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I. Introduction

The Kosovo Specialist Chambers (KSC) officially commenced its work in April, 2016, seventeen years after the crimes it hopes to prosecute were committed. The Chambers, together with the Specialist Prosecutor’s Office (SPO), have a specific mandate to prosecute certain trans-boundary and international crimes committed during and following the 1998-1999 Kosovo War, in which the former Federal Republic of Yugoslavia (FRY, today Serbia and Montenegro) fought the Kosovo Liberation Army (KLA) for control of the territory of Kosovo. Kosovo had formal autonomy within Serbia when it was a republic of Yugoslavia, but when Yugoslavia’s six republics separated in the 1990s, tensions increased and full-scale war erupted. In June of 1999, Slobodan Milosevic accepted NATO’s terms for ending the war and over the next few months all involved parties withdrew and disarmed. The United Nations Interim Administration Mission in Kosovo (UNMIK) was established almost immediately.

With support from the international community, Kosovo eventually declared independence in 2008. It has struggled to gain full recognition as a state, with only 114 countries, three of the five permanent UN Security Council members, twenty-three out of the twenty-eight EU members, and thirty-four out of the forty-seven Council of Europe
members fully recognizing it. Notably, Serbia still does not recognize Kosovo as a country. Even in the EU and other international institutions, Kosovo is dealt with under the concept of "status neutrality," so that it can participate and get benefits from these organizations, but cannot fully accede to them. Internal control also remains an issue for the nascent Kosovo government: the country particularly lacks authority over its northernmost region, which is contiguous with Serbia and populated primarily by Serbs. This region rejected Kosovo's independence from Serbia, and still considers themselves to be part of Serbia. Serbia gives covert and informal aid and support to this region, as it is not allowed to have any formal administration or law enforcement role there. It contains approximately 2.5% of Kosovo's population (between 40 to 50,000 people). Kosovo has been attempting to build its state capacity and claims to sovereignty since its inception.

**II. Background**

During the time of the war and directly following the war, there were a number of atrocities committed on both sides. Despite the efforts of the international community and Kosovo courts thus far, impunity for crimes committed during this time remains a serious problem. As part of the development of Kosovo's statehood, the international community, NATO, and the EU have provided significant support for developing the rule of law there through judicial mechanisms and institutions. The latest attempt to address impunity is through the Kosovo Specialist Chambers and Specialist Prosecutor’s Office.

**Impunity for crimes committed during the time of the war and directly following the war, remains a serious problem.**

This paper will discuss a central legal and political question raised by these new judicial mechanisms: how does the constitutional context of these bodies interact with theories of sovereignty, and what does the creation of this court say about the sovereignty of Kosovo?

A Council of Europe Parliamentary Assembly report (hereafter CoE report) published on January 7, 2011 investigated and brought crimes to light, many of which had been alleged in the 2008 memoires of Carla del Ponte (former ICTY prosecutor). The crimes asserted by Del Ponte included kidnappings, forced disappearances, organ trafficking, and involvement with organized crime. Following up on these allegations, the CoE report found that towards the end of the conflict in Kosovo and continuing after its official end, one powerful faction of the KLA known as the Drenica Group, which had taken control of the KLA’s organized criminal enterprises connected to Albania, was responsible for running a coordinated and well-established network of detention facilities used for holding Serb, Roma, other minority, and Kosovar Albanian “traitors” to the KLA. Primarily, they were responsible for running an extensive ad hoc network across Albania of detention facilities, as well as for the treatment of the prisoners in those facilities, private residences and in one medical reception center. The CoE investigation found that one safe house in particular, a farmhouse in Fushë-Krujë, Albania, was the center of an organ trafficking operation in which prisoners were likely to lack of control over the territory. In 2009, the EU took over the international investigation and prosecution of war crimes and other serious crimes in Kosovo through EULEX, whose mandate lasted until 2016. Only a small number of cases were successful under EULEX, and most perpetrators were not able to be held responsible for their actions.
killed and their organs (kidneys and others) were posthumously removed and sent abroad through the nearby Tirana airport. The CoE report doesn’t simply make allegations, but further calls upon Kosovo to punish the perpetrators, many of whom are currently in places of high influence: “There cannot and must not be one justice for the winners and another for the losers. Whenever a conflict has occurred, all criminals must be prosecuted and held responsible for their illegal acts, whichever side they belonged to and irrespective of their political role.”

A new body within EULEX, the autonomous Special Investigative Task Force (SITF), was established in 2011 to investigate the allegations in the CoE report, and they made official allegations in July 2014. This body, headquartered in Brussels and staffed with internationals, was removed from the domestic Kosovo context to facilitate its autonomy and effectiveness. They nevertheless experienced a number of challenges, as the crimes had been committed almost fifteen years prior, and both evidence and willing witnesses were difficult to find. However, they were able to conduct an investigation thorough enough to file an indictment against “certain senior officials of the Kosovo Liberation Army.” The report found broadly that the KLA carried out an organized and directed ethnic cleansing campaign against minorities south of the Ibar River, including acts such as: “unlawful killings, abductions, enforced disappearances, illegal detentions in camps in Kosovo and Albania, sexual violence, other forms of inhumane treatment, forced displacement of individuals from their homes and communities, and desecration and destruction of churches and other religious sites.”

They also found, to the CoE report allegations, that KLA factions committed crimes against humanity “in a sustained campaign of violence and intimidation through 1998 and 1999 directed at Kosovo Albanian political opponents, which also included acts of extrajudicial killings, illegal detentions, and inhumane treatment.” They confirmed the organ trafficking allegations, yet described the small scale on which they were conducted. SITF anticipated charges could be made under violations of war crimes, crimes against humanity, and various domestic Kosovo laws such as murder. Because these crimes are violation of international humanitarian law, there is no statute of limitations as there would be for some domestic offenses. For the first time, reports of these crimes were planned to be brought for prosecutorial review, and they planned to bring these indictments through the Specialist Prosecutor in the context of the Kosovo Specialist Chambers. These prosecutions are meant to fill the jurisdictional hole left by the ICTY, in which post-war crimes were not able to be prosecuted. These were primarily perpetrated by the KLA and their affiliates. “In the end,” the Chief Prosecutor, careful to specify that this prosecution would not be about any type of group punishment for Kosovar Albanians, wrote, “this was solely about certain individuals in the KLA leadership using elements of that organization to perpetrate violence in order to obtain political power and personal wealth for themselves, not about any larger cause. And, it is as individuals...
that they must bear responsibility for their crimes.”

One of the key reasons why impunity has remained a serious problem in Kosovo for the past seventeen years is a number of societal practices. The CoE report indicates that it is difficult to get truthful testimony, let alone testifying witnesses, for the following reasons: the strong sense of loyalty Kosovars have to their clans, a behavior which translates over to members within the same organized crime groups; the strength of the concept of honor in traditional Kosovar society; the power of Albanian organized crime networks; the serious reality of witness intimidation (in ICTY prosecutions, witnesses for KLA trials were found dead and justice was not ultimately served); and the lack of confidentiality of sources, as local interpreters have shared information in confidential conversations with external sources. The SITF investigation findings also intimated that witness intimidation was a serious obstacle to their progress, claiming that “there is probably no single thing that poses more of a threat to the rule of law in Kosovo and to its progress towards a European future than this pervasive practice.” Thus, the KSC and SPO’s goals are to provide a new model, which fills the central need of creating accountability under the rule of law.

A second goal of the Chambers is to provide Kosovo with legitimacy. The court hopes to strengthen Kosovo’s judicial capacity and serve as a vehicle for demonstrating Kosovo’s commitment to non-discriminatory human rights. This is because Kosovo is constantly in danger of losing what little claim to sovereignty it has. After entering into a period of “international trusteeship” under the UN, NATO, and the EU in 1999, and then international supervision by the EU and US upon independence in 2008, Kosovo has been building up its state institutions gradually.

Kosovo notably represents a key pillar in the European enlargement strategy, but also one of its greatest security risks due to the prevalence of violent regional conflict, state failure, and organized crime. EU involvement in Kosovo starting in 2008, following from Kosovo’s independence settlement plan, was primarily to support and take on some functions of rule of law authorities. As is true of EU expansion across the eastern part of the continent, human rights promotion is central to their work there. The theory of change in Kosovo is that direct involvement in legal institutions will have the effect of directly promoting human rights and ensuring that the European Convention on Human Rights and other international human rights law are intentionally built into the workings of the judicial institutions. In order to imbue Kosovo with the legitimacy it needs to stand on its feet, but also to be compatible with the EU it plans to join, the EU’s investment is geared towards making Kosovo a better neighbor and one day a strong member.

In order to achieve the goals laid out here and in hopes of overcoming the potential difficulties discussed, the KSC and SPO are designed in a very specific way. They are considered to be an internationalized tribunal, meaning that they seek to uphold domestic law and work...
within the domestic institution of the Kosovo court system, yet they contain several internationalized elements. They are temporary juridical bodies with a specific mandate to prosecute crimes against humanity, war crimes, and violations of other Kosovo laws that were committed or commenced within the territory of Kosovo between January 1, 1998 and December 31, 2000. The jurisdiction extends to those who are of Kosovo or FYR citizenship or to those who committed crimes against those of Kosovo or FYR citizenship. The chambers are structured as chambers of the existing national Kosovo court system, with the addition of a prosecutorial arm which works closely with Kosovo law enforcement.

