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REGIONAL COMMUNITIES, MEMBERSHIP AND SOCIALISATION: A COMPARATIVE ANALYSIS

MATHEW DAVIES

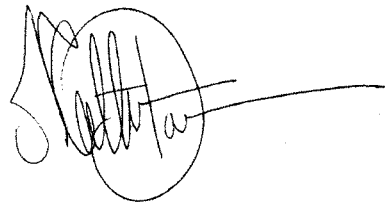
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The Australian National University

Statement of Authenticity

I declare that the thesis is my own original work
and all sources have been acknowledged.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Mathew Davies

27th February 2009

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It is a truism perhaps, but I would not be here, at this point, without the loving support, and admirable patience, of so many. To my mother and father for making this all possible and allowing me the space to think down less conventional paths, and to my brother for proving to me the value of not mistaking that for something better than it in fact is. You are in my choice of phrase and my way of thinking, my horizons and my decisions. That it is a futile task to fully give thanks for the plethora of small miracles that got me from there to here, is no excuse to not try.

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Abstract

The study of how regional communities socialise human rights via membership has long been wedded to the detailed focus on the European Union (EU) as the most prominent example of that phenomenon. However, this over focus has unbalanced studies of how regional communities, membership and socialisation intersect, and the over concentration on a single atypical case has created an unhealthy preoccupation with notions of conditionality. This work corrects this myopia through a focus on the ASEAN relationship with Myanmar and the Organization of American States (OAS) relationship with Panama, as well as the EU relationship with Turkey.

A comparative investigation of how membership, regional communities and socialisation interact provides not only empirical novelty, but requires innovative methodologies and theoretical frameworks. Methodologically, this study rests on the move towards analytical eclecticism already well established in the discipline more broadly. However, to do justice to the extended range of empirical studies, this work moves the foundations of this eclecticism into how we define norms and socialisation. To investigate the shortcomings of unreconstructed eclectic efforts, and to suggest new ways forward, this study rests on a Critical Realist definitional framework, shifting the foundations of studying socialisation to a post positivist premise. Based upon this, the theoretical framework presents rational choice and constructivist accounts of socialisation embedded in an empirically rich analysis along the spectrum of membership, running from applying to a regional community through to maintaining that right once achieved.

The combination of empirical, methodological and theoretical innovations suggests a sequence of conclusions. Different types of regional community present different socialisation mechanisms, in different combinations and with different stories of success and failure. Rationalist explanations are revealed to be only part of the socialisation jigsaw when the EU is compared to different examples. Whilst always present, rationally construable processes are potentially joined by member-states pushing forwards their own agendas via the community membership process. Extending our analysis into socialisation once a member reveals the significance of community building dynamics. Community building creates rich discursive environments, where potential future plans compete with each other for dominance. Revising standards also creates the possibility of Social Sanction, Rhetorical Action and Naming and Shaming. The ultimate success or failure of these socialisation efforts rest on a combination of the strength of the norm in question, the mechanisms by which it is promoted and protected and a broader impression that those standards are meant to be binding in the real world.

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1. Introduction

In May 1997, the Association of Southeast Asian Nations (ASEAN), against both fierce criticism from the United States and a number of European states and the reluctance of a few of its own members, admitted Myanmar as a full member. It did so in the belief, held more strongly by some than others, that membership would in some way “civilise” the regime and bring it into dialogue about, and ultimately engender change in, its human rights record. In the same year, some 13,000 km away from Yangon, the Organisation of American States (OAS) in Washington, D.C. created a Special Rapporteur to protect and promote freedom of expression in its members as part of its already expansive commitment to the defence of human rights across the hemisphere. Finally, again in 1997, the European Union (EU) published *Agenda 2000* in which it criticised the Turkish record on human rights and noted that Turkey’s inability to reach EU standards on human rights and democracy rendered it ineligible to commence formal membership negotiations with the Union.

These regional communities have emerged as a crucial part of international relations, helping to shape distinct groupings of states. They achieve this in part by offering to states a central point around which certain norms coalesce, some of which are legal in character, and some of which are social. Regional communities of states seek to socialise their members, whether potential, new or long-standing, into these standards, of which human rights constitute a particularly important subset. Superficially, regional communities appear disparate in their pursuit of these efforts. The EU focuses on bringing

states into alignment with standards before they become members through establishing clear legal and financial conditionality. The OAS has erected impressive courts and commissions to bring about change in states that are already members. ASEAN has spent the last 10 years not only discussing whether it should develop an interest in human rights at all, but articulating a range of pressures on Myanmar that have sought to socialise it into evolving human rights standards. These different ways of altering and discussing standards of human rights exert different pressures, and this variance is the empirical puzzle at the heart of this study. Underlying this diversity is one common thread that binds these cases together: the issue of membership. Whether one looks at how membership is offered, denied, or redefined once it has been bestowed, membership is both the bundle of material and social rights and responsibilities that drives socialisation forward and the unifying theme upon which this study rests.

To investigate the issue at hand, the key question underpinning this work is: **“What are the socialisation mechanisms that arise from applying, achieving and maintaining membership of regional communities?”** Within this question we must bear in mind the question of agency. Both before and after membership is achieved, communities and existing member states play an active role in the attempts to socialise states. A focus on the efforts of both forms of agency is necessary to address the full range of socialisation consequences of membership. Addressing this central research question requires an appreciation of the following subsidiary questions. Firstly, what are the *mechanisms* by which

socialisation occurs, and secondly, how can we understand the various stories of *success and failure* of the mechanisms that we observe?

The problem that drives this key question rests upon the contrast between a global phenomenon—that of regional communities attempting to socialise states into human rights standards via the issue of membership—and modes of analysis that have been, until now, essentially local in focus. The body of literature that has done most to investigate regional communities, membership, and socialisation rests almost solely on the European example, and even more heavily on the EU itself. This literature, explored in chapters two and three, offers a range of important insights into socialisation phenomena pertaining to regional communities. Scholars such as Frank Schimmelfennig would suggest that membership is only relevant as a process by which a state joins a community, and that this political journey is characterised by a focus on the centrality of conditionality and bargaining processes resting on a sophisticated rational choice theoretical framework to conceptualise the socialisation consequences of such processes.¹ This conclusion is unsatisfactory because of the limited empirical sample upon which the argument rests. The ignoring of other sites where regional communities socialise, and the role of membership in that process, undercuts our ability to discern more fully the many different ways in which regional communities of states socialise members.

Whilst a focus on the EU makes sense if one is interested in questions such as “how does the EU socialise states via membership?” it does little to address the broader question of “how do regional communities socialise via membership?” As I investigate in considerable depth in chapter two, EU studies

¹ An argument made most powerfully in Frank Schimmelfennig and Ulrich Sedelmeier, *The Europeanization of Central and Eastern Europe*, Cornell Studies in Political Economy (Ithaca, NY: Cornell University Press, 2005).

supply incomplete conclusions because the EU is just one example of regional community design, and it is the design of the regional communities themselves that has a powerful effect on the nature of socialisation that they display. The EU rests upon highly institutionalised and exacting legal standards, which requires applicants to be socialised before membership can be bestowed. As such, the EU reveals only some of the ways in which socialisation occurs, namely those socialisation processes that flow from imparting exacting legal standards to applicants. As I show in chapter two, those who study the EU have revealed two socialisation mechanisms, namely bargaining and persuasion that in turn rest on a wider theoretical debate between rationalists and constructivists.² It presents distinct understandings of what those mechanisms resemble, and also clearly argues that bargaining is of greater importance. The EU is highly bureaucratic and legalised, and enforces its standards through strict conditionality before states join it. In the absence of a comparative study, there is no stable foundation for believing that these are the only ways in which regional communities socialise, nor that we should ascribe one or other set of expectations as being in some way more correct.

We can conceive of other types of community and the very fact that they are different may be significant for how socialisation occurs. ASEAN is a community that is coming to terms with human rights standards and grappling with such fundamental questions as its purpose and effectiveness. ASEAN member states have attempted to develop a human rights commitment that covers pre-existing members by evolving new commitments that have to be agreed upon by members before those standards can bind them. The OAS has a 60-year

² Alastair Iain Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe," *International Organization* 59, no. 04 (2005) offers a précis of these conclusions at the close of the famous fall 2005 International Organizations edition.

record of varying attempts at influencing its members; first through the erection of weak legal and declaratory standards on human rights and later via an intensely discursive environment that resulted in courts and commissions being established to police radically upgraded standards. I argue that ASEAN and the OAS are just as much communities as the EU, and all three are engaged in socialising rights standards, yet do so differently. Without further analysis, the literature that addresses regional community socialisation and membership by focusing only on the EU does so to the omission of the empirical richness of these phenomena.

The move towards regionalism, both politically and as a distinct field of academic enquiry, has become a prominent trend.³ This study concerns itself with that phenomenon, focusing on the example of regional communities of states attempting to socialise human rights norms. Given the increasing importance of regionalism, it is vital that we develop a far more sophisticated understanding of the way in which various political manifestations of regionalism operate and change. We can only progress so far through either EU-centric studies or localised and non-comparative studies. If regions are going to play an increasing role in shaping international politics, then we need both more insight into their activities as well as enhanced cognitive tools for appraising that behaviour. This study responds to those two requirements.

³ Andrew Hurrell, "One World? Many Worlds? The Place of Regions in the Study of International Society," *International Affairs* 83, no. 1 (2007) p. 130. Hurrell explores regions in the global context through an English School appreciation. For a different example, see Barry Buzan, "Security Architecture in Asia: The Interplay of Regional and Global Levels," *The Pacific Review* 16, no. 2 (2003).

PROPOSITION, ARGUMENT AND FINDINGS

My proposition is that in exploring the multifaceted ways in which questions of membership are used by communities and other member states we can generate more robust, coherent and cogent understandings of the very processes by which socialisation occurs and as such, how norms diffuse. I argue that existing theoretical and conceptual approaches that focus either on a rational choice analysis of bargaining, or constructivist accounts of persuasion and identity change, are limited in their explanatory power because neither, on its own, can act as an adequate theoretical framework to encapsulate the varied socialisation mechanisms that arise when states, membership and regional communities intersect. This suggests that analytical eclecticism is a necessary tool to resolve those explanatory weaknesses.⁴

However, I argue that existing approaches to eclecticism are flawed. They currently rest eclecticism on a wilfully ignored grey-zone where rival definitions of norms and socialisation co-exist. The process of identifying, critiquing and improving upon this use of dual definitions of norms and socialisation represents the conceptual argument of the study. When I tried to relate the existing literature on norms and socialisation to the cases at hand, a rather strange issue emerged. Whichever definition of these phenomena I used did not “capture” the richness of what I was able to observe. These definitions suggested that norms were either intervening variables that affected only the behaviour of actors or they were social structures that operated at an ideational level on the very identity of those who encountered them. The studies I had at

⁴ See Peter J Katzenstein and Nobuo Okawara, "Japan, Asian Pacific Security and the Case for Analytical Eclecticism," *International Security* 26, no. 3 (2001/02). I discuss this in more depth below as well as conceptually in chapter two.

hand were telling me they were both, and that a single standard was being used as the basis for differing processes at the same time. I was surprised when even the sophisticated eclectic accounts of EU socialisation seemingly ignored this definitional issue. Responding to this, I make an argument about what it means to theorise eclectically about political action by suggesting that the eclectic insight must be deepened by opening for investigation the very definitions we use in our analytical arguments, to best ensure that we do not deploy definitions that actually exclude norms and socialisation from being, or meaning, something that is clearly an important part of their nature. This is vitally important if we are to avoid "defining" ourselves out of an ability to appraise as much of varied effects of norms and life of socialisation as we can.

When first critiquing existing bridge-building accounts at the close of chapter two I use Critical Realism to note that not only have they failed to present a single definitional account of norms and socialisation, but also that they are philosophically unable to do so.⁵ This is because ultimately they are both wedded to a certain approach to the philosophy of science that rests on an implicit anthropomorphism, that is, that what is real is in some way defined by what we perceive.⁶ This need to perceive things in their entirety in turn rests upon an explicit notion of what a cause is. Norms cause something to happen, and because rationalists and constructivists focus on different "things" happening, that is either changed behaviour or changed identity, they are forced apart by the imperative to isolate and identify empirical invariance as the pre-

⁵ Critical Realism within international relations is a rapidly growing area of enquiry. For an assessment on the possibilities of this research agenda, refer to Colin Wight, "A Manifesto for Scientific Realism in IR: Assuming the Can-Opener Wont Work!" *Millennium: Journal of International Studies* 35, no. 2 (2007) and Chris Brown, "Situating Critical Realism," *Millennium: Journal of International Studies* 35, no. 2 (2007).

⁶ Heikke Patomaki and Colin Wight, "After Post-Positivism? The Promises of Critical Realism," *International Studies Quarterly* 44 (2000) p. 217.

requisite for a definition to be “correct”. Through the Critical Realist reframing of reality away from something we can discern fully towards a realm that we may appreciate with more or less, but never total, clarity, we can break this causal logic.⁷ Doing so allows for us to construct definitional accounts of norms and socialisation that can incorporate *within one definition of each term* both a constructivist and rationalist appreciation of the differing effects. As such, at the close of the first section of chapter three I define norms as *standards around and over which directions of change in behaviour are debated* and socialisation as *the process of changing a third party towards different standards, a change which otherwise would not have occurred in the absence of that interaction*. In cementing these definitions in a strong philosophical argument, Critical Realism saves us from the Scylla of exclusivity and the Charybdis of blind adherence to theoretical precepts, whilst at the same time providing a firm foundation on which to wed rationalist and constructivist accounts of socialisation.

Employing these definitions, I develop an analytically eclectic framework, fully explored in chapter three, that provides me with the tools I need to explore the practices of membership socialisation, and through this to articulate a more robust and conceptually sophisticated account of the various mechanisms of socialisation that potentially can occur. I chart how, and why, socialisation pressures change both along the spectrum of applying, joining and remaining a member and across differing regional communities. To do this, I argue that we can discern a three-fold hierarchy of claims. Firstly, we can identify a socialisation *process*, that is a political tool deployed by an actor in order to engender an outcome. Secondly, a socialisation *mechanism*, that is a

⁷ Ibid. p. 223.

deeper conceptual appreciation of the nature of that political process.⁸ Thirdly, at a fundamental level, a broader theoretical *tradition* in which the previous two layers of analysis nest. With this in mind, I first construct an account of the socialisation pressures before membership is achieved. Prior to membership we can identify two such discreet hierarchies. Firstly, we can discern the presence of conditionality as a socialisation process, which in turn is conceptualised as a series of bargaining mechanisms ultimately embedded in broader rational choice accounts. We see this in all three cases, although its significance for freedom of expression waxes and wanes across those enquiries. Secondly we can discern situations where existing member states try to convince the applicant that membership is significant for human rights and freedom of expression. These processes do not rest on the formal community offer of membership, but existing member states do use that offer as an umbrella for their own machinations. These processes I suggest exist outside of bargaining assumptions and I present them as conceptually akin to persuasion mechanisms aligning with constructivist expectations, given that it is the very identity of members and the meaning of membership that is in play.⁹

I then traverse the membership threshold. I take the two established frameworks erected in accounting for pre-membership processes and travel them into the post-membership context. This allows us to chart how it is that socialisation changes by generating a framework of expectations. The transition

⁸ Michael Zürn and Jeffrey Checkel, "Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State," *International Organization* 59, no. 04 (2005) p. 1049. They argue that these mechanisms are the "intermediate processes along which international institutions may lead actors toward accepting the norms..... mechanisms connect things: they link specified initial conditions and a specific outcome".

⁹ Note the preliminary discussion of persuasion at Jeffrey Checkel, "Why Comply? constructivism, Social Norms and the Study of International Institutions," *ARENA Working Paper* 99, no. 24 (1999), http://www.arena.uio.no/publications/wp99_24.htm.

to being a member marks a moment where the power configurations of the various actors change. The new member state is empowered through its enjoyment of the rights of membership. It can participate in the erection of new standards and revised enforcement mechanisms. It is also, however, as an inexorable consequence of that transition, inserted into a maelstrom of competing pressures as community building ensues. The renegotiation of the rights of members, and what standards they should subscribe to in order to avail themselves of those benefits, exert socialisation effects in themselves. This shows that the constructivist accounts have much to tell us about the community building process and the socialisation pressures that arise. The discursive nature of community building whereby states seek to persuade each other about certain courses of action ultimately manifests itself as debates about the identity of communal membership.

The rationalist framework sees considerable alteration within the membership context. Accounts of conditionality as a discreet process become far scarcer. The only area in which conditionality retains relevance is where the community possesses, or creates, clear court systems which can sanction the transgression of behavioural standards. There is, however, nothing inherent about the mechanism of bargaining that necessitates the process of conditionality. In both the OAS and ASEAN studies we can discern a broad range of what I term "social influence" techniques, resting on the strategic use of language to promote socialisation.¹⁰ This can come in three discreet forms. Firstly, Rhetorical Action, which draws on the work of Thomas Risse, whereby actors engage in discussion about future behaviour but, in contradistinction to a constructivist account, at

¹⁰ See Trine Flockhart, "'Masters and Novices': Socialization and Social Learning through the Nato Parliamentary Assembly," *International Relations* 18, no. 3 (2004) p. 366.

least one party is not motivated to change its own interests and identity.¹¹ Instead this party pronounces truth claims and seeks to force other actors to agree with those pre-conceived ideas. Secondly, a process of Naming and Shaming where actors spread information about a third party's behaviour when that behaviour in some way falls short of agreed standards in the hope that this publicity promotes censure and change. Finally, Social Sanctioning, the denial of some of the rights that members enjoy, be that a prestigious chairmanship of meetings or participation in certain fora of a community. These three different processes, I suggest, rest as much on bargaining mechanisms, given the absence in all of them of any commitment to persuasive engagement, as conditionality.

In the process of making these arguments, this study rests on what has been actually found in the three case studies. While the above claims represent my direct response to the research question, in exploring the intersection between regional communities, membership and socialisation, this dissertation also makes a series of empirical contributions based on those separate findings. Each study is a discreet investigation into a different mode of socialisation, the examination of which tells us something about the community propagating it. ASEAN, and its members, have used broad terms such as human rights and democracy, and refused, or been unable, to detail what they actually mean by these. In this study we see strong member state attempts to persuade Myanmar, both before and after membership, to alter its ways. We also see ASEAN itself using various social influence mechanisms, particularly Social Sanction and Rhetorical Action to influence Myanmar. These broad standards have, therefore, promoted

¹¹ Thomas Risse, "Let's Argue!" Communicative Action in World Politics," *International Organization* 54, no. 01 (2003) p. 8.

socialisation efforts that are surprisingly consistent, at least since the turn of the millennium. This leads to a rejection of many prevailing assessments of ASEAN as impassive and little more than a hollow shell.¹² Detailing the pressures ASEAN has brought to bear on Myanmar, and the role of discussion and censure in that story, suggests that ASEAN is a far more complex and nuanced actor than many give credit for.

The OAS study presents a form of socialisation whereby community building processes have developed substantially revised standards and expectations that those standards are binding on states. It tells us about how socialisation modes can change and evolves as a community establishes ever-stronger frameworks as the basis of socialisation attempts. The OAS has shifted from broad commitments, the mode of socialisation evident in the ASEAN case, to detailed and legally binding commitments. Again we see the extension of social influence techniques alongside community building, but we also see a situation where they have become increasingly successful. The literature that talks of the OAS and its actions is extensive, but it has systematically failed to integrate the broad nature of the OAS's socialisation efforts. Too much focus is on the incoherence of the OAS and its failure to act consistently.¹³ The study of its actions with regards to Panama reveals that socialisation efforts have become consistent and effective.

Finally the EU study reveals a mode of socialisation that rests on strong legal standards that operate as the basis of socialisation efforts from the moment that a state applies for membership. We can clearly identify conditionality being

¹² David Martin Jones and Michael L.R. Smith, "ASEAN's Imitation Community," *Orbis* (2002) p. 93.

¹³ Craig Arceneaux and David Pion-Berlin, "Issues, Threats and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America," *Latin American Politics and Society* 49, no. 2 (2007) stands out as a well-reasoned example.

deployed repeatedly over the course of the relationship, tied to flow of financial assistance and on going goal-setting by Brussels. In investigating this, however, I take issue with the unproblematic assertion that the socialisation we see within the EU account is successful, and that rational choice accounts explain this fully.¹⁴ Here the mode of socialisation clearly rests on detailed legal standards. It returns us to the centrality of conditionality and asks whether or not that process, and its attendant intellectual baggage, is necessarily the right one to achieve the EU's aims.

INVESTIGATING REGIONAL COMMUNITIES AND MEMBERSHIP

In this thesis I argue that regional communities of states are identified by the common characteristic that they all engage in the practice of human rights socialisation. ASEAN, the OAS and the EU may vary in their commitment to human rights standards, both in terms of the length of time they have engaged in discussion about human rights and the nature of their commitment to those standards, but that attempting to socialise human rights has become an important part of each community.¹⁵ Making the step away from the simple regulation of international affairs, towards a more intrusive concern with the rights and wellbeing of individuals, is the hallmark of regional communities. This is common between ASEAN, the OAS and the EU and marks them as distinctly more sophisticated social environments than the term system, or even society,

¹⁴ As already noted a position adopted by Frank Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe," *International Organization* 59, no. 04 (2005).

¹⁵ Note the body of literature that analyses from various perspectives the theoretical significance of regionalism. The European perspective is nicely encapsulated in Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (Cambridge: Cambridge University Press, 1999) A focus on power and regionalism is offered by Thomas Pedersen, "Co-Operative Hegemony: Power, Ideas and Institutions in Regional Integration," *Review of International Studies* 28 (2002).

can encapsulate. These communities are engaged in moving beyond the "conspiracy of silence entered into by governments about the rights and duties of their respective citizens"¹⁶ by elevating a concern with individual justice to the community level through the legitimisation of its place within the discourse between member states and regional communities.

I recognise that this is a contentious statement that differs from more conventional definitions. Even Amitav Acharya's attempt to present ASEAN as a "security community", drawing on Karl Deutsch's famous work, provoked sustained criticism,¹⁷ and I am using the term regional community to denote a far more sophisticated arrangement of states than either Acharya or Deutsch ever intended. Those who reject definitions of regional communities of states, especially in the ASEAN example, argue that many groupings of states do not succeed in changing anything, and so they are some less sophisticated assemblage of actors.¹⁸ I suggest that it is erroneous to argue that just because nothing happened, it *automatically* infers that nothing was attempted and that therefore the community was passive. The practice of socialisation, the deployment of various mechanisms with the intention to alter a state, is not the same as actual successful socialisation. One shortcoming of the literature on regional community socialisation is that it has only focused on successful

¹⁶ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: MacMillan Press, 1977) p. 80.

¹⁷ Amitav Acharya, *The Quest for Identity: International Relations of Southeast Asia* (Singapore: Oxford University Press, 2000), ———, "Do Norms and Identity Matter? Community and Power in Southeast Asia's Regional Order," *The Pacific Review* 18, no. 1 (2005). For a critical response see Nicholas Khoo, "Deconstructing the ASEAN Security Community: A Review Essay," *International Relations of the Asia Pacific* 4 (2004). A thoughtful piece is offered by Donald K. Emmerson, "Security, Community and Democracy in Southeast Asia: Analyzing ASEAN," *Japanese Journal of Political Science* 6, no. 2 (2005).

¹⁸ David Martin Jones and Michael L. R. Smith, "Making Process, Not Progress," *International Security* 32, no. 1 (2007) for an insightful typology of differing regional arrangements, refer to Mohammed Ayoob, "From Regional System to Regional Society: Exploring Key Variables in the Construction of Regional Order," *Australian Journal of International Affairs* 53, no. 3 (1999).

cases,¹⁹ when in fact questions of the success or failure of socialisation attempts are of secondary importance. Investigating the story of success and failure of socialisation would be a strange tale indeed if we only dealt with successful examples. Stories of failure are as much part of the regional community experience as success. Defining communities on the condition of success would close our eyes to manifestly important events. I investigate the existing claims about success, and my response to them, more fully in chapter three, and then again in specific reference to the three cases in each empirical chapter.

There are many who would argue that, even given the above, ASEAN is still far from a community. They would ask whether ASEAN has really attempted to socialise human rights standards to its members.²⁰ I am happy to argue, as I do in chapter four, that ASEAN has proven woefully unsuccessful in socialising Myanmar, but a focus on ASEAN since 1997 shows far more than a simple rejectionist stance would suggest. In *Vision 2020*, ASEAN committed itself to "caring communities", a step which has led to dramatic changes within ASEAN directly over rights. The Bali II Declaration and Vientiane Action Plan of 2004 centralised a concern with human rights within the so-called Political Pillar of a proposed ASEAN Community. The ASEAN Charter itself, the culmination of this 10-year community building exercise, explicitly calls for a Human Rights Mechanism as the centrepiece of the Community. Within this process, ASEAN has talked about human rights and democracy, and it has issued

¹⁹ This heeds the prescient but still too often ignored analysis offered by Sonja Cardenas, "Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behaviour," *International Studies Review* 6 (2004) pp. 224-226.

²⁰ Note the review by Donald K. Emmerson, "Will the Real ASEAN Please Stand Up? Security, Community, and Democracy in Southeast Asia," in *The Walter H. Shortenstein Asia-Pacific Research Center* (Stanford University: 2005). See also the more positive assessment offered by Umar Hadi, "Human Rights Promotion in the ASEAN Security Community: An Overview" (paper presented at the AICOHR - ASEAN-ISIS Colloquium on Human Rights, Manila, 15-16 May 2006).

direct and telling criticism of Myanmar on exactly those issues, as well as acting as a unifying roof under which various fellow members have also critiqued the regime. Such critiques have taken the form of discussions about rights; they are an engagement with questions of socialisation, of attempting to elevate Myanmar to some regionally acceptable threshold.

If my line of argument is correct, that regional communities are united by their socialisation of human rights attempts, then the next step is to identify and explore the motor of that socialisation, regardless of the particular process or mechanism that it is attempted by. The issue of membership of regional communities stands out as a key site on which to ground this study because the processes of becoming and remaining a member are intimately linked with socialisation.²¹ This is so because membership acts as a gatekeeper to resources, material or social, which are desired by a member or potential member state.²² The membership of international organisations, of which regional communities of states are a specific example, "has been one of the most hotly contested issues in recent years".²³ The act of bestowing political agency on some through empowering them as members of an in-group, and denying it to others by excluding them from that group, results in one of the great divisions between

²¹ The importance of membership within International Relations has a long history. The English School has focused on the expansion of the international society, with membership as a transformative moment for the qualitative relations between states. See Hedley Bull and Adam Watson, eds. *The Expansion of International Society* (Oxford: Oxford University Press, 1985) And Gerrit Gong, *The Standard of Civilisation in International Society* (Oxford: Clarendon Press, 1984). For a modern reinterpretation with a critical edge, note Shogo Suzuki, "Japan's Socialization into Janus-Faced European International Society," *European Journal of International Relations* 11, no. 1 (2005).

²² A study on state motives for creating and joining regional communities can be Accessible at Sheila Page, *Regionalism among Developing Countries* (Basingstoke MacMillan Press, 2000) pp. 14-44.

²³ Barbara Koremenos, Charles Lipson, and Duncan Snidal, "The Rational Design of International Institutions," *International Organization* 55, no. 4 (2001) p. 770.

otherwise juridically equal sovereign states, and is clearly of considerable import, as the ever growing list of EU applicants - and the consternation they cause in Brussels and some Western European capitals – testifies. Even Myanmar, a usually reticent state, was keenly interested in joining ASEAN, which itself speaks of how desirable the benefits that membership can be.

My conceptualisation of membership as investigated in chapter three is broad. It covers the process of applying for, and then maintaining, a particular bundle of rights and responsibilities. Socialisation into human rights standards through membership of regional communities of states is not only about questions of admission and expulsion. Instead those two phenomena act as conceptual bookends for a far broader internal array of on-going discussion between member states, as well as the community itself, about what it means to be a member, and what rights, responsibilities and notions of behaviour characterise membership. Regional communities continually revise the obligations of membership through the erection of new legal standards, and prolonged and intense discussion about norms and how to enforce them. The history of the OAS is in part a history of an evolving regional commitment to the protection and promotion of rights and democracy in ways never imagined at its founding in 1948. ASEAN has, as noted, discussed and then established a human rights mechanism. These change what it means to be a member, and engender socialisation through revising the notions of what a “good” member is. As a fluid bundle of rights and responsibilities, it makes little sense to limit our appreciation of membership to only those examples of the initial effort to achieve those social and material goods. Regional communities use membership, both in the forms of

its initial offering and the maintenance of its benefits, to condition the behaviour of states.

My emphasis on only membership driven socialisation serves to both focus the empirical parameters of this study while isolating an important but oft-overlooked aspect of regional community socialisation. This should not be interpreted as an attempt to argue that membership and socialisation are synonymous.²⁴ The EU has made part of its Common Foreign and Security Policy (CFSP) the promotion of human rights across the globe; something that can be construed as an attempt to socialise in the absence of membership. Similarly, much of the academic literature on the socialisation power of the EU does not rest on an explicit focus of membership as a driver of that process. My focus on membership is not because it is the *only* way that communities socialise human rights, but because it is by far the most important, enduring, and successful example of that intention. Disaggregating the focus on EU socialisation generally from the EU, membership and socialisation relationship offers both a window of contribution for this study as well as positioning the relevant literature most accurately. Membership stands as the common theme across different examples of communities.²⁵

²⁴ Indeed, much of the literature on the socialisation power of the EU to be discussed in chapter two talks about this ability in the absence of a focus on membership. See for example Judith Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton: Princeton University Press, 2006).

²⁵ Human rights do play some role in the external relations of ASEAN and the OAS. Hiro Katsumata, "Establishment of the ASEAN Regional Forum: Constructing a 'Talking Shop' or a 'Norm Brewery'?" *The Pacific Review* 19 (2006) offers an appreciation of the role of ASEAN external relations. Also see, with specific focus on Myanmar and human rights, Magnus Petersson, "Myanmar in EU-ASEAN Relations," *Original Paper - Institute of Defense and Strategic Studies, Nanyang Technological University* (2006). Although the notion of inter-regional community discussion on rights has developed in recent years Anne Pieter Van Der Mei, "The New African Court of Human and Peoples' Rights: Towards an Effective Human Rights Protection Mechanism for Africa?" *Leiden Journal of International Law* 18 (2005) notes the dialogue between OAS and AU on the issue.

HUMAN RIGHTS, DEMOCRACY AND FREEDOM OF EXPRESSION

Within this broad focus on regional communities socialising their members through the pressures exerted by questions of membership, I propose to study a complex of standards that broadly fits under the human rights label with a particular focus on freedom of expression. At the core of this right are the freedoms to seek, receive and impart information and ideas of all kinds.²⁶ Freedom of expression is considered a fundamental right, presented in the Preamble to the Universal Declaration of Human Rights (as the freedom of speech) as well as enshrined in Article 19 of the Declaration.²⁷

We must be mindful that freedom of expression is not held equally across regional communities. The EU has a clear set of standards that emerge from the European Court of Human Rights, and have become embedded in its belief that applicants must be democratic (part of the famous Copenhagen Criteria). The OAS began in 1948 with relatively weak standards regarding freedom of expression, but has spent the last 60 years refining them in terms of the regional standard itself (the 1948 Declaration on Human Rights was rather vague, the 1969 Convention was considerably more rigorous, and the 2001 Declaration on Freedom of Expression stands as perhaps the most detailed account of this right to be found in any regional community, including the EU). ASEAN presents a different case as a consequence of its newness to community building and human rights. Despite this, and it is certainly an issue to remain mindful of, I argue that including the Myanmar and ASEAN study in this work is not only valid but *vital* if I am to investigate socialisation.

²⁶ It is closely related to the right of freedom of speech, the prime articulation of which is Article 19 of the Universal Declaration of Human Rights, 1948.

²⁷ Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

As shown in chapter four, ASEAN has most certainly discussed concepts of democracy and human rights, and has acted as a lens through which member-states have critiqued Myanmar on rights and democracy. How are these issues related to freedom of expression? I offer two suggestions, one practical and the other conceptual. Firstly, freedom of expression provides a thread with which to chart the competing pressures and outcomes on Myanmar. The various reports of the United Nations (UN) Special Rapporteur's on Myanmar make explicit reference to freedom of expression, both in terms of its status within Myanmar and also as a constituent part of democratic standards, about which ASEAN and others have most definitely spoken. Secondly, additional light is shed on the matter by the concept of what I term "norm-sets". A norm-set can be said to exist when a group of inter-related norms together define a collective social good. Much as collections of protons, neutrons and electrons combine to form various atoms, so a combination of individual norms can be brought together to cover more sophisticated notions of the social good than can be expressed in any one standard. Freedom of expression is just one norm that together with others (such as norms that govern elections, civil society and government) comprises a norm set that articulates standards of democracy; "freedom of expression is one of democracy's fundamental values",²⁸ although it is not necessarily determinative of democracy.²⁹ This is referenced in both the OAS and EU cases, with both communities explicitly stating that freedom of expression is a fundamental part of democratic standards. As Robert Dahl has noted:

²⁸ Claudio Grossman, "Freedom of Expression in the Inter-American System for the Protection of Human Rights," *ILSA Journal of International and Comparative Law* (2001) p. 448.

²⁹ Furthermore, freedom of expression itself is comprised of a variety of separate standards that must come together before we can claim that this freedom is being protected. Freedom of expression is itself a norm-set, and the recursive nature of norm-sets is of great importance when assessing the success of any socialisation attempt.

[A] belief in desirability of democracy does not exist in isolation from other beliefs. For more other people it is part of a cluster of beliefs. Included in this cluster is the belief that freedom for expression, for example, is desirable in itself. ... Like the other rights essential to a democratic process, free expression has its own value because it is instrumental to moral autonomy, moral judgement and a good life.³⁰

I recognise that the ASEAN study does not deal with “the socialisation of freedom of expression”. It does, however, deal with the related question of “the socialisation of human rights and democracy standards generally”. It is a study about how efforts to socialise these broad norm-sets have socialisation effects for the component standards within that broader assemblage. All across the globe we see weak and general standards being erected as the precursor of deeper and more substantive appraisal of individual standards. For example, the OAS commitment to freedom of expression was for a long time mediated through a concern with democracy. To deny this case a “place at the table” would be to weaken our ability to appraise weak efforts to socialise alongside strong ones. It would also close our eyes to a particular mode of socialisation, that of using these broad declaratory standards as the basis of political action. A comparison between three “strong” cases is not an empirically inclusive one. With this context in mind, and to aid comparability, I use freedom of expression as a thread to chart the outcomes of the discussions and revisions to ASEAN over time. If ASEAN has begun along the path towards successfully limiting the harshest anti-democratic tendencies of Myanmar, and if its talk about democracy and caring communities has any substance, then it is in freedom of expression, as a fundamental component of those standards, that we will first see change.

³⁰ Robert Dahl, *On Democracy* (New Haven: Yale University Press, 1998) pp. 50-51.

Freedom of expression serves as both a thread for analysis and a beacon of change.

CASE STUDIES AND METHODOLOGY

The study focuses on three examples of where states apply, become, and maintain the privilege of being, members; the ASEAN-Myanmar study, the OAS-Panama example and finally the EU-Turkish case. Why these studies and not alternate ones? If regional communities and membership and socialisation interact all over the world, there has to be a rationale for focusing our attention on some of those, as opposed to potential alternatives. I justify my case study selection by first observing the variation between communities and then situating my studies so as to encapsulate that variation.

Variation between communities can be fruitfully conceptualised via an appreciation of three issues. Firstly, while all regional communities are *institutions* in international politics, and they all display some degree of *organisational* sophistication, this sophistication varies between those communities.³¹ This difference coexists with two other variations. Regional communities can vary depending upon the range of issues that they deal with, whether primarily a single concern or a far wider range of issues. Finally, regional communities possess different strategies of governance: while some such as ASEAN are intergovernmental in nature, others exhibit varying degrees of supranational governance, with the EU the most extreme example. The

³¹ I will use the term organisation to refer to the bureaucratic arrangement of international affairs in a given geographic setting. Institution refers to the deeper level of an arrangement of understandings about cooperation and co-existence. This draws on the definitions found in Christian Reus-Smit, "The Constitutional Structure of International Society and the Nature of Fundamental Institutions," *International Organization* 51, no. 4 (1997). The literature on international institutions and organisations is vast, with a range of competing definitions, approaches and theoretical traditions. A good overview of this is offered by John Duffield, "What Are International Institutions?," *International Studies Review* 9 (2007).

specific combination of these variables is dependent on the history of each region, the diversity of its constituent states and the length of time that the regional community has existed.³² I note that as a result of this we are presented with two forms of variation: the variation in the regional community along the three lines just outlined, and the potential variation of socialisation that then ensues. The situating of the case studies aims at facilitating an exploration, discussed in chapter three, of whether these two forms of variation can be seen to co-vary; that is whether variation in the nature of the regional community *necessarily* correlates with an alteration in socialisation.

ASEAN in 1997 represented the “low” point on each of the three themes; it was weakly institutionalised, operated within the strictest of intergovernmental logic and was competent in comparatively few issue areas. This case allows us to identify and appraise both the role of the regional community as an actor in its own right and the role that existing member states play in using membership as a vehicle for their own socialisation agendas. Thailand and the Philippines, as the then most democratic of the ASEAN member states were keen to use the membership process to draw Myanmar into a web of institutions, discussions and norms that were important to them, but were not shared at an ASEAN level. The Myanmar case also represents an excellent example of the ongoing politics of membership within a community building process. Since 1997, ASEAN has been re-imagining itself in fundamental ways. It has upgraded its commitment to first being a “caring community”, then one that is both procedurally democratic as

³² There appears to be a strong correlation between the length of time a regional community has been active and the breadth of its purview and depth of its engagement. It is also a plausible argument to posit that earlier examples of regional communities provide a foundation for more recent versions to build upon, influencing the sophistication of any one community.

well as fostering democracy at a national level, and now most recently has on paper commitments to “human rights” within its member states.

Secondly, I investigate the ongoing relationship between the Organization of American States and Panama since 1948. The history of the OAS reveals the significance of how the evolution of a community can have socialisation consequences. The OAS case differs from that of ASEAN in two ways. First, it embraces the charting of membership politics from the very inception of a regional community through to the seemingly successful socialisation of Panama, a process that took over 50 years. Second, it presents an example of how changes in the nature of the community, the developed of courts and commissions which oversee regional standards, have interacted with changing understandings of what it means to be a member, what the regional community itself is understood by members to be, and how Panama has reacted to those changes in order to maintain a comfortable fit between itself and the OAS. While the process of increasing obligations of membership is the same in both the ASEAN and OAS cases, the story has progressed much further in the OAS example, shedding more light on how it is that membership, its meaning, and the processes of socialisation that lead to it, have interacted.

Finally, I study the relationship between the European Union and Turkey in terms of the ongoing negotiations towards possible Turkish membership. The EU represents the “high” point across the axes of variation. It is heavily institutionalised across the full spectrum of issue-areas, and is governed by a blend of supranational and intergovernmental strategies depending on the specific issue in question. Here, the regional community is involved less in the politics of self-construction than in policing the already established norms that

characterise the EU today. It should be noted that while the studies of ASEAN and the OAS have been investigated via primary and secondary sources, as well as interviews, the EU case is based only on the documentary record. This is because the transparency of EU socialisation efforts is high, and the outpouring of documents, speeches and press releases by Turkey, and the various organs of the EU allow for considerable insight to be generated from those resources.

As already introduced, to investigate my question through the prism of the above focus on freedom of expression across these three studies, I rest, albeit critically, on the shoulders of the trend towards analytical eclecticism. I draw on insights offered by the recent work of Peter Katzenstein, who has argued in a series of publications the usefulness of downplaying the sharp divisions between theories in favour of empirically informed discussions.³³ As Katzenstein and Okawara note, "the privileging of parsimony has become the hallmark of paradigmatic debates"³⁴ with the consequence that "strict formulations" along these paradigmatic lines "sacrifice explanatory power in the interest of analytical purity".³⁵ Contemporary analyses of regional communities and socialisation, such as that offered in the Fall 2005 *International Organization* edition, have attempted to "bridge-build" between rational choice analysis and constructivist approaches as a remedy to the lack of explanatory power that Katzenstein has identified,³⁶ and I position myself consciously amidst this trend. This approach

³³ Refer to J.J. Suh, Peter J Katzenstein, and Allen Carlson, eds. *Rethinking Security in East Asia: Identity, Power and Efficiency* (Stanford University Press, 2004), especially the chapter by Rudra Sil and Peter Katzenstein, "Rethinking Security in East Asia: A Case for Analytic Eclecticism."

³⁴ Katzenstein and Okawara, "Japan, Asian Pacific Security and the Case for Analytical Eclecticism," p. 154.

³⁵ Ibid. p. 167.

³⁶ Here an excellent example is offered by Checkel, "Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State."

has sought to use both rational choice and constructivist accounts to investigate how the EU socialises, although the process of their merging has varied. This agenda has emphasised not “a unified synthetic approach, but rather greater flexibility of a particular research tradition vis-à-vis the others; [where] the objective is not to encourage theoretical integration but to ward off the criticisms each approach typically faces from proponents of competing approaches”.³⁷ I note, and agree with, the analysis offered in perhaps the most recent study of analytical eclecticism by Katzenstein and Sil that such eclecticism “should not be confused with theoretical synthesis or the building of a unified theory”.³⁸ The conceptual analysis developed in this study eschews the goal of presenting a single “theory” of socialisation. Instead, my aim is to both use existing frameworks simultaneously to best “capture” what socialisation processes are attempted but also as a set of guidelines towards a revised and enhanced conceptual frame resting on revised definitions as suggested previously.

What exactly does it mean to think eclectically, and what within this comparative study am I actually comparing? Eclectic theorising rests on the assertion that “rival” methodological frameworks should be deployed together to investigate the same empirical puzzles with the aim of developing as far as possible our understanding, using different lenses at the same time. As such, I will deploy two sets of existing “scope conditions” that have emerged from the focus on the EU. These scope conditions, one emerging from constructivist analysis, the other from rational choice accounts are, as I investigate in chapter

³⁷ Rudra Sil, “The Foundations of Eclecticism: The Epistemological Status of Agency, Culture and Structure in Social Theory,” *Journal of Theoretical Politics* 12, no. 3 (2000).

³⁸ Christian Reus-Smit and Duncan Snidal, eds. *The Oxford Handbook of International Relations*, The Oxford Handbooks of Political Science (Oxford: Oxford University Press, 2008) Chapter by Peter Katzenstein and Rudra Sil, *Eclectic Theorizing in the Study and Practice of International Relations* p. 118.

three, a way to discern when socialisation is intended, and the process by which it actually occurs.³⁹ They represent contemporary accounts as to what constitutes good data and how investigation into socialisation, whether that is from a rationalist or constructivist starting line, should proceed. They both focus on the same sets of information, documentary archival records, interview based analysis and process tracing methodological beliefs, and as such are broadly qualitative in nature.⁴⁰ They also both rest on process tracing methodological choices.⁴¹ To be eclectic, I shall deploy those scope conditions across my cases and across the membership spectrum, that is both before states join a community and afterwards as they seek to maintain the benefits of being part of that community. Each set of scope conditions, because of its origins within either rational choice or constructivist accounts, talks about a single socialisation mechanism, bargaining or persuasion. Deploying these across the studies allows comparisons of different socialisation mechanisms, where we see bargaining or persuasion accounts, and what precise socialisation process they are manifested through. Through systematising the link between theoretical tradition, socialisation mechanism and scope condition, I can develop a way of making the empirical evidence speak to theoretical expectations.

Two further methodological points need to be made. First, how do you discern a failed socialisation attempt, if there is no behavioural change to trace? I achieve this through triangulating the intentions of various actors through

³⁹ Jeffrey Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, no. 03 (2001) offers an excellent recap of these scope conditions and the relative merits and forms a substantive basis for the more detailed discussion of methodology in chapter three.

⁴⁰ Qualitative data is not inimicable to a rational choice analysis. Note the discussion in Reus-Smit and Snidal, eds. *The Oxford Handbook of International Relations*. Chapter by Andrew H. Kydd, *Methodological Individualism and Rational choice* p. 429.

⁴¹ I therefore subscribe to the discussion in Ibid. Chapter by Andrew Bennett and Colin Elman, *Case Study Methods* p. 510.

examining their public statements, their other related behaviour and any relevant documents. This provides a basis to extrapolate the desires of any particular actor in relation to socialisation. Secondly, how do I investigate the success and failure of these attempts? In each case, I draw on the documentary record produced as to the standards of human rights within the target state. In the Myanmar case this involves referring to the annual reports generated by the Special Rapporteur on Myanmar. For the OAS and EU studies, I draw on reports created by the regional community itself. I recognise, as discussed in chapters five and six respectively, that these are both evidence of change and through their publicity, a process of socialisation themselves.

STRUCTURE OF STUDY

Chapter two presents the existing literature on how regional communities engage in socialisation in order to provide the intellectual backdrop for an investigation into those socialisation processes. I investigate the difference between a broad appreciation of regional community socialisation and the more focused question of regional community socialisation via membership. I reveal how this literature is currently dogged by both limited empirical travel and ultimately partisan definitional frameworks that have not been overcome by existing bridging accounts, two factors that undercut its utility in addressing the ways in which regional communities attempt to socialise states. The final part of chapter two presents the Critical Realist-inspired critique of the reasons why this definitional impasse came about, and how it cannot be solved with recourse to established approaches. In chapter three I present and unpack the key conceptual claims of this work. Here I establish my definitional framework through wedding a Critical Realist sensibility with existing theoretical accounts. I then present the

conceptual claims of this study, fleshing out the conceptual framework on process, mechanism and tradition both before and after the act of membership, as well as investigating the variations in success and failure that we see.

Chapters four, five and six present the empirical dimension of this study, focusing on ASEAN, the OAS and the EU respectively. In each I isolate and interrogate prevailing accounts of those communities and the academic packaging that has surrounded them to date. This provides a platform to explore the theoretical and definitional arguments and also provide space for the empirical investigation of the socialisation, membership and regional community nexus. Finally, in chapter seven, I present my conclusions, I draw together these lines of argument to provide an account of what has been discerned and the innovations that have helped reveal them. This also provides a space in which to demonstrate possible theoretical extensions of this work towards the creation of a full Critical Realist methodological account of socialisation, as well as to highlight the broader significance of this study to related areas of research on norm socialisation in world politics.

2. Regional Communities, Membership and Socialisation

This chapter serves to critically assess existing accounts of the relationship between membership, regional communities and socialisation. Focusing on the literature that has emerged from the study of how the EU socialises, I will suggest that whilst the academy has promoted some insightful analysis, it also manifests sustained flaws, both conceptual and empirical, that limit the explanatory power of that analysis in terms of my research. To illustrate this, I outline the theoretical positions of two established rival accounts of how regional communities socialise, the rational and the constructivist. I critique this literature as inadequate for answering my research question on two grounds. Firstly the limited empirical horizons of EU scholarship are inadequate given the unique nature of the EU, which creates a unique set of socialisation processes. As such the conclusions based upon them as to which process is dominant are not truly representative of how socialisation, membership and communities interact. Secondly, the existing literature facilitates a division between rival understandings of norms and socialisation that actively impedes a fuller account of how regional communities socialise.

APPRAISING THE MEMBERSHIP, REGIONAL COMMUNITY AND SOCIALISATION NEXUS

The belief that organisations promote socialisation is not novel.⁴² Analysis emerging from the academy that studies the EU has focused on the

⁴² Susan Park, "Norm Diffusion within International Organizations: A Case Study of the World Bank," *Journal of International Relations and Development* 8 (2005) p. 43. A compelling account of the link between institutions and socialisation is offered by David H. Bearce and Stacy Bondanella, "Intergovernmental Organizations, Socialization, and Member-State Interest Convergence," *International Organization* 61 (2007). Another intriguing account from a slightly

fundamental question of why, and how, do states comply with the standards of others.⁴³ This analysis has been divided between what Alexander Wendt has termed two “second order” frameworks, rational choice and constructivism.⁴⁴ Second order approaches are concerned with the “ontological and epistemological questions” surrounding human agency, social structures, ideas and material forces in social life,⁴⁵ and as such are umbrella terms for a variety of “first order theories”, such as neo-realism or its liberal alternatives, that are derived from the second order theory which stands behind them. Both accounts understand norms and laws differently, in ways that are compatible with their own theoretical heritage, and the next sections will outline these positions. I present the theoretical backdrop of each account before moving on to how each has dealt with the question of the EU socialising states in a specific way.

RATIONAL CHOICE APPROACHES TO SOCIALISATION

Rational choice is based upon assumptions that concern actors and the environment they find themselves in, resting on a “methodological approach that explains both individual and collective (social) outcomes in terms of individual goal seeking under constraints”.⁴⁶ Actors are assumed to be strategic and

different perspective is offered by Emilian R. Kavalski, "The International Socialization of the Balkans," *Review of International Affairs* 2, no. 4 (2003).

⁴³ Checkel, "Why Comply? Constructivism, Social Norms and the Study of International Institutions." p. 3.

⁴⁴ Alexander Wendt, *Social Theory of International Politics* (Cambridge; New York: Cambridge University Press, 1999), James Fearon and Alexander Wendt, "Rationalism Vs. Constructivism: A Skeptical View," in *Handbook of International Relations*, ed. Beth Simmons and Thomas Risse Walter Carlsnaes (New York: Sage, 2002). Note this theoretical distinction forms the basis of the analysis in Bearce and Bondanella, "Intergovernmental Organizations, Socialization, and Member-State Interest Convergence," as well, although their flavour of constructivism is particularly positivist.

⁴⁵ Mark A Pollack, "Rational choice and EU Politics," *ARENA Working Paper* (2006) p. 3.

⁴⁶ Duncan Snidal, "Rational choice and International Relations," in *Handbook of International Relations*, ed. Beth Simmons and Thomas Risse Walter Carlsnaes (New York: Sage, 2002) p. 74. Note the similar assertion at Reus-Smit and Snidal, eds. *The Oxford Handbook of International Relations*. Chapter by Andrew H. Kydd, *Methodological Individualism and Rational choice* p. 439.

instrumentally rational, seeking to maximise their own power and welfare, operating on a “logic of consequence” basis.⁴⁷ Behaviour is ultimately explainable as the aggregate of an individual’s discreet choices.⁴⁸ As utility maximisers, it is assumed that actors are motivated to better their own position; “Individuals with fixed preferences over possible states of the world calculate the expected utility of alternative courses of actions and choose the action that is most likely to maximise their utility”.⁴⁹ Finally, actors are also under constraint, they must “weigh and choose among alternate courses of action within the constraints of the physical and social surroundings, often on the basis of incomplete information”.⁵⁰

The first order theories derived from a rational choice orientation display a remarkable degree of variation whilst remaining true to the beliefs of their second order commitment. This is attributable to the fact that adopting rational choice assumptions in no way prejudices what the target of investigation is. First order theories remain free to identify “particular social systems as the object of study” and to make “specific assumptions about those systems and their constituent actors and specific causal or interpretive claims about them”.⁵¹ Within this second order framework approaches such as the various textures of realism and liberalism all have within them something to say about socialisation.⁵² However, the body of literature that has evolved out of the study

⁴⁷ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 9.

⁴⁸ Pollack, “Rational choice and EU Politics.” p. 3.

⁴⁹ Ibid. p. 4.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² They do not all necessarily talk about norms, however. For example, the socialisation embedded in neorealism as a structural imperative derived from anarchy is not based on normative propositions, Kenneth Neal Waltz, *Theory of International Politics* (New York: Random House, 1979) p. 76. Also see Peter G Cerny, “Mapping the Varieties of Neoliberalism” (paper presented at the International Studies Association Conference, Montreal, Quebec, Canada, 17-20th March 2004). For an excellent overview of the various neoliberal accounts and Andrew

of the European Union from a rational perspective has advanced both relevant and seemingly convincing arguments about how membership of a regional community is significant for socialisation consequences.

EUROPEAN INTEGRATION RATIONALISM

Scholarship surrounding the European example comes in a myriad of forms and with a similarly broad array of interests, from classic (neo)-functionalist works⁵³ studying the integration process⁵⁴ to much of the more detailed work on individual aspects of the Union, such as studies on the legislative, executive and judicial process.⁵⁵ It should be borne in mind, especially in light of the critique to come, that there are two bodies of closely intertwined literature to be dealt with here. The first details the broad appreciation of the EU's socialisation power in Eastern Europe. The second comprises those studies that make explicit reference to the three-way nexus between the regional community, membership and socialisation. The addition of membership to the equation does, as will be shown, have significant consequences for the conclusions generated.

Moravcsik, "Explaining International Human Rights Regimes: Liberal Theory and Western Europe," *European Journal of International Relations* 1, no. 2 (1995) for the recent liberal Intergovernmentalist account.

⁵³ See for example Ernst Bernard Haas, *The Uniting of Europe; Political, Social, and Economic Forces, 1950-1957* (London: Stevens & Sons Limited, 1958).

⁵⁴ Henry Farrell and Adrienne Héritier, "A Rationalist-Institutionalist Explanation of Endogenous Regional Integration," *Journal of European Public Policy* 12, no. 2 (2005).

⁵⁵ Questions of legislative harmonisation are explored in the work of Amie Kreppel, "The European Parliament's Influence over EU Policy Outcomes," *Journal of Common Market Studies* 37, no. 3 (1999) and ———, *The European Parliament and Supranational Party System: A Study in Institutional Development*, Cambridge Studies in Comparative Politics. (Cambridge; New York: Cambridge University Press, 2002). The development of the EU as a centre of executive authority is explored in Jonas Tallberg, *European Governance and Supranational Institutions: Making States Comply*, Routledge Advances in European Politics; 14 (London; New York: Routledge, 2003). A focus on judicial socialisation is offered by Karen Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (Oxford: Oxford University Press, 2001).

In the European rationalist account, regional communities are interested in expanding membership as a way to condition the behaviour of other actors to enhance the predictability of that behaviour and to gain access to some desirable consequence of membership. Norms and laws offer ways in which that behavioural conditioning can be articulated and transmitted. Norms are positioned as intervening variables mediating between interest and political outcomes with scant independent explicatory power,⁵⁶ whilst laws possess relatively unproblematic binding power and are respected due to the relative power between enforcer and target state. The work of Frank Schimmelfennig is an exemplar of this European integration rationalist approach, his work focusing around a quest to explain socialisation as a product of the membership process between the EU and potential member states without having to assume non-egoistic actor utilities.⁵⁷ In a recent work, Schimmelfennig argues that socialisation is understood as a "process of reinforcement" that rests upon three major components.⁵⁸ Firstly he indicates the centrality of the "highly material and political rewards of membership" as the only phenomena that has sustained change. Secondly, he argues that the main channel of international reinforcement is intergovernmental, given that the weakness of societies and electorates is such that they are unable to act as effective agents of socialisation. He finally indicates that the prospects for socialisation, and stable adherence to any new behaviour,

⁵⁶ Refer to Stephen D. Krasner, *International Regimes*, Cornell Studies in Political Economy (Ithaca: Cornell University Press, 1983).

⁵⁷ Frank Schimmelfennig, "International Socialization in the New Europe: Rational Action in an Institutional Environment," *European Journal of International Relations* 6, no. 1 (2000) p. 110.

⁵⁸ Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe," p. 828.

are dependent upon the long-term constellation of political parties and power in the domestic arena in the target state.⁵⁹

The rational approach delivers specific understandings of how laws affect other actors. It has also, under the weight of the constructivist critique, developed detailed understandings of norms as intervening variables and socialisation as changing behavioural patterns. It does so in a particularly rationalist way, one that pays heed to the belief that the identity and interests of actors are assumed to be exogenous and static, and that as such socialisation can only refer to changed behaviour on the part of actors.⁶⁰ This is part of a wider trend in recent scholarship that has split rationalists between so called "thick" and "thin" varieties of rationalism. Whilst "thick" rationalists dismiss normative factors as wholly irrelevant to the understanding of international relations, "thin" rationalists have responded to the growth of normative concerns within the discourse by offering a reinterpretation of the utility of norms. In this interpretation, ideational factors are viewed in highly circumscribed ways, and when they are used, it is instrumentally. Thin rationalists are open to the possibility of construing incentives, rewards and punishments as either material or social. European rationalist scholarship is comfortable with the notion of change on the domestic level, where sub-national elites, NGOs and civil society more widely, are actively affected by normative concerns. This domestication of norms provides for internal sanctioning, whereas using coercion to change behaviour is successful only as long as the coercive pressure is applied, and thus is costly and of a short-term nature. Socialising actors rationally seek to aid the

⁵⁹ Ibid. pp. 828-830.

⁶⁰ Although it should be noted that recent scholarship has started to engage with endogenous preference formation from a rational choice perspective, although this field is still new. A good example is offered by Farrell and Héritier, "A Rationalist-Institutionalist Explanation of Endogenous Regional Integration."

internalisation of norms as a preference for a mechanism that best ensures compliance. The external states also seek to minimise the costs of their being socialised via normative manipulation that aims at maximising the net benefit to be gained from socialisation.⁶¹

To illustrate this, whilst earlier incarnations of rational choice showed little interest in ideational or social phenomena such as legitimacy,⁶² Schimmelfennig's more recent work is based explicitly on these concerns. A rationalist "turn" in the understanding of legitimacy is provided by the insight that "the basic self interest of politicians and political organizations is to come to and stay in power".⁶³ Legitimacy is understood as an external institutional fact that impacts upon their cost-benefit calculations of power motivated actors.⁶⁴ This is of central importance in an institutional environment such as the EU where notions of what is, and is not, a legitimate action are central in achieving success because they define the parameters of what behaviour can be used to achieve ones goal. As Schimmelfennig puts it, "those who seek positions of authority have to base their political ambitions on the system's constitutive political values and norms in order to be perceived as legitimate."⁶⁵ Schimmelfennig provides three consequences of adopting the thin rationalist take on socialisation. Firstly, actors do not automatically take the rules and norms of the community as a given, rather they confront them as external institutional facts that work as a resource of support for norm-conforming behaviour and as a

⁶¹ Schimmelfennig, "International Socialization in the New Europe: Rational Action in an Institutional Environment," p. 129.

