing on dynamic efficiency are less common. It is easy to see, however, that different initial allocations and limitations may lead to different rates of growth and different distributional outcomes for the society as a whole – differences which may compound over time, and may be of crucial importance for "development," however we may define that term. We know that with different factor endowments we expect different development outcomes. The possibility of gains from trade even for societies with an absolute disadvantage in the production of all goods does not alter the significance of factor endowments. Different initial allocations may place a society on alternative – even if equally efficient – economic paths with very different growth rates or patterns of distribution.

It is easy to think about factor endowments in physical terms – how much arable land, how skilled a labor pool, how much capital, what technology, and so forth. Once we begin to add social endowments and institutions to the list – how effective a government, how comprehensive an educational system, what forms of money, what modes of accounting – we increasingly recognize that endowments treated as exogenous limits may often be subject to change through strategy. More public goods might be provided, institutions could be strengthened or changed, technological innovations could be encouraged, and so forth.

The crucial point about private law is this: at base, *all* factor endowments are also legal entitlements. A nation only has agricultural or mineral endowments if the entitlements of economic actors vis-à-vis one another are arranged in such a way as to facilitate exploitation and sale of ore, sunshine, water, seeds and more. Land is only a resource if and to the extent it can be exploited for gain. Someone, some legal entity or some group has to be able to defend, whether formally or informally, their exclusive productive use of a resource and be able to offer the produce for sale. Establishing a regime of private entitlements – rules about property, contract, finance, corporate authority, and obligations – is the process by which the initial factor

endowment and institutional limitations are established. In a sense, all we ever buy and sell are entitlements – to use, destroy, profit from, assets of various kinds. In this sense, private law is always present at the creation.

6. Property law analytics: "clear" property rights and the call for formalization.

Among development policy makers, it is common to attribute the apparent effectiveness of legal regimes in modern and developed societies to the clarity of rules and procedures. It therefore seems sensible in developing economies to urge that informal arrangements be written down and written rules leave as little room for interpretive flexibility as possible so that their implementation will be predictable and automatic. Unfortunately, calls for the "formalization" of private entitlements, like general calls for ever stronger property rights, only obscure the distributive choices involved in constructing a private law regime – choices which ought rather to be carefully analyzed for their impact on economic growth and development.

There is a long tradition of associating legal "formality" with industrial capitalism and economic growth. The relative formality of a legal order might be assessed in various ways:

- the extent to which the rules of the legal order fit together into a comprehensive and orderly system – the lack of legal pluralism
- the precision and determinacy with which legal reasoning is able to link outcomes to rules, subordinate rules to rules, and rules to broader principles through deductive logic
- the prevalence of rules (18 years of age) as opposed to more general standards ("mature," "reasonable") in the body of legal doctrine,
- the significance and priority of the written or official legal order over informal or customary arrangements for dispute settlement, problem solving or rule making
- the effectiveness of the administrative bureaucracy – decisions at the top generate results at the bottom – and the absence of discretion among public officials

The link between each of these attributes of the legal order and economic growth remains tenuous.

8. Summary and Conclusion

The arrangement of legal entitlements with respect to assets is a crucial tool for develop policy. For using that tool, "clear and strong" property rights is a misleading recipe. Property rights have no ideal form which could be rendered clear and strong. Their allocation is everywhere a matter of economic, social and political choice for which no formula can substitute. It is not only that the arrangement of entitlements is inseparable from concerns about social uses and obligations, although this is true. The arrangement of entitlements also constitutes the actors and defines the rules of the game, allocating bargaining power, determining who can do what with which resources and what rents can be captured by what means. A preference for "strong and clear" entitlements is little help in making these strategic choices. Strengthening title, for example, tells us very little about the damage adjacent land owners can do to the value of one another's

property. The definition of "ownership" requires a strategic idea about use. Different decisions about the allocation of entitlements and the meaning of ownership may lead to different development paths, just as different background entitlements provide the baseline for alternative economic equilibria.

Unfortunately, some work in the law and economic field has obscured the necessity for making economic and political choices in constructing a property regime. One often encounters misreadings of Ronald Coase's famous work which suggest that the allocation of entitlement matters little since economic actors, in a perfect market, will reallocate their entitlements until an efficient allocation has been reached. This ignores Coase's own preoccupation with the ubiquity of transaction costs and imperfect markets and the consequent need for intermediaries and firms as well as compensatory regulation. Much modern law and economics scholarship begins here and has much to teach development policy makers. Unfortunately, however, the focus on "efficiency" has often obscured the potential to see entitlement allocation as part of the baseline constraints within which an efficient equilibrium may be sought – and to see the potential for each subsequent entitlement adjustment as open to strategy about alternative paths to development and alternative possible equilibria. Distributive policy has too often been relegated to a later stage of compensatory adjustment during which it can seem far less is open for strategic adjustment.

Property rights are indeed central to development strategy. Struggle over their meaning and allocation has been at the heart of political debate throughout the developed world. The call for clear property rights obscures the range of alternative property regimes which have always been at work within the industrialized West, reflecting different resolutions to the management of social/economic/political conflicts. Worrying about the clarity or strength of property rights focuses attention on the current allocation of rights, reducing attentiveness to past and future possible allocations, and making path dependence harder to avoid. The result discourages the more complex analysis necessary to arrange the various elements in the "bundle of rights" so as to encourage efficient productivity, engaging the dynamic potential in both past and possible future allocative arrangements. This in turn obscures the opportunity to choose among alternative, perhaps equally efficient or productive economic models through property rights allocation, while underestimating the relationship between property rights and other institutional forms and legal regimes in the society which may alter the meaning of those rights in practice.

In short, there are many reasons for adopting a healthy skepticism about claims that clear or strong property rights are necessary or even possible as a path to economic development. Perhaps the most significant consequence of the property rights mantra has been the propagation of a serious misestimation of the allocative role of law. A property regime, like any other legal order, is all about choices. Small and large, these choices cannot be made by reasoning outward from the nature of property or general ideas about what constitutes "good law." They require economic, social and ethical analysis, and must be made and contested in those terms.

The Economist

Economics and the rule of law

Order in the jungle

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"AM I the only economist guilty of using the term [rule of law] without having a good fix on what it really means?" asks Dani Rodrik of Harvard University. "Well, maybe the first one to confess to it."

The rule of law is usually thought of as a political or legal matter. The world's newest country, Kosovo, says its priority is to improve the rule of law in order to reduce corruption and build up the state. But in the past ten years the rule of law has become important in economics too. Indeed, it has become the motherhood and apple pie of development economics—which makes Mr Rodrik's confession the more striking. The rule of law is held to be not only good in itself, because it embodies and encourages a just society, but also a cause of other good things, notably growth. "No other single political ideal has ever achieved global endorsement," says Brian Tamanaha, a legal scholar at St John's University, New York.

But as an economic concept the rule of law has had a turbulent history. It emerged almost abruptly during the 1990s from the dual collapses of Asian currencies and former Soviet economies. For a short time, it seemed to provide the answer to problems of development from Azerbaijan to Zimbabwe, until some well-directed criticism dimmed its star. Since then it has re-established itself as a central concept in understanding how countries grow rich—but not as the panacea it once looked like.

Economists became fascinated by the rule of law after the crumbling of the "Washington consensus". This consensus, which was economic orthodoxy in the 1980s, held that the best way for countries to grow was to "get the policies right"—on, for example, budgets and exchange rates. But the Asian crisis of 1997-98 shook economists' confidence that they knew which policies were, in fact, right. This drove them to re-examine what had gone wrong. The answer, they concluded, was the institutional setting of policymaking, especially the rule of law. If the rules of the game were a mess, they reasoned, no amount of tinkering with macroeconomic policy would produce the desired results.

This conclusion was strengthened by events in the former Soviet empire. Many post-communist countries got their policies roughly right fairly quickly. But it soon became clear this was not enough. "I was a traditional trade and labour economist until 1992," says Daniel Kaufmann, now head of the World Bank Institute's Global Governance group. "When I went to Ukraine, my outlook changed. Problems with governance and the rule of law were undermining all our efforts."

Pretty quickly, "governance"—political accountability and the quality of bureaucracy as well as the rule of law—became all the rage. Economists got busy calculating what it was, how well countries were doing it and what a difference it made. Mr Kaufmann and his colleague Aart Kraay worked out the "300% dividend": in the long run, a country's income per head rises by roughly 300% if it improves its governance by one standard deviation. One standard deviation is roughly the gap between India's and Chile's rule-of-law scores, measured by the bank. As it happens, Chile is about 300% richer than India in purchasing-power terms. The same holds for South Africa and Spain, Morocco and Portugal, Botswana and Ireland. Economists have repeatedly found that the better the rule of law, the richer the nation. (The chart below shows the results of three studies, put on a comparable basis by Mr Kaufmann.) Every rich country with the arguable exceptions of Italy and Greece scores well on rule-of-law measures; most poor countries do not.

Mr Rodrik reviewed the contributions to growth of governance ("institutions", he called it), geography and openness to trade. He concluded, to use the title of an article he published in 2002, that "Institutions Rule". Writing from the perspective of a political scientist, Francis Fukuyama of Johns Hopkins University concurred: "I believe that the institutionalists have won this argument hands down."

Partly because of this, and also because the rule of law is desirable for its own sake, governments and aid agencies began splurging money on rule-of-law reforms, such as training judges, reforming prisons and setting up prosecutors' offices. Such reforms had begun in Latin America in the mid-1980s. Now they became universal.

The European Union insists that all its members satisfy standards for the rule of law. It requires applicants to commit themselves to legal reforms to meet those standards and dispatches armies of lawyers to advise them how to bring their legal systems up to scratch. America's Millennium Challenge Corporation, set up in 2004 to improve the effectiveness of American official aid, confines its largesse to countries that have committed themselves to minimum rule-of-law standards (one of three basic requirements). Western donors have poured billions into rule-of-law projects over the past 20 years. The World Bank is now running such projects (narrowly defined) worth almost $450m; on a wider definition, almost half the bank's total lending of $24 billion in 2006 had some rule-of-law component (for example, advice on conflict resolution in village-development projects, or on bankruptcy law in privatisation programmes). In roughly a decade the rule of law has gone from a specialist political and legal topic into a staple of economic thinking and the subject of a vast aid-giving effort.

So it came as an unwelcome surprise when, in 2003, one of the world's acknowledged experts on governance wondered aloud whether the emperor had any clothes. Thomas Carothers of the Carnegie Endowment for International Peace, a think-tank in Washington, DC, wrote a paper politely entitled "Promoting the Rule of Law Abroad: The Problem of Knowledge". According to Mr Carothers, the problem was, as William Goldman said of Hollywood, that nobody knows anything.

Mr Carothers argued that the intrinsic difficulty of defining the rule of law, combined with the problems of knowing how specific laws work in practice, meant that "the rapidly growing field of rule-of-law assistance is operating from a disturbingly thin base of knowledge at every level." Many of the difficulties are inherent, he said. But not all: aid organisations always look forward to the next project, rather than back to the lessons of experience; lawyers who carry out the work are not much interested in development; university professors are not gripped by applied policy research. As a result, according to one rule-of-law promoter, "deep down, we don't really know what we are doing."

The shock of Mr Carothers's argument was salutary. In response, there has been a flurry of rule-of-law studies. A new body of work has appeared, which could be called the economics of the rule of law. It shows the rule of law can indeed be improved. It has made clearer what economists and others mean when they talk about the rule of law. It has laid down some guidelines about reforms, helping show what works when, say, training judges or policemen. What it has not yet shown beyond doubt is that the rule of law is a precondition for economic growth everywhere. In the process, the subject of law as an economic matter has begun to grow up. It has passed from vigorous childhood into more troubled adolescence.

Unruly law

In "The Rule of Law and Development" (to be published next month by Edward Elgar), Michael Trebilcock of the University of Toronto and Ron Daniels of the University of Pennsylvania tackle the question of what economists mean by the rule of law. A report by a new research group, the Hague Institute for the Internationalisation of Law, does the same thing. Both publications argue that people routinely use two quite different definitions, which they call "thick" and "thin".

Thick definitions treat the rule of law as the core of a just society. In this version, the concept is inextricably linked to liberty and democracy. Its adherents say a country can be spoken of as being ruled by law only if the state's power is constrained and if basic freedoms, such as those of speech and association, are guaranteed. The "declaration of Delhi" drawn up by the International Commission of Jurists in that city in 1959 followed this line in saying that the rule of law "should be employed to safeguard and advance the civil and political rights of the individual" and create "conditions under which his legitimate aspirations and dignity may be realised." Among other proponents of a thick definition are Friedrich Hayek, an Austrian economist, and Cass Sunstein of the University of Chicago. In their view, the rule of law includes elements of political morality.

Thin definitions are more formal. The important things, on this account, are not democracy and morality but property rights and the efficient administration of justice. Laws must provide stability. They do not necessarily have to be moral or promote human rights. America's southern states in the Jim Crow era were governed by the rule of law on thin definitions, but not on thick.