However, the European Union has played a central role in funding, staffing, and housing the court with EU money, international judges and personnel, and a building located in the Hague. The personnel of the court is required by law to be international: all judges are from European and North American countries other than Kosovo. The president of the Chambers is Bulgarian judge Dr. Ekaterina Trendafilova, the registrar is the Irish lawyer Dr. Fidelma Donlon, and the special prosecutor is American prosecutor David Schwendiman. The prosecutions are expected to be brought primarily against former members of the KLA. As stipulated in the law, there will be an additional seat of the chambers in Kosovo itself, but it is expected that most of the work will be done in The Hague. The term of the court will last for five years from its founding. It is hoped that this internationalized body, established constitutionally within Kosovo’s legal system but with a very limited mandate for action, will help finally resolve Kosovo’s legacy of impunity and assist the country in moving forward with stronger institutional capacity.

III. Kosovo’s Constructed Sovereignty

Although the KSC and SPO were developed and established according to constitutionally valid procedures, there remains the underlying question of sovereignty. The KSC and SPO are not an international tribunal, nor are they a fully domestic court. They sit within a broader context—one in which the EU is actively reshaping sovereignty.
roles in various European countries and across the European continent. The interaction between the EU and state sovereignty also appears to operate beyond the types of checks to national sovereignty that have already existed. Certainly, the KSC is novel in its conception and as such warrants an analysis on the court’s implementation as it relates to the sovereignty of Kosovo.

If such intimate involvement of the international community in the domestic institutions of a state can be declared constitutional, what does this say about the sovereignty of Kosovo? Is, perhaps, Kosovo incapable of possessing sovereignty? Is sovereignty an unusable construct in the modern European context? This section will explore what the creation of the KSC and SPO say about Kosovo’s sovereignty under the law. It will posit the theory that regardless as to whether Kosovo was essentially “coerced” into accepting the KSC and SPO, the formation of this court still represents a demonstration of constructed sovereignty rather than a removal of that sovereignty.

III. a. Sovereignty

Sovereignty is a concept in law which has several applications, and therefore implications, for state powers. Thus, its exact definition can be hard to pin down, because the theories conveyed through the word are constantly debated. The legal definition of sovereignty implies the supreme authority to make laws in a governing territory, as well as autonomy of decision making. With respect to domestic constitutional law, this delegates power to certain actors within a state to make autonomous and binding decisions for that state. With respect to international relations, the modern concept of a sovereign state delimits autonomous, cohesive state actors which are recognized as such to be the single force on the international stage. Sovereignty is thus protected under international law through many vehicles, and states often seek to explicitly declare and preserve their own sovereignty through their domestic constitutions. The UN Charter, the European Convention on Human Rights, and the Vienna Convention on the Law of Treaties all explicitly orient themselves around the concept of sovereignty.

For the country of Kosovo, the concept of sovereignty is very important. As they sought, and continue to seek, full independence from Serbia, they have demanded legal sovereignty within their borders and pursued autonomy and recognition on the international level. As such, the concept of sovereignty was a driving force in the writing of their Constitution (Article 2 and Article 20). This increases the importance of questions about the KSC and how it interacts with Kosovo’s sovereignty. The key sovereignty questions raised by the amendment and the law, as described above, include whether the granting of power to uphold human rights to an internationally staffed institution with a different structure from the similar Kosovo institutions and autonomy of action takes the place of a task that the people of Kosovo should be exercising. Also, there is the question of whether the Constitution and government institutions are actually agents of the people of Kosovo and whether through this process, the power of the current internationalized Kosovo institutions in creating additional ones prolongs Kosovo’s mission to gain sovereignty and perhaps dooms it.

III.b. Foundational Theories: Sovereignty as a Construct

Yet what does sovereignty really mean in today’s world? Although positivist, more traditional theories claim that it is a basic rule which defines the functioning of the modern state system, the concept is actually a social one, as it is invoked with respect to states and how they relate to other states. This paper will begin from the social constructivist theoretical foundation that sovereignty is a social construct, rather than an absolute truth or natural law. Writing on this very topic, Thomas Biersteker and Cynthia Weber define sovereignty as “a political entity’s recognized right to exercise final authority over its affairs” and that this right is reliant on the concept of the state—it requires the elements of authority, territory, population, and recognition, and yet does not take the same defined or uniform shape in every context. Scholars such as F.H. Hinsley declare sovereignty “a fiction.” Alan James has called it “a legal and not a physical reality.” Most agree that sovereignty is the concept behind which the modern state system is organized, and yet it is not an absolute truth, not a given, fixed fact of life. Political actors have created the idea of sovereignty in order to organize widely recognized authority across territories and populations, but there is nothing inevitable about this concept or the form in which it has been traditionally theorized to take.
Thus, sovereignty can be changed and developed based on the meaning that people give to it within the context of their own lives. In fact, sovereignty is constantly being redefined and renegotiated within different contextual boundaries. Scholars argue that these contexts are numerous. Notably, Alexander Wendt has written that a variety of interests help to create identities, then these identities build national self-interests which motivate behavior. These national self-interests include physical survival, autonomy, economic well-being, and collective self-esteem. Sovereignty, the recognition of sovereignty, and the demonstration of sovereignty both nationally and internationally is thus dependent on interests. His work highlights a central concern for sovereignty in the context of the modern European Union: whereas sovereignty typically indicates autonomous power, many influences play a role in the “sovereign” decisions of states, and no state can ever be truly independent in a real-world context.

Kosovo provides an interesting case study demonstrating constructed sovereignty as opposed to positive sovereignty. The new state’s concept of sovereign Kosovo is what the people, dependent on its interests and identities, determines sovereignty to be. This is demonstrated clearly by the fact that Kosovo fought the Former Yugoslavia for its sovereignty (authority over its own territory and peoples, with recognition and protection of the rights of those peoples), but has been very selective about where that sovereignty applies. Their declaration of independent control is strictly upheld with respect to how they regard their relationship with Serbia, but looser in engagement with the European Union and even neighboring Albania. The state has chosen to limit its sovereignty by giving some authorities over to certain groups (the EU) in search of protection from encroachment on that sovereignty by other groups (Serbia).

If it can be claimed that Kosovo’s sovereignty is constructed, then it may be argued that Kosovo itself defines what that sovereignty means.
The greatest challenge to this way of thinking is in determining whether it is actually the Kosovar people who are doing that construction. As noted previously, the consistent and prolonged international involvement in Kosovo, especially with regards to building state institutions, may indicate that the international community and Kosovo portray internationalized decisions as ones made from a position of sovereignty. There may be significant domestic support for any given project or institution, yet this internationalization may nevertheless represent an instance of “coercion” by the international community in which regional interests supplant national ones. This is particularly relevant to the conversation surrounding the implications of the KSC and SPO for Kosovo’s sovereignty.

III. c. Kosovo’s Sovereignty in the EU

Human Rights Context

The context of the European Union adds a further layer to understanding Kosovo’s constructed sovereignty. In the EU, it has become necessary to regard the sovereignty of states in a new way. There has been an explosion of literature reimagining what sovereignty means in a EU context, as the autonomy of nation states has proved to be necessary even whilst EU integration has taken over several important functions of traditional state power, reaching even directly to citizens. Although one might argue that European states have abdicated sovereignty to the EU by giving up the power to retain complete control over their affairs, constructivist theories would indicate that rather the states had transferred power through the exercise of their sovereignty and have at any time the authority to take it back.40

Rather than the supranational authority of the EU overtaking national sovereignties in Europe, the EU has instead relied on a pluralistic system of multiple, divided sovereignty.41 In their introduction to the book Sovereignty in the Shared Legal Order of the EU, Luchtman, Van den Brink, and Scholten write that “The Member States need the EU to achieve goals which they cannot achieve individually; conversely the EU is dependent on its Member States for the realization of the Union’s goals.”42 In areas of shared policy, the EU and its Member States have both a “vertical relationship,” in which policies are introduced by the EU to Member States and vice versa as well as a “horizontal” relationship which requires cooperation across borders.43 EU policies and rules may come into conflict or tension with national ones, and in those cases, the EU is supreme; and yet the national constitutions have been proven to determine the extent to which this obligation is binding on the states.44 Through conflict, the limits of these respective authorities are shaped.