⁶² Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998).

⁶³ Schimmelfennig, "International Socialization in the New Europe: Rational Action in an Institutional Environment," p. 117.

⁶⁴ Ibid.

⁶⁵ Ibid.

constraint that imposes costs on norm-violating behaviour. Actors weigh up the costs and benefits of reinforcement and compliance in light of their goals and finally actors manipulate the norms strategically so as to avoid or reduce the cost to them of socialisation.⁶⁶ Through this process, actors “learn” the best way to behave to ensure desirable outcomes, and are therefore socialised into certain patterns of behaviour that are more legitimate than the alternatives. Rationalist understandings of learning tend towards a high degree of individualism that downplays the social aspect of this phenomenon. In what has been termed “simple-learning”, rational choice posits that actors acquire new information as a result of interactions, and that this information may be used to alter strategies, but not preferences, which remain static.⁶⁷

THE CRITIQUE OF RATIONAL CHOICE

Before moving onto an account of the constructivist counter charge, a few words on the limitations of the rational choice approach are appropriate. Rational choice accounts of EU socialisation rest upon a set of accepted “no-go” areas that are bred of rationalist ontological choices. Most interestingly for this research, it is unable, I suggest, to outline exactly how a set of EU goals becomes institutionalised in the heads of lawmakers, jurists and individuals in any target state. The EU effort in Turkey is concerned with two things; firstly a reorientation of the Turkish legal system in terms of the written law, penal codes and even the constitution, and secondly the alteration of the opinions of government and the judiciary and the instilling of these rights into civil society. Rational choice approaches are excellent at answering the first question. We can

⁶⁶ Ibid.

⁶⁷ Checkel, “Why Comply? Constructivism, Social Norms and the Study of International Institutions.” p. 7.

clearly trace (if we subscribe at least to certain notions of causality) EU statements on the need to change a specific law actually being filtered through into Turkish plans to change that same law, followed by Turkey acting to do so. What we cannot do is create a similar chain of events that link EU conditionality with the shared norms of freedom of expression that exist in civil society and which are guarded by an informed and proactive judiciary. Why is this the case? Because rational choice black boxes identities when it makes explicit assumptions about the nature of actors as closed, rational egoists. As such, it effectively closes off a vital area of insight, one that is crucial to actually explaining what the intentions of the EU are when it extends membership to new states.

Schimmelfennig and Sedelmeier indicate that rational choice approaches are the best way to understand the socialisation that we see with the expansion of the EU,⁶⁸ leaving room for broadly constructivist accounts in the subsidiary capacity of explaining the minutiae of the eventual outcome.⁶⁹ It appears somewhat strange to describe the embedding of freedom of expression in civil society, something the EU explicitly states as of central importance when it demands that not only should standards exist on paper, but also they should be clearly and routinely enforced throughout society, as “minutiae”. The rational choice account offers an excellent analysis of how the EU is able to influence the

⁶⁸ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 224. Corroborating research is offered by Dimitris Papadimitriou and David Phinnemore, "Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania," *JCMS: Journal of Common Market Studies* 42, no. 3 (2004) and Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey," *JCMS: Journal of Common Market Studies* 41, no. 3 (2003).

⁶⁹ Frank Schimmelfennig and Ulrich Sedelmeier, *The Politics of European Union Enlargement: Theoretical Approaches*, Routledge Advances in European Politics (New York, London: Routledge, 2005). This additional emphasis shows clear signs of being derived from the work of Jeffrey Checkel, a sociological scholar. Detailed analysis of Checkel's position can be found below.

rewriting of laws and constitutions in Turkey; it offers, however, an exceedingly poor account of how it goes from the constitution to the minds of the great and the good in Ankara and Istanbul.

THE CONSTRUCTIVIST APPROACH TO SOCIALISATION

Could a constructivist appraisal of socialisation offer a superior account to that of the rationalists just presented? Constructivism is a broad school that incorporates numerous approaches to the study of politics.⁷⁰ Apart from the work of Alexander Wendt who explicitly tries to construct a socially informed theory of international relations to replace the neorealist intellectual hegemony, the vast majority of constructivist work has eschewed that goal, preferring a contextual approach that limits how universalisable it is outside its own empirical horizons. In opposition to a "logic of consequence" approach constructivists of all hues adopt a "logic of appropriateness", whereby actors are presumed to be motivated by internalised identities, values and norms.⁷¹ Whilst the most sophisticated rational choice approaches have incorporated norms and social phenomena such as legitimacy into their analysis, some argue that despite this they are inherently limited by their ontological commitments to a full understanding of the potential

⁷⁰ Typologies of the variety of constructivism vary almost as widely as the approach itself. Systemic constructivists, most notably Wendt himself, seek to create an explicitly social theory of international relations, a third image approach, with much the same motives as Waltz and his neorealist account. See Wendt, *Social Theory of International Politics* and Alexander Wendt, "Anarchy Is What States Make of It - the Social Construction of Power Politics," *International Organization* 46, no. 2 (1992). Many who sought to use the social insight in a more focused way rejected this, Kathryn Sikkink, *Ideas and Institutions - Developmentalism in Brazil and Argentina* (Ithaca: Cornell University Press, 1991) is a good example of this second image-reversed approach that looks inside states in order to discuss the social origins of political behaviour. Constructivism can also vary along epistemological lines from a positivist account of norms through to various linguistic constructivists who focus on the formative power of language which at the extreme can become a radical (de) constructivism that approaches the theorists own role in the reproduction of the social world. Note the extensive discussion of this at Jeffrey Checkel, "Social constructivisms in Global and European Politics: A Review Essay," *Review of International Studies* 30 (2004) Also refer to Steve Smith, "Social constructivisms and European Studies: A Reflectivist Critique," *Journal of European Public Policy* 6, no. 4 (1999).

⁷¹ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 9.

of norms, because norms ultimately interact with both the identities and interests of actors at a fundamentally constitutive level.⁷² Interests and identities are therefore not bracketed away, but become the key focus of analysis, and their social endogenous origins are central in accounting for political behaviour. Constructivists unite around a mutually constitutive ontological stance that rests upon the irreducibly intersubjective dimension of human action,⁷³ and the consequences that this has for understanding sub-national, national and international processes.

Constructivism endeavours to understand the world through a focus on normative and ideational factors that, through an ever-changing social process between actors, constantly form and reform actor identities, where "identities and interests are learned and sustained by inter-subjectively grounded practice".⁷⁴ The constructivist approach seeks to understand the full range of roles that ideas can play in world politics, rather than specifying *a priori* roles for actors and ideas as the rational choice approach tends to.⁷⁵ It does not automatically exclude the possible significance of material issues such as power, but it does argue that any approach that excludes ideational factors at a constitutive level is seriously lacking. The constructivist approach to socialisation rests upon problematising what rational choice approaches take for granted, namely the nature of actors and interests themselves. Actor identity and interests are not exogenous; rather they are the product of a complicated and constantly active feedback between actors,

⁷² Annika Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, no. 1 (2002) p. 9.

⁷³ John Gerard Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," *International Organization* 52, no. 4 (1998) p. 856.

⁷⁴ Maya Zehfuss, "Constructivism and Identity - a Dangerous Liaison," *European Journal of International Relations* 7, no. 3 (2001) p. 316.

⁷⁵ Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," p. 867.

identities and norms. States are not normatively alike; rather they possess a range of different identities and domestic configurations that lead to every state possessing multiple identities.⁷⁶ Norms are not instrumental tools but are independently held by a variety of social actors, and they play a central role in explaining identity and interests, as well as the continuous interaction of the two. Audie Klotz states succinctly the constructivist interpretation of norms when she makes the case that they are not merely a constraint of self interested action, rather they play an explanatory role by problematising identity and interest formation,⁷⁷ with “irreducible ontological status”.⁷⁸ What this results in is an argument that socialisation occurs because actors discuss with each other the way ahead, drawing on norms and laws to substantiate their particular truth claims. Socialisation occurs because actors agree, down to the individual level, that it is the right thing to do. True to the majority of constructivist accounts, the ultimate agents of political action are individuals, and as such the linkage between changed individual beliefs and shifts towards pro-norm behavioural changes are important, the progress in understanding how actors change their interests and their behaviour will come from the interaction of strategic behaviour with social-psychological socialisation mechanisms.⁷⁹

⁷⁶ Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton, N.J.: Princeton University Press, 2001) p. 14.

⁷⁷ Audie Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions against South Africa," *International Organization* 49, no. 3 (1995) p. 460.

⁷⁸ Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," p. 11.

⁷⁹ Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe," p. 1014. The constructivist focus on the sociological has a sequence of methodological consequences. Note the discussion in Reus-Smit and Snidal, eds. *The Oxford Handbook of International Relations*, Chapter by Friedrich Kratochwil, *Sociological Approaches* pp. 455-458.

The constructivist approach to understanding why the EU has successfully socialised its laws and norms to others notes that the simple fact that the EU is powerful, where its power is manifested as the structural asymmetry it exhibits vis-à-vis applicants, does not explain the socialisation that we see. Such structural considerations may define the outer boundaries of what is possible, but in understanding the precise nature of the change that has occurred, we must be aware of the social understanding that surrounds that relationship.⁸⁰ Laws are not simply obeyed, rather they are assessed as being "right or wrong", an assessment that is constantly in flux as actors interests and identities evolve under a welter of constant discussion, pressure and interaction.

Interestingly, within this broad conclusion, constructivist studies of the EU have focused less on the processes of membership than on the day-to-day politics of the Union itself and how those politics influences existing states and their representatives.⁸¹ There is a conceptual difference between a focus on the day-to-day politics of being a member of the EU, where constructivism has a distinct voice, and a focus on the socialisation consequences of membership. In the former, membership is the permissive condition, the backdrop against which specific socialisation pressures occur, but it is not itself problematised. In the latter example, the one at the heart of this study, it is questions of membership that are at the forefront of the socialisation story. Revisions to the obligations and meanings of membership are themselves vital sources of socialisation pressure. Representative of the constructivist focus on the occurrences within membership

⁸⁰ Carol Atkinson, "Constructivist Implications of Material Power: Military Engagement and the Socialization of States, 1972-2000," *International Studies Perspectives* 50 (2006) p. 534.

⁸¹ For a broad theoretical overview of the constructivist account of the EU note Thomas Christiansen, Knud Erik Jorgensen, and Antje Wiener, "The Social Construction of Europe," *Journal of European Public Policy* 6, no. 4 (1999).

contexts, Jeffrey Lewis presents an analysis of the Committee of Permanent Representatives (COREPER) of the EU in an attempt to investigate how state delegates to that Committee have their “cognition, attitudes and identity” altered by membership of COREPER in ways that create a gap between their behaviour and the rational expectation that they would fulfil their national governments desires unquestioningly.⁸² Lewis concludes, “COREPER’s institutional architecture challenges the conventional dichotomy that sharply demarcates the national and European levels”⁸³ with the result that Brussels based decision-makers, ensconced in a dense institutional and normative environment with strongly held standards of behaviour come to internalise, albeit partially, these norms and respond in ways that are not simply “national” in outlook.⁸⁴

Constructivists therefore seem to have ceded the study of the membership, community, and socialisation nexus to the rationalists. They focus very much on the socialisation consequences of *being* a member, not of *gaining* and *maintaining* membership. Where is the constructivist riposte to Schimmelfennig? This is really quite surprising, given that the limitations of rational choice scholarship on the socialisation history of the EU just outlined above seem to offer the perfect “social moment”. It is also a rather strange state of affairs given that, within the broader realm of International Relations, constructivism has become a well-rounded and embedded research programme across multiple disciplinary agendas. It even has great traction in the broader account of international organisations as “teachers” of norms outside of explicit

⁸² Jeffrey Lewis, “The Janus Face of Brussels: Socialization and Everyday Decision Making in the European Union,” *International Organization* 59, no. 04 (2005) p. 938.

⁸³ Ibid. p. 967.

⁸⁴ Ibid. p. 968.

questions of membership.⁸⁵ There is something about the addition of EU membership that leads to rationalists becoming the “winner”, for reasons that will be more fully investigated below.

THINKING PLURAL? THE STRENGTHS AND WEAKNESSES OF BRIDGE-BUILDING

At face value, the literature offers a simple binary opposition that encapsulates the exclusive nature of the rival meta-theoretical approaches. Rationalists focus on conditions of asymmetry promoting changed behaviour, while constructivists focus on changing social structures promoting changed identities and thus interests. In response to this, and in the interest of creating a more holistic account of socialisation, the EU Academy has innovated methodologically in light of the complexity of the socialisation process itself, and the variety of outcomes that it engenders. There has also been an increased awareness that viewing every event through only one of these two lenses creates an unhealthy distortion in the analysis of phenomena.⁸⁶ Here we can identify an intriguing gap between the study of EU membership-driven socialisation and a broader account of EU socialisation. This bridge building has come to the fore in the broad study of the EU’s socialisation ability, not in the study of EU membership driven socialisation. Jeffrey Checkel’s comparative study between Germany and Ukraine is an excellent example of this bridging in the broader EU context.⁸⁷ Such bridge-building efforts downplay the theoretical incompatibility of rationalist and constructivist approaches.⁸⁸ Instead Checkel advocates an

⁸⁵ Susan Park, "Theorizing Norm Diffusion within International Organizations," *International Politics* 43 (2006) Also note Park, "Norm Diffusion within International Organizations: A Case Study of the World Bank," p. 112.

⁸⁶ Fearon and Wendt, "Rationalism Vs. Constructivism: A Skeptical View."

⁸⁷ Checkel, "Why Comply? Social Learning and European Identity Change."

⁸⁸ Much of the work of Jeffery Checkel has focused on these issues and his response to them. An excellent recent overview of his position can be Accessible at Jeffrey Checkel, "International

“empirically informed dialogue” that facilitates our ability to examine socialisation events by combining the insights of both approaches.⁸⁹ This work is an interesting starting point for this study, focusing as it does on the eclectic appreciation of the insights of both rational choice and constructivist scholarship. The argument rotates around the belief that rational and constructivist insights may be “better” at explaining socialisation depending on different contexts, a safe suggestion and one that this study supports. In the Fall 2005 edition of International Organization edition, Checkel advocates the use of dual “lenses” to analyse events, now arguing that instead of one theoretical lens being better than the other in different contexts, that they should both be used simultaneously, moving from an either/or account to one that seeks to adopt a both/and methodology. As he states, “this double interpretation seems a necessary step to identify issues and dimensions on which rationalism and constructivism come to clearly competing predictions”.⁹⁰ Adopting such a perspective opens our eyes to a surprising degree of complementarity between the two approaches, allowing constructivism to “focus mainly on the explanation of preference and the rationalist perspective on the explanation of behaviour with given preferences”.⁹¹ Checkel’s interpretation on scholarship in reference to the European example has helped to break the simple binary zero-sum analysis that characterised the early rational choice/constructivist discourse, and has revealed the paucity of

Institutions and Socialization in Europe: Introduction and Framework,” *Working Paper submitted to International Organizations* (16/05/03). See also Andrew Moravcsik, “Is Something Rotten in the State of Denmark? Constructivism and European Integration,” *Journal of European Public Policy* 6, no. 4 (1999) for an analysis of the shortcomings of constructivist approaches to socialisation. The counter critique is Accessible at Thomas Risse and Antje Wiener, ““Something Rotten” And the Social Construction of Social Constructivism: A Comment on Comments,” *Journal of European Public Policy* 6, no. 5 (1999).

⁸⁹ Checkel, “Why Comply? Social Learning and European Identity Change,” p. 581.

⁹⁰ ———, “Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State,” p. 1065.

⁹¹ Ibid.

approaches that seek to link causes and consequences with a specific theoretical perspective.

This bridge-building is both a promising avenue for this study and at the same time more than a little strange, and I use the coming analysis as a window into the broader criticisms that this study levels at current accounts. Why does Checkel advocate a well-reasoned bridging account of EU socialisation powers, and yet Schimmelfennig can forward the conclusion that EU *expansion* (that is, the EU, membership and socialisation nexus) is best understood through rational choice? Could it be that the form of the EU itself, a point discussed in greater depth below, facilitates such a conclusion? If so, then the conclusion that rational choice is the main solution to the regional community, membership and socialisation nexus is not generalisable without further comparative analysis. While I do not wish to pre-empt the coming analysis, I suggest here that the bridge-building insight into the broad affects of the EU needs to be imported into the study of membership driven socialisation by regional communities. Secondly, and at a conceptual level, these bridging efforts, despite their insight, rest on a rather problematic omission. It is bridge-building that does not translate that eclecticism to the level of definitions. Rather, it builds on top of rationalist and constructivist understandings of norms and socialisation. Addressing these two lines of investigation turns our attention to the broader shortcomings of the established literature.

CRITICISM OF THE THEORETICAL UNDERSTANDINGS OF REGIONAL COMMUNITIES, SOCIALISATION AND MEMBERSHIP AS A WHOLE

There are two strands of criticisms which addresses the existing literature just covered that I wish to forward. When viewed together these two strands

reveal how existing scholarship is unable to address or answer the research question at the heart of this study, that of exploring the socialisation mechanisms that arise from applying, achieving and maintaining membership of regional communities. I will firstly investigate how the limited geographical travel of this work undercuts its ability to truly account for the socialisation that we see, even if we adopt the unreconstructed bridge-building approach of Checkel. Secondly, and building upon that, I will focus on how this limitation has facilitated the development of an incomplete definitional framework that actually contradicts the methodological intent of the eclectics. It should be noted that these are not criticisms of their project as a whole, and the next chapter will advance theoretical and practical arguments that rest upon them.

THE PERILS OF LIMITED HORIZONS

The literature discussed bases itself, in whatever theoretical and methodological configuration, on a single site of how communities, socialisation and membership interact. An empirical set of criticisms, and a window into the theoretical shortcomings, focuses on the danger of conflating a focus on a single case study with wider claims that aim to be definitive of socialisation by regional communities. The literature on the EU has not investigated how their conclusions travel to other occurrences where regional communities, membership and socialisation interact. This has not gone un-remarked upon by the academy itself, and some have called for the extension of socialisation studies away from a strict focus on Europe.⁹² Zürn and Checkel in 2005 noted that the over-whelming preponderance of rational choice accounts of socialisation which emerge out of

⁹² Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe."

the study of the EU are less to do with universal truths of socialisation and more to do with the analytical focus on the EU as a constraining factor on state behaviour.⁹³ This limited travel is important because new empirical examples of socialisation by regional communities via membership may well indicate that the conclusions generated by the EU both in terms of what socialisation processes actually exist, and then which ones are more or less important, or are myopic.

The EU shows only one way in which socialisation, membership and regional communities can interact; a way that is unique because of the nature of the EU itself as the most atypical of communities in the most extreme of situations.⁹⁴ The EU rests upon a massive body of treaty law and jurisprudence, known as the *acquis*. For Turkey to become a member, it must first, before membership, incorporate that framework into both its domestic legal system and, even more intrusively, into its social fabric and broader civil society. The EU tightly controls the variation of its member states as a consequence of its elaborate political, economic and social goals. There could be no common market if states were not liberal capitalist democracies. There could be no commitment to, let alone progress towards, "ever closer union" if some states violated freedom of expression and some states enshrined it. You *must* be similar to existing member states to become a member, and that similarity *must* occur

⁹³ Checkel, "Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State," p. 1069.

⁹⁴ Refer to Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London: Routledge, 1999). An interesting take from a different perspective is found in Thomas Diez, "Constructing the Self and Changing the Other: Reconsidering "Normative Power Europe"," *Millennium* 33, no. 3 (2005). We must also be aware of the specific context of Central and Eastern Europe after the fall of communism in the 1989–1991 period, because this rendered those states especially amenable to socialisation by the various European organisations and regimes. The new democracies sought a historic "return to Europe" to paraphrase Vaclav Havel and as such were especially sensitive to the norms that were perceived as characterising Europe in general and the European Union as the prime organisation within that region. Note Joshua A. Trucker, Alexander C. Pacek, and Adam Berinsky, "Transitional Winners and Losers, and Attitudes Towards EU Membership in Post-Communist Countries" (paper presented at the Annual Meeting of Midwest Political Science Association, Chicago, April 19-21 2001).

prior to your accession. The focus on EU socialisation is understandable given that it is both the most impressive example and that the majority of scholars who study regional community, membership and socialisation live within its borders, making it accessible and directly relevant to policy. The offer of EU membership is the most impressive example of socialisation in the modern world. Billions of Euros are dispensed in a tightly focused way towards clearly enunciated goals that cumulatively build an applicant state up to the standards of existing members. Each Annual Report on Turkey numbers hundreds of pages and is poured over by the Accession Partnership Committees, and by the Union itself, to determine whether change is sufficient and fast enough.

As such the conclusions generated by the work on EU membership-driven socialisation are not conclusions that speak to regional community, membership and socialisation as a global phenomena. Instead they are conclusions about one community, that because of its uniqueness cannot be broadly representative of how communities socialise human rights via membership broadly. The EU study of socialisation when it interacts with membership is not a study of all socialisation, it is a study of the centrality of a specific notion of conditionality resting upon the belief that the socialisation of freedom of expression is achieved as the pre-requisite of becoming a member. Is this really the same as how the OAS or ASEAN have acted? This would have to be the case were the EU example to serve as an adequate representative basis for the phenomenon of regional community socialisation as a whole. The OAS and ASEAN are communities concerned with socialising human rights using membership, but they do so in different ways and in a differing context. This difference plays out both in terms of the processes of becoming a member, and

also in the way a member retains membership. Centrally, the studies show us that socialisation can occur within the context of existing members engaging in community building efforts. I do not attempt to argue here that the EU is disengaged from building a community, the interminable rumblings of the EU Constitution and then the more prosaically named “Reform Treaty” are eloquent testimony to the error of such a claim. However, in terms of freedom of expression and democracy, the EU achieves its goals before membership is bestowed. There is no more development on these issues; they represent settled legal frameworks within the Union that are socialised via conditionality before membership occurs. In counterpoise to this, the process of achieving membership for Panama and Myanmar was, in both cases ultimately insignificant for freedom of expression and democracy. However, over the histories of their respective memberships, these questions have come to the fore as part of how the OAS and ASEAN have sought to reinvent themselves.

These processes of community building might exert socialisation effects in and of themselves that the EU study cannot capture because it is an example where this does not happen with regard to freedom of expression. It suggests that discursive environments and persuasion may well be more important in a community that is undergoing revision than in the European case. In turn this indicates that to conclude the centrality of rational choice accounts in all examples of where communities, socialisation and membership intersect is dangerously presumptive. Crucially, these discussions remain focused on membership; they are processes of reformulating what it means to be a member, and what mechanisms exist to bind members to any revised standards. The point here is that the EU case simply cannot talk to us about these potential

socialisation processes because they are simply absent, and if that is the case then we confront a stark truth about existing bridge-building accounts. The bridge-building efforts so far have been constructing bridges between two accounts that have not been given a level field or equal starting point. The attempted bridges are being grounded on an example in which one camp, the rationalist, is clearly superior because of the nature of the EU and the socialisation it engenders. This allows Schimmelfennig to say that rational choice analysis best explains what we are seeing when we look at EU membership socialisation.⁹⁵ If we are interested in a broader appreciation of regional communities and how they socialise via membership, and if we are concerned with membership as a process of achieving and maintaining a set of rights and duties, then we must look beyond the EU.

Similarly at the conceptual level limited empirical horizons are damaging not only to a balanced account of socialisation, and to the role of a constructivist ethos in addressing socialisation, but also to the richness that rationalists can bring to the discussion. The rationalist account of EU socialisation through membership has focused on one process by which socialisation occurs; explicit bargaining based accounts rotating around conditionality. Despite the work of Schimmelfennig in extending the rationalist take on socialisation into the domain of social goods and away from brute materialism, the EU as an example rests clearly on conditionality as the motor that drives socialisation forwards. While this is not incorrect within its confines, it is, again, not definitive of the insight a rational choice approach may possess. There is no intrinsic reason why rational choice accounts should relate only to the politics of conditionality. Breaking the EU focus not only possesses potential benefits for the constructivist account but

⁹⁵ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 224.

also, though breaking the rational choice–bargaining–conditionality link that so predominates at currents, opens the door to a more nuanced rationalist investigation of socialisation.

THE PERILS OF PARTISANSHIP

The second criticism is based on a simple observation. Rationalist and constructivist accounts result in rival understandings of norms and socialisation, which in turn are related to their commitments in how norms and socialisation may be identified. This has two shortcomings, a conceptual one that is cognitively central to this study, albeit with far wider ramifications, and a practical one directly related to answering my question of how socialisation by regional communities via the different ways in which membership can be significant. This has deleterious consequences for the investigation of norms because it focuses the attention of the studies of the EU on questions of identifying the effects of norms, not an appreciation of what norms actually are. Whilst my analytical innovations must await the next chapter, it is necessary here to first identify this misstep and then outline its consequences for my question.

A CONCEPTUAL MISSTEP

Socialisation studies rest on rival claims about the nature of norms. Those whose focus is sociological define norms in a way that is compatible with that perspective, as inherently social phenomena that alter identities at the most fundamental level. Trine Flockhart presents one such example when she conceives of norms as part of a process of “social construction” where they “may shape behaviour *and* reconstitute institutions and actor identities” (italics

added).⁹⁶ Those who engage in a rationally inspired instrumentalist account will shun the sociological definition, as it is incompatible with their ontological predilections, preferring to view norms as intervening variables in the rational process of utility maximisation, "mediating between interest and political outcomes with little or no independent explanatory power".⁹⁷ It is worth pausing for a moment and assessing whether this claim is quite accurate. Is it really the case that these approaches posit that norms are different things, or is it more accurate to believe that they share a definition, norms as standards, but then disagree as to their effect?

There is undoubtedly mileage in this account, and I certainly concur that at a bare minimum, the notion of "shared standards" certainly underpins both. However, as shown, it is not this definition *per se* that drives the various research agendas. The problem comes in the *exclusive* way that differing approaches understand those effects. A shared assessment of norms as common standards means little when the methodological lenses rationalists and constructivists deploy to identify the presence of those norms depend on identifying their effects. We cannot go out and simply "see" a norm;⁹⁸ rather we can see second-hand evidence that appears to support the presence of norms (be it in the form of changed state behaviour or the altered identities of actors). If we are looking for different things, such as evidence of changed ideational commitments or behavioural modification, then the emphasis of the problem merely shifts from

⁹⁶ Trine Flockhart, "Ideas - the Key to Comparing 'Apples and Oranges.'" *Co-operation and Conflict: Journal of Nordic International Studies Association* 37, no. 1 (2002) p. 75 Also note Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions against South Africa."

⁹⁷ Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," p. 11 Also note Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization* 36, no. 2 (1982)

⁹⁸ Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," p. 13

forwarding different and exclusive definitions to forwarding different and exclusive understandings of effect.

Rational choice and constructivist approaches take these appreciations and translate them into differing assessments of what socialisation is and how it actually occurs. Both emphasise that change occurs both in a states external behaviour vis-à-vis other international actors, and in its internal political make up,⁹⁹ indicating that socialisation refers to change on both sides of the international/domestic divide.¹⁰⁰ The divergence comes when one considers the “depth” at which one must locate change. Constructivists argue that norms affect actors’ identities and interests at a psychological level,¹⁰¹ and therefore socialisation is understood to be the process by which norms are “internalised” into the psychological makeup of actors through a process that seeks to alter actors understandings of what is “correct” or socially acceptable behaviour. Their analysis is “deep” in the sense that they seek to identify attitudinal changes at a fundamental psychological level and to appraise the “cognitive and ethical dimensions” of decision-makers.¹⁰² Rational choice accounts seek to explain change through shifts in behaviour induced not by changes in belief but a

⁹⁹ Most recent examples of scholarship explicitly on compliance would bear this out. Refer to James Hughes, Gwendolyn Sasse, and Claire Gordon, "Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-National Government," *JCMS: Journal of Common Market Studies* 42, no. 3 (2004). Substantiating scholarship, again from the European context, is offered by the work of Frank Schimmelfennig, including Schimmelfennig, Engert, and Knobel, "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey."

¹⁰⁰ Indeed socialisation into human rights norms would appear to necessitate domestic change; a state that pays lip service to such norms, but violates them at home, cannot be said to be fully socialised, although it may be on the way to that goal. An interesting perspective on this is offered by Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?," *Yale Law Journal* 111, no. (2002).

¹⁰¹ See, for example, Judith Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions," *International Organization* 58, no. 03 (2004) p. 428.

¹⁰² James G. March and Johan P. Olsen, "The Institutional Dynamics of International Political Orders," *International Organization* 52, no. 4 (1998) p. 951.

strategic realignment of behavioural patterns to ensure best outcomes.¹⁰³ Here socialisation is the process by which actors are made to conform to normative propositions and incorporate them as an instrumental truth in their decision-making processes. This approach does not seek to engage with the psychological motivation for behaviour in the individual and psychological levels.

A PRACTICAL IMPEDIMENT

Identifying the issue is only the first step in locating why it is likely to be a problem for this study. I suggest that this plurality of definitions of effect provides little traction in the analysis of norms. An examination of the nature of the case studies suggests why this should be. The EU has socialised freedom of expression through rationalist accounts in which clearly held legal standards are projected via strong statements of conditionality that Turkey must comply with. The OAS has engaged in both rationalist and constructivist methods to promote socialisation, creating courts and commissions, but also engaging in a radical overhaul of the discursive environment within which socialisation has been attempted. It has upgraded its own norms on freedom of expression and ultimately, albeit unconsciously, has changed the very meaning of what it is to be a member of a community. ASEAN has only the thinnest of legal standards, and yet it has discussed democracy and human rights both through its own community building efforts and directly through pronouncements and actions concerning Myanmar.

Adopting an explicitly rational choice or constructivist definition to underpin this study would serve to close ones eyes to potentially vital

¹⁰³ An excellent précis of the range of rational choice approaches to socialisation is offered by Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45 (2001).

socialisation processes that exist and are best understood from an alternate perspective. If one only seeks standards that can be identified via changed individual beliefs, and you may well find a different set of norms, and processes, which spread them, than if you only looked for changed behaviour, and processes that reinforce that shift. The value of a comparative study such as the one at hand is that it presents a wider range of processes to consider, which focus attention on a single standard, freedom of expression, and a single process, socialisation. An inherently comparative enterprise such as this one, must establish firmer definitions than existing accounts if it is truly to be able to compare just how it is that freedom of expression is being altered in three spaces and in multiple timeframes. Bridge-building may have opened the door to such an approach by rejecting the quest for a single theory to answer socialisation puzzles, but it remains an incomplete endeavour in the absence of an investigation of the definitional foundations of possible answers, however eclectic they may in fact be.

GOING CRITICAL: THE PHILOSOPHICAL SHORTCOMINGS OF CONVENTIONAL ACCOUNTS

It is at this juncture that we confront a choice. We could simply note the shortcoming in definitional structures as interesting but ultimately intractable and rest our eclectic socialisation accounts upon this grey zone. This is intellectually unappealing and shaky ground on which to base any investigation. If the constructivist critique of rationalism is that there is value in breaking open the black box of identity, then it seems a short-sighted step to then merely rest the open black box on a wilfully ignored grey one. What is needed is a definition of norms and socialisation that underpins both rationalist and constructivist

accounts equally, and as such keeps our eyes open to what the empirical world is telling us. The remainder of this chapter will present how Critical Realism critiques the existing definitional accounts and helps reveal why we cannot rest our definitions on either existing approach, before turning in chapter three to the (re) construction of a definitional frame that does offer sufficient grounding for both the theoretical requirements of constructivist and rational choice programmes whilst at the same time doing justice to the empirical findings of this study. To investigate this I will present a criticism of the existing causal accounts that underpin the rational choice and constructivist accounts of socialisation previously encountered, showing how they cannot offer a solution to the conundrum.

THE INSIGHT OF CRITICAL REALISM: THE EPISTEMIC FALLACY AND ITS CONSEQUENCES FOR STUDYING SOCIALISATION

The discussion so far has revealed that rational and constructivist accounts of socialisation rested on an apparent disagreement over the effects of norms, and that this plays negatively against my need to investigate socialisation broadly. Critical Realism provides a different approach to appraising this division as a first step to rebuilding our definitions. It does so by identifying what Roy Bhaskar, the father of philosophical realism has termed the epistemic fallacy.¹⁰⁴ The argument is complicated, but ultimately fruitful for the discussion here. Stated broadly, the epistemic fallacy is a belief that much thinking in the social sciences generally confuses reality with the representation of that reality. It identifies that the ontological statements put forward, both within International

¹⁰⁴ I follow Kurki in differentiating between Philosophical Realism as a broad movement and Critical Realism, the version of this movement with relevance to the social sciences. Milja Kurki, *Causation in International Relations: Reclaiming Causal Analysis* (Cambridge: Cambridge University Press, 2008) p. 168. Also note the discussion in Brown, "Situating Critical Realism," .

Relations and elsewhere, are arguments about *being* that rest implicitly on certain expectations about *knowing*. We make assessments about what is in the world through our ability to know the world.¹⁰⁵ Critical Realism argues that this is fundamentally the wrong way around. It suggests that the transitive epistemological dimension (that which we can possibly know) is not the same as the intransitive ontological one (that which exists, but is beyond our senses to fully comprehend). In Bhaskar's own words, "knowledge follows existence, in logic and in time; and any philosophical position which explicitly denies this has got things upside down".¹⁰⁶ Kuhn, Popper, Lakatose and their intellectual disciples, the luminaries upon which International Relations as a social science rests, and as such on which existing accounts of socialisation are based, fundamentally mistook reality for what they perceived it to be, not what it actually was.

The value of this line of reasoning becomes apparent when we trace the effects of this mistake on the existing definitions of norms and socialisation. When rationalists and constructivists talk about norms, they are doing so while mistaking their ability to *discern* what norms are, which is ultimately an epistemological question, for what norms *actually really* are, which is an ontological question. They may share an understanding of norms as shared standards, but the differing ways in which they then take that understanding to mean that norms exert different effects is in fact an argument about what the "true" effect of norms really is. Rationalists and constructivists thus follow divergent paths because of the fundamental similarities in their respective philosophical positions. Positivists ultimately denote the real in "terms of the

¹⁰⁵ Philip J. Dobson, "The Philosophy of Critical Realism - an Opportunity for Information Systems Research," *Information Systems Frontiers* 3, no. 2 (2001) p. 200.

¹⁰⁶ Roy Bhaskar, *A Realist Theory of Science* (Hassocks: Harvester Press, 1978) p. 39.

experienced” whilst post positivists understand what is real in terms of “language and discourse”.¹⁰⁷ These may seem like opposing positions, but the commonality between them is that what is “real” in both cases is anthropomorphically defined, to be “real” something has to be in some way discernable by human observation. Illustratively, Waltz’s contention that “what we think of reality is itself an elaborate conception constructed and reconstructed through the ages. Reality emerges from our selection and organisation of materials that are available in infinite quantity,”¹⁰⁸ is alarmingly similar to post positivist assertions of the socio-linguistic construction of reality,¹⁰⁹ stating that nothing exists outside of the discourse of understanding we construct around it.

This results in both rationalist and constructivist approaches asking how we can identify norms, not asking what norms actually are in the first place, because the norms themselves are not directly observable. This then results, vitally or our story, in rational choice and constructivist approaches seeking to understand norms and socialisation through epistemological questions that rotate around how we can know norms, and then mistakenly transferring that, true to the epistemic fallacy, into a statement about what norms are and what socialisation is. Both answer the question “how can we know norms” by seeking to identify changes in actors characteristics, whether that be “merely” behavioural or at a deeper level of identity and ideational. The definition of what norms are comes from looking out into the world, seeing change, and then attributing that change to a “norm”. The need to be able to “discern norms fully” norms leads to detailed and rival accounts of what those norms are, how they reach significance, and then how they finally exert influence. The danger of

¹⁰⁷ Patomaki and Wight, “After Post-Positivism? The Promises of Critical Realism,” p. 217.

¹⁰⁸ Waltz, *Theory of International Politics* p. 5.

¹⁰⁹ Patomaki and Wight, “After Post-Positivism? The Promises of Critical Realism,” p. 217.

letting our “identification of norms” lead to a “reification of theory”,¹¹⁰ seems to be have been ignored by rational choice and constructivist approaches both of which continue to discuss the nature of norms in this vacuum, resulting in the disagreements just presented.¹¹¹ The key issue here is that “our knowledge of unobservables is much more dependent on what our theories rather than our senses tell us”,¹¹² with the result that the definition of norms has for too long been dependent on the intellectual heritage of the particular observer.¹¹³ Put another way, because we do not discern norms directly, we have relied on our theoretical understandings, derived ultimately from epistemological concerns, to bridge the gap.

THE EMPIRICIST CAUSAL LOGIC, THE TYRANNY OF BEHAVIOUR AND THE SOURCE OF DEFINITIONAL SHORTCOMINGS

Underpinning this line of reasoning is the deepest level on which definitions rest, and that is the level of causality. Norms *cause* things, and socialisation is the process by which that causality plays out. To escape the definitional impasse identified, we must first analyse the similarities in the causal arguments of rational choice and constructivist accounts of norms, before, in the next chapter, turning to elaborate on the Critical Realist approach to cause as the first building block in redefinition.

¹¹⁰ Harald Müller, "Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations " *European Journal of International Relations* 10, no. 3 (2004) p. 426.

¹¹¹ Note that this is not a new observation, even if my analysis of it is novel. Raymond notes in 1997 that “norms appear to be many things to many people” Gregory A. Raymond, "Problems and Prospects in the Study of International Norms," *Mershon International Studies Review* 41, no. 2 (1997) p. 216.

¹¹² Wendt, *Social Theory of International Politics* p. 61.

¹¹³ Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," p. 13.

At one level, the issue of causality has been a contested notion for much of the history of International Relations theorising.¹¹⁴ Indeed, substantial time has been spent within the discipline in discussing rival approaches and forwarding specific agendas.¹¹⁵ These debates have translated into seemingly different causal accounts of socialisation. As noted earlier rational choice approaches argue for the importance of material motivations. Constructivists, meanwhile draw upon on a range of ideational factors as primary causal forces. The EU rationalists think that normative statements are complied with because they are linked to structurally asymmetric relationships and material sanctions, whilst constructivists present norms as competing truth claims that are ultimately internalised when one is held to be morally better than any of the alternatives. Vitally, both of these accounts are based on a hidden unity, the centrality of establishing the presence of causal relationships through the coincidence of empirical regularity. Within International Relations theorising therefore there is very little debate on the *philosophy* of causality.¹¹⁶ Both rational choice and the majority of constructivist perspectives adopt an unquestioningly empiricist philosophy. Both seek to establish causality through general patterns of observed behaviour.¹¹⁷ This “Humean notion” of cause is based on the deductive argument that “the explandandum is the logical conclusion of a general law and the occurrence of a set of initial conditions which together constitute the

¹¹⁴ Milja Kurki, "Critical Realism and Causal Analysis in International Relations," *Millennium: Journal of International Studies* 35, no. 2 (2007) p. 361.

¹¹⁵ A justly famous account is Gary King, Robert Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton: Princeton University Press, 1994).

¹¹⁶ Kurki, *Causation in International Relations: Reclaiming Causal Analysis* p. 8.

¹¹⁷ ———, "Critical Realism and Causal Analysis in International Relations," p. 362. For a full list of the consequences of Humeanism within social scientific research see ———, *Causation in International Relations: Reclaiming Causal Analysis* p. 291.

explanans",¹¹⁸ or more succinctly that a causal relationship can be denoted through the presence of unvarying regularity in the interaction of presumed cause and effect. There is, according to this approach, a conjunction between the recognition of empirical regularities in world politics and the development of a predictive theoretical basis for explaining that regularity. Cause in the Humean sense, is the logical corollary of the repeated conjunction of cause and effect as revealed through the theoretical appraisal of dependent and independent variables.

What this creates is the need for both rational and constructivist accounts to wed their approach to identifying norms to empirical invariance, to consistent behavioural change. A norm exists to rational choice accounts of socialisation when we see states coming up against "something" and then exhibiting changed behaviour as a result of that interaction, thereby enabling the definition of norms as a consequence of that interaction. Freedom of expression exists in the EU legal framework. When Turkey applied for membership the norm of freedom of expression causes a change in Turkish behaviour, identified through the alteration of Turkish legal and constitutional practices, and the norm is socialised when Turkish practice is in step with the EU standard. This is exactly the same identification mechanism as the constructivist appraisal of the norm to freedom of expression within the OAS, where the norm exists as a social truth in the OAS structure, is socialised via discursive practices and then can be said to be finally socialised when we see not only Panamanian behaviour in conformity with that

¹¹⁸ Patomaki and Wight, "After Post-Positivism? The Promises of Critical Realism," p. 228. This is known as the DN Covering Law Model, which was systematised into International Relations Theory through the behaviouralist contribution in the 1960's. For a fuller discussion refer to Milja Kurki, "Causes of a Divided Discipline: Rethinking the Concept of Cause in International Relations Theory," *Review of International Studies* 32 (2006) p. 193.

norm but also the very identity of Panama as a member of the hemispheric community.

The ultimate source of rival definitions of norms and socialisation, and the inability to resolve them without further analysis, is the way that existing accounts which do forward arguments about such phenomena share this Humean notion of causality. The necessity to base analysis on empirical invariance, and the decision to focus on different things (identities or behaviour) weds definitions to different things, and thus promotes differing definitional frameworks. In both, the processes are different, and the secondary markers of the norms presence are different, but the way in which cause underpins the analysis is identical. This is erroneous because it ties the identification of norms into methodological processes that in fact are not realistic. The determination of cause and effect through the necessary empirical conjunction of effects rests on a "closed world" assumption, that is on abstracting certain things that are deemed "important" and excluding those that are considered "unimportant". There is no absolute reason why something is important, or not. The decision rests far more on the theorists own theoretical prejudices (norms cause effects because of material asymmetries between actors, or norms cause effect because of the power of arguments that surround them), than on an awareness of the real world in which norms exist. This also has the methodological consequence of linking one's understandings of norms, and the ability to identify socialisation, through the presence of change. However, what if there is no change? Failed socialisation efforts would not elicit change in either identity or behaviour, and so there is nothing to measure, but, as in the ASEAN-Myanmar relationship, they clearly exist. The link between causal logic-empirical invariance-definitions must be broken if we are to both ground

rational and sociological perspectives equally, as well as to account for failed socialisation attempts. Could this be the ultimate origin of the fixation of existing accounts of socialisation with successful outcomes?

CONCLUSIONS

These criticisms are ultimately nested within each other. The empirical limitations of existing scholarship have facilitated limited theoretical discussion resting on incomplete bridge-building. This in turn has both permitted and then promoted unstable and partisan definitional frameworks. Critical Realism provides a useful platform from which to perceive these limitations, focusing our attention on the causal logics that have created the space in which exclusionary definitions can exist. It also serves to forward our understanding to those criticisms, a vital task if we are to accurately conceptualise what norms and socialisation really are. In the next chapter, I will suggest the direction that this should take is in realising the fundamental unity of norms. One norm of freedom of expression is eliciting numerous socialisation outcomes. Critical Realism serves to both break down existing accounts and also to rebuild our appreciation of norms and socialisation, as well as providing a firm basis to think eclectically using rationalist and constructivist insight. The process of socialisation may well be one where different theoretical perspectives have more or less traction, and can tell us greater or lesser truths about what we are seeing, just as the eclectics tell us, but the need to create a new definitional framework to underpin this work, is not an “optional extra”. It is vitally important to account for the variety and texture of socialisation processes that occur when regional communities offer membership and states maintain the bundle of rights, duties and obligations that are necessary to uphold that membership

3. Theorising the Membership, Socialisation and Community Nexus

The criticisms presented in the previous chapter rest on the realisation that existing approaches to membership, communities and socialisation are derived from weak empirical and definitional grounds. Together these shortcomings have significantly retarded how we conceptualise the relationship between communities, membership and socialisation. This chapter presents the conceptual corrections to those shortcomings. The first response is to create new definitions of norms and socialisation to underpin the empirical analysis to come. Over this I will present an eclectic methodology that facilitates the identification of socialisation. I will then construct an analytical framework that corrects the over focus on the EU through extending existing work first geographically outwards from the EU study and conceptually across the membership spectrum. This provides an inclusive platform that analyses socialisation in the many forms that are engendered where membership and regional communities interact.

THE DEFINITIONAL ARGUMENT

Critical Realism enables us to identify the reasons why rational choice and constructivism mistake epistemology for ontology, and how this leads to all manner of definitional questions that retard answering my research question. It takes this argument all the way down to the very processes by which norms cause events, and the markers that distinguish the presence of a norm and socialisation. The next step is to outline how Critical Realism can move the discussion forwards in a direction that does help my research. It does so by offering a solution to the epistemic fallacy, and the causal logics therein,

providing a platform for rational and social accounts, whilst also promoting a basis from which to assess failure.

LINKING CRITICAL REALISM WITH EXISTING APPROACHES

Critical Realism is not proffered here as a new theory of socialisation, rather its utility comes from the ability to re-base existing accounts of socialisation on new definitions. This is a vital step if we are to engage critically, but constructively, with existing scholarship and travel that work to the ASEAN and OAS studies. We are helped in this goal by the realisation that Critical Realism is a philosophy of science, not a theory of society. As such, it does not answer any first order empirical questions.¹¹⁹ This provides the basis for rebasing our understanding of norms and socialisation because “any theory of society or international politics can be interpreted in realist terms”,¹²⁰ and as such is compatible with a range of theories.¹²¹ Varying different theoretical perspectives can interpret the same “unchanging world in radically different ways.”¹²² The value of Critical Realism is that it serves to increase our “stock of knowledge”¹²³ not to advance any one theoretical perspective on that knowledge. To quote Bhaskar at some length,

Transcendental [Critical] Realism explicitly asserts the non-identity of the objects of the transitive and intransitive dimensions, of thought and being. And it relegates the notion of a correspondence between them to the status of a metaphor for the aim of an adequate practice. It entails acceptance of the principle of epistemic relativity, which states that all beliefs are socially produced, that all knowledge

¹¹⁹ Wendt, *Social Theory of International Politics* p. 61.

¹²⁰ Ibid.

¹²¹ Brown, "Situating Critical Realism," p. 415.

¹²² Patomaki and Wight, "After Post-Positivism? The Promises of Critical Realism," p. 224.

¹²³ Wight, "A Manifesto for Scientific Realism in IR: Assuming the Can-Opener Wont Work!" p. 383.

is transient, and neither truth values nor criteria of rationality exist outside historical time¹²⁴

Critical Realism, given it is methodologically and epistemologically agnostic, provides a foundation upon which to reground Rational and Constructivist scholarship on norms without rejecting either of them. By suggesting that norms and socialisation are never fully knowable, because they are irreducibly complex phenomena much like the world in which they are embedded, Critical Realism leads to a conclusion that rival competing theoretical explanations of them would do well to adopt non-partisan definitions that heed the Critical Realist insight that we are dealing with a “real world” situations where one norm, and one socialisation consequence, is amenable to multiple theoretical lenses of analysis.

CRITICAL REALISM’S APPROACH TO CAUSE

Critical Realism stands in counterpoise to the notion of cause that to date has underpinned the study of norms and socialisation. The Critical Realist approach to cause is broad, challenging the regularity-determinism of Humeanism by asking whether the principle of empirical invariance is either necessary or sufficient in identifying and explaining cause.¹²⁵ The empirical regularities, the heart of both rational and constructivist accounts, that appear so convincing only actually exist under constructed “closed” conditions,¹²⁶ that is under the assumption that the world is fully knowable, something that they are happy to commit to given their already discussed anthropomorphism. Critical

¹²⁴ Roy Bhaskar, *Reclaiming Reality: A Critical Introduction to Contemporary Philosophy* (London: Verso, 1989) p. 23.

¹²⁵ Kurki, "Causes of a Divided Discipline: Rethinking the Concept of Cause in International Relations Theory," p. 202 Patomaki and Wight, "After Post-Positivism? The Promises of Critical Realism," p. 228.

¹²⁶ Bhaskar, *A Realist Theory of Science* p. 14.

realism argues that this ignores the irreducibly complex nature of reality.¹²⁷ The world “consists of more than the actual cause of events and experiences and/or the discourses about them”.¹²⁸ Through their focus on the relations of independent and dependent variables, positivist models can lack holistic ontological engagement with complex causal environments, even when they try to negotiate causal complexity through methodological processes.¹²⁹ The Critical Realist understanding of causality is a product of their rejection of a world defined by what we can perceive in favour of a world that is both real and beyond our senses to ever fully comprehend.¹³⁰ As such, the objects of enquiry and the causal laws that mesh them together are both ontologically real and tantalisingly beyond our senses to ever fully appreciated...“what we experience is the result of complex interaction of structures, mechanisms and processes that are often not accessible to the senses”.¹³¹

This translates into the requirement to define norms and socialisation in a way that pays heed to the irreducibly socially complex world in which they exist. We cannot identify the full range of reasons why a norm causes anything, nor can we ever definitively encapsulate the consequences of that norm. These things are lost to us in the complexity of a reality that truly exists but that is veiled from us. Rationalist and constructivist definitions that rest on the assumption that the world is closed and that as such they can make apparently causally underpinned arguments about what norms are, and the effects that they have. The Critical Realist approach to cause makes us suspect of those claims. The study of norms,

¹²⁷ Patomaki and Wight, "After Post-Positivism? The Promises of Critical Realism," p. 223.

¹²⁸ Ibid.

¹²⁹ Kurki, "Critical Realism and Causal Analysis in International Relations," p. 366.

¹³⁰ For a fuller account of the influence of Critical Realism's ontology on its conception of causality, see Ibid. p. 364.

¹³¹ Wight, "A Manifesto for Scientific Realism in IR: Assuming the Can-Opener Wont Work!," p. 398.

as causal structures in the world, and of socialisation, as the process by which those norms take effect, must define both processes true to the intransitive and open causal nature of that phenomenon.

CRITICAL REALISM, NORMS AND SOCIALISATION

We now have a statement of how Critical Realism identifies the problem and how it provides a basis for creating a solution that builds upon existing approaches whilst correcting their identified shortcomings. As argued in chapter two, the existing definitional approaches offer little traction for analysis because they exclude norms exerting certain effects. The breaking of existing causal underpinnings of norms allows us to think about definitions that are not exclusive of differing effects, because there is no longer the need to prove a definition solely through empirical regularity. I recognise this results in far from “absolute” definitions; that is definitional statements that may appear looser than those forwarded in unreconstructed form by rationalists and constructivists. However, I suggest that this is something to be valued, not rejected. If the shortcomings of existing accounts for this study are that attempts at absolute categorisation, then a degree of reflexivity, with the belief that definitions can always be improved upon and refined in the future, is a healthy corrective. The case studies note that the same norm, freedom of expression, is transmitted in different ways, and exert different effects. Existing approaches respond by focusing on diverging effects and translating that backwards into separate ontological statements. I, in keeping with the Critical Realism arguments presented, reverse the equation, starting with a definition based in a real world, and allowing different theoretical approaches to take it from there in focusing on differing aspects of how that norm exerts effect.

A Critical Realist inspired definition of norms would pay heed to this multiplicity of functions by accepting that norms exert a variety of influences that differing theoretical perspective shed varying degrees of light upon. As such, I define norms as "*Standards around and over which directions of change in behaviour are debated.*" Such a definition avoids the shortcomings of previous attempts to define norms by refocusing attention away from the necessity of proving norms epistemologically to the realisation of their ontological existence. As such, it reveals that previous definitions have been constructed at the level of the unreal, and as such are implicitly exclusionary. Shifting the focus of definitional efforts to the "real", the Critical Realist account of norms allows for multiple unreal perspectives to enjoy explanatory insight into the same real world phenomenon, and as such reveals the true value of the corpus of work on socialisation studies.

The study of socialisation when reconceptualised along Critical Realist suggestions requires a plural approach that accepts rational choice and Constructivist insights to shed differing light on the same phenomenon. This is not a call for definitions to be neutral as such a goal is both chimerical and counter-productive, but it does require definitions that are exclusionary of manifestly significant processes of socialisation. Previous attempts to answer a seemingly simple question "what is socialisation?" have elicited far too many responses, often answering that question in "mutually incompatible ways".¹³² As Flockhart amongst others has indicated, discovering when socialisation has occurred is considerably easier than discovering the causes of that

¹³² Kai Alderson, "Making Sense of State Socialization," *Review of International Studies* 27 (2001) p. 416. Of course the term socialisation is used outside of Regional Community studies when talking about how any type of institution or organisation provokes change. For example Ann Kent, "China's International Socialization: The Role of International Organizations," *Global Governance* 8 (2002).

phenomenon.¹³³ Given this, and the paradoxical simultaneously ideational and material roles that the norms that underpin that process seem to play, it would pay to retain an open mindedness when confronting issues of socialisation. I have focused here on norms as effecting behavioural patterns. What I do not state, however, is that they *only* affect behaviour. Changed identities are manifested through behavioural patterns. I intend behaviour to be “open” to the sociological insight, not the end of the debate.

As such, my definition is considerably more “open” in a philosophical sense than Zürn and Checkel, whose definition of socialisation as “the process of inducting actors into the norms and rules of a given community”¹³⁴ is superficially appealing, but flawed in two regards. Firstly it takes that definition as inferring the ultimate importance of logic of appropriateness accounts of socialisation¹³⁵ and secondly it rests upon an unproblematised appreciation of how the theoretical constructs that create definitions relate to each other and the empirical world. Just as defining norms in either rational choice or constructivist language undermined the real world consequence of norms, so definitions of socialisation along similar lines are equally as myopic to the complex nature of socialisation in the real world.

We should therefore define socialisation in a Critical Realist inspired manner as the foundation as the shared language of multiple perspectives to use and yet to retain mutual comprehension. Socialisation is, therefore *the process of*

¹³³ Refer to Trine Flockhart, "Critical Junctures and Social Identity Theory: Explaining the Gap between Danish Mass and Elite Attitudes to Europeanization," *JCMS: Journal of Common Market Studies* 43, no. 2 (2005) and also Flockhart, "Masters and Novices: Socialization and Social Learning through the NATO Parliamentary Assembly," as well as Checkel, "Why Comply? Social Learning and European Identity Change."

¹³⁴ Checkel, "Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State," p. 1046.

¹³⁵ Jeffrey Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization* 59, no. 04 (2005) p. 805.

changing a third party towards different standards, a change which otherwise would not have occurred in the absence of that interaction. What do we mean by change? First of all that it refers to a change in state behaviour that is “sticky”.¹³⁶ To be truly honest to bridge-building accounts, we cannot ascribe to the notion only behavioural or ideational/identity change. Change must refer to both aspects in a non-exclusionary way if it is to be a definition that adequately encompasses the range of real world outcomes that we see. It refers to the *internalisation* of a norm or law into a state, but it makes no further comment on the nature of that internalisation and the processes that invoked it. There is simply not room for a definition of socialisation that operates successfully at both levels. I recognise that this definition stands against those who feel that socialisation refers either only to “internalisation” as a process of ideational change¹³⁷ or solely to externally manifested behavioural alteration. As such this definition is in conscious distinction from that of Checkel who presents socialisation as intrinsically a logic of appropriateness concept, resting on complex learning.¹³⁸ As suggested, the philosophical underpinnings of the distinction between behavioural and attitudinal approaches to socialisation are chimerical foundations.

THE METHODOLOGICAL DIMENSION

Building up from the definitions towards a conceptual framework requires two aspects. Firstly an ability “to establish how socialisation happens

¹³⁶ Alderson, “Making Sense of State Socialization,” p. 423.

¹³⁷ Ibid. p. 417. Note here I agree with the criticisms offered by Cameron G. Theis, “Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson,” *Review of International Studies* 29 (2003) p. 547 who argues that rational choice accounts have just as much light to shed on socialisation as sociological.

¹³⁸ Checkel, “International Institutions and Socialization in Europe: Introduction and Framework,” p. 809.

(the socialisation *mechanism*) and secondly to account for under what conditions socialisation via different approaches occurs (identify the *scope conditions*).¹³⁹ Whilst a discussion of the mechanisms of socialisation awaits the next section of this chapter, it is important here to discuss how one is able to identify socialisation. This methodological framework is vital to make sense of the empirical evidence discovered. True to my eclectic aims, the methodological framework constructed to analyse my question is precise but encompassing. We must be able to identify when socialisation, regardless of the theoretical lens best suited to conceptualising that process, has happened. The academic response to EU driven socialisation is vital to unpacking this set of requirements, offering answers to how it is we can actually identify socialisation, what its empirical indicators might be and what counts as “good” data.¹⁴⁰ Just as we encountered in the previous chapter two different ways to conceptualise socialisation, so those frameworks posit two different ways in which we can identify socialisation when we see it. They do so by isolating the contexts in which different types of socialisation are presumed to occur. This provides a methodological map to aide our identification of various types of socialisation. We need to utilise both of these if we are to capture as much of the socialisation that happens, or is intended to happen, as possible.

Rational choice accounts of discerning socialisation rest on conditions where there exists structural asymmetry between socialiser and socialisee that allows the socialiser to act as “the gatekeeper for resources in the social

¹³⁹ ———, “Getting Socialized to Build Bridges: constructivism and Rationalism, Europe and the Nation-State,” p. 1049.