The existence of competing definitions of something may seem fatally to undermine its usefulness. If you argue that the rule of law is vital to growth, which version do you mean—the one that defends human rights or the one that guarantees property rights? But economists love competition. Their differing definitions of the rule of law reflect competing explanations of what drives economic growth.

One account of growth—associated with Douglass North of Washington University in St Louis, Missouri—is "institutional". It focuses on the importance of property rights, transaction costs and economic organisation. On this view, stable, predictable laws encourage investment and growth. Thin definitions of the rule of law fit this well. The other—associated with Amartya Sen of Harvard—says that if you expand people's "capabilities" (Mr Sen's term), they will do things that help countries grow rich. Freeing people to take advantage of their capabilities usually means lifting the oppressive burden of the state and guaranteeing certain basic rights—a much thicker concept.

The distinction between thick and thin versions of the rule of law overlaps another distinction between legal traditions. Starting in 1997, a group of economists led by Andrei Shleifer of Harvard and Robert Vishny of Chicago started to compare the economic performance of common-law countries (such as America and Britain) with that of civil-law ones (France, Germany and Scandinavia). They argued that common-law countries have more secure property rights, better protection of shareholders and creditors, more diversified share ownership, and tougher disclosure and liability laws—to the benefit, they claimed, of stockmarket performance.

Like the initial claims for the rule of law, those on behalf of the common law were subject to harsh criticism at about the same time, mostly from continental economists. Some claimed the differences between common and civil law were not as sharp as they seemed, and were proxies for differences of politics, history and culture. Others pointed out that a country's legal origins do not seem to explain much about how it is faring economically or in terms of the rule of law. North and South Korea have the same legal origins.

But just as rule-of-law scholars have responded to criticism with more research, so have the legal-origins crowd. In a stream of papers they have found strong evidence that civil-law countries encourage government ownership of the media and banks, a higher burden of entry into business, more labour-market regulation and greater formalism of court procedures—to their detriment, they claim.

Perhaps such arguments can never be resolved. As Rainer Grote of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg says, the rule of law "belongs to the category of open-ended concepts which are subject to permanent debate." This part of the new economics of the rule of law clarifies its role, but no more. Other findings, though, are more constructive.

Scales of justice

There have been huge improvements in monitoring and measuring the rule of law, even though people cannot agree exactly what it is. "Fifteen years ago, we didn't talk about this stuff," says Steve Radelet of the Centre for Global Development, a Washington think-tank. "Ten years ago, there was no data." Now, the Worldwide Governance Indicators project—"one of the best kept secrets at the World Bank", believes Gordon Johnson, a grand old man of aid-giving—is the state of the art. It gathers data on more than 60 indicators (the extent of crime, the quality of police, judicial independence and so on) to create rule-of-law and governance measures for virtually every country in the world. Aggregating like this (and being honest about the margin of error), says Mr Kaufmann, is far from perfect, but is a decent approximation.

These measures confirm what is clear anyway: some countries have been able to improve their legal framework even in a short time. In 2000 Mikhail Saakashvili, then Georgia's minister of justice, sacked two-thirds of his country's judges for failing to pass an exam. Four years later as president, he fired all the country's traffic police. Georgia's World Bank rule-of-law score rose from nine out of 100 in 2002 (in the bottom 10%) to 33 at the end of 2006—low, but better. Central European and Baltic countries are doing better still: the radical legal changes required by membership of the EU improved their economies as well as their judicial systems.

In general, the measures suggest, bold reforms work better than gradual ones. Latin America modernised its penal codes and made trials more transparent. Chile, for instance, established a new public-prosecution system beginning in 2003. But many of its officials lack experience and have met resistance from the police. Russia implemented some judicial reforms in the 1990s and raised spending on the courts in 2000—to no avail: its rule-of-law scores have fallen in five of the past seven years.

The difference between central Europe and Latin America may be one of political backing. Messrs Trebilcock and Daniels divide countries into three: those where politicians, legal professionals and the public all support reform (central Europe after the fall of communism, South Africa after apartheid); those where politicians support reform, but lawyers and police do not (Chile and Guatemala); and those where lawyers want change, but not politicians (Pakistan). Only in the first group, the professors say, does rule-of-law reform get far.

Consistent with that rather gloomy finding, some new research finds only a weak link between the rule of law and economic growth. The connection with wealth is well established (see chart again) but that is different: it has been forged over decades, even centuries. The link with shorter-term growth is harder to see. China appears to be a standing contradiction to the argument that the rule of law is needed for growth. It is growing fast and is the world's largest recipient of foreign investment, yet has lots of corruption and nothing that most Westerners would recognise as a rule-of-law tradition. (It does, though, guarantee some property rights and its government is good at formulating and implementing policies.)

On the other hand, there is surely a connection between the legal reforms carried out in central Europe and the Baltics and their fast growth rates, or between Spain's post-Franco legal opening and its long boom. And there are proxy indicators connecting legal reform with growth in other areas. The value of rural land in Brazil, Indonesia, the Philippines and Thailand increased sharply when people were given title deeds, because owners were more willing to invest. One independent study for the World Bank a decade ago found a surprising link between projects the bank financed and civil liberties: projects in countries with strong civil liberties had far higher rates of return than those in countries with weak traditions of liberty.

But such links do not tell you anything about causation. Perhaps growth helps the rule of law, not vice versa. Perhaps countries can afford the luxury of the rule of law only after they have grown rich. The persistence of "frontier justice" into the 1930s in America gives a colour of plausibility to that idea.

Yet it is not Mr Kaufmann's view. He argues that rule-of-law improvements tend to help growth; that few countries have sustained gains in growth without improving their rule of law; and that places that have grown without such improvement have subsequently lurched backwards (Argentina used to be one of the ten richest countries in the world). The real puzzle is to explain the exceptions: why crony capitalism has flourished in parts of fast-growing Asia or Kremlin banditry in Russia. The answer, he says, is that, without a rule of law, well-connected crooks can grab an unfair share of the spoils of growth, especially if these include windfall gains from oil and raw materials.

The existence of crony capitalism and "state capture" by robber barons is, of course, an argument for trying to strengthen the rule of law where you can, since it suggests growth will not necessarily create law automatically. There are other arguments, too: the rule of law is desirable for its own sake—to improve human rights or to increase citizens' chances of justice against predatory governments. As John Locke wrote in 1690, "wherever law ends, tyranny begins." Plainly, in some countries, such as Myanmar and Zimbabwe, legal abuses and over-mighty regimes are direct obstacles to growth. Reforms would help—if they could be implemented.

But as a generalisation, the efforts of the past few years have thrown up mixed messages. They suggest the rule of law can be improved sharply; that rule-of-law reform is at root a political not a technical undertaking; and that it is linked to growth, if weakly in the short term. But they do not really bear out the assertion that the rule of law is an underlying prerequisite for growth. Rather, the more economists find out about the rule of law, the more desirable it seems—and the more problematic as a universal economic guide.

ALSO BY SVEN BECKERT

The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850–1896

EMPIRE OF COTTON

A Global History

Sven Beckert

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The ability to move workers into factories became key to the cotton empire's triumph. As a result, a chasm opened around the world between statesmen and capitalists able to mobilize labor and those who failed. Convincing thousands of peo ple to give up the only way of life they had known was no less complex than installing new machines. Both required, as we have seen, certain legal, social, and political conditions. The tran-

sition to the factory was at first concentrated in a few places, and even there encountered tremendous opposition. Success required a lopsided distribution of power that allowed statesmen and capitalists to dominate the lives of individuals and families in ways that still eluded elites in much of Asia and Africa. The power of the state did not just need to be extensive, as it was in many parts of the world, but intensive, focused, and penetrating all realms of life. As a result, in areas of the world in which rulers could not easily subdue alternative means of gaining access to subsistence, it was all but impossible to transition to factory production. Ironically, factory production itself would slowly undermine such alternative ways of organizing economic activity.

To be sure, the Industrial Revolution was mostly about labor-saving technology—as we have seen, productivity in spinning, for example, increased by as much as a hundred times. Still, these labor-saving machines required labor to operate them; as markets for cotton goods expanded explosively in response to falling prices, a rapidly growing cotton industry demanded at first thousands, then tens of thousands, and, in some parts of the world, hundreds of thousands of workers. In Britain, by 1861 there were 446,000 people working in the cotton industry. It has been estimated that in 1800 about 59,700 workers labored in the German cotton industry, a number that increased to 250,300 in 1860. The French industry drew on approximately 200,000 workers, the Swiss cotton industry in 1827 employed 62,400 workers. While the U.S. cotton industry only counted 10,000 wage earners in 1810, that number rose to 122,000 in 1860. Russia in 1814 employed 40,000 cotton workers, and about 150,000 in 1860. Spain in 1867 counted about 105,000 workers in its cotton industry. The global cotton industry rested on proletarianized labor; at the same time it was one of the greatest proletarianizing agents itself.[6]

Before the factory had become a way of life, capital owners had only one model for how to mobilize vast amounts of labor: the plantation economy of the Americas, built on the enslavement of millions of Africans. Many a cotton entrepreneur was intimately familiar with this system; Samuel Greg of Quarry Bank Mill, as we have seen, owned slave plantations on Dominica, and he was far from alone. But such possibilities had been forestalled in Europe because of the new sensibilities about economic man spurred by the Enlightenment and the resulting legal prohibitions against slavery in Europe. Bringing African slaves to

Manchester, Barcelona, or Mulhouse was out of the question; enslaving the local population was also impossible. Moreover, slave labor had significant economic disadvantages—it was difficult to motivate workers under conditions of servitude, and supervision costs were high. Slave labor, moreover, incurred costs year round, sometimes for the life of the worker, and was not easily adjusted to the vexing boom-and-bust cycles of industrial capitalism. The model of the plantation, in other words, did not serve the needs of the factory.

Yet access to labor was crucial to manufacturers the world over. After all, an entrepreneur's significant investment in machines could only be profitable with the promise of a predictable stream of labor to operate those machines. The labor power of women and men, girls and boys, was thus transformed into a commodity.[7] Turning people into factory workers meant turning them into wage workers as well. For most people in Europe and elsewhere, however, wages had not been central to their livelihood. Many who lived off the land or made artisan crafts, not surprisingly, had little incentive to become factory workers. A farmer grew his own sustenance; an artisan created goods he could sell or barter. A factory worker, by contrast, possessed nothing but the power of labor.

Budding capitalists and statesmen thus had to invent new ways to mobilize labor on a massive scale—that "fresh race of beings" that a rural magistrate observed in Lancashire in 1808. If they had envisaged the millions of workers they eventually needed to hire, the problem might have seemed overwhelming—and indeed, sometimes concerns about insufficient labor supply were on their minds. From his home in the West Midlands, a Shrewsbury mill owner complained, for example, in 1803 that the greatest problem in starting his mill was to attract a sufficient number of workers.[8]

These hopeful employers had help, however, especially from the transformation of the countryside that was already decades—and in some places, centuries—in the making. Bonds of mutual obligation between lords and peasants had begun to break down. In Europe, landowners had enclosed huge areas of land, making independent farming less accessible to peasants, and the wave of proto-industrial work had already made manufacturing, and even wage payments, a normal part of many peasants' subsistence.[9]

Moreover, the bureaucratic, military, ideological, and social penetration of a bounded territory by newly consolidating states aided mill own-

ers. Coercion had almost always been a central element in getting people to perform labor for others, a staple for feudal lords and colonial masters alike. Yet one of industrial capitalism's signal features was that coercion would now be increasingly accomplished by the state, its bureaucrats and judges, and not by lords and masters. Many capitalists throughout the world in need of workers feared the decline of personal dependencies such as serfdom, slavery, and apprenticeships, expecting idleness and even anarchy as a result. But in some areas the state had gained sufficient strength to create conditions that secured reliable flows of women, children, and men into factories. Throughout much of Europe, the rights of landowners and capitalists to control labor as personal dependents had been severely curtailed, but at the same time the state had increasingly taken on the role of legally compelling people to work (such as paupers, so-called vagrants, and children). Moreover, by the enclosure of the commons the state had made alternative possibilities of gaining a livelihood increasingly inaccessible, in fact increasing economic pressures on those without property. As legal historian Robert Steinfeld has put it, even "economic coercion is an artifact of the law," that is, of the state.[10]