One arena in which this dialogue occurs, particularly for newer Member States and those awaiting membership, is human rights. In the European context, a set of “core values” forms the overarching basis of the legal order, and is supported by constitutional values which define how these core values act in relation with Member States' domestic legal systems. Some of these core values, as defined by Gerbrandy and Scholten, include human dignity, freedom, equality and non-discrimination, rule of law, justice, and peace.45 These values, upheld by the Treaty on the European Union, the Charter of Fundamental Rights of the EU, and the ECHR.46 These values are held supreme over all EU Member States through concepts such as subsidiarity, direct effect, primacy, and institutional balance.47

Through the process of EU integration, the role of the core values in both the EU broadly and the nation states domestically evolves, as the values come into conflict with each other both vertically and horizontally.48 As such, the EU and the integrating nation states are constantly constructing the bounds of legal sovereignty. National sovereignty remains important, yet states who accept the core values of the European Union and commit to upholding them are in the ongoing process of negotiating what EU and national authorities mean for the implementation of those values. Thus, as Konrad Schiemann wrote, the EU “creates new possibilities of imagining, and thus of subsequently realizing, political order on the basis of a pluralistic rather than a monolithic conception of the exercise of political power and legal authority.”49 Nowhere is this clearer than in the globalization (or regionalization, in this case) of human rights. Many argue that these rights and the supranational institutions which uphold them inevitably weaken state sovereignty, and yet the authority and institutions of nation states remain necessary to actually enforcing these rights.50

Kosovo is not currently a Member State, nor is it even recognized as a state by the EU. However, its close
relationship with and plans to join the EU put it in a similar category with its Western Balkan neighbors who are EU candidate countries. One might consider that Kosovo is one place where the evolution of sovereignty and jurisdictions with respect to human rights is currently evolving through a discursive process: the EU and Kosovo are together determining the limits on the internationalization within Kosovo’s domestic system in order to pursue human rights. However, the EU is doing this in a novel way. Rather than following a policy of subsidiarity, the EU is experimenting with the effective internationalization of a domestic court in a place that is otherwise is under its extraterritorial jurisdiction. With respect to the core values and supremacy of EU human rights law over domestic jurisdictions, this may be giving a significant domestic power over to EU staff, yet it is also a new step in the process of negotiating the limits of the EU’s power within Kosovo. As the specific jurisdiction and powers of the KSC and SPO are clearly defined in Kosovo law, whether Kosovo will gain a strengthened claim to sovereignty will be determined on the one hand by the point to which the EU abides by the terms of the agreement and does not overstep its granted jurisdiction, thus explicitly violating sovereignty; on the other hand by how successfully Kosovars cooperate with the court, thus intentionally claiming the gains of the court as their own. As Kosovo is a country with regional conflict and contested borders, the EU has significantly more power in this negotiation as they offer the promise and potential assurance of legitimacy for Kosovo, something they desperately need.

III. d. Foundational Theories: What Contemporary Classical and Critical Theories Can Say About Kosovo’s Sovereignty

Given that this paper has thus far established Kosovo’s constructed sovereignty, with the involvement of EU human rights values being critical, how can critiques that Kosovo’s institutions are illegitimate be addressed? Keeping in mind that Kosovo’s goals are to gain autonomy and access to the EU, and that the EU’s goals are to promote security and stability, two theoretical perspectives shed light on how the KSC and SPO impact the construction of sovereignty. The two interpretations essentially agree that the delegation of sovereignty is equivalent to Kosovo’s exercise of that sovereignty, although both add different facets to the conversation and raise different types of critiques which shed light on the situation.

The classical approach to sovereignty, which will not be applied to the case of Kosovo in this paper, states that the sovereign possesses and exercises unlimited power within its jurisdiction. It has absolute power to make decisions on every aspect of life in its territory. A state is a sovereign power if it is not bound by other powers externally and is independent of every other power. Furthermore, the condition of sovereignty comes from the people of a state and is manifested in the parliament as independent power and control. This control is absolute and cannot be infringed upon by any external power. The strictly classical approach is not as relevant in today’s world as it becomes clear that international law and the EU are forcing states to redefine how sovereignty works within the larger picture.51

Therefore, the first relevant theory is the contemporary legal interpretation of sovereignty. It takes many of the stated assumptions of the classical approach to be true. However, it adds that in fact, this authority can be shared. In this theory, sovereignty can be delegated to and removed from other powers and institutions by a sovereign power itself. This is particularly relevant in light of the EU, which claims a new understanding and a transcendence of the concept of the sovereign state. A key understanding from this contemporary interpretation is that sovereignty can be limited only by actions of the state itself. If the state has absolute control, it thus has absolute control to delegate power and to take that power back at any time as consistent with its own internal constitutional order. This is theoretically true in the context of both the state’s own internal control as well as its external role in international relations. Thus, binding oneself to international law, supranational institutions, or treaties is actually a manifestation of sovereignty rather than a limiting of it. One counterargument to this theory is that international law always trumps national law and therefore there can never be any true sovereignty; yet it has been continually proven that regardless of the existence of international law, sovereign states nevertheless have the decision making and enforcement power, whereas international law still has never managed any enforcement independent of sovereign states.52
Theoretically, therefore, the fact that Kosovo can make the decision to delegate some of its domestic powers to the European Union is an expression and confirmation of the sovereignty it possesses. In particular, the fact that Kosovo made this decision democratically, through the proper constitutional procedure and with approval of the legislature, supports this interpretation. As it strives to develop the capacities of a full state, Kosovo seeks to have authority over its territory and peoples, as well as recognition on the international stage. Kosovo has demonstrated their ability to engage with the EU at the level of an international agreement through this process, making a decision to transfer some specific and limited powers to the EU which could only be made by a state which is sovereign. In the process of developing its state capacity, it is moments such as these in which sovereignty is exercised which contribute to the specific contextual construction of sovereignty.

There remain some caveats to this interpretation, however. Is there something different about Kosovo than there is about other states? For example, given the international trusteeship over Kosovo, could it be the case that they are making decisions which are seemingly exercises of sovereignty, but in actuality coerced in order to realize larger goals? That this “decision” may have been more coerced than a democratic showing of Kosovars is an important critique. Yet Kosovo had other options besides accepting these chambers and offices and could have instead chosen to prosecute the crimes committed during the Kosovo War by Kosovar Albanians wholly domestically. Instead, they have actively chosen to involve the European Union and managed to get the required votes in the Assembly at every step of the way. Procedurally, this is a legitimate expression of sovereignty, according to the contemporary classical interpretation. Yet this theory cannot fully explain the rationale for Kosovo to limit its sovereignty. In order to make such a tradeoff of authority, there must be some compelling national interest.

In the second relevant theory, the critical interpretation of sovereignty in international law, sovereignty possesses three characteristics: control, the capacity to act, and responsibility. This perspective adds an additional layer of purpose, the responsibility that a state has for its own actions to its own people and to the international community. The international community can actually play a key role in helping states develop that responsibility. Thus, by actively choosing to limit its own sovereignty in certain circumstances, a state may be in fact exercising its sovereignty because it is being responsible to its people and to the international community. Echoing the discussion on human rights above, James Crawford argues that the distinction between domestic and international authority becomes “relative” with the promotion of human rights, as they have supplanted much of state authorities, but that they have done so in a broad way which gives states the responsibility to uphold those specific values but a wide latitude in which to craft policies to get them there. Human rights rather “qualify” or “reinforce” rather than “displace” state sovereignty.

The critical interpretation provides a fuller explanation for why Kosovo’s decision to transfer some of its functions over to the EU is a key event in the construction of its sovereignty. This theory implies that...
through limiting its powers, Kosovo is not only demonstrating their control and capacity, but demonstrating further their responsibility to all people in Kosovo, to the European Union they wish to be a part of, and to the larger global community in their commitment to the impartial application of justice. One critical component of sovereignty is that states are recognized as sovereign: as Kosovo seeks to gain this recognition, both from states who refuse to recognize it and from states who are making slow progress in their best efforts to aid Kosovo towards full and independent capacity, it must make certain demonstrations of its commitment to achieving that capacity. Based on the language used by President Jahjaga, the Constitutional Court, and relevant politicians as described in Part III, it becomes clear that this is the case. Kosovo actually needs this external recognition to exist, and thus it is ready to create an independent institution of an international nature, which will include international jurors and staff members, within its domestic court system. This is not typical. As it wishes to secure a future as a sovereign state in the context of the European Union, in particular, where human rights and impartial judicial systems are held at high value, this is a way for Kosovo to develop its sovereignty with great impact.

Although this more fully explains Kosovo’s choice to implement the KSC and SPO, there also exist caveats to this theory. This choice could still fail to be an expression of sovereignty. Will the decisions of an international body, particularly after eight years of independence under international supervision and with so unpopular a mandate, be respected? Their basis of legitimacy in Kosovo only exists as long as the people of Kosovo demand it remains. Changes in politics, such as the results of the snap elections held on June 11, 2017, may have a significant impact on the way this court operates and on its popular support. At this point, despite international involvement, it appears that this institution has been an earnest attempt by the Kosovo people to garner recognition; its popular legitimacy going forward has yet to be proven.

The KSC and SPO illuminate the construction of a new type of sovereignty, both a European one and a Kosovar one, which is created through decisions, contexts, and dialogues. Although the idea exists that sovereignty means total control and autonomy over one’s affairs, the case of Kosovo helps to open the classic concept up to new possibilities of how states and demonstrate and build genuine and enforceable recognition. This interpretation is not definitive, as the way the court is perceived and the effectiveness of its operations have not yet been realized. At this moment, however, the KSC and SPO hold the promise of helping Kosovo to one day attain full sovereignty.