¹⁴⁰ ———, “International Institutions and Socialization in Europe: Introduction and Framework,” p. 803.

environment which the actor needs or desires to have".¹⁴¹ This structural dependency triggers, Schimmelfennig believes, a learning process on the part of the external state in which it comes to adopt the constitutive beliefs and practices of the community.¹⁴² His argument is rooted in the assumption that state governments are rational actors operating in a normatively institutionalised environment.¹⁴³ Breaking this down further, bargaining is more likely when the determinacy of conditions, referring to the need for the benefits to be clearly expressed by the socialising agent in a clear and constant manner, is high. Related to this is the fact that the perceived size of the benefits to be accrued by complying, together with the speed of which that benefit will be enjoyed can also effect greatly the pace and success of the process. Additionally, the credibility of any conditionality attached to the possible benefits, and the likelihood of punishment or denial of benefits will also impact on the process. It is also noted that the adaptation costs of any changed behaviour must also be considered.¹⁴⁴ This is less a condition for identifying socialisation than in accounting for its success. The bleeding together of these two uses of the framework, the identification of socialisation, and then accounting for its success, shall be investigated further below.

The constructivist sensibility also presents a set of scope conditions as to where they expect to see socialisation occurring. Checkel has best delineated these.¹⁴⁵ They include the requirement that the target of socialisation is in a novel

¹⁴¹ Schimmelfennig, "International Socialization in the New Europe: Rational Action in an Institutional Environment," p. 117.

¹⁴² Ibid.

¹⁴³ Ibid. p. 116.

¹⁴⁴ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* pp. 31-35.

¹⁴⁵ As well as Jeffrey Checkel, "Persuasion in International Institutions," *ARENA Working Paper* (2002), http://www.arena.uio.no/publications/wp02_14.htm. Also refer to Checkel, "Why Comply? Social Learning and European Identity Change," and Jeffrey Checkel, "Going Native in

and uncertain environment and has few ingrained prior beliefs. Within the grouping where we are looking for socialisation, the socialising agent must be considered authoritative. The socialising agent should engage in serious deliberative argument and finally the agency/target interactions occur in a less politicised and more insulated setting.¹⁴⁶ Constructivist efforts to identify socialisation therefore rest on the absence of "overt coercion".¹⁴⁷ As such we can meaningfully extrapolate from this requirement that constructivist socialisation is identifiable in the absence of hierarchy, whether that be institutional hierarchy through material hierarchy (a larger country pushing its opinion roughshod over the competing opinions of others). Private discussions between state representatives and broader civil society actors are assumed to be the most likely site where such socialisation efforts occur.

Two final methodological points are necessary. I note that these scope conditions, especially the constructivist accounts, are designed to identify socialisation that rests ultimately on the meeting of individuals that is free reasoning humans. In applying this framework to the behaviour of regional communities, I am making a deliberate attempt to transpose this assessment onto those communities as actors in their own rights. The focus of constructivist accounts of regional community socialisation introduced in the previous chapter is on the need to trace individual belief change within organisational contexts. I intend to deploy this insight at the level of community interaction. Second, socialisation does not automatically flow from when we can identify a situation

Europe? Theorizing Social Interaction in European Institutions," *ARENA Working Paper* (2001), http://www.arena.uio.no/publications/wp01_23.htm.

¹⁴⁶ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 813.

¹⁴⁷ Jeffrey Checkel, "It's the Process Stupid! Process Tracing in the Study of European and International Politics," *ARENA Working Paper* No. 26 (2005) p. 8.

as congruent with one or other scope conditions. Socialisation depends on an actor intending socialisation to occur, and then operationalising that intention through one or other mechanism, dependent on the situation that they find themselves in and the material and social tools at their disposal. Identification of intention is achievable through analysis of public pronouncements, private deliberations as revealed through the documentary and archival records, and interview based research.

THE SOCIALISATION CONSEQUENCES OF GAINING MEMBERSHIP

With the definitional and methodological frameworks established, it is time to move to the conceptual focus of this work. The following arguments run sequentially along the membership process, from applying to joining to maintaining. To aide comparability I will focus as suggested in the introduction on a threefold chain of thought. Socialisation rests on a political act (the socialisation *process*). In turn, this can be conceptualised via a discreet socialisation *mechanism* (either bargaining or persuading). Finally, each mechanism rests of a theoretical perspective to underpin its expectations (rational choice or constructivist). This “tree” can be traced in each example of socialisation, helping reveal at what level variations are encountered.

The first task is to analyse the socialisation that occurs before a state joins a community. I will focus on the ever present mechanism of bargaining, which rests on the legal conditionality of gaining membership. I will also investigate the presence of a separate process, member state driven socialisation that potentially exists alongside that, and suggests a constructivist analysis. I will also provide an assessment of the co-variation of socialisation and regional community type. After a discussion of the transformative moment of membership itself, I turn to

an analysis of how being a member is also significant for socialisation, especially within a community building context. Investigating this, I will “flip” the established framework that characterises pre-membership socialisation into the post-membership context, assessing how they travel. Doing so presents the need for a range of modifications to the rational choice account that the EU has developed to extend those observations away from conditionality into a fuller account of the use of language and the deployment of Social Sanctions. In all cases, I suggest that socialisation processes exist independently of questions of success or failure. I will provide a framework for accounting for that success, as well as defining what success actually means.

COMMUNITIES AS ACTORS: THE CONDITIONALITY OF MEMBERSHIP

Regional Communities can act both as *actors* in socialisation (that is, they promote socialisation pressures with a desire to change an actor) and also as *sites* of socialisation (the fora in which others attempt socialisation).¹⁴⁸ Dealing with the first of these, it is clear that to become a member, a state must become like the community to which it has applied to join. Membership is *conditional* on adopting the existing framework of the community. Together with Collingwood I define conditionality as “the practice of attaching political and economic conditions to incentives such as loans, aid and membership of international organisations”.¹⁴⁹ It requires “a government to do something it would not otherwise do” through the provision of incentives.¹⁵⁰ It is a “classic management

¹⁴⁸ I take inspiration for this division from Checkel, “International Institutions and Socialization in Europe: Introduction and Framework.” p. 806.

¹⁴⁹ Vivien Collingwood, “Power and Conditionality in Global Governance,” in *The Fifth Pan-European International Relations Conference* (The Hague, Holland: 2004).

¹⁵⁰ Peter Larmour, “Conditionality, Coercion and Other Forms Of “Power”: International Financial Institutions in the Pacific,” *Public Administration and Development* 22 (2002) p. 249.

instrument used to help foster change in a predetermined reform process".¹⁵¹ All three cases show that membership is conditional on the accession to the collected laws that characterise any one Community, although that conditionality was significant for Freedom of Expression only in the EU study.

THE SOCIALISATION MECHANISM DRIVING CONDITIONALITY

We can conceptualise of a link between conditionality as a political process, to the socialisation mechanism of bargaining that in turn rests on rational choice theoretical frameworks.¹⁵² Bargaining refers to the process of negotiation about the future course of an actor's behaviour. Only that future behaviour is up for debate. Actors have preformed endogenous identities and interests that they bring to the table in a black box. They may help explain what the process of bargaining resembles, but in no way can bargaining effect what is in the black box. As shown, rationalist theorising adopts an individualistic ontology where the choice mechanism assumed is a cost/benefit analysis. These assumptions lead many to cast the role of language and communication in purely strategic/informational terms,¹⁵³ with the consequence that the infamous "black box" is erected around the "interaction context from which decisions to comply emerge".¹⁵⁴

Such bargaining processes rotating around conditionality rest upon simple learning accounts where actors engage with the external provision of models and alter their behaviour accordingly. EU conditionality works in such a

¹⁵¹ Dorothee Schmid, "The Use of Conditionality in Support of Political, Economic and Social Rights: Unveiling the Euro-Mediterranean Partnership's True Hierarchy of Objectives?" *Mediterranean Politics* 9, no. 3 (2004) p. 397.

¹⁵² Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," pp. 808-810.

¹⁵³ ———, "Why Comply? Social Learning and European Identity Change," p. 556.

¹⁵⁴ Ibid.

way, and is driven forwards by asymmetric relationships between the community as a socialiser, the gatekeeper to desired resources, and the socialisee, the state as desiring access to those resources. The EU acts in a position of extreme empowerment vis-à-vis Turkey. It has detailed the Turkish situation with regards to the full range of required obligations, drawn up intrusive plans about what needs to change, and provided extensive financial assistance for that process. The process is conditional in terms both of the ultimate aim of membership being conditional on full Turkish compliance and also in the continued provision of financial assistance from year to year. The whole process is monitored both by Brussels itself and through *in situ* EU bodies integrated into the Turkish government. There are no negotiations over who is right or wrong, indeed in a pedantic sense it is not a negotiation at all. It is a structured imposition of one set of standards on Turkey.

Domestic political actors engage in a sequence of strategic calculations in order to achieve goals that are best addressed internationally. For example, the significant upswing in Turkish socialisation in 2002, even more noticeable with the election of the *Adalet ve Kalkinma Partisi* (AKP) in 2003 is attributable to different constellations of domestic political power. A comparison between the three studies also reveals the importance of recognising that the necessary precursor of socialisation is a gap between regional and national standards where it is the community standards that are more “advanced”. Panama discussed the founding, and then joined, the OAS at a time when it was more committed to protecting freedom of expression than many others were. As such, we can conceptualise this engagement not as one of potential socialisation, but one of “locking-in” national standards into a regional framework.

Success is a relative term, to be judged through the interplay of intentions and outcomes. It is also a debatable one. I have sought to detach the study of the socialisation attempt from the study of socialisation success, but success itself can mean multiple things. Is socialisation successful when we can see some response to a socialisation attempt, or should we reserve the term for only ever “complete” socialisation, and how would we identify “completeness”? I argue that to answer questions of success, one must identify first the presence of a socialisation attempt, through examining actor’s intentions within the scope condition frameworks. When you have identified a situation where socialisation via one mechanism can occur, and then established that an actor actually wanted socialisation to occur, it is then valid to talk about the success of that outcome. The lack of interest in the ASEAN study of the regional community itself in socialising rights to Myanmar means it cannot be claimed to be a failure. It simply did not occur. The OAS case shows some considerable interest in questions of rights, but ultimately these rested not on legal conditionality processes, and again are not relevant for success. It makes sense, from a practical perspective, to identify graduations in success. When a mechanism invokes a change, it is in part successful, even if that change is somewhat less than the actors themselves may desire. The analysis here is that success rests on, true to my definition of socialisation above, modifications in actor behaviour that would not have occurred in the absence of the interaction. From this basis the graduations of success can be judged relative to the intentions of those “doing” the socialising.

We do see both the clear intent and a record of considerable success in EU socialising Turkey into freedom of expression norms, although this success is not absolute as will be detailed in Chapter six. How are we to account of that? The scope conditions presented above offer a partial clue because they “generate expectations” for when socialisation is likely to occur.¹⁵⁵ They both present a methodological framework for discerning socialisation as well as a conceptual clue as to how to account for its success, albeit with the requirement of additional insight. When a state exists in the inferior position with regards to those conditions, we can expect socialisation via that process and mechanism to commence. Underpinning this is the question of intention on the part of target state, as a qualifier to the pacing and nature of that socialisation itself. A position of structural dependency may be the necessary requirement but it is not sufficient, especially when one is interested not simply in broad success and failure, and rather in explaining the pacing of socialisation and why that alters over time. Intention here has two characteristics, firstly the willingness to see the rewards of membership as something valuable, and secondly an assessment of just how valuable those rewards are in the context of competing domestic political pressures. Socialisation via conditionality is successful when the domestic alignment of political forces is one that facilitates that process. The elections of 2002 saw a decided shift within Turkey both to a single party government and also to the ascendancy of a pro-EU discourse. The rapid increase in socialisation after the election, in the face of all other considerations remaining the same, substantiates the claim that it is domestic “constellations” that determine the pacing of socialisation via bargaining, even if it is external desires that condition

¹⁵⁵ ———, “It’s the Process Stupid! Process Tracing in the Study of European and International Politics,” p. 9.

the ultimate end point of that process.¹⁵⁶ The Turkish case also suggests that their exist boundaries as to what conditionality driven socialisation can achieve. Whilst the realignment of legal standards within Turkey has proceeded apace, the inability of the EU to “get inside the heads” of judges to convince them of the rightness of the new legal standards, has led to continued shortcomings. Given that the EU focuses not only on legal reform but its impartial and consistent delivery to society, the success of bargaining is left ultimately with a sense of incompleteness.

COMMUNITIES AS SITES: MEMBER-STATE DRIVEN SOCIALISATION

MEMBER STATES AND CONSTRUCTIVIST SOCIALISATION

Existing scholarship has understood the division between communities as either actors or sites in the socialisation story as a distinction between a rational choice focus on communities as actors and then a constructivist account of individuals within community contexts socialisation (exactly as the Lewis study presented in the previous chapter discussed). This division is useful, but incomplete. It is useful in the sense that it denotes the split between differing ways that communities and socialisation interact, but there is no need to make the constructivist focus solely on individuals within dense institutional environments. The ASEAN study reveals that states can seek to use the formal offer of membership by a community mean more than the community itself intends.

In such situations, states are not able to make recourse to material sanction or structural asymmetry to forward their own interests, in the way that

¹⁵⁶ Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe," p. 842.

the community itself can. They do not play the role of gatekeeper. Rather, states interact with each other, within the framework of the prospect of membership of a shared community, to discuss what upcoming membership for a state should mean. This finds strong affinities in the constructivist account of socialisation that I term persuasion.¹⁵⁷ This refers to empirical and normative statements put forward with the intention of being held valid and truthful, with the purpose of changing beliefs. As such, it refers not only to changes in state behaviour, but in keeping with its constructivist heritage, altering beliefs of actors, down to the individual level of analysis.¹⁵⁸ In its purest form, persuasion promotes norm consistent action through a process of interaction that involves changing attitudes without reward or coercion.¹⁵⁹ When this occurs, actors actively and reflectively internalise new understandings of appropriate behaviour and change their behaviour accordingly.¹⁶⁰ The theoretical process by which persuasion is assumed to occur is a Habermasian account of Communicative Action.¹⁶¹ This focuses on the way in which "argumentative and discursive processes challenge the truth claims inherent in identities and perceived interests."¹⁶² This is rooted in the belief that communicative processes occur in an "ideal speech situation"

¹⁵⁷ Various referred to as argument, argumentation or normative suasion. Note Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," pp. 812-813. Further note that I use the term persuasion to refer to a specifically constructivist process of realignment of identities, not to a broader approach to change that can be engendered by either rational or constructivist accounts. See ———, "Persuasion in International Institutions." for such an approach.

¹⁵⁸ Rodger Payne, "Persuasion, Frames and Norm Construction," *European Journal of International Relations* 7, no. 1 (2001) p. 41.

¹⁵⁹ Flockhart, "'Masters and Novices': Socialization and Social Learning through the Nato Parliamentary Assembly."

¹⁶⁰ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 812.

¹⁶¹ Refer to Thomas Diez and Jill Steans, "A Useful Dialogue? Habermas and International Relations," *Review of International Studies* 31, no. 1 (2005) for an introduction to the role of Habermas in international political theorising. A more general discussion of the potentialities within Habermas can be Accessible at Fred Dallmayr, "Conversation across Boundaries: Political Theory and Global Diversity," *Millennium* 30, no. 2 (2001).

¹⁶² Thomas Risse, "International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena," *Politics and Society* 27, no. 4 (1999) p. 530.

where the goal is the achievement of consensus about truth claims.¹⁶³ This rests on notions of moral discourse; that is discussion that rests not only on norm justification but also on identity related arguments.¹⁶⁴ Not only were Thailand and the Philippines seeking to change what Myanmar did, within the notion of membership of ASEAN, so was Myanmar forwarding its own arguments about what was legitimate topics for discussion, which in turn potentially influenced Bangkok and Manila's identities as members.¹⁶⁵

Persuasion seeks to operationalise the roles of communication and social interaction, and given its constructivist heritage, "restores a sense of agency to the social norms that may be central to learning".¹⁶⁶ Given that the ontology here is not individualist but relational, social dynamics are given a much greater role in the formation of both preference and behaviour. Persuasion translates into a range of political acts designed to alter an actor's behaviour in the absence of overt conditionality. Central to this are processes of discussion and attempts to convince others of the "wrongness" of their current behaviour, whilst crucially remaining open yourself to reconstitution by the process of discussion. These are analysable sociologically because the process of discussion rests on the mutual constitution of actors and the identities that they project. Persuasion rests on altering the social advantages and costs of a particular action and then convincing actors that change is required as a consequence, and as such the social learning that underpins persuasion breaks with strict methodological

¹⁶³ Ibid. p. 534.

¹⁶⁴ Thomas Risse, Steve C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, Cambridge Studies in International Relations; 66. (Cambridge: Cambridge University Press, 1999) p. 13.

¹⁶⁵ Alice Ba, "Who's Socializing Whom? Complex Engagement in Sino-ASEAN Relations," *The Pacific Review* 19 (2006) p. 162. Ba promotes a constructivist appraisal of the relationship between China and ASEAN that could well be translated to the focus here on human rights between ASEAN and Myanmar.

¹⁶⁶ Checkel, "Why Comply? Constructivism, Social Norms and the Study of International Institutions." Op. Cit. p. 10.

individualism.¹⁶⁷ I make this claim, as opposed to conceptualising these pressures as some rational choice account of language (which we will encounter shortly) because of the relationship between the various interlocutors within this situation. In the ASEAN situation, the detachment of these negotiations from the official offer of ASEAN membership significantly reduced the presence of various forms of hierarchy between the participants. I do not contend that relations between participants ever reached full congruence with a Habermasian lifeworld, where total "true" discourse is required, but nor do I subscribe to the arguments of some that this renders the persuasive process a dead end in socialisation studies. The justification for this is as follows.

I agree with those who have argued that the Habermasian focus solely on truth seeking arguing between actors is flawed and that the discursive process is characterised not by free debate but by actors advancing their arguments via the exploitation of asymmetries between them, be they material or social in nature.¹⁶⁸ At a fundamental level, the Foucauldian critique suggests Habermas is constructing an illusion when he talks of ideal speech, unsurprising given that Foucault believes that power resides in the structure of discourse itself, and it is this latent power that has a determinative influence on who speaks and who stands the greatest chance of being agreed with. One does not, however, have to adopt a Foucauldian analysis to believe that on a more pragmatic level, the notion of ideal speech is too divorced from the context of any persuasion attempt, a context that necessarily interfaces with the relative power of those engaged in the persuasion act. They are still engaged in persuasion attempts; in

¹⁶⁷ Jeffrey Checkel, "Social Construction and Integration," *Journal of European Public Policy* 6, no. 4 (1999) p. 548.

¹⁶⁸ Laura K. Landolt, "(Mis)Constructing the Third World? Constructivist Analysis of Norm Diffusion," *Third World Quarterly* 25 (2004).

the process of changing others opinions and beliefs, but they may well adopt material techniques, either actively or passively, to ensure the success of that process.

I further believe that the various attempts to “weaken” the Habermasian commitment to “ideal speech” are doomed to failure given this commitment is so deeply rooted in truly understanding persuasion. Whilst it may well be the case that “international institutions... provide an information rich and normative framework structuring interactions”¹⁶⁹ with multiple public spheres to enable a process of challenge and counter challenge, Risse’s belief that we can “relax” the assumption that power imbalances in these contexts is in error.¹⁷⁰ It fundamentally misconstrues the nature of Habermas’ ideal project and applies it falsely to real world political institutions. The belief that power is not a universal constant in all speech acts, rather a matter for empirical enquiry in each context does little to assuage the sense that Risse is adopting an overly optimistic interpretation of the potential in real world circumstances for a common lifeworld in a truly Habermasian sense to exist.¹⁷¹ Risse’s back up justification, that “the ideal speech situation is not meant as a statement about the empirical world”, but rather as a counterfactual does not alleviate the fundamental quandary. It only works if actors “communicate as if they were in an ideal speech situation”,¹⁷² a statement that requires the investigation of an actors beliefs, a task the outcome of which is dependent more on the viewers preferences than on impartial enquiry. Given this line of reasoning I argue, that the value, of persuasion is less to do with its exacting intellectual heritage and more related to

¹⁶⁹ Risse, ““Let’s Argue!” Communicative Action in World Politics,” p. 33.

¹⁷⁰ ———, “International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena,” p. 535.

¹⁷¹ Ibid. p. 536.

¹⁷² Ibid. p. 535.

the fact that it offers an insightful cognitive “short cut” to investigating socialisation processes that no rationalist account can grasp. The problem comes in seeking to mould Habermas to the real world, not in the fundamental insight about the importance of persuasion in horizontally arranged discursive environments.¹⁷³

The presence of this mechanism rejects the EU generated conclusion that constructivist accounts of socialisation play only a subsidiary role. These member state driven approaches central, both substantively and in terms of their potential significance for freedom of expression as a marker of broader domestic reform, given the comparatively “light” nature of ASEAN as a regional community. The EU focus on a community that is highly bureaucratic and legalised creates little space for these member state driven accounts to exist. The ASEAN study reveals the value of comparative analysis, and broader definitional categories underpinning that.

THE QUESTION OF SUCCESS

Accounting for the success or failure of persuasive socialisation efforts is again embedded in the dual nature of the established scope conditions. Actors who enter a situation with either weakly held, or totally absent, codes for notions of appropriate behaviour in any given situation are more likely to be susceptible to persuasive actions. Within such contexts, authoritative and recognised actors should interlocate frequently and “honestly” with the target state, ideally over an extended period of time. The importance of these accounts is evidenced by a

¹⁷³ Note in this regard the importance to persuasion actually being persuasive of those actors who are attempting to impart new standards being “enabled and legitimated by the broader social discourse in which they are embedded.” Jeffrey Checkel, “Constructivist Approaches to European Integration,” *ARENA Working Paper* 06, no. 06 (2006), http://www.arena.uio.no/publications/working-papers2006/papers/wp06_06.htm. p. 15.

counterfactual appreciation of the nature of Myanmar's engagement with existing members of ASEAN.

Myanmar can plausibly be described as being in a novel environment, but it certainly did not come to the table with few deep beliefs about the correctness of its own behaviour, and nor can Thailand and the Philippines be considered truly authoritative given they could not by themselves make membership conditional on the fulfilment of their goals. Whilst Thailand and the Philippines were "genuine" in their recourse to dialogue between ASEAN, member states and Myanmar, the Junta itself dealt with those debates instrumentally, and adroitly negated their impact over the actual conditions that stood between itself and membership of ASEAN. In contrast to the EU study, the question of intention is also important. Rights issues were never central to the process of constructive engagement. Whilst Thailand and the Philippines expressed rights concerns, Thailand especially was interested in other matters such as border security and stemming the flow of narcotics. Whereas the intent to socialise was clear in the EU study, the intent was conflicted in the constructive engagement example.

Constructivist accounts of successful socialisation emphasise the importance of enduring, repeated and genuine discussion between actors. The length of time Myanmar was part of the constructive engagement process was simply too short a time to persuade Myanmar. The occasional meeting between heads of state, or the more regular bureaucratic processes that underpinned Myanmar's integration of ASEAN law were insufficient fora for member states to exert their own influences. Finally, that the Constructive Engagement process between ASEAN and Myanmar was animated in part by rights concerns is not

the same as arguing that it was predominately organised around shared notions of rights. It was a broad strategy of enmeshing Myanmar. Rights were just one competing voice in a chorus of competing desires, and were only being sung "in tune" by a minority of ASEAN members themselves.

CO-VARIATION OF REGIONAL COMMUNITY AND SOCIALISATION PRE-MEMBERSHIP

Before membership is achieved, legal conditionality processes are always present as the conditioner by which a non-member becomes like a member. The need for all regional communities to limit the heterogeneity of their members, to define the "in-group" from the outsiders, flows from the requirement to shape who holds what benefit. The variation between these examples comes in terms of what exactly each Regional Community holds membership to be conditional on. The broader and deeper the agreement embodied in the existing legal framework of a Community, the more "traffic" there is being socialised ultimately to the target applicant state and the more significant the change promoted will be.

The role that member states play in exerting their own socialisation pressures varies between the cases. There is an inverse relationship between the scope for member state driven activities and the sum obligation of membership as defined through the three types of variation outlined. We see this strategy most clearly emerging in the ASEAN case. Conversely, the state behaviour within the EU was largely limited to petulant displays of vetoing membership on grounds as chimerical as "not European enough" or somewhat more worryingly, "too Islamic". Why this difference? The answer is to be found in the degree of homogeneity that membership of the Community requires. As outlined, the requirements to be a member of ASEAN, both legal and normative, were so nebulous that they facilitated the induction of various political regimes from

democracy of varying secular and religious flavours through to autocracy and communist dictatorship. As such, there existed the ever-present fact that the legal and normative frameworks of domestic and regional governance could diverge sustainedly and that this divergence was an accepted and legitimate fact.

This results in members whose own goals are far more complex, and of many varying flavours, than those that can be expressed at the regional level, where unanimity is required before a law, or a norm, can be said to be held by the Community itself. Intense heterogeneity of ASEAN member states necessarily limited that which was expressed regionally, creating space for member driven strategies to arise. The contrast with the EU could not be greater. Here, sophisticated obligations in terms of governance structure and human rights engendered significant continuity between domestic and regional normative allegiance, with the result that the space between domestic and regional was narrow or non-existent. All member states were democracies, and liberal capitalist ones at that, and as such these rights became embedded within the legal and normative frameworks of the Union because all could agree both that these norms were "correct" and that it was the role of the Union to protect and promote them.

SOCIALISATION AFTER MEMBERSHIP

To this point I have identified and theorised about two discreet socialisation processes that occur prior to membership being granted, bargaining and persuasion. I have also identified the conditions under which those can be expected, as well as accounts of their success. The next step is to continue the focus on socialisation via shifting our appreciation to what being, as opposed to becoming, a member entails. The significance of expanding our analysis across

the membership spectrum is to open our eyes to otherwise ignored ways in which regional communities potentially attempt socialisation.

Crossing the membership threshold is significant for socialisation because, put succinctly, "membership has its privileges".¹⁷⁴ Not only does it mark the point at which applicant states finally gain access to the benefits they craved; it fundamentally recasts the relationship between the now-member state and the Community. It alters the socialisation pressure states are under, and their ability to influence that process. Vitally it grants the new member the right to influence the future course of the Regional Community. This means that once a member, states can control to some degree, depending on the nature of the Community they joined, the pressures that they are under to conform to new, existing or evolving standards over time. The OAS and ASEAN studies promote the importance of community building as something that promotes socialisation into new and revised standards. Regional communities rarely remain static; they and their members are constantly exposed to changing fortunes and circumstances, both ideational and material. Devising responses to these shifting contexts exposes the participants of that process to the discussion of rival ideas and plans for the future that they themselves may not share, as well as attempts by the proponents of those ideas to proselytise their opinions. They change and develop in response to both the goals of their members and external pressures. ASEAN is in the process of overhauling itself with a commitment to human rights and democracy. The OAS has developed a forceful commitment to freedom of expression where none existed before, which is now protected by commissions and courts that patrol and enforce revised standards. Discussions

¹⁷⁴ Pamela A. Jordan, "Does Membership Have Its Privileges? Entrance into the Council of Europe and Compliance with Human Rights Norms," *Human Rights Quarterly* 25 (2003) p. 688.

about revised standards precede legal reform of those standards, and the creation of courts to address them. As such, the analytical framework must be able to incorporate an appreciation of both the transformative moment of membership and how socialisation processes occur once a member. The aim here is to “travel” the above two arguments about the nature and success of socialisation into the post membership environment. This provides a basis of comparison across the membership spectrum and suggests ways in which our analysis needs to be furthered to cover new examples of socialisation.

Whilst the role of membership prior to accession to a regional community is clear, a point of clarification should be made for the role of membership subsequent to that event. I do not argue that all politics between member-states and community after joining is automatically related to membership. However, I do argue that membership remains important in two respects. Firstly, the continued provision of the benefits of membership by the regional community remains contingent on member states not violating the agreements that first gained them access to those resources. Where states have transgressed those contracts the community and other members question their membership, and the suspension of membership rights, or the withdrawal of membership itself, becomes possible. Secondly, the on-going politics of membership interacts with the processes of community building. By community building I mean those internal political debates over the future course of the community. ASEAN has engaged since 1997 with fundamental questions of the purpose of the community and how that purpose is best served through institutional and legal reform, and the OAS has over its 60 year history expanded the depth and breadth of its own activities. The studies reveal that community building exerts socialisation effect,

whether intentional or otherwise, on existing members both through the substance of debate and through the final agreed reforms.

THE DISCURSIVE ENVIRONMENT OF COMMUNITY BUILDING

Community building involves two stages. Whilst the ultimate form is the creation of new legal standards, perhaps accompanied by courts and commissions to monitor those standards, community building always involves discussing different visions of the future of the Community. Community building comes about as states, and the community itself, evolve in response to both their own political goals and external stimuli, be that economic crisis or political re-orientation. States discuss with each other their identities as members in order to forward their own goals in an attempt to persuade other states that theirs is the “correct” vision of future plans. Both the structure and nature of these discussions push us to ascribing this to constructivist lenses. Rational choice understandings fail to capture either the negotiation dynamics themselves or the precise outcomes of any given set of negotiations because we are dealing with constant renegotiation of the communal identity, seeking answers to what it means to be a member of any given community.

These discussions ultimately rest on the identity of those states as members. What does it mean to be a member of a community, is that identity one that includes concerns with human rights, or which rejects that? Regional communities legal frameworks enshrine state equality, at least with regards to discussing the future design of that community. ASEAN and the OAS are clear about state equality, and even the EU requires all member states agree to something like the failed Constitution. As such, formal power imbalances are not relevant within these discussions. States must be persuaded to agree that one

course of action is preferable to another. This requirement of consensus and persuading actors leads us away from rationalist expectations. For example such expectations would suggest that Indonesia as the largest and most important member would create significant pull effects over the evolution of human rights within ASEAN, that it would ultimately achieve its aims. Whilst I am comfortable arguing that the role of Indonesia is important, the scale of the final outcome was far less ambitious than if Indonesia was truly able to exert overwhelming power. The way in which interested parties suggested future visions of community building was through discursive acts where states with different identities and interests sought to establish revised understandings of themselves as community members. Indonesia, and other interested states together with a range of civil society actors engaged in intense discussion about the what membership of ASEAN actually meant, just as the U.S.A. and the attendant civil society in the Americas discussed what the OAS meant. The evolution of a human rights component within ASEAN and the OAS occurred as a series of discussions and normative propositions, where ASEAN members discussed with each other their competing goals. The maximalist agenda espoused by Indonesia and others, together with the civil society actors that mapped out future changes in ASEAN, and were then presented for discussion with other members who disagreed and resulted in outcomes that are only explicable from a persuasive, not bargaining, perspective. These discussions were where differing perceptions of what membership meant, and should mean, came into contestation with each other, much as the process of constructive engagement bought competing claims together before membership was granted.

I suggest therefore that the constructivist appraisal of pre-membership socialisation can indeed be transferred to the post membership environment. I further suggest that the established conceptual framework presented above required no conceptual modification to account for post membership constructivist accounts of community building. Given that its persuasive mechanism rests ideally outside questions of power imbalance, the shift from non-member to member does not alter the texture of conversation between actors. Just as states sought to influence Myanmar prior to entry, so they sought to do the same after it was a member. Indeed, membership, by institutionalising regular contact in a shared set of governance organs as well as heightened interactions only serves to upgrade the utility of constructivist accounts.

RATIONAL CHOICE IN THE COMMUNITY CONTEXT: RELEVANCE BEYOND CONDITIONALITY

THE DECLINING RELEVANCE OF CONDITIONALITY

The role of conditionality as a political act resting on bargaining prior to membership is clear. It's presence and importance subsequent to membership being achieved requires careful attention. Prior to membership it was the community itself that was withholding membership until change was achieved. Subsequent to membership, this right bestowed, the role of the community is reduced. The precise nature of this reduction can be outlined by an appreciation firstly of the nature of any one community at the time a state joins that community, and secondly to whether or not community building results in the creation of organs of a community that promote pressures that can be construed as conditionality.

If a state has joined a community that has established court systems, which create asymmetry between community organs and member states, then rational choice accounts of conditionality retain their relevance by allowing for an investigation of that relationship where clear material sanction is deployed to condition behavioural excess. Membership within the EU, if Turkey achieves it, places it under the jurisdiction of the European Court of Human Rights. Of course, socialisation of standards has occurred prior to membership, but court systems and hierarchical systems of redress ensure that monitor that socialisation and ensure that relapses, if they occur, are corrected. If a community building process results in the creation of hierarchical enforcement structures such as Courts that can clearly censure members and demand a change, then conditionality again plays a role. However, the utility of conditionality processes within community building would appear to be not a forgone conclusion. Whilst the OAS has developed a Court of Human Rights (although as noted in Chapter 5 there is a distinct lack of jurisprudence directly between it and Panama on freedom of expression concerns), ASEAN has not created such an effective parallel.

Accounting for this, we should be aware of the significance of the nature of the community being joined. The structure of ASEAN at the time of joining has helped retard the discussion and promotion of the very norms and even perhaps eventually laws that would have effectively socialised Myanmar. Yangon was able to use its privileges of membership to influence the evolution of the community in such a way as to limit any socialisation into norms that it disagreed with via the rejection of plans that had to be agreed upon unanimously, or as in the recent ASEAN Charter process, agreeing to “empty” institutional

reform such as a Human Rights Court that has no mandate. Its presence, together with other reluctant members who are wary of constitutionalising any intrusive obligations within ASEAN, retards the formation of new norms. They may be proposed by “progressive” states, but they are constantly argued over between those progressives and the other traditional interpretations.

EXPANDING THE BARGAINING INSIGHT: QUESTIONS OF SOCIAL INFLUENCE

Conditionality is not the only way in which rational choice accounts have traction in terms of socialisation within the community context. Whilst the EU study itself makes strong linkages between the political practice of conditionality and the socialisation mechanism of bargaining, there is nothing intrinsic about this relationship. EU conditionality, and the study of it, is based on a materialist account of the relation between actors, but we can conceive of hierarchical relationships that exist outside of material sanction. Communities can engage in the sanctioning of members through a diverse range of political acts. The rhetorical use of language, the denial of the social rights of membership as well as Naming and Shaming processes shows that the utility of rational choice accounts metamorphoses across the membership boundary. These are as much bargaining processes, in the meaning established above, as conditionality driven socialisation pre-membership. They are manifested, however, through differing political actions. The argument is therefore that whilst constructivist accounts of persuasion survive the transition from pre to post membership, the rational choice account of socialisation diversifies substantially. This is a result of the changing nature of hierarchies and the shifting tools that are available to communities to engage with their members. These processes can be broadly

categorised under the “social influence” approach to socialisation,¹⁷⁵ understood as the distribution of social rewards and punishment.¹⁷⁶ All three are based upon hierarchy and non-persuasive political action designed not to discuss openly future plans, but to impress upon an actor that they are categorically “wrong”.

Rhetorical Action does not rest on an enforcement organ utilising its position of empowerment to legally censure offending states.¹⁷⁷ In the absence of conditionality, the central organs of a community can still use their hierarchical position to forward statements of “truth” in the absence of any discursive intent, and with the desire to condition a behavioural response.¹⁷⁸ I understand this as Rhetorical Action within Risse’s definition of the term (note therefore that my criticism of Risse above was focused specifically on the cognitive shortcomings of downplaying Habermas’s commitment to persuasive processes, not to his work as a whole). Rhetorical Action is designed to convince actors to “mend their ways” in the face of no material incentives to do so.¹⁷⁹ They rest on the use of language to convey information and preferences.¹⁸⁰ For example, ASEAN’s preferences were fixed when it spoke of Myanmar’s “wrongness” in failing to democratise. It did not engage with Myanmar over the validity of its claims or wishes. Instead, through the medium of public communiqués at the end of both the Annual Ministerial Meetings and the ASEAN Summits, it stated clearly both

¹⁷⁵ Flockhart, “Masters and Novices: Socialization and Social Learning through the Nato Parliamentary Assembly,” p. 366.

¹⁷⁶ Michael Zürn and Jeffery Checkel, *Op. Cit.* p. 1052.

¹⁷⁷ See the analysis of Rhetorical Action at Müller, “Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations ” p. 404. Brining it in directly to socialisation studies see Frank Schimmelfennig, *The EU, NATO and the Integration of Europe: Rules and Rhetoric*, Themes in European Governance (Cambridge: Cambridge University Press, 2003).

¹⁷⁸ Risse, “International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena,” p. 532. See also ———, ““Let’s Argue!”: Communicative Action in World Politics,” p. 8.

¹⁷⁹ Darren Hawkins, “Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms,” *International Studies Quarterly* 48 (2004) p. 781.

¹⁸⁰ Müller, “Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations,” p. 398.

its own displeasure at Myanmar's behaviour and, on occasion its desire for Myanmar to in some way change its behaviour. I note that Rhetorical Action is "located on the borderline between strategic-instrumental rationality and argumentative rationality", that is between mainstream rationalist and constructivist accounts.¹⁸¹

Closely related to Rhetorical Action is the Naming and Shaming process.¹⁸² Whereas Rhetorical Action rests on an actor forwarding exact statements to promote change, Naming and Shaming appears to be more indirect, where the mere publicity of news about how national and regional standards have diverged in itself creates pressure to change. Here communities do not state, "change in this way", rather they identify areas of incongruence between national and regional standards without addressing how to correct that. For example, the OAS from the late 1970's first via the Commission and later the Special Rapporteur on Freedom of Expression, a sequence of reports that identified shortcomings in Panamanian compliance with regional standards on freedom of expression. These reports, especially early on, were designed solely to publicise the situation, especially given the then inability of the Commission to publicly call for change. I note that the distinction between Rhetorical Action and Naming and Shaming is a conceptual, not a practical one. In actual political practice both processes occur, often simultaneously and often within the same documentary record. The distinction here is for conceptual purposes. The final socialisation

¹⁸¹ Risse, "International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena," p. 533 ———, "'Let's Argue!' Communicative Action in World Politics," p. 9. See also Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the European Union," *International Organization* 55, no. 1 (2003) p. 48.

¹⁸² For a broader analysis in a different context, refer to James H. Lebovic and Erik Voeten, "The Politics of Shame: The Condemnation of Country Human Rights Practice at UNHCR," *International Studies Quarterly* 50, no. 4 (2006).

effort that the studies reveal that falls within the rational category is what I term Social Sanction. Distinct from the above Rhetorical Action, this involved not the judicious use of language but the denial of the social rights of members. In 2005 ASEAN ultimately, under considerable internal and external pressure, denied Myanmar the position of chair. This came with no material cost or benefit to either party, but it did act as a point of censure. Panama at the height of the democratic crisis in the late 1980's was denied participation in the mechanism of consultation of the OAS, a similar example.

I suggest there is a link between all three of these mechanisms of social influence and attempts to manipulate the legitimacy of certain members in order to promote socialisation. The identification of Myanmar and Panama as in some way deficient with regards to the established community standards can be conceptualised as a process of publicly undermining the legitimacy of those states within the membership context. There is nothing inherently sociological about focusing on legitimacy in this way. Conceptually, I link this to Schimmelfennig's work on legitimacy.¹⁸³ Schimmelfennig's suggestion that legitimacy is an external institutional fact helps us understand events. For example, ASEAN's comments on Myanmar, increasingly strident over time, together with the eventual denial of the Chair of ASEAN to Myanmar in 2005, rested on attempts to alter the perceived legitimacy of Myanmar as a member. It was an attempt to influence Myanmar through identifying its position as something less than a full member, as worthy of less than the regular entitlements of members.

¹⁸³ Schimmelfennig, "International Socialization in the New Europe: Rational Action in an Institutional Environment," p. 117.

CO-VARIATION OF REGIONAL COMMUNITY AND SOCIALISATION POST-MEMBERSHIP

Co-variation after membership is conceptually more complex than the pre-membership context. Community building rests on discursive acts where members debate the future identity of the community itself, together with their own identities as members. All regional communities engage in this process, it is a natural consequence of political debate between members in part as a response to changing external stimuli. Whereas before membership I conceptualised of member state driven processes as a discreet socialisation avenue, after membership, those same member-states form the substantive part of community building processes. This process often broadens to include an array of civil society actors who cluster around these communities as a locus of authority and legitimacy. Persuasive accounts always have something to say about socialisation within community contexts.

As a potential consequence of community building, the nature of the agreements changes. Standards are revised and institutional oversight upgraded. This can lead to conditionality as a political process occurring once again. The rareness of this occurrence suggests that states are very careful locking in their compliance to court systems. However, community building is the necessary precursor to a broader range of social influence attempts. Community building processes help create gaps between the desired regional standard and contemporary national behaviour. This gap, in turn, is a platform for Rhetorical Action, Social Sanction and Naming and Shaming processes. The greater the regional community building process, the greater the potential gap in standards and the more likely social influence becomes. Social influence strategies dominate both when regional community consensus is lacking, as in the ASEAN

study, and also when there exist apparent shared standards but members transgress these, as we see in the OAS case.

Subsequently, the negotiations between member states become part of the broader community building project. The story of socialisation varies at different points on the membership spectrum, as the empowerment of various actors' waxes and wanes in response to their relative positioning. When power is imbalanced, rational accounts seem to predominate as communities adopt a role of gatekeeper. When power is balanced between members who each enjoy the ultimate power of veto and the community becomes again a forum within which these states act, the boundaries of shared meanings, then constructivist accounts predominate. Crucially, these processes potentially co-exist with each other. Standards embodied in court systems also form the substance of discursive engagement as well as the basis for Social Sanction and Rhetorical Action. Single standards are the cause of multiple attempts to spread that standard, processes that are best construed by a range of approaches. This speaks to the question, dominant not only in socialisation studies but elsewhere, as to "under which circumstances does which type of logic (the rational, or the constructivist) apply?"¹⁸⁴ The evidence suggests that both logics apply simultaneously. It is not a matter of determining which logic is "clear" and which "unclear".¹⁸⁵ Rather the simultaneous application of both logics to real world events is the only way to capture the detail of socialisation, and the many ways by which it occurs. Reducing one into the other, or seeking to place them into a hierarchy falls into the unnecessary trap of reductionism.

¹⁸⁴ Müller, "Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations," p. 401.

¹⁸⁵ March and Olsen, "The Institutional Dynamics of International Political Orders," p. 952.

SUCCESSFUL SOCIALISATION IN A COMMUNITY BUILDING CONTEXT

INTERROGATING SOCIALISATION

This realisation requires of the observer great care in attributing significance precisely. What socialisation pressure was *most* significant at various points in the story? Whilst inevitably a degree of caution must surround any suggestions, a few avenues of investigation can be forwarded. There is scant evidence for community building by itself promoting successful socialisation. Community building in both the ASEAN and OAS example created discursive contexts in which actor's identities as members were in the mix as states sought to renegotiate their identities as members and as such their relationships with each other, their citizens and the community itself. However, Myanmar dealt with these pressures strategically and as such was deaf to the competing pressures upon it. The Panama example is more complex inasmuch as the period in which change did occur was one where both community building and social influence pressures were brought to bear. However, even here light on the relative importance can be discerned. I suggest that community building processes resting on discursive engagement were necessary but not sufficient for socialisation to occur, at least in the form that they occurred within the parameters of this study. Community building was necessary because it was the origin of the revised standards, even when states such as Myanmar and Panama were disingenuous in their acquiescence to those revisions that become the basis for Social Influence efforts. Had there been no community building within ASEAN, no revised commitment to democracy and human rights, then ASEAN would never have been able to criticise Myanmar on those issues in the last five years. Equally, had community building not arisen within the OAS then the

Commission would not have been created, or the Convention or the Special Rapporteur. Whilst these instruments may have exerted socialisation pressure rationally, I suggest that we cannot conceptualise of their initial creation without recourse to discussion and persuasion. This nesting of conceptual frameworks within each other further substantiates the importance of eclecticism in capturing the nature of regional community socialisation.

Community building was not sufficient because neither the OAS nor ASEAN was able to sufficiently alter the ability of Myanmar or Panama to deal with these discussions in a meaningful way. The absence of formal censure and hierarchical authority as the source of that ability is both the defining quality of persuasive acts as well as the source of their weakness in the absence of a genuine commitment. The constructivist accounts of socialisation with relation to the EU encountered in the previous chapter offer a clue. Lewis' account rests on individuals existing in intense and enduring contact. Community building examples in the ASEAN and OAS do not resemble those. Whilst the only way to conceptualise them is as discursive, the identification of type is not the same as an identification of success.

REVISING OUR ACCOUNT OF SUCCESS

Traversing the membership threshold alters the tale of success and failure that we see. It does so because states interact with each other differently under different contexts. I suggest a sequence of conceptual innovations is required to mesh the existing accounts presented above to the changed context of post-membership socialisation.

THE QUESTION OF NORM STRENGTH.

The established scope conditions for both rational and sociological counts of successful socialisation do not appreciate as part of their analytical framework the *strength* of the norms in question. The analytical frameworks of European scholarship assume a flat playing field where norms exist or not unproblematically, at least in reference to the socialisation that occurs as states seek to become members. It does not grapple with the varying socialisation consequences of weak norms vis-à-vis strong ones, and thus fails to question whether there is a relationship between the strength of any one norm and the way in which it is socialised. Whilst this is perhaps understandable given the prevalence of European scholarship where norms are strong and often embedded in legal frameworks, it is radically at odds with rival sites of socialisation, which reveal the complex and contested nature of normative debate in the real world. The logical concomitant to the belief that norms emerge is that they do not come into the world at “full strength”. Both ASEAN, and the OAS for a time, were attempting to socialise only weakly held norms that were also undergoing constant revision as member states negotiate between each other. Commitments to democracy and human rights, even explicitly to freedom of expression, do not emerge perfectly formed. Weak standards exist as a necessary precursor to strong ones.

The simple presence of the words “democracy”, “human rights” or “freedom of expression” in any form, even legal documents, in the absence of detailed understandings of what those mean are insufficient to promote successful socialisation. Broad terms in the absence of detailed and “in house” enunciations of what those terms actually mean in the regional context offer no

substantive benchmarks against which to judge state performance.¹⁸⁶ We must remain aware of the relevance of “norm-sets”. Attempts to socialise something as complex as “democracy” or “human rights” requires the composite norms of those ideas of the social good to be clearly stated and perceived as both widely legitimate and actually followed by states themselves. Clear and detailed norms are themselves more persuasive, as well as providing greater exactitude to legal accounts of those norms, because they seem to represent settled normative standards within the Community itself. ASEAN and its member states have been unsuccessful in socialising democracy or rights since 1997 because those norms, for political reasons, have never reached anything more than the most abstract of enunciations, and so have never been convincingly presented to Myanmar as representing revised standards of membership. Mere political dialogue between member states is insufficient, in the absence of clear outcomes, to promote socialisation.

¹⁸⁶ Interestingly, Regional Communities that reference external standards in these regards have been unable to socialise them. ASEAN made reference to the Vienna Treaty on Human Rights but this has never been invoked as an internal standard. Equally, the OAS for a long time made reference to UN standards but again, was unable to move towards enforcing those.

A second revision to our accounts of success requires an appreciation that the scope conditions that generate conclusions about success rest upon unproblematised assumptions that laws and norms are regarded not only as strong, but also as being a binding source of authority. However, we can conceptualise of a law that fulfils all the apparent requirements of strength but at the same time is ignored. It can be clearly written down, with states agreeing to it. They can go into detailed enunciations of the various components of that standard, and they can be embedded in court systems that monitor and enforce compliance. Despite all of this, these "laws" mean nothing; they are routinely and *legitimately* ignored. The reason why, I suggest, is the "social meaning" of membership. This ties into the body of academic work that claims that signalling your agreement with human rights treaties, even when those offer detailed specifications about what Freedom of Expression actually is, does not automatically infer that you intend to be bound by those stipulations.¹⁸⁷ Existing studies reveal how signalling such intent offers a rational path for states to adopt to avoid criticism from other actor. To account for success therefore, one must investigate the attitude of actors towards otherwise strong standards. Successful socialisation of Panama occurred not solely because of the discussion of norms and then the erection of revised legal standards, but because of the shifting meaning that was ascribed to existing legal standards. There is no automatic

¹⁸⁷ Hathaway, "Do Human Rights Treaties Make a Difference?" offers a famous appraisal of this. Note the continuing discussion coming from this article in Ryan Goodman and Derek Jinks, "Measuring the Effects of Human Rights Treaties," *European Journal of International Law* 14, no. 1 (2003) And Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* 49, no. 6 (2005). James Raymond Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture," *International Organization* 62, no. Winter (2008) offers an up to date analysis.

process by which creating laws creates an equal set of understandings that those laws are binding, and the investigator should pay heed to that potential gap.

SUCCESSFUL SOCIAL INFLUENCE

The extension of our account of rational choice accounts of socialisation resting on membership requires a critical reflection on the success conclusions generated by existing accounts. The conditions for success presented above rest heavily on conditionality as a motor towards socialisation. Social influence accounts eschew that political process, and as such require differing frameworks for judging success. The conceptual similarities between the various forms of social influence presented above allow for the presentation of a shared framework for investigating their success or failure. Trine Flockhart offers a starting point for analysis of social influence success, noting that it requires a clear understanding and consensus on what constitutes good behaviour against which behaviour can be judged.¹⁸⁸ As the above discussion on strength indicates, norms that are weakly institutionalised or hollow declaratory statements cannot be held to be clear and consensual. Community pronouncements such as ASEAN's call for Myanmar to embrace democracy did not rest on any settled meaning of "democracy" that allowed the community to speak authoritatively on that issue. OAS oversight in the 1970's and 1980's equally did not rest on established and meaningful commitments to rights. Social influence processes stand greater chances of success when the standards upon which those efforts are based are themselves clear and consistently held, promoted and protected by the actor making that attempt.

¹⁸⁸ Flockhart, "Masters and Novices: Socialization and Social Learning through the Nato Parliamentary Assembly," p. 367.

Given that social influence is about the enhancement of status in an international setting by joining a group that has a positive value attached to it, the "forum through which socialisation takes place cannot be either private or unobservable, as that will not generate social pressure for compliance."¹⁸⁹ The broader the audience of any social influence effort, and the more relevant and willing that audience is to note the particular attempt and recognise it as substantive, the more likely social influence is to prove successful. This is particularly the case with Naming and Shaming processes, but I suggest that it is also relevant for the broader appreciation of success of social influence accounts. It is the public expression of displeasure, and the deployment of social costs as a potential corrective, that drives this process forwards. Concomitantly, social influence depends on the target state either sharing the assessment of the rebuking party about what is "right" behaviour (for Naming and Shaming and Rhetorical Action) or valuing the rights of membership that have been denied it (the Social Sanction account). This shared appreciation of right and wrong, and of the valuing of certain social functions of membership

At the deepest level, and facilitating the establishment of these shared appraisals, social influence is dependent on "at least one person in the audience being prepared to be convinced by the better argument."¹⁹⁰ As explored in chapter four, Myanmar dealt with these interactions in a strongly strategic way. It did so because ASEAN's efforts to promote change were never linked in a meaningful way with threats to deny Myanmar what it desired membership for, strategic cover from western criticism. ASEAN never seriously entertained that prospect, and despite occasional dire forecasts from regional leaders, member

¹⁸⁹ Ibid.

¹⁹⁰ Risse, "'Let's Argue!' Communicative Action in World Politics," p. 9.

states never pushed for it either. Myanmar was not in the mood to be persuaded, and it could not be forced to take ASEAN seriously, and to value the rebukes that ASEAN was clearly deploying. Socialising agents must ensure, therefore that pressure for reform is consistent across the range of activities where agent and target interact. Communities cannot expect success via any social influence process unless the message that they seek to transmit from that sanction is consistent. The multifaceted relations between Myanmar and ASEAN allowed Myanmar to ignore criticism from ASEAN when that community at the same time provided ASEAN with continued social goods, specifically the protection from western criticism.

THE WAY FORWARDS

The following chapters focus on specific examples of membership in regional communities and the socialisation consequences that ensue from that relationship. Whilst diverse, I will be interrogating them in the same way, in line with the definitional, methodological and conceptual reasoning presented above. In each case the first task is to address the socialisation processes that led (or in the Turkish case continues to lead) up to the point of membership. This requires analysing not only how the regional community themselves socialise states (and how they go about that with specific reference to freedom of expression) but also how membership acts as a conduit for other socialisation pressures. For the Panama and Myanmar, a focus on the socialisation pressure after membership carries the analysis forwards. The focus in both is firstly on how gaining membership dramatically alters the nature of socialisation pressure, in ways that are dependent upon the nature of the regional community being joined. The

subsequent story of being a member rests on an analysis of the nature of community building.

4. ASEAN and Myanmar: Community building, Social Influence and the Failure of Socialisation

In the wake of the 1993 Vienna Conference on Human Rights, ASEAN states committed themselves to investigating regional arrangements for the protection and promotion of those rights. Some 15 years later, the ASEAN Charter seemingly fulfilled that commitment, calling for the establishment of a regional human rights mechanism.¹⁹¹ In parallel to this deepening of the community has been a process of widening membership to include four new members. This has finally fulfilled ASEAN's inauguration commitment, contained in the Bangkok Declaration of 8th August 1967, that it was "open for participation to all states in the Southeast Asian region".¹⁹² Myanmar became a member of ASEAN on July 23rd 1997. The confluence of widening ASEAN and then introducing a concern with human rights opens up the question of how ASEAN attempts to socialise its members.

This is a study about a particular mode of socialisation. It is about investigating how a community can use broad definitional terms, democracy or human rights, to try and exert socialisation influence in the absence of any agreement about detailed understandings of those terms. In the wake of the Asian Financial Crisis of 1997, ASEAN came to renegotiate its very nature and through

¹⁹¹ The ASEAN Charter, Article 14. Accessible at www.aseansec.org/ASEAN-Charter.pdf.

¹⁹² The ASEAN Declaration, Bangkok, Thailand, 8th August 1967. Accessible at <http://www.aseansec.org/1212.htm>. the five original members were Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997, and Cambodia on 30 April 1999. The 10 member states have a population of about 500 million, a total area of 4.5 million square kilometres and a combined gross domestic product of US\$737 billion. Currently East Timor remains separate to ASEAN, although it enjoys observer status. For an interesting discussion of the relationship between ASEAN as a political term and Southeast Asia as a geographic term refer to Donald K. Emerson, "Challenging ASEAN: A "Topological" View," *Contemporary Southeast Asia* 29, no. 3 (2007) pp. 426-428.

that process, the rights and obligations that members both enjoy and must fulfil. The basis of socialisation was not detailed legal standards, such as we will encounter in the later period of the OAS–Panamanian relationship or the EU–Turkey study. This should not be surprising; ASEAN was and remains a community wedded to a unique method of structuring relations not only between itself and members but also its external contacts with dialogue partners across the globe. We would fall quickly into the trap of western centricity were we to suggest that this different mode of socialisation is in some way not comparable to other examples.

STATEMENT OF ARGUMENTS

This study is framed by the first structured relationship between ASEAN and Myanmar in 1993 through to the final ratification of the ASEAN Charter on 15th December 2008. The chapter forwards two clusters of relevant conclusions. In terms of the specific literature on ASEAN, the story of human rights socialisation within ASEAN is one that has not been told before. Too often the appreciation, or to be more accurate depreciation, of ASEAN assert it is little more than a façade where norms have no affect on members.¹⁹³ ASEAN, this account suggests, is an “imitation community” or “rhetorical shell” with little or no substantive content.¹⁹⁴ Based on this, ASEAN is assumed to be a weak international actor as well, at the whim of external powers.¹⁹⁵ However, in revealing the pressures that have been exerted on Myanmar and the various ways that these pressures have been articulated, I rebut this line of reasoning. ASEAN has developed considerable interest in human rights and democracy, it and

¹⁹³ Khoo, "Deconstructing the ASEAN Security Community: A Review Essay," p. 45.

¹⁹⁴ Jones and Smith, "ASEAN's Imitation Community," p. 93.

¹⁹⁵ ———, "Making Process, Not Progress."

various members have used those revisions to exert multiple socialisation efforts on Myanmar. The presence of these mechanisms evidences my contention that ASEAN is a far more complex community than previous scholarship has suggested. Where I agree with the broader ASEAN literature is in the contention that these norms *achieved* little. We will see no successful socialisation over the coming study. The separating of socialisation intent from socialisation outcome, as previously explored in the Introduction, allows a more nuanced interfacing with existing literature.

At the broader conceptual level, before membership was granted legal conditionality resting on bargaining mechanisms was present and successful. In this case, however, there was no account of freedom of expression within that process of becoming a member, and as such human rights socialisation was not part of the story. However, alongside this a distinct second mechanism can be identified, the importance of member state efforts to socialise Myanmar. This pressure, which I conceptualise as discursive and amenable to persuasive analysis through a constructivist lens, failed to result in any change in Myanmar because of the lack of clarity these member states had about what exactly they were arguing for, together with their contradictory desires to both make membership meaningful for human rights and to get Myanmar into ASEAN as quickly as possible. I study these mechanisms separately to isolate the nature of socialisation that occurs before membership.

After membership occurred the nature of socialisation pressures changed. There is no role for conditionality in the analysis, but three types of pressure can be identified. Firstly the direct pronouncements of ASEAN on Myanmar, which I suggest we can conceptualise as Rhetorical Action. Secondly, the use of what I

term Social Sanction, understood as the denial of the social benefits of membership, was used in 2005 over the issue of the chair of ASEAN. Both of these I position within the rational choice tradition. Thirdly the processes of discussion that surrounded the ongoing ASEAN community building project where Myanmar was enmeshed in a process of discussion and normative debate with other members about the future direction of the Community where questions of rights and democracy played an increasingly central role. I suggest that this process is inherently discursive and thus bound to the persuasion mechanism of socialisation as this process of community building rests on the creation of, and contestation over, a distinct community identity. This is vital for our understanding of socialisation because it created revised standards that went towards increasing the gap between the community identity, and the understandings other members had as part of ASEAN, and Myanmar. Finally, despite these avenues of pressure, change in Myanmar was not forthcoming. I will suggest that the continued lack of clarity about what ASEAN was trying to socialise Myanmar into, together with the inherent “weaknesses” of ASEAN as a regional community and its own relationship with external criticism fatally undermined the success of these attempts. The mode of socialisation here, resting on broad standards and declaratory statements was both the foundation for socialisation attempts, and a central reason for the failure of those attempts.