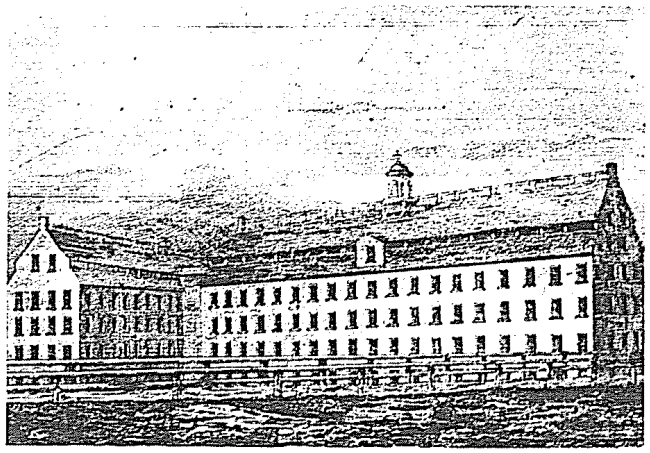
The state thus created a legal framework for wage labor that made it more fathomable to rising manufacturers. They appreciated that wage labor retained significant nonpecuniary coercive elements—bodily coercion—even in the centers of the new industrial capitalism. Indeed, employers in Britain, the United States, France, Prussia, and Belgium "required and strictly enforced labor agreements in wage labor" and "were using forms of legal compulsion to tie workers to jobs." The 1823 Master and Servant Act, for example, explicitly allowed "English employers to have their workmen sent to the house of correction and held at hard labor for up to three months for breaches of their labor agreements." Between 1857 and 1875, in England and Wales alone, about ten thousand workers annually were prosecuted for "breach of contract," many of them sentenced to prison; cotton workers were frequently among them. In Prussia throughout the nineteenth century, workers could be fined and imprisoned for leaving their job: "Journeymen, helpers, and factory workers, who leave work without permission and without legal justification, or are guilty of shirking or gross disobedience, are to be punished with a fine of twenty Thalers or prison up to fourteen days," determined the Prussian *Gewerbeordnung* of 1845.[11]

Despite powerful state support, recruiting workers remained a huge challenge for budding manufacturers, testifying to the fact that workers

themselves, as long as they still had access to other means of subsisting, tried to escape the world of the factory. When apothecary Joan Baptista Sires, for example, opened a cotton factory in the Raval neighborhood of Barcelona in 1770 with twenty-four looms and nineteen printing tables (places for the application of colors on cotton fabrics), one of his most difficult challenges was recruiting the 60 to 150 women and men he needed to keep up production. Turnover was huge, as most workers stayed only for a few months. Sires tried to solve this problem by replicating some elements of the artisan workshop in his factory, providing skilled male workers with the best-paid positions, but also allowing their wives and children to work in the factory, thus increasing the family wage while at the same time saving on their discounted labor. To try to enmesh workers at his factory, Sires allowed some families to live in the buildings, replicating a pattern long typical for artisan workshops throughout Europe.[12]

Fifty years later, in the United States, the problem of labor recruitment had not changed much. The Dover Manufacturing Company in Dover, New Hampshire, had to employ a total of 342 workers in the period from August 1823 to October 1824 just to maintain an average workforce of approximately 140.[13] Workers came and left frequently, as they desperately tried to retain access to a livelihood outside the factory. Entering the factory for a few weeks, they would leave once they had made enough money to hold them over to the selling of their crops or when their labor was needed on the farm.

These patterns of labor recruitment were typical of regions undergo-



The renamed Dover Manufacturing Company mill (date unknown)

ing cotton industrialization. In every case, proto-industrialization and proletarianization intersected. The spread of machine-made yarn, and later cloth, undermined hand spinning and handloom weaving on the farm, creating pressures on textile workers to find income elsewhere. For many, the only other viable solution was the very factory that had undermined their prior source of income. Barcelona entrepreneur Sires, in fact, usually hired workers from the farming areas surrounding the Catalan capital. In Saxony, earlier difficulties in recruiting labor were overcome when cheap yarns pouring out of the first cotton factories outcompeted hand spinners, who were then forced to work in the expanding factories. In Switzerland, the tens of thousands of workers that putting-out merchants kept busy in the vast countryside as far away as the Black Forest provided a huge potential labor reservoir, and indeed many of them eventually moved into factory production. With the rapid expansion of the Alsatian cotton industry and its significant labor needs, entrepreneurs looked to the mountainous areas of the Vosges and the Black Forest for that labor. There, the survival of families still rested on agricultural pursuits and continued to do so even after the onset of factory production: Nearly all workers in the spinning and weaving mills of Wesserling, for example, a small town high above the city of Mulhouse, still owned their own land and supplemented their income by farming as late as 1858. In the search for spinners and weavers, capital moved ever deeper into the countryside, allowing manufacturers to pay extremely low wages because workers could still draw on the unpaid reproductive labor of family members—child rearing and the growing of food among them. Here, as elsewhere, the unfolding of capitalism depended on noncapitalist forms of production and labor.[14]

More often than not, though, workers lost access to land and, faced with the decline of household manufacturing, moved from the countryside into cities. Indeed, cotton industrialization led to huge migrations, often across national borders. In 1815, among the fifteen hundred workers of the Guebwiller firm of Ziegler, Greuter et Cie, 750 were Alsatians, but the rest were migrants from Switzerland and Germany. U.S. textile mills drew on such migrants as well. Thousands of workers moved from the marginal agricultural soils of New England to the newly emerging textile towns, and many workers crossed the Atlantic, such as Irish women and men escaping the potato famine. The Dutch, Belgian, Catalonian, and French cotton industries drew on migrants from the surrounding countryside as well.[15]

These rural workers, abandoning their agricultural pursuits and home-based manufacturing activities, flowed down the mountains and sometimes across the seas into the textile factories of the Black Forest, Switzerland, the Vosges, Catalonia, Saxony, and New England. There they met a population of essentially artisanal workers. Those workers, mostly male, took on the most skilled positions, often with experience from older artisanal workshops, not farm fields. When Neuhaus & Huber created a weaving mill in Biel, Switzerland, in 1830 next to their spinning enterprise, they drew on newly unemployed but highly skilled handloom weavers who had for decades prospered around the town. Skilled workers too migrated over great distances: The cotton cloth factory Schwarz, in the Russian town of Narva, employed in 1822 thirty-five Germans, a French dyer, and a person from Holland. Ludwig Knoop's Kreenholm factory employed in 1857 many British skilled workers. Indeed, French, Mexican, American, and other manufacturers frequently recruited highly skilled workers from abroad.[16]

The vast majority of workers, however, were not skilled and were not recruited; rather, they were driven into factories by changing conditions within the countryside, and especially by the decline of goods made at home that could no longer compete with those made in factories. Perhaps most dramatic was the moment when power looms replaced hand weaving beginning in the 1820s. As a huge wave of misery passed over large parts of Europe, unemployed home-based weavers were ready to move into factories. In response to such conditions, factory employment often became a family strategy to maintain a household's ability to stay on the land, either by sending one member of the family to work at a mill full-time or by sending various members of the family for short stints. That was the case among the workers in Lowell, Massachusetts, where (unmarried) women's factory wages often enabled their families to remain on the land. Migrating into factory labor could give marginal agricultural pursuits another lease on life.[17]

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As the examples of Egypt and India show, by the last third of the nineteenth century, rulers and bureaucrats played a critical role in the effort to further cotton growing for world markets. They did so partly because their own power rested on access to resources and was made more stable by the relative social peace that came from humming mills. But they also acted at the behest of powerful capitalists—either because rulers and capitalists were largely the same group of elites, as in the case of Egypt, or because statesmen were subject to concerted lobbying and political pressure, such as in the case of Britain and France and, as we will see, Germany.

States' desire to mobilize cotton-growing labor now led to unprecedented claims upon their subjects, as states increasingly defined and enforced the rules of the market. From Berar to the Nile Delta to Minas Gerais, governments and courts undermined older collective claims to resources such as grazing and hunting rights, forcing peasants to dedicate themselves single-mindedly to the production of cotton. Berar's natural landscape, for example, was turned upside down by a vast British effort to survey the land, followed by the encouragement of the British to turn so called "waste lands" into cotton farms. "Waste lands" once had been open to the collective use of farmers, but now increasingly were turned into private property. In the process, extensive forests that traditionally had been the source of firewood and wild foods were logged, and grasslands put under the plow that had in earlier times served as communal grazing lands. Logging further reduced the forests to feed the steam presses of Western merchants in the major Berar cotton towns. In some parts of the world, such deforestation led to significantly altered patterns of rainfall, undermining the very colonial cotton craze that had incited deforestation in the first place.[48]

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Court-enforced lien laws, moreover, gave creditors another means to undermine peasants' claims to the land and enmesh them further in a quagmire of debt, which forced them to grow ever more cotton. The systems of mutual dependence and personal domination that had characterized the countryside of Berar, the American South, and elsewhere before the U.S. Civil War gave way to a world in which creditors backed by the state turned rural cultivators into producers and consumers of commodities. As an anonymous British writer on Indian cotton explained, "Where there is no intelligent population to lead the way, a Government must do what in more civilized countries can safely be left to private enterprise."[49]

The creation of private property in land became yet another state-led project, in India and elsewhere. British cotton manufactures, demanding that the colonial government "set its colonial house in order," called for new forms of land tenure, as they perceived the old system of communal ownership as "obstructive to the rights of individual ownership, and to its effective cultivation." They saw private property in land as a precondition for increasing production of cotton. Individuals were to gain clear title in land that then could be bought, sold, rented, or mortgaged. These new property rights were quite a departure: In precolonial Berar, for example, relations between various social groups had been characterized by a "master-servant relationship of social status in the caste hierarchy" in which "the produce of the soil . . . was divided according to social ranking." Individuals did not control particular pieces of land, but instead enjoyed rights to a share of the harvest. A British colonial official perceptively compared that "system, if system it may be called," to "medieval Europe." Once the British arrived on the scene, however, the land was surveyed, boundaries between various landowners clearly demarcated, and taxes on each parcel set. A class of *khatedars* was created who controlled the land, and in turn were made responsible for tax payments. By 1870, a British colonial official was able to report that the revolution was succeeding. In Berar "the occupant of land is its absolute proprietor." Because the *khatedars* owned land, but no capital, they were dependent on moneylenders, to whom they now were able to mortgage the land they controlled. To work the land, these *khatedars* brought in sharecroppers, who in turn received their working capital from moneylenders. There and elsewhere in India, it was the large landowners, and moneylenders, who drew significant profit from the extension of cotton

culture for export, unlike the vast majority of small landholders or landless peasants, who entered a morass of debt and poverty.[50]

With private property in land spreading throughout the global countryside, landowners could now also be made responsible for the payment of taxes, to be paid in cash, which in turn encouraged the production of cash crops. In the Indian province of Maharashtra, as in Berar, British efforts to increase revenue and encourage peasants to produce for distant markets led to the weakening of the collective nature of villages. Individual peasants, instead of villages as a whole, were now responsible for taxes. Moneylenders thereby gained new power over peasants' land and labor, as rural cultivators became dependent on advances to pay their taxes. In similar ways, in the Çukurova, the Ottoman state increasingly taxed local populations, and as a result, people had to engage in wage labor, or were forced to work on infrastructure projects. Cotton production benefited from their need for cash—just like in the United States—because "cotton is the one article," observed the Cotton Department in Bombay in 1877, "that always commands the readiest and best sales."[51]

While Indian cotton growers usually held on to their land, unlike freedpeople in the United States, they had to draw on advances not just for tax payments, but also to purchase implements, cottonseeds, and even grains to hold them over until harvest time. New contract laws allowed these same moneylenders to enjoy a modest security when making advances to peasants. New property rights in fact favored the commercialization of agriculture not just because they made for easier land transactions, but also because they allowed for the infusion of capital, for which the land itself could now serve as collateral. Cultivators paid exorbitant rates of interest on these loans (30 percent annually was not unusual), and in turn they signed over their cotton crop to moneylenders, usually many months before the harvest—creating what one historian has called "debt bondage."[52]

Moneylenders—*sowkars*—had been deeply rooted in villages and had advanced credit to peasants for a long time before the arrival of the British. However, they had been embedded within a moral economy that had forced them to support peasants in years of poor harvests, a lifeline that increasingly disappeared in the more commercialized economy that British colonialism was building. While moneylenders could acquire modest wealth, and large landowners could benefit from the availability of capital (allowing them to focus on a cash crop with hired labor), small landhold-

ers, sharecroppers, and especially landless agricultural wage workers were most at risk. As prices for cotton continued to fall for nearly thirty years after the Civil War, this mass of "modernizing" farmers were thrust into more and more desperate circumstances; many of them would eventually perish in famines that swept the cotton-growing districts of India during the 1890s.[53]

New infrastructures, new laws, and new property rights invaded the global countryside on the trails of strengthening and expanding states, making the kind of transformations possible that still had been unimaginable a few decades earlier. State involvement in cotton was furthered in many other ways. Perhaps the most comprehensive endeavor was the systematic effort to collect and disseminate information about all aspects of cotton agriculture. Huge compilations about climate and soil conditions, production trends, patterns of land ownership, seed qualities, and labor systems increasingly filled governmental office files, much of the same information that in previous decades merchants had laboriously gathered and transmitted via letters or circulars. In part this was a straightforward effort to systematize and appropriate indigenous knowledge. Observing Indian peasants' efforts to grow cotton could yield useful information about best practices under specific environmental conditions, which could then be transferred to Africa or elsewhere. Similarly, specific strains of cotton could be collected and then sent to other parts of the world—indeed, governments enabled a vastly accelerated circulation of biological matter throughout the world. But more important than either of these two tasks was a very simple effort to take stock—to observe what was there in the social and natural world, to translate that information into numbers, force it into tables, compile it, and then send it out throughout the empire of cotton. These numbers clarified the "potential" of certain places and suggested certain policies to actualize that potential.[54]