IV. Conclusion

Kosovo is attempting to construct itself as a state, a process which takes time and significant effort. It is also likely to take a series of sacrifices. In the hopes that the EU can help Kosovo strengthen its institutions in the long term, solutions which temporarily limit Kosovo’s sovereignty to demonstrate its responsibility in effect contribute to that sovereignty and help Kosovo to become the state it desires to be. There is a case to be made for the KSC itself to communicate these gains clearly to the people of Kosovo, reinforcing the already convincing statements prominent Kosovars have made in support of the court.

However, this action will mean little if the specialist chambers and prosecution are unable to be effective. Currently, there is a tension between the EU promoting the rule of law in Kosovo, and still indirectly encouraging corruption by having supported undemocratic leaders both in Kosovo and throughout the region. Furthermore, there remains significant doubt that even this court will be able to prevent witness intimidation. Finally, greater investigation should be done into the motivations and decision making points of the political actors involved in the creation of these courts in order to understand how the construction of sovereignty is actually operating on an individual-based level. Given the political sensitivity surrounding this issue, it is likely to take some time for these accounts to come to light.

Despite the best efforts of the international community, Kosovo’s sovereignty will ultimately construct itself through the way that Kosovars interact with the court. If they are able to fully comply with its authority, it may have the power to strengthen Kosovo’s voice on the international stage as well as in its domestic law enforcement. If not, the battle for a fully independent Kosovo will wear on.
Endnotes

2. Ibid., 64.
5. Ibid., 68.
6. Ibid., 70.
10. Ibid., 125.
12. Ibid., 21.
13. Ibid., 24.
16. Ibid., 2.
17. Ibid., 2.
18. Ibid., 3.
20. Ibid., 4.
21. Ibid., 7.
22. Parliamentary Assembly of the Council of Europe, "Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo," 7, 12.
27. Ibid., 99-102.
29. Assembly of the Republic of Kosovo, Law on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015, Law No. 05/L-053.
30. Third parties, such as the United States, have also contributed funding.
35. Ibid., 2-3.
36. Ibid., 9.
37. Ibid., 1-11.
38. Ibid., 11.
42. Ton van den Brink, Michiel Luchtman, and Miroslava Scholten. "Sovereignty in a Shared Legal Order: On the Core Values of Regulation and Enforcement in the EU." In Sovereignty in the Shared Legal Order of the EU. (Cambridge: Intersentia, 2015), 1.
43. Ibid., 2.
46. Ibid., 17.
47. Ibid., 20.
48. Ibid., 24-27.
50. Priban, Sovereignty in a Post-Sovereign State, 44-46.
54. Ibid., 121-122.
55. Ibid., 122.
Al-Qaeda in Syria and Recommendations for US Foreign Policy in the next year

by Timothy Davis
The purpose of this paper is to analyze the frequent rebranding efforts of Hayat Tahrir al-Sham (HTS) and its affiliation to al-Qaeda. Specifically, how should the United States tailor its foreign policy in the next year to address the growing influence of Hayat Tahrir al-Sham?

**Scope Note**

This paper inquires:

1. Even though Hayat Tahrir al-Sham has claimed to not be affiliated with Al-Qaeda, do its actions and stated motivations say otherwise?
   a. Is it instead just a rebranded AQ in Syria?
2. How should US foreign policy, if at all, be tailored to HTS/AQ in Syria in the next year?
   a. What are the potential responses of Turkey, Iran, Russia, and Syria, and how should the US react to those responses?

This forward leaning analysis provides recommendations for one year’s time. This time frame was chosen because six months was too soon for any meaningful change and two years was too far for predictions to be useful. While this paper analyzes the larger countries operating in the region, it does not observe smaller state interests or non-state actors interests. It will not look at individual actors involved (leaders, spokesmen, etc.). It does not discuss the military movements of HTS, nor the deeper levels of its salafi jihadist ideology. Overall, it will precisely look at what is necessary to efficiently determine if HTS is an affiliate of al-Qaeda and what the US policy reaction should be.
Key Analytic Judgement

Since 2011, Jabhat al-Nusra has rebranded itself twice: the first time into Jabhat Fateh al-Sham, and the second time (and current iteration), into Hayat Tahrir al'Sham. It has claimed to be unaffiliated with al-Qaeda, yet it continues to utilize strategies and seek goals that are al-Qaeda particular. Specifically, it aims to create a unified civil administration in the unregulated Idlib province in Syria. The United States should militarily target HTS allies, provide aid to those who give information against it and remove aid from those who aid it, and use the rebranded name in conjunction with the name al-Qaeda in Syria to not forget that they are the same. The US should also conservatively anticipate that HTS will not be defeated in one year, but should be directly confronted so the threat of its rise to governance does not become a reality.

Background

Al-Nusra Front was founded in 2011 by a Syrian national with the assistance of the Islamic State of Iraq. In 2013 al-Nusra declined allegiance to ISIS (the Islamic State of Iraq and Syria) and pledged allegiance to al-Qaeda and its leader Ayman al-Zawahiri. In July 2016 Al-Nusra renounced its affiliation with al-Qaeda and rebranded itself as Jabhat Fateh al-Sham. In early 2017 it merged with four smaller salafi jihadist groups to become Hayat Tahrir al-Sham (HTS). It merged with Jabhat Ansar al-Din, Jaysh al-Sunna, Harakat Nour al-Din al-Zinki, and Liwa al-Haqq. These groups had similar ideals and/or had an established working relationship with al-Nusra. The group’s stated goals were to be removed from American terrorism lists, to create an internationally recognized civil administration in the de-escalation zone of Idlib, Syria, and to overthrow Syrian President Bashar al-Assad by uniting the opposition groups under its umbrella. The merger was also meant to combat al-Sham’s rival in the region- Ahrar al-Sham. It aimed to attract Ahrar al-Sham followers to its banner and defeat the remaining members. HTS feared the growing power of Ahrar, who could then potentially eliminate HTS and its allies in the region.

In July 2017, Jabhat was able to reach its original goal of defeating Ahrar. The defeat of Ahrar cemented HTS’s power in the Idlib region of Northern Syria by monopolizing specific points of interest, such as: border crossings, regional sharia courts, and aid-funded humanitarian service providers. Since that time Jabhat has experienced a series of defections by Nour al-Din, Jaysh al-Ahrar, online jihadist celebrities, preachers, and jihadist commanders.
It is now back to the foundational core of Jabhat Fateh al-Sham, while still being called Hayat Tahrir al-Sham, and continues to cultivate support, power, and legitimacy in Syria.

Analysis/Discussion

Rebranding

The merge of Jabhat Fateh al-Sham and its allies into Hay’at Tahrir al-Sham has been denounced as an attempt on the part of Al-Qaeda in Syria to rebrand itself. Despite objections raised by HTS supporters, there is little difference between HTS, Jabhat Fateh al-Sham, and Jabhat al-Nusra regarding goals and operational methods. Each rebranded iteration of al-Qaeda in Syria acted as a phase geared towards creating an Islamic emirate in Syria.

Jabhat al-Nusra (which means “support front”) was the first phase, where the group sought to act as a support front for the Syrian local audience. It attempted to gain the trust of the Syrian opposition groups and to appear as a fundamental Syrian rebel group as opposed to a group with a jihadist ideology. The goal was to embed itself into the Syrian opposition so it could begin its second phase.

As the movement gained success, it began its second phase by rebranding itself as Jabhat Fateh al-Sham. This pivot was geared towards rising above other Syrian rebel groups by becoming a mass popular movement and mainstream option for the local Syrian audience to accept and support. It gained support through controlled pragmatism and emphasizing support strategies of the local population and rebels. It attempted to gain popular support by stating that it was formally cutting ties with al-Qaeda.

The alliance with other salafi jihadist Islamist groups and formation of HTS was the third phase of al-Qaeda in Syria’s rebranding. HTS declared itself to be an “independent entity and not an extension of former organizations and factions”- an attempt at further distancing and rebranding itself from al-Qaeda. The merge was meant to create a stronger overall force, fold in would-be competitors, and divert attention away from the core Nusra/al-Qaeda group- all in the name of achieving the overall goal of creating an Islamic emirate in Syria.

As a branch of AQ

HTS utilizes a localized version of the global Al-Qaeda strategies and tactical ideologies. It does so by integrating itself into the area (in this case the Syrian insurgency) to create a popular support front with the end goal of creating an Islamic emirate or government. It provides material goods such as electricity and water, while also acting in minor governance roles via controlling market prices for basic goods like food. It also issues
The relationship between Al-Qaeda and ISIS

The future of HTS, as a branch of al-Qaeda, will “largely be defined by the competition between” it and ISIS. To separate itself from the failure of ISIS and distance itself from being equated with the group, al-Qaeda has pursued opposing tactics. For instance, al-Qaeda used its tactics of infiltrating members into other groups and governances to cultivate grassroots support in the Idlib province where ISIS has lost influence. It has also recruited former ISIS fighters and does not declare other jihadist factions to be apostates, or takfir, which ISIS uses as a main strategy against opponents. Al-Qaeda acts as a moderate force, whereas ISIS is known for its “uncompromising strategy of sectarianism, barbarity, and conquest.” ISIS has pursued tactics of mass executions, rape, and beheadings against Shiites. This tactic makes local Sunnis wary of supporting ISIS. HTS recognizes this and pursues a moderate approach towards Shiites, although it still propagates derogatory references to them in its propaganda.