THE SOCIALISATION AFFECTS OF GAINING MEMBERSHIP.

The first task is to account for any socialisation pressures, and then their outcome, in the process leading up to Myanmar’s entry into ASEAN on 23rd July 1997. There are two aspects to consider. First, the official ASEAN position on human rights and second the distinct member state-driven processes separate to

ASEAN's own engagement with Myanmar. Only when these are both unpacked can we turn to the track record of those attempts to promote change within Myanmar to gauge the efficacy of these processes. In both cases we must note that the discussion was not about freedom of expression, but about broad terms such as democracy and human rights, and in the case of member states a sense of unease at being formally grouped with a regime as intransigent and unpopular as Myanmar's. Freedom of expression therefore is used, through our ability to trace its course within Myanmar via United Nations documentation, as a marker of the effectiveness, or otherwise, of these more general avenues of pressure.

CONDITIONALITY AND THE HUMAN RIGHTS SIGNIFICANCE OF JOINING ASEAN

The socialisation that flowed from gaining membership was intimately linked to the legal standards that ASEAN had developed in the run up to 1997. Membership was conditional on accession to all the basic documents and agreements of ASEAN.¹⁹⁶ The Protocols of Membership signed by Myanmar lists the treaty obligations that it undertakes and its subscription to these documents,¹⁹⁷ and the accompanying declaration of accession notes "the Union of Myanmar has agreed to subscribe or accede, as the case may be, to all ASEAN Declarations, Treaties and Agreements".¹⁹⁸ Signing this array of documentation locked Myanmar into becoming like ASEAN, either immediately or in terms of the economic agreements, over an agreed time. This conditionality

¹⁹⁶ Mya Than, *Myanmar in ASEAN - Regional Cooperation Experience* (Singapore: ISEAS, 2005) p. 86. For a historical analysis of the evolution of ASEAN Membership, note R.P. Anand, ed., *Cultural Factors in International Relations* (New Delhi: Abhinav Publications, 1981) pp. 176-180.

¹⁹⁷ Refer to the Protocol of Accession of the Union of Myanmar to ASEAN Agreements, Subang Jaya, Malaysia, 23rd July 1997, Accessible at <http://www.aseansec.org/1830.htm>. and the Second Protocol for the Accession of the Union of Myanmar to ASEAN Agreements, Subang Jaya, Malaysia, 16th October 1997. Accessible at <http://www.aseansec.org/1833.htm>.

¹⁹⁸ Declaration on the Admission of the Union of Myanmar into the Association of Southeast Asian Nations, Subang Jaya, Malaysia, 23rd July 1997. Accessible at <http://www.aseansec.org/1829.htm>.

marks the first potential socialisation avenue of membership. The question confronting the investigator is therefore was there anything within the process of conditionality that spoke about an ASEAN concern with human rights within its members, which would then act as a conduit for socialisation pressure upon Myanmar? An examination of the both the areas of ASEAN cooperation as well as the specific goals of the community with relation to Myanmar indicates that human rights and democracy were not part of the membership negotiations, and as such socialisation of freedom of expression was not intended. Assessing the goals of ASEAN requires recourse to its evolution. The Bangkok Declaration, which founded ASEAN in 1967, offered a list of ASEAN goals:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.¹⁹⁹

ASEAN goals were intrinsically “negative” inasmuch as they wedded ASEAN and its members to “not doing” something which unduly violated the sovereignty of fellow members. These political goals of ASEAN were enhanced, but not fundamentally modified by both the Declaration of ASEAN Concord,²⁰⁰ and the Treaty of Amity and Cooperation,²⁰¹ both signed in Bali on 24th February 1976. There was certainly no concern with rights here. ASEAN’s pacifying

¹⁹⁹ The ASEAN Declaration, Bangkok Thailand. August 8th 1967, Accessible at <http://www.aseansec.org/1212.htm>.

²⁰⁰ Declaration of ASEAN Concord, Jakarta, Indonesia 24th February 1976. Accessible at <http://www.aseansec.org/3630.htm>.

²⁰¹ Treaty of Amity and Cooperation in Southeast Asia, Jakarta, Indonesia. 24th February 1976. Accessible at <http://www.aseansec.org/1217.htm>.

effect was based on the Zone of Peace, Freedom and Neutrality Declaration, signed on 27th November 1971 in Kuala Lumpur, which stated:

1. That Indonesia, Malaysia, the Philippines, Singapore and Thailand are determined to exert initially necessary efforts to secure the recognition of, and respect for, South East Asia as a Zone of Peace, Freedom and Neutrality, free from any form or manner of interference by outside Powers;
2. That South East Asian countries should make concerted efforts to broaden the areas of cooperation that would contribute to their strength, solidarity and closer relationship.²⁰²

This is not to say that ASEAN itself had never discussed questions of human rights. At the 1993 ASEAN Annual Ministerial Meeting after the June 1993 Vienna World Conference committed itself to “respect human rights and fundamental freedoms as set out in the Vienna Declaration.”²⁰³ The Declaration affirmed commitment to the full gamut of international human rights instruments, including the United Nations Charter, the Universal Declaration, the 1966 Covenants on both Civil and Political and Economic, Cultural and Social rights, and the continuing evolution of treaty law since then.²⁰⁴ As a result of this ASEAN had affirmed its commitment to the UN derived programme in relation to freedom of expression; Article 18 of the Universal Declaration of Human Rights spoke of the right to “freedom of thought, conscience and religion” whilst Article 19 referred explicitly to the “right to freedom of opinion and expression”.²⁰⁵ Article 19 of the International Covenant on Civil and Political Rights also spoke, in greater detail, of the right to freedom of expression, noting

²⁰² Zone of Peace, Freedom and Neutrality Declaration, Kuala Lumpur, Malaysia, 27th November 1971. Accessible at <http://www.aseansec.org/3629.htm>.

²⁰³ Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23-24th July 1993. Para. 16 Accessible at <http://www.aseansec.org/3666.htm>.

²⁰⁴ The Vienna Declaration and Programme of Action, 25th June 1993, A/CONF/157/23, Accessible at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)

²⁰⁵ The Universal Declaration of Human Rights, UNGAR 217 A (III), 10th December 1948, Accessible at <http://www.un.org/Overview/rights.htm>.

that “this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”²⁰⁶ Interestingly for this study, however, this commitment to rights was not in a form that bound ASEAN to commitment to those standards. The commitment in the Declaration of Ministers was not in and of itself binding on member states or ASEAN. It required negotiation to transfer that into the legal structures of ASEAN, negotiations that were not forthcoming. Talking about rights, even committing yourself in statements to them, meant little in the absence of any behaviour to live up to that commitment, and as such, ASEAN never translated that into a meaningful commitment on members, and as such on applicants.

Overlaying the set of written general purposes for expansion generated by the ASEAN treaty system itself, we can discern that the specific goals of ASEAN in offering Myanmar membership were also silent on human rights. Myanmar’s membership would exert ASEAN’s pacifying influence over the Andaman Sea.²⁰⁷ Chinese leasing of the Coco Islands, the northern most of the strategically significant Andaman Island Chain in 1994 presented the worrying possibility of the increasing militarization of the approaches to the Malacca Straits, the free navigation of which was vital to the continued economic security of existing ASEAN states. Myanmar’s membership would serve as a showcase of ASEAN’s durability and the effectiveness of ASEAN in ameliorating the tensions of the region.²⁰⁸ It is not surprising that the goals of ASEAN in relation

²⁰⁶ The International Covenant on Civil and Political Rights, UNGAR 2200A (XXI), 16th December 1966, Accessible at http://www.unhchr.ch/htm.l/menu3/b/a_ccpr.htm.

²⁰⁷ Interview with Edy Prasetyono, 22/09/2006, Director of International Relations, CSIS, Jakarta.

²⁰⁸ Interview with Dr. Hariyadi Wirawan, 26/09/2006 Chair of International Relations Department, Universitas Indonesia, Depok-Jakarta.

to Myanmar were similarly oriented, although in a different balance than those that characterised ASEAN's intentions vis-à-vis new members from Indochina.²⁰⁹ Whilst the Cambodian-Laotian-Vietnamese triangle presented a complex and multi-dimensional challenge to ASEAN,²¹⁰ Myanmar, with an isolationist and introspective government presented little threat to traditional definitions of regional stability. The political motives therefore were embodied in the desire to complete ASEAN, bringing all Southeast Asia under one organisational umbrella.²¹¹ This served to increase the "weight" of ASEAN in order to better fulfil the self proclaimed vital "balancing role between the major powers". This is especially the case in terms of the ASEAN maintaining the leadership role within the ASEAN Regional Forum (ARF), and the ASEAN+3 process." As Malaysian Prime Minister Mahatmir noted, a "complete" ASEAN would "form a community with a combined population of 500 million [with] the potential [to] be a significant player in Asia and the world".²¹²

MEMBER STATE SOCIALISATION PRESSURES AND THE CONSTRUCTIVIST VALUE ADDED.

That ASEAN itself was not motivated by socialising freedom of expression, or any other notion of human rights whether specific or general, to Myanmar in 1997 is not the end of the story. The relationship was never solely between Myanmar and ASEAN, rather it was a three-way discussion between Myanmar, ASEAN as an actor in its own right and existing members using the

²⁰⁹ Ramses Amer, "Conflict Management and Constructive Engagement in ASEAN's Expansion," *Third World Quarterly* 20, no. 5 (1999) p. 1031.

²¹⁰ Ibid.

²¹¹ Interview with Mamud Rizali, 20/09/2006, Universitas Indonesia, Depok-Jakarta. Confirmed in interview with Dr. Yeo Lay Hwee, 5/10/2006, Singapore Institute of International Affairs, Singapore.

²¹² "A Green Light for Burma to Join ASEAN's Ranks," *International Herald Tribune*, January 25th 1997 (http://iht.com/articles/1997/01/25/burma-t_0.php).

issue of membership as a forum within which to present their own views. Some pre-existing member states of ASEAN in the period before 1997 engaged with Myanmar through a process called Constructive Engagement where they sought to persuade Myanmar that membership of ASEAN was significant for human rights issues.

Constructive Engagement was inaugurated at the 24th Ministerial Meeting of July 1991 in Kuala Lumpur, subsequent to the failure of the Myanmar regime to recognise the 1990 election results.²¹³ It was the response of Thailand and the Philippines especially to house their concerns within a non-threatening environment. As such, the Constructive Engagement process revolved around creating a safe space in which states could discuss their differences and where activist states such as Thailand could engage with Myanmar critically but cooperatively. I note that at the outset this was not directly related to an active application by Myanmar, although it later did merge with membership concerns as Myanmar moved towards joining in the late 1990's. Constructive Engagement was intended to draw Myanmar slowly into a web of promises and friendly peer pressure,²¹⁴ in an "attempt that put process over proper institutionalisation of norms".²¹⁵

I argue that to conceptualise the significance of this process we should note that states could not exert influence via conditionality, as they could not alter the formal requirements of membership and thus the discussions occurred in the absence of material or Social Sanction, the denial of membership itself.

²¹³ Kavi Chongkittavorn, "The Evolution of Constructive Engagement," in *From Consensus to Controversy: ASEAN's Relationship with Burma's SLORC*, ed. Ralph Bachoe and Debbie Stothard (Bangkok: Alternative ASEAN Network on Burma, 1997).

²¹⁴ Interview with Yuri Thamrin, 27/09/2006, Director of Asia-Pacific Desk, Indonesian Foreign Ministry, Jakarta.

²¹⁵ Mann Bunyanunda, "Burma, ASEAN and Human Rights: The Decade of Constructive Engagement, 1991-2001," *Stanford Journal of East Asian Affairs* 2 (2002) p. 123.

Existing members could do nothing but seek to *persuade* Myanmar that membership in ASEAN meant that it should change its approach to human rights issues. A focus simply on rational approaches to conditionality would miss out on this process, because we see no recourse to power in the sense of hierarchically derived conditionality or social influence approaches. This suggests the relevance of constructivist accounts of socialisation, where interlocutors seek to persuade each other as to the best course forwards through competing truth claims. The debate was over whether or not membership of ASEAN should mean something more than what was written down in the legal documents that Myanmar would be bound by. It was at one level a debate about creating new standards, not enforcing old ones. States used a process of enmeshing Myanmar in a discursive environment where in a situation of equality they could air their opinions and seek to discuss their own visions of the future. Member state driven socialisation therefore rested on debate between members and Myanmar within the framework of Constructive Engagement.

Thailand in particular was driven by both “realities and aspirations” as then Prime Minister Anand Panyarachun noted.²¹⁶ In 1992, the Thai government suggested that Myanmar be granted observer status to ASEAN. This was rejected by Indonesia, Malaysia and Brunei because of Myanmar’s mistreatment of the Muslim Rohingya minority, an explicitly human rights concern.²¹⁷ ASEAN member states made clear that Myanmar’s eventual admission to the organization “would require further progress on the domestic front”.²¹⁸ When the SLORC (the “State Law and Order Restoration Council”, the chosen name for

²¹⁶ Ibid. p. 122.

²¹⁷ Kay Moller, “Cambodia and Burma: The ASEAN Way Ends Here,” *Asian Survey* 38, no. 12 (1998) p. 1089.

²¹⁸ Ibid. p. 1090.

the Junta in a moment of Orwellian flourish) released Aung San Suu Kyi in July 1995, they were invited to become a signatory to the Treaty of Amity and Cooperation, and thus received official observer status, granted the following year. Interestingly, acting Thai Prime Minister Pitsuwan believed that this was a product of the policy of Constructive Engagement.²¹⁹ It was at the 1995 ASEAN Bangkok Summit that Myanmar officially signalled its intention to apply for membership, the formal application lodged in August 1996, with the intention that it would be granted in 2000.²²⁰

As membership drew closer, so criticisms of Myanmar's preparedness and suitability for membership grew increasingly vociferous, even as Malaysia, in its role as then chair of ASEAN in 1996, unilaterally advanced Myanmar's membership to 1997 from the originally agreed 2000.²²¹ In the Philippines President Fidel Ramos called for a reconsideration of Myanmar's application on the ground of "failing to familiarise itself with the political mechanisms of ASEAN states".²²² Singapore, initially uncritical of Myanmar's application, shifted towards a more ambiguous position, with *The Strait Times*, often used as a mouthpiece for the government, publishing an editorial that called on Yangon to follow a policy of political pluralism or risk ASEAN losing patience with them. Further, in an interview with Finish television, Prime Minister Goh Chok Tong stated, "I do not think Myanmar is quite ready in the near future to adopt all the obligations of being a member of ASEAN".²²³ Thailand was even more

²¹⁹ Leszek Buszynski, "Trends, Developments and Challenges in Southeast Asia," in *Southeast Asian Affairs 1996*, ed. ISEAS (Singapore: ISEAS, 1997) p. 6.

²²⁰ Carlyle A Thayer, "Challenges to ASEAN's Cohesion: The Policy of Constructive Engagement and a Code of Conduct for the South China Sea," in *Regionalism and Globalism in Southeast Asia* (2000). p. 9.

²²¹ Moller, "Cambodia and Burma: The ASEAN Way Ends Here," p. 1091.

²²² "Burma Worries ASEAN," *Nation Today*, Manila, 4 October 1996.

²²³ Agnes Wee, "Myanmar will join ASEAN when it is ready."

severe. Prime Minister Banharn Silpa-Archa indicated that Myanmar's internal situation would bar it from membership.²²⁴

What were the permissive conditions that allowed member state pressures to arise? As will be shown, they are not present in either the OAS or EU studies. I suggest the reason for the presence of members state in the ASEAN case, and its absence elsewhere, lies in the difference between those respective communities. ASEAN was a community resting on highly diverse members with various political, social and economic frameworks of their own created space for significant member state activity. As a community with far less commonality than the EU or even the OAS the range of member state opinions on issues such as rights and democracy was simply greater than in other examples. Further, as a strictly intergovernmental community, those states retained their own sense of agency, even when the formal membership process was between ASEAN and Myanmar. The EU as a sophisticated community resting on supranational governance did not have that space. As will be discussed at greater length in chapter six, this undercut the role of member-state driven pressure. The ASEAN policy was always a composite of member demands, a lowest threshold of what could be agreed to enact regionally. It is of little surprise that states with more active concerns with rights were not satisfied with the formal ASEAN policy, and sought to forward their own opinions.

²²⁴ The Thai position was subject to a series of radical swings due to the shifting constellation of domestic political power. The 1996 Thai national elections and the change of government that saw Chavalit Yongchaiyudh assume the Prime Ministership, the Thai official position swung behind that of Indonesia, Malaysia and Vietnam in support of early and unconditional entry. The government of Chuan Leekpai reversed this. The new foreign Minister, Surin Pitsuwan quickly advocated a revised policy of "Constructive Intervention" that sought to allow ASEAN to act when internal domestic situations in certain countries posed a threat to regional stability.

ASSESSING THE SUCCESS OF MEMBER STATE DRIVEN STRATEGIES

To investigate the domestic situation in Myanmar as the basis for establishing the effects of these pressures, both here and later in this chapter, I use documents drawn from the then UN Commission on Human Rights, in particular the regular reports submitted by the Special Representative to Myanmar.²²⁵ This provides the ability to trace the relationship between regional standards and the status of freedom of expression within Myanmar. From this documentary record, we can conclude that the period running up to Myanmar's accession to ASEAN, when member state pressure was deployed, showed no improvement in the condition of the right of freedom of expression.

The preliminary assessment in 1993 by then Special Rapporteur Dr Yozo Yokota noted that "in regards to restrictions on personal freedoms.... violations occurred primarily as a result of attempts of citizens to participate freely in the political process and the transition to the democratically elected civilian government".²²⁶ Whilst some minor improvement was noted over 1993, the 1994 report "continues to be concerned by the serious restrictions imposed upon people in the enjoyment of civil and political rights. People do not generally enjoy freedom of thought, opinion, expression, publication and peaceful assembly and association".²²⁷ Change was lacking though 1995 as well. Yokota noted that together with continued restrictions on all forms of press and media

²²⁵ Situation of Human Rights in Myanmar. United Nations Commission on Human Rights Resolution 1992/58, 3rd March 1992. See also Bunyanunda, "Burma, ASEAN and Human Rights: The Decade of Constructive Engagement, 1991-2001," pp. 125-127.

²²⁶ United Nations Committee on Human Rights, E/CN.4/1993/37, 17th February 1993, para. 205.

²²⁷ United Nations Committee on Human Rights, E/CN.4/1994/57, 16th February 1994 para. 121.

sources,²²⁸ “the people do not enjoy the freedoms of opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that whatever they or their family members say or do would risk arrest and interrogation by the police or military intelligence”.²²⁹ The new Special Rapporteur, Rajs Moor Lallah noted in February 1997 that “the clearest evidence of violation of the freedom of expression continues to be found in Myanmar Laws, such as law no. 5/96 of June 7th 1996 ‘Promoting the stable, peaceful and systematic transfer of state responsibility and the successful implementation of the National Convention free from disruption and opposition’”.²³⁰ This law, amongst others, seriously undermined the freedom of individuals and associations to spread any ideas that were deemed to undermine the stability of the state or offer criticism of the SLORC regime. Whilst some minor improvements in the conditions of political parties in 1997, Lallah again noted the “virtually complete control that the authorities seem to exercise on the freedoms of association, assembly and expression”.²³¹

The framework for establishing successful persuasive socialisation introduced in chapter three rests upon a de-politicised environment where actors engage in discussions with the potential outcome of changing their own opinions and identities as a result. This constellation of conditions did not present themselves during the Constructive Engagement process, and I particularly focus on two aspects, the importance of the *authority* of those seeking to persuade Myanmar, and then the coherence with which those pressures were put forth.

²²⁸ United Nations Committee on Human Rights, E/CN.4/1996/65, 5th February 1996, paras 120-122.

²²⁹ Ibid. para. 151.

²³⁰ United Nations Committee on Human Rights, E/CN.4/1997/64, 6th February 1997, paras. 15 and 32.

²³¹ United Nations Committee on Human Rights, E/CN.4/1998/70, 15th January 1998, para. 69.

Those who forwarded rights related arguments could not make their claim that membership in ASEAN meant some degree of respect for rights standards “authoritative”, to use Checkel’s term.²³² They could not draw upon arguments that legitimated their desires in the context of what ASEAN was, and what it was for. The reason why it was not so convinced rest with the heterogeneity of ASEAN states.²³³ Proactive states could not rest their argument that membership meant some degree of human rights compliance when existing members of ASEAN were so divergent in their own subscription to those standards. Counterfactually, all member states would have to be presenting the same line of arguments, and discursively linking those to notions of a shared community identity, for the constructive engagement process to be successful. Whilst Thailand and the Philippines again made much of the running in terms of the role of human rights, it was far less important to the then Indonesian government, or existing Indochinese members Laos and Vietnam.

Secondly, even proactive member states were conflicted about the processes of Constructive Engagement. Conflicting motives for Constructive Engagement retarded the ability of the states to present their opinions consistently. The most important goal of Constructive Engagement was never resuscitation of human rights in Myanmar,²³⁴ it was the umbrella under which ASEAN and its member states engaged with Yangon, and human rights were only one animating factor amongst many. They were conflicted both in terms of how important human rights were, and also as to whether constructive engagement was designed to pressure Myanmar to change before membership, or

²³² Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 813.

²³³ "Schools In: ASEAN Peer Pressure" *Far Eastern Economic Review*, June 19th 1997, p. 5.

²³⁴ Mann Bunyanunda, op. cit. p. 123.

to move the relationship, and then membership, forwards quickly. Thailand especially was concerned not only about human rights but also a broad range of issues from border security, economic development and the flow of narcotics across the border. Those very member states driven to engage critically with Myanmar were also motivated to not retard Myanmar's membership application unduly. The consensus was that Myanmar should be brought quickly into ASEAN's protective fold to expose it to greater discursive pressure. Malaysian Prime Minister Mahathir Mohammed noted that were Myanmar outside ASEAN "it is free to behave like a rogue or a pariah, whilst if it is inside, it would be subject to certain norms of behaviour",²³⁵ whilst Severino asks the question, retrospectively, "would it be better for the people of Myanmar if their country was admitted to ASEAN or if it were kept out?"²³⁶ ASEAN was interested, as Philippine Foreign Minister Domingo Siazon noted, in providing membership as then "there would be better opportunities to influence Myanmar to adjust its internal policies and move towards national reconciliation".²³⁷

THE IMPORTANCE OF BEING A MEMBER

Myanmar was "deluding itself if it expected business as usual," after it became a member.²³⁸ Constructive engagement had shown that questions of rights and Myanmar's membership in ASEAN would remain at the forefront of at least some member's minds. The potential way in which that pressure would be exerted altered as Myanmar crossed the threshold from applicant to member.

²³⁵ Agence France Press, "ASEAN Stands Firm on Burma's Entry Despite Western Pressure" 1st May 1997.

²³⁶ Rodolfo C. Severino, *Southeast Asia in Search of an ASEAN Community: Insights from the Former Secretary-General* (Singapore: ISEAS, 2006) p. 133.

²³⁷ Domingo Siazon Jr. "No New Walls". Keynote Address at the 4th European Association for Southeast Asian Studies (EUROSEAS) Conference, Paris. 1st September 2004.

²³⁸ "Under Construction: Vietnam and Burma Engage the World" Far Eastern Economic Review, July 27th 1995 p. 7.

Joining ASEAN was significant for socialisation because it shaped the ongoing relationship by providing Myanmar with the power of a member over the future direction of ASEAN. As a recognised participant of the ASEAN Treaty System up to 1997 Myanmar was granted both the negative rights of sovereign equality vis-à-vis other members and the positive rights of participating as an equal over the future development of ASEAN itself. This was especially important in a Community such as ASEAN that had centralised unanimity and informality and in 1997 possessed no Court system to ensure compliance. Myanmar from 1997 could use its rights as a member to influence the future of the very socialisation pressures that it itself would be subject to. Myanmar could, because of the requirement of unanimity, and in cooperation with other reticent states, retard the formation both of shared values at the ASEAN level and then the mechanisms and processes to protect and promote those values.

I will now turn to first investigate the origins and consequences of the two important points in the developing ASEAN, the Bali II Accords of 2004 and the ASEAN Charter process until its final implementation at the close of 2008. Within these I shall focus on the evolving discursive environment on human rights within ASEAN as part of the evolution of a distinct community identity. I will both identify that community building as representing a discursive socialisation process in itself, and also as the necessary precursor for a range of social influence processes through the creation and then expansion of a “gap” between the wills of the majority of ASEAN states and Myanmar’s continued refusal to adopt a meaningful internal reform process. I will frame the increasing, and various, forms of social influence deployed by ASEAN itself as a separate

avenue of socialisation pressure. Whilst community building's relevance for socialisation rests on persuasion, through free debate about creating new standards, these pronouncements do not concern a persuasive attempt to socialise. They rest on specific notions of hierarchy and the judicious use of language and Naming and Shaming to censor, and hopefully as a consequence alter, behavioural patterns. Again, they are based on the notion of enforcing existing standards. The presence of this distinct socialisation process helps focus our attention on the continued, but changing, utility of rational choice analysis.

THE QUESTION OF MYANMAR: ASEAN ENGAGEMENT WITH HUMAN RIGHTS 1998-2004

The initial years after membership were quiet in terms of any socialisation pressures brought to bear on Myanmar by ASEAN. However, there is a clear movement post 2000 toward such pressures. Here the story is one of an increasing interface with human rights and democracy, as well as discussion about Myanmar's participation in ASEAN. Socialisation pressure emerged from two directions. Rhetorical Action can be discerned where ASEAN spoke of what Myanmar should do. Persuasive efforts emerged out of the discussions of proposed community building efforts.

TALKING TO MYANMAR: ASEAN AND RHETORICAL ACTION

ASEAN became increasingly vocal about the situation in Myanmar. During this period these announcements took the form of entries into the official final communiqué of ASEAN Ministerial Meetings (AMM). Through elevating the issue of Myanmar to the level of the communiqué, states were linking ASEAN to these statements. The act of doing this in and of itself indicates the

gravity of the situation. The Joint Communiqué of the 34th AMM held in Hanoi on 23-24 July 2001 was the first to mention Myanmar, when ASEAN:

Noted encouraging developments in the Union of Myanmar and appreciated the efforts of the Government of Myanmar towards these developments and reiterated our support to the on-going process of national reconciliation in this country²³⁹

Subsequently, there was a gradual hardening of the tone and an increase in the detail of the language that ASEAN has used in relation to Myanmar. The Communiqué of the 36th AMM in Phnom Penh went further inasmuch as it investigated in more detail domestic events, stating that:

[We] discussed the recent political developments in Myanmar, particularly the incident of 30 May 2003.... we urged Myanmar to resume its efforts of national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy. We welcomed the assurances given by Myanmar that the measures taken following the incident were temporary and looked forward to the early lifting of restrictions placed on Daw Aung San Suu Kyi and the NLD members.²⁴⁰

By the 37th AMM held in Jakarta in 2004, ASEAN was acknowledging, in regards to the National Convention Process (the apparent bringing together of disparate political and ethnic elements within Myanmar for the formulation of a new constitution) *within* Myanmar:

The potential of the Convention in paving the way for new constitution and the holding of elections in keeping with it.... In this regard, we underlined the need for the involvement of all strata of Myanmar society in the on-going National Convention. We encouraged all concerned parties in Myanmar to continue their efforts to effect a smooth transition to democracy. We recognized the role of

²³⁹ Joint Communiqué of the 34th ASEAN Ministerial Meeting, Hanoi, Vietnam 23-24th July 2001, point. 17. Accessible at <http://www.aseansec.org/3716.htm>.

²⁴⁰ Joint Communiqué of the 36th ASEAN Ministerial Meeting, Phnom Penh, Cambodia, 16-17th June 2003. Accessible at Point 18 <http://www.aseansec.org/14833.htm>.

the Special Representative of the United Nations Secretary-General in assisting Myanmar to achieve this goal.²⁴¹

These statements, although anodyne in language, were a point of departure for a community wedded to non-interference. It marks the outermost limit of the possible for ASEAN, and by far the most intrusive use of ASEAN announcements in the history of the community. They are also vital because they show that ASEAN desired Myanmar to change its behaviour. How should we analyse these conceptually? The simple fact that we are focusing on language is no *a priori* reason to ascribe a constructivist lens. As shown in chapters two and three, rationalist accounts are theoretically happy to incorporate such phenomena, although their "take" on them remains different to those of a more sociological bent. I suggest that the announcements of ASEAN, both here and later, can be related to the process of Rhetorical Action. ASEAN itself was not interested in being persuaded, it adopted a position of non-negotiation, which Risse suggests as the *sine qua non* for Rhetorical Action to occur.²⁴² Here the use of language was to act as an expression of expectation and to outline what ASEAN would like Myanmar's future behaviour to be. The identity of ASEAN was not in question here, although as will be shown below these pronouncements do rest on a changing ASEAN identity. The commitment to its own truthfulness pushes us to identify this as social influence.

EXPLAINING THE INTEREST: THE SHIFTING ASEAN WAY

Why had ASEAN gone from an organisation with no interest in human rights, to a *community* with a nebulous but growing concern for those very same

²⁴¹ Joint Communiqué of the 37th ASEAN Ministerial Meeting, Jakarta, Indonesia, 29-30th June 2004, point. 15. Accessible at <http://www.aseansec.org/16192.htm>.

²⁴² Risse, "International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena," p. 532.

issues? The reason for this shift can be attributed to the effects of the 1997 Asian Financial Crisis and how that event problematised the previously sacrosanct way ASEAN went about its business, and member states related to each other.²⁴³ This traditional guide to behaviour was known as the "ASEAN Way". The ASEAN Way represented a settled consensus on what membership of ASEAN meant, what the traditional community identity was, and how states should relate to each other. The Treaty of Amity and Cooperation outlined the ASEAN Way best as the following principles:

- Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations.
- The right of every State to lead its national existence free from external interference, subversion or coercion.
- Non interference in the internal affairs of one another.
- Settlement of differences or disputes by peaceful manner.
- The renunciation of the threat or use of force.
- Effective cooperation amongst themselves.²⁴⁴

These substantive norms resulted in a set of procedural counterparts,²⁴⁵ including non-discrimination and the twin concepts of *musyawarah* (consultation) and *musfakat* (consensus based decision making).²⁴⁶ These in turn

²⁴³ An detailed account is Markus Hund, "The Development of ASEAN Norms between 1997 and 2000: A Paradigm Shift?," in *ZOPS Occasional Papers* (Center for East Asian and Pacific Studies, 2001). For the theoretical significance of the crisis see Jürgen Ruland, "ASEAN and the Asian Crisis: Theoretical Implications and Practical Consequences for Southeast Asian Regionalism," *The Pacific Review* 13, no. 3 (2000).

²⁴⁴ Treaty of Amity and Cooperation in Southeast Asia, Denpasar Indonesia. 24th February 1976, accessible at <http://www.aseansec.org/1217.htm>. Article 2. An interesting analysis of these norms and their modification is provided by Amer, "Conflict Management and Constructive Engagement in ASEAN's Expansion."

²⁴⁵ Refer to R. Katanyuu, "Beyond Non-Interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization," *Asian Survey* 46, no. 6 (2006) for an overview of the evolution of this position.

²⁴⁶ Kraft, "ASEAN and Intra-ASEAN Relations: Weathering the Storm?" p. 460.

had created a predilection for decentralised decision making, informality and “quiet diplomacy.”²⁴⁷

The financial crisis undid the consensus that traditional ways of operating were unquestionably a good thing. As the aftershocks rumbled on, debate between member states rotated around how best to reaffirm the fundamental purposes of ASEAN, and make safe the gains that ASEAN had achieved in interstate peace, whilst extending ASEAN to deal with the sources of social instability.²⁴⁸ The crisis had seen member states stoic refusal to discuss with each other the domestic sources of the problems now facing the region, aiding its rapid contagion across the region. The result was the opening up “more directly the already difficult subject of the principle of non-intervention in the affairs of other members.”²⁴⁹ The permissive space that had previously insulated ASEAN from criticism was closed, and ASEAN was for the first time since its foundation questioned and doubted. This debate ultimately dissolved ASEAN’s overwhelming concern to not interfere with member states domestic affairs. The financial crisis led to the “loss of legitimacy of authoritarian structures.”²⁵⁰ In the economic boisterous days of the early 1990’s, ASEAN seemed to be the protector of a valued regional order. The crisis called into question the norms

²⁴⁷ For the origins of the ASEAN Way with regards to the regional response to Colonialism refer to L. Z. Rahim, “Fragmented Community and Un-Constructive Engagements,” *Critical Asian Studies* 40, no. 1 (2008) p. 70.

²⁴⁸ Hadi Soesastro, “ASEAN During the Crisis,” in *Southeast Asia's Economic Crisis*, ed. H.W. Arndt and Hal Hill (Singapore: Institute of Southeast Asian Studies, 1999) p. 159.

²⁴⁹ Stuart Harris, “The Asian Regional Response to Its Economic Crisis and the Global Implications,” (1999) p. 12.

²⁵⁰ Herman Joseph S. Kraft, “ASEAN and Intra-ASEAN Relations: Weathering the Storm?,” *The Pacific Review* 13, no. 3 (2000).

that underpinned that perception of success because they were now held as complicit in causing and then exacerbating the crisis itself.²⁵¹

The Thai government once again took a lead, with “vociferous” questioning of received wisdom.²⁵² Thai Foreign Minister Surin Pitsuwan outlined a new vision that sought to correct what he perceived as the shortcomings revealed by the crisis. He argued strongly that the increasingly intense relationships between ASEAN member states and the opportunities and perils that this created required a redefined relationship between ASEAN and members. This was brought to ASEAN-wide attention at the 31st ASEAN Ministers Meeting (AMM) held in Manila on July 23-31st 1998 when Pitsuwan submitted for discussion his proposal for “Flexible Intervention”. Pitsuwan was supported by Philippine Foreign Minister Domingo Siazon, who argued:

ASEAN could achieve greater feats if we can cooperate among ourselves in the spirit of more openness. We should be able to speak more freely on issues occurring in one member country that affect others, with a view to building more solid ground for regional action.²⁵³

These statements indicate the presence of a clear wish to make community identity one that meshed together not only a far greater permissive latitude for intra-mural discussion to cross into domestic issues, but the clear necessity of doing so when regional issues were at stake. Whilst these plans were at this stage rejected, the counter proposal of “Enhanced Interaction” being championed by Indonesia, Malaysia, Myanmar, Vietnam and Laos, the

²⁵¹ Hund, “The Development of ASEAN Norms between 1997 and 2000: A Paradigm Shift?” p. 102 Also see Ruland, “ASEAN and the Asian Crisis: Theoretical Implications and Practical Consequences for Southeast Asian Regionalism.”

²⁵² Markus Hund, Op. Cit. p. 13.

²⁵³ Statement of Domingo L. Siazon Jr. Secretary of Foreign Affairs of the Philippines at 31st ASEAN Standing Committee of Foreign Ministers, Manila, Philippines, 24th July 1998, <http://www.aseansec.org/3923.htm>.

reverberations of this debate filtered through into a longer-term process of revising ASEAN. It represented "the realization of ASEAN decision makers that they ultimately could not prevent each other from publicly commenting on those intra-state developments that had a perceived detrimental social, economic or political impact on other members or the association as a whole".²⁵⁴

A DISCURSIVE ENGAGEMENT – BALI II AND THE QUESTION OF HUMAN RIGHTS

For ASEAN to engage in Rhetorical Action when previously it had been silent indicates that the standards within ASEAN were changing. If they had remained constant there would be little motive to engage rhetorically with Myanmar. The debate about the ASEAN Way had opened the door to redirecting ASEAN towards a more intrusive concern with standards within its members. Community building involved protracted discussion about which vision of ASEAN's future should be pursued, which I suggest are debates over a communal identity. This not only formed the basis of the above Rhetorical Action but also I suggest exerted socialisation pressure in itself, as Myanmar was included in these discussions with the other members, and as such encountered different opinions that it had to interface with, even if that was to reject them.

The scope conditions for identifying the conditions under which persuasion occurs, focusing on horizontal arrangements between actors helps identify the relationship. Alice Ba has forwarded a constructivist account of

²⁵⁴ Jürgen Haacke, "'Enhanced Interaction' With Myanmar and the Project of a Security Community: Is ASEAN Refining or Breaking with Its Diplomatic and Security Culture?" *Contemporary Southeast Asia* 27, no. 2 (2005) p. 189. The consequences of this destabilisation of received wisdom had immediate effects within the academic community. Rationalists such as Herman Kraft "emphasise the trans boundary implications"(Hiro Katsumata, "Why Is ASEAN Diplomacy Changing? From "Non-Interference" To "Open and Frank Discussions"," *Asian Survey* 44, no. 2 (2004), p 241) of interdependence that produce rationally comprehensible shifts in behaviour, whilst constructivist accounts emphasise the degree to which "ASEAN diplomacy. Has been affected by this normative shift at the global level"(Katsumata, "Why Is ASEAN Diplomacy Changing? From "Non-Interference" To "Open and Frank Discussions"," p. 247).

Sino-ASEAN engagement within the complex engagement process between the two actors.²⁵⁵ My argument here is similar but in the context of human rights. The non-coercive processes of debate between member states, and as will be shown broader civil society actors, over the future of ASEAN draws our attention to persuasive acts as member states debate with each other new visions for the future of ASEAN. Myanmar came under persuasive pressure as states sought to get agreement to a community building programme that included rights and democracy. Whereas before the rival visions for ASEAN's communal identity had seen the broad re-assertion of traditional interpretations, now we can see the growing ascendancy of a concern with human rights and democracy within ASEAN. The value of this additional analysis is that it encapsulates a range of processes surrounding communal identity building that cannot be captured through rational choice analysis as there was no sense of in some way sanctioning Myanmar.

It is possible to trace the evolution of a human rights thread within ASEAN community building through 1998 to 2004. The process started tentatively in 1998 with ASEAN Vision 2020, adopted as a result of the Second ASEAN Informal Summit, held in Kuala Lumpur on December 15th 1997. Vision 2020 repackaged existing ASEAN goals within a broader "concert of Southeast Asian Nations" and a "partnership for dynamic development". Part of this was a commitment to what at this stage was termed "Caring Communities." These Caring Communities would ensure "all people enjoy equitable access to opportunities for total human development",²⁵⁶ and that member states are "governed with the consent and greater participation of the people with its focus

²⁵⁵ Ba, "Who's Socializing Whom? Complex Engagement in Sino-ASEAN Relations," p. 158.

²⁵⁶ ASEAN Vision 2020, Kuala Lumpur, Malaysia, 16th December 1997. Accessible at <http://www.aseansec.org/5228.htm>.

on the welfare and dignity of the human person and the good of the community”.²⁵⁷ Whilst oblique, this is the first reference by ASEAN in an official document to these notions of dignity, and to the belief that people should have some sort of consent in their own governments.

Neither Vision 2020 nor the immediate follow up eminent persons group (EPG) made any reference to rights or democracy or human rights, the EPG restricting itself to identifying a range of “Social, Educational and Cultural” goals. However, by the Bangkok 33rd Ministerial Meeting of 24 – 25th July 2000 a whole section of the Report, entitled a “People Orientated Approach” did establish some substantive content to caring communities. The 34th Annual Ministerial Meeting (AMM) “recalled the decision made by the 26th ASEAN Ministerial Meeting held in Singapore on 13-14 July 1993 to consider the establishment of an appropriate regional mechanism on human rights”. This interest was translated into a concern with social issues at the Bali ASEAN Summit of 2003. Here again the tone develops. Whilst the terms human rights and democracy do not exist in the document, ASEAN has clearly developed the meaning of “Caring Communities”. The Declaration of ASEAN Concord II (Bali II) came to terms with what ASEAN was actually trying to achieve when it spoke of a community, and it translated the desire for Caring Communities into a far more comprehensive plan for an ASEAN Community.²⁵⁸ The Bali Declaration established that, “An ASEAN Community shall be established comprising three pillars, namely political and security cooperation, economic cooperation and socio-cultural cooperation”,²⁵⁹ which called for the development

²⁵⁷ Ibid.

²⁵⁸ Declaration of ASEAN Concord II (Bali Concord II), Bali, Indonesia, 7th October 2003, Accessible at www.aseansec.org/15159.htm.

²⁵⁹ Ibid.

of a set of “socio-political values and principles”. The ASEAN Socio-Cultural Community (ASCC) sought to foster a “community of caring societies”,²⁶⁰ committing itself more specifically to “raising the standard of living of disadvantaged groups and the rural population”.²⁶¹

Bali II was an essentially evolutionary, not revolutionary, product. Article 5 noted that “the Treaty of Amity and Cooperation in Southeast Asia is the key code of conduct governing relations between states and a diplomatic instrument for the promotion of peace and stability in the region”,²⁶² centralising the ASEAN Way within the process of community building. In line with this, the Socio-Cultural Community, where the commitment to caring communities resided, contained little that could possibly be objected to even by Myanmar as the most reticent of members. It noted that the Socio-Cultural Community would be in “consonance with the goal set by ASEAN Vision 2020”, an essentially traditional interpretation.²⁶³ Moving forwards from 2003, the tenor of discussion advances again. Whilst the process up to Bali II was a discussion in the absence of the “rights” or “democracy” words, the follow-ups were radically different in flavour. The Vientiane Action Plan of November 2004 formulated by member states to develop the ideas embodied in Bali II marks a significant step in the discursive environment within the community. Vientiane promoted a sense of regional interest in human rights directly into the first pillar, that of the Security Community, and more specifically the political development aspect of that pillar. To quote in full:

²⁶⁰ Ibid.

²⁶¹ N. M. Morada, “ASEAN at 40: Prospects for community building in Southeast Asia,” *Asia-Pacific Review* 15, no. 1 (2008) p. 41.

²⁶² Declaration of ASEAN Concord II (Bali Concord II), Bali, Indonesia, 7th October 2003, Accessible at www.aseansec.org/15159.htm. Article 5.

²⁶³ Ibid. Article C.1.

- Completion of a stock-taking of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children;
- Formulation and adoption of Memorandums of Understanding (MOU) to establish network among existing human rights mechanisms;
- Formulation of work programme of the network;
- Promote education and public awareness on human rights;
- Establish a network of cooperation among existing human rights mechanisms;
- Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers;
- Establishment of an ASEAN commission on the promotion and protection of the rights of women and children.²⁶⁴

The ASEAN Security Community has been the least contentious part of the proposed *Vision 2020*, building upon pre-existing extensive ASEAN cooperation in the area of security and political cooperation. The inclusion of human rights as a part of the political programme marks a considerable upgrade of the standing and importance of human rights, and explicitly positions them as a pre-requisite for the security community to develop.²⁶⁵ The Philippine Foreign Minister Alberto Romulo noted, that the goals of the security community, and more generally of creating a region of peace in the context of a just, democratic and harmonious environment “are dependent on one crucial element – the commitment of each government to enact laws and policies that will promote this kind of environment. This must necessarily include the protection and promotion of human rights across the region.”²⁶⁶ In a speech on August 18th 2004 entitled “Civil Society and Regional Cooperation” given to the 31st International Council

²⁶⁴ Vientiane Action Plan, Vientiane, Laos, 29th November 2004, Annex 1, point. 1.1.4. Accessible at www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf.

²⁶⁵ Interview with Edy Prasetyono, 22/09/06, Director of International Relations, CSIS, Jakarta. Dr. Prasetyono was involved in the drafting of the VAP.

²⁶⁶ See Hadi, “Human Rights Promotion in the ASEAN Security Community: An Overview” p. 6.

on Social Welfare in Kuala Lumpur, ASEAN Secretary General Ong noted that “the overarching ASEAN Community could not become a reality if we did not first build cohesive and caring community among the peoples of ASEAN”.²⁶⁷ Human rights promotion and traditional arenas of ASEAN success were becoming discursively linked for the first time. Human rights were becoming increasingly important to ASEAN’s goals, and Myanmar’s continued refusal to change its domestic situation was evolving into a matter of clear regional concern.

To substantiate my conceptualisation of community building as an array of persuasive pressures on Myanmar, I recognise that the fine detail of these discussions is lost to the academic observer behind the veil of secrecy and quiet diplomacy that ASEAN values. However insight is generated by an awareness of two things. First the origins of ASEAN’s commitment to human rights, both in terms of civil society participation in the community building process and second, the shift in the political orientation of certain members, as well as the public announcements of ASEAN members. I suggest that when viewed together these form a firm basis for arguing that those discussions must have been, at least in part, about human rights within the broader context of ASEAN community building. This allows us to triangulate the nature of these discussions, true to the methodological choices explored in chapter three, helping to flesh out the discursive way in which rights were discussed within ASEAN and substantiate the claim that persuasive socialisation was present.

The first substantiating fact is to chart the origins of the shifting commitment to human rights. There has to be a reason why community building

²⁶⁷ Remarks by Mr Ong Keng Yong, Secretary General of ASEAN on “Civil Society and Regional Cooperation” Delivered at the 31st International Council on Social Welfare, Kuala Lumpur, Malaysia, 18th August 2004. Accessible at, www.aseansec.org/16324.htm.

came to mean, in part, enhancing ASEAN's commitment to those rights. The evolution of a rights component within ASEAN community building is attributable to the confluence of the role of Indonesia and civil society actors, and then the way that this renewed interest was mediating through existing ASEAN governance structures. The role of Indonesia as *primus inter pares* within ASEAN is important because of the latent leadership position that Indonesia has played in ASEAN merited by its size.²⁶⁸ The resignation of Suharto on May 21st 1998, and the fall of the Indonesian New Order, resulting ultimately in the election of Abdurrahman Wahdid and then Megawati Sukanoputri saw ASEAN's most populous state move sharply towards democracy and a greater awareness of the importance of human rights as a guarantee of domestic stability.²⁶⁹ This reorientation shifted Indonesia's international priorities. The new Indonesian government saw the chance to seize the leadership of ASEAN as well as demonstrate to both domestic and international audiences its democratic credentials.²⁷⁰ To Indonesia, refocusing ASEAN on "caring communities" played to both domestic and international audiences most conveniently, as well as offering solutions to ASEAN's problems that had already been identified.²⁷¹

²⁶⁸ Interview with Azis Nurwahyudi, 25/09/2006, Deputy Chair of ASEAN Desk (Political and Security Cooperation), Indonesian Foreign Ministry, Jakarta. Corroboration offered by interview with Yuri Thamrin, 27/09/2006, Director of Asia Pacific Desk, Indonesian Foreign Ministry, Jakarta and with Edy Prasetyono, 22/09/2006, Director of International Relations, CSIS, Jakarta.

²⁶⁹ Interview with Professor Harikristuti, 21/09/2006, Director of the Department of Human Rights, Indonesian Ministry of Justice, Jakarta.

²⁷⁰ Interview with Vitit Muntarbhorn, 13/10/2006, Co-Chair of the Working Group for the Establishment of an ASEAN Human Rights Mechanism, Chulalongkorn University, Bangkok. This substantiates the argument of Anthony L. Smith, "ASEAN's Ninth Summit: Solidifying Regional Cohesion, Advancing External Linkages," *Contemporary Southeast Asia* 26, no. 3 (2004) p. 423.

²⁷¹ Chandra investigates the role of the Indonesian shift to democracy on the formation and strength of Indonesian non-state actors and their influence on ASEAN. Alexander C. Chandra, "Indonesia's Non-State Actors in ASEAN: A New Regionalism Agenda for Southeast Asia," *Contemporary Southeast Asia* 26, no. 1 (2004).

An analysis of the multiple “tracks” that contribute to ASEAN sheds further light by allowing us to delineate how a changing Indonesia interacted with broader shifts in civil society.²⁷² It was not just shifting Indonesian desires, but the interaction of that with a broader regional civil society push towards rights and democracy.²⁷³ For example it was the ASEAN Working Group on the Establishment of a Human Rights Mechanism (AWGHRM), a Track Three actor, which first presaged the addition of human rights to the security community. It was again the AWGHRM that called for the then “novel suggestion of having the ASEAN Security Community Commit itself to regional human rights”.²⁷⁴ Vitit Muntarbhorn, co-Chair of the Working Group believes this to be the vital role of these actors, signposting possible ways forwards that the politicians can take heed of during their own deliberations.²⁷⁵ Contact between the Working Group and ASEAN is institutionalised in annual meetings as well as more informal personal relationships.²⁷⁶ Then Secretary General Severino advised the group that it should focus both on talking to ASEAN and to its member states,²⁷⁷ a process that has been developed, albeit fitfully, since 2003. Annual Roundtables have been organised under the aegis of the Indonesian Foreign Ministry and

²⁷² Track One focuses upon governments and their related institutions. Track Two refers to the various expert groupings across the region, whilst Track Three denotes the wider Civil Society process. Maznah Mohamad, "Towards a Human Rights Regime in Southeast Asia: Charting the Course of State Commitment," *Contemporary Southeast Asia* 24, no. 2 (2002) pp. 236-237. Also see Tan Hsien-Li, "Persistent Persuasion Rather Than Consolidation: How Track Two Can Contribute to the Realisation of the ASEAN Community" (paper presented at the AICOHR, Manila, 15-16th May 2006).

²⁷³ Interview with Professor Harikristuti, 21/09/2006, Director of the Department of Human Rights, Indonesian Ministry of Justice, Jakarta.

²⁷⁴ Tan Hsien-Li, *Op. Cit.* p. 4.

²⁷⁵ Interview with Vitit Muntarbhorn, 13/10/2006, Co-Chair of the Working Group for the Establishment of an ASEAN Human Rights Mechanism, Chulalongkorn University, Bangkok.

²⁷⁶ Other NGO's such as the ASEAN Inter-Parliamentary Caucus on Burma have also organised efforts to raise the profile of Myanmar in member states of ASEAN in order to persuade governments to censure the regime. Interview with Teresa Kok, Deputy Chairperson of ASEAN Inter-Parliamentary Caucus on Burma, 16/10/2006, Kuala Lumpur.

²⁷⁷ Severino, *Southeast Asia in Search of an ASEAN Community: Insights from the Former Secretary-General* p. 153.

National Human Rights Committee. Through a step by step process that is conversational, not confrontational, the Working Group has sought to express its interest in human rights to as many parties as possible, to influence their opinion before they in turn translate that into discussions between ASEAN members over the community project. The Working Group also acts as a point of coordination between national level human rights bodies allowing them to transmit their opinions to the international level for further discussion.²⁷⁸

This transferral of a domestic interest in human rights to the ASEAN stage had to be mediated through the way ASEAN was governed. Indonesia, even in potential partnership with other democracies in ASEAN, and in consultation with interested NGOs simply could not impose its will on ASEAN because the agreed nature of ASEAN centralised consensus and unanimity. Meaningful change could not occur with anything less than 100% support of members. States had to be convinced of the rightness of any particular course of action before agreeing to change communal identity. The debates that led to the emergence of human rights standards occurred in maelstrom of competing national opinions on the nature of what membership should mean, and how the community itself should reflect those. The mediation of Indonesia's commitment into a watered down process at the regional level is testimony to the discursive nature of the interaction within ASEAN community building.

The final substantiating fact is the increased interest of member states again in the situation within Myanmar, and the use of common ASEAN membership to advance that opinion. Whilst we cannot know the nature of private discussion between ASEAN member states, we can discern other actions

²⁷⁸ For a broader discussion of National Human Rights Institutions, see Philip Eldridge, "Emerging Roles of National Human Rights Institutions in Southeast Asia," *Pacifica Review* 14, no. 3 (2002) p. 214.

of those states. There were notably absent in the first few years of Myanmar's membership, an apparent anomaly attributable to the region wide focus on domestic economic and social problems the Financial Crisis wrought. The Thai premier Thaksin Shinawatra initiated a policy of "forward engagement" that sought a "softer, less confrontational" relationship than that which characterised the previous Leekpai government.²⁷⁹ 2003 saw the Thai government propose a "road map" for further democratic conciliation with assistance from ASEAN as a whole. This was rejected by Yangon who devised, and subsequently implemented, a home grown 7-point path to democracy. Despite this, a Thai hosted "Forum on International Support for National Reconciliation in Myanmar" (the Bangkok Process) was held in December 2003.²⁸⁰ Myanmar itself participated in the forum, in the apparent belief that the forum would not criticise Myanmar, would offer no binding time table unpalatable to Yangon and would again show Myanmar's apparent commitment, however spurious it may be, to reform.²⁸¹ The process appeared to make headway, with Myanmar Foreign Minister Win Aung committing to its road map to democracy; a 2004 start date for the National Convention and enhanced communication between the NLD and Government. In response, the other participants stressed the need for the process to be as inclusive as possible, the reconciliation process to have a clear time table of progress and the role of UN Envoy Razali as accepted facilitator of discussion between rival groups within Myanmar itself.²⁸²

²⁷⁹ Katanyuu, "Beyond Non-Interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization," p. 830.

²⁸⁰ See Helen James, "Myanmar's International Relations Strategy: The Search for Security," *Contemporary Southeast Asia* 26, no. 3 (2004) pp. 539-542.

²⁸¹ Katanyuu, "Beyond Non-Interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization," p. 832.

²⁸² Ibid.

In a more critical vein, in July 2003 it was reported in the *Far Eastern Economic Review* that Malaysian Prime Minister Mahathir Mohamed had commented that ASEAN should consider expelling Myanmar for its continued human rights abuses, most notably in relation to the detention of Aung San Suu Kyi.²⁸³ It was also noted that the Prime Minister had told the Myanmar junta that they had become “an embarrassment to ASEAN” as early as 2000.²⁸⁴ Philippine Foreign Secretary Blas Ople and then Indonesian President Megawati Sukarnoputri who said “We want the democratisation process in Myanmar to continue and Madam Suu Kyi release before the upcoming ASEAN Summit (Bali II)”.²⁸⁵

We therefore have evidence for both the insertion of human rights into the discussion between member states and civil society actors, as well as an ASEAN itself that had moved to commit itself to certain sectoral approaches to rights protection. At the same time, outside of the secret ASEAN discussions we have ongoing processes of member states expressing concern over joint membership in ASEAN with Myanmar, concerns that were explicitly human rights related. It would make no sense for these topics to stop “at the door”. As ASEAN moved to understand itself what a “caring community” meant, it sought answers from civil society more broadly. These answers forced it along paths which led to human rights, and which naturally generated tension between itself and Myanmar.

²⁸³ “Booting Burma Out: Has ASEAN Had A Rethink About Intervention?” *Far Eastern Economic Review*, July 31st 2003, p. 6.

²⁸⁴ *Ibid.*

²⁸⁵ “The Rogues of Rangoon.” *Far Eastern Economic Review*, October 9th 2003, p. 8.

ACCOUNTING FOR THE FAILURE OF ASEAN PRESSURE

Despite both Rhetorical Action and Myanmar's inclusion within community building processes, we can see no correlation between standards within the country and the pressures it was subjected to. UN Special Rapporteur Rajsoomer Lallah noted in 1998 that the Myanmar government refused access to the Special Rapporteur to conduct any investigation in the country.²⁸⁶ Despite this it was further noted that Myanmar Law actively criminalised "or adversely affected freedom of thought, information, expression, association and assembly,"²⁸⁷ and noted further that the arbitrary arrest of people engaged in "normal civilian conduct"²⁸⁸ undermined any sense of civil society, free participation in politics and the associated individual freedoms. Myanmar had in no way changed since 1997.²⁸⁹ This continued in uninterrupted fashion in 1999 and 2000. The 1999 Special Rapporteur on Myanmar's Report noted the "intense and constant monitoring of political parties and individuals,"²⁹⁰ and that despite positive changes in terms of Myanmar's cooperation with the International Committee of the Red Cross and greater assistance with *some* UN activities within the country (such as the World Food Programme), there ultimately was "no progress in the situation of human rights in Myanmar. If anything, the situation is worsening".²⁹¹ The 2000 Report noted that "the suppression of the exercise of political rights, freedom of thought, expression, association and

²⁸⁶ Interim Report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights, A/53/364, 10th September 1998. Chapter II, para. 4.

²⁸⁷ Ibid. Chapter III. Para. 6.

²⁸⁸ Ibid. Chapter III. Para. 9.

²⁸⁹ Ibid. Chapter VI. Para's. 55, 56, 58 and 59.

²⁹⁰ Interim Report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights, A/54/440, 4th October 1999 Chapter II, Para. 4.

²⁹¹ Ibid. Chapter VI, Para. 52.

movement continues unabated”,²⁹² and that the situation in Myanmar was one of “continuing deterioration”.²⁹³

The newly installed UN Special Rapporteur Paulo Sergio Pinheiro noted in 2002 that the situation in Myanmar had shown a marked improvement, and he welcomed “several positive initiatives addressing some of the human right’s concerns of the Commission,”²⁹⁴ especially the creation of a Human Rights Committee within the SPDC governing structure.²⁹⁵ On May 6th 2002 Suu Kyi was released after some 19 months of house arrest, along with some 600 other political detainees.²⁹⁶ However, despite this, Pinheiro further noted that “freedom of expression is controlled by more than half a dozen laws, the violation of which may be, and in fact is, widely sanctioned by 3-20 years in prison”.²⁹⁷ Despite these concerns, Pinheiro concludes that “undeniably the political atmosphere in the country is very gradually improving and some basis of mutual understanding has begun to emerge between the SPDC and NLD.”²⁹⁸

There is a chronological coincidence between the upswing in ASEAN activity documented and the UN documenting what appears, in 2002 at least, to be a parallel upturn in the situation within Myanmar. Can we attribute this change to ASEAN, and the changes outlined above? Are we seeing socialisation that later faded in the face of an atavistic turn in Myanmar’s politics? David Steinberg indicates the reasons for the upswing in standards around 2002 were

²⁹² Interim Report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights, A/55/359, 22nd August 2000.