Throughout the cotton-growing world, governments embarked on such efforts. In 1866, the colonial government of India created the "Cotton Commissioner for the Central Provinces and the Berars," a colonial bureaucrat who collected scrupulously detailed information on cotton-growing regions. Harry Rivett-Carnac, an intrepid agent of the cotton empire's expansion, came to fill this position, traveling up and down Berar, living in a railroad carriage with an attached "horse-box, so that I could, whenever necessary, ride off to some important point in the district where my presence was required," all to "extend and improve the

cultivation in order to increase the supply; then to undertake all necessary measures to assist the trade in getting these supplies to the coast in good order and without delay." The revolutionary transformation of the world's countryside rested on the shoulders of such government bureaucrats. By 1873, the Indian government expanded these activities and centralized them by creating a Fibres and Silk Branch that studied the production of cotton, among other fibers, throughout India in exacting detail.[55]

Other countries followed suit. The United States in 1862 established a Department of Agriculture, which soon began to work on cotton. The department first collected statistical information, but soon broadened its activities by studying diseases affecting the cotton plant, trying to identify cotton strains particularly suited for particular environmental conditions, and breeding improved cotton strains. The department also applied itself to the pressing question of how cotton could be grown in western states such as Arizona. In 1897, Russia created an Administration of Agriculture and State Domains in its newly acquired Central Asian possessions, whose focus was cotton. In Egypt, the government provided detailed information about agricultural best practices to cotton farmers and by 1919 created a ministry of agriculture to expand on these efforts—a model later studied and appropriated by the Belgian colonial authorities in the Congo.[56]

The collection of information went hand in hand with governmental efforts to recast cotton agriculture directly: British colonial officials distributed American cottonseeds to Indian peasants, worked on changing Indian cotton strains, and encouraged peasants to use new agricultural methods. The Egyptian Société Royale d'Agriculture experimented with model farms. Local peasants often resisted such projects, for not only was the planting of new cotton strains more labor-intensive, but it was also riskier because they had not been proven in the local climate. Few projects provided increased remuneration to offset these burdens, and it took powerful pressures to make them succeed.[57]

THE TERRITORIALIZATION OF ETHNOPOLITICAL REFORMS IN COLOMBIA

Chocó as a Case Study

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Abstract: This article looks at the Chocó Department, where black and indigenous ethnic movements demanded collective land rights and autonomy to safeguard local livelihoods from resource-intensive economies. However, after decentralization and state restructuring reforms granted constitutional protections of local ethnopolitical autonomy in the nineties, most indigenous and black communities failed to benefit from the new rights. This has been explained as the result of human rights violations, neoliberal development, and armed groups' appropriation of regional economies, which created stressful conditions for self-governance. In such a scenario, autonomy was maintained only by communities that could resist violence and hold regional or national governments accountable. I build on these claims and add that the difference between the intent and the actual outcome of the reforms is explained by the way new institutions were territorialized or adapted by specific actors to local dynamics. In the Chocó Department, reforms were territorialized in a context of weak institutions, government corruption, and resource-intensive land-use changes that worked against ethnopolitical autonomy by enabling local intermediaries, who frequently made decisions that went against community rights.

In 2005 one of Colombia's oldest ethnic organizations, the Chocó Department's Embera-Wounaan Regional Indigenous Organization (OREWA), succumbed to violence and internal divisions, raising concerns about the effects of armed conflict and corruption on local organizational efforts. OREWA's breakdown also resulted from the way it adapted to reforms that overhauled governance practices and changed local political dynamics. As in other parts of Latin America, Colombia's decentralization and state restructuring reforms addressed ethnopolitical autonomy in response to social movement demands and new international norms on the rights of ethnic groups (Hooker 2005; Van Cott 2001). The reforms enhanced as well the role of these groups in the conservation of natural resources (Davis and Wali 1994; Dove 2006) and endorsed neoliberal environmental policies to stimulate environmental markets (Arsel and Büscher 2012; Schmink and Jouve-Martín 2011), such as those for water or carbon sequestration.

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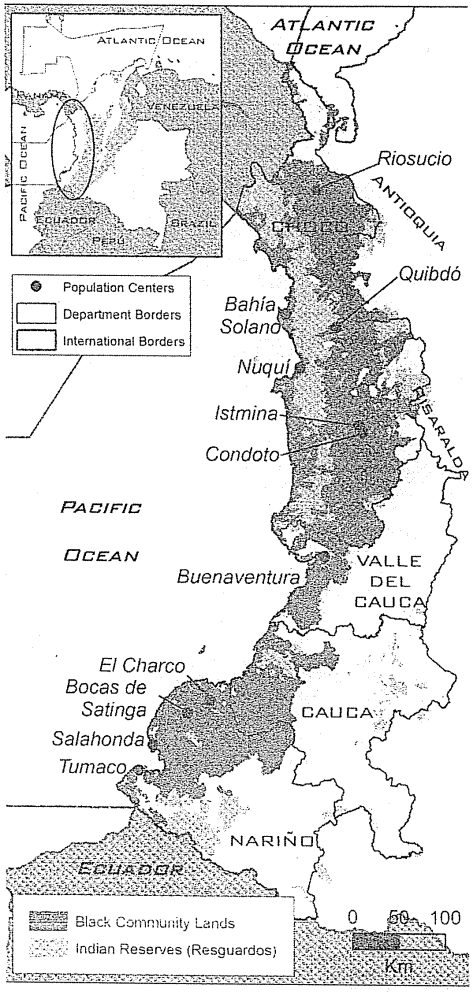
Colombia's reform advocates promoted decentralized spatial planning to increase the central government's territorial legitimacy in the hope that unifying the fractured country would end armed conflict (Asher and Ojeda 2009) and tackle cultural differences. The 1991 Constitution recognized Indigenous Territorial Entities (Entidades Territoriales Indígenas, ETIs) as subnational authorities whose governance over decentralized fiscal resources, health and education programs, natural resources, and customary justice systems was enabled by laws passed between 1991 and 1999. The Constitution contained a transitory article on the land rights of Afro-Colombians, whose territorial claims were formalized in 1993 when Black Community Councils were created but not recognized as public authorities in the same manner as ETIs.

Indigenous communities acquired collective land rights to 34 million hectares of land, and riverine Afro-Colombian communities acquired rights to 4.7 million hectares (DANE 2005). However, most groups either failed to benefit from these rights or are struggling to maintain a semblance of them. For example, as of 2007 only 18 percent of the country's indigenous territories had applied the new legal framework (Chirif and García 2007), while violence deterred Afro-Colombian organizing. This article examines another outcome of the reforms, namely how they provoked a crisis of ethnic organization in a region where social movements had been relatively influential. The literature on Colombia's ethnic politics offers ample evidence in support of two main explanations to make sense of this. First, capitalist expansion and regional political economies of violence uprooted people, traditional livelihoods, and grassroots organizations. Second, and as a result, only communities with capacities to mobilize innovative strategies and networks of support could safeguard local decision-making practices.

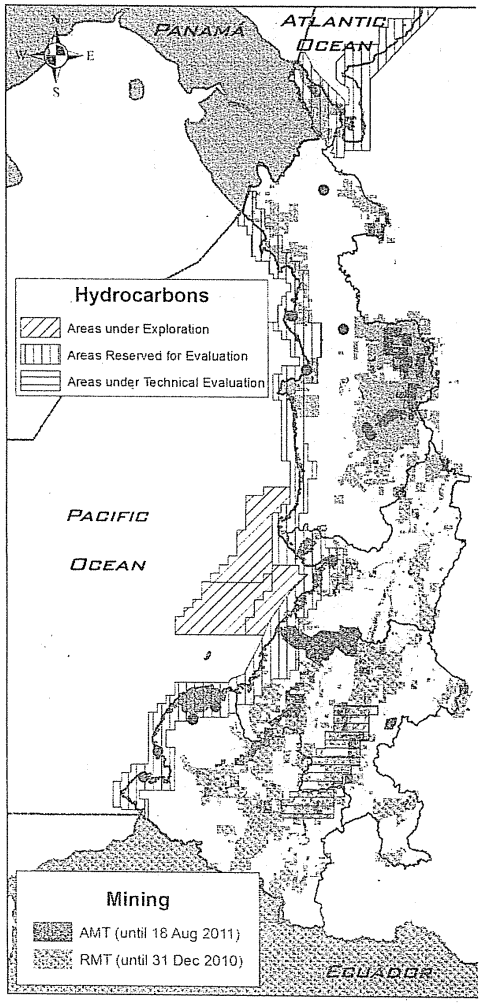
In the first case, few communities could endure neoliberal economic reforms that delocalized decision making to favor large capitalist companies, nor could they fend off an increasingly regionalized political economy of war based on violent land occupations to control people and natural resources (Houghton 2008; Villa and Houghton 2004; Oslender 2007; García and Jaramillo 2008; Asher 2009). In the second case, communities that sustained local decision making did so by linking up to national and international social-movement networks, resisting violent pressures on their communities, or holding the national government accountable (Hernández 2004; Wirpsa, Rothschild, and Garzón 2009; Chirif and García 2007). Chocó's OREWA as well as other ethnic organizations in the department arguably had similar capacities, yet they failed to benefit from the reforms. So what other factors beyond the detrimental effects of armed conflict explain organizational breakdown? In this article I associate the crisis of ethnopolitical organizations with the way reforms were adapted to specific local dynamics.

THE CHOCÓ DEPARTMENT

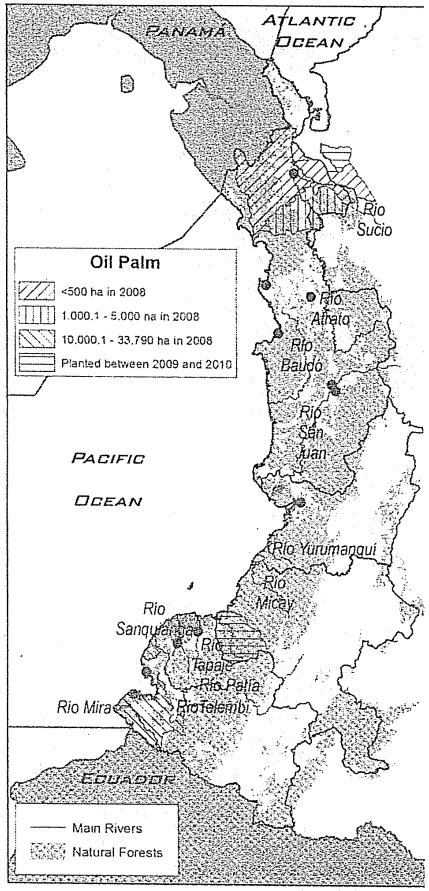
The heavily forested Chocó Department is a biodiversity hotspot located in the Pacific littoral (see map 1). Central government claims over this periphery historically undermined the region's sociocultural dynamics and local decision-making practices (Villa 2004). Not coincidentally, its 390,000 inhabitants currently count



Map 1 Ethnic community lands. Map created by Nicolás Vargas Ramírez. Sources: Black community lands and Indian reserves: Instituto Geográfico Agustín Codazzi (IGAC) (2010) and Instituto Colombiano de Desarrollo Rural (2011, 2012). Cartographic base: IGAC.



Map 2 Mining and hydrocarbon concessions. Map created by Nicolás Vargas Ramírez. Sources: Hydrocarbons: Mapa de Tierras de la Agencia Nacional de Hidrocarburos. Mining: Approved Mining Titles (AMT) and Requested Mining Titles (RMT) in Catastro Minero Colombiano. Cartographic base: IGAC.



Map 3 Oil palm, natural forests, and rivers. Map created by Nicolás Vargas Ramírez. Sources: Oil palm: Geografías de Derechos, Violaciones y Resistencias, http://www.hrev .org/project/geographiando/ (2011). Natural forests: Instituto de Hidrología, Meteorología y Estudios Ambientales (IDEAM), IGAC, Instituto de Investigaciones de Recursos Biológicos Alexander von Humboldt (IAVH), Instituto de Investigaciones Marinas y Costeras José Benito Vives de Andréis (INVEMAR), Instituto Amazónico de Investigaciones Científicas (SINCHI), and Instituto de Investigaciones del Pacífico John von Neumann (IIAP) (2007). Continental, coastal, and marine ecosystems of Colombia: IDEAM, IGAC, IAVH, IIAP, INVEMAR, and SINCHI. Cartographic base: IGAC.

among Colombia's poorest as well as victims of its worst violence. In 2008, 36 percent of the population had been forcefully displaced, and contrary to national trends, poverty in Chocó increased from 64 percent to 79 percent and indigence from 31 percent to 49 percent between 2002 and 2005, while additional quality-of-life indicators demonstrate that the majority of the population cannot meet its basic needs (DNP 2008).