Where al-Qaeda integrates itself into local governments and towns, ISIS extorts locals, runs strict religious patrols to enforce Sharia law, and refuses to work with local militant leaders, rather overtakes them. HTS promulgates itself as a “less extreme alternative” for local Syrian Sunnis. Where HTS installs a mix of locals and group members into leadership positions, ISIS installs foreigners and ISIS members into leading positions ignoring locals entirely. Due to the propaganda it disseminates online, ISIS also continues to claim credit for lone wolf attacks in the United States—where HTS has attempted to avoid angering the West directly. HTS has even announced that it will temporarily stop attacking the West to avoid being the focus of American counterterrorism efforts so it can concentrate on its local goals.

The Future of HTS/Al-Qaeda in Syria

Al-Qaeda in Syria/HTS has learned it is best to focus on local issues and goals as opposed to concentrating on a nebulous long-distance war with the West to achieve its goal of an Islamic emirate in Syria. HTS has chosen to pursue moderate local policies that allow it to integrate itself into the local environment and build legitimacy and support until it is fully in control of the area. This could lead to a situation in which HTS gains characteristics similar to Hezbollah in Lebanon. It would act as a non-state actor, with legitimate political support from the people while also conducting acts of terrorism.
Policies of powers operating in the region

US foreign policy regarding HTS in Syria must be placed in the context of past, current, and possible reactions from countries, including the US, that have specific interests in the Idlib governance. These countries include, but are not limited to: Turkey, Russia, Iran, and Syria.

Whereas Turkey and the US do not support the Assad regime and Russia and Iran do – all four countries have agreed to create de-escalation zones in Syria. One of these zones would be Idlib. The talks have so far failed due to the Syrian government and the rebels not complying. Al-Qaeda in Syria, in all its iterations, has declared that its goal is to overthrow the Assad regime. It has urged all other rebel factions to join the common cause of defeating the Assad regime. With HTS in control of the Idlib governance, any discussion of ceasefire will require cooperation with the group or its defeat.

US policy in the Middle East is to stop the spread of religious extremism and terrorism. HTS has operated and gained influence in the civil war torn and unregulated zones of Syria. Due to HTS avoiding conflict with the West, the overt propaganda methods of ISIS have drawn the attention of Western counter-terrorist efforts. Yet with the decline of ISIS’s power in Syria, America may turn its attention to al-Qaeda. US officials have stated that “no matter what name they use or who they merge with”, the rebranding of Jabhat al-Nusra into Hayat Tahrir al-Sham will not change its designation as a terrorist organization.

The Idlib governorate lies on the border of Turkey, presenting a threat to the country if HTS gains more unchecked power and legitimacy in the region. It labeled HTS’s predecessor, al-Nusra, a terrorist organization. Turkey has stated that it expects Idlib to become a de-escalation zone so humanitarian aid can become more accessible. It is busy intervening in other parts of Syria and therefore may be unable to stretch itself to two conflicts in two parts of the country. Turkey also does not aim to aid the Syrian opposition as much as it aims to fulfill the interests of the agreements it has made between it and its allies-Russia and Iran. This means it may not be inherently interested in toppling Assad’s government like HTS is.

Putin has declared ISIS, the main rival of HTS, to be its main enemy in Syria. He opposes HTS being taken off terrorist designation lists so that no one forgets it is a “dangerous enemy.” He claims to want to stop the spread of religious extremism into Russia and has pushed Turkey to create a plan to eliminate the jihadist presence in Idlib. Russia has conducted airstrikes against rebel jihadists in support of the Syrian government. Most recently they claimed to have conducted an airstrike against HTS in which the commander of the jihadist group, Abu Mohammed al-Jawlani, was severely injured and dozens of other members were killed.

Iran has labeled Jabat al-Nusra a terrorist organization. It has further stated that Nusra’s attempt to rebrand and claim that it has severed ties with al-Qaeda to be a ploy, a point underscored by the July 2016 killing and capture of Iranian soldiers by al-Nusra. Al-Nusra afterwards posted photos of the bodies and captive Iranians. It also shares similar strategic goals to Russia. They both want HTS out of Aleppo, to secure the strategic Hama-Aleppo highway, and secure the entry point, Jisr al-Shughour, to the coastal area that is al-Assad’s stronghold. In August 2016, Iran stated that no matter what name al-Nusra uses, it will dedicate itself to uprooting the terrorist organization in Syria.
Recommendations

If HTS continues to expand and rebrand, a version of al-Qaeda will emerge out of Syria that will have learned from the mistakes of al-Nusra and ISIS—which will make it “far harder to identify and contain than its forerunners.” HTS has perfected the strategy of cooperating and merging with opposition groups to eliminate other opposition groups. HTS’s willingness to merge with opposition groups draws the attention of Western counterterrorism efforts off of the al-Qaeda core. The US should implement strategies to halt the merge of more organizations into the HTS fold to counter the gradual expansion of HTS before its influence becomes unmanageable.

An HTS that is allowed to grow unimpeded has the increased potential to gain Hezbollah-like qualities. It could gain control over a territory, through the support of its people, and continue to conduct terrorist attacks while being harder to remove due to the support of the locals and increased legitimacy. Another possibility could see HTS removed from Syria by another actor (Russia, Syria, US, etc.), yet it still would have spent much of this time gaining power and learning how to operate covertly.

To halt and deter recruitment and mergers, the US should utilize available resources to conduct drone strikes against terrorist targets affiliated with HTS while simultaneously stating that the attacks will continue as long as they support HTS. Effective and pointed attacks against known affiliates of HTS or potential allies, with official US statements noting the attacks are directed against HTS in Syria allies, would deter other groups from affiliating with them. Further, the US should direct our Syrian rebel allies to reject HTS as a potential partner and continue to persuade locals to reject the presence of HTS. It should deny aid to rebels and civilians who are harboring or aiding HTS in any way. Further, it should offer increased aid to groups and individuals willing to give actionable information regarding HTS.

HTS is using the US focus on ISIS and the Syrian Civil War as a way to hide it’s growth from the US. The US should focus on HTS and not let it thrive unhindered. Especially since many actors in the region, such as rebel groups and Syrian citizens, see HTS as a moderate and reasonable alternative and counterpart to ISIS. This seeming-moderation tricks rebel groups and Syrian citizens into thinking HTS is there to support them, when in reality HTS is only looking out for itself- with the ultimate goal of creating an Islamic caliphate at all costs. The US should work to show that despite the rebranding effort, HTS is the Syrian branch of al-Qaeda and is only laying low until it sees an opportunity to rise up and gain further power- even at the cost of Syrian lives. The US should use the brand Hayat Tahrir al-Sham in association with the name al-Qaeda in Syria at all times, and request that its allies do so as well, to show that they are one-in-the-same. Furthermore, it should strive to use the updated rebranded names to show that the US is up-to-date and tracking the group as opposed to ignoring it, which al-Qaeda in Syria benefits from.

HTS will eventually push to gain more power and influence in the region if it sees an opportunity. It’s long term goal is to create an Islamic caliphate in Syria. For the time being it has learned to work with and gain the support of the local populace. However, because HTS is a branch of al-Qaeda, it will likely target civilians and use brutal tactics if it determines necessary to achieve its ultimate goal of establishing an Islamic caliphate. Overall, the US should:

1. Militarily target allies of HTS, and publicly announce that it is doing so to make sure there is no confusion as to why the attacks are occurring.
2. Deny aid to allies of HTS and provide aid to actors who help the US against HTS.
3. Use the brand HTS in conjunction with the name al-Qaeda in Syria at all times, and encourage allies to do so as well.
4. Strive to use the updated, rebranded name to show that the US is still monitoring and actively opposing HTS/al-Qaeda in Syria.

Without active attention from the US, HTS will continue to grow, thrive, and root itself in Syria by benefiting from the chaos of the Syrian Civil War. It’s continuous power gain is a direct threat to US national security and cannot be left to other actors to handle.
Pakistan in US Strategy for Afghanistan

by Marvin G. Weinbaum

The rollercoaster pattern of US-Pakistan relations is well established. There has hardly been a time since a military alliance was first struck more than 60 years ago that ties have not tightened through mutual reliance or loosened by disappointment or indifference. The two countries shared many common objectives during the Cold War 1960s and the 1980s but were estranged in the 1970s and 1990s. While for a time after 2001 bilateral interests realigned around Afghanistan, differences steadily grew as an Afghan insurgency worsened and American policy makers sought to assign causes.

The election of Donald Trump as president was initially welcomed by Pakistan’s officialdom. Through the presidential campaign and early months of his presidency Trump had not enunciated a South Asia policy. Yet Pakistan nursed the hope that its views would get a better hearing in Washington than they had from a perceived unreceptive Obama administration. A more even-handed Washington it was hoped would reverse an undeniable tilting toward India.