²⁹³ Ibid. Chapter V, Para. 59.

²⁹⁴ United Nations Committee on Human Rights, E/CN.4/2002/45, 10th January 2002. Preamble.

²⁹⁵ Ibid. para. 19.

²⁹⁶ David I. Steinberg, “Myanmar: Reconciliation - Progress in the Process?” in *Southeast Asian Affairs*, 2003, ed. ISEAS (Singapore: ISEAS, 2003) p. 172.

²⁹⁷ United Nations Committee on Human Rights, E/CN.4/2002/45, 10th January 2002 para. 30.

²⁹⁸ Note the analysis at Ashley South, “Political Transition in Myanmar: A New Model for Democratization,” *Contemporary Southeast Asia* 26, no. 2 (2004) as to the broad tenor of the relationship.

both economic (the “dire straits into which the military economy has fallen”)²⁹⁹ and political (fears of U.S. intervention, however groundless those fears were).³⁰⁰ The activity of ASEAN may have increased, but this did not lead to successful socialisation. Were that the case, how would one explain the relapse of Myanmar’s behaviour beyond 2003 in the presence of ever increasing activity by ASEAN, its organs and member states? It seems counter-intuitive to attribute the 2002 changes to ASEAN and then ignore the failure of those changes to embed themselves in continued Myanmarese adherence to human rights norms.

2003 saw a substantial relapse, one that would continue to grow in severity. The events of May 30th 2003 lead to the re-arrest of Suu Kyi and resulted in Pinheiro noting “significant setbacks” by the following years report.³⁰¹ Pinheiro concluded:

“[L]ooking back at the period between May 2002 and May 2003, when many people had some hope, albeit mixed with uncertainty... opportunities were missed to build on the earlier confidence building efforts. Lack of sufficiently solid bonds of mutual confidence led to mistrust instead of growing confidence”.³⁰²

The much heralded Road Map to Democracy, the Junta’s home grown “solution” to the political tension, fell substantially short of the truly inclusive process that was intended, especially with regards to the failure of the National Convention to truly represent all of Myanmar’s disparate ethnic and political factions. Pinheiro remained highly sceptical, in his view “the pronouncements made and action taken by the current leadership in Myanmar do not yet appear to signal any new policy direction in respect of the National Convention

²⁹⁹ Steinberg, “Myanmar: Reconciliation - Progress in the Process?” p. 172.

³⁰⁰ Ibid. p. 173.

³⁰¹ United Nations Committee on Human Rights, E/CN.4/2004/33, 5th January 2004 Also note the analysis at Kyaw Yin Hlaing, “Myanmar in 2003,” *Asian Survey* 44, no. 1 (2004).

³⁰² United Nations Committee on Human Rights, E/CN.4/2004/33, 5th January 2004, para. 63.

Process”.³⁰³ However, Pinheiro also noted in an important caveat “it would be unfair to refuse to acknowledge progress because the changes do not meet a maximalist scenario. Whilst noting the slow progress in Myanmar’s evolution towards a democratic state with full provision for the enjoyment of human rights, the Special Rapporteur hopes that it will continue in a steady and irrevocable manner”,³⁰⁴ noting that despite the setbacks an air of precarious optimism was still possible.

We have two avenues of socialisation pressure to deal with, and so two sets of interrelated arguments about the shortcomings of those attempts. In terms of the shifting community building programme and the increasing significance of a human rights component to that, we can attribute the failure of these pressures and reforms to the following line of reasoning. Persuasive processes of socialisation rest on the necessity of actors all dealing with the discussion in an open and frank way, within highly institutionalised contexts where contact is enduring. Actors meet to be convinced of the better argument.³⁰⁵ It would appear that Myanmar never dealt with these interactions in such a way as to be conducive to those pressures. Yes, Myanmar had to agree to this evolution of human rights within the ASEAN framework, but there appears to be a disconnect between its commitment and its domestic situation. Discursive attempts were therefore matched by a strict *froideur* from Yangon. Actors can only be persuaded if they enter discursive environments with the belief that their future behaviour and very identities are up for discussion. Myanmar was not so motivated. It dealt strategically with the evolving debates surrounding ASEAN’s

³⁰³ United Nations Committee on Human Rights, E/CN.4/2005/26, 2nd December 2004, para. 53.

³⁰⁴ *Ibid.*

³⁰⁵ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," pp. 812-813.

future and seems to have not stood in the way of vague commitments to rights sure in the knowledge that those in and of themselves meant little.

It should be noted that at this point ASEAN had not revised any legal stipulations of membership. The process of community building through to 2008 and the final ratification of the Charter rested on discussion, not legal revision. Significantly, however, it was this growing gap between regional standards that Myanmar appeared to agree with, and its failure to alter its domestic situation, that provided the platform from which Rhetorical Action could flow. The criticisms of ASEAN with regards to community building carry over in terms of the failure of ASEAN Rhetorical Action, although we lose the sense of mutual constitution and truly free debate between actors, as here ASEAN was stating things as "true" in order to censure Myanmar in some way. As Risse notes, Rhetorical Action only works when "there is at least one other actor listening who is prepared to change her preferences or her definition of a situation in light of the arguments".³⁰⁶ Myanmar was not interested in "listening" in this way, and as such "they [Myanmar and ASEAN] can argue strategically until they are all blue in the face and still not change anyone's mind".³⁰⁷ The junta seems to have been very adept in identifying what it had to conform to, and what it did not. Regardless of the social pressures mounting as member states and ASEAN expressed increasing disquiet over their behaviour, were never authoritative, and as such Yangon interpreted them as of no consequence because they did not ultimately threaten Myanmar's membership and the benefits that flowed from it.

Underpinning the failure of both socialisation pressures is the realisation of the weakness of the standards Myanmar was being judged against. We must

³⁰⁶ Risse, "International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Arena," p. 533.

³⁰⁷ ———, "'Let's Argue!'" Communicative Action in World Politics," p. 8.

understand how, when ASEAN dealt with the issue of community building, it did so in a unique manner. It set itself targets and goals loosely. It was easier to establish consensus that something should be done, or that it was desirable to think about doing something, and leave the details of what actually would be done until later.³⁰⁸ This created ambiguity when one asks what exactly ASEAN was seeking to socialise Myanmar into? Talk about human rights, or democratic and caring communities, meant little in the absence of a detailed account of the content of those terms. Socialisation attempts are unsuccessful when the socialising agent, here ASEAN, talks about complex notions of the social good in the absence of an appreciation of the constituent norms of that good themselves. Both Rhetorical Action and persuasion require that the socialising party in some way be truthful about its claims, where truthful infers a deep understanding of the content of the standards being used to suggest revisions. ASEAN's inability to cement a precise meaning of the standards it then acted upon undercut its ability to act authoritatively. Broad standards once again may have permitted a socialisation attempt, but they also condemned that attempt to failure.

THE EMPTY COMMUNITY 2004-2008: REFORM AND EXASPERATION

In the most recent period we can discern the most radical reform of ASEAN being discussed, the institution of some human rights mechanism and a firm footing for regulating member behaviour should they transgress regional standards. Myanmar "agreed" to those standards, not only signing the Charter but also ratifying it in late 2008. However, despite this we can also identify a

³⁰⁸ Interview with Azis Nurwahyudi, 25/09/2006. Deputy Chair of ASEAN Directorate (Political and Security Cooperation), Ministry of Foreign Affairs, Jakarta.

continued insouciant refusal on the part of the Junta to change its respect for freedom of expression in ways that would be compatible with the pressure being brought to bear upon it. Extending the analysis into this period is relevant because it illustrates a diversification of social influence attempts, introducing ASEAN's deployment of Social Sanctioning. It also marks the further evolution, and escalation, of the community building process. The failure of either of these to change Myanmar helps us delineate more precisely where socialisation can be successful, as well as revealing further shortcomings in ASEAN's efforts.

ASEAN AND MYANMAR: SOCIAL SANCTION AND RHETORICAL ACTION

ASEAN did more than engage in Rhetorical Action. In 2005 it, under the confluence of pressure from member states, some NGO's and other third parties, engaged in Social Sanction.³⁰⁹ ASEAN took the unprecedented step of denying a full member state the rights of a member, denying it the right to chair the Community (the chair rotates in strict alphabetical order amongst member states). I suggest that Social Sanction is a different political process, part of the wider arsenal of social influence strategies that rest conceptually on bargaining and ultimately on rational analysis. It is different from Rhetorical Action because whereas that process rests on the presentation of truth claims, Social Sanctioning rests on the denial of social benefits.

ASEAN was under intense EU, US and British pressure to deny Myanmar the chair, all three threatening a boycott of the various dialogue summits, and was itself split for a long time split on the issue.³¹⁰ Some states, such as Indonesia and Thailand, in private contacts with Myanmar, attempted to

³⁰⁹ Interview with Teresa Kok, Deputy Chairperson of ASEAN Inter-Parliamentary Caucus on Burma, 16/10/2006, Kuala Lumpur.

³¹⁰ Tin Maung Maung Than, "Myanmar: Challenges Galore but Opposition Fail to Score," in *Southeast Asian Affairs 2006*, ed. Singh and Salazar (Singapore: ISEAS, 2006) pp. 194-195.

persuade the regime to relinquish its chairmanship, whilst others, especially the newer Indo-Chinese states, resisted that call.³¹¹ As late as April 2005, at the informal ministerial retreat in Cebu, Philippines, ASEAN could only “agree to disagree” as to the way forwards.³¹² Thai Foreign Minister Suphamongkohn was clear that “we [ASEAN] have impressed upon Myanmar the concerns of the international community”,³¹³ and the community had made clear that Myanmar “in reaching its decision... should act in ASEAN’s interest.”³¹⁴ Ultimately, in a last minute shift from April, it was announced at the 2005 Ministerial Meeting that ASEAN had “been informed by our colleague, Foreign Minister U Nyan Win of Myanmar, that the Government of Myanmar had decided to relinquish its turn to be the Chair of ASEAN in 2006 because it wanted to focus its attention on the ongoing national reconciliation and democratisation process,”³¹⁵ an act that UN Special Rapporteur on Human Rights in Myanmar Pinheiro attributes to ASEAN pressure.³¹⁶

The role of chairperson offered no material benefit, but it was a position of prestige, granting the right to host and chair various ASEAN meetings as well as the range of external diplomatic relations embodied by the ASEAN Regional Forum, ASEAN +3 (the dialogue with China, Japan and South Korea) and the dialogue partnerships with other actors (the USA and the EU in particular). This censure is the most severe rebuke ever exerted on a member state, and shows clear disgruntlement on the part of ASEAN about Myanmar’s behaviour. The

³¹¹ Interview with Tin Maung Maung Than, 04/10/06, ISEAS, Singapore.

³¹² Emmerson, “Security, Community and Democracy in Southeast Asia: Analyzing ASEAN,” p. 177.

³¹³ S. Osman, “Myanmar may not Chair ASEAN”, Straits Times, 24th April 2005.

³¹⁴ Jürgen Haacke, *Myanmar's Foreign Policy: Domestic Influences and International Implications* (New York City: Routledge, 2006) p. 55.

³¹⁵ Joint Communiqué of the 38th ASEAN Ministerial Meeting, Vientiane, Laos, 26th July 2005. Point 70. Accessible at <http://www.aseansec.org/17592.htm>.

³¹⁶ Report of the Special Rapporteur on the Situation of human rights in Myanmar, 12/02/2007, A/HRC/4/14 para. 29.

rebuke did not deny Myanmar material benefit, nor was it one that would be withdrawn if Myanmar changed its ways. ASEAN was sanctioning Myanmar in a way that affected its legitimacy as a member. How could Myanmar be a full and legitimate member, in the same way as the other nine members, if it was in some way unworthy of enjoying those rights? ASEAN was unable to deploy material sanction against Myanmar, but it was able to alter the bestowing of social rights through the disenfranchisement of Myanmar in response to its continued violation of ASEAN's intentions.

In parallel ASEAN increased the scope of Rhetorical Action vis-à-vis Myanmar, adopting increasingly harsh language in further evidence both that the patience of ASEAN and the majority of member states was running thin.³¹⁷ The ASEAN Summit of December 2005 in Kuala Lumpur was notable for being, "unusually direct",³¹⁸ calling explicitly for "the release of those placed under detention".³¹⁹ ASEAN noted the "increased interest of the international community" in Myanmar and in response indicates ASEAN's renewed interest in the implementation of the National Roadmap to Democracy, which ASEAN "encouraged". It also expressly "called for the release of those placed under detention".³²⁰ This is the first explicit request by ASEAN on a human rights issue about an existing member state. It was at the Summit that Myanmar agreed to allow an ASEAN Envoy, the then ASEAN Chairman and Malaysian Foreign Minister Syed Hamid Albar, to assess the human rights situation in Myanmar.³²¹

³¹⁷ Jürgen Haacke, "ASEAN and Political Change in Myanmar: Towards a Regional Initiative?," *Contemporary Southeast Asia* 30, no. 3 (2008) p. 354.

³¹⁸ "Asian Group Raps Burma on Rights," BBC News, www.news.bbc.co.uk/2/hj/asia-pacific/4520040.stm 12.12.2005.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ On January 6th 2006 the Myanmar government indicated that it was unable to host Albar due to the logistical problems caused by the transferral of the Capital away from Yangon.

The 2006 AMM, held in Kuala Lumpur on 25th July 2006 ASEAN expressed:

Concern on the pace of the national reconciliation process and hope to see tangible progress that would lead to peaceful transition to democracy in the near future. We reiterated our calls for the early release of those placed under detention and for effective dialogue with all parties concerned. We expressed our support for the constructive role taken by the Chairman of the 39th ASEAN Standing Committee and further discussed the outcome of his visit to Myanmar on 23-24 March 2006.³²²

The 40th Ministerial Meeting, held in Manila on July 30th 2007 calls again for progress; "We expressed concern on the pace of the national reconciliation process and urged Myanmar to show tangible progress that would lead to a peaceful transition to democracy in the near future." Furthermore it stated "while recognizing the steps taken by the Myanmar Government to release the leader of the NLD, we continue to express concern on the detention of all political detainees and reiterate our calls for their early release."³²³ The July 2008 AMM, the 41st such meeting, "reiterated our calls for the release of all political detainees".³²⁴ Ong Keng Yong noted that "ASEAN is concerned about the impact of this [Myanmar] issue... on our credibility and standing, because the world seems to think that ASEAN should be the one tackling this issue and bringing about a positive outcome".³²⁵ Emerson is correct to draw attention to the changing language that this statement reveals. Whereas before ASEAN had called for "national reconciliation" with the effect of "making [the regime] seem the moral equivalent to the opposition and suggesting a compromise solution

³²² Joint Communiqué of the 39th AMM, Kuala Lumpur, Malaysia 25th July 2006, points. 79 and 80. Accessible at <http://www.aseansec.org/18561.htm>.

³²³ Joint Communiqué of the 40th ASEAN Ministerial Meeting, Manila, Philippines 30th July 2007, points 75 and 76. Accessible at <http://www.aseansec.org/20764.htm>.

³²⁴ Joint Communiqué of the 41st ASEAN Ministerial Meeting "One ASEAN at the Heart of Dynamic Asia". Singapore 21st July 2008. Accessible at <http://www.aseansec.org/21771.htm>.

³²⁵ As quoted in Heda Bayron, "ASEAN Losing Patience with Burma", *Voice of America*, Kuala Lumpur, 25th July 2006, and requoted in Emerson, "Challenging ASEAN: A 'Topological' View," p. 425.

halfway between their two positions",³²⁶ the call now for a transition to democracy denoted a shift in ASEAN preferred solution "away from mere compromise and towards what the very name of the National League of Democracy endorsed".³²⁷

THE EVOLUTION OF THE ASEAN CHARTER: THE CONTINUING DISCURSIVE CONTEXT

The process of drafting the ASEAN Charter, as the culmination of the process of community building that runs through Vision 2020 and Bali II, was officially launched with the Kuala Lumpur Declaration on 12 December 2005.³²⁸ I focus on the role of community building and discussing various plans for the proposed community to chart the debates over community identity as Myanmar was exposed to diverging pressures and wishes of others. Given its newness, I do not discuss the consequences of the Charter; it is too early to forward anything but the most conjectural sketching of its possible effects. I suggest, as before, that the process of discussing the content of the Charter was inherently persuasive and construable through constructivist accounts. Its relevance here is in the way that it helps us both understand how even sophisticated discussions can result in no socialisation, as well as revealing new reasons for ASEAN's inability to overcome those impediments.

The period represents a series of degradations to the proposed importance of human rights within ASEAN. Another Eminent Persons Group was established by the Kuala Lumpur Summit to discuss the full range of issues

³²⁶ Donald K. Emmerson, "ASEAN's Black Swans," *Journal of Democracy* 19, no. 3 (2008) p. 73.

³²⁷ Ibid.

³²⁸ Kuala Lumpur Declaration on the Establishment of the ASEAN Charter. Kuala Lumpur, Malaysia, 12th December 2005. Accessible at www.aseansec.org/18030.htm.

confronting ASEAN in its process of community building.³²⁹ The EPG comprised one representative from each member, usually a retired political functionary of ministerial level (Myanmar being the only state to send a comparatively lowly Civil Servant). The EPG reported in December 2006³³⁰ stating that the first principle of ASEAN should be the “promotion of ASEAN’s peace and stability through the *active* strengthening of democratic values, good governance, rejection of the unconstitutional and undemocratic changes of government, the rule of law, including international humanitarian law, and respect for human rights and fundamental freedoms”³³¹ (*italics added*). It also noted that the problem with ASEAN is not one of “lack of vision” but of “ensuring compliance and effective implementation,”³³² and recommended the establishment of a “Dispute Settlement Mechanism (in) all fields of ASEAN cooperation”.³³³ Finally, it advised that “ASEAN should have the power to take measures to redress cases of serious breaches of ASEAN’s objectives, major principles and commitments to important agreements” although “unless otherwise decided by the ASEAN Council in exceptional circumstances” there should be no “recourse to expulsion of members”.³³⁴

These opinions, however, were not binding upon member states, and the EPG was always intended as a “free-thought” experiment. The downgrading of these suggestions through until the final text of the Charter reveals the reluctance of many members to move from a broad set of declaratory principles towards the very detailed standards that would actually provide a basis for successful

³²⁹ Ibid.

³³⁰ Report of the Eminent Persons Group on the Establishment of an ASEAN Charter, December 2006. Report accessible at <http://www.aseansec.org/19247.pdf>.

³³¹ Ibid. Executive Summary, para 3, Point 1.

³³² Ibid. Executive Summary, para 6.

³³³ Ibid.

³³⁴ Ibid.

socialisation. The EPG suggestions were submitted to a High Level Task Force of active politicians who through a series of meetings from January – October 2007 resolved a draft Treaty, which was signed at Singapore on 20th November 2007.³³⁵ The Charter itself marks a step backwards from the EPG Report in terms of the strength of ASEAN's commitment to rights. In laying out the Purposes of ASEAN, point 7 (demoted from Point 1) refers to the strengthening of democracy, good governance and human rights, although it inserts the caveat that this should be done “with due regard to the rights and responsibilities of the member states of ASEAN”.³³⁶

It is not all negative, however. The discussions did lead to an apparent greater commitment to notions of regional oversight. The Charter process necessitated a far greater attention to those parts of the deliberations that ASEAN had proven so averse to. ASEAN has clearly stated that the Charter will “transform ASEAN from being a loosely-organised political association into a rules-based legal regime”.³³⁷ Article 14 of the Charter calls most novelly, and in response to the call in 1993, for the creation of an ASEAN Human Rights Body that operates “in conformity with the purposes and principles of the ASEAN Charter”,³³⁸ and in accordance with terms of reference to be drawn up by the Foreign Ministers Meetings. This may sound radical, but those principles governing ASEAN outlined in the Charter reference not only the need to adhere to the “rule of law, good governance, the principles of democracy and

³³⁵ The Singapore Declaration on the ASEAN Charter, Singapore, 20th December 2007, Accessible at <http://www.aseansec.org/21233.htm>.

³³⁶ The ASEAN Charter, <http://www.aseansec.org/ASEAN-Charter.pdf>. Chapter I, Article I, Paragraph 7.

³³⁷ ASEAN Bulletin December 2005, www.aseansec.org/17945.htm.

³³⁸ The ASEAN Charter, <http://www.aseansec.org/ASEAN-Charter.pdf>. Article 14.

constitutional governance”,³³⁹ as well as “respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice”³⁴⁰ but also the states right to exist free of *all* external interference in internal affairs, (*italics added*).³⁴¹ Whilst, therefore, Myanmar had agreed to a human rights instrument of some kind, it had most certainly not agreed to make membership conditional on fulfilment of human rights standards. The difference between EPG report and final text also reveals that states had successfully rejected any intrusive obligations or standards. The mode of socialisation attempts through broad declarations not detailed standards, was thus reaffirmed by the Charter, regardless of the institutional subterfuge represented by Article 14 and an apparent commitment to human rights.

THE CONTINUING FAILURE OF SOCIALISATION

The period from 2005-2008 represents the loudest, most direct and precise criticism that ASEAN has ever directed towards a member-state, as well as the process of drafting a Charter that seemingly contains legal stipulations about the nature of state behaviour in precisely the area of human rights. Rhetorical action, Social Sanction and discursive engagement sit side by side, all three evidence of the displeasure of many other member states to use their common membership of ASEAN to promote change, and yet we still see no socialisation of any of standards. Pinheiro was barred from access to the country from 2003 onwards, but he noted in the 2006 “the humanitarian situation in Myanmar has shown marked signs of deterioration over the past year”.³⁴² He noted that although Myanmar had engaged in the “seven point road map for

³³⁹ The ASEAN Charter, <http://www.aseansec.org/ASEAN-Charter.pdf>. Article 2 (h).

³⁴⁰ The ASEAN Charter, <http://www.aseansec.org/ASEAN-Charter.pdf>. Article 2(i).

³⁴¹ The ASEAN Charter, <http://www.aseansec.org/ASEAN-Charter.pdf>. Articles 2(e) and 2(f).

³⁴² United Nations Committee on Human Rights, E/CN.4/2006/34, 7th February 2006. Preamble.

national reconciliation and democratic transition” that ultimately this had led to the political space being “defined in even narrower terms”.³⁴³ The Special Rapporteur was “deeply dismayed” to learn that despite the reconvention of the National Convention in Myanmar on December 5th 2005-31st January 2006, “no progress towards instituting genuine democratic reform had been made,”³⁴⁴ and that consequently the “SPDC has continued to impose severe restrictions on freedom of movement, freedom of expression, freedom of association and freedom of assembly”.³⁴⁵ In 2007, Pinheiro report maintained its negative tone, noting the “severe restrictions” on freedom of expression had not lessened.³⁴⁶

There are two reasons for continued failing, firstly the continued weakness of ASEAN’s efforts due to its inability to create substantive standards and secondly ASEAN’s inability to present a coherent strategy on Myanmar, both familiar themes. Clearly, “mere” talk, be it about enforcement mechanisms or the norms that they enforce, is not enough, even if that talk comes in the form of treaties and resolutions that Myanmar signs up to. The biggest innovation in terms of the language used has been the gradual import of “democracy” into the pronouncements of ASEAN and member states at a variety of levels and the wedding of notions of Community and democracy and human rights. However, in the absence of detailed ASEAN standards about what those norm sets actually comprised, the talk was free floating. Agreement that something should be done, especially if that agreement is disingenuous, is easy compared to developing a shared understanding of what exactly should be done. As such, the problem that

³⁴³ Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, A/61/369, 18th October 2006.

³⁴⁴ United Nations Committee on Human Rights, E/CN.4/2006/34, 7th February 2006.

³⁴⁵ Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, A/61/369, 19th October 2006. Para. 40.

³⁴⁶ Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, 12th February 2007, A/HRC/4/14. Para. 51.

Rudolph Severino has noted, that ASEAN “has no central institutions to uphold compliance”³⁴⁷ and “no credible mechanisms for settling disputes in an objective and binding”,³⁴⁸ remains essentially unresolved by the Charter, despite the institutional subterfuge represented by the Human Rights Mechanism. Perhaps the best evidence of this is that Myanmar, assuming no sudden volte-face on the part of the Junta and a new desire to “mend their ways”, a seemingly safe conclusion, ratified the Charter in July of 2008.

In explaining this, we must make recourse to the gap between the domestic and regional orders and questions of how the ASEAN Way and ASEAN heterogeneity interacted to retard socialisation efforts.³⁴⁹ It remained the case that member states of ASEAN diverged significantly in terms of their democratic, and human rights, credentials, which again impacted on the ability of members to create a simultaneously inclusive and detailed normative consensus that could then be expressed through ASEAN itself. Even by 2008 only one member state of ASEAN was accredited the appellation “free” on the Freedom House ratings on Political Rights and Civil Liberties, Indonesia.³⁵⁰ The Philippines, Malaysia and Singapore were ranked as semi-free and Thailand, that former motor of engagement with Myanmar was now rated unfree given the military coup to oust Thaksin Shinawatra on September 19th 2006. Quoted in the Singapore Strait Times, General Surayad Chulanont, the head of the interim government, noted to UN Special Envoy Gambari that such events weakened ASEAN’s ability to talk to Myanmar saying, “I cannot preach too much about

³⁴⁷ Rudolph Severino, ed., *Framing the ASEAN Charter: An Iseas Perspective* (Singapore: Institute of Southeast Asian Studies, 2005) p. 6.

³⁴⁸ Ibid.

³⁴⁹ Chin Kin Wah, "Introduction: ASEAN - Facing the Fifth Decade," *Contemporary Southeast Asia* 29, no. 3 (2007) p. 400.

³⁵⁰ Freedom House “Map of Freedom”. Accessible at <http://www.freedomhouse.org/template.cfm?page=363&year=2008>

democracy if our government is not an elected one. We must not forget who we are and where we stand before thinking of pressuring the Burmese (sic) junta".³⁵¹ ASEAN could not be perceived as a legitimate interlocutor on democracy or rights or freedom of expression even if it had mentioned that phrase when its member states were so diverse with regards to their own commitments. ASEAN remains not a vanguard of democracy but an arena in which it is discussed.³⁵²

Finally ASEAN has found itself trapped, rhetorically and politically. It is unable to deny Myanmar that which Yangon values membership for, external political support vis-à-vis the west, even when engaged in sustained criticism of Myanmar. ASEAN, founded in the immediate aftermath of Western Colonialism, and committed to sovereign equality, would appear if it did limit its support of Myanmar, to be giving in to external pressure of a kind particularly corrosive of both its founding intentions and most deeply cherished ideational statements. At the 6th Asia-Europe Meeting held in Rotterdam in September 2005 ASEAN's economic ministers refused to attend as "a matter of principle" when the Dutch denied Myanmar's Minister a visa.³⁵³ This was at exactly the same time that ASEAN was exerting significant pressure on Myanmar over the chairmanship issue. The fact that ASEAN was willing, even when critiquing Myanmar as never before, to stand with them can only be seen as a sign that when ASEAN unity is threatened, ASEAN will side with Myanmar, providing the junta with exactly what it wants.³⁵⁴ At the November 2007 East Asian Summit held in

³⁵¹ Singapore Strait Times, 15th October 2007, p. 6, Quoted in Kin Wah, "Introduction: ASEAN - Facing the Fifth Decade," p. 400.

³⁵² Emmerson, "ASEAN's Black Swans," p. 81.

³⁵³ Than, "Myanmar: Challenges Galore but Opposition Fail to Score," p. 195.

³⁵⁴ For a fuller account of the role of Myanmar in the EU-ASEAN relationship refer to Petersson, "Myanmar in EU-ASEAN Relations." Of particular interest here is the apparent collapse of EU pressure on ASEAN resulting in Myanmar gaining a place in ASEM and the Europeans seemingly scaling back on pressurising ASEAN.

Singapore as an adjunct to the ASEAN Summit, the Myanmar Prime Minister, General Thein Sein, objected to the Singaporean invitation to Sergio Gambari, the UN Special Rapporteur on Myanmar, to attend the meeting and brief the delegations, ultimately successfully blocking Gambari's attendance.³⁵⁵ ASEAN had gone from condemning Myanmar to "caving in" to its demands that its human rights violations were not discussed, showing both a lack of coherence and of "moral courage and vision".³⁵⁶

I argue therefore that successful socialisation is dependent upon coherence in the full range of relations between community and target. The ASEAN case is an example where the community, despite the pressure it put upon Myanmar in some spheres of activity, acted with overall incoherence. It never presented a single attitude to Myanmar, nor did it ever link its pressure to threaten the temporary or permanent cessation of the reasons that Myanmar did value ASEAN membership. Despite the increasing tensions caused by Myanmar's continued membership of ASEAN, both in terms of intra-ASEAN tensions and extra regional complications, ASEAN as a Regional Community is highly unlikely to terminate Myanmar's membership.³⁵⁷ This helps explain why Social Sanctioning was ineffective. The denial of the rights of the chair was irrelevant to Myanmar because it did not value those rights and benefits, regardless of the opinions and intentions of others. Successful socialisation rests on coherence in the socialising agents behaviour. The incoherence of ASEAN, and the conflicting signals this transmitted to Myanmar, allowed Myanmar to ignore ASEAN's efforts with impunity.

³⁵⁵ For a fuller account of the diplomatic manoeuvring around this decision refer to Emmerson, "ASEAN's Black Swans."

³⁵⁶ Rahim, "Fragmented Community and Un-Constructive Engagements," p. 69.

³⁵⁷ Interview with Mahmud Rizali, 20/09/2006, Universitas Indonesia, Depok- Jakarta.

Myanmar has also played the diplomatic game well in response to ASEAN's pressure whilst seemingly never changing from its fundamental course. Calls for caring societies? Myanmar has signed up to the rights of women and children within the ASEAN framework. Member states should be "democratic" and "harmonious"? Myanmar has pressed ahead with its Roadmap to Democracy and the National Constitutional Convention (indeed so committed is it that Cyclone Nargis was unable to derail the referendum on this).³⁵⁸ As such it has proven itself sufficiently an active member of the Association to avoid calls for its exclusion to reach anywhere near critical mass whilst at the same time steadily ignoring calls to change because those calls cannot be made in such a way as to make membership conditional upon their fulfilment. Now these may be empty processes, but following Hathaway,³⁵⁹ Smith,³⁶⁰ and Linton,³⁶¹ even signalling that you are "moving towards human rights... can result in substantial material benefits",³⁶² the continuance of membership and all the value added that flows from it. Myanmar has acted sure in the knowledge that an ASEAN that excluded it would not be the same ASEAN that is currently valued by its members, it would be an all together different beast, and one which may well have not survived the last 40 years.

³⁵⁸ See Andrew Selth, "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fear of Invasion," *Contemporary Southeast Asia* 30, no. 3 (2008).

³⁵⁹ Hathaway, "Do Human Rights Treaties Make a Difference?"

³⁶⁰ Heather M Smith, "Explaining Ratification of Global Human Rights Instruments: The Role of Regional Instability," in *Journeys in World Politics Conference* (University of Iowa: 2006).

³⁶¹ S. Linton, "ASEAN States, Their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children," *Human Rights Quarterly* 30, no. 2 (2008) p. 443.

³⁶² Ibid.

CONCLUSION: THE PRICE OF FAILURE

Singaporean Foreign Minister Rajarathan, talking in May 1974 at the closing of the Seventh ASEAN Ministerial Meeting, noted dryly:

You might recollect at the first meeting in 1967, when we had to draft our communiqué, it was a very difficult problem of trying to say nothing in ten pages, which we did. Because at the time, we ourselves, having launched ASEAN were not quite sure whether it was going anywhere at all.³⁶³

The pithier observer may share those sentiments today. For a long time ASEAN slowly added issues to its remit, but never did it tamper with the source of its success, its informal and accommodating nature. Ironically its biggest achievements in sustaining peace in an otherwise fractious region of the world have been made by ASEAN stoically not doing very much at all. This sense of success led ASEAN to fulfil its long held dream to represent all of Southeast Asia in the hope that it could both influence these new members.

This study has shown ASEAN and its members have expressed clear and consistent socialisation pressure on Myanmar. Rhetorical action, social influence and Social Sanctioning, all construed as part of a broader rationalist account of bargaining, have since the turn of the millennium come to the fore as socialisation processes resting on the evolving standards that community building has created. We can also discern the presence of persuasion based attempts through the very community building process itself, bringing Myanmar into discussion with states, and NGOs, who had varying assessments of the meaning attached to ASEAN membership. Membership resulted in both processes being present, although in differing configurations at different times.

³⁶³ Cited by Michael Leifer, "The ASEAN States and the Progress of Regional Co-Operation in South-East Asia," in *Politics, Society and Economy in the ASEAN States*, ed. Otto Harrassowitz (Wiesbaden: 1975) p. 4.

The presence of these processes rejected the claims of those such as Khoo, Jones or Smith that ASEAN does little. It has attempted to socialise Myanmar in ways which given the prevailing ASEAN Way and the sensitivity of members to oversight can only be seen as radically innovative, given the framework from which it has emerged. The mode of socialisation here, resting on broad declaratory frameworks, is just as much a story of socialisation as what we will encounter in the next two chapters. The distinction between socialisation attempt and socialisation outcome means that whilst I disagree with those who claim ASEAN *does* nothing, I agree with the claim that it *achieves* little, at least in terms of the discussion of human rights presented here. Those who thought membership would bring Myanmar into discussion about its domestic arrangements and that this would, in and of itself, engender change have been proven woefully optimistic, and membership has both stymied ASEAN's own community building and jeopardised its relations with western powers.

Members and ASEAN may regret the admission of Myanmar, but they cannot turn back the clock without fundamentally damaging why ASEAN exists, and was successful in the first place. Furthermore ASEAN cannot now revise its internal standards given Myanmar enjoys the powers of a member over that revision process. Wishing the Junta away does little given the Junta itself would appear to be the only practical agent of change in the game.³⁶⁴ In light of the resilience of the regime there are few alternatives short of actual military intervention. ASEAN has attempted to exert considerable pressure over Myanmar, but it has failed to grapple with its inability to censure Myanmar in a way that would be effectively noticed by the Junta as anything other than

³⁶⁴ Interview with Tin Maung Maung Than, 4/10/2006, ISEAS, Singapore.

background noise. That it may well prove forever unable to do so, if it is to remain true to the sources of its success, is a cause of considerable pessimism for those who would seek to make ASEAN matter, as well as a cautionary tale about the limitations of community building.

5. The OAS and Panama: Agency, Social Meaning and The Question of Success

In this, the second empirical case of the dissertation, I turn to the relationship between the OAS and Panama. The OAS from its formation in 1948 had a commitment to human rights and democracy, one which over the course of 60 years has developed into a seemingly impressive set of institutions, charters and declarations that lock in commitments to freedom of expression as well as protecting and promoting the whole range of political and economic rights. When investigating this evolution, this chapter unpacks how differing modes of socialisation transition into each other, and how that transition affects the nature of the socialisation attempts that are made. The positioning of this study as the second of three is deliberate, exploring the conceptual gap between ASEAN's weak commitments and the EU's highly legal standards that shall be encountered in the next chapter. Early OAS commitments to human rights were broad and imprecise, just as ASEAN's would be some 50 years later. However, the trajectory of community building has resulting in ever-stronger commitments to freedom of expression together with stronger bodies charged with the protection and promotion of that right. The Panamanian position within this assemblage of standards is a complicated but ultimately informative one. The many ways in which the OAS has spoken to Panama, and the development of the belief that those statements are in some way authoritative and legitimate, form the substantive analysis of this chapter.

STATEMENT OF ARGUMENTS

Adopting the same two-layer approach as the previous chapter, I suggest that this case makes two contributions. The first generated by its empirical findings, the second its contribution to the broader conceptual analysis of this work. The story of Panamanian participation within the OAS as analysed through the prism of human rights is just as novel as was the discussion in the previous chapter about ASEAN and Myanmar. Nearly all academic enquiry into Panama in a regional context, in the English-speaking world at least, has mediated an interest in Panama either through the distorting lens of focusing on the Panama Canal, or at best on the role of the United States within Panama either specifically or more generally as an example of military intervention.³⁶⁵ I suggest that a focus on Panama within the OAS through the prism of the rights socialisation process, offers much benefit. Such a focus rejects the claim by many that the OAS is either a weak, or more extreme wholly passive, organisation, a charge that is levelled both at the contemporary OAS as well as at its actions in the past.³⁶⁶ Even when there is a successful outcome, such as the OAS mediation through organising and chairing discussions between rival political factions, for example in Peru in the late 1990's and 2000, this is ascribed more to happenstance than a coherent strategic engagement by the

³⁶⁵ The literature here is prodigious. See John Major, *Prize Possession: The United States and the Panama Canal 1903-1979* (Cambridge: Cambridge University Press, 1993) or Michael L. Conniff, *Panama and the United States: The Forced Alliance* (Athens and London: The University of Georgia Press, 1992). For a wider appreciation of the USA and Latin America, as an example of the US centrality that colours English speaking accounts, see Ivan Musicant, *The Banana Wars: A History of United States Military Intervention in Latin America from the Spanish-American War to the Invasion of Panama* (New York City: MacMillan Press, 1990).

³⁶⁶ See Arceneaux and Pion-Berlin, "Issues, Threats and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America," for a contemporary analysis and Tom J. Farer, *The Future of the Inter-American System* (New York: Praeger Publishers, 1979) for an older retrospective.

OAS.³⁶⁷ True to the arguments I presented in my Introduction, disassociating questions of success and failure from the question of the practice of socialisation helps reveal that the OAS has, since the late 1970's, acted in increasingly coherent and structured ways through the extension of regular oversight and investigation of standards within Panama.

At the broader conceptual level this study as a whole, the study of the relationship between Panama and the OAS tells us two preliminary things. Firstly, that states do not always join pre-existing communities, they can participate in their founding. Secondly, that states do not automatically engage with regional communities lagging in respect to their protection of freedom of expression. They can be in the vanguard of seeking to create regional protection for that, and other, rights. In such cases, regional communities can become a "lock-in" for pre-existing domestic standards, the act of raising them to the regional level indicative of the apparent concern in which they were held. The failure of this lock in permitted the gradual erosion of freedom of expression within Panama and sets the stage for the socialisation efforts we can discern later in our story. The subsequent thirty years of membership saw community building both in terms of extensive discussion of the norm of freedom of expression and the norm-set of democracy, but also in the gradual process of legal and institutional reform that was so lacking in the ASEAN example. However, whereas ASEAN was quick to start pressuring Myanmar, the OAS was exceedingly slow. Whilst Panama was part of the community building process, and engaged in discussion about the obligations and nature of membership, there is no evidence of the OAS actively seeking to impart its standards to Panama

³⁶⁷ Andrew F. Cooper and Thomas Legler, "The OAS Democratic Solidarity Paradigm: Questions of Collective and National Leadership," *Latin American Politics and Society* 43, no. 1 (2001).

until 1978. The focus of our attention therefore falls, on the period up to 1978, on the role of community building, and persuasion, as states debate between each other the creation of revised communal identities and the role of human rights within that. The growing gap between Panamanian and regional standards up to 1978 indicates that community building may have progressed on paper, but it most certainly had not created succeeded in affecting Panamanian respect for freedom of expression. In exploring this, I suggest that across this period a set of “social meanings” of membership undercut the socialisation attempts via discursive practice that we would expect to occur otherwise, denuding the community building process of any persuasive edge.

The third period to be discussed is between 1978 and 1990, where we do see the development of hemispheric oversight of the situation within Panama with the introduction of Country Reports. Here I identify “Naming and Shaming” and Rhetorical Action pressure being exerted on Panama, and a rational choice analysis again starts to have traction in accounting for the relationship. However, these political machinations resulted in no great success in the face of the unrevised social meaning of membership. The period since 1990 and the forced restoration of Panamanian democracy has seen the linkage between national and regional standards so absent before. This has occurred not only because of the increasing relevance of hemispheric oversight, again through Rhetorical Action and Naming and Shaming, but also the changed social meaning of what it meant to be a member of the OAS. I attribute this changed meaning to the confluence of extensive revision of the OAS as well as broader political and economic processes that wrought their change during the 1980’s onwards.

THE PANAMANIAN POSITION DURING NEGOTIATIONS FORMING THE OAS

In terms of socialisation, the story of the role the OAS played with regards to Panama starts only after membership was achieved. The negotiations surrounding the creation of the OAS, running from the Mexico Conference on the Problems of War and Peace, (February 21-March 8 1945) through to the final OAS Charter being signed at the end of the Ninth Inter-American Conference which held in Bogotá, Colombia, March 30th–May 2nd 1948, certainly represent a potential forum for socialisation. Panama was an active participant in discussions about the role of human rights and democracy within the nascent OAS. However, when we look at those discussions, we see an important fact. Socialisation, by any mechanism or process, rests on there being a gap between the standards of the socialising agent and the target of any socialisation attempt. Persuasion requires you come around to a better argument, just as bargaining necessitates an asymmetrical commitment to any particular material or social good.³⁶⁸ During negotiations Panama was in the vanguard of a push to integrate a respect for democracy and human rights within proposed regional arrangements. Its positioning therefore retards the presence of socialisation because it breaks the link between socialiser and socialisee.

At the Mexico Conference, Guatemala had led the charge to in some way sanction states that violated democratic credentials. It called for states to not recognise governments that were either non-democratic or had democratic rule interrupted, effectively denying membership of the Inter-American system to offending states.³⁶⁹ Quickly rejected, the issue returned in November 1945 when

³⁶⁸ See Müller, "Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations " pp. 397-398.

³⁶⁹ Bryce Wood, "Human Rights and the Inter-American System," in *The Future of the Inter-American System*, ed. Tom Farer (New York City: Praeger Publishing, 1979). See also Charles G.

the Uruguayan Foreign Minister Eduardo Larreta sought to “transform” the rhetorical commitment to democracy into reality,³⁷⁰ calling for the inter-American system to somewhere install a mechanism for collective intervention to protect democracy, something that quickly became known as the Larreta Doctrine.³⁷¹ This proposal was rejected by 13 other American states (eight approved including Panama itself).³⁷² At the Bogotá Conference Panama joined with Brazil in an attempt make the requirements for membership more onerous with regards to democracy, including the requirement that members of the OAS should subscribe to “the following principles: plurality of political parties, freedom of the ballot, the opportunity of private enterprise and the guarantee of the fundamental rights of man”,³⁷³ this proposal was rejected under growing US worries that an overly strong democratic mandate in the OAS would weaken its anti-Communist campaign. Panama had pressed for the creation of a “Council of Solidarity” which would be based outside the U.S.A. and would “handle all political powers of the Inter-American System and withhold such functions from the Governing Board in Washington”, with a focus as part of that on human rights concerns.³⁷⁴ As part of this desire to institutionalise the political system of the proposed Community, Ricardo J. Alfaro, Panamanian Minister of Foreign

Fenwick, *The Organization of American States - The Inter-American Regional System* (Washington D.C.: Kaufmann Printing, 1963) pp. 28-30.

³⁷⁰ Ann van Wyren Thomas and Jr Thomas, A.J. *The Organization of American States* (Dallas: Southern Methodist University Press, 1963) p. 219.

³⁷¹ PAU, Consultation of the Government of Uruguay and Replies of the Governments on the Parallelism between Democracy and Peace, the International Rights of Man and Collective Action in Defense of those Principles (May, 1946).

³⁷² The United States government was strongly in support of the Larreta doctrine at the time, given its desire to strengthen the anti-Communist credentials of the evolving hemispheric arrangements. J. Lloyd Meham, *The United States and Inter-American Security, 1889-1960* (Austin: University of Texas Press, 1961) p. 288.

³⁷³ van Wyren Thomas and Thomas, *The Organization of American States* p. 57.

³⁷⁴ Lawrence O. Ealy, *The Republic of Panama in World Affairs, 1903-1950* (Philadelphia: University of Pennsylvania Press, 1951) p. 135.

Affairs at the time, pushed to reinstate the Larreta doctrine, but mustered no support besides Panama and Guatemala themselves.³⁷⁵

This positioning of Panama as a “leader” in the debate between delegates over the issue of rights and democracy should not be surprising; Panamanian President Enrique Jimenez (June 1945 - August 1948) was a strong supporter of human rights, despite the oligarchic foundations of political power in the republic across the period.³⁷⁶ Panama had enshrined human rights generally, and made specific mention to freedom of expression in Article 27 of the 1904 Panamanian Constitution, which provided “extensive protection for freedom of thought and expression”,³⁷⁷ stating that “any person may express his thoughts freely, in speech or in writing, in print or in any other medium, without being subject to prior censorship”.³⁷⁸ The role of Panama as a leader, not laggard, in the drive to integrate rights into the OAS results in the period of joining the community not being significant for socialisation of freedom of expression. What was significant, both at the time and for the story I present further below, was that the failure of Panama and others to “lock-in” a respect for freedom of expression at the hemispheric level, whether that was through a commitment to democracy or a direct reference to that right. This created the permissive conditions for a serious degradation of the right to freedom of expression within Panama once it was a member. In charting this, I first present the final form that commitments to democracy and human rights took at Bogotá, with reference to

³⁷⁵ Ibid. p. 137.

³⁷⁶ Ibid. p. 135.

³⁷⁷ Report on the Situation of Freedom of Expression in Panama 3rd July 2003, OEA/Ser.L/V/11.117, Doc, 47, Chapter IV – Analysis of Freedom of Expression in Panama, The Historical Context, Paragraph 45.

³⁷⁸ Ealy, *The Republic of Panama in World Affairs, 1903-1950* p. 128.

their weakness, and then chart the domestic situation within Panama to act as a precursor for the coming analysis.

The Charter represented a strange hybrid of “rules, agreements, principles and aspirations” that both defined the organisational set up of the community as well as the “emotional motive power” and aspirations of the continent.³⁷⁹

Democracy appeared in the Preamble that declared that American States were;

...Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based upon respect for the essential rights of man.³⁸⁰

Article 5(d) sought to reaffirm the “solidarity of the American States” and further noted that its many aims to secure peace and freedom rested on the need for its members to ensure “the effective exercise of representative democracy”.³⁸¹

Article 5(j) proclaimed the “fundamental rights of man”. A somewhat stronger commitment to human rights was contained in Article 13, which required, in relation to the evolution of member states political evolution that this development “*shall* respect the rights of the individual and the principles of universal morality” (italics added).³⁸²

Superficially this appears to be a commitment that represents Panama’s, and others, desires in the 1945-1948 period. However, a more detailed appraisal reveals that these commitments to rights and democracy are considerably less than they appear. Centrally not everything in the Charter was equally binding on members. As a hybrid between legal stipulations and aspirational statements, the

³⁷⁹ John C. Dreier, *The Organization of American States and the Hemisphere Crisis* (New York City: Harper & Row Publishers, 1962) p. 32.

³⁸⁰ Charter of the Organization of American States, Preamble.

³⁸¹ Ibid.

³⁸² van Wyren Thomas and Thomas, *The Organization of American States*.

wording and positioning of various clauses must be carefully considered. Article 5(d) did not state that membership of the OAS was conditional on democratic government, such as had been proposed by Larreta, Brazil and Panama at various times, rather only that democratic solidarity should be promoted. The stronger commitment to democratic values held in the Preamble was not legally significant given the fact it was in the Preamble, not a substantive clause.³⁸³ The preamble “sets forth certain political ideals without guaranteeing their realisation by establishing a legal obligation to behave in a certain manner”.³⁸⁴

The commitment to human rights in Article 5(j) was similarly weak. What exactly are these rights spoken of? How will they be protected and promoted? These were questions that found no answer within the Charter itself. Just as ASEAN had constructed a commitment to rights in its Human Rights Mechanism of 2008 in the absence of any appreciation of what those rights in fact were, so had the OAS in 1948 instilled a commitment to rights with no official understanding of that term. This interacted fatally with the established governance strategy that the Charter institutionalised. The OAS was more an “agency for the enforcement of the peace rather than the law”.³⁸⁵ The determination to restrict intervention, understandable in the post World War Two environment,³⁸⁶ created immediate problems of enforcement for any obligations within the Charter itself. Article 15 established that:

No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. This prohibits not only armed force but also any

³⁸³ Ibid. p. 220.

³⁸⁴ Ibid.

³⁸⁵ van Wyren Thomas and Thomas, *The Organization of American States* p. 153.

³⁸⁶ Tom J. Farer, “Collectively Defending Democracy in a World of Sovereign States: The Western Hemisphere’s Prospect,” *Human Rights Quarterly* 15 (1993) p. 720.

other form of interference or attempted threat against the personality of the state or its political, economic and cultural elements.

The Charter was mute on “whether the OAS or its members could take enforcement measures against a member state who fails to respect human rights”,³⁸⁷ and the Inter-American Juridical Council (IAJC), when asked opined that “it would be in vain to search in the Charter of the Organization for any such competence” and that any attempt to infer one was erroneous given that “in so serious a matter as this, one cannot speak of implicit faculties; they should be expressly stated”.³⁸⁸ The dangers of a Regional Community committed to the defence of democracy and human rights, but at the same time resting on sacrosanct non-intervention was not unremarked upon. Larreta had warned back in 1946, “non-intervention cannot be converted into a right to invoke one principle to be able to violate all other principles with immunity.”³⁸⁹

The interest expressed by Panama and others in human rights had not, however, been wholly rejected. Rather it was diverted away into a Declaration on the Rights and Duties of Man, which whilst also promulgated at Bogotá, had no formal relationship with the OAS at all, although as we shall see becomes of central importance to later attempts to protect rights through the OAS.³⁹⁰ The Declaration went considerably further than the Charter in terms of human

³⁸⁷ Lawrence J. LeBlanc, *The OAS and the Promotion and Protection of Human Rights* (The Hague: Martinus Nijhoff, 1977). See also David J. Harris and Stephen Livingstone, eds. *The Inter-American System of Human Rights* (Oxford: Clarendon Press, 1998) Chapter by Antonio Augusto Carcado Trindade, *The Interaction Between Political Actors, Commission and Court*, p. 191.

³⁸⁸ Inter-American Juridical Committee, *Study of the Juridical relationship between Respect for Human Rights and the Exercise of Democracy* (Pan American Union: Washington D.C., May 1960) p. 10.

³⁸⁹ Quoted in Inter American Dialogue, “Inter-American Dialogue - a Conference Report - Advancing Democracy and Human Rights in the Americas. What Role for the OAS?” (Washington DC, 1994) Chapter by Javier Corrales, *Advancing Democracy and Human Rights in the Americas – The Rapporteurs Report*, p. 2.

³⁹⁰ General Secretariat, ed., *The International Conferences of the American States - 2nd Supplement* (Washington D.C.: Pan-American Union, 1958).

rights.³⁹¹ In 38 Articles, it outlined a full range of rights and duties of individuals. It covered political and economic rights, together with broader ethical aspirations that underlay any democratic system of government. The Declaration, in Article 4 stated "Every person has the right to freedom of investigation, of opinion and of the expression and dissemination of ideas, by whatever medium whatsoever".³⁹² The framers at Bogotá had, however, through their separation of Charter and Declaration, underlined the collective opinion that these rights were clearly not laws, and as such the Declaration was not the lock in that some had wanted. It was neither possible nor desirable to make the Declaration binding,³⁹³ and the IAJC noted that the Bogotá Declaration did not create a legal contractual obligation.³⁹⁴ The Declaration was neither attached as an annex of the Charter nor was it a separate treaty in its own right; it held the status of an unattached "declaration" of principles, revealing quite clearly the opinion of states that it was considerably less than legally binding.³⁹⁵

In a portentous sequence of events that both evidences the failure of the OAS to lock in the protection of democracy and fundamental rights within the OAS and also presage coming events in the history of freedom of expression within Panama, the period following President Jimenez's departure from power in 1948 was one of increasing political instability. The growing political ascendance

³⁹¹ A full appraisal of the Declaration is offered at van Wyren Thomas and Thomas, *The Organization of American States* pp. 223-227.

³⁹² The Inter-American Declaration on the Rights and Duties of Man. Resolution XXX of the 9th International Conference of American States (1948), Reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System* OEA/SER.L.V/II.82 doc.6 rev.1 at 17 (1992), Article IV.

³⁹³ 9th International Conference of American States, Acta Commission VI, 3a.

³⁹⁴ Fenwick, *The Organization of American States - the Inter-American Regional System* p. 444.

³⁹⁵ For a fuller discussion of the OAS Charter and the Declaration refer to LeBlanc, *The OAS and the Promotion and Protection of Human Rights* pp. 8-19.

of the National Police, led by Jose Antonio Remon, led to the installation in November 1949, of Arunulfo Arias as president. Arias was no defender of political and civil liberties and “arbitrarily” annulled the Constitution of 1946 by executive fiat, a move that ultimately led to an attempt to “destroy the National Assembly and Supreme Court”,³⁹⁶ but which ended up only with his impeachment. Panama passed the Instrument of Ratification for the OAS on March 16th 1951 and deposited that ratification on March 22nd. The Charter came into force shortly after, on December 13th 1951 with the 14th ratification, that of Columbia. Arias had therefore both dissolved national political parties and ratified a charter that despite its murky wording, enshrined democracy as a keystone principle. The argument is that the standards established within the OAS were so weak, because of the reduced legal nature of them together with the undercutting of the creation of strong norms through the outsourcing of rights to the Declaration, that they offered no impediment to domestic behaviour within Panama that violated those standards. The deterioration within Panama as the National Police and established aristocracy vied for power was not halted by the signing, ratification or operationalisation of the Charter. It was in no sense a “lock-in” of democracy or freedom of expression, as shown by Arias’ blatant disregard for both.

PLAYING COMMUNITY AND A LACK OF AGENCY: THE OAS AND PANAMA 1951-1978

The relationship between Panama and the OAS from 1951 until 1978 is seemingly contradictory. We see extensive community building efforts within the OAS, the erection of a Commission and then a Court to defend human rights.

³⁹⁶ Walter LaFeber, *The Panama Canal: The Crisis in Historical Perspective* (New York City: Oxford University Press, 1989) p. 113.

We can also perceive extensive discussion and ultimate agreement on a detailed assessment of freedom of expression. Panama participated in both process, and consented to their outcomes. Panamanian participation would appear to indicate that it had, from its low base in 1951, been persuaded through discursive engagement over time, of the rightness of detailed discussions on democracy and freedom of expression. It would appear, superficially at least, that Panama should be socialised. It agreed to detailed meanings of freedom of expression, whereas in comparison Myanmar had baulked at anything other than the most anodyne of commitments within ASEAN.

Despite this, Panamanian standards on freedom of expression show no correlation between regional and national sentiment. There are two parts to addressing why. First, there is no *agency* in the relationship. That is, the OAS over this period did not investigate, prosecute or in any other way engage with Panama explicitly over questions of freedom of expression. This renders as wholly absent the array of rational choice socialisation processes. Given this, the period represents an excellent way to investigate the power of community building and persuasion to, on their own, engender successful socialisation. In exploring the failure of this, I will investigate a set of understandings shared by Central and Latin American states that coloured their interpretation of these revised standards. I term this the “social meaning” of membership. The identification of this phenomena serves to both remind us of the importance of understanding the broader content in which socialisation efforts arise, as well as introducing the argument that community building does not, in and of itself, promote persuasion based socialisation attempts. The investigator must be aware

of the social interpretation of what community building was actually intended to do, and why states participated within it.

BUILDING A COMMUNITY? HUMAN RIGHTS AND FREEDOM OF EXPRESSION WITHIN THE OAS

The first step is to chart the evolving commitment within the OAS to the various norms, and norm sets, which are relevant for freedom of expression. These represent insight into the nature of the community building project. They reveal what should be a set of conditions where we would expect socialisation via persuasion to be successful. In establishing this claim I shall compare the documentary record with the scope conditions established through my methodological discussions in chapter three. I suggest that see Panamanian participation in a discursive environment where questions of rights were placed centre stage and then agreed upon. The process of creating an apparent new communal identity was seemingly successful. The OAS went from a community in 1951 with no substantive commitment to rights or democracy to one in 1978 with a Court, a Commission, revised standards on human rights including a detailed appraisal of freedom of expression and a stronger commitment to the desirability of democratic government. On paper, this would appear to represent all the necessary methodological hallmarks for identifying a persuasion mechanism resting on a community building process.

The first important movement on questions of rights came at the 1959 Fifth Meeting of Consultation of Ministers of Foreign Affairs. The meeting was charged with answering the question as to "whether, and if so to what extent, the American states could take collective action against dictatorship on behalf of

human rights without endangering the principle of “non-intervention” in the affairs of other states”.³⁹⁷ The solution was found in the creation of a Commission on Human Rights that would mediate the competing concerns with non-intervention and human rights. The Commission was created as an autonomous entity of the OAS and was expressly linked with the human rights enunciated in the Declaration,³⁹⁸ the first formal link between the OAS and the Declaration. In terms of actual “powers”, the Commission was limited to firstly the preparation of country reports and secondly, after 1965, responding to individual petitions, a power granted to it at the Second Special Inter-American Conference of that year. It was a comparatively weak institution at this stage, but the very act of its creation is significant testimony to an apparent revision of the regional commitment to promoting and protecting human rights.