Chocó's relationship with the national government was historically mediated by mining companies, a merchant class primarily interested in extraction (Wade 1993), and by Claretian missionaries who had arrived in 1909 on an evangelizing mission (Flórez 2007). Chocó became a full department in 1945, at which point local elites gained access to key patronage institutions, while profitable economic activities continued to operate through commercial links in the departments of Antioquia, Risaralda, and Valle del Cauca. Between 1950 and 1980 economic pressures intensified as it became a national imperative to integrate peripheral areas to support modernization policies (Asher 2009). In the 1980s aggressive entrepreneurs arriving in the region pressured local economies by co-opting or circumventing local institutions and coercing populations (García and Jaramillo 2008).

Black and Indian place-based social movements formed because of such economic pressures and successfully declared the lowlands as territories of difference (Escobar 2008). OREWA began to lead indigenous land claims in the late 1970s, and black peasant communities along the Atrato River followed suit in the 1980s. The black peasant's "ethnicization" process (Restrepo 2002) hinged on reconstructing a common African-Colombian culture buttressed by geographical remoteness (Sánchez, Roldán, and Sánchez 1993), spatial relations to riparian environments (Almario 2002; Oslender 2002; Hoffman 2004), and traditional knowledge and practices that supported conservation (Escobar 2008; Asher 2009; Arocha 2009).

[. . .]

Territory and Neoliberal Development

This legislative overhaul on ethnic rights boldly transformed governance in one-third of the country's territory, eventually colliding with national economic growth priorities that hinge on competitive, market-based plans in resource- and land-intensive economic activities. A central point of contention is how article 332 of the Constitution, which establishes state ownership of subsoil and nonrenewable resources, curtails autonomy. This contradiction became evident in a set of legislative initiatives designed to open markets for environmental services and extractive activities. The Mining Code (Law 685/2001) and Forest Law (1021/2006) and bills to pass a law for rural reform and water and *páramo* laws all contemplated some level of privatization, even in collective lands.[1] Ethnic organizations, environmentalists, and organizations such as Colombia's Commission of Jurists

1. *Páramos* are high elevation tropical valleys and wetlands located in the Andes at an altitude between 3,000 and 5,000 meters.

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mobilized against the measures when they identified clear loopholes enabling investors to circumvent provisions on the rights of ethnoterritorial groups (Jaramillo and Velasco 2007). The Constitutional Court agreed and in 2008 found the Forest Law unconstitutional on grounds that it violated ethnic rights to free, prior, and informed consultation (*El Tiempo* 2008).

Such tensions were also at the center of acrimonious confrontations between the government and ethnic social movements. During a series of contentious episodes in 2008 in the Cauca Department, where Indian cabildos were occupying privately owned lands that they contended should be allocated to Indian *resguardos*, or reserves, President Álvaro Uribe Vélez (2002–2010) famously accused Indians of being the country's largest landowners and keeping large tracts of idle land (González 2011). Such rhetoric not only distorted facts about ethnic territoriality—most ethnic lands are located in protected areas such as forest reserves where the government wants to increase natural resource exploitation—it deliberately ignored the fact that most of these lands are not under the control of indigenous authorities.

A year later, Colombia's Constitutional Court condemned this state of affairs when it published Judicial Decrees 004 and 005 in 2009 demanding government safeguards of ethnic minority rights.[2] Decree 004 cites extensive evidence of gross human rights violations of indigenous peoples, including deterritorialization and uprooting resulting from the illegal or irregular use of natural resources in ancestral lands, while Decree 005 orders the protection of Afro-Colombian communities violently displaced from collective lands. The Court found the government culpable for failing to protect communities or even colluding with illegal actors.

More recently, the United Nations Development Program (2011) criticized Colombia's unsustainable political and economic use of its territory that exacerbated land-use conflicts. The report blames neoliberal rural reforms that increased inequality and land concentration and undermined rural institutions, including those of ethnic communities. It cites the wasteful use of agricultural and pasture lands, where 78 percent of the 22 million hectares of arable lands are not cultivated, while cattle ranching is overextending by 54 percent (from 21 to 39 million). This is the result of violent counter-agrarian reform, a strong landowner preference for expanding cattle ranching or leaving land idle, and loss of competitiveness resulting from increased imports. The report legitimizes specific claims that biofuel projects have negative environmental effects and are expanding into ethnic lands, where people have been displaced and food production is decreasing.

Against this backdrop, most people interviewed for this article believed that the government is trying to guarantee maximum exploitation of natural resources in preparation for free trade agreements that require an overhaul of environmental and ethnic rights legislation in order to allow mining and hydrocarbon exploration. The government's 2006–2010 and 2010–2014 National Development Plans confirm some of these claims. Both plans contemplate resource-intensive economic development, and the latest plan seeks to position the country as a strong energy-producing economy, for which it is offering large sections of the country's territory under hydrocarbon and mining concessions (DNP 2007b, 2010).

2. Corte Constitucional de Colombia, Auto 004/09: Protección de los derechos fundamentales de las personas y los pueblos indígenas desplazados por el conflicto armado o en riesgo de desplazamiento forzado (January 26, 2009); Auto 005/09: Protección de los derechos fundamentales de la población afrodescendiente víctima del desplazamiento forzado (January 26, 2009), http://www.corteconstitucional.gov.co/.

Table 2. Assessment of challenges and opportunities to territory, autonomy, and natural resources

	Opportunities		*Challenges*	
	External	Internal	External	Internal
Territory	• Statutory laws on collective property rights • International laws that support collective rights of ethnic minorities	• Successful self-governance in some territories	• Enclave economies • Development undermines ethnic territoriality • Overhaul of environmental laws • State's subsoil rights • Armed group occupation	• Changing land-use practices resulting from mining, coca, or logging • Loss of traditional knowledge
Autonomy	• Constitutional Court • Ombudsman's Office • Networks with domestic and foreign advocacy groups	• Innovative leaders • Historical ability to resist • Cross-cultural alliances • Willingness to learn and adapt • Customary laws • Self-awareness campaigns • Increase organizational capacities	• Companies overpower local authorities • Failure by government authorities to hold the Constitution's promise of a Social Rule of Law • Weak coordinating governance mechanisms • Flawed process of free, prior and informed consultation • Human rights violations • Local government corruption • Control of local economies by violent groups	• Weak local and regional organizations • Internal political divisions • Weak leaders; have lost political vision • Misappropriation of fiscal transfers or other communal resources • Organizational fragmentation, unrepresentative organizations • Authoritarian practices by some community leaders • New generations lack interest in traditional work • Disconnect between geographically spread-out communities and urban leaders • Dependence on international aid and cooperation • Organizations fail to protect own populations
Natural resources	• Legal recognition of community resource management	• Traditional management practices	• Contamination, longer rain/drought seasons • Large development projects • Extractive companies • Unclear environmental service market instruments, such as programs to Reduce Emissions from Deforestation (REDD)	• Local leaders abusing power to privatize resource use • Few economic alternatives to reduce poverty

Source: Author's interviews, informal conversations, and field notes.

DEVELOPMENT AND GOVERNMENTALITY

Michael Watts

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Excerpts: pp. 18-26

[…]

Force and domination: The space of chieftanship

Nembe community in Bayelsa State stands at the originary point of Nigerian oil production. In the 1950s, the Tennessee Oil Company (an American company) began oil explorations there but oil was not found until much later, when Shell D'Arcy unearthed the Oloibiri oil field in Ogbia. Subsequent explorations led to the opening of the large and rich Nembe oil fields near the coast in Okpoama and Twon- Brass axis. Currently, the four Nembe oil fields produce approximately 150,000 barrels of high quality petroleum through joint operating agreements between the NNPC and Agip and Shell. If Nembe is the ground zero of oil production, it is also a theatre of extraordinary violence and intra-community conflict, the result of intense competition over political turf and the control of benefits from the oil industry. The violence can be traced back to the late 1980s when the Nembe council of chiefs acquired power from then king, Justice Alagoa Mingi IX, to negotiate royalties and other benefits with the oil companies. The combination of youth-driven violence and intense political competition has transformed Nembe's customary system of governance and set the stage for further challenges to the traditional authority of chieftainship (see Kemedi, 2002; HRW, 2002).

Oil became commercially viable in 1970s, but to grasp its transformative effects on Nembe politics and community – that is, to its genesis as a distinctive governable space – requires an understanding of customary rule and chieftainship in the Delta. Indirect rule in the colonial period certainly left much of the Niger Delta marginalised and isolated, but it also, in the name of tradition, built upon and frequently invented chiefly powers of local rule which in the Nembe case was grafted onto a deep and complex structure of kingship and gerontocratic rule. To understand the dynamics of Nembe as a governable space, recall that land lay in hands of customary authorities (notwithstanding the fact that the 1969 Petroleum Law granted the state the power to nationalise all oil resources). Land rights, and therefore claims on oil royalties, were from the outset rooted in the *amayanabo* (king) and, derivatively, the subordinate powers, namely the council of chiefs and the executive council. Historically the Nembe community possessed a rigid political hierarchy consisting of the *amayanabo* presiding over, in descending order, the chiefs (or heads of the war canoe houses)2 elected by the entire war canoe houses constituted by their prominent sons. Although the chiefs were subservient to the *amayanabo*, they acted as his closest advisers, supported the *amayanabo* in the event of military threat, and in turn were responsible for electing the *amayanabo* from the Mingi group of houses, that is to say, from the royal line. The current Nembe council of chiefs is the assemblage of the recognised chiefs of Nembe "chalked" by the king.

By the late 1980s, a widespread sense of malaise coloured Mingi rule. Accordingly, the Nembe monarch's ineffectiveness in dealing with the oil companies led to a radical decentralisation of his powers in 1991 to the council of chiefs headed by Chief Egi Adukpo Ikata. Insofar as the council now dealt directly with Shell and handled large quantities of money paid by the oil companies, competition for election to the council was intensified as various political factions struggled for office. By 2000, the council had expanded from 26 to 90 persons. Coeval with the evisceration of kingly powers, the deepening of the council mandate and the expansion of council members was a subtle process of "youth mobilisation". In an age-graded society like the Nembe Ijaw, youth refers to persons typically between their teens and early forties who, despite whatever achievements they may have obtained (university degrees, fatherhood, and so on), remain subservient to their elders. Central to any understanding of the emergence of a militant youth in Nembe town was the catalytic role played by a former company engineer with Elf Oil Company, Mr. Nimi B.P. Barigha-Amage. He deployed his knowledge of the oil industry to organise the youths of the Nembe community into a force capable of extracting concessions from the oil companies, in essence by converting cultural organisation into protection services. Chief Ikata was quick to exploit the awareness and restiveness of the youths to pressure Shell into granting community entitlements. A pact between Chief Ikata and the young engineer was in effect instituted: the engineer supplied the youths with information regarding community entitlements, and the chief deployed his knowledge of military logistics to organise the shutting down of flow stations, the seizure of equipment and sabotage (Alagoa, 2001; HRW, 2002).

Armed with insider knowledge of the companies and an understanding of a loosely defined set of rules regarding company compensation for infringements on community property, Barigha-Amage pushed for the creation of youth "cultural groups" who gradually, with the support of some members of the council of chiefs, intermediated with oil companies and their liaison officers, and manipulated the system of compensation in the context of considerable juridical and legal ambiguity. Liaison officers, colluding with community representatives, were able to invent ritual or cultural sites that had ostensibly been compromised or damaged by oil operations, for which monies exchanged hands. As the opportunities for appropriating company resources in the name of compensation became visible through the success of the cultural groups, other sections of the youth community began to organise in turn around clan and familial affiliations. In 1994, for example, a group called "House of Lords" (*Isongoforo*) was created by a former university lecturer, Lionel Jonathan; a year later, in 1995, Mrs. Ituro-Garuba, wife of a well-placed military officer, established "Little Fishes" (*Agbara-foro*). Inevitably, with much at stake financially, and control of the space between community and company in the balance, conflicts within and among youth groups proliferated and deepened. In turn, growing community militancy spilled over into often violent altercations with the much-detested mobile police ('Mopos') and local government authorities. The regional state and governor attempted to intervene as conditions deteriorated but a government report, on which such action was predicated, was never released for political reasons. A subsequent banning of youth groups had, as a result, no practical effect (HRW, 2002).