Trump’s strategic plan for Afghanistan, announced in August 2017, heralded however a possibly tougher approach toward Pakistan. It closely reflected the US military’s undisguised anger over what it saw as Pakistan’s duplicity in the Afghan conflict. However, Pakistani officials interpreted subsequent remarks by the President and his Secretary of State Rex Tillerson to suggest an opening for a more positive US attitude toward Pakistan. This optimism was dashed when in December the President in setting forth his National Security Strategy sharply rebuked Pakistan, and Vice President Pence while on a visit to Afghanistan warned that Pakistan was “put on notice.” Certainly any remaining doubt about American resolve to punish Pakistan was set to rest with President Trump’s first of the New Year’s tweets accusing Pakistan of “lying and deceit.” A suspension of all US security assistance to Pakistan followed shortly after. Strained relations between the two countries now threatened greater estrangement and possible confrontation.

Aims and Demands

Plainly, US policy makers have lost patience with Pakistan. Frustrated over the drawn out war in Afghanistan, Pakistan is seen as critical if not indispensable to being able to prevail over the insurgency. The military’s book on insurgencies holds that the enemy is impossible to defeat or neutralize as long as it finds shelter in a neighboring country. Pakistan’s thinly veiled patronage of the Taliban and partnered Haqqani Network is believed instrumental to sustaining them in the conflict. Politically, Pakistan is held responsible for also obstructing a negotiated solution.

Repeatedly, Pakistan has been asked to “do more” to help in overcoming the insurgency. Specifically, Pakistan’s intelligence services are expected to cut their links to insurgents and deny the Taliban and Haqqanis safe haven. Less clear is whether Pakistan is expected to simply evict Taliban leaders and fighters having sanctuary, or is being asked that they be apprehended and turned over to the US and Kabul government forces. Unlike Al Qaeda and the Haqqanis, the Taliban Quetta (Rahbari) Shura has never been officially labeled by the US as a terrorist group and been targeted by the US drones. Aside from the killing of Taliban chief Mullah Akhtar Mansour in May 2016 for supposedly standing in the way of peace negotiations, the Taliban in Baluchistan has long been spared, presumably in order to have its senior leaders eventually participate in talks.

The US’s announced strategy for Afghanistan, although promising victory, does not in fact count on scoring a decisive military victory over the Taliban and other elements of the insurgency. The decision that has brought the American troop level to 14,000 and an intensified
The US campaign is instead designed to achieve sufficient military gains against the Taliban and Haqqani Network to turn the tide of the war and force them to negotiate. Their leaders are then expected to settle for a power sharing arrangement that leaves largely in place the Afghan constitutional and democratic framework and protects most of the social and economic gains of the past 16 years. An American strategy described as “condition based” rather than time driven leaves open, however, how long the US is prepared to wait for the Taliban to come to the negotiating table, much less the length of time it takes to reach a compromise deal.

The US strategy for Afghanistan continues to avoid directly addressing how fighters with other elements of the insurgency, including Islamic State, Al Qaeda, Islamic Movement of Uzbekistan, would be induced to join a political settlement. All are considered more resolute than the Taliban in their rejection of a negotiated end to the conflict. Whatever influence Pakistan’s Inter-Services Intelligence (ISI) may have with the Haqqanis and Taliban leadership, it is not thought to extend to these other groups. The best a political strategy can hope for is that once an agreement is reached, a weakened insurgency would lead other insurgents to eventually follow suit.

Heightened demands on Pakistan for closer cooperation on Afghanistan are of one piece with US insistence that Pakistan must also do more to reign in its domestic violent extremists. Washington has for some time been asking Pakistan to end the policy distinction it makes between good and bad terrorist groups—between those jihadi groups that serve the purpose of Pakistan’s covert foreign policy objectives in Kashmir and Afghanistan, and those that have turned on the Pakistan state. Importantly, both favored groups and the anti-state TTP insurgents and sectarian terrorists have given aid and comfort to the Afghan Taliban.

To induce Pakistan to yield to American demands, the US has employed or threatened financial, political, strategic and military actions. The award of financial assistance has been the preferred means to win Pakistan’s cooperation on Afghanistan. Since 2001, roughly $33 billion in assistance has gone to Pakistan, more than $22 billion of which is explicitly security related. These security funds have been intended to strengthen the capacity of Pakistan’s security forces to confront militants in the border areas with Afghanistan. The withdrawal of security funds in January 2018 marks the most visible display of US displeasure with Pakistan’s efforts. Political pressure has been exercised by publically shaming Pakistan for inconsistent and insincere terrorism policies. Playing on Pakistan’s obsession with India’s activities in Afghanistan, the US uses the threat of its drawing strategically closer to India to pressure Pakistan. President Trumps plainly upset Pakistan when his strategic plan for Afghanistan called for greater Indian involvement in the conflict. Military pressure comes with the stated possibility that the US will act on its threat that unless Pakistan takes definitive actions against harbored Afghan insurgents, the US may unilaterally use force to remove them.

Obstacles and Misunderstandings

Pakistan regularly denies the existence of links to the Taliban and Haqqani Network or that it shields certain domestic extremist groups. Military and civilian officials regularly recite the high price the country has paid in lives and coin for joining in the war against terrorism. They point in particular to the Zarb-e-Azb military campaign beginning in June 2014 that succeeded in clearing the Taliban and Haqqani Network from North Waziristan as well as the Pakistan government’s having legislated the following January a comprehensive National Action Plan to combat
domestic terrorism. But Pakistan’s leadership has never fully understood how little weight its narrative carries with Washington, which judges Pakistan primarily on whether in exchange for aid programs it has delivered on meeting US expectations of cooperation against the Afghan insurgency.

At the same time, American policymakers have no better understanding of why Pakistan has for so long resisted relinquishing its patronage of the Taliban and Haqqani Network. Pakistan is legitimately concerned that these groups if targeted could in alliance with domestic militants turn against the state. But more importantly, the retention of a Pashtun proxy force continues to be seen as insurance against the possibility of state failure in Afghanistan. In that event, the Taliban and Haqqanis are expected to secure for Pakistan a sphere of influence in a fragmented Afghanistan. Only when Pakistan’s military leadership is reasonably assured of a friendly and stable Afghanistan, one largely free of Indian influence, are Afghan insurgents likely to be viewed as a liability. While Pakistan would have no objection to a political settlement that resulted in a dependably friendly, stable united Afghanistan, a hedging strategy that relies on the Taliban and Haqqanis runs counter to that outcome.

An American strategy that has sought to enlist Pakistan in bringing the Taliban and Haqqanis to the bargaining table has overestimated and misunderstood the nature of Pakistan’s influence. Pakistan has repeatedly demonstrated its spoiler power, its ability to block or undermine any initiative by the US or Kabul government that excludes Pakistan. It will also try to prevent the participation in negotiations of any Taliban representatives it believes cannot be trusted to protect Pakistan’s security interests. What Pakistan has never been able to do, however, is to dictate to the Taliban, that is, to get the organization and its leaders to agree to actions they vigorously oppose.

Pakistan’s reluctance to yield to US demands is related to the climate of public opinion in the country. Years of hardening anti-American sentiment have seen extremist narratives about American policy, once fringe views, become mainstream in Pakistan’s society. These attitudes are not lost on Pakistan’s of military and elected officials as they shape their responses to American demands. These elites must be careful not to have it appear that they are acting on behalf of American interests and against those of Pakistan. The military bears considerable responsibility for helping to create an anti-Americanism that is inflamed by opportunistic politicians, media pundits and religious groups. To change these
deeply ingrained public attitudes would entail taking risks that few officials were willing to incur. The blunt, undiplomatic language that has accompanied the new US military initiatives in Afghanistan has only increased caution among policy elites to avoid appearing to cave in to the US pressures.

A growing feeling in official circles also holds that however much Pakistan has profited from having the US’s financial and other forms of support, the country can readily manage its withdrawal. However much aid is valued by the military, it makes up a very small percentage of the defense budget. Instead, many in Pakistan conclude that in light of American involvement in Afghanistan, the US needs Pakistan more than Pakistan needs the US. Best recognized is Pakistan’s leverage in controlling air and ground access to Afghanistan, without which the US would have great difficulty supplying its forces. Concerns in Washington about Pakistan’s stability and the security of its nuclear arsenal are thought to discourage the US from taking action that could seriously weaken effective, sustained way to address regional terrorism.

Behind much of Pakistan’s increased confidence is that it need not fear isolation China is believed to offer a realistic alternative to the US, always considered a reliable friend and now also a generous economic, even if it cannot be expected to fully replace all forms of US assistance. China’s heavy investment in Pakistan and broadened economic ambitions through its One Belt, One Road initiative is thought to presage more comprehensive and intensive Chinese involvement in South Asia than in the past. Aside from China, Pakistan’s policy elites are convinced that the country has potential future economic partners in Russia and Iran. And Saudi Arabia, where Pakistan has for decades contributed to the kingdom’s defense posture, is expected to continue to backstop Pakistan in times of economic duress.