Institutional revision sat alongside detailed discussion on democracy and freedom of expression. In addition to creating the Commission, Resolution One of the Fifth Meeting had called generally for all people of the Americas to live under democratic institutions based upon the respect for human rights. The Declaration, known as the Declaration of Santiago de Chile, started to outline a clearer hemispheric understanding of democracy; in its Preamble it noted that it was “the general aspiration of the American peoples to live in peace under the protection of democratic institutions.”³⁹⁹ In a further eight points, the various

³⁹⁷ LeBlanc, *The OAS and the Promotion and Protection of Human Rights* pp. 46-47 specifically the Dominican Republic accused Cuba and Venezuela of inciting unrest. The situation in Cuba also troubled the OAS political organs and the United States. Refer to Harris and Livingstone, eds. *The Inter-American System of Human Rights* Chapter Christine Cerna, *The Inter American Commission on Human Rights – Its Organization and Examples of Petition and Communication* p. 65.

³⁹⁸ LeBlanc, *The OAS and the Promotion and Protection of Human Rights*. Article 2 of the resolution creating the Commission noted, “For the purposes of this Statute, human rights are understood to be those set forth in the American Declaration of the Rights and Duties of Man.”

³⁹⁹ Declaration at the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, August 12 through 18, 1959, Final Act. Document OEA/Ser.C/II.5, pp. 4-6.

characteristics of what a western hemisphere democratic regime was were outlined, an “admission by the inter-American system that the hitherto vague statements of principles relating to democracy did little to provide a means for distinguishing democracy,” from alternate political systems.⁴⁰⁰ The importance of democracy to freedom of expression was clear to participants of the OAS. This issue arose when the IAJC was requested in 1960 to explicate the relationship between representative democracy and human rights more broadly. In the resultant Advisory Opinion the Committee asserted that:

[T]here is not only a possible, there is a clear, relationship between respect for human rights and the effective exercise of democracy. A democratic regime must necessarily be based upon certain essential rights and freedoms.⁴⁰¹

The “elective affinity between democratisation and specific human rights provisions clearly rests upon the maintenance of electoral democracy”, indicating the interdependence of human rights and democracy.⁴⁰² Participants of community building knew what the significance of democracy was to human rights. Advancing democracy was not done in a vacuum; it was a key portion of the apparent revising commitment to human rights.

Not only had Panama consented to these, but it was once again in the apparent lead of a push to institutionalising freedom of expression ever more powerfully into regional arrangements. Evidence for this behaviour comes from investigating the considerable discussion within the Commission rotating around a proposed Draft Inter-American Convention on Freedom of Expression,

⁴⁰⁰ van Wyren Thomas and Thomas, *The Organization of American States* p. 231.

⁴⁰¹ Inter-American Juridical Committee, *Study of the Juridical Relationship between Respect for Human Rights and the Exercise of Democracy* OEA / Ser.I / Eng. CIJ.52, May 1960 p. 2.

⁴⁰² Louise Fawcett and Monica Serrano, eds. *Regionalism and Governance in the Americas* (Basingstoke: Palgrave MacMillan, 2005) p. 150.

Information and Investigation. The Preamble of the Second Draft of the Convention noted, "freedom of expression... is a right that must be respected and protected for the practice of democracy".⁴⁰³ The draft goes on to outline a detailed appreciation of the nature of freedom of expression.⁴⁰⁴ The draft declaration was forwarded to members of the OAS for consultation. The United States was in general negative in its response arguing that the draft "shows the dangers of being too specific".⁴⁰⁵ The Panamanian response was far more positive, calling for the "right to be fully explored and situated within the regional system as a vital precursor to democratic government."⁴⁰⁶ Whilst we can trace the diminution of the proposed Convention under US led hostility until its gradual final rejection, the key point to take is that Panama was clearly on the side of institutionalising respect for freedom of expression.⁴⁰⁷

By 1969, a mere 10 years after Commission was founded, another convulsive community building event occurred, and again Panama was active in this. Here the issue was the debate over reformulating and extending existing OAS commitments to human rights. The Inter-American Commission on Human Rights had not fundamentally altered the environment of membership of the

⁴⁰³ 2nd Report on Draft Convention on Freedom of Expression Information and Investigation, September 10th 1962, OEA/Ser.L/V/11.4 Doc. 4 (Eng).

⁴⁰⁴ 2nd Report on Draft Convention on Freedom of Expression Information and Investigation, September 10th 1962, OEA/Ser.L/V/11.4 Doc. 4 (Eng).

⁴⁰⁵ Observations Regarding the Draft Inter-American Convention on Freedom of Expression, Information and Investigation, October 1st 1962, OEA/Ser.L/V/11.5, doc. 11 (Eng), Letter from Durward V. Sandifer.

⁴⁰⁶ Observations Regarding the Draft Inter-American Convention on Freedom of Expression, Information and Investigation, October 1st 1962, OEA/Ser.L/V/11.5, doc. 11 (Eng), Letter from Gabrino Fraga.

⁴⁰⁷ To chart the declining fortunes of the proposed convention compare 2nd Report on Draft Convention on Freedom of Expression Information and Investigation, September 10th 1962, OEA/Ser.L/V/11.4 Doc. 4 (Eng) with the 3rd Report on Draft Convention on Freedom of Expression, Information and Investigation, September 3rd 1963, OEA/Ser.L/V/11.8, doc. 3 (Eng). This latter document is both shorter and less precise about its terms and content. The final draft declaration is even further denuded on content, losing another 4 articles. See Final Draft Inter-American Convention on Freedom of Expression, Information and Investigation, October 13th 1963, OEA/Ser.L/V/11.8, doc.15 (Eng).

O.A.S because “mere declarations, no matter how beautiful they may be, will be endowed with moral fibre alone, and will certainly be ineffective against a government that does not wish to observe them”.⁴⁰⁸ The Commission had always been viewed as an interim institution pending the adoption of a coherent and binding human rights treaty,⁴⁰⁹ and it had been long felt that “only a Convention, properly ratified, will have legal contractual force. Only a Convention will be binding upon the states and adducible before an international tribunal”.⁴¹⁰ That treaty finally came in the form of the 1969 American Convention on Human Rights, signed in San José after the Inter-American Specialised Conference on Human Rights held from November 7 – 22.⁴¹¹

The Convention firstly arrived at a far more substantial, and nuanced, appreciation of the freedom of expression. Whereas the discussions of 1962 and 1963 around the proposed Declaration were felt to be premature, by 1969 there was considerable groundswell in favour of institutionalising these commitments. The result was an Article 13 of the Inter-American Convention that went into far greater detail than previous articulations of freedom of expression, although I note that it was not as sophisticated as the right contained in the draft Convention of 1962-3. Article 13(1) restated the universality of the right to freedom of expression, “everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and import information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print in the form of art,

⁴⁰⁸ Study on the Juridical Relationship between Respect for Human Rights and the Exercise of Democracy, May 1960, OEA/Ser.I/Eng.CIJ.52, p. 3.

⁴⁰⁹ Article 50 of the Protocol of Buenos Aires notes that “until the Inter-American Convention on human rights, referred to in Chapter XVIII, enters into force, the present Inter-American Commission on Human Rights shall keep vigilance over the observance of human rights.”

⁴¹⁰ Study on the Juridical Relationship between Respect for Human Rights and the Exercise of Democracy, May 1960, OEA/Ser.I/Eng.CIJ.52, p. 3.

⁴¹¹ For a full version of the drafts, comments and travaux préparatoire, refer to “The Inter-American Specialized Conference on Human Rights” San Jose, Costa Rica, 1969, OEA/Ser.K/XVI.1.1.Eng.

or through any other medium of one's choice". Article 13(2) established the lawfulness of liability for the consequences of freedom of expression so as to protect the rights and reputations of others and "national security, public order, or public health or morals. 13(3) protects the various mechanisms through which freedom of expression can be exercised and requires the government to resist from interfering with it, although 13(4) allows for the protection of children and 13(5) outlaws using freedom of expression as a cover for propaganda or the incitement of hatred. These rights are further enhanced in Article 14 that entrenched the right of reply and ensured that all organizations possess liability for any infringement.⁴¹² Panama during negotiations over the convention had consciously situated itself as again a leader in discussing rights within the proposed Convention framework, going so far as to link its previous commitment to the defunct Inter-American Convention on Freedom of Expression to its now desire to institutionalise that right within the broader Inter-American Convention on Human Rights framework.⁴¹³

We should also note out of an interest in completeness that the Convention created a Court of Human Rights.⁴¹⁴ The idea of a Court of Human Rights can be traced back to Resolution XXXI of the 9th Inter-American Conference of American States, which called for a Court to be established within

⁴¹² Inter-American Convention on Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22nd November 1963, Accessible at <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>.

⁴¹³ The Inter-American Specialized Conference on Human Rights" San Jose, Costa Rica, 1969, OEA/Ser.K/XVI.1.1.Eng.

⁴¹⁴ An understanding agreed with by the OAS General Assembly – G.A. Res. 447, OAS G.A. 9th Sess. OAS Doc. AG/447 (1979) The Ratification process for the Convention was protracted. Le Blanc Notes, writing in 1977, at a time when the fortunes of the Convention were at their nadir, that the prospects for ratification within the foreseeable future were not good, especially given the reluctance of the bigger states to devote time to ratification. It was only with the incoming Carter Presidency in the U.S.A, with its re-emphasis on human rights in foreign policy, that the U.S.A started to support the Convention process, and by 1980 11 states, the minimum for activation, had ratified it and brought the Convention to life.

the new organisational structure being discussed. The Court finally became active on 18th July 1978 with two broad functional roles: contentious and advisory jurisdiction.⁴¹⁵ Whilst contentious jurisdiction was binding, advisory opinions allowed states to use the court without the perceived dangers of subjecting themselves to compulsory jurisdiction.⁴¹⁶ The Court, whilst a fascinating organisational response to human rights promotion, is relevant for our discussion only because Panama agreed to its creation. As discussed below, the Court was silent on the question of Panama and freedom of expression, and as such does not embody a substantive socialisation mechanism to concern us in this analysis.

What was the nature of Panamanian participation in this process? I suggest that we can conceptualise it as a discreet set of persuasive arrangements where states debated with each other the creation of a future community identity. Referring back to the scope conditions in chapter three, I note that these discussions occurred without asymmetric arrangement between states. Nor was the content of these discussions about the enforcement of any particular standard as “correct”. Rather as we have seen, Panama and others debated with each other what it meant to be part of the OAS. It did so in a long sequence of meetings, both regular and ad hoc, where questions of rights and freedom of expression were repeatedly debated and consensus sought on the “correct” way forwards. These lasting institutional contacts subscribe to Checkel’s analysis as presented

⁴¹⁵ Annual Report of the Inter-American Court of Human Rights to the General Assembly. CEA/Ser.L/V/111.3, 15th April 1980.

⁴¹⁶ Annual Report of the Inter-American Court of Human Rights to the General Assembly of the OAS, 15th April 1980, CEA/Ser.L/V/111.3 p. 5.

in chapter three.⁴¹⁷ Any socialisation that flowed from this arrangement would therefore be construable as persuasion based.

THE FAILING OF AGENCY: THE ABSENCE OF BARGAINING MECHANISMS

The above represents on paper a considerable set of revisions, upgrades and commitments to both freedom of expression in particular but also to democracy and broader questions of human rights. I have also clearly uncovered the position of Panama within those. Its active agreement to the Commission and Convention, together with its position as an apparent *leader* in the discussions over the proposed Inter-American Convention on Freedom of Expression would appear to suggest that Panama should be, by 1978, strongly protecting that right within its own domestic political structures and that socialisation had occurred between 1951 and 1978.

It is, therefore, superficially mystifying to uncover that Panama across this period shows scant regard for freedom of expression. There is no correlation between the chain of upgrades to the regional arrangement and the situation within Panama. The shifting constellations of political power within Panama were united, regardless of the rhetoric in favour of democracy, against the actual establishment of true democracy and protection of freedom of expression.⁴¹⁸ The coup of 1968 brought an end to civilian, if often oligarchic, government and the start of some 20 years of military rule. The National Guard led by General Omar Torrijos seized power and was to rule for the next 13 years. The National

⁴¹⁷ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 813.

⁴¹⁸ Laurence Whitehead, "The Imposition of Democracy," in *Exporting Democracy: The United States and Latin America*, ed. Abraham F. Lowenthal (Baltimore: The John Hopkins University Press, 1991) p. 368.

Assembly was closed and all political parties proscribed.⁴¹⁹ It is not without a sense of irony that the military coup that interrupted civilian government in 1968 would, if Panama had been successful in integrating the Larreta Doctrine into the OAS commitment to democracy in 1945-48, have led to its suspension from the OAS.

Substantiating the claim that the Panamanian position was unattached to regional standards, I draw on the empirical investigation of the Inter-American Commission of Human Rights report into the situation within Panama published in 1978. Whilst I will not analyse the conceptual significance of this report until the next section given when it was published, the report offers a retrospective analysis of the situation within Panama in the 1970's that is relevant to the study here. The Commission noted that Panama had ratified the International Covenant on Civil and Political Rights⁴²⁰ on 8th March 1977, its optional protocol,⁴²¹ as well as the Covenant on Economic, Social and Cultural Rights.⁴²² It also noted that the Panamanian Constitution of 1972 nominally protected the rights of freedom of expression, assembly and association though Articles 36 – 40.⁴²³ Article 36 read:

Every Person may freely express his opinion orally, in writing or by any other means, without subjection to prior censorship. However, legal liability shall be incurred when by any of these means the reputation or honor of persons is assailed or when social security or public order is attacked.⁴²⁴

⁴¹⁹ Peter Calvert and Susan Calvert, *Latin America in the Twentieth Century* (London: MacMillan Press, 1990) p. 149.

⁴²⁰ 8th July 1977, *Gaceta Oficial*, 18.373 Panama City.

⁴²¹ 4th February 1977, *Gaceta Oficial*, 18.269 Panama City.

⁴²² 18th May 1977, *Gaceta Oficial*, 18.336 Panama City.

⁴²³ Report on the Situation of Human Rights in Panama. 22nd June 1978, OEA/Ser.L/V/II.44. doc. 38, rev. 1, chapter five, Para.1.

⁴²⁴ Quoted in Report on the Situation of Human Rights in Panama. 22nd June 1978, OEA/Ser.L/V/II.44, doc. 38, rev. 1, chapter five, Para.1.

The report established that a range of legal and judicial regulations could undermine constitutional guarantees of freedom of expression, such as existed in Article 36 of the Panamanian Constitution. For example, wide range use of Cabinet Decrees, such as No. 342 limited the right to freedom of expression in the name of public order.⁴²⁵ The IACHR noted that Decree 342 stated, “various types of Expression... were considered a crime of subversion of public order”.

How can we explain the gap between Panama’s behaviour within the OAS and its own domestic standards? The first step in investigating this refers to the total absence of bargaining processes. Whether one is discussing either conditionality or some form of social influence, both processes rest on the requirement that there is an actor socialising a target state. This dynamic is then expressed through various reports, pronouncements, suggestions, engagement and discussion, which are then available for the researcher to draw upon.⁴²⁶ The situation between Panama and the OAS did not resemble this. There are no reports of any kind across this period, at a fundamental level the OAS was not “talking” to Panama. There are no reports or dialogue. There is discussion at the OAS level about a range of relevant activities on democracy and freedom of expression, but where is the sense of agency to transmit those actively to Panama? There was none. This is not attributable to lethargy on the part of the Commission. The Commission had developed a surprisingly robust defence of its goals in the face of the potential limitations of hazy mandates in a process of “creative interpretation” of its founding documents. It did this because in the face

⁴²⁵ *Gaeta Oficial*, No. 16.480, 31st October 1969.

⁴²⁶ An example of this silence comes from an analysis of the Report Submitted by the Pan-American Union to the Eleventh Inter-American Conference, 1959, OEA/Ser.D/V.2 (Eng) which makes no reference to either Panama or human rights.

of such grave hemispheric wide abuses, there was the need to “establish and publicise what was happening and seek to change behaviour through negotiation, rather than adverse rulings in petition cases”.⁴²⁷ However, the Commission was simply too small, and too under funded, to deal with all states and all issues, whatever its mandate may have been, and Panamanian respect for freedom of expression standards simply did not figure in its activities.⁴²⁸

THE “FAILURE” OF MEANING

If the lack of agency accounts for the lack of presence of various forms of bargaining socialisation, there is still the matter of community building itself as a socialising process resting on persuasion. Panama had agreed to a whole raft of revisions and enhancements to the OAS. It would appear to have been persuaded through ongoing discussions with other members that commitments to rights and democracy were the superior course of action. If the failure of the ASEAN community building process was because of a lack of standards, and a lack of clear mechanisms for protecting those standards, then the discussions in the OAS should suggest that socialisation occur. How then do we explain the gap between what Panama said at the regional level, and what it actually did domestically? This gap between national and regional standards was something the OAS was painfully aware of, the IAJC remarking:

We have a multiplicity of declarations that are not carried out, that have remained in writing, while, to a surprised and perplexed public, there appears to be an extraordinary difference between these declarations and the political and international reality of the hemisphere [and that

⁴²⁷ Harris and Livingstone, eds. *The Inter-American System of Human Rights* Chapter by David Harris, *Regional Protection of Human Rights, The Inter American Achievement*. p. 20.

⁴²⁸ Interview with Christina Cerna, Principle Human Rights Specialist, Inter-American Commission on Human Rights, Organization of American States, Washington D.C., America, 04/12/2008.

consequently there exists an] absolute contradiction between the written law and reality.⁴²⁹

Why would the states of the America's, and Panama in particular, agree to a whole raft of community building process and even go so far as to institutionalise this in Commissions and Courts if they had no intention of changing their behaviour to match their on paper declarations? In answering this, we must be aware that the OAS, indeed pan-American regionalism generally, was imbued with a set of pre-existing meanings that coloured both Panama's behaviour at the regional level, as well as its interpretations of the human rights standards that it had, on paper, agreed to. Notions of any specific hemispheric arrangement were constructed in relation to the continued importance not only of sovereignty and equality, but also in terms of a specifically "Latin American" set of understandings about what regional politics meant, which were constructed and interpreted historically. Following the final collapse of Spanish imperialism in the wars of Bolivarian Independence, and the failure of the Panama Congress of 1825, Latin American states arrived at four rules that became the basis of the shared meaning of regionalism to states in the hemisphere.⁴³⁰ Firstly, that old imperial boundaries would be honoured, secondly that sovereignty was to be rigorously upheld, thirdly that states should cooperate and mediate disputes and fourthly that implementation of agreements would be lax.⁴³¹ This fourth point is significant because it hints that all the agreements, the on paper commitments to rights, democracy and freedom of expression previously explored, were not

⁴²⁹ Study on the Juridical Relationship between Respect for Human Rights and the Exercise of Democracy, OEA/Ser.I/Eng.CIJ.52.

⁴³⁰ Jorge I. Domínguez, "International Co-Operation in Latin America: The Design of Regional Institutions by Slow Accretion," (Cambridge, MASS.: Weatherhead Center for International Affairs, Harvard University, 2004). p. 12.

⁴³¹ Ibid.

interpreted by those who composed them as meaning you had to comply with them. This, I suggest, resulted in a specific approach to the OAS. Firstly those officials who formulate OAS level commitments never note that gap, even if they exploit it. Secondly, that states will continually work to advance the rhetoric regardless of the growing gap between that and implementation and thirdly that states are happy to sign agreements that are in contradiction to their earlier professed normative commitments.⁴³²

This helps explain the disconnect Panama exhibited between regional and national standards. Panama could agree to community building processes in the sure understanding that the process was never intended to result in meaningful guides to identity. What this reveals is that community building in the OAS, at least before the late 1990's, did *not* create socialisation processes, despite all the on paper evidence that it had, because no one within that process was either persuaded to change their identity or, vitally, even to try and persuade others to do so. It is a remarkable example of states pushing forwards with behavioural patterns that only make sense if we understand the social context that generates meaning for those political acts. Community building therefore does not result automatically in socialisation efforts. The value of the OAS study here is that it helps us identify when, and why, community building is significant for socialisation via persuasion. Whilst further analysis is outside the remit of this case, it is fascinating to ponder how these various set of understandings arose, and the role that a constructivist enquiry into social identities would play. Once again, it would appear that to understand the nature of socialisation processes themselves, especially how and why they succeed and fail, we need to make

⁴³² Ibid. p. 19

recourse to a broader social enquiry to investigate why norms are, or are not, seen as in some way binding.

Widening the field of analysis for a moment, the disingenuousness of community building in the OAS example is remarkable, as is the United States complicity with that. Across the period there is a general trend towards the establishment of military Junta's in Latin America, often with the complicity or support of the USA. Brazil fell under military rule in 1963, Bolivia in 1971, Chile and Peru in 1973 and Argentina in 1976 at exactly the same time as the negotiations over OAS standards on freedom of expression and the ways in which it is promoted and protected. The shift away from democracy, and the support this received from Washington as a necessary evil in the face of the Communist threat was decisive in undercutting the utility of the OAS's revisions to its democratic standards.⁴³³ Contemporary studies of US efforts to promote democracy in Latin America make scant reference to the OAS.⁴³⁴ American commitments to democracy were always subordinate to political priorities. Richard Nixon was of the belief that "the United States has a strong interest in maintaining cooperation with our neighbours *regardless of their domestic viewpoint*" (italics added),⁴³⁵ a view unsurprisingly echoed by Henry Kissinger who emphasised in 1973 a pragmatic relationship where human rights abuses could be ignored if they were not too offensive, and if they were, then the USA would just avoid dealing with

⁴³³ See for example John D. Martz and Lars Schoultz, eds. *Latin America, the United States and the Inter-American System* (Boulder: Westview Press, 1980).

⁴³⁴ An excellent example is offered by Abraham F. Lowenthal, ed. *Exporting Democracy - the United States and Latin America* (Baltimore and London: John Hopkins University Press, 1991). A focus on the early importance of security is Accessible at Mecham, *The United States and Inter-American Security, 1889-1960*. A study on the Latin American perspective is Howard J. Wiarda, ed., *The Continuing Struggle for Democracy in Latin America* (Boulder: Westview Press, 1980).

⁴³⁵ Henry Kissinger, US Congress, Senate, Committee on Foreign relations, Subcommittee on Western Hemisphere Affairs, *United States Policies and Programs in Brazil*, 92nd Cong. 1st Session, May 4,5 and 11, 1971, p. 290.

that country, a somewhat disingenuous claim given its relations with Chile and Uruguay at the time.⁴³⁶

COMMUNITY OVERSIGHT AND THE FAILURE OF DEMOCRATIC PROTECTION 1978-1990

Which was more important in explaining the failure of socialisation between 1951 and 1978, the established social meaning of membership or the lack of agency between the OAS and Panama itself? Put another way, could an activist and engaged OAS have overridden the established social meaning and forced Panama to live up to its commitments? Examining the period 1978-1990 helps reveal clearly that it could not. The period between 1978 and 1990 sees a detailed OAS interest in Panama. It is illustrative that this interest did not take the form of a court case, but in the extension of the Commission's work in the form of investigation. Here socialisation was for the first time clearly intended, and we can discern the two social influence processes, explicitly Rhetorical Action similar to that we encountered before in the study of ASEAN, and novelly an attempt to "name and shame" Panama through the public dissemination of information about its domestic standards. However, neither process was successful, the events under Noriega in the late 1980's being clear testimony to that. Indeed, the OAS was ineffective in responding to that crisis, and it was only with the U.S. led intervention of 1989 that democracy was restored.

⁴³⁶ Lars Schoultz, *Human Rights and United States Policy Towards Latin America* (Princeton: Princeton University Press, 1981) p. 110. The Carter administration, it should be noted, adopted a different orientation to either the Nixon or Ford years, or indeed the Reagan years after. Carter was far more proactive on the protection of rights and in linking that to other areas of cooperation, arguing in his first major foreign policy speech that a regime that "deprives its own people of basic human rights" will suffer accordingly.

THE NATURE OF OAS SOCIALISATION PRESSURE 1978-1990.

The nature of OAS interest in Panama over the period rests on the publication, and content of, the Reports of the Inter-American Commission on Human Rights Commission. The Country Reports on Panama of 1978 and 1989 promote two related socialisation processes, both of which I suggest are rationally construable. Firstly, and echoing the process of Rhetorical Action seen previously in the ASEAN study, the reports presented discreet "recommendations" that outlined the direction of change that should occur in order to bring Panama "up" to regional standards. For example, the 1978 report closes on these recommendations calling for nine discreet reforms, from judiciary independence to greater adherence to international norms.⁴³⁷ The 1989 Report is more specific still, in Article 8 of its conclusion it explicitly links Panamanian future behaviour to Article 13 of the Convention.⁴³⁸ The OAS was linking its standards to the future behaviour of Panama, creating a map of future desired actions. Again the OAS here was not engaged in a process that is understandable as an account of identity creation, and resulting free debate where actors seek to persuade each other. Instead, these recommendations forwarded are clear truth statements, put forwards as correct and not negotiable, the provision of which are designed to censure Panama and provide it with a model of what "correct" future behaviour resembles.

Secondly, we can discern a new socialisation process that rests on the very fact the reports were published. The Reports represent an attempt to disseminate

⁴³⁷ Report on the Situation of Human Rights in Panama, 22nd June 1978, OEA/Ser.L/V/II.44 doc. 38, rev.1, "Conclusions". For a broader account of the relevance of this 1978 report, and its effect on the rules of conduct for Commission activities, see Tom Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not yet an Ox," *Human Rights Quarterly* 19, no. 3 (1997) pp. 531-532.

⁴³⁸ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Conclusions and Recommendations. Article 8.

information regarding the shortcomings of Panamanian standards on freedom of expression. I term this a Naming and Shaming approach. I note that the Commission at the outset was not engaged in direct enforcement. Its mandate, to monitor and supply information did not provide any ability to articulate, or enforce, sanctions, although as just noted it was able to make discreet recommendations.⁴³⁹ It was not in the business of "protecting" rights in any direct way, rather it was engaged much more indirectly with "promoting" observance through "Naming and Shaming". Naming and Shaming is a process that has affinities with Rhetorical Action, the difference being that the process rests not on the provision of statements that are held to mark the way forwards. The process is dependent on highlighting clear "wrongs", vis-à-vis existing standards as expressed in the various statements of regional standards on freedom of expression. These are expressed to an audience in the belief that greater information about these infractions will lead to revision of that behaviour to avoid the loss of legitimacy that comes with "shame".⁴⁴⁰ There is not engagement in communicative and persuasive acts here, in the sense that mutual constitution and identity issues are up for truthful debate. The Commission Reports make no allowance for maybe being "wrong" in their assessments, or in the standards that they apply.

⁴³⁹ Pan American Union, *Draft Declaration of the International Rights and Duties of Man and Accompanying Report* p. 60.

⁴⁴⁰ Lebovic and Voeten, "The Politics of Shame: The Condemnation of Country Human Rights Practice at UNHCR," p. 871.

1978-1990: THE FAILURE OF SOCIAL INFLUENCE

The period up to 1990 was one of marked turbulence with regards to freedom of expression within Panama.⁴⁴¹ Drawing on the 1978 and 1989 Commission reports on Panama, this section argues that the social influence processes deployed were wholly unsuccessful. There is no correlation between the oversight of the OAS and the standards within Panama. Indeed, there is in fact an inverse trend between those regional standards and pronouncements and the situation within Panama. I attribute this failure to the weakness of social influence processes deployed, together with the continuing social meaning of membership.

Following General Torrijos' announcement that he would work towards general elections in 1984, he stood aside from the position of President in favour of Aristides Royo. Following the death of Torrijos in a plane accident on July 31st 1981, a period of marked instability within the ranks of the National Guard and wider Panamanian Government ultimately led to Manuel Noriega becoming head of the Panamanian Defence Forces.⁴⁴² The 1984 elections in particular became a source of considerable controversy, with international observers denouncing the government for massive electoral fraud.⁴⁴³ On June 8th 1987 Roberto Diaz Herrera of the Panamanian Defence Force accused Noriega of involvement in the death of President Torrijos. The accusation dramatically escalated the tense situation in Panama, and led to the State of Emergency Decree of June 10th 1987. Without getting lost in the minutiae of the rumbling political crisis, ultimately

⁴⁴¹ For a broader assessment of the status of Latin American democracy at this time, refer to Thomas D. Anderson, "Progress in the Democratic Revolution in Latin America: Country Assessments - 1987," *Journal of Interamerican Studies and World Affairs* 29, no. 1 (1987).

⁴⁴² Linda Robinson, "Dwindling Options in Panama," *Foreign Affairs* 68 (1989-1990), p. 188.

⁴⁴³ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Introduction. Also note *Human Rights in Panama*, American Watch Report, Washington D.C., April 1988, p. 6.

Panama was invaded by the United States on December 20th 1989, some 26,000 troops participating in Operation Just Cause to remove Noriega, who was taken to Miami for trial on January 4th 1990.⁴⁴⁴

The Inter-American Commission had noted that, starting in June of 1987, it “began to receive numerous and serious complaints of violations of the human rights set forth in the American Convention of Human Rights, of which Panama is a party”.⁴⁴⁵ To investigate these, the Commission requested an invite to Panama to conduct a field mission, which was duly offered. The Commission noted that Panama had made increasing recourse to “declaring a state of emergency and to adopting special State security measures”,⁴⁴⁶ and that under Decree no. 56 of June 10th 1987, it had ordered the total suspension of the Right to Freedom of Expression (Article 37 of the Panamanian Constitution, as revised in the Constitutional Act of 1983). Although this suspension was lifted with Decree no. 59 of July 7th 1987, Decree no. 63 of August 14th restricted the right of Assembly and Decree No. 70 of October 1987 prohibited public demonstrations indefinitely. In its concluding Comments, the Commission noted that:

It is convinced that these [freedom of expression] Rights that are fundamental to the existence of a democratic society, have been violated by the government of Panama. These rights cannot be exercised in Panama due to restrictions imposed by the Government which include illegal actions, threats on the lives, liberty and personal integrity of independent journalists as well as measures taken against the media that have resulted in their closing the destruction of the same, the revocation of their licenses, and other forms of pressure that have led to the strangulation of these rights.⁴⁴⁷

⁴⁴⁴ Detailed in Musicant, *The Banana Wars: A History of United States Military Intervention in Latin America from the Spanish-American War to the Invasion of Panama* pp. 390-417.

⁴⁴⁵ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Introduction.

⁴⁴⁶ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Chapter I – The Political and Legal System of Panama, Section 3 – Legal Restrictions on the Exercise of Human Rights in Panama.

⁴⁴⁷ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Conclusions and Recommendations.

The effectiveness of Naming and Shaming as a socialisation process was undermined when it was left uncertain who was the "audience for the Commission reports on conditions in particular countries".⁴⁴⁸ Naming and shaming only works when the audience is both wide and interested in the findings of any given report. The addition of the Country Reports to the operations of the Commission marked a vital potential first step, but whilst they evidence a clear interest in Panama by the OAS, I am not convinced they represent a consistent interest. There are only two over a 10-year period, and neither was followed up.⁴⁴⁹ This issue of "follow-up" is key, as in reality this debate is over the presence, and composition, of the audience that would receive these reports. There had been considerable debate within the Commission as to how to respond to country reports, particularly whether some sort of monitoring should be institutionalised to report back on whether the deficiencies identified had been rectified. The 1974 IACHR report on Chile was so extreme that the General Assembly, for the first time, requested that the Commission report back on progress that Chile had made in addressing these issues.⁴⁵⁰ This "improvement" was never uniformly followed (there are no follow up for the 1978 Panama reports, for example) and in any event was short lived. The 1981 IACHR Report on Argentina provoked such strong reactions from Buenos Aires and its allies that the General Assembly refused to discuss the report lest it garner unpalatable attention.⁴⁵¹ This resulted in the "lost all of the elements that once made them [the country reports] vehicles of political condemnation", with

⁴⁴⁸ Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not yet an Ox," p. 517.

⁴⁴⁹ Wood, "Human Rights and the Inter-American System," p. 130.

⁴⁵⁰ Refer to OAS General Assembly Resolution GAR190 (u-o/75).

⁴⁵¹ Annual report of the Inter-American Commission on Human Rights, 1980-1981, 16th October 1981, OEA/SER.L/V/11.54.

the concomitant belief that "the General Assembly should limit its role to the approval of the annual and country reports simply by verifying compliance with any formal requirements".⁴⁵² As the recommendations contained in the reports were not "formal requirements", rather counted as recommendations, they were not followed up.⁴⁵³ Rhetorical action efforts could be ignored with apparent impunity if no one would ever judge you if you fail to heed the pressure. This denial of a public forum undercut the Naming and Shaming accounts within country reports as well.⁴⁵⁴ A secret report generates little sense of shame, especially when it is shown only to member states, many of whom are as egregious in their violations of community standards as the country documented in the report itself.

Secondly, both Rhetorical Action and Naming and Shaming only work if there is an agreement about what is shameful and what is in some way "right". Whilst the evolution of the OAS and its understanding of freedom of expression may seem to provide the detail against which Panama's behaviour could be judged, the simple presence of standards expressed regionally does not necessarily equate with those standards being understood as binding on members. For there to be shame, or for the calls of the Commission to be seen as legitimate, there has to be a sense that certain behaviour is shameful and other behaviour is somehow less so, but the enduring social meaning of membership undercut that. There is a distinct disjuncture between regional and national assessments of just what shame appeared to mean. The failure of the OAS to create this sense of

⁴⁵² Harris and Livingstone, eds. *The Inter-American System of Human Rights*. Chapter by Antonio Augusto Carcado Trindade, *The Interaction Between Political Actors, Commission and Court*, pp. 193-195.

⁴⁵³ Report on the Situation of Human Rights in Panama, 9th October 1989, OEA/Ser.L/V/II.76, doc. 16, Rev. 2, Conclusions and Recommendations.

⁴⁵⁴ Again note the debate at Flockhart, "Masters and Novices: Socialization and Social Learning through the Nato Parliamentary Assembly," p. 367.

shame and to meaningfully link its standards to the expectation that they should be fulfilled, was the primary requirement for even partial socialisation to occur, and its absence explains, I suggest, the failing of socialisation via either Rhetorical Action or social influence over the period.

MAKING MEMBERSHIP MATTER: THE OAS AND PANAMA SINCE 1990

Whereas previously we have been studying the failure of socialisation attempts to successfully change Panamanian standards, the most recent period indicates the at least partial success of the various pressures brought to bear on Panama. I am careful to not overstate the case; the initial restoration of democracy in Panama after the December 1989 invasion came at the point of American guns, not the pen of regional politicians.⁴⁵⁵ I do suggest, however, that over time membership of the OAS came to a position of significance that it previously had not enjoyed. This has dramatically empowered the effectiveness of social influence techniques. To investigate these claims, I first outline the developing OAS commitment to democracy, before turning to chart the increasingly detailed interest in freedom of expression within the hemisphere. I note the role of Panama within that community building process. I then present, as before, the social influence processes that were deployed before turning to the reviving standards of freedom of expression within Panama. Finally, I will investigate the link between Panamanian change and OAS behaviour, attributing it both to the social influence mechanisms encountered as well as a shifting social meaning that came to characterise the OAS during the 1990's.

⁴⁵⁵ The role of the United States in reconstructing democracy in Panama is explored in Whitehead, "The Imposition of Democracy," pp. 366-371.

DISCURSIVE AGREEMENT ON DEMOCRACY AND FREEDOM OF EXPRESSION

This section serves to present the sophisticated standards that were birthed by community building since 1990. I again suggest that these processes of forming and reforming the communal identity conform to the scope conditions established in chapter three, and as such present at least the potential for persuasion based socialisation efforts.

There is a definite upswing in both the tone and outcome of community building. The first significant development in terms of democracy actually came as early as the 1985 Protocol of Cartagena de Indias, approved at the 14th Special Session of the OAS General Assembly. The Protocol amended the preamble of the OAS Charter, adding, "Representative democracy is an indispensable condition for stability, peace and development of the region".⁴⁵⁶ Furthermore Article 2 of Chapter 1 of the revised Charter constitutionalised the requirement for the OAS to "promote and consolidate representative democracy" although that is balanced with the need to do so with "due respect for the principle of non-intervention".⁴⁵⁷ Further additions to the "emerging pro-democratic doctrine"⁴⁵⁸ articulated at the OAS meeting in Santiago held in June 1991 to hammer out the "Santiago Commitment to Democracy and the Renewal of the Inter-American System" Here the OAS pledged to adopt an "efficious, timely and expeditious, processes to ensure the promotion and defence of representative democracy."⁴⁵⁹ The commitment empowered the Secretary General to call for the immediate

⁴⁵⁶ Protocol of Amendment to the Charter of the Organization of American States "Protocol of Cartagena de Indias", approved on December 5, 1985, at the Fourteenth Special Session of the General Assembly.

⁴⁵⁷ Ibid.

⁴⁵⁸ Andrew F. Cooper and Thomas Legler, *Intervention without Intervening: The O.A.S. Defense and Promotion of Democracy in the Americas* (New York City: Palgrave MacMillan, 2006) p. 26.

⁴⁵⁹ The Santiago Commitment, OEA/Ser.P/AG/Doc.2734/9, 4th June 1991.

convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the organizations member states. OAS General Assembly Resolution 1080 went further than Santiago inasmuch as it "instructed the Secretary General to convene immediately a meeting of the Permanent Council and to hold an ad hoc meeting of the ministers of Foreign Affairs or a special session of the General Assembly, all within a ten day period, with the goal of empowering the General Assembly to "adopt any decisions deemed appropriate, in accordance with the Charter".⁴⁶⁰ It is significant in that it is the first attempt to make the "long standing commitments to democratic defence operable",⁴⁶¹ marking a "watershed moment" for the OAS.⁴⁶² Previous OAS efforts had engaged in a process of attempting to de-legitimize non-democracies within the Americas, through the setting of standards and on paper commitments.⁴⁶³

The Washington Protocol of 1992 explicitly tied continued functional membership of the OAS to the maintenance of democratic standards. It allowed for the suspension of member states if their government is changed in a non-democratic way, suspending them from participation in the OAS and its related bodies.⁴⁶⁴ In line with this Protocol, December 14th 1992 saw the amendment of Article 9 of the OAS Charter, which now read:

⁴⁶⁰ General Assembly Resolution 1080, OEA/Ser.P/AG/doc.2739/91, Rev.1.

⁴⁶¹ Arceneaux and Pion-Berlin, "Issues, Threats and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America," p. 49.

⁴⁶² Interview with Christina Cerna, Principle Human Rights Specialist, Inter-American Commission on Human Rights, Organization of American States, Washington D.C., America, 04/12/2008. In the same vein, note Francisco Villgrand de Leon, *The Organization of American States and Democratic Development* (Washington D.C.: United States Institute for Peace, 1992).

⁴⁶³ Ibid.

⁴⁶⁴ Protocol of Washington, December 14th 1992, Accessible at

[A] Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialised Conferences as well as in the Commissions, Working Groups and any other bodies established.

The June 1993 OAS General Assembly resolution, the “Declaration of Managua for the Promotion of Democracy and Development” recognised that “the Organization’s mission is not restricted to defending democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy and a continuing effort to prevent and anticipate the very causes of the problems that work against democratic rule”, a strong statement of the desire for the OAS to move towards proactive engagement with protection and promotion of democracy.

The trend within the OAS with regards to democratisation came together in the September 11th 2001 Inter-American Democratic Charter (IADC).⁴⁶⁵ The IADC restated, in Article one, that “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”⁴⁶⁶ The composite nature of democracy as a norm set is re-affirmed by Article 3 that says that “essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms.”⁴⁶⁷ Article 4 noted the centrality of the various component rights, in particular freedom of expression. Article 7 expressly restated the link between democracy and human rights more broadly construed. Articles 17 and 18 restate the ability of the OAS to take

<http://OAS.org/assembly2001/assembly/GAAssembly2000/Protocol%20of%20Washington.pdf>

⁴⁶⁵ Andrew F. Cooper, “The Making of the Inter-American Democratic Charter: A Case of Complex Multilateralism,” *International Studies Perspectives* 5 (2004) p. 95.

⁴⁶⁶ Inter-American Democratic Charter Doc. OEA/SerP/AG/Res.1 (2001); 28th Spec. Sess., OAS Doc. OEA/Ser.P/AG/RES.1 (xxviii-E/01) (OAS General Assembly) (Sept. 11, 2001).

⁴⁶⁷ Ibid.

interest in the democratic health of any member state when requested, and to outline methods of assistance. Article 20 outlined the diplomatic measures to be taken to restore democratic constitutional practices, whilst Article 21 noted that should this fail, membership of the OAS could be suspended. As a charter, not a mere declaration, it has greater force than those pronouncements that preceded it.⁴⁶⁸

Against this backdrop of revisions to the democratic credentials of the OAS, stands a more detailed appreciation of freedom of expression. The Inter American Convention had already institutionalised in Article 13 a strong understanding of what freedom of expression actually meant, but discussions now increased that depth further. Prime amongst these is the creation and then operation of the Special Rapporteur on Freedom of Expression, created as a result of the 97th Regular Session of the Inter American Commission in October 1997. Whilst I analyse the conceptual significance of the Special Rapporteur as a promoter of socialisation below, here I note that the Rapporteur took the lead in researching, investigating and then drafting what would become the 17th October 2000, of the Inter-American Declaration of Principles on Freedom of Expression, adopting 13 principles that together provide a coherent and detailed appreciation of the meaning of freedom of expression and the relationship between that right and the associated rights of assembly, opinion, thought and association. It notes the “fundamental and inalienable” nature of the right (Article One), and then outlined the content of that right in Article Two, which stated that:

Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal

⁴⁶⁸ Arceneaux and Pion-Berlin, "Issues, Threats and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America," p. 49.

opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Article Four protected the right to access information held by the state, whilst Article 5 noted that prior censorship through any means “must be prohibited by law”. Article Six protected the right to communicate views “by any means and in any form”, and outlines the protection of journalists from state interference, whilst Article Eight protects the right of confidential sources and Nine required the state to protect communicators of opinions from harassment of any form. The only restrictions on this are in cases where it can be proved that “in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”⁴⁶⁹

SOCIAL INFLUENCE FROM TWO DIRECTIONS: COMMISSION AND SPECIAL RAPPORTEUR

With these broad revisions to regional standards mapped as a project of community building, we can now discern the exact way in which they were articulated to Panama. Much as in the previous period, the prime focus of interlocution between Panama and the OAS on freedom of expression comes in the form of country reports. However, there are now two origins of that pressure, the continuing reports of the Inter-American Commission but also the reports produced by the Special Rapporteurship, either in the form of their annual general synopsis on the state of that right both generally and through country

⁴⁶⁹ Inter-American Commission on Human Rights, 108th Session, “Inter-American Declaration of Principles on Freedom of Expression”, accessible at <http://www.iachr.org/declaration.htm>.

specific investigation (from 1998 onwards) or in terms of country specific reports (as they produced with regards to Panama in 2003).

In understanding the socialisation efforts that the OAS engaged in over this period, I note that conditionality remains inadequate in accounting for the changes within Panama. There is simply no court case on Panamanian compliance with freedom of expression standards, although there is considerable activity by the court with regards to other countries.⁴⁷⁰ Despite this, rational choice analysis through social influence is considerably upgraded. The Special Rapporteur is a vital “missing link” in the story. The Special Rapporteur on Freedom of Expression was by the 97th Regular Session of the Inter American Commission in October 1997. In terms of its enhancement of social influence processes, it is important to assess the Rapporteur’s four roles. Firstly, it raises public awareness through information dispersion, organised seminars and meetings, conferences for journalists. Secondly, it acts as a norm entrepreneur advancing understandings of freedom of expression that not only collates information but that engages in forward thinking which provide options and opinions that the Commission, amongst other organs, can avail themselves of if desired.⁴⁷¹ Thirdly, it conducts on site visits that report the current status of the Right to freedom of expression across the hemisphere and finally it has acted in

⁴⁷⁰ The Inter-American Court had developed a meaningful body of jurisprudence on Freedom of Expression. The November 22nd 2005 decision of the *Palamara Iribarne v. Chile* case declared that “the state violated the right to freedom of thought and expression” in Article 13 of the Convention, and through article 269 (paras. 9-19) outlined a range of binding changes that Chile had to follow. This was followed by a November 30th 2007 Decision monitoring Compliance with the 2005 judgement filled which outlined progress towards those goals. The Court engaged in similar defences in the “Last Temptation of Christ” Case (“*Olmedo Bustos et al.*”) on February 5th 2001, the *Ricardo Canese v. Paraguay* decision of August 31st 2004 and the *Herrera-Ulloa v. Costa Rica* Decision of July 2nd 2004. In all of these the Inter-American system was successfully protecting freedom of expression through legal systems.

⁴⁷¹ Interview with Alejandra Gonza, Lawyer, Special Rapporteurship on Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States, Washington D.C., America, 04/12/2008.

an advisory role as a cluster of expertise and knowledge for notions of freedom of expression. It offers a nexus of expertise and practitioners that inputs into the decisions of the Commission and other OAS organs.⁴⁷² It has played a role with regards to Panama in all four of these guises. The annual reports involved statements about what Panama should do to revise its current protection of freedom of expression to ensure greater adherence to regional standards. They are therefore documents that evidence Rhetorical Action. For example, in the most recent Annual Report of the Special Rapporteur it is noted that the revisions to Article 304 of the Panamanian constitution “are incompatible with the American Convention on Human Rights” and should be altered into adherence with that regional standard.⁴⁷³ The reports published also stand as detailed Naming and Shaming accounts, publicly describing in considerable detail the faults of Panamanian compliance.⁴⁷⁴

INVESTIGATING THE SUCCESS OF OAS EFFORTS: THE POLITICS OF OUTREACH

How effective were these revised efforts? The evidence, garnered from both Commission and Special Rapporteur investigations show a substantial improvement over freedom of expression concerns within Panama, especially when once compares the first Special Rapporteur report of 1998 to the more recent investigations.

⁴⁷² Ibid. The Rapporteurship itself defines these as its three-fold mandate. The promotion and dissemination of knowledge, the conduct of country visits and engagement with hemispheric networks for the protection of the Right of Freedom of Expression. See Report of the Office of the Special Rapporteur for the Freedom of Expression, 1998 Annual Report. Accessible at <http://www.cidh.org/Relatoria/showarticle.asp?artID=134&IID=1>, pp. 10-12.

⁴⁷³ Report of the Office of the Special Rapporteur for Freedom of Expression, Volume II, 8th March 2008, OEA/Ser.L/V/II.131 para 225.

⁴⁷⁴ Report of the Office of the Special Rapporteur for Freedom of Expression, Volume II, 8th March 2008, OEA/Ser.L/V/II.131. The reprimands are present throughout the text.

Panamanian President Guillermo Endara (1989-1994) may have failed to deal with the structural consequences of invasion, but he managed to preside in 1994 over the "freest and most competitive national elections in the history of the country"⁴⁷⁵ where opposition leader Balladares won. The Endara regime represented "a substantial improvement over the prior [Noriega] regime"⁴⁷⁶ in respecting freedom of expression, although "highly subjective" enforcement of technical operational requirements" represented a continual threat.⁴⁷⁷ The referendum held to ratify the new constitution in 1992 was acclaimed as one of the fairest and most open in Panamanian history.⁴⁷⁸ The first Annual Report of the OAS Special Rapporteur on Freedom of Expression, in 1998, noted that Panama "has a set of anachronistic laws on freedom of expression" that "rather than acting as an effective guarantee of rights, these laws have become a frequently used tool in the hands of government employees who wish to silence criticism".⁴⁷⁹ The Special Rapporteur noted that the continued outdated legal framework in Panama included Cabinet Decree 251 of 1969 on Censorship, Chapters I and II of Title III of the Criminal Code (Articles 172-180) on "crimes against honor" (*delitos contra el honor*); and Laws 11, 67 and 68 of 1978 on the media and journalism, commonly referred to as the "gag laws". To this triumvirate should be added provisions on contempt derived from the Political Constitution and Article 307 of the Criminal Code, and which those who work in

⁴⁷⁵ Orlando L. Perez, "Public Opinion and the Future of U.S. - Panama Relations," *Journal of Interamerican Studies and World Affairs* 41, no. 3 (1999) p. 5.

⁴⁷⁶ *Situation in Panama, 1991*, Human Rights Watch Report, Accessible at <http://www.hrw.org/reports/1992/WR92/AMW2-04.htm>.

⁴⁷⁷ Ibid.

⁴⁷⁸ Margaret E. Scranton, "Consolidation after Imposition: Panama's 1992 Referendum," *Journal of Interamerican Studies and World Affairs* 35, no. 3 (1993) p. 65.

⁴⁷⁹ Report of the Office of the Special Rapporteur for the Freedom of Expression, 1998, p. 27, Accessible at <http://www.cidh.org/Relatoria/showarticle.asp?artID=134&IID=1>

the Judiciary, the Public Prosecutor's Office and the Electoral Tribunal often use to silence their critics.⁴⁸⁰

The Special Rapporteur, in the 1999 Annual Report, stated that Panama had made significant progress in the protection of that right,⁴⁸¹ attributable to new President Mireya Moscoso swift action after her election. In December 1999 Law 55 repealed Articles 15, 16, 17 and 19 of Law 11 (1978) and Law 68 (1978). These had "allowed the Ministry of Government and Justice to levy pecuniary fines and even shut down media outlets".⁴⁸² The 2000 Annual Report noted that Panama had continued to make "advance in freedom of expression" such as when repealing certain gag laws, but that there remained indications that the media continued to be dealt with arbitrarily, with some 70 criminal prosecution brought against journalists for libel and slander.⁴⁸³ The 2001 Report continued this trend of noting positive improvements within a broader concern about continued misuse of archaic slander laws.⁴⁸⁴ After a series of three special visits to the country, In July 2000, June 2001 and April 2003, the Special Rapporteur noted that whilst there were "commendable" improvements, such as the repeal of gag laws, which facilitated the protection of freedom of expression,⁴⁸⁵ there remained numerous "anachronistic laws still on the books

⁴⁸⁰ Ibid.

⁴⁸¹ Report of the Special Rapporteur for Freedom of Expression, 1999, Section E – Freedom of Expression in some Member States, p. 43. Accessible at <http://www.cidh.org/Relatoria/showarticle.asp?artID=135&IID=1>

⁴⁸² Report on the Situation of Freedom of Expression in Panama 3rd July 2003, OEA/Ser.L/V/11.117, Doc, 47, Chapter IV – Analysis of Freedom of Expression in Panama, paragraph. 51.

⁴⁸³ Annual Report of the Special Rapporteur on Freedom of Expression, 2000, Chapter IV.4 (a) – Pages 83-87. Accessible at <http://www.cidh.org/Relatoria/showarticle.asp?artID=136&IID=1>

⁴⁸⁴ Annual Report of the Special Rapporteur on Freedom of Expression, 2001, Chapter II (c), paragraphs 169-179 Accessible at, <http://www.cidh.org/Relatoria/showarticle.asp?artID=137&IID=1>

⁴⁸⁵ Report on the Situation of Freedom of Expression in Panama 3rd July 2003, OEA/Ser.L/V/11.117, Doc, 47, Chapter V – Conclusions and Recommendations, paragraph 157.

that restrict effective exercise of the right”,⁴⁸⁶ that required revision to bring Panama into full compliance with OAS Article 13 and the related jurisprudence. The Special Rapporteur’s report continued that Constitutional guarantees alone were insufficient for the free functioning of the right itself. The Right could be undermined by criminal law, judicial review and the failure of governments to comprehensively review their own legal statutes. The Rapporteur noted, in Section IV.c.1 that *desacato*, or contempt laws, often used to protect the “honor of officials acting in their official capacities unjustifiably grants them a right that is not available to other members of society”,⁴⁸⁷ reversed the principle “that a functioning democracy is indeed the greatest guarantee of public order”.⁴⁸⁸ In making these, and other, assessments, the Special Rapporteur draws directly on the Declaration on Principles of freedom of expression as a benchmark against which to judge standards.

We see then a developing protection of freedom of expression within Panama, and a parallel set of reforms at the regional level to protect freedom of expression. Can we attribute one to the other? Change in Panama *has* been attributed to the OAS; membership of the OAS has been described as vital for the advancement and maintenance of freedom of expression in Panama in the contemporary period.⁴⁸⁹ I suggest that most importantly, the process of informing relevant parties has heightened the receptiveness of member states to the opinions of various OAS organs because they now come to expect a degree

⁴⁸⁶ Ibid. para. 158.

⁴⁸⁷ Ibid Chapter IV – Analysis of Freedom of Expression in Panama, paragraph 63.

⁴⁸⁸ Ibid.

⁴⁸⁹ Interview with requested anonymous person, member of the Panamanian Delegation to the United Nations, New York City, 27/11/2007. Corroborated in interview with Leticia Linn, Associate Lawyer, Special Rapporteurship on Freedom of Expression, Inter-American Commission on Human Rights, Washington D.C. 7/12/2007. The documentary evidence for this causal relationship is scarce, although in no way contradictory. I rest my argument here on corroborated interviews together with my confidence in the source.

of domestic response to those pronouncements.⁴⁹⁰ This I understand as the politics of outreach. The Special Rapporteur has taken the revised standards within the OAS and empowered various NGO's within Panama, as well as talked to the Panamanian government about that right. This is the transition moment between modes of socialisation. Only with detailed understandings of a right can an institution such as the Rapporteur reach out, because only then does it have something to say and can be seen to be authoritative in those claims.

Vitaly, in distinction to the period between 1978 and 1990, the audience for these pronouncements has also expanded. This is significant because, in line with existing theoretical accounts, the wider the audience of such efforts, the greater the costs of ignoring the recommendations presented.⁴⁹¹ This is the product of a conscious "outreach" by the Special Rapporteur to regional and national NGO's in an attempt to increase the effectiveness of its activities. Key to this process has been the steady, and intentional, integration of civil society actors into the OAS protection of freedom of expression.⁴⁹² This is explicitly designed as a strategic act to make states "take notice" of the Special Rapporteur.⁴⁹³ The Special Rapporteur was expressly charged with this as one of its key mandates with the task of educating actors, and the fostering of civil society has become central to the perceived success and failure of the inter-American system more widely.⁴⁹⁴ In a process that looks very much like the

⁴⁹⁰ Ibid.

⁴⁹¹ Flockhart, "'Masters and Novices': Socialization and Social Learning through the Nato Parliamentary Assembly," p. 367.

⁴⁹² Interview with Jessica Grebeldinger, Civil Society Expert, Summit of the Americas Secretariat, OAS Secretariat, 13/12/2007, Washington D.C.

⁴⁹³ Interview with Leticia Linn, Associate Lawyer, Special Rapporteurship on Freedom of Expression, Inter-American Commission on Human Rights, Washington D.C. 7/12/2007.

⁴⁹⁴ Interview with Jessica Grebeldinger, Civil Society Expert, Summit of the Americas Secretariat, OAS Secretariat, 13/12/2007, Washington D.C.

dynamics set up in the famous “boomerang effect”,⁴⁹⁵ the Special Rapporteur has adopted the role of placing domestic NGO’s into contact with each other and their international siblings, and then providing these networks with increased training and information. The intention here is to create self-sustaining domestic political processes to advance freedom of expression.⁴⁹⁶

For example, the Special Rapporteurship has taken a leading role in promoting National Human Rights Institutions within member countries to facilitate this enmeshment.⁴⁹⁷ The Panamanian institution was established on 5th February 1997, and itself publishes regular reports on the situation within Panama.⁴⁹⁸ The Panamanian institution has adopted the policy of linking national human rights efforts to the OAS protection of that right in an attempt to ensure maximum awareness of these rights, in particular drawing on the education programmes offered by the Special Rapporteurship.⁴⁹⁹ Panama during the late 1990’s set up a series of internal committees whose mandate was either exclusively, or partially, related to questions of freedom of expression. The Committee to Evaluate Press-related Laws (February 1999), the Report of the Committee to Protect Journalists on the Situation of Freedom of Thought and Expression in Panama (March 1999) and the Final Drafting Committee for the Penal and Procedural Codes (April 1999) together produced a detailed appraisal

⁴⁹⁵ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change* p. 18.

⁴⁹⁶ Interview with Alejandra Gonza, Attorney in the Office of the Special Rapporteur on Freedom of Expression, Washington D.C., 4/12/2008.

⁴⁹⁷ For example resolution on Strengthening the Role of National Human Rights Institutions in the Promotion and Protection of Human Rights in the Organization of American States, AG/Res. 2421, 3rd June 2008.

⁴⁹⁸ An archive of publications is provided by the Defensora del Pueblo de la Republica de Panama, accessible at <http://www.defensoriadelpueblo.gob.pa/> Role of the Special Rapporteur in this process discussed in Interview with Leticia Linn, Associate Lawyer, Special Rapporteurship on Freedom of Expression, Inter-American Commission on Human Rights, Washington D.C. 7/12/2007.