Slowly, the subversion of royal authority, the strategic alliances between youth and chiefs, and the growing (and armed) conflict between youth groups for access to Shell resulted in the ascendancy of a highly militant *Isongoforo*. In an environment of rampant insecurity and lawlessness, of occupations and closures of flow stations, and of tensions between the companies, service companies and local security forces, *Isongoforo* were provided "stand by" payments by the companies, that is to say hired for protection purposes, and at the same time colluded with the community liaison officers to invent compensation cases. *Isongoforo* occupied the centre of a new governable space which they ruled through force rather than any sense of consent or customary authority. This quasi-mafiosi was funded by the large quantities of monies that they commanded from the companies, and by the arms which they controlled. This volatile state of affairs collapsed dramatically as local resentments and struggles proliferated. In February 2000, a "Peoples Revolution" overthrew *Isongoforo*, ostensibly precipitated by the humiliation of the council of chiefs at the hands of Shell (backed by the intimidating *Isongoforo* forces). The chiefs now orchestrated the occupation of flow stations and undermined the powers of *Isongoforo* by recruiting and supporting other youth groups. By May 2000, *Isongoforo* had been sent into exile, but they were promptly replaced in the wake of the return of Barigha- Amage as high chief of Nembe by his own "cultural group", *Isenasawo/Teme*. *Teme* instituted a rule of terror and chaos far worse than their predecessors. It, too, proved unstable in the context of excessive youth mobilisation, and split into two factions producing, in short order, coups, counter coups and much bloodshed. A government Peace Commission was established in January 2001 in a desperate effort to bring peace to one of the jewels in the oil-producing crown (Alagoa, 2001).

Much of this later violence (after 1996) was largely unregulated by the state authorities because of its concurrence with the 1999 elections in which some of the key youth leaders were expected to deliver votes for the incumbent gubernatorial race. In the creation of what in effect was a sort of vigilante rule, there were

complex complicities between chiefs, youth groups, local security forces and the companies. The occupation of oil flow stations (for purposes of extortion) were often known in advance and involved collaboration with local company engineers; youths were *de facto* company employees providing protection services, and local compensation and community officers of Shell and Agip produced fraudulent compensation cases and entitlements. Nembe, a town with its own long and illustrious history and politics, had become a sort of company town in which authority had shifted from the king to warring factions of youth who were, in varying ways, in the pay of and working in conjunction with the companies. The council of chiefs stood in a contradictory position, seeking to maintain control over revenues from the companies and yet intimidated and undermined by the militant youth groups on whom they depended. In the context of a weak and corrupt state, the genesis of this power nexus bears striking resemblances to the genesis of the Mafia of nineteenth-century Sicily (Blok, 1974).

In Foucauldian terms, what I have described is the displacement of a specific form of pastoral power (chieftainship) by a governable space of civic vigilanteism, a sort of thickening of civil society that the likes of Robert Putnam (see 2000) would presumably *not* endorse. Civic powers have expanded by overthrowing a territorial system and a gerontocratic royal order. Youth mobilisations – whose political affiliations and ambitions were in any case complex because they reflected an unstable amalgam of clan, family and local electoral loyalties – had thrown up an identity and subject that was indisputably revolutionary, representing an unholy alliance between civic organisations (presenting themselves as cultural organisations) and private companies. Rule in Nembe is a realm of privatised violence; an unstable hegemony held in place by domination and force. The analytics of government here turn on what Foucault (2000) calls men in their imbrication with wealth and resources – institutionalised through forms of calculability, *techne*, visibility, and so on that emerge from the legal and company dispositions to regulate local populations, backed up by the forces of repression. The governable subject is *de facto* a sort of employee, and rule is a Gramscian War of Position (Gramsci, 1971). Culture serves as the form by which company rule is experienced (violent youth groups) but in a way that renders the space increasing *ungovernable.*

Persuasion and consent: The space of indigeneity

The Niger Delta is a region of considerable, perhaps one should say bewildering, ethno- linguistic complexity. The Eastern Region, of which the Delta is part, is dominated statistically by the Ibo majority, but there is a long history of excluded ethnic minorities in the Delta, dating back at least to the 1950s when the Willinck Commission took note of the inter-ethnic complexity of the region. Throughout the colonial period prior to the arrival of commercial oil production, there had been efforts by various minorities, who saw themselves as dominated by the Ibo, to establish Native Authorities of their own. In the 1960s, prior to the outbreak of civil war two charismatic local figures, both Ijaw – Nottingham Dick and Isaac Boro – declared a Delta Republic, a desperate cry for some sort of political inclusion that lasted a mere 12 days. The ill-fated Delta Peoples Republic in 1966 was the forerunner of what is today a prairie fire of ethnic mobilisation by the historically excluded minorities – now tagged as "indigenous" in order to capture the political and legal legitimacy conferred in 1995 by the International Labor Organization of the United Nations (ILO Convention 169) (Nelson, 1999; see also Kinsbury, 1999; Brysk, 2000). The paradigmatic case in the Delta is the struggle by Ken Saro-Wiwa and the Ogoni/MOSOP. I shall concentrate here on their case simply as a way of revealing a rather different sort of governable space, one marked by ethnic subjects and indigenous territory.

The Ogoni are typically seen as a distinct ethnic group consisting of three subgroups and six clans dotted over 1,050 km2 of creeks, waterways and tropical forest in the northeast fringes of the Niger Delta. Located administratively in Rivers State, a Louisianalike territory of some 50,000 km2, Ogoniland is of one the most heavily populated zones in all of Africa. Indeed, the most densely settled areas of Ogoniland – over 1,500 persons per km2 – are the sites of the largest wells. Its customary productive base was provided by fishing and agricultural pursuits until the discovery of petroleum, including the huge Bomu field, immediately prior to independence. Part of an enormously complex regional ethnic mosaic, the Ogoni were drawn into internecine conflicts within the Delta region, largely as a consequence of the slave trade and its aftermath, in the period prior to arrival of colonial forces at Kano in 1901. The Ogoni resisted the British until 1908 (Naanen, 1995) but, thereafter, were left to stagnate as part of the Opopo Division within Calabar Province. As Ogoniland was gradually incorporated during the 1930s, the clamour for a separate political division grew at the hands of the first pan-Ogoni organisation, the Ogoni Central Union, which bore fruit with the establishment of the Ogoni Native Authority in 1947. In 1951, however, the authority was forcibly integrated into the Eastern Region. Experiencing tremendous neglect and discrimination, integration raised longstanding fears among the Ogoni of Ibo domination.3 Politically marginalised and economically neglected, the Delta minorities feared the growing secessionist rhetoric of the Ibo and, consequently, led an ill-fated secession of their own in February 1966. Ogoni antipathy to what they saw as a sort of internal colonialism at the hands of the Ibo continued in their support of the federal forces during the civil war. While a Rivers State was established in 1967 – which compensated in some measure for enormous Ogoni losses during the war – the new state recapitulated in microcosm the larger "national question". The new Rivers State was multiethnic but presided over by the locally dominant Ijaw, for whom the minorities felt little but contempt.

During the first oil boom of the 1970s, Ogoniland's 56 wells accounted for almost 15 per cent of Nigerian oil production, and in the past three decades an estimated US$30 billion in petroleum revenues have flowed from this Lilliputian territory. It was, as local opinion had it, "Nigeria's Kuwait". Yet according to a government commission, Oloibiri, where the first oil was pumped in 1958, has no single kilometre of all-season road and remains "one of the most backward areas in the country" (Furro, 1992:282; see also Douglas & Okonta, 2001). Rivers State saw its federal allocation fall dramatically in absolute and relative terms. At the height of the oil boom, 60 per cent of oil production came from Rivers State but it received only five per cent of the statutory allocation (roughly half of that received by Kano, Northeastern State, and the Ibo heartland, East Central State). Between 1970 and 1980 it received in revenues one-fiftieth of the value of the oil it produced. Few Ogoni households have electricity, there is one doctor per 100,000 people, child mortality rates are the highest in the nation, unemployment is 85 per cent, 80 per cent of the population is illiterate and close to half of Ogoni youth have left the region in search of work. Life expectancy is barely 50 years, substantially below the national average. If Ogoniland failed to see the material benefits from oil, what it *did* experience was an ecological disaster – what the European Parliament has called an environmental nightmare. The heart of the ecological harms stem from oil spills – either from the pipelines which criss-cross Ogoniland (often passing directly through villages) or from blow outs at the wellheads – and gas flaring. As regards the latter, a staggering 76 per cent of natural gas in the oil-producing areas is flared (compared to 0.6 per cent in the US). As a visiting environmentalist noted in 1993, in the Delta, "some children have never known a dark night even though they have no electricity" (*Village Voice*, 21 November 1995:21). Burning 24 hours a day at temperatures of 13-14,000o C, Nigerian natural gas produces 31.75 million tonnes of carbon dioxide and 10.89 million tonnes of methane, more than the rest of the world (and rendering Nigeria probably the biggest single cause of global warming) (Hammer 1996). The oil spillage record is even worse. There are roughly 300 spills per year in the Delta, and in the 1970s alone the spillage was four times the much publicised Exxon Valdez spill in Alaska. In one year alone, almost 700,000 barrels were soiled according to a government commission. Ogoniland itself suffered 111 spills between 1985 and 1994 (Hammer, 1996:61). Figures provided by the NNPC document 2,676 spills between 1976 and 1990, 59 per cent of which occurred in Rivers State (Ikein, 1990:171), of which 38 per cent were due to equipment malfunction.6 Between 1982 and 1992, Shell alone accounted for 1.6 million gallons of spilled oil, 37 per cent of the company's spills worldwide. The consequences of flaring, spillage and waste for Ogoni fisheries and farming have been devastating. Two independent studies completed in 1997 reveal total petroleum hydrocarbons in Ogoni streams at 360 and 680 times the European Community permissible levels (RAN, 1997; HRW, 1999).

The hanging of Ken Saro-Wiwa and the Ogoni nine in November 1995 – accused of murdering four prominent Ogoni leaders – and the subsequent arrest of 19 others on treason charges represented the summit of a process of mass mobilisation and radical militancy which had commenced in 1989. The civil war had, as I previously suggested, hardened the sense of external dominance among Ogonis. A "supreme cultural organisation" called *Kagote*, which consisted largely of traditional rulers and high ranking functionaries, was established at the war's

end and, in turn, gave birth in 1990 to MOSOP. A new strategic phase began in 1989 with a programme of mass action and passive resistance on the one hand, and on the other, a renewed effort to focus on the environmental consequences of oil (and Shell's role in particular) and on group rights within the federal structure. Animating the entire struggle was, in Leton's words (cited in Naanen, 1995:46), "genocide being committed in the dying years of the twentieth century by multinational companies under the supervision of the Government". A watershed moment in MOSOP's history was the drafting in 1990 of an Ogoni Bill of Rights (Saro-Wiwa, 1992, 1995). Documenting a history of neglect and local misery, the Ogoni Bill took head-on the question of Nigerian federalism and minority rights. Calling for participation in the affairs of the republic as "a distinct and separate entity", the Bill outlined a plan for autonomy and self determination in which there would be guaranteed "political control of Ogoni affairs by Ogoni people... the right to control and use a fair proportion of Ogoni economic resources... [and] adequate representation as of right in all Nigerian national institutions" (Saro-Wiwa, 1990:11). In short, the Bill of Rights addressed the question of the *unit* to which revenues should be allocated – and, derivatively, the rights of minorities (HRW, 1999; Okonta, 2002).

In spite of the remarkable history of MOSOP between 1990 and 1996, its ability to represent itself as a unified pan-Ogoni organisation remained an open question. There is no pan- Ogoni myth of origin (characteristic of some Delta minorities), and a number of the Ogoni subgroups engender stronger local loyalties than any affiliation to Ogoni nationalism. The Eleme subgroup has even argued on occasion that they are not Ogoni. Furthermore, the MOSOP leaders were actively opposed by elements of the traditional clan leadership, by prominent leaders and civil servants in state government, by some critics who felt Saro- Wiwa was out to gain "cheap popularity" (Osaghae, 1995:334) and, not least, the youth wing of MOSOP, which Saro-Wiwa had made use of, and which the leadership were often incapable of controlling. What Saro-Wiwa did was to build upon over 50 years of Ogoni organising and upon three decades of resentment against the oil companies to provide a mass base and a youth-driven radicalism – and, it must be said, an international visibility – capable of challenging state power. Yet, at its core, the indigenous subject – and the indigenous space – was contentious and problematic. Ike Okonta (2002) has brilliantly showed how, in the Ogoni case, it proved unravelled into fragments of class, clan, generation and gender.