There exists at the same time a widespread belief in Pakistan and, for that matter among neighboring countries, that the US seeks to remain in Afghanistan indefinitely, and is deliberately prolonging the conflict there to justify a continued presence. The US is seen as seeking permanent military bases as part of a regional strategy aimed at countering the growth of Chinese, Iranian and Russian influence. From Afghanistan many believe the US is positioning itself to seize Pakistan’s nuclear arsenal should it threaten to fall into the hands of terrorists. Others see the US as seeking to remain in Afghanistan because it covets the country’s rich natural resources.
Looking Forward

Nothing the US has done thus far has succeeded in altering Pakistan’s core policies on Afghanistan. Aid sanctions have never been particularly effective in altering Pakistan’s behavior. Pakistan has regularly resisted being pushed into making decisions it sees as compromising its national security. Yet US strategy remains predicated on the idea that by ratcheting up pressures Pakistan can be induced to accede to American demands. Proponents of a “press Pakistan hard” approach assume that countries like Pakistan can be swayed once the costs of their resistance become apparent. This thinking underestimates, however, the extent to which non-calculable emotive factors such as national sovereignty, honor, and respect figure in reaching decisions, even when these choices seemingly are against their national interest.

The history of bilateral relations suggests that Pakistan will cede to American demands when convinced they also serve its own interests. Even then, the military and civilian government are unlikely to act without having rallied public support for their actions. The US has most succeeded when it has applied persistent carefully calculated pressures leavened with incentives. Progress of any kind requires the persistent, skilled diplomacy, not achieved through blustering public threats.

The US and Pakistan are not necessarily on different pages on Afghanistan. Neither would profit from a Taliban dominated country or from a chaotic, proxy driven civil war. Both could live with a Taliban having a share of power in a stable, united and essentially democratic Afghanistan. This is not the 1990s when Pakistan’s Afghan policy focused on using the Taliban to install a subordinate Kabul regime in the pursuit of strategic depth against India. Following 2001, policy makers have been forced to view Afghanistan through the lens of Pakistan’s own insurgency and the implications of developments in Afghanistan for Pakistan’s domestic security. Where the US and Pakistan part is in their priorities. Pakistan’s policies above all aim for an outcome in Afghanistan that assures India’s presence and influence will be minimal. The US is concerned most of all with the survival of a regime in Afghanistan able to prevent Afghanistan being occupied by terrorist organizations with a global reach.

The Trump administration’s new strategy on Afghanistan could conceivably set the two countries on a collusion course. The US demand for definitive evidence of policy changes may be beyond anything Pakistan feels prepared to deliver. The promises and ameliorative measures with which Pakistan has overcome previous crises in its relationship may not be enough this time. Nor may the US be as willing to back off its threats as in the past. The suspension of security sector funds announced in early January could be just the first step in a sharp escalation of American pressures and resistance by Pakistan.

Withdrawal of Pakistan’s non-NATO alliance status, while now mostly symbolic with the military aid already cut-off, could further the loss of valuable intelligence sharing. More serious would be a US declaration of Pakistan as a state sponsor of terrorism that carries severe financial and political consequences. A further US decision to deliver on its threat to clean out terrorist networks across the Afghan border should Pakistan fail to act holds the greatest dangers. Unilateral military incursions could quickly turn what has become a frosty relationship into a potentially adversarial one. These punitive measures come at a time when a weak, distracted Pakistani government and a deeply offended military, under pressure from hard by religious and partisan may be more constrained than in the past to accede to demands.

The strains between the US and Pakistan may seem more acute than ever, but this difficult period may also be just another episode in the up and down history of their relationship. With Afghanistan’s future at issue, militant Islamic extremism unchecked, and tensions between Pakistan and India rising, the need for cooperation between the US and Pakistan has rarely been greater. Yet calls in the US to punish Pakistan’s behavior and angry voices in Pakistan for it to turn its back on the US are strengthening. It will take more than building trust to overcome the differences between the countries. If relations recover it will be because the leaderships in the US and Pakistan accept that there are areas where their national interests will continue to diverge but that they are outweighed by shared security interests too critical to allow the countries to disengage or divorce.
Dr. Joseph S. Nye, Jr., is a former Dean of the Kennedy School of Government at Harvard University. He received his bachelor’s degree summa cum laude from Princeton University, studied at Oxford University, and earned a Ph.D. in political science from Harvard where he joined the faculty in 1964. He is listed as one of the most influential scholars on American foreign policy, and in 2011 Foreign Policy listed him among the 100 leading global thinkers.

From 1977-79, Dr. Nye was a deputy Undersecretary of State and chaired the National Security Council Group on Nonproliferation of Nuclear Weapons. In 1993-94 he chaired the National Intelligence Council, and in 1994-95 served as Assistant Secretary of Defense for International Security Affairs. He won Distinguished Service medals from all three agencies. Dr. Nye has published fourteen academic books, a novel, and more than 150 articles in professional and policy journals.

Soft Power and Populism:

Interview with Dr. Joseph Nye
Do you think the American soft power depends on a likable president or is it independent?

The soft power for the country comes partly from the personality of the president. But a lot of it comes from civil society, not even from government, much less the personality of the president. Things like Hollywood, Stanford University, the Gates Foundation – those often affect the attractiveness of the society and country. So, you can have an unattractive person, and still have a certain amount of soft power. Or to give a historical example, Richard Nixon was very unattractive and unpopular, and American policies, such as in Vietnam, was very popular. And, yet, America recovered soft power after Nixon. And that was helped partly by Carter’s human rights policy, Reagan’s policies.

I remember talking to a British cabinet minister in November 2008 after Obama won the election. He said, “It’s quite remarkable. Only America could reverse its low soft power as quickly as you just did in this 2008 election.” So, the election of an African-American made a big jump in the poles for the United States. The invasion of Iraq had brought down the US’s soft power quite dramatically.

Is there any correlation between level of soft power and a particular party in power?

Not necessarily. Reagan was obviously a Republican. And he had an optimistic streak in the way he approached policy. So, it may have less to do with the partisan policy issues than the positive demeanor of the president. And, obviously policy matters, but it is just correlated with partisanship.

Which framework of populism do you buy into? Do you believe it (populism) is a social or economic (phenomenon)?

I think, the populism we’re seeing now is a combination of economic inequality and job loss. But I do think that my colleague at Harvard, Pippa Norris, has shown the cultural problems are greater. The status deprivation, I think, is probably the stronger of the two. It is not either or, it’s both there. But her findings indicate that status change is the stronger of the two.

Right before the elections and even in the early days of the Trump administrations, the media had said on numerous occasions that Germany is going to become the leader of the social democratic values. Is it possible for Germany to replace the US in terms of value-based leadership?

Germany has done very well if you look at the Soft Power 30, an index published in Britain. The leading country this past year was France with Germany just behind. Germany has done well, but let’s not ignore the other Europeans. France is not often given the credit. The Macron victory has given it a greater playing. So, Germany, yes, but let’s admit that it shares it now with France.

How do you think the rise of social media contributed to populism and nationalism? Technology was expected to support the liberal order. And it did indeed super charge it at some point. But more recently it has also been accused of undermining that. What is the net effect of social media?

Social media and the internet have allowed remote and separated pockets of opinion to contact each other and to reinforce each other, and to create new virtual communities that previously were inhibited by geographical isolation. Some of that is good. For example, if you were a gay person, isolated in a rural area and you thought you were the only gay person in the world. Now, you had a community that could support you and say we all share the same view. On the other hand, if you are an anti-Semite, or fascist, and I better keep my opinions my quiet because they are so unpopular. Now, you find there is alt-right community on the web which shares these opinions, you feel emboldened.

And we’ve seen about this phenomenon of technology overcoming distance in the creation of community, having both positive and negative effects on the liberal values.

Do you believe populism will be reversed?

Populism covers a broad range of behavior. There are many types of populism. To simplify, there is left populism and right populism, you have economic populism and cultural populism. And there are different degrees of chauvinism that can be associated with it.

The question, I think, is not populism, but what type of populism. In American history, some of the populism that was represented by William Jennings Bryan in the late nineteenth century laid the grounds for the progressive era in which Teddy Roosevelt and Woodrow Wilson made profound important liberal forums. Another type of populism was Joseph McCarthy’s and his appeal to right-wing prejudice and extreme anti-communism led to the destruction of a number of careers in the 1950s. Or the populism of George Wallace with its racist appeals set
back some of the progress on the integration in the American south. So, we’ve seen different types of populism rise and fall. I suspect, we’re going to see the current wave of nationalist populism go through a similar cyclical process.

An interesting question is whether the left populism, which was perhaps represented by Bernie Sanders in 2016, will get stronger or not. Whether the right populism of Trump will get stronger or not. And, I think, at this stage, we just don’t know. Because of the economic inequality and the status deprivation, I think we are going to see right-wing populism to continue, whether Trump is re-elected or not. But whether it would be as strong, I am not clear.

I believe in that almost nobody else agrees with you? (Laughs) Something I believe in that no one shares. Well, within the community of academics which I inhabit, I am a hunter. I go out into the woods and shoot animals. It’s partly because I grew up on the farm. I can make the case of moral justifications and pragmatic justifications for it. But not many colleagues share this outlook.

And, on the other hand, if I look at the country as a whole and where I live, which is rural New Hampshire, it’s not that rare so. Again, it depends. In relation to what community, but certainly in the community that I inhabit most of the time, being a hunter is very rare. I won’t kill anything unless I eat it. I eat what I kill and I don’t believe in just killing for its own sake. I do try to eat what I kill and also what I grow. A simple primitive approach to live. And it is not very common in the academic community.