⁴⁹⁹ See Instrumentos Internacionales sobre Derechos Humanos Reconocidos Por la Republica de Panama, November 2001, accessible at <http://www.defensoriadelpueblo.gob.pa/>

of the conditions within Panama and the requirements, as they saw it, for the advancement of that right. These resulted ultimately in the creation of a Special Delegate on Freedom of Expression, established by the *Defensoria del Pueblo* of Panama itself to audit government activity.⁵⁰⁰ These committees and Special Delegate have become enmeshed with the Special Rapporteur through the policy of outreach and information sharing. The OAS and the standards on freedom of expression has become a model for domestic standards within Panama. The OAS has also, through its engagement with civil society actors, created an informed and politically literate constituency in Panama that helps to protect and promote freedom of expression on its own.⁵⁰¹

If the functions of the Special Rapporteur help explain the efficacy of the Rhetorical Action and Naming and Shaming processes that we can discern, a final comment must be made about the role of community building and the processes of persuasion that are embedded therein. As discussed already, community building and the provision of stronger statements on democracy and freedom of expression represent a clear sequence of upgrades to the regional commitment. Did this process exert persuasion based socialisation attempts, and if it did, how did they relate to questions of social influence? Which was more important? Clearly Panamanian participation in community building had brought it into contact with those revised standards and had elicited its agreement with them. However, there is not sufficient evidence to state that persuasive processes

⁵⁰⁰ Annual Report of the Special Rapporteur on Freedom of Expression, 2002, Chapter II, Paragraph 193, Accessible at <http://www.cidh.org/Relatoria/showarticle.asp?artID=138&IID=1>

⁵⁰¹ Interview with Alejandra Gonza, Attorney in the Office of the Special Rapporteur on Freedom of Expression, Washington D.C., 4/12/2007. For the growth of domestic NGO's with an interest in human rights, refer to Edward L. Cleary, *The Struggle for Human Rights in Latin America* (Westport: Praeger, 1997) p. 63.

actually account for the change that we see, hence my positioning them as the facilitators of social influence, much as in the ASEAN study. Further examination may help disambiguate persuasion from social influence, but at this point I cannot state that community building, in and of itself, was significant for socialisation outcome.

THE CHANGED SOCIAL MEANING

There is one final step to make. If my argument about social influence processes promoting socialisation is valid, then how do I account for that effectiveness if the previous argument about the prevailing social meaning of membership is also correct? I argue in this last section that the social meaning of membership shifted over this last period of analysis, through the co-action of three discreet processes. Firstly, the role of the Summit of the Americas process in reinvigorating the OAS and its behaviour. Secondly, the change within member states as the majority of Latin American returned to, or further consolidated, their democratic credentials. Third, the actual behaviour of the OAS "on the ground" as it started to reach out and engage with protecting and promoting democracy and human rights, re-energising its hitherto moribund commitment.

The OAS has been re-invigorated by the Summit of the Americas process, an irregular meeting of heads of government outside the regular OAS structure, launched in Miami in 1994.⁵⁰² The Summits "provided a complementary political forum to reinforce the attachment of the states within

⁵⁰² A recap of which is offered in Ambler H. Moss Jr, "Introduction: The Summit of the Americas, 1994," *Journal of Interamerican Studies and World Affairs* 36, no. 3 (1994).

the hemisphere to democratic norms".⁵⁰³ Whilst official heads of state meetings organised under the aegis of the OAS have widely been labelled failures,⁵⁰⁴ the American Summitry process as it now stands has proven resilient, successful and increasingly valued by members. After Miami, the Summit has met in Santiago, Chile in 1998, Quebec City Canada in 2001, Monterrey Mexico in 2004, Mar del Plata in Argentina in 2005 and scheduled again for Port of Spain in Trinidad and Tobago in 2009. At the Quebec Summit, Mexico and other Latin American states linked being a democracy to participation in the ongoing Free Trade Area of the America's negotiations, a process that had started at the Miami Summit of 1994.⁵⁰⁵ The Miami summit may have been held outside the OAS remit because of a "negative assessment of the OAS's capacity to manage and deliver on the hemisphere's first post Cold War opportunity,"⁵⁰⁶ but the OAS was soon central to the planning, running and follow up to the Summitry process, particularly in those fields where the "organization had long experience and a track record: democracy, human rights and security".⁵⁰⁷

The OAS itself, and its member states, have "embraced the summit process and mandates and significantly revamped its missions and agenda".⁵⁰⁸ For example, the OAS General Assembly Resolutions has directed that the OAS

⁵⁰³ Andrew F Cooper and Jean-Philippe Thérien, "The Inter American Regime of Citizenship: Bridging the Institutional Gap between Democracy and Human Rights," *Third World Quarterly* 25, no. 04 (2004) p. 736.

⁵⁰⁴ Robib L. Rosenberg, "The OAS and the Summit of the Americas: Coexistence, or Integration of Forces for Multilateralism," *Latin American Politics and Society* 43, no. 1 (2001) p. 80.

⁵⁰⁵ Dominguez, "International Co-Operation in Latin America: The Design of Regional Institutions by Slow Accretion." p. 32.

⁵⁰⁶ Rosenberg, "The OAS and the Summit of the Americas: Coexistence, or Integration of Forces for Multilateralism," p. 85.

⁵⁰⁷ Ibid. p. 87.

⁵⁰⁸ Richard Feinberg, "Presidential Mandates and Ministerial Institutions: Summitry of the Americas, the Organization of American States (OAS) and the Inter-American Development Bank (Idb)," *Review of International Organizations* 1 (2006) p. 71.

views the Summit mandates as binding on the OAS.⁵⁰⁹ This has resulted in an “reinvigorated” institutional agenda.⁵¹⁰ The meshing together of the American Summitry system with the OAS introduced renewed impetus to making meaningful commitments to rights, and it also upgraded the perceived importance of regional commitments. Importantly, we cannot simply ascribe this to US dominance after the Cold War. The governance structure of the OAS and its strict one member one vote approach restricted U.S. dominance. An analysis of the OAS shows that “relations amongst member states are more nuanced than many observers might anticipate,”⁵¹¹ where “Latin American members resist U.S. pressure and reject U.S. proposals” far more than a simple power relationship would suggest.⁵¹² Instead, all had to agree that the Summitry process was useful, and that this in turn created a new nexus of political authority that came to reinvigorate the OAS.⁵¹³ As many Latin American states returned to democracy after the prolonged military junta period of the 1970’s and 1980’s, so they turned to the OAS as an expression of that renewed commitment.⁵¹⁴ Democracies were far more perturbed by the failure of national standards to relate to regional commitments, and this shift in the politics of Latin American states undid the social meaning of membership as the tolerance of a disconnect between what a country says, and what it does, evaporated.

⁵⁰⁹ Ibid. p. 85.

⁵¹⁰ Ibid. p. 87.

⁵¹¹ Carolyn M. Shaw, “Limits to Hegemonic Influence in the Organization of American States,” *Latin American Politics and Society* 45, no. 3 (2003) p. 88. An additional perspective is offered by Gordon Mace, Louis Belanger, and Jean Philippe Therien, “Regionalism in the Americas and the Hierarchy of Power,” *Journal of Interamerican Studies and World Affairs* 35, no. 2 (1993) which provides a strongly quantitative analysis of the power relationships between the U.S.A. and other American states with the aim to analyse outcomes.

⁵¹² Shaw, “Limits to Hegemonic Influence in the Organization of American States.”

⁵¹³ Feinberg, “Presidential Mandates and Ministerial Institutions: Summitry of the Americas, the Organization of American States (OAS) and the Inter-American Development Bank (IADB),” pp. 77-78 offers strong qualitative data supporting this claim.

⁵¹⁴ Shaw, “Limits to Hegemonic Influence in the Organization of American States,” p. 84.

As a vital part of this process of re-definition is the dramatic changes the OAS has made in terms of its actual behaviour.⁵¹⁵ The OAS up until the mid 1980's was assumed to be a largely impotent force.⁵¹⁶ We see a distinct upswing in OAS actions to actually protect and promote the rights it had for so long appeared committed to.⁵¹⁷ Two conceptual points are warranted here. First, I note that the OAS was not acting directly vis-à-vis Panama, but that is not necessary for the argument I am forwarding here. The OAS actions have shown a commitment to make its standards meaningful that I suggest were then translated back to Panamanian perceptions of the validity of its own commitments. During the 1960's if even the OAS itself was not acting to protect democracy, why should Panama or any other actor take notice of its protestations? When the OAS started to engage with democratic promotion, then those commitments suddenly become more valuable. This in turn changed the meaning of the things the OAS did "do" in relation to Panama, creating the sense that they were not merely for show. The Naming and Shaming and Rhetorical Action meant something, and had to be responded to. Secondly, my argument does not hinge on the necessity of the OAS always being successful in its efforts from the 1990's onwards.⁵¹⁸ Its recent engagements in the political process in Peru and Venezuela through the so-called "mesa" process, as analysed by Cooper and Legler reveal an OAS "torn

⁵¹⁵ For a complementary account of OAS activities, note the discussion at Arturo Santa-Cruz, "Constitutional Structures, Sovereignty and the Emergence of Norms: The Case of International Election Monitoring," *International Organization* 59, no. Summer (2005). Santa Cruz's arguments support, from a theoretical perspective, the growing OAS activism in support of democratic credentials.

⁵¹⁶ Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not yet an Ox," p. 534.

⁵¹⁷ Cooper and Thérien, "The Inter American Regime of Citizenship: Bridging the Institutional Gap between Democracy and Human Rights," p. 737.

⁵¹⁸ Arceneaux and Pion-Berlin, "Issues, Threats and Institutions: Explaining OAS Responses to Democratic Dilemmas in Latin America," p. 49. For a critical perspective see Barry S. Levitt, "A Desultory Defense of Democracy: OAS Resolution 1080 and the Inter-American Charter," *Latin American Politics and Society* 48, no. 3 (2006).

between an urge to innovate and to maintain the status quo in terms of democratisation".⁵¹⁹ Even the brief evidence presented below shows marked fluctuation in outcomes, although arguably a greater consistency in intentions than other academic enquiry has given credit for.

1990 saw the OAS, together with the Carter Foundation, assist in Nicaragua with the peaceful transfer of power at the close of the Sandinistas period. In 1994 election monitoring was undertaken in the Dominican Republic, although with limited success. In Peru in 1992, the response to President Alberto Fujimori's suspension of the Constitution and imposition of martial law saw immediate O.A.S response including condemnation and a call to suspend financial assistance.⁵²⁰ More recently, the OAS has inserted itself into the political processes in Peru (2000) and Venezuela (2002-2004) through the "mesa" process.⁵²¹ This process involved establishing dialogue with various contending domestic factions in order to mediate between and promotes their own desired political outcomes.⁵²² Whilst the two cases show marked variation, the key point here is that they were extensive interventions into the domestic political process of member states to protect democratic standards.⁵²³ This nexus between acting regionally, and the protection of democracy and freedom of expression was, I suggest, significant to Panamanian conceptions of membership

⁵¹⁹ Cooper and Legler, *Intervention without Intervening: The OAS Defense and Promotion of Democracy in the Americas*.

⁵²⁰ Richard L. Millett, "Beyond Sovereignty: International Efforts to Support Latin American Democracy," *Journal of Interamerican Studies and World Affairs* 36, no. 3 (1994) p. 15. Note Ad Hoc Meeting of Ministers of Foreign Affairs, Support to the Democratic Government of Haiti, OEA/ser.F./V.1-MRE/RES, 1/19 corr. 1 (1991). Also refer to Yasmine Shamsie, "Building Low Intensity Democracy in Haiti: The OAS Contribution," *Third World Quarterly* 25, no. 6 (2004).

⁵²¹ Examined at Andrew F Cooper and Thomas Legler, "The OAS in Peru: A Model for the Future?," *Journal of Democracy* 12, no. 4 (2001).

⁵²² ———, "A Tale of Two Mesas: The OAS Defence of Democracy in Peru and Venezuela," *Global Governance* 11 (2005) p. 427.

⁵²³ Ibid. p. 440.

of the OAS.⁵²⁴ On the ground, the vast majority of states became, or entrenched further, democratic governance.⁵²⁵ This was reflected at the hemispheric level in an institutional lock in of democracy through the evolution of the OAS normative and organisational sophistication.⁵²⁶ This in turn legitimised the OAS as an actor and reduced the gap between rhetoric and reality in such a way as to give flesh to the commitments that the OAS had long been charged with and that resulted in member states thinking that that gap should be closed through behavioural modification on their part, as opposed to simply letting the gap continue, or revising the normative commitments of the OAS “down” to match the reality.⁵²⁷ For Panama to remain a comfortable member of the OAS required more respect for the written words of the contract between Panama and the region.⁵²⁸

CONCLUSION: THE OAS, SOCIALISATION AND PANAMA IN CONTEXT

2009 sees a vibrant and entrenched democracy within Panama, rated as “free” by Freedom House.⁵²⁹ Whilst ongoing difficulties remain, especially with regards to journalistic freedoms, the changes within Panama have been remarkable. The story of OAS actions vis-à-vis Panama is a story that rejects

⁵²⁴ There is considerable quantitative analysis of the effectivity of international organisations, particularly the OAS, to promote democracy. See, as an example, Jon C. Pevehouse, “Democracy from the Outside-In? International Organizations and Democratization,” *International Organization* 56, no. 3 (2002).

⁵²⁵ Refer to Terry Lynn Karl, “The Hybrid Regimes of Central America,” *Journal of Democracy* 6, no. 3 (1995) p. 72.

⁵²⁶ See Merilee Serrill Grindle, *Audacious Reforms: Institutional Invention and Democracy in Latin America* (Baltimore: John Hopkins University Press, 2000) especially chapters one and nine.

⁵²⁷ For an analysis of the earlier importance of international commitments to the process of democratisation, see Alexandra Barahona de Brito, “International Dimensions of Democratisation: Brazil,” in *Working Paper* (Lisbon: Instituto Portugues de Relacoes Internacionais).

⁵²⁸ Interview with requested anonymous person, member of the Panamanian Delegation to the United Nations, New York City, November 26th 2007.

⁵²⁹ Freedom House: Freedom in the World, Panama 1997. Accessible at http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2007&country=7249&pf

accounts of OAS inactivity, although once again I note the disjuncture between questions of intention and questions of success. The role of the OAS in facilitating this alteration is at times hard to discern. For thirty years after its creation, the OAS either said nothing. From the late 1970's through to the mid 1990's the OAS has said increasingly more and more about Panamanian standards, although this only became effective once the OAS became recognised as a legitimate source of pressure and guide to behaviour.

Within this story, when we move to conceptualise the pressures uncovered, community building on its own, as in the ASEAN case, seems to be insufficient for socialisation to occur, although it is a necessary pre-condition. The unpacking of social influence pressures again also broadly agrees with the previous ASEAN study, although here we "gain" an account of Naming and Shaming, and "loose" the presence of Social Sanctioning. These processes I have suggested are again rationally construable, although it must be noted that the social meaning component of the story is one about norm and identity shifts that hints at the relevance of a constructivist enquiry. Whilst this falls outside the direct parameters of this study, it is a fascinating aide-memoire as to the importance of understanding not only the socialisation mechanism and process, but also the broader permissive conditions that allow for those processes to occur. This wedding of constructivist and rational appraisal goes beyond notions of bridge building about individual processes of socialisation and hints at the importance of a more holistic appreciation of the context in which those attempts arise.

6. Turkey and the EU: The Limits of Conditionality

In this, the final study, we return our focus onto the socialisation efforts of the EU, specifically dealing with the candidature of Turkey. Turkey has long been integrated economically and politically into the majority of organisations that characterise Western Europe and the Atlantic. Turkey joined NATO on February 18th 1952, was a founding member of the Organisation for Security and Cooperation in Europe (OSCE) and joined the Council of Europe (CE) in the year of its inception, 1949. Within this dense organisational environment Turkish absence from the prime regional community, the EU, is notable. This absence is a product not of Turkish indifference, but of European delay, compounded by widespread conceptual confusion as to what "Europe" is and should become.⁵³⁰ Whilst many Central and Eastern European countries (known collectively as the CEEC's) moved quickly towards membership after the end of the Cold War, the Turkish membership experience has been protracted.⁵³¹ Turkey has had a formal relationship with the EU since the 1960's and applied officially for membership in 1987, but it was only in 1999 that the pre-accession process formally commenced, and on 17th December 2004 when the EU finally recognised Turkish compliance with all necessary pre-requisites for commencing actual membership negotiations.

⁵³⁰ This question is intimately linked with the problem of drawing boundaries of Europe. Europe may possess relatively clear geographic boundaries, but efforts to delineate cultural, social and economic boundaries are considerably more problematic. This, paradoxically, provides the EU with considerable power over neighbouring states, given that if they remain included, even theoretically, in the list of potential members, the EU retains a degree of ability to socialise that state via membership.

⁵³¹ Literature on the application journey of the various CEEC's to membership, whether placed in historical perspective or a more specific socialisation context is prodigious. An interesting comparative focus is offered in Rachel A. Cichowski, "Western Dreams, Eastern Realities," *Comparative Political Studies* 33, no. 10 (2000). An examination of the reasons why the EU has expanded so fast, see Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action and the Eastern Enlargement of the European Union."

The socialisation stories of Myanmar and Panama have been ones of slowly increasing pressure after membership was granted. The Turkish study is one where freedom of expression has been centre stage, institutionalised both within the legal framework of the Union and in its own goals in extending membership. It is a mode of socialisation that rests on those detailed standards, which are then inserted directly into the domestic political context of applicant states. I will investigate this through examining four key periods; firstly the period surrounding the 1999 Helsinki summit which formalised Turkish candidature. Second the formal accession partnership of 2001 and the national election of 2002. Third the period 2002-2005 charting the substance of the pre-accession negotiations, and then finally the period after October 2005 covering the accession negotiations.

STATEMENT OF ARGUMENTS

Given that this is a study of the EU, the “home turf” of the broader conceptual focus of both this study and the theoretical literature I am drawing and extending upon, there is a far closer linkage between the direct voice of this study and the broader conceptual arguments that it supports. However, the division is still useful. At the first level, the study of the relationship between Turkey and the EU reveals that the assertion that conditionality processes are successful rests on a rather optimistic assessment of their ability to alter the beliefs of judges and civil society, not merely on changes in the legal and constitutional frameworks of the target state. I will argue, at the close of this chapter, that this failure to complete the process is because both of the scale of the re-orientation required, but also because of the shortcomings identified in chapter two as to the nature of conditionality, and what is required to achieve

“full” socialisation. Requiring that Turkish providers of justice, as well as civil society broadly, believe that the EU standard on freedom of expression is the right one requires persuasive attempts to alter their identities and beliefs. Conditionality does not do this, and whilst there are potential mechanisms for altered behaviour to filter through into altered identities, the EU is not engaging such processes. This defines the outer limits of what is feasible with conditionality mechanisms of socialisation.

Returning to the broader conceptual argument, I suggest that that the rational choice accounts of asymmetric bargaining characterise the relationship between the EU and Turkey. However, accounting for the success of that process must pay regard to how it both a credible offer of membership *and* a structured financial relationship were required, either on their own was not sufficient. Further we must emphasise the importance of the domestic political orientation within Turkey in determining the scale and the timing of the process. An examination of the significance in the Turkish election of 2002 to the pacing of socialisation substantiates my claims here.

PRE-ACCESSION: FORMALISING THE OFFER OF MEMBERSHIP: 1999-2001

There exist distinct phases of the Turkish membership negotiations with the EU. The first stage, pre-accession, runs from 1999-2005, and itself can be broken down into distinct periods. This stage was designed to bring Turkey up to an initial threshold of standards to enable the second phase of the relationship, the substantive Accession negotiations (that run from 2005 to present). The period 1999-2001 sees, with the offer of formal membership, the starting of that membership process. The argument in this preliminary section is that the formal

offer of membership was a necessary organisational precursor for socialisation. It was not, however, sufficient in and of itself to actually start socialisation occurring via either mechanism. The reasons for this I suggest are two fold. Firstly, the offer of membership did not automatically create a structural relationship conducive to political change in Turkey. There was no financial assistance, and there was no clear EU investigation of the Turkish situation or pronouncements of what should be done. It was at this stage a vague promise of membership, not a structured path to it. Secondly, there existed serious doubt that, despite the formal offer of membership, Turkey would not be a member. The EU excluded Turkey from a number of key meetings which it invited other candidates. This “tainted” the offer and undercut, on the Turkish side, the desire to engage in a costly reform process.

THE PRE-HISTORY OF ACCESSION

The transition to formal candidature in 1999 closes a long “pre-history” between Ankara and Brussels. Turkey had applied for associate membership of the then fledgling European Economic Community as far back as 1957, and for full membership in 1987.⁵³² Both had been rebuffed, and alternate structures put in place by the Europeans to structure the relationship in some way that was short of an offer of membership. Negotiations for a common market, and then a customs union, occurred fitfully from 1963 with the signing of the Association Agreement between Brussels and Ankara until its final, and much delayed,

⁵³² There is considerable shifting nomenclature to be aware of here, moving in step with revisions to the community. The European Economic Community (EEC) was founded in 1958 with the Rome Treaties, and sat alongside two then separate organisations, the European Atomic Energy Community and the European Coal and Steel Community. The three organisations were merged institutionally, although retained separate political identities with the Brussels Treaty of 1967 that created the European Communities. The Communities were merged into a single political entity, with a revised and extended mandate with the 1993 Maastricht Treaty that founds the EU itself.

ratification in 1995.⁵³³ The Europeans seemed unwilling to go beyond theoretical confirmation of Turkish eligibility, as long as that was accompanied by its practical rejection. In 1963 they had noted that as soon as the operation of this agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the establishment the Community, the Contracting Parties would examine the possibility of the accession of Turkey to the Community".⁵³⁴ In 1989, when rejecting Turkey's application, they again stated that Turkey would remain eligible for membership.⁵³⁵

Questions of human rights played a role within this "pre-history". The Turkish coup in 1980, and then the end of the Cold War in 1989 and the application of the CEEC's to join the Union both mark moments of upgrade in the role of rights in the Brussels-Ankara dynamic. The EC had made it clear that progress towards Customs Union would be conditional on political and human rights reforms. In the late 1980's Turkey responded to this through the reversal of numerous anti-democratic measures that had been initiated during the military period.⁵³⁶ Articles 141 and 142 of the Criminal Code, which outlawed the establishment of, or propaganda by, communist, dictatorial and racist regimes was repealed. Article 163 which criminalized attempts to alter Turkey's basic social and political structure towards any religiously inspired principles was also reformed. The European Parliament in 1994 went so far as to suspend the

⁵³³ Agreement Establishing an Association Between the European Economic Community and Turkey, 12th September 1963, in Official Journal of the European Communities (OJEC). 24.12.1973, No C 113/2, pp. 2-8. For an analysis of the economic causes and consequences of the Customs Union, refer to Erkan Erdogan, "Turkey and Europe: Undivided but Not United," *Middle East Review of International Affairs* 6, no. 2 (2002).

⁵³⁴ Ibid.

⁵³⁵ It is therefore in a qualitatively different category than say Morocco that had been clearly rejected in 1973 for being non-European. Refer also to Harun Arian, "A Lost Opportunity? A Critique of the EU's Human Rights Policy Towards Turkey," *Mediterranean Politics* 7, no. 1 (2002) pp. 28-32.

⁵³⁶ Ibid.

meetings of the Joint Parliamentary Committee until such time as the improvement of rights within Turkey was clear. This ongoing pressure, and the threat of denial of the Customs Union led to reform within Turkey. 1995 saw revisions to the Constitution, aimed "at extending the right of association, the right and formation of trade union's in certain areas, and the right of academics to be active in political parties".⁵³⁷ It further saw revisions of Article 8 and 13 of the Anti-Terrorism law to reduce the stringency of custodial punishments.

Despite these relations, both bilaterally and multilaterally through such vehicles as the Euro-Mediterranean Partnership of 1995 onwards, the relationship between the EU and Turkey prior to 1999 was felt that to have gone "badly wrong",⁵³⁸ and the clear concern with human rights expressed by the EU had failed to translate into substantial realignment of the Turkish state. What reforms there has been were spasmodic, undirected and seemed more attributable to political opportunism than a concerted Turkish commitment. The lack of a clear offer of membership to both structure European interest in Turkey, to act as a focusing channel for financial assistance, and then motivate Turkey to reform. It is only with that offer of membership that the story of socialisation, as a subset of the story of the fuller relationship between Turkey and the EU, starts.

THE FORMALISATION OF CANDIDATURE AND EU STANDARDS

If the failure of the relationship to result in any meaningful socialisation of Turkey before 1999 is attributed to the lack of a clear membership offer, we could expect the formalising of the membership process to be a considerable

⁵³⁷ Jolanda Van Westering, "Conditionality and EU Membership: The Case of Turkey and Cyprus," *European Foreign Affairs Review* 5 (2000) p. 101.

⁵³⁸ Barry Buzan and Thomas Diez, "The European Union and Turkey," *Survival* 41, no. 1 (1999) p. 41. For a fuller account of the Euro-Mediterranean see Schmid, "The Use of Conditionality in Support of Political, Economic and Social Rights: Unveiling the Euro-Mediterranean Partnership's True Hierarchy of Objectives?"

marker of change. This came with the acceptance by the EU of Turkish candidature. The official Pre-Accession process was opened with the Helsinki European Council of December 10-11th 1999, which stated that:

Turkey, like other candidates will benefit from a pre-accession strategy to stimulate and support its reforms. This will include enhanced political dialogue, with emphasis on progressing towards fulfilling the political criteria for accession with particular reference to human rights... Turkey will also have the opportunity to participate in Community Programmes and agencies and in meetings between candidate States and the Union in the context of the accession process.⁵³⁹

Pre-Accession status regularised the relationship between Turkey and the EU formalising the status of Turkey as a candidate country.⁵⁴⁰ As a candidate, Turkey had now assumed the burden of integrating the EU respect for freedom of expression within its own political structure. As opposed to either the ASEAN or early period of the OAS studies, the EU has had a clear commitment to democracy and human rights, with detailed appraisals and jurisprudence surrounding those standards. With regards to freedom of expression, there are two places to look to discern the content of that standard. Most broadly, the EU deployed what were known as the Copenhagen Criteria, introduced at the European Council of 1993. These points were originally developed to structure the expectations of the CEEC in their clamour for membership. Pre-Accession would require Turkey, like other states, to guarantee three things:

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for minorities
- The existence of a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union

⁵³⁹ Conclusions of the Helsinki European Council, 11th December 1999 I (12). Accessible at http://europa.eu.int/council/off/conclu/dec99/dec99_en.htm#enlargement

⁵⁴⁰ Meltem Muftuler Bac, "Turkey's Political Reforms and the Impact of the European Union," *South European Society and Politics* 10, no. 1 (2005) p. 21.

- The ability to assume the obligations of membership, including adherence to the aims of political, economic and monetary union.⁵⁴¹

Of these “deceptively simple” requirements,⁵⁴² the most important obstacle facing Turkey was the political requirement, and in particular the pre-requisite for adherence to a specifically European standard of human rights.⁵⁴³ Not only did human rights have to be protected legally, but also that they were institutionally guaranteed by stable systems of governance. This introduced the necessity that such rights do not exist solely as statutes, but are fully implemented by government and the judiciary in a clear and consistent way. More specifically in regards to freedom of expression, the EU has at the heart of its commitment the standards created by another European organisation, the Council of Europe. Formed in 1949, the Council is the oldest extant organisation of European Integration, and lies at the heart of regional promotion of human rights across the continent. It does so through the European Convention on Human Rights (ECHR) and the associated European Court of Human Rights (ECrHR) of 1950. Whilst the EU and the CoE and its related organs are separate, the EU understanding of what freedom of expression looks like is rooted in the statutes and jurisprudence of the ECrHR.⁵⁴⁴ Article 10 of the Convention specifically concerns the right to freedom of expression and is worth quoting at length.

⁵⁴¹ Fuller explanations can be Accessible at <http://europa.eu.int/comm/enlargement/intro/criteria.htm>.

⁵⁴² Heather Grabbe, “European Union Conditionality and the Acquis Communautaire,” *International Political Science Review* 23, no. 3 (2002) p. 249.

⁵⁴³ Refer to Meltem Müftüçler Bac, “Turkey in the EU’s Enlargement Process: Obstacles and Challenges” *Mediterranean Politics*, Vol. 7, No. 2 (2002). Duner and Devereil argue that the Copenhagen Criteria stretch across political economic and legislative dimensions. Bertil Dunér and Edward Devereil, “Too Bumpy a Road? Turkey, the EU and Human Rights,” *The Swedish Institute of International Affairs* (2000) p. 2.

⁵⁴⁴ The full text of which can be accessed at <http://www.hri.org/docs/ECHR50.htm>. Note the analysis at Robert Harmsen, “The European Convention on Human Rights after Enlargement,” *The International Journal of Human Rights* 5, no. 4 (2001).

- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Whilst there is a degree of ambiguity over the full scope of this article and there is no single perfect case for the incorporation of it into national law it remains a relatively clear post against which to gauge a country's performance.⁵⁴⁵ It also offers an underpinning of the ongoing socialisation processes that membership negotiations elicited by providing an EU wide understanding of what compliance with freedom of expression would look like. As will be shown below, this standard is invoked repeatedly in the EU's investigation of freedom of expression within Turkey. Whereas neither ASEAN nor the OAS during membership negotiations had a specific understanding of what the freedom of expression would look like, the EU in its relations with Turkey was never encumbered with such silences.

THE NATURE OF THE RELATIONSHIP AND THE INITIAL TURKISH RESPONSE

Even at this early stage, we can investigate the nature of the relationship that was developing in terms of its comparability with the scope conditions for identifying socialisation. I note that because of the formal offer of candidature,

⁵⁴⁵ William Hale "Human Rights, the European Union and the Turkish Accession Process" *Turkish Studies* Vol. 4, No. 1, (2003) p. 113.

the EU became elevated to the role of gatekeeper for benefits Turkey had clearly long desired. This, together with the increased institutionalisation of the relationship that flowed from the formalisation of membership candidature pushes one to viewing the relationship as subscribing broadly to rational choice scope conditions.⁵⁴⁶ Substantiating this claim, I note that the detailed standards on freedom of expression are not "up for discussion", and Turkey has no option but to incorporate them fully, given the nature of the Copenhagen Criteria's clear commitment to democracy and the role that freedom of expression plays in that norm set. With this established, the last task in investigating the period 1999-2001 requires us to ask whether or not the offer of membership was significant in terms of socialisation? To achieve this I compare the standards of freedom of expression within Turkey in 1999 and then the potential change in that by 2001. I argue that there is no distinct change, and as such, socialisation had not occurred, or even commenced. At this point the formal offer of membership was not sufficient.

Investigating the efficacy of the shift to formal candidate status requires an appreciation of the condition within Turkey with regards to freedom of expression. This provides the basis against which we can understand the targeted nature of EU reform and the direction that change within Turkey took. There existed serious and sustained constitutional and legal limitations to freedom of expression within Turkey. Articles 22-26 of the Constitution stated that everyone has the right to freedom of communication, residence and movement, conscience, religious belief and conviction, freedom of thought and opinion and the freedom to disseminate their thoughts and opinions. Article 26 referred

⁵⁴⁶ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 803.

specifically to freedom of expression, although it also contained limitations notably the banning the “expression and dissemination” of ideas banned by law.⁵⁴⁷ The Turkish constitution as it stood was unique in that it has provisions within it that limit the freedoms it seeks to establish.⁵⁴⁸ Especially important was Articles 13, which stated:

Fundamental rights and freedoms may be restricted by law, in conformity with the letter and the spirit of the Constitution, with the aim of safeguarding the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health, and also for specific reasons set forth in the relevant articles of the Constitution.

The limitations of this article in relation to the freedom of expression are clear, and effectively limit public expression to a defence of the political status quo.⁵⁴⁹ Article 14 extended the scope of Article 13 by indicating that none of the forgoing rights can be exercised with the aim of violating the integrity of the state or threatening its “fundamental rights and freedoms”. Furthermore, Article 68, which outlined the rights and duties of political parties, required that “statutes and programmes, as well as the activities of political parties, shall not be in conflict with the independence of the state, its indivisible integrity and its territory and nation”, effectively banning Kurdish separatism, however it was promoted. Infraction of these Articles is not a criminal offence unless made so under the provisions of the Penal Code, or other legislative act, giving them effect.⁵⁵⁰ Articles 159 and 312 of the Penal Code, together with Article 8 of the

⁵⁴⁷ Yusuf Sevki Hakyemez and Birol Akgun, “Limitations on the Freedom of Political Parties in Turkey and the Jurisdiction of the European Court of Human Rights,” *Mediterranean Politics*, Vol. 7, No. 2 (2002) p. 56.

⁵⁴⁸ Ibid.

⁵⁴⁹ Ibid. p. 57.

⁵⁵⁰ William Hale, “Human Rights, the European Union and the Turkish Accession Process,” (2003) pp. 109-111.

Law for the struggle Against Terrorism do just that. Article 159 “provided that those who publicly insult or deride the moral character of Turkishness, the Republic, the Grand National Assembly or the government, or the ministries, the military or security forces of the state or the moral character of the judiciary shall be punished by between one and six years severe imprisonment”. Article 312 criminalizes anyone who “openly incites the public to hatred and enmity with regard to class, race, religion, religious sect or regional differences”. Also of importance, the Political Parties Law was “used to close down parties deemed to have supported separatism, or advanced illegal Islamist ideas”.⁵⁵¹ Between 1993 and 1998 the Turkish High Court dissolved six political parties, including the Welfare Party on 16 January 1998, then the largest party in the Parliament, on grounds of violating secularism, with the concomitant negative effect this had on freedom of expression in the political process.⁵⁵²

The vulnerable status of freedom of expression was noted by the EU in the First Annual Report on Turkish candidature, drawn up in 1998 when it noted that the situation in regards to freedom of expression was “not fully assured”.⁵⁵³ These reports had been introduced at the Cardiff European Council in June of that year as a means of providing an annual overview of Turkish preparedness, as well as providing insight onto reform that was still required. The Commission pointed to “an excessively narrow interpretation of the Constitution and other legal provisions”,⁵⁵⁴ drawing attention to Articles 7 and 8⁵⁵⁵ of the Anti-Terror

⁵⁵¹ Ibid. p. 112.

⁵⁵² Refer to Yusuf Sevki Hakyemez and Birol Akgun, "Limitations on the Freedom of Political Parties in Turkey and the Jurisdiction of the European Court of Human Rights," *Mediterranean Politics* 7, no. 2 (2002) p. 65.

⁵⁵³ Quoted in “Regular Report From the Commission on Turkey’s Progress Towards Accession” Accessible at p. 15.

⁵⁵⁴ Ibid.

Law and Articles 158, 159, 311 and 312 of the Criminal Code. The Commission also noted severe issues with regards to the related fields of freedom of the press, freedom of association and freedom of assembly.

Moving from this basis to an analysis of how the offer of membership in 1999 altered the Turkish situation, we can discern no great change.⁵⁵⁶ The 1999 Regular Report showed little progress in concern with human rights in general and the freedom of expression⁵⁵⁷ whilst the 2000 report states that “ Turkey has not fulfilled these [the Copenhagen] criteria”.⁵⁵⁸ In regards to the freedom of information, however, the report noted that “there is still a serious problem”⁵⁵⁹ and that “Turkish Courts continue to restrict the expression of views with which the state disagrees, notably when it concerns the situation of the population of Kurdish origin”.⁵⁶⁰ It was concluded that reform of both “legislation and practice in this field is urgently needed”.⁵⁶¹

In the absence of any structured follow up to the formalisation of Turkish candidature, the Accession Partnership not being formalised until 2001, the period 1999-2001 helps show just how effective the shift from not being a candidate to being formally on the path to membership was for socialisation, in the absence of any other factor. The above evidence would appear to indicate not

⁵⁵⁵ Article 8 forbids “written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country and nation”. This was revised slightly in a 1995 Constitutional reform package that introduced the concept of intent.

⁵⁵⁶ Note that this argument in part rejects the claims of Ziya Onis who argues that the “Helsinki Summit has accelerated the momentum of political and economic reforms” Ziya Onis, “Domestic Politics, International Norms and Challenges to the State: Turkey - EU Relations in the Post-Helsinki Era,” (2003) p. 12. Whilst I believe that Helsinki was significant in setting the longer term parameters of change which was to come, in and of itself it proved relatively ineffective.

⁵⁵⁷ Regular Report From the Commission on Turkey’s Progress Towards Accession, European Commission, 1999. Accessible at

http://www.europa.eu.int/comm/enlargement/report_10_99/pdf/en/turkey_en.pdf.

⁵⁵⁸ Regular Report from the Commission on Turkey’s Progress Towards Accession, European Commission, 2000. Accessible at

http://www.europa.eu.int/comm/enlargement/report_11_00/pdf/en/tu_en.pdf, p. 7

⁵⁵⁹ Ibid. p. 16.

⁵⁶⁰ Ibid.

⁵⁶¹ Ibid.

very much utility to this change at all. The first explanatory factor to consider is that not all offers of membership are equal. They vary in terms of their credibility. The formalisation of candidature did not mean that Turkey was fully assured of its position as an equal candidate. There were many signs that at this point, despite the formalisation at Helsinki, Turkey remained in a unique category where membership was not automatically inferred through the offer of candidature. At the Nice summit of December 2000 Turkey, alone amongst potential candidate countries, was excluded from the proposed discussion about institutional reforms that were thought necessary to prepare for EU expansion.⁵⁶² Turkey was further excluded from the informal Ghent summit of October 2001 to discuss who should participate in the Convention on the Future of Europe, and it was not until the December 2001 Laeken Council that Turkish participation, and thus candidacy, was placed on an equal footing with other potential member states.⁵⁶³ Secondly, it was not until the Accession Partnership, also of 2001 that the EU and Turkey formalised and detailed their relationship. This would see the tying of financial assistance, through clear conditionality processes, to political and social goals, the fulfilment of which would be closely monitored. The offer of membership was not enough, given the scale of change required within Turkey and the costs that was involved to promote socialisation on its own. What was required was at least a credible offer of membership together with financial assistance to ameliorate the costs of the transition that was required.

⁵⁶² Presidency Conclusions, European Council Meeting, Nice, 7-10th December 2000, Accessible at http://www.europarl.europa.eu/summits/nice1_en.htm.

⁵⁶³ Presidency Conclusions, European Council Meeting, Laeken, 14-15th December 2001, Accessible at ec.europa.eu/governance/impact/docs/key_docs/laeken_concl_en.pdf.

THE ACCESSION PARTNERSHIP OF 2001 AND THE NATIONAL ELECTION OF 2002

The years 2001 and 2002 represent a tipping point in the relationship between Turkey and the EU. The changes to be discussed provide compelling grounds on which to map Turkish candidature as subscribing to rational choice expectations of socialisation. Building on the asymmetrical gatekeeper relationship formalised in 1999, this period sees the insertion of political conditionality into the relationship. This occurs in two relevant ways, the overall conditionality of the offer on membership with EU standards and also the programme specific conditionality attached to the various financial arrangements that from this point on underpinned Turkish reforms. The argument I develop in this section is therefore that the rising credibility of the EU offer, together with stronger and incremental conditionality that focused on individual steps that Turkey must take, helps drive socialisation of freedom of expression forwards as we see the dramatic empowerment of the EU as a socialising agent within rationalist understandings of that. To explore the shifting pacing of that socialisation relationship, we must make recourse to analysing the context in which EU conditionality was interpreted, namely the Turkish political system. The election of 2002 brought to the fore a political movement that was both strongly receptive to EU requirements on freedom of expression as well as in a position to implement those quickly and decisively.

THE ACCESSION PARTNERSHIP

On the EU side, the formalisation of Turkish candidature was considerably upgraded with the formulation, and implementation, of a single coherent framework for the relationship between EU and Turkey, known as the

Accession Partnership. The Accession partnership is significant because it shows us two things. Firstly, that the EU now had a clear interest in socialising Turkey, in a way that the mere formalisation of candidature did not convey. Whilst the period 1999-2001 might reveal a situation that can be mapped to rational choice scope conditions, it is only now that we see the confluence of that situation with an intention to socialise. Secondly, the content of the Accession Partnership reveals the centrality of conditionality within the EU socialisation effort.

Council Regulation ED 390/2001 of February 26th 2001 that outlined the framework of assistance to be delivered under the pre-accession strategy. This was adopted on 8th March 2001, when the Council of the European Union formally accepted the Accession Partnership.⁵⁶⁴ The Accession Partnership created a “clear road-map” that Turkey must follow.⁵⁶⁵ The provision of a single framework of relations between the Turkey and the EU would enable the closer targeting of financial assistance to specific policy initiatives aimed towards furthering Turkish compliance with the Copenhagen Criteria. It would also clearly and unambiguously link the changes required in Turkey for it to complete pre-Accession negotiations to existing EU standards that were already binding on members. The precise nature of this re-founded relationship was outlined in November 2000 in the draft Accession Partnership document.⁵⁶⁶ The conditionality of that agreement was made explicit in the third introductory paragraph that stated “Community assistance is conditional on the fulfilment of essential elements and in particular on progress towards fulfilment of the

⁵⁶⁴ Council Decision 2001/235/EC of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey [Official Journal L 85 of 24.03.2001].

⁵⁶⁵ Chris Rumford, "Failing the EU Test? Turkey's National Programme, EU Candidature and the Complexities of Democratic Reform," *Mediterranean Politics* 7, no. 1 (2002) p. 55.

⁵⁶⁶ Official Journal of the European Communities, L85/15.

Copenhagen Criteria”.⁵⁶⁷ It went on to outline the short term requirements in the field of human rights included the need to strengthen civil society and intensify human rights training of law enforcement officials so that reform as not just legal, but also filtered down into regular practice. Medium term political reforms focused upon the more comprehensive review of the Constitution and creation of total equality for all Turkish citizens. The document is also clear about the scale of the EU aims. The relatively uncomplicated legislative changes required to bring Turkey into legislative alignment with European norms on freedom of expression are, of themselves, insufficient, rather “incorporation of the *acquis* into legislation is necessary, but in itself not sufficient; it is necessary to ensure that it is actually applied”.⁵⁶⁸ What is required is nothing less than the recreation of the relationship, both formally and practically, between Regional Community, national government and the domestic sphere in order to shape a society that is informed of its rights, various social organisations such as NGO’s that can protect them and an institutional structure that respects those rights without prejudice.

TRACING SOCIALISATION IN TURKEY

The Turkish response to the Accession Partnership was the 19th March 2001 National Plan for the Adoption of the Acquis (NPAA), which had been in preparation since the circulation of the draft partnership.⁵⁶⁹ The NPAA was intended to highlight the discrepancies between EU and Turkish law as well as

⁵⁶⁷ Official Journal of the European Communities, 2001/235/EC p. 1.

⁵⁶⁸ Official Journal of the European Communities, L 85/15 point 3.

⁵⁶⁹ The Turkish National Plan for the Adoption of the Acquis, 19th March 2001, Accessible at http://www.europa.eu.int/comm/enlargement/turkey/pdf/npaa_full.pdf.

outline how the gap between the two could be closed.⁵⁷⁰ The NPAA covered all areas where progress was required. Indeed it was so broad that ultimately it drew attention to the scale of the task confronting Turkey.⁵⁷¹ The NPAA "represented an attempt on the part of the political authorities in Turkey to strike a balance between the need to meet the Copenhagen Criteria and the unwillingness to implement reforms on the most sensitive issues in the short term".⁵⁷² For example, it stated, "this review will be undertaken on the basis of the fundamental principles of the Turkish Constitution, particularly those concerning the secular and democratic character of the Republic, national unity and the unitary state model".⁵⁷³ This statement is testimony to the strongly entrenched desire to protect certain aspects of the Turkish state from Europeanisation, and to ensure that the Turkish state retained its ability to criminalise certain modes of expression that it found to be contrary to its understanding of "permissible" civil discourse. Both the European Parliament and Commission shared the opinion that the NPAA fell substantially short of "expectations outlined in the Accession Partnership document".⁵⁷⁴

Exploring the relationship further, in the context of the broader ways in which the EU operates substantiated my previous claim that the relationship subscribes to rational choice frameworks. Bargaining between the EU and candidate countries is characterised by power asymmetries.⁵⁷⁵ Of great

⁵⁷⁰ Rumford, "Failing the EU Test? Turkey's National Programme, EU Candidature and the Complexities of Democratic Reform," p. 60.

⁵⁷¹ Ibid.

⁵⁷² Onis, "Domestic Politics, International Norms and Challenges to the State: Turkey - EU Relations in the Post-Helsinki Era," p. 13.

⁵⁷³ Ibid.

⁵⁷⁴ Onis, "Domestic Politics, International Norms and Challenges to the State: Turkey - EU Relations in the Post-Helsinki Era," p. 13. Also Rumford, "Failing the EU Test? Turkey's National Programme, EU Candidature and the Complexities of Democratic Reform," p. 59.

⁵⁷⁵ David L. Ellison, "Divide and Conquer: The European Union Enlargements Successful Conclusion?" *International Studies Review* 8, no. 1 (2006) p. 158.

significance is that candidates have no “power to vote along with EU member states on the actual terms of the agreement” that they are held to,⁵⁷⁶ with the result that discursive environments are not part of the relationship. The EU occupied a position of structural asymmetry vis-à-vis Turkey in two regards. Both the overall process of membership rested on legal conditionality and the explicit provision of financial assistance organised under the annual funding agreements was conditional on measurable performance outcomes.⁵⁷⁷ Whilst highly institutionalised by this point, the relationship was never truly discursive in the way required by persuasive theoretical approaches. The EU focused on the conditionality of its financial aid, and the conditionality of the overall offer of membership. The detailed investigation of the Turkish situation allowed the EU to focus that investigation very tightly on specific areas of concern. Nowhere in the process was the question of the EU being “wrong” or even open to discussion about its request ever present, although the EU has displayed some sensitivity to the Turkish situation.

We can trace the relationship between the Accession Partnership, the NPAA and finally Turkish legal reform. The close linking between the Accession Partnership and then the NPAA is important evidence of the causal significance of the EU in promoting the changes within Turkey. A simple chronological coincidence is insufficient to denote significance of course, but tracing the process through these levels is possible, and a strong indicator of the EU’s role as socialising agent given its positioning as gatekeeper. From these asymmetries we can trace the flow of a call for reform on the EU side through a

⁵⁷⁶ Ibid.

⁵⁷⁷ Clearly expressed with relation to Turkey in a speech by Olli Rehn, EU Commissioner for Enlargement, *Perspectives pour la politique d’élargissement 2009, une année riche d’espoirs et de projets*, Assemblée Nationale, Paris, 6th November 2008, SPEECH/08/603.

National Plan in Turkey, the reform of national legal and constitutional protection and the provision of financial assistance. The Accession Partnership noted as a short term political criteria the “strengthening of legal and constitutional guarantees for the right of freedom of expression in line with Article 10 of the European Convention on Human Rights”.⁵⁷⁸ This request was reflected in Section 2.1.1. of the NPAA, titled “Freedom of Thought and Expression”. Here the Turkish government states that it will review the constitution, article 312 of the Penal Code, articles 7 and 8 of the Anti-Terrorism Act, the Act on the Establishment of Radio and Television Enterprises and their Broadcasts and the Act on Press.⁵⁷⁹ Furthermore, in the medium term in plans to review the Act on Political Parties, as well as regulations on the Police and other security services, the various laws governing Cinema, Broadcasting and Musical Works and ultimately enact a new comprehensive Penal Code.⁵⁸⁰

As a consequence of the NPAA the Turkish National Assembly passed the First Constitutional Package on October 3rd 2001. With regards to enhancing the protection of freedom of expression, it identified specifically Articles 13 and 14 of the constitution. Article 13 was altered so as to restrict the ability of parliament to limit individual rights. Furthermore, reform of Articles 22, 26 and 28 removed the constitutional impediments to broadcasting in languages other than Turkish. Article 26 was reformed, improving the standards of freedom of expression “by removing the clause that had enabled the lawmaker to prohibit

⁵⁷⁸ Council Regulation (EC) No 390/2001 of 26 February 2001 on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an accession partnership [Official Journal L 58 of 28.02.2001].

⁵⁷⁹ The Turkish National Plan for Accession to the Acquis, March 18th 2001, Accessible at http://www.europa.eu.int/comm/enlargement/turkey/pdf/npaa_full.pdf p. 21

⁵⁸⁰ Ibid pp. 21-22.

the expression of ideas in certain languages”,⁵⁸¹ bringing Turkish legislation into “rough correspondence” with Articles 10 and 11 of the European Convention on Human Rights.⁵⁸² The revised Article 26 also, however, introduced new limitations on the grounds of defending the “fundamental characteristics of the Republic” and “national security, public order, public security and the integrity of the state with its territory and its peoples”. This was a particularly onerous burden given that the Constitution defined the fundamental characteristics of the republic as “democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk and based on the fundamental tenants set forth in the Preamble”. The August 3rd 2002 Third Constitutional Package further harmonised EU and Turkish legislation.⁵⁸³ Notably it included the abolition of the death penalty in peacetime, extending the right of broadcasting in languages other than Turkish, enhancing protection for minorities and easing press restrictions.⁵⁸⁴ Further, Turkey in 2002 passed a reform package of in February that amended articles 159⁵⁸⁵ and 312⁵⁸⁶ of the Turkish penal code, as well as Articles 7 and 8 of the Anti-Terror law.⁵⁸⁷

⁵⁸¹ Hakyemez and Akgun, "Limitations on the Freedom of Political Parties in Turkey and the Jurisdiction of the European Court of Human Rights," p. 58.

⁵⁸² Refer to William Hale, Op. cit. p. 115.

⁵⁸³ See Bac, "Turkey's Political Reforms and the Impact of the European Union," p. 23.

⁵⁸⁴ Refer to Saban Kardas, "Human Rights and Democracy Promotion: The Case of Turkey-EU Relations," *Alternatives - Turkish Journal of International Relations* 1, no. 3 (2002).

⁵⁸⁵ Refers to insults to the State and to State institutions and threats to the indivisible unity of the Turkish Republic. Prison sentences were reduced from six to three years and fines for criticising Turkish law were abolished, although the actual definition of the offence remained the same. This article was further reformed in August 2002 through amending the scope of the provision in the following way: expressions of criticism of the institutions are no longer subject to penalties unless they are intended to “insult” or “deride” those institutions.

⁵⁸⁶ The scope of this article was narrowed substantially. To the original offence of “incitement to hatred on the basis of differences of social class, race, religion, sect or region” was added the requirement that the act was intended “in a way that may be dangerous for public authority.”

⁵⁸⁷ Anti-Terror reforms were notably contentious, however, increasing sentences for some offences and introducing the notion of “visual” propaganda whilst also shortening sentences for other crimes and easing the bans of certain broadcasting equipment. It was again stated, however

The potency of this conditionality to promote change is revealed clearly when one considers that prior to the 2002 Turkish General Elections, a delicate three way coalition government composed of the Democratic Left Party (DSP), the Motherland Party (ANAP) and the Nationalist Movement Party (MHP), held power. The MHP especially was ambiguous at best on the benefits of EU membership.⁵⁸⁸ Pre 2002 the Turkish response to EU conditionality was often coloured by a nationalist reflex⁵⁸⁹ that significantly misunderstood the requirements of membership in general and the rigour that the EU expected in negotiations in particular, hence their misjudging of the NPAA previously presented. Rumford articulates this as the “dominance of short term political thinking over more strategic considerations”.⁵⁹⁰ Any account of this relationship must understand the importance of Kemalism to some segments of Turkey.⁵⁹¹ Mustafa Kemal, known to posterity as Atatürk, was key to the creation of modern Turkey after the failures revealed by World War One and the collapse of the Ottoman Empire. Turkey focused on modernisation, westernisation and laicism,⁵⁹² to force Turkey to become “modern”, to become “European”.⁵⁹³ This

that “the interpretation of legislation is crucial to ensuring actual freedom of expression. There are as yet no signs that the interpretation of the law by judges consistently takes into account the rights of the defendant under the ECHR”. 2002 report, p. 33. External corroboration of this point can be found in the 2002 Freedom House report on Turkey.

⁵⁸⁸ In parliament it had refused to endorse the necessary reforms, despite being a signatory of the Accession Partnership Document. Refer to Selcuk Gultasli, “The Copenhagen Summit: A New Era or Another “Deja Vu” For Turkey?” *Alternatives - Turkish Journal of International Relations* 1, no. 4 (2002).

⁵⁸⁹ Ibid. p. 64. Also Ziya Onis, “An Awkward Partnership: Turkey's Relations with the European Union in Comparative Historical Perspective,” *Journal of European Integration History* 7, no. 1 (2001).

⁵⁹⁰ Ibid. p. 65.

⁵⁹¹ Senem Aydin and E. Fuat Keyman, “European Integration and the Transformation of Turkish Democracy,” *EU-Turkey Working Papers*, No. 2, August 2004. Accessible at www.ceps.be. Aydin and Keyman here define Kemalism as a “will for civilization”. A “nationalist discourse that produces at the conceptual level a boundary between what is civilized and what is uncivilized.”

⁵⁹² A fuller analysis can be Accessible at Smith, Thomas, W., “Between Allah and Atatürk: Liberal Islam in Turkey” *The International Journal of Human Rights*, Vol. 9, No. 3 (2005).

⁵⁹³ A fascinating investigation of this is provided Ernst Gellner, *Encounters with Nationalism* (Oxford: Oxford University Press, 1994) chapter on Kemalism. Gellner argues that Kemalism

ideology in the military and government prior to 2002 coloured Turkish impressions of the EU. Whilst the call for freedom of expression to the EU represented a settled and unthreatening standard, to Turkey it threatened fundamentally the Kemalist inheritance, which had reified the state and protected it from criticism for fear of religious or separatist pressures. The relationship between the EU and Turkey, and the onerous demands of membership, therefore came into conflict with the relationship between Turkey and itself. Freedom of expression to many actors within Turkey meant empowering both the religious and Kurdish separatists who actively sought through violent means to partition the Kemalist state.⁵⁹⁴

THE SECOND LEVEL OF CONDITIONALITY: THE FINANCIAL RELATIONSHIP

The EU approach to conditionality rests on a far more complex and invasive set of tools than seen in the other studies. In terms of the actual political operationalisation of conditionality by the EU, there are five discrete categories that potentially exert influence: Gate keeping, Benchmarking, Model provision, Money and Advice/Twinning.⁵⁹⁵ The EU is the gatekeeper of both the goal of membership and the various steps along the path towards that, it offers clear and precise investigation of Turkish performance, as well as the direction that change

sought to reform both the state and society through a process of top down reforms designed to create in Turkey the necessary social conditions for western ideas and practices to thrive. Kemalist nationalism was not just a process of importing laws, it sought to import the mindset that made those laws viable.

⁵⁹⁴ For a brief, but insightful analysis of the importance of Kemalism to visions of the Turkish state, refer to Chris Rumford, "Resisting Globalization? Turkey-EU Relations and Human and Political Rights in Context in Cosmopolitan Democratization," *International Sociology* 18, no. 2 (2003). For a wider analysis of the question of membership through the prism of security cultures, see Hasan Kosebalaban, "Turkey's EU Membership: A Clash of Security Cultures," *Middle East Policy* 9, no. 2 (2002).

⁵⁹⁵ Heather Grabbe, "How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity," *Journal of European Public Policy* 8, no. 6 (2001) p. 1021. I suggest that all of these, except twinning, were relevant to the Turkish situation with regards to freedom of expression. The record of twinning between Turkey and the EU is recapped at <http://www.euturkey.org.tr/index.php?p=40990&l=2>

should occur in, it provides a model of what "success" looks like as well as financial assistance in the form of conditionality. As Grabbe notes, there is a difference between the way say the World Bank applies conditionality to its financial arrangements with third parties, which is in terms of "ensuring execution of a contract",⁵⁹⁶ and the EU demands which are situated in a long term and evolving politicised relationship, with the result that "the linkage between fulfilling particular tasks and receiving particular benefits is much less clear than in International Financial Institutions conditionality because the tasks are complex, and many of them are not amenable to quantitative targets that show explicitly when they have been fulfilled".⁵⁹⁷ As Gates argues, the EU has "picked a bargaining strategy that makes extraordinary demands and offers no guarantees of any sorts".⁵⁹⁸

Of the five tools of conditionality Grabbe presents, I suggest two, gate keeping and the provision of financial assistance, have particular relevance to the socialisation of freedom of expression. At the broadest scale, access to the benefits of membership, the gate-keeping role of the EU, requires macro political reorientation of the Constitution, statute and jurisprudence to clearly defined EU standards. They are articulated directly to Turkey through the Accession Partnership and its revisions. The overall conditionality of membership, together with the provision of a clear roadmap along which Turkey must progress, provides both a goal and a means to get to that goal. It is not, however, the only way in which the EU promoted change within Turkey. In parallel to this overall

⁵⁹⁶ Grabbe, "European Union Conditionality and the Acquis Communautaire," p. 252 Also note Gates discussion on this issue at Andrea Gates, "Negotiating Turkey's Accession: The Limitations of the Current EU Strategy," *European Foreign Affairs* 10 (2005) pp. 382-386.

⁵⁹⁷ Grabbe, "European Union Conditionality and the Acquis Communautaire."

⁵⁹⁸ Gates, "Negotiating Turkey's Accession: The Limitations of the Current EU Strategy," p. 387.

conditionality there is a sequence of ever-larger financial linkages between Turkey and the EU. These again are based on conditionality, but here the conditionality is tied to the ongoing funding of a particular programme, each with a very narrow and focused “on the ground” concern. Financial conditionality within the broader relationship was never therefore along the lines of “we will give you x amount of Euro’s if you change this law”. It was concerned with targeted but ultimately cumulative reforms within Turkish government to ensure that those revising legal and constitutional standards were implemented. Financial assistance is designed to aide the shift from on paper reform to in practice protection of standards.

Exploring the financial relationship, the first restructured financial package was issued in 2002,⁵⁹⁹ when total financial assistance was to total some €126 million, of which just over €2 million was designated, under programme TR 0201, towards addressing human rights concerns. This was especially important given that by 2001 Turkey was “the only candidate country which does not meet the political criteria set out in Copenhagen”⁶⁰⁰ and as such had by far the furthest to go before accession negotiations could commence. Financing under this new programme was designed to be multi-year (programmes run over three years) and co-funded, with Turkey providing some 10% of the total programme costs. This was intended to provide Turkey with the role of a stakeholder in the process, enhancing Turkish desire to fulfil the requirements.⁶⁰¹

⁵⁹⁹ 2002/002-555 National Pre-Accession Financial Assistance Programme for the Republic of Turkey. Accessible at http://ec.europa.eu/enlargement/fiche_projet/index.cfm?page=415392&c=TURKEY. Note that each finance memorandum outlines programmes that run for a three year fixed period. At any one point, therefore, there are three finance packages operative, each at a different stage of maturity. The programmes contained within them are designed to be cumulative.