What sort of articulation of indigenous identity and political subjectivity did Saro- Wiwa pose? What sort of governable space did this represent? It was clearly one in which territory and oil were the building blocks upon which ethnic difference and indigenous rights were constructed. And yet it was an unstable and contradictory sort of articulation. First, there was no simple sense of Ogoni-ness, no unproblematic unity, and no singular form of political subject (despite Saro-Wiwa's (1995), ridiculous claim that 98 per cent of Ogonis supported him). MOSOP itself had at least five somewhat independent internal strands embracing youth, women, traditional rulers, teachers and Churches. It represented fractious and increasingly divided "we", as the open splits and conflicts between Saro- Wiwa and other elite Ogoni confirms (Ministry of Information, 1996).7 Second, he constantly invoked Ogoni culture and tradition, yet he also argued that war and internecine conflict had virtually destroyed the fabric of Ogoni society by 1900 (Saro-Wiwa, 1992:14). His own utopia, then, rested on the recreation of Ogoni culture and suffered like all *ur*-histories from a quasi-mythic invocation of the past. Third, ethnicity was the central problem of postcolonial Nigeria – the corruption of ethnic majorities – and, for Saro-Wiwa, its panacea (the multiplication of ethnic minority power). To invoke the history of exclusion and the need not simply for ethnic minority inclusion as the basis for federalism led Saro-Wiwa to ignore the histories and geographies of conflict and struggle among and between ethnic minorities. And, the narrative of Ogoni exclusion and internal colonialism proved also to be partial, not least with respect to other ethnic minorities in the Delta. Compared to many Delta minorities the Ogoni have fared well (with 12 per cent of Rivers State population, the Ogoni accounted for one third of the state's commissioners). The Ogoni produce none of Rivers State oil currently; while two other small minorities with no political representation account for 68 per cent (Okonta 2002).

Paradoxically, MOSOP surfaced as a foundational indigenous movement even though the significance of its oil-producing region was diminishing. By the late 1990s moreover, as a movement it had fallen apart and intergroup struggles deprived it of much of its previous momentum and visibility. But it gave birth to what one might call many Ogonis, as indigenous movements among oil producing communities have proliferated. The same forces have spawned a raft of indigenous self-determination movements among the Egi, Ijaw, Ikwerre, Isoko, Itsekiri, Ogbia and Urhobo, among others (Obi, 2001).8 MOSOP itself fell apart precisely as these other movements gained power. Since the return to civilian rule in 1999, there has been a rash of such minority movements across the Delta calling for "resource control", autonomy and a national sovereign conference to rewrite the Nigerian constitution. At the same time, the Delta has become ever more engulfed in civil strife: militant occupations of oil flow stations, pipeline sabotage, intra-urban ethnic violence and, of course, the near anarchy of state security operating in tandem with company security forces. The shock troops of many of these indigenous movements are youth, and the multiplication of ethnic youth movements is one of the most important political developments in contemporary Nigeria. And it is here that the politics of oil-producing communities meet up with the politics of oilproducing indigenous groups.

What does the Ogoni case reveal, then, as a governable space? My point is that particular "populations" have been constructed as indigenous; this construction, as I explain below, emerged from the nationalist struggle as customary rights were added to a discourse of citizenship. But the process received enormous energy as indigeneity as a political category garnered international support in the last part of the twentieth century, a resource that Saro-Wiwa deployed brilliantly (Bob, 2002). The emergence in Nigeria of a national debate over resource control in the late 1990s is precisely a product of indigenous claims-making on the state, a process by which ethnic identifications must be discursively and politically produced. The Ogoni case shows that there is no pre-given ethnic identity but, rather, complex and unstable genealogical histories of identification that have emerged in the last century. The indigene has to be made – interpolated – around a strong sense of territory and in the context of cultural, economic and political heterogeneity. In Foucauldian terms, this was achieved through an imbrication of things and people, oil and ethnicity, and it has been generative of a profusion of indigenous movements. Indigeneity has, in this sense, unleased the huge political energies of ethnic minorities who recapitulate in some respects the postcolonial history of spoils politics in Nigeria. The effect of this multi-ethnic mobilisation was the production of political and civic organisations and new forms of governable space, a veritable jigsaw of militant particularisms. The Kaiama Declaration in December 1998 indicates that there is the making of a pan-ethnic solidarity movement in the works, but its contours are at present limited (see ERA, 2000; Douglas & Okonta, 2001). As the Ogoni case shows, much of this visibility and identification turned on the invention and reinvention of tradition and local knowledge, with an eye to the Nigerian constitution and international politics (Nelson, 1999). This is a classic case of the articulation of differing forms of power that Foucault describes. What I have documented here, however, is the multiplication of governable spaces which stand in some tension or even contradiction with each other – only in this way can one understand the explosion of inter-ethnic tensions in the Delta – and with the national space of Nigeria, to which I now turn.

Corruption and fraud: The space of nationalism

One of the striking aspects of the governable spaces of indigeneity as they emerged in the Delta is that they became vehicles for political claims, typically articulated as the need for a local government, or in some cases a state. Indigeneity necessarily raises the question of a third governable space, that of the nation state, an entity that pre-existed oil and came to fruition in 1960 at independence. Oil, in this sense, became part of the nation-building process – the creation of an "oil nation". Nature and nationalism become inextricably linked. But how did petro-capitalism, understood as a state-led and thoroughly globalised development strategy, stand in relation to the creation of the governable space called modern Nigeria?

Here I want to start with the work of Mahmood Mamdani (1996, 2001) and his observations on postcolonial African politics. Colonial rule and decentralised despotism were synonymous, says Mamdani (1996). The Native Authorities consolidated local class power in the name of tradition (ethnicity) and sustained a racialised view of

civic rights. The nationalist movement had two wings, a radical and a mainstream. Both wished to deracialise civic rights, but the latter won out and reproduced the dual legacy of colonialism. They provided civic rights for all Nigerians, but a bonus "customary rights" for indigenous people. The country had to decide which ethnic groups were indigenous and which were not a basis for political representation, a process that became constitutionally mandated in Nigeria. Federal institutions are quota-driven for each state, but only those indigenous to the state may apply for a quota. As Mamdani (1998:7) puts it:

> The effective elements of the federation are neither territorial units called states nor ethnic groups but ethnic groups with their own states... Given this federal character every ethnic group compelled to seek its own home, its NA [Native Administration], its own state. With each new political entity the non-indigenes continues to grow.

Once law enshrines cultural identity as the basis for political identity, it necessarily converts ethnicity into a political force. As a consequence, in Nigeria, clashes in the postcolonial period came to be not racial but ethnic, and such ethnic clashes, which dominated the political landscape in the last three decades, are always at root about customary rights to land, and derivatively to a local government or to a state that can empower those on the ground as ethnically indigenous. Into this mix so brilliantly outlined by Mamdani enters oil, that is to say, a valuable, centralised (state-owned) resource, a source of unearned income that detaches the states from the financial task of securing revenue from its ciitzens . It is a *national* resource on which citizenship claims can be constructed. As much as the state uses oil to build a nation and to develop, so communities use oil wealth to activate community claims on what is seen popularly as unimaginable wealth – black gold. The governable space of Nigeria is, as a consequence, reterritorialised through ethnic claims-making. The result is that access to oil revenues amplifies what I call subnational political institution-making; politics becomes, then, a massive state-making machine. Only in this way can one understand how, between 1966 and the present, the number of local governments have grown from 50 to almost 1000, and the number of states from three to 36! Nigeria as a modern nation state has become a machine for the production of ever more local political institutions, and this process is endless. The logic is ineluctable and, of course, terrifying.

What sort of national governable space emerges from such multiplication, in which, incidentally, the political entities called states or LGAs (local government areas) become vehicles for massive corruption and fraud – that is to say, the disposal of oil revenues (Ikporukpo, 1996)? The answer is that it works against precisely the creation of an imagined community of the sort that Ben Anderson (1998) saw as synonymous with nationalism. Nation building, whatever its imaginary properties, whatever its style of imaging, rests in its modern form on a sort of calculation, integration and a state and bureaucratic rationality which the logic of rent-seeking, petro-corruption, ethnic spoils politics and state multiplication works to systematically undermine. Lauren Berlant (1991:61) has said in her study of Nathaniel Hawthorne that every nation – and hence every governable national space – requires a "National Symbolic", a national fantasy which "designates how national culture becomes local through images, narratives and movements which circulate in the personal and collective unconsciousness". My point is that the Nigerian national symbolic grew weaker and more attenuated as a result of the political economy of oil. There was no sense of the national fantasy at the local level; it was simply a big lie (or a big pocket of oil monies to be raided in the name of indigeneity). At independence, Obafemi Awolowo, the great western Nigerian politician, said that Nigeria was not a nation but a "mere geographical expression"; 40 years later this remained true but more so. Any construction of a robust, meaningful, national identity requires, as Clifford (2001:114) says, a "rigorous survey of the social body" to determine its makeup and nature. A petro-state of the Nigerian sort, wracked by corruption-fraud in the Gramscian sense referred to earlier, is the very antithesis of surveillance, or indeed of rigour. It is as Nigerian novelist Chinua Achebe (1988) called it, at best, a big crummy family.

ASIA PACIFIC The New York Times

How China Got Sri Lanka to Cough Up a Port

By Maria Abi-Habib

June 25, 2018

HAMBANTOTA, Sri Lanka — Every time Sri Lanka's president, Mahinda Rajapaksa, turned to his Chinese allies for loans and assistance with an ambitious port project, the answer was yes.

Yes, though feasibility studies said the port wouldn't work. Yes, though other frequent lenders like India had refused. Yes, though Sri Lanka's debt was ballooning rapidly under Mr. Rajapaksa.

Over years of construction and renegotiation with China Harbor Engineering Company, one of Beijing's largest state-owned enterprises, the Hambantota Port Development Project distinguished itself mostly by failing, as predicted. With tens of thousands of ships passing by along one of the world's busiest shipping lanes, the port drew only 34 ships in 2012.

And then the port became China's.

Mr. Rajapaksa was voted out of office in 2015, but Sri Lanka's new government struggled to make payments on the debt he had taken on. Under heavy pressure and after months of negotiations with the Chinese, the government handed over the port and 15,000 acres of land around it for 99 years in December.

The transfer gave China control of territory just a few hundred miles off the shores of a rival, India, and a strategic foothold along a critical commercial and military waterway.

The case is one of the most vivid examples of China's ambitious use of loans and aid to gain influence around the world — and of its willingness to play hardball to collect.

The debt deal also intensified some of the harshest accusations about President Xi Jinping's signature Belt and Road Initiative: that the global investment and lending program amounts to a debt trap for vulnerable countries around the world, fueling corruption and autocratic behavior in struggling democracies.

Months of interviews with Sri Lankan, Indian, Chinese and Western officials and analysis of documents and agreements stemming from the port project present a stark illustration of how China and the companies under its control ensured their interests in a small country hungry for financing.

• During the 2015 Sri Lankan elections, large payments from the Chinese port construction fund flowed directly to campaign aides and activities for Mr. Rajapaksa, who had agreed to Chinese terms at every turn and was seen as an important ally in China's efforts to tilt influence away from India in South Asia. The payments were confirmed by documents and cash checks detailed in a government investigation seen by The New York Times.

• Though Chinese officials and analysts have insisted that China's interest in the Hambantota port is purely commercial, Sri Lankan officials said that from the start, the intelligence and strategic possibilities of the port's location were part of the negotiations.

• Initially moderate terms for lending on the port project became more onerous as Sri Lankan officials asked to renegotiate the timeline and add more financing. And as Sri Lankan officials became desperate to get the debt off their books in recent years, the Chinese demands centered on handing over equity in the port rather than allowing any easing of terms.

• Though the deal erased roughly $1 billion in debt for the port project, Sri Lanka is now in more debt to China than ever, as other loans have continued and rates remain much higher than from other international lenders.

Mr. Rajapaksa and his aides did not respond to multiple requests for comment, made over several months, for this article. Officials for China Harbor also would not comment.

Estimates by the Sri Lankan Finance Ministry paint a bleak picture: This year, the government is expected to generate $14.8 billion in revenue, but its scheduled debt repayments, to an array of lenders around the world, come to $12.3 billion.

“John Adams said infamously that a way to subjugate a country is through either the sword or debt. China has chosen the latter,” said Brahma Chellaney, an analyst who often advises the Indian government and is affiliated with the Center for Policy Research, a think tank in New Delhi.

Indian officials, in particular, fear that Sri Lanka is struggling so much that the Chinese government may be able to dangle debt relief in exchange for its military’s use of assets like the Hambantota port — though the final lease agreement forbids military activity there without Sri Lanka’s invitation.

“The only way to justify the investment in Hambantota is from a national security standpoint — that they will bring the People’s Liberation Army in,” said Shivshankar Menon, who served as India’s foreign secretary and then its national security adviser as the Hambantota port was being built.

An Engaged Ally

The relationship between China and Sri Lanka had long been amicable, with Sri Lanka an early recognizer of Mao’s Communist government after the Chinese Revolution. But it was during a more recent conflict — Sri Lanka’s brutal 26-year civil war with ethnic Tamil separatists — that China became indispensable.

Mr. Rajapaksa, who was elected in 2005, presided over the last years of the war, when Sri Lanka became increasingly isolated by accusations of human rights abuses. Under him, Sri Lanka relied heavily on China for economic support, military equipment and political cover at the United Nations to block potential sanctions.