What is on your reading list right now? I just finished Pachinko, which is a wonderful story of several generations of Koreans living in Japan over a century. And then another one that I am reading is David Ignatius’ The Quantum Spy about stealing secrets of quantum computing. Those are two recent books that I’ve been reading.

Bookshelf:

Pachinko (National Book Award Finalist)
by Min Jin Lee
In the early 1900s, teenaged Sunja, the adored daughter of a crippled fisherman, falls for a wealthy stranger at the seashore near her home in Korea. He promises her the world, but when she discovers she is pregnant—and that her lover is married—she refuses to be bought. Instead, she accepts an offer of marriage from a gentle, sickly minister passing through on his way to Japan. But her decision to abandon her home, and to reject her son’s powerful father, sets off a dramatic saga that will echo down through the generations. Richly told and profoundly moving, Pachinko is a story of love, sacrifice, ambition, and loyalty.

The Quantum Spy: A Thriller
by David Ignatius
A hyper-fast quantum computer is the digital equivalent of a nuclear bomb; whoever possesses one will be able to shred any encryption and break any code in existence. The winner of the race to build the world’s first quantum machine will attain global dominance for generations to come. The question is, who will cross the finish line first: the U.S. or China? Grounded in the real-world technological arms race, The Quantum Spy presents a sophisticated game of cat and mouse cloaked in an exhilarating and visionary thriller.

Source: Amazon.com
Goodbye populism?
Argentine political dynamics in the Macri era

Op-ed by
Sergio Berensztein

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The results of the October 2017 mid-term elections in Argentina confirmed the Cambiemos coalition as the dominant political force in the country. President Macri’s alliance received a resounding political endorsement, and left the top-tier potential 2019 Peronist presidential candidates defeated on their own home turf. It is clear that the country is now in a new political era: the Macri era. But how much of a change does it really represent? Is it really the end of populist politics in Argentina or will it be a refashioning of the traditional populist political system with a different color?

To answer the latter of these questions I propose focusing on four aspects: a) international political economy (IPE), b) institutional strengthening, c) economic policy-making and d) political culture.

The international commodity cycle has been an international source of populism in Latin America. Volatile prices lead to profligate governments during the boom cycle, overstretched companies and mismatched balance-sheets; all of which turns sour during bust cycles, which are coupled with fickle foreign capital flows. The fall in commodity prices after 2014 played an important part in ending the populist cycle of the Kirchner era. Macri has attracted investors with important policy changes that led both Moody’s and Fitch’s ratings agencies to upgrade Argentina’s credit rating. The World Bank’s Commodity Markets Outlook expects agricultural prices to edge up 1.2% in 2018 due to reduced supplies, with grain, oil and food prices rising marginally. Will higher commodity prices lead to the strengthening of a distributional coalition that maintains a still relevant import-substituting model of industrialization? Will the pressures of protectionist interests derail long-term reforms for short-term political gains?

The second (institutional) dimension is much less encouraging. The centrality of the presidential institution has only been strengthened during the Macri era. The use of presidential decrees began with appointing two Supreme Court Justices and reached its apex in January 2018, when the president issued a decree with 170 measures that derogates 19 laws and modifies 140, impacting eight ministries – Modernization, Production, Labor, Finance, Transport, Culture, Agroindustry and Energy – as well as the Central Bank, the ANSES social security agency, and the AABE (the agency in charge of administering the state’s assets). Checks and balances have been weakened, and there are serious concerns for judicial independence. Cambiemos has been slow or noncommittal with regards to broader and deeper institutional reforms. Supremacy of presidential power has traditionally been a hallmark of populism.

The third aspect is economic policy-making. Bringing down inflation from more than 40% to the low 20s meant an expansion of credit. Banks ramped up lending, leading household credit to expand by 20% in real terms during 2017. Macri walked a tightrope between cooling inflation...
and strangling growth. On January 9th, the Central Bank lowered its benchmark interest rate after relaxing inflation targets in late 2017 on a clear bet that a bump in prices was worth it for higher consumer borrowing and spending. Social resistance to measures such as the proposal to calibrate the calculation of retirement benefits was massive and violent. The City of Buenos Aires saw the number of street protests spike 32% in 2017.Boosting growth to improve the public mood is a custom of populist policy-making. It can also easily derail a recovering economy. Argentina is running a primary deficit of 4.6% of GDP. If Macri does not cut government spending now it will delay economic pain, paying more in a future that he does not control.

The last dimension is cultural. Macri has tried to overcome the dichotomy structuring the Argentine political system between the people-friendly populist and the cold-hearted technocrat. Macri has attempted to craft a middle ground between classic caudillo leadership and a responsible statesman driving the country to normalcy. But structural reforms are a weak rallying cry. It is difficult to convey a message of austerity and expect a rise in popularity. Populists have appeal with electorates precisely because they do the opposite. What is at stake is not just Macri’s personal reelection or Cambiemos’ political consolidation but the very structure and dynamics of Argentina’s politics.
The conference held on November 2017 explored the diverse forms that populism takes across the world (North America, Latin America, Europe) and their consequences. Below is a snapshot of two specific issues discussed at the conference: populist movements in America and regionally in Europe:

**Populism in America.** The United States has a long history of populist rhetoric, populist movements, and populist entrepreneurs. Below are memos that capture the historical perspective in two ways: 1) historical analogies and 2) the study of the societal, economic, and political mechanisms that together make for a coherent narrative of the rise of illiberal threats.

“**Populist International**”. The emergence of an “illiberal international” anchored in Moscow appears to have won many allies throughout Europe and the United States, yet the connections between these politicians and parties are not clear. The memos below describe movements in the EU: whether they share a common ideology or if their affinities are superficial and ephemeral.

Stay tuned for next year’s conference in the Fall of 2018!
Please see https://fsi.stanford.edu/global-populisms/ for more information
American Populism

Julia Azari: *The Political Geography of American Populism*

Geography impacts American populist rhetoric. This paper discusses modern American populism, and focuses on differences between George Bush’s and Donald Trump’s political rhetoric in specific U.S. regions. While Bush avoids references to southern populism, he perpetuates an anti-elite and economic narrative in the West, Midwest, and Pacific states in 2004. Trump’s approach changes the basis of his narratives in different geographies. In Wisconsin and Michigan, he tones down his populist voice while amplifies it in Pennsylvania and across the South.

David Kennedy: *The Paradoxes of American Populism*

The two founding principles of the American constitution, equality and the right to liberty and pursuit of happiness, lay the foundation for immense inequality. Radical egalitarianism and by extension, anti-elitism, are the core of American populism. Poverty is not a sufficient cause for populism, but the relative deprivation of status and income for certain populations in the U.S. Series of quotes from historians, social scientists, statesmen and writers provide a rich narrative on the history of American populism.

Pia Malaney: *Economic Nationalism as a Driving Force of Populism in the U.S.*

Populism represents a new counter narrative to the pro-globalist consensus that has dominated policymaking and media in recent decades. Pro-globalization elites have entrenched liberal trade and immigration policies, despite mounting evidence that such policies are not unambiguously good for native population. The rise of social media has allowed counter narratives emerge; circumventing traditional media, academic, and political centers of power.

Rob Mickey: *Anti-anti Populism, or: The Threat of Populism to U.S. Democracy Is Exaggerated*

It is not populism, but its accompanying conditions of elite polarization, negative partisanship, racial conflict, and party failure that present the real threats to U.S. democracy today. This essay presents a counterpoint to the current consensus on what our modern populist moment means for consolidated Western democracies.

EU Populism

Dr. Anna Grzymala-Busse: *Populism and the Erosion of Democracy in Poland and in Hungary*

Poland and Hungary were initially on the path towards liberalization, and now have undermined and backtracked on their progress. This essay discusses the transformations of Poland and Hungary, introduces the populist elite, and shares two potential solutions to slow the erosion of democratic values.

Julia Lynch: *Populism, Partisan Convergence and Redistribution in Western Europe*

Economics are a reason for the growing discontent by populist parties in Western Europe. The rhetoric of economic protection through cutting off access for immigrants (from other EU countries or from outside of the EU) is illusory. If populist politicians are to deliver on their promises, economic reform is more feasible through redistribution from wealth to the dispossessed.

Kathleen McNamara: *When the Banal Becomes Political: The EU in the Age of Populism*

Although an apolitical approach allowed the EU project to flourish in the first place, the current wave of populism sweeping Europe is a natural response to the ambitious post-national project of the EU and its departure from traditional democratic participation. Being open to these concerns both in its approach to governance and culture of debate will help the EU project to navigate populist opposition.

Kenneth Scheve: *The Economic Origins of Authoritarian Values: Evidence from Local Trade Shocks in the United Kingdom*

Explanations for the rise in populism typically fit into two groups: 1) economic pressures and 2) the other value systems. This paper brings the two together, arguing that views on authoritarianism are in part consequences of economic conflict. Such views are found to be a strong correlate for populist behavior in the United Kingdom.