The war ended in 2009, and as the country emerged from the chaos, Mr. Rajapaksa and his family consolidated their hold. At the height of Mr. Rajapaksa’s tenure, the president and his three brothers controlled many government ministries and around 80 percent of total government spending. Governments like China negotiated directly with them.

So when the president began calling for a vast new port development project at Hambantota, his sleepy home district, the few roadblocks in its way proved ineffective.

From the start, officials questioned the wisdom of a second major port, in a country a quarter the size of Britain and with a population of 22 million, when the main port in the capital was thriving and had room to expand. Feasibility studies commissioned by the government had starkly concluded that a port at Hambantota was not economically viable.

“They approached us for the port at the beginning, and Indian companies said no,” said Mr. Menon, the former Indian foreign secretary. “It was an economic dud then, and it’s an economic dud now.”

But Mr. Rajapaksa greenlighted the project, then boasted in a news release that he had defied all caution — and that China was on board.

The Sri Lanka Ports Authority began devising what officials believed was a careful, economically sound plan in 2007, according to an official involved in the project. It called for a limited opening for business in 2010, and for revenue to be coming in before any major expansion.

The first major loan it took on the project came from the Chinese government's Export-Import Bank, or Exim, for $307 million. But to obtain the loan, Sri Lanka was required to accept Beijing's preferred company, China Harbor, as the port's builder, according to a United States Embassy cable from the time, leaked to WikiLeaks.

That is a typical demand of China for its projects around the world, rather than allowing an open bidding process. Across the region, Beijing's government is lending out billions of dollars, being repaid at a premium to hire Chinese companies and thousands of Chinese workers, according to officials across the region.

There were other strings attached to the loan, as well, in a sign that China saw strategic value in the Hambantota port from the beginning.

Nihal Rodrigo, a former Sri Lankan foreign secretary and ambassador to China, said that discussions with Chinese officials at the time made it clear that intelligence sharing was an integral, if not public, part of the deal. In an interview with The Times, Mr. Rodrigo characterized the Chinese line as, "We expect you to let us know who is coming and stopping here."

In later years, Chinese officials and the China Harbor company went to great lengths to keep relations strong with Mr. Rajapaksa, who for years had faithfully acquiesced to such terms.

In the final months of Sri Lanka's 2015 election, China's ambassador broke with diplomatic norms and lobbied voters, even caddies at Colombo's premier golf course, to support Mr. Rajapaksa over the opposition, which was threatening to tear up economic agreements with the Chinese government.

As the January election inched closer, large payments started to flow toward the president's circle.

At least $7.6 million was dispensed from China Harbor's account at Standard Chartered Bank to affiliates of Mr. Rajapaksa's campaign, according to a document, seen by The Times, from an active internal government investigation. The document details China Harbor's bank account number — ownership of which was verified — and intelligence gleaned from questioning of the people to whom the checks were made out.

With 10 days to go before polls opened, around $3.7 million was distributed in checks: $678,000 to print campaign T-shirts and other promotional material and $297,000 to buy supporters gifts, including women's saris. Another $38,000 was paid to a popular Buddhist monk who was supporting Mr. Rajapaksa's electoral bid, while two checks totaling $1.7 million were delivered by volunteers to Temple Trees, his official residence.

Most of the payments were from a subaccount controlled by China Harbor, named "HPDP Phase 2," shorthand for Hambantota Port Development Project.

China's Network

After nearly five years of helter-skelter expansion for China's Belt and Road Initiative across the globe, Chinese officials are quietly trying to take stock of how many deals have been done and what the country's financial exposure might be. There is no comprehensive picture of that yet, said one Chinese economic policymaker, who like many other officials would speak about Chinese policy only on the condition of anonymity.

Some Chinese officials have become concerned that the nearly institutional graft surrounding such projects represents a liability for China, and raises the bar needed for profitability. President Xi acknowledged the worry in a speech last year, saying, "We will also strengthen international cooperation on anticorruption in order to build the Belt and Road Initiative with integrity."

In Bangladesh, for example, officials said in January that China Harbor would be banned from future contracts over accusations that the company attempted to bribe an official at the ministry of roads, stuffing $100,000 into a box of tea, government officials said in interviews. And China Harbor's parent company, China Communications Construction Company, was banned for eight years in 2009 from bidding on World Bank projects because of corrupt practices in the Philippines.

Since the port seizure in Sri Lanka, Chinese officials have started suggesting that Belt and Road is not an open-ended government commitment to finance development across three continents.

"If we cannot manage the risk well, the Belt and Road projects cannot go far or well," said Jin Qi, the chairwoman of the Silk Road Fund, a large state-owned investment fund, during the China Development Forum in late March.

In Sri Lanka's case, port officials and Chinese analysts have also not given up the view that the Hambantota port could become profitable, or at least strengthen China's trade capacity in the region.

Ray Ren, China Merchant Port's representative in Sri Lanka and the head of the Hambantota port's operations, insisted that "the location of Sri Lanka is ideal for international trade." And he dismissed the negative feasibility studies, saying they were done many years ago when Hambantota was "a small fishing hamlet."

Hu Shisheng, the director of South Asia studies at the China Institutes of Contemporary International Relations, said that China clearly recognized the strategic value of the Hambantota port. But he added: "Once China wants to exert its geostrategic value, the strategic value of the port will be gone. Big countries cannot fight in Sri Lanka — it would be wiped out."

Although the Hambantota port first opened in a limited way in 2010, before the Belt and Road Initiative was announced, the Chinese government quickly folded the project into the global program.

Shortly after the handover ceremony in Hambantota, China's state news agency released a boastful video, proclaiming the deal "another milestone along the path of #BeltandRoad."

A Port to Nowhere

The seaport is not the only grand project built with Chinese loans in Hambantota, a sparsely populated area on Sri Lanka's southeastern coast that is still largely overrun by jungle.

A cricket stadium with more seats than the population of Hambantota's district capital marks the skyline, as does a large international airport — which in June lost the only daily commercial flight it had left when FlyDubai airline ended the route. A highway that cuts through the district is traversed by elephants and used by farmers to rake out and dry the rice plucked fresh from their paddies.

Mr. Rajapaksa's advisers had laid out a methodical approach to how the port might expand after opening, ensuring that some revenue would be coming in before taking on much more debt.

But in 2009, the president had grown impatient. His 65th birthday was approaching the following year, and to mark the occasion he wanted a grand opening at the Hambantota port — including the beginning of an ambitious expansion 10 years ahead of the Port Authority's original timeline.

Chinese laborers began working day and night to get the port ready, officials said. But when workers dredged the land and then flooded it to create the basin of the port, they had not taken into account a large boulder that partly blocked the entrance, preventing the entry of large ships, like oil tankers, that the port's business model relied on.

Ports Authority officials, unwilling to cross the president, quickly moved ahead anyway. The Hambantota port opened in an elaborate celebration on Nov. 18, 2010, Mr. Rajapaksa's birthday. Then it sat waiting for business while the rock blocked it.

hina Harbor blasted the boulder a year later, at a cost of $40 million, an exorbitant rice that raised concerns among diplomats and government officials. Some openly peculated about whether the company was simply overcharging or the price tag ıcluded kickbacks to Mr. Rajapaksa.

y 2012, the port was struggling to attract ships — which preferred to berth nearby t the Colombo port — and construction costs were rising as the port began xpanding ahead of schedule. The government decreed later that year that ships arrying car imports bound for Colombo port would instead offload their cargo at ambantota to kick-start business there. Still, only 34 ships berthed at Hambantota ı 2012, compared with 3,667 ships at the Colombo port, according to a Finance Ministry annual report.

"When I came to the government, I called the minister of national planning and asked for the justification of Hambantota Port," Harsha de Silva, the state minister for national policies and economic affairs, said in an interview. "She said, 'We were asked to do it, so we did it.' "

Determined to keep expanding the port, Mr. Rajapaksa went back to the Chinese government in 2012, asking for $757 million.

The Chinese agreed again. But this time, the terms were much steeper.

The first loan, at $307 million, had originally come at a variable rate that usually settled above 1 or 2 percent after the global financial crash in 2008. (For comparison, rates on similar Japanese loans for infrastructure projects run below half a percent.)

But to secure fresh funding, that initial loan was renegotiated to a much higher 6.3 percent fixed rate. Mr. Rajapaksa acquiesced.

The rising debt and project costs, even as the port was struggling, handed Sri Lanka's political opposition a powerful issue, and it campaigned heavily on suspicions about China. Mr. Rajapaksa lost the election.

The incoming government, led by President Maithripala Sirisena, came to office with a mandate to scrutinize Sri Lanka's financial deals. It also faced a daunting amount of debt: Under Mr. Rajapaksa, the country's debt had increased threefold, to $44.8 billion when he left office. And for 2015 alone, a $4.68 billion payment was due at year's end.

Signing It Away

The new government was eager to reorient Sri Lanka toward India, Japan and the West. But officials soon realized that no other country could fill the financial or economic space that China held in Sri Lanka.

"We inherited a purposefully run-down economy — the revenues were insufficient to pay the interest charges, let alone capital repayment," said Ravi Karunanayake, who was finance minister during the new government's first year in office.

"We did keep taking loans," he added. "A new government can't just stop loans. It's a relay; you need to take them until economic discipline is introduced."

The Central Bank estimated that Sri Lanka owed China about $3 billion last year. But Nishan de Mel, an economist at Verité Research, said some of the debts were off government books and instead registered as part of individual projects. He estimated that debt owed to China could be as much as $5 billion and was growing every year. In May, Sri Lanka took a new $1 billion loan from China Development Bank to help make its coming debt payment.

Government officials began meeting in 2016 with their Chinese counterparts to strike a deal, hoping to get the port off Sri Lanka's balance sheet and avoid outright default. But the Chinese demanded that a Chinese company take a dominant equity share in the port in return, Sri Lankan officials say — writing down the debt was not an option China would accept.

When Sri Lanka was given a choice, it was over which state-owned company would take control: either China Harbor or China Merchants Port, according to the final agreement, a copy of which was obtained by The Times, although it was never released publicly in full.

China Merchants got the contract, and it immediately pressed for more: Company officials demanded 15,000 acres of land around the port to build an industrial zone, according to two officials with knowledge of the negotiations. The Chinese company argued that the port itself was not worth the $1.1 billion it would pay for its equity — money that would close out Sri Lanka's debt on the port.

Some government officials bitterly opposed the terms, but there was no leeway, according to officials involved in the negotiations. The new agreement was signed in July 2017, and took effect in December.

The deal left some appearance of Sri Lankan ownership: Among other things, it created a joint company to manage the port's operations and collect revenue, with 85 percent owned by China Merchants Port and the remaining 15 percent controlled by Sri Lanka's government.

But lawyers specializing in port acquisitions said Sri Lanka's small stake meant little, given the leverage that China Merchants Port retained over board personnel and operating decisions.

When the agreement was initially negotiated, it left open whether the port and surrounding land could be used by the Chinese military, which Indian officials asked the Sri Lankan government to explicitly forbid. The final agreement bars foreign countries from using the port for military purposes unless granted permission by the government in Colombo.

That clause is there because Chinese Navy submarines had already come calling to Sri Lanka.

Strategic Concerns

China had a stake in Sri Lanka's main port as well: China Harbor was building a new terminal there, known at the time as Colombo Port City. Along with that deal came roughly 50 acres of land, solely held by the Chinese company, that Sri Lanka had no sovereignty on.

That was dramatically demonstrated toward the end of Mr. Rajapaksa's term, in 2014. Chinese submarines docked at the harbor the same day that Prime Minister Shinzo Abe of Japan was visiting Colombo, in what was seen across the region as a menacing signal from Beijing.

When the new Sri Lankan government came to office, it sought assurances that the port would never again welcome Chinese submarines — of particular concern because they are difficult to detect and often used for intelligence gathering. But Sri Lankan officials had little real control.

Now, the handover of Hambantota to the Chinese has kept alive concerns about possible military use — particularly as China has continued to militarize island holdings around the South China Sea despite earlier pledges not to.

Sri Lankan officials are quick to point out that the agreement explicitly rules out China's military use of the site. But others also note that Sri Lanka's government, still heavily indebted to China, could be pressured to allow it.

And, as Mr. de Silva, the state minister for national policies and economic affairs, put it, "Governments can change."

Now, he and others are watching carefully as Mr. Rajapaksa, China's preferred partner in Sri Lanka, has been trying to stage a political comeback. The former president's new opposition party swept municipal elections in February. Presidential elections are coming up next year, and general elections in 2020.

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Although Mr. Rajapaksa is barred from running again because of term limits, his brother, Gotabaya Rajapaksa, the former defense secretary, appears to be readying to take the mantle.

"It will be Mahinda Rajapaksa's call. If he says it's one of the brothers, that person will have a very strong claim," said Ajith Nivard Cabraal, the central bank governor under Mr. Rajapaksa's government, who still advises the family. "Even if he's no longer the president, as the Constitution is structured, Mahinda will be the main power base."