⁶⁰⁰ Ibid.

⁶⁰¹ Section 4.4 of the financial assistance programme restated forcefully the centrality of conditionality: “the Commission may reduce, suspend or cancel assistance in respect of the

Within this framework, only one project was undertaken under the 2002 Finance Memorandum; project TR 0201.01 – “Improvement of Statement Taking Methods and Statement Taking Rooms in the Republic of Turkey”. The nature of this package is important. In the justification for this package, the finance memorandum explicitly stated that the October 2001 Constitutional package, together with harmonisation packages passed in April and August 2002, whilst changing the legislative framework, had not altered conditions on the ground sufficiently. There remained the pressing requirement to ensure that the reforms these embodied were carried through to day-to-day practice. Within this micro level projects, conditionality was just as prominent, and there was equally no “discussion” in the persuasive understanding of the term. Here, as in elsewhere in the story, the EU was “right” and the nature of Turkish reform was not negotiable.

THE IMPORTANCE OF DOMESTIC SALIENCE

Identifying the nature of the socialisation relationship between Turkey and the EU is not sufficient. An investigation of bargaining driven socialisation should concern itself not solely with the end product, a socialised state, but with the nature of that journey and the reasons why it ebbed and flowed as it did. Whilst the provision of membership negotiations ultimately depends on the EU, the actual pacing of those negotiations cannot be considered in isolation of the context of the Turkey. Whether or not socialisation actually occurs is dependent upon domestic political configurations, and most importantly on political elites in

measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the Financing Memorandum”.

the state to be socialised believing membership to be valuable.⁶⁰² Attempting to understand the relationship between Turkey and the EU merely by pointing to the presence of external phenomena such as conditionality in both membership and financial assistance is only half the story. Explaining the variegated texture of socialisation requires recourse to an appraisal of the domestic context within the target state,⁶⁰³ and then how the domestic level interacted with international pressures for socialisation and compliance.⁶⁰⁴

I suggest that whilst the process of bargaining resting on EU conditionality is necessary in creating change, it is never determinative of the precise nature of that change, or indeed the timing of it. Diez, Agnantopoulos and Kaliber in their study of the role of civil society in Turkey adopt this position, arguing that change is “driven by civil society actors” who collectively interpret what external conditionality actually means, and whether the costs associated with it are ones worth paying.⁶⁰⁵ The importance of domestic considerations is most clearly revealed by analysing the consequences of the 3rd November 2002 Turkish election, a landslide in Turkish politics. The Justice and Development Party (*Adalet ve Kalkinma Partisi* - AKP), a right wing moderately Islamist group⁶⁰⁶ born of the dissolved Welfare Party, garnered 10,779,489 votes,

⁶⁰² Rumford, “Failing the EU Test? Turkey’s National Programme, EU Candidature and the Complexities of Democratic Reform,” p. 63.

⁶⁰³ Such an approach is found Trine Flockhart, “Uses and Abuses of Hegemony: Socialisation of Democratic Norms in Post-War Germany and Post-War Iraq,” *Discussion Paper 27 / 2004 – School for Postgraduate Interdisciplinary Research on Interculturalism and Transnationality*, Aalborg University (2004) and Schimmelfennig, Frank, “Strategic Calculation and International Socialization: Membership Incentives, Party Constellations and Sustained Compliance in Central and Eastern Europe,” *International Organization*, Vol. 59, No. 4, (2005).

⁶⁰⁴ For a comparative analysis of the importance of domestic political configuration between Turkey and Poland, refer to Ziya Onis, “Diverse but Converging Paths to EU Membership: Poland and Turkey in Comparative Perspective,” in *Second Pan-European Conference - Standing Group on EU Politics* (Bologna: 2004).

⁶⁰⁵ Thomas Diez, Apostolos Agnantopoulos and Alper Kaliber, “File: Turkey, Europeanization and Civil Society” *South European Society and Politics*, Vol. 10, No 1 (2005) p. 10.

⁶⁰⁶ It considers itself to be the Turkish equivalent of the Christian Democratic parties of Europe.

some 34.3% of those who voted.⁶⁰⁷ With 363 seats, the AKP found itself with just one represented opposition party, the Republican People's Party, which gained 19.4% of the vote and 178 seats. All previous parties of government failed to score above 10%, and were banished from parliamentary representation.⁶⁰⁸

Should external conditionality be the only determinant of the pace and strength of Turkish reforms we would expect no differences before and after 2002, given that the external set of incentives and costs remained static. Such a simple account would note a "linear relationship, driven by EU conditionality, between externally demanded conditions that are accepted domestically by adoption policy reforms".⁶⁰⁹ This, however, is not the case, 2003 marked a year of increasing reform. January saw the fourth Constitutional Package enacted, February the fifth, July the Sixth and August the seventh. Together these addressed the full gamut of human rights concerns. Furthermore, the International Covenants on Civil and Political and Economic, Cultural and Social rights, signed in 2000, were finally ratified, although with reservations concerning the right to education and the rights of minorities.⁶¹⁰

Explaining why the AKP's election was significant for the pacing of socialisation requires an appreciation of two things, firstly, its vision of Turkish geopolitical security and secondly its own domestic political programme. The

⁶⁰⁷ For an interesting account of the 2002 Election and the rise of moderate political Islam, refer to Omer Caha, "Turkish Election of November 2002 and the Rise Of "Moderate" Political Islam," *Alternatives - Turkish Journal of International Relations* 2, no. 1 (2003) For a longer perspective, note Thomas W. Smith, "Between Allah and Atatürk: Liberal Islam in Turkey," *The International Journal of Human Rights* 9, no. 3 (2005).

⁶⁰⁸ The MHP in particular suffered as a result of its participation in the Europeanization process, many of its members viewing any move that threatened the unitary nature of the state as tantamount to concessions to terrorism.

⁶⁰⁹ Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform," *South European Society and Politics* 10, no. 1 (2005) p. 75.

⁶¹⁰ Regular Report on Turkish Progress towards Accession. European Commission, 2003. Accessible at http://www.europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf.

AKP was firmly part of the pro-European discourse for a number of reasons. It viewed the EU as a safe harbour from the stresses of globalisation as well as a necessary economic stimulus. The AKP also possessed a different understanding of national security to its predecessors. Previous approaches to security were "internal" inasmuch as they rested upon security of the state vis-à-vis a perceived Kurdish insurgency. It was only after the success of the AKP that the domestic power configuration was such that a majority of those in power came to believe that "the development of the Turkish state is guaranteed less by its ability to insulate itself from international norms and more by its capacity to integrate with international democratic regimes".⁶¹¹ The AKP understood Turkish security in a broader way that emphasised the importance of a collaborative effort with Western powers, and the EU as the archetypal entity within that set of overlapping structures.⁶¹² Finally the AKP used the EU and its offer of membership as an external hook upon which to rest its own domestic agenda. Nathalie Tocci unpacks this conceptually by characterising the EU as either a trigger of reform, or an anchor for it.⁶¹³ The AKP when it came into power with an agenda to reform the Turkish state and relax the strict Kemalism came to see EU membership and the processes that surrounded it as a convenient external justification for policies that they desired. EU membership came to be the common ground between diverse political actors who desired the same thing, the enhancement of freedom of expression, but for differing motives. This

⁶¹¹ Ibid. p. 64.

⁶¹² Although note that this approach has its limits, most forcefully shown in the ultimate refusal to allow American military forces access to northern Iraq during the 2003 Iraq War.

⁶¹³ Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?" *South European Society and Politics*, Vol. 10, No. 1 (2005). Also refer to Ziya Önis, "Domestic Politics, International Norms and Challenges to the State: Turkey-EU Relations in the post-Helsinki Era," *Turkish Studies* (2003).

dramatically increased the “intention” to be socialised on the Turkish side of the debate from the situation that had occurred prior to 2002.⁶¹⁴

Given such an overwhelming mandate and the fact that the AKP could assume office with no need for a coalition, the new Turkish government found itself considerably less inhibited than its predecessor. The AKP successfully positioned itself so as to draw many centre right votes away from the established parties whilst at the same time appealing to Kurdish and moderate Islamic segments of the population.⁶¹⁵ This reorientation of political allegiances has dramatically increased the power of the pro-EU lobby, especially given the ascendancy of moderate and politically literate Islam, a force that is capable of mass public support and is committed to, if not overthrowing, then certainly modifying the laic structure of Turkish politics and society, and perceives Europeanisation, with its focus on human rights and the separation of government, religion and the military, as the best way to achieve this.⁶¹⁶

THE CONDITIONS OF CONDITIONALITY: 2003-2005

The period from 2003 to 2005 is one of consolidation of existing reforms as well as revealing areas of continued resistance to socialisation. This period sees a fuller financial relationship underpinned by strict restatements of conditionality, and continued Turkish receptiveness, at least at the government level. It also reveals still incomplete socialisation of freedom of expression. The

⁶¹⁴ For example in a 2004 speech Erdogan called directly for “unconditional full membership”. *Recep Tayyip Erdogan: Taking Part in the EY Will Bring Harmony of Civilisations – It is the Project of the Century* The Independent (UK) 13th December 2004. Accessible at <http://www.independent.co.uk/news/people/profiles/recep-tayyip-erdogan-taking-part-in-the-eu-will-bring-harmony-of-civilisations--it-is-the-project-of-the-century-685203.htm>

⁶¹⁵ Omer Caha, “Turkish Election of November 2002 and the Rise of ‘Moderate’ Political Islam” *Alternatives – Turkish Journal of International Relations*, Vol. 2, No. 1 (2003) offers a detailed analysis of the shifting voting patterns and the rise of the AKP.

⁶¹⁶ Refer to Kosebalaban, “Turkey’s EU Membership: A Clash of Security Cultures,” for an analysis of the empowerment of different domestic actors through Europeanisation in the military sphere.

presence of these limitations powerfully delineates the outer limits of what EU conditionality could do. I will investigate the developing EU commitment to Turkey, the continued Turkish response to that and how it was the continued issue of credibility that undermined Turkish socialisation, although this credibility was no longer formally expressed through denying Turkish participation in various meetings. Instead it was embodied in national and community level within the community itself.

EXTENDING THE FINANCIAL RELATIONSHIP

The course through membership negotiations was to be both incentivised and facilitated through direct financial aid that was conditional in much the same way as the broader offer of membership itself. EU financial assistance for the year 2003 was organised under the aegis of the 2003 National Programme for Turkey Finance Package,⁶¹⁷ that amounted to some €145.1 million, of which €9.521 million was assigned to supporting the Copenhagen Criteria, and thus is of relevance to freedom of expression.⁶¹⁸ The three programmes in 2003 were targeted towards implementing political reforms and creating the conditions in which the new normative agenda could flourish. TR 0301.01, the strengthening of police accountability, efficiency and effectiveness. The project fiche states that the purpose of the project is to enable the police to carry out “its responsibilities in respect of the enforcement of law in accordance with

⁶¹⁷Financing Memorandum Between The European Community and the Republic of Turkey, TR 2003/005-667.01 to TR2003/005-667.07.

⁶¹⁸ The full breakdown of funding saw funding split into seven streams. TR 0301, Copenhagen criteria, received €9.521million, TR 0302 Economic assistance received €22.565 Million. TR 0303 Public Administration saw some €25.027 million. TR 0304 Justice and Home affairs garnered €10.268 million. TR 0305 Economic and Social Cohesion saw €45.300 million, whilst TR 0306 Programme Preparation €31.319, million whilst finally TR 0307 Communications costs totalled €1.100 million.

democratic principles and having regard for the Human Rights of all citizens”.⁶¹⁹ It proposes detailed training and education programmes to make the police system more aware of the new legislative environment and also able to act in a social context where citizens themselves are more aware of their legal rights. The need to educate the people in their new rights is another attempt to improve standards of implementation. TR 0301.02 aims at the “development of human rights, democracy and citizenship education”⁶²⁰ through altering educational curricula, capacity building within the education system and a communications strategy to “parents and other stakeholders”.⁶²¹ TR 0301.03 focuses on the development of civil society, and on enhancing NGO democratic participation as a means to further consolidate human rights within the domestic sphere.⁶²² Together, these three programmes outline a detailed and far ranging attempt to create the social and institutional conditions for a revised conception of human rights to thrive in the domestic arena by empowering both individuals and social actors such as NGO’s with the knowledge of their various rights and enhanced expectations about their protection.

The 2004 Financial Assistance Package⁶²³ saw pre-accession assistance rise to some €236 million, a substantial increase on previous years. The

⁶¹⁹ Standard Summary Project Fiche, TR 0301.01. Strengthening the Accountability, Efficiency and Effectiveness of the Turkish National Police, Accessible at http://www.europa.eu.int/comm/enlargement/fiche_projet/document/TR%200301.01%20Strengthening%20accountability%20of%20police.pdf.

⁶²⁰ Draft Standard Summary Project Fiche, TR 0301.02, Development of Human Rights, Democracy, and Citizenship Education. Accessible at http://www.europa.eu.int/comm/enlargement/fiche_projet/document/TR%200301.02%20Development%20of%20human%20rights%20education.pdf.

⁶²¹ Ibid p. 1.

⁶²² Standard Summary Project Fiche, TR 301.03, Improving Cooperation Between NGO’s and Public Sector http://www.europa.eu.int/comm/enlargement/fiche_projet/document/TR%200301.03%20Improving%20cooperation%20between%20NGOs%20and%20public%20sector.pdf.

⁶²³ Financing Memorandum Between the European Community and the Republic of Turkey, 2004, TR 2004/016-779

Copenhagen Criteria packages amounted to just over €19 million of this.⁶²⁴ The specific programmes constructed by the EU in regards to the Copenhagen criteria are again informative of the status of the Turkish application and its particular weaknesses. As can be seen, there was a general refocusing on the implementation of previous reforms and the development of the capacity of the Turkish state to implement and monitor these legal provisions coherently. TR 0401.01 specifically deals with concerns about Turkish implementation of reform and aims to ensure that the Turkish human rights situation is compatible with the ECHR,⁶²⁵ building directly on concerns outlined in the 2004 Annual Report. Working through civil society and the various human rights bodies within the Turkish government, the project is intended to raise awareness of what rights individuals have, and to reinforce their impartial and consistent enforcement. Other activities funded were 0401.02, which supported the establishment of Court of Appeal to the amount of €1.400.000. 0401.03 called for the improvement of public service/quality standards-civil society organisations and was funded for €7.127.000, whilst 0401.04 was targeted at strengthening the right to freedom of association, and predicted to cost €2.520.000. 0401.05 saw €1.170 million used to support the running of Turkish Ombudsman whilst finally 0401.06 targeted the promotion of cultural rights with €2.500.000 of aid.

http://www.europa.eu.int/comm/enlargement/fiche_projet/document/2004-016-779%20&%202004-016-180%20Turkey%20National%20programme.pdf

⁶²⁴ TR 0401, Copenhagen, €19.001.500 TR 0402, Acquis approximation, €31.827.420 TR 0403, Public Admin Strength, €56.549.600 TR 0404, Justice and Home, €11.488.700 TR 0405, Economic and Social Cohesion, €77.556.000 TR 0406, Programme Prep, €39.176.780 TR 0407, Communication, €1.120.000

⁶²⁵ Standard Summary Project Fiche, TR 401.01. Support to implementation of human rights reforms in Turkey.
http://www.europa.eu.int/comm/enlargement/fiche_projet/document/TR%200401.01%20Support%20to%20Implementation%20of%20Human%20Rights%20Reforms%20in%20Turkey.pdf p. 1.

This funding of “micro level” projects continued in tandem with macro level political change throughout 2003 and 2004. Numerous further restrictions were lifted, a process that led to acquittals and the early release of certain prisoners. The sixth reform package of May 2003 repealed Article 8 of the Anti-Terror Law (the criminalisation of propaganda against the divisibility of the state).⁶²⁶ Freedom of expression in relation to broadcasting was enhanced in the sixth reform package by narrowing the scope for suspending or banning works. The reform limited banning to those works considered to undermine the “fundamental characteristics of the Republic and the indivisible integrity of the state”.⁶²⁷ The seventh reform package reduced the minimum sentence under Article 159 of the Penal Code⁶²⁸ from a year to six months. This further brought it into line with previous reforms that exempted from punishment the expression of opinions that were designed only to criticise the state, not to either insult or deride, those institutions.⁶²⁹ The seventh package also narrowed the scope on Article 169 of the Penal Code⁶³⁰ and strengthened further the 2002 amendments to Article 7 of the Anti-Terror Law.⁶³¹ The 8th Package of May 7th 2004 substantially revised the constitution, improved the freedom of the press and

⁶²⁶ Article Eight criminalised propaganda against the indivisible unity of the state

⁶²⁷ Regular Report on Turkey’s Progress Towards Accession, European Commission, 2003. p. 30. Accessible at: http://www.europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf.

⁶²⁸ “Insulting the state and state institutions and threats to the indivisible unity of the Turkish Republic”

⁶²⁹ Regular Report on Turkey’s Progress Towards Accession, European Commission, 2003. Accessible at http://www.europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf. p. 30

⁶³⁰ Article on the aiding and abetting of terrorist organisations.

⁶³¹ The reformed Article 7 introduced the notion of “propaganda in connection with the terrorist organization in a way that encourages the use of terrorist methods”, thus moving away from the blanket criminality of any relation to a terrorist organization. In the Turkish context, terrorist organization specifically means those organizations concerned with the Kurdish question. In the latest reform the words “terrorist methods” were replaced with “resorting to violence or other terrorist means.”

gave priority to supranational treaties over domestic law.⁶³² Turkish attention was focused not only on legal reform, but also on attempts to ensure that those rights were implemented. Human Rights boards were established in all 81 provinces and 849 sub-provinces of the Turkish state and were tasked with handling and forwarding human rights complaints to the prosecutors office. Human Rights Council was established within the National Government, chaired by the deputy Prime Minister, and a Reform Monitoring Group was established in September 2003 tasked with ensuring the various legal reforms were implemented across the range of government departments.

It is estimated that between 2002 and 2003 the number of prosecutions relating to freedom of expression within Turkey halved, whilst those cases filed under Arts. 159, 169 and 312 as well as the Anti-Terror Law are “also believed to have decreased significantly”.⁶³³ Whilst part of the reason for this should be attributed to the revised statutes just outlined, it is also important to note that the methodological differences that used to separate the Turkish judicial system from that of the European Court of Human Rights have been reduced. Previously, in assessing violations of the right to freedom of expression, the ECtHR took into account four conditions when assessing the threat of a statement to public order: “the content of the relevant statement, the identity of the speaker, the context in which the statement is made and the form of the expression of the statement”.⁶³⁴ In contrast, the Turkish Courts tended to apply only one criteria that of the

⁶³² For a fuller account of the substantive details of these Constitutional Packages, refer to Meltem Muftuler-Bac, “Turkey in the EU’s Enlargement Process: Obstacles and Challenges,” *Mediterranean Politics* 7, no. 2 (2002).

⁶³³ Senem Aydin and E. Fuat Keyman, “European Integration and the Transformation of Turkish Democracy,” in *EU-Turkey Working Papers* (Brussels: Centre for European Policy Studies, 2004), p. 27.

⁶³⁴ *Ibid.* p. 29.

content itself.⁶³⁵ Before 2004, however, judicial reform saw the partial adoption of European methodology, although at currents this remains an incomplete process.⁶³⁶

As before, however, socialisation remained incomplete. For example, drawing on the work of a joint OSCE/ODIHR report on the 2002 Election Monitoring programme,⁶³⁷ it was noted that despite extensive legislative reform efforts "there is still a tendency for prosecutors to use alternative provisions of the Penal Code (312 and 169) and of the Anti-Terror Law (Article 7) to limit freedom of expression".⁶³⁸ The report notes that the use of these and other articles limited the "parameters of allowable legal debate".⁶³⁹ Furthermore, although Turkey reformed the laws on broadcasting in languages other than Turkish, it retained Article 58 of the Law on Basic Provisions on Elections and Voter Registration that strictly forbids the use of any language aside from Turkish in electioneering. This had severe consequences for the Democratic People Party (DEHAP), which asserted its ability to communicate with the ethnic Kurds that constitute a majority of its supporters was severely retarded by.⁶⁴⁰ A similar example can be drawn from 2004, when reputable NGO Rapporteurs sans Frontières indicated that press freedoms were little altered over the year, and that

⁶³⁵ Refer to Oktay Uygen, "Freedom of Expression and the ECHR and Turkish Law," *paper presented at the Human Rights General Assembly: European Convention of Human Rights and Turkey, Istanbul 17-19 May* (2004).

⁶³⁶ Aydin and Keyman, "European Integration and the Transformation of Turkish Democracy." p. 29.

⁶³⁷ Republic of Turkey Parliamentary Elections, 3rd November 2002, OSCE/ODHIR Assessment Report, Warsaw 4th December 2002. Accessible at http://www.osce.org/documents/odihr/2002/12/1463_en.pdf.

⁶³⁸ Regular Report on Turkey's Progress Towards Accession, European Commission, 2003 http://www.europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf, p 30.

⁶³⁹ Republic of Turkey Parliamentary Elections, 3rd November 2002, OSCE/ODHIR Assessment Report, Warsaw 4th December 2002. Accessible at http://www.osce.org/documents/odihr/2002/12/1463_en.pdf.

⁶⁴⁰ Ibid. p. 8. Note that DEHAP announced its merger into the Democratic Society Movement on August 17th 2005.

preparations for EU accession had not improved the condition of freedom of expression.⁶⁴¹ Whilst this may be a little polemical, it testifies to a fundamental truth, that reform was incomplete. The EU itself noted this in the 2004 Progress Report on Turkish Candidature, remarking that the Penal Code, introduced in September 2004, “provides only limited progress on freedom of expression”.⁶⁴² The report stated, “Articles that have been frequently used to restrict freedom of expression and have been assessed as potentially conflicting with Article 10 of the ECHR have been maintained or changed only slightly”.⁶⁴³

THE CONTINUING ISSUE OF CREDIBILITY

Vitally, the credibility of the EU offer of membership was, through to the final December 2004 decision to commence accession negotiations in October 2005 and indeed beyond, ambiguous in a way that has not been the case with previous EU applicant states. We must be careful here. I suggest that there are graduations in credibility that promoted or retarded socialisation at any one time. When the membership candidature was placed on a formally equal footing with other applicants in 2001, so socialisation could commence. However, that is not to say that after 2001 there were no further doubts about Turkish admissibility. I suggest that this ambiguity was not strong enough to negate the socialisation of freedom of expression, but it does serve as a useful point of analysis as to why that socialisation remained incomplete. Whilst the EU has committed sizeable resources to Turkey and commenced pre-accession negotiations, and in formal terms offered as much credibility to the offer of membership as with any other

⁶⁴¹ Turkey 2004 Annual Report. Reporters Without Borders, Accessible at http://www.rsf.org/article.php3?id_article=10265&Valider=OK

⁶⁴² Regular Report on Turkey's Progress Towards Accession, European Commission, 2004 http://www.europa.eu.int/comm/enlargement/report_2004/pdf/rr_tk_final.pdf p. 38

⁶⁴³ Ibid.

applicant, there remains a discourse at the public, national and European levels that indicates significant reticence over Turkish membership and impacts strongly on the credibility of membership offers outside of the formal offer. The very existence of such a debate is received in Turkey as evidence of the lack of a clear and consistent EU strategy and commitment,⁶⁴⁴ and as such we can expect it to have an impact on Turkish cost / benefit analysis in such a way as to, if the theoretical construct is correct, retard the socialisation of freedom of expression.⁶⁴⁵

There continued to be "informal" yet authoritative questioning about the likelihood of Turkish membership.⁶⁴⁶ The sources for this are various, ranging from emotional opposition that Turkey simply is not a European country in the same way as the Eastern European countries unambiguously are through to serious concerns on the institutional affects of admitting a large and comparatively poor state into the Union, both in terms of the financial consequences as well as the affects of Turkish participation in the Parliament, Commission and Council of the Union.⁶⁴⁷ This ambiguity is expressed at two levels. Firstly the groundswell of public opinion with the EU and the effect that this has had on national governments, Public opinion within the EU is against Turkish accession; a 2005 Eurobarometer poll found some 52% of EU citizens

⁶⁴⁴ Nathalie Tocci, Op. Cit. p. 77.

⁶⁴⁵ Pollack, "Rational Choice and EU Politics." p. 4.

⁶⁴⁶ Speech by Olli Rehn, EU Commissioner for Enlargement, *EU and Turkey on the Threshold of a New Phase*, European Parliament Plenary Session, Turkey Debate, Strasbourg, 13th December 2004, SPEECH/04/538.

⁶⁴⁷ Gates, "Negotiating Turkey's Accession: The Limitations of the Current EU Strategy," pp. 392-393. Note the role of Turkish Islam in facilitating these views. See Netherlands Scientific Council for Government Policy, *The European Union, Turkey and Islam* (Amsterdam: Amsterdam University Press, 2004).

remain against Turkish entry into the EU⁶⁴⁸ Significant figures in a wide range of EU member states have expressed strong reservations to Turkish entry.⁶⁴⁹

Second, the EU Commission itself has also been the source of conflicting messages, continuing to talk of alternatives to membership and increasingly emphasising the Union's capacity to include new members as a new criteria for membership.⁶⁵⁰ The Negotiating Framework for accession in the second clause noted that eventual membership was conditional both on the Copenhagen Criteria and "the absorption capacity of the Union",⁶⁵¹ placing another hurdle in the way of Turkish entry, one that Turkey itself has no control over. The 2005 Enlargement Strategy Paper from the Commission elaborates this point, indicating that in regards to future enlargement, the "Union has to ensure it can maintain its capacity to act and decide according to a fair balance within its institutions; respect budgetary limits; and implement common policies that function well and achieve their objectives".⁶⁵² The "danger" of admitted a populous, comparatively poor, political different and ethnically diverse Turkey from this perspective is clear.

⁶⁴⁸ The full range of Eurobarometer reports can be accessed at http://europa.eu.int/comm/public_opinion/enlargement_en.htm. Also note the importance of the perception of religious difference between the EU and Turkey, as a majority Islamic country, even if the state remains secular. Refer to Elizabeth Shakman Hurd, "Negotiating Europe: The Politics of Religion and the Prospects for Turkish Accession," *Review of International Studies* 32 (2006) p. 405.

⁶⁴⁹ Austrian President Heinz Fischer has suggested the need for a pan-European referendum on the issue, and Jacques Chirac in the Constitution referendum campaign in France promised a national referendum on Turkish entry. We should also pay regard to the Greek role, given the improved but still not normalised relations between Ankara and Athens. Note Harun Arıkan, *Turkey and the EU: An Awkward Candidate for EU Membership?* (Aldershot: Ashgate Publishing Limited, 2003) pp. 159-163.

⁶⁵⁰ There is little doubt that Turkey represents a serious "cost" to the Union were it to be come a member. A detailed appraisal of this is offered at Ibid. pp. 11-18.

⁶⁵¹ Negotiating Framework for Turkey, Luxembourg 3rd October 2005. Accessible at http://ec.europa.eu/enlargement/pdf/st20002_05_TR_framedoc_en.pdf.

⁶⁵² 2005 Enlargement Strategy Paper, COM 92005) 561, Final, Brussels, 9th November 2005, Accessible at http://europa.eu.int/comm/enlargement/report_2005/pdf/package_v/com_561_final_en_strategy_paper.pdf.

We need to be careful in discussing this line of reasoning about the role of existing members. Could their reticence be evidence of member state efforts to socialise Turkey via the offer of membership, just as Thailand did with Myanmar's membership process? Superficially there are similarities. Member states of the EU expressed a whole range of differing opinions about the "correctness" of Turkish entry, regardless of its potential conformity with the legal framework of membership. This seems to rotate around questions over what it means to be "European" in a way that is not quite encapsulated by even the EU's legal complexity. This is evidenced by the recent step by the EU to add notions of its own "absorption" capacity as a determinant of when membership is to be granted? There is no legal stipulation as to what this means, or how Turkey can meet that requirement. Rather it is based upon a wide range of concerns about what the EU is, and wants to become. To join the Union you have to be not only in alignment with the *acquis*, but also with notions of Europeanness. I suggest, however, that this is not a socialisation process, but rather an attempt to deny membership by creating non-legal hurdles that are effectively insurmountable by Ankara. In the ASEAN case the process of membership was perceived as an opportunity to do make something more of the moment than ASEAN itself could carry. There was a clear intent to socialise. Here, we see no intent to socialise, indeed the desire to deny membership would appear to be the very antithesis of socialisation. The sheer size and "otherness" of Turkey scares many in the Union. Membership should never happen, because if it did it would kill the integration project, or at least retard it by decades.

ACCESSION NEGOTIATIONS: 2005 – 2009

The previous analysis has charted the importance of both an unambiguous offer of membership and the maintenance of focused financial assistance. It has investigated, and substantiated, just how rational choice accounts of socialisation can proceed. The benefit of extending this analysis through from 2005 until is that it suggests one final relevant conclusion. I argue that the continued failure to socialise, despite the transition to full blown membership negotiations and continued financial assistance reveals that what is missing in the EU socialisation effort is persuading Turkey, and the various judges, civil society actors and the like, that these changes are the right ones. As identified in chapter two, conditionality processes fail to “get inside the heads” of the targets of socialisation, and yet this is vital for the EU effort to promote consistent on the ground stable implementation. I argue that in explaining the continued failure, even as Turkey moved from pre-accession to direct accession negotiations, can be explained by the inbuilt limitations of the very socialisation strategy the EU has deployed.

THE CONTINUING RELATIONSHIP

The previous discussion has been about the extensive negotiations to bring Turkey into alignment with the Copenhagen Criteria, allowing it to move onto Accession Negotiations. The European Commission communicated to both the European Council and the European Parliament in October 2004 “Turkey sufficiently fulfils the Copenhagen political criteria”.⁶⁵³ Superficially, this would appear to be the end of the story. If the Copenhagen Criteria required the

⁶⁵³ Communication of 6th October 2004 from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey’s progress towards Accession. Com(2004) 656. Accessible at <http://europa.eu/scadplus/leg/en/lvb/e50015.htm>.

acceptance of human rights and democracy, then the statement that Turkey now fulfils them would indicate that socialisation was at a successful close. The key word in that statement, however, is “sufficiently”, a significant qualifier because both before, and after, October 2004 sustained questioning of whether or not Turkey had actually moved into alignment with Copenhagen remained. It was felt necessary in the Negotiating Framework to restate the Copenhagen criteria as a framework against Turkish preparedness could be measured. Whilst we can note that the Copenhagen Criteria are “very broad and open to considerable interpretation”,⁶⁵⁴ and more troublesomely, considerable alteration over time as aspects are removed, played down, enhanced or added upon,⁶⁵⁵ the leeway given to Turkey in this regard was considerable.

Regardless, Accession negotiations between Turkey and the EU commenced on the 3rd October 2005. Whereas pre-Accession negotiations focused on the fulfilment of the Copenhagen Criteria, that is the democratic and human rights situation together with the *ability* to incorporate the *acquis communautaire* (the collected treaty and jurisprudence of the Union), actual Accession negotiations covered the substantive Chapters that together are the *acquis* with the aim of actually incorporating it. The first stage of this is known as “screening” where the full 35 chapters of the *acquis* are presented to Turkey, and the situation within Turkey graded in terms of what the areas of incompatibility are, and how to address those.⁶⁵⁶ Within this shifting set of arrangements, the financial assistance continued, at a larger scale. The Financial

⁶⁵⁴ Grabbe, “European Union Conditionality and the Acquis Communautaire,” p. 251.

⁶⁵⁵ Ibid. Also note Heather Grabbe, “A Partnership for Accession? The Implications of EU Conditionality for Central and Eastern European Applicants,” *EUI/RSC Working Paper No. 99/12*, Robert Schuman Centre, European University Institute, San Domenico di Fiesole, Italy (1999).

⁶⁵⁶ The full rundown of these chapters and their current status is accessible at http://ec.europa.eu/enlargement/how-does-it-work/negotiations/index_en.htm.

Assistance Programme for 2006 totalled some €450-470 million, so large that it was subject to two Financing Decisions. Financing for the first time also engaged in the “promotion of Civil Society Dialogue” with the aim of “preparing civil society from the EU and Candidate Countries for future enlargement, by encouraging a societal debate around related issues”.⁶⁵⁷ As always, the “agreement of the 2006 pre-accession financial assistance programme will depend on the Turkish authorities’ commitment to the continued forceful implementation of the pre-accession strategy”.⁶⁵⁸ Council resolution 1085/2006, of 17th July 2006 established an “Instrument for Pre-Accession Assistance” with Turkey that re-based the relationship between the EU and Turkey.⁶⁵⁹ Under this programme, the IPA-Transition Assistance and Institution Building Component for 2007 was set at €256,202,720.⁶⁶⁰ It noted in regards to the Copenhagen Criteria, “assistance will be provided to consolidate the reforms that have been adopted and to improve their implementation on the ground”.⁶⁶¹ It did so through the creation of five projects. Of these, particularly important were TR 0701/03 that trained military judges and human rights prosecutors, TR 0701/04 that funded civil society funding for programmes to empower women’s N.G.O.s and TR 0701/05 that supported implementation of various administration reforms. All of these relate again to securing the protection of freedoms within the domestic environment.

⁶⁵⁷ Commission Decision c/2006/2206, 9th June 2006, “Establishing a National Pre-Accession Financial Assistance Programme for the Republic of Turkey – Part One.”

⁶⁵⁸ Ibid. p. 9.

⁶⁵⁹ Refer to EC 1085/2006, 17th July 2006.

⁶⁶⁰ Commission Decision C/2007/6423 of 20th December 2007 p. 1.

⁶⁶¹ Ibid. p. 4.

The Turkey 2006 Progress Report noted that the Ministry of Justice issued a circular that instructed prosecutors to take into account both Turkish Legislation and the ECHR, as well as establishing a monthly monitoring system in regards to the freedom of expression and the related cases within the Turkish legal system.⁶⁶² The report continues to note that restrictive jurisprudence surrounding article 301 of the Turkish Penal code had been “repeatedly used to prosecute non violent opinions expressed by journalists, writers, publishers academics and human rights activists”,⁶⁶³ 301 penalising perceived insults to the notion of “Turkishness”, the republic and the organs and institutions of state. The report concluded, “freedom of expression in line with European standards is not yet guaranteed by the legal framework”.⁶⁶⁴ 2006 also saw EU Enlargement Minister Olli Rehn note that there was a need for Turkey to rewrite those laws that restrict or limit the full right to freedom of expression.⁶⁶⁵

The re-election of the AKP in 2007 further entrenched the pro-EU lobby within Turkish politics. Prime Minister Erdogan stating that “our government sees the EU entry talks both as a way of integration and a reform process to improve political, economic, social and legal standards”.⁶⁶⁶ The Turkish Parliamentary Elections of 22nd July 2007 where “characterised by pluralism and a high level of public confidence underscored by the transparent, professional

⁶⁶² Turkey 2006 Progress Report, Commission Staff Working Document, SEC (2006) 1390, Brussels 8th November 2006.

⁶⁶³ Ibid. p. 14.

⁶⁶⁴ Ibid. p. 15.

⁶⁶⁵ EU Criticises Turkish Law on Insulting Turkishness, James McConalogue, 19th July 2006, The Brussels Journal, Accessible at <http://www.brusselsjournal.com/node/1197>. Also see Speech by Olli Rehn, EU Commissioner for Enlargement, *Reforms in Turkey – The First Place it is the Interest of the Turkish Citizen*, European Parliament Debate on Turkey, Strasbourg, 26th September 2006, SPEECH.06/536.

⁶⁶⁶ Quoted in “Turkish Leader Promises Reforms”. Washington Post, 31st August 2007. Accessible at http://www.washingtonpost.com/wp-dyn/content/article/2007/08/31/AR2007083101692_pf.htm.

and efficient performance of the election administration".⁶⁶⁷ The return to power of the AKP under Prime Minister Erdogan was immediately followed by a restatement of that government's commitment to implementation of the Turkish Road map for EU Accession, presented in April 2007.⁶⁶⁸

In broad terms, compliance with international human rights accords continued. The ratification of the First Optional Protocol to the ICCPR entered into force, allowing individual Turkish citizens to petition the UN Human Rights Committee. However, some 330 judgements were passed down by the European Court of Human Rights finding for Turkish violation of the ECHR, although it was noted that compliance with the judgements of the Court was improving, *especially* with regards to freedom of expression.⁶⁶⁹ It was further noted that whilst "open debate continued in the Turkish media" in regards to sensitive issues, "the prosecution and conviction for the expression of non-violent opinions under certain provisions of the Turkish Criminal Code are a cause of serious concern".⁶⁷⁰ Article 301 was singled out for particular criticism, becoming the focus for European criticism over freedom of expression in Turkey.⁶⁷¹ 301 stated that:

1. A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years.
2. A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security

⁶⁶⁷ Turkey 2007 Progress Report, Communication from the Commission the European Parliament and the Council, Sec. 1436, 6th October 2007.

⁶⁶⁸ See the discussion in Ozlem Onaran, "Speculation-Led Growth and Fragility in Turkey: Does the EU Make a Difference or "Can It Happen Again"?" *Vienna University of Economics: Department of Economics Working Papers Series, No.93* (2006).

⁶⁶⁹ Turkey 2007 Progress Report, Communication from the Commission the European Parliament and the Council, Sec. 1436, 6th October 2007 p. 12.

⁶⁷⁰ Ibid. p. 14.

⁶⁷¹ Ibid. p. 15.

organizations shall be punishable by imprisonment of between six months and two years.

3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.

4. Expressions of thought intended to criticize shall not constitute a crime.

The willingness of Turkish courts to prosecute under 301 had raised awareness of its incompatibility with Article 10 of the ECHR.⁶⁷² In December 2005 Journalist Perihan Magden was prosecuted for a newspaper column where she defended the right to deny military service. This, together with other cases, caused Amnesty International to focus specifically on 301 and its incompatibility with European norms.⁶⁷³ This welter of negative publicity led Turkish Foreign Minister Abdullah Gul to note that there was a need to change 301, the reforms being passed by Parliament April 30th 2008. Outside of 301, Articles 215, 216, 217 and 220, that together criminalizes freedom of expression with regards to public order as well as Article 228 that restricts freedom of expression with regards to notions of fair trial also substantially curtailed the rights that were guaranteed constitutionally. This led the Commission to conclude that “the Turkish legal system does not fully guarantee freedom of expression in line with European standards”,⁶⁷⁴ and that the growing jurisprudence these various Criminal Code articles was creating was establishing a “climate of self-censorship in the country”.⁶⁷⁵ The 2008 Council Decision on the Principles, Priorities and Conditions contained in the Accession Partnership with the

⁶⁷² Speech by Olli Rehn, EU Commissioner for Enlargement, *Enlargement Policy in 2009 – An Outlook*, ECOSOC External Relations, Brussels, 5th February 2009, SPEECH/03/39.

⁶⁷³ “Turkey: Article 301 is a Threat to Freedom of Expression and must be repealed now!” Amnesty International, 1st December 2005. Accessible at <http://www.amnesty.org/en/library/info/EUR44/035/2005>

⁶⁷⁴ Ibid. p. 15.

⁶⁷⁵ Ibid. p. 61.

Republic of Turkey saw the resolution of this issue as laying in bringing Turkish legislation and judicial practice “in line with the ECHR and with the case law of the ECtHR”,⁶⁷⁶ whilst stating most forcefully that “failure to respect these general conditions could lead to a decision by the Council to suspend financial assistance on the basis of Regulation (EC) No. 2500/2001 or on the basis of Article 21 of Regulation (EC) No 1058/2006”.⁶⁷⁷

THE CONCEPTUAL LIMITATIONS OF EU SOCIALISATION ATTEMPTS

Despite considerable reform, and the machinations of conditionality, socialisation of freedom of expression remains incomplete.⁶⁷⁸ That it took until 2008 for Article 301 of the Criminal Code to be revised, and the continual presence in EU financial conditionality focusing on advancing the right of freedom of expression within the Turkey are evidence to both the failure of the EU to close the process and also to perhaps a more fundamental weakness. The Turkish Progress Report of 2008 has continued to highlight how both the “institutional framework for human rights promotion and enforcement does not meet the independence requirement and lacks financial autonomy and transparency.”⁶⁷⁹ The EU remained concerned about the continued lack of reform of Articles 215, 216 and 217, and the slow pace of change.⁶⁸⁰ It noted that the wide interpretation of these by judges, especially when dealing with Kurdish questions, was “not in line with the ECtHR case law on freedom of expression

⁶⁷⁶ Council Decision on the Principles, Priorities and Conditions contained in the Accession Partnership with the Republic of Turkey and Repealing Decision 2006/35/EC, 2008/157/EC, 18th February 2008.

⁶⁷⁷ Ibid. Chapter Five.

⁶⁷⁸ Memorandum by Olli Rehn, EU Commissioner for Enlargement, *Key Findings of the Progress Reports on the Candidate Countries, Croatia, the Former Yugoslav Republic of Macedonia and Turkey*, Brussels 6th November 2007, MEMO/07/447.

⁶⁷⁹ Turkey 2008 Progress Report. SEC 92008) 2699 Final, Brussels 5th November 2008. Accessible at http://www.avrupa.info.tr/Files/File/Docs/turkey_progress_report_en.pdf p. 12

⁶⁸⁰ Speech by Olli Rehn, EU Commissioner for Enlargement, *Turkey and the EU: A Win-Win Game*, Opening Address at Bosphorus Conference, Istanbul, 20th October 2008, SPEECH/08/520

and implies in particular a lack of distinction between violent and non-violent opinions".⁶⁸¹ The 2007 IPA-Transition Assistance Programme also noted, with regards to human rights, that "the promotion of human rights... has been addressed though a number of projects aimed at the police and gendarmerie services, the judiciary and civil society" but that despite this there has been "no definitive resolution to the identified problems" and that part of the reason for this should be found in the "deep divisions within the [Turkish] public administration, for example judiciary reform, not all segments of which supported the aims of EU Assistance".⁶⁸²

We cannot ascribe the ongoing failure by Turkey to reform its protection of freedom of expression to a lack of information, or an unclear set of criteria on the EU's side. It would appear that socialisation via the scope conditions established for rational choice accounts of bargaining should be successful.⁶⁸³ It has a clear intention to socialise, and Turkey has proven sustainedly receptive to socialisation. The 2008 Revised Accession Partnership again states clearly the requirements for Turkish Accession, to "yardstick" the status of compliance.⁶⁸⁴ Nor can we in some way fault the EU's assistance to Turkey. It has been extensive, sustained and minutely detailed. The sequence of Annual Reports and funding agreements clearly established what the EU desired, and did so in a public way. Turkey was operating in an information rich context, and yet still has not translated the clear requirements into domestic reform, despite the fullest

⁶⁸¹ Turkey 2008 Progress Report. SEC 92008) 2699 Final, Brussels 5th November 2008. Accessible at http://www.avrupa.info.tr/Files/File/Docs/turkey_progress_report_en.pdf. p. 16

⁶⁸² Commission Decision C/2007/6423 of 20th December 2007 p. 20.

⁶⁸³ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," p. 803.

⁶⁸⁴ Speech by Olli Rehn, EU Commissioner for Enlargement, *An Open and Self-Confident Society: Fundamental Freedoms, constitutional reform and democratisation in Turkey*, Conference of Constitutional Reform in Turkey, European Parliament, 3rd March 2008, SPEECH/08/121.

deployment of conditionality encountered anywhere in the world.⁶⁸⁵ The reason for this is that the process of conditionality, even in its multi-faceted guise encountered here, has limits, limits that are suggested by the theoretical studies of it as advanced in chapter two. How do you go from altering someone's behaviour to altering their beliefs?⁶⁸⁶ The EU requires just that transformation; it requires judges to consistently apply revised standards. It requires civil society to promote and protect freedom of expression for itself. This is not happening, as just noted judges apply even revised standards in ways that are compatible with their own atavistic beliefs, not the intentions of the EU in prompting those reforms.

In explaining this, I suggest that theory casts additional light. What has been lacking in the account presented here is an environment where the EU persuades Turkey that these changes are "right" in a way deeper than simply being intervening variables between it and membership. In part this is understandable given that the EU is not engaged in negotiating with Turkey in a discursive sense. Turkey must simply accept that it must change into EU standards or not become a member. The dominance of conditionality as the conditioner of change in Turkey is a result of the intense, complex and supranational nature of the EU, both in terms of human rights but also with regards to the full gamut of its activities. It also, paradoxically, interacted

⁶⁸⁵ Speech by Olli Rehn, EU Commissioner for Enlargement, *Turkey on the Road of Reforms*, European Parliament Plenary Session, Strasbourg, 24th October 2007, SPEECH/07/651.

⁶⁸⁶ There is a body of literature that engages with this question. Cognitive Dissonance Theory argues that actors, who—for ulterior reasons—act in a certain manner and need to justify these activities to themselves and others, begin to internalize the justification even if they were initially critical of it. Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State," p. 1053. The work is interesting, but not relevant here. Cognitive Dissonance Theory rests on a single actor engaging in behavioural patterns at odds with their own beliefs, and then altering those beliefs to avoid dissonance. The Turkish situation under discussion here is different. We are dealing with at one level Turkey as a political actor changing its behavioural patterns, and then the dissonant behaviour of individual judges. These different layers of analysis preclude dissonance from arising.

negatively with the requirements of the EU. The recourse to conditionality was not a choice, it was a necessity, but in becoming *the* socialisation preference of the EU the community lost its ability to convince others of the rightness, at an identity level, of its actions. This may have not been a significant issue with the ex-communist states, whose common heritage and unique political situation after the Cold War rendered them especially amenable to identity change without the EU having to promote that persuasively. It is vitally significant to the Turkish situation, where deep-seated and highly valued political and social codes have to be transformed by membership, and yet nowhere are the practitioners and holders of those codes being convinced that the new way is better. They are only being convinced that to be a member, they must change their behaviour.

The EU itself has recognised the difficulty of truly matching its requirements for stable protection of human rights within the domestic sphere and the limitations of conditionality approaches.⁶⁸⁷ The 2007 Financial Agreement is notable in its inclusion of extensive provisions for the “Promotion of an EU-Turkey Civil Society Dialogue”⁶⁸⁸ that provided for the “establishment of partnerships and promotion of dialogues between civil societies of Turkish and EU Counterparts”.⁶⁸⁹ The EU has also funded a concerted effort to develop civil society through educating Turkish domestic actors about freedom of expression under the authority of the Delegation of the European Commission in Turkey, through the broader “European Instrument for Democracy and Human

⁶⁸⁷ Speech by Olli Rehn, EU Commissioner for Enlargement, *Civil Society at the Heart of the EU's Enlargement Agenda*, Conference on Civil Society Development in Southeast Europe – Building Europe Together, Brussels, 17th April 2008, SPEECH/08/201.

⁶⁸⁸ Refer to Commission Decision C/2007/6423 of 20th December 2007.

⁶⁸⁹ Ibid.

Rights" (EIDHR) programme.⁶⁹⁰ The Delegation funded direct, in grants not financial conditionality, N.G.O activity to raise "Turkish citizens awareness about restrictions on freedom of thought and expression in Turkey" through €509,000 grant to the Association for Liberal Thinking in 1999. In 2006 the Delegation funded the creation of a Centre for Freedom of Expression, with the aim of creating domestic pressure on the Turkish government by highlighting areas of continuing incompatibility in existing legislation compared to European standards as well as publicising that right to the public at large. Other efforts include grants to human rights promoters and efforts to reform Turkish education standards to reflect the central importance of human rights.⁶⁹¹ EU engagement with Turkey was not solely through the prism of the funding memoranda. Rather, in an attempt to ensure true adherence to the *acquis* and Copenhagen Criteria, the EU reached out to civil society to create both a sense of ownership of freedom of expression as well as an indigenous system for addressing the government's transgressions of that right.

I suggest therefore that the continued track record of reform in Turkey never reaching the level desired by the EU powerfully denotes the ultimate outer-limits of the effectiveness of conditionality. Conditionality is an excellent tool for altering political arrangements, laws and constitutions. Where it is lacking, however, is in completing the process of transformation at a social level. Holding governments conditional on certain behaviour, such as human rights compliance, is ultimately a thankless task in the face of continued social resistance. Indeed

⁶⁹⁰ The broader importance of civil society to EU democratic promotion is charted with reference to the ex-Soviet bloc in Kristi Raik, "Promoting Democracy through Civil Society," in *CEPS Working Document* (Brussels: Centre for European Policy Studies, 2006).

⁶⁹¹ A full account of these grants to large and small projects is found in European Instrument for Democracy and Human Rights (EIDHR): Turkey Programme, Delegation of the European Commission to Turkey, January 2008. Accessible at <http://www.avrupa.info.tr/EUCSD.D.hag.htm>.

the record of conditionality to diffuse complex social norm-sets such as human rights or democracy is "not completely convincing".⁶⁹² This is because whilst governments can be conditioned into changing their behaviour in pursuit of a goal, societies are much more unwieldy affairs. Just because a government is held accountable does not automatically alter the decisions and opinions of the judicial system, of sub-national actors such as political parties and members of civil society.

CONCLUDING REMARKS

The socialisation of Turkey into EU standards is a story of remarkable, but not complete, success. The growing credibility of the European offer of membership, and the growing financial relationship between Brussels and Ankara to ease the necessary transition has seen extensive legislative and juridical realignment in Turkey towards European standards. These standards, expressed in clear legal documents that are binding upon existing members prompt my agreement with that scholarship that focuses on the centrality of rational understandings of bargaining in the European Regional Community example.⁶⁹³ Whereas the other studies reveal the significance of social influence tools, the extensive deployment of conditionality here suggests that it is the preferred mechanism when strongly held legal standards have to be socialised prior to a state becoming a member.

This conclusion is based upon a belief that the texture of the EU relationship with Turkey cannot be explained without recourse to deeper

⁶⁹² Schmid, "The Use of Conditionality in Support of Political, Economic and Social Rights: Unveiling the Euro-Mediterranean Partnership's True Hierarchy of Objectives?" p. 401.

⁶⁹³ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 224. See also Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of European Public Policy* 11, no. 4 (2004) pp. 661-663.

reasoning. To understanding the varying timing of negotiations, why periods of progress are meshed with periods of apparent lethargy attention must be paid to two further explanations. An appreciation of the importance of credibility of the EU offer of membership is central in understanding how it is that freedom of expression remains partially unprotected within Turkey. Of course, the time it takes to re-orientate a police and justice system, not to mention Civil Society more broadly, towards the full protection and promotion of European standards on freedom of expression is considerably longer than the comparatively simple task of promulgating new laws and repealing offending ones. The continuing shortcomings of the Turkish political system with regards to freedom of expression despite the continuing EU financial assistance should be attributed to the increasing obstacles to membership, whether they are originating from the EU itself of various member states. Into this we must also remain away of the role of Turkish domestic political and civil society in translating the external incentives into a set of meanings about what membership is and what costs are suitable to achieve that. Rational accounts of socialisation based solely on the existing scope conditions may fail to comprehend why socialisation occurs in the way, and at the pace, that it does. They also fail to identify how socialisation works at the level of sub-national groupings whose behaviour cannot be held up to conditionality in the same way Turkey's can. Just as before, we are presented with the dual need to explain the conditions in which socialisation arises, as well as the actual mechanisms of that socialisation.

7. Conclusions and Extensions

At the close of this dissertation, I return to my research question, **“What are the socialisation mechanisms that arise from applying, achieving and maintaining membership of regional communities?”** In answering this question, I have had to make a range of innovations in order to shed light upon the phenomena at hand. New areas of empirical insight have been studied, and these have prompted analytical, methodological and definitional innovation in order to best conceptualise answers to the questions posed and to respond to the explanatory weaknesses I identified in the introduction. Analytical eclecticism, which I expand on here by rearticulating the importance of definitions, corrects existing explanatory shortcomings and permits more robust conceptualisations of how socialisation occurs. The empirical, analytical and conceptual arguments flow into and complement each other, although each level speaks to differing audiences. In this concluding chapter I present a summary of my findings before drawing these answers together to address the various contributions made by this thesis. I close by outlining the possibilities for extending the findings of this project in ways that would further both my own research and the broader agenda of work on socialisation.

THE SURPRISINGLY VARIED NATURE OF SOCIALISATION

This study has revealed a range of different socialisation mechanisms as states apply to become, and then continue to remain, members of regional communities. Both before and after the point of acquiring membership, rationalist and constructivist approaches have something to say about those processes. Rationalists focus our attention on the various ways in which

hierarchy influences socialisation. Before membership is gained, the process of conditionality, underpinned by bargaining mechanisms, is ubiquitous across all three studies, although it was significant for freedom of expression in only the EU case. After membership, the role and insight of rationalist accounts changes. Where court systems either exist or come to exist, rationalists have something to say about the placing of sanctions on states that transgress agreed standards. However, and drawing on Risse's and Schimmelfennig's work, I have also hoped to show how the core rationalist focus on static identities provides a platform for it to investigate the presence of Rhetorical Action, Naming and Shaming and Social Sanctioning within the membership context. Shifting the rationalist focus here away from simple bargaining accounts towards an analysis of the strategic deployment of language adds a healthy corrective to the rather narrow confines of the rationalist account of socialisation which has, in pre-existing scholarship, been promoted by the focus on EU socialisation through membership.

Alongside these processes I have shown that a constructivist sensibility offers significant value added, again as a corrective to the EU set of conclusions. The use of the formal membership process by other members to exert pressure occurs as discursive engagement, operating around the forwarding and debating of various ideas about what the identity of membership within a community entails. The addition of a discursive awareness to the study of the membership, regional community and socialisation nexus facilitates an appreciation of the evolving nature of communities. It would appear that regional communities are highly valued, even when they appear dysfunctional. Even the OAS at the nadir of its fortunes in the mid 1960's was never seriously considered for abolition. Instead, states and the broader regional civil society and domestic actors, engage

in ongoing attempts to transform a given community and to construct a better set of agreements and norms to overcome the deficiencies encountered. Community building in both the ASEAN and OAS cases came to talk explicitly about human rights, indeed it became a defining feature of both processes. The constructivist focus on persuasion and identity construction can account for this in a fuller and richer way than even the most sophisticated rationalists can account for. It focuses our attention on truth claims and complex debates, and on the power of norms and the need for their promoters to develop convincing arguments. Whilst outside the remit of this study, a focus on framing and norm entrepreneurs would shed additional valuable light on these events.⁶⁹⁴

In addition to the identification of differing mechanisms by which socialisation pressures are exerted, comparison between the three cases has reveals two different *modes* of socialisation. These modes refer to the different basis upon which socialisation pressure is exerted, either detailed understandings of freedom of expression such as in the EU or later periods of the OAS case, or broad declaratory commitments to democracy and human rights, as seen in the ASEAN study. The recognition of these two different bases for socialisation attempts is significant for how we understand when and where socialisation occurs. Due to the conflation of socialisation attempts with successful examples of socialisation, there is a mistaken belief that socialisation is only attempted where detailed standards are present.⁶⁹⁵ ASEAN has engaged in socialisation attempts, but has rested those efforts on broad standards in the absence of any

⁶⁹⁴ See for example the utility of a focus on norm entrepreneurs in Christine Ingebritsen, "Norm Entrepreneurs: Scandinavia's Role in World Politics," *Co-operation and Conflict: Journal of Nordic International Studies Association* 37, no. 1 (2002), Payne, "Persuasion, Frames and Norm Construction."

⁶⁹⁵ Indeed the bleeding together of the established scope conditions between identifying the *presence* of socialisation and identifying its *success* is illustrative of this fact.

detailed appreciation of the content of “democracy” or “human rights”. This observation suggests that the claim that socialisation rest on the deployment of mechanisms that “link specified initial conditions and a specific outcome” is erroneous.⁶⁹⁶ If socialisation can be attempted on the basis of broad declarations, then there is no *specific* outcome for mechanisms to link with. Socialisation can be attempted without an understanding of what the end point of that process can and should be. Whilst this lack of a definite outcome is significant for questions of success and failure, it does not exclude the very presence of socialisation attempts.

Turning to that question of success and failure, analysis must rest on a number of assessments. First is an accurate account of intentions, on top of which should rest a range of predictions as to what promotes success via the various mechanisms that exist. I have based my account of success and failure on the scope conditions for identifying rational and constructivist processes. That there are established accounts of when something is successful or not is no excuse for complacency, and I have deployed these conditions critically. The story of ASEAN, and much of that of the OAS is one of failure, where the regional community has proven unable to transfer its wishes into outcomes. Rationalist accounts of bargaining focus more heavily on questions of credibility and domestic political alignment than previously thought. The pacing and depth of socialisation in the Turkish case is dependent on both of these criteria. However, the comparative study also reflects the need to expand our framework for conceptualising the success that, while remaining true to rationalist ontological commitments, rests on something other than bargaining. Rhetorical

⁶⁹⁶ Michael Zürn and Jeffrey Checkel, “Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State,” *International Organization* 59, no. 04 (2005) p. 1049.

action requires the presence of parties who are willing to listen. Panama was not willing to listen before the mid 1990's, and Myanmar still turns a deaf ear to the entreaties of ASEAN. Social sanctioning, defined as the denial of membership rights, which would otherwise be bestowed, seeks to alter the legitimacy of membership. Legitimacy and value are not synonymous facts. Myanmar did not value the chair of ASEAN in the way that would be necessary for it to act as a hook upon which change could be hung. Naming and shaming, in a related set of expectations, requires both a wide and meaningful audience, preferably one linked to civil society at the regional and national level to create a positive feedback loop through which to press for enhanced compliance. It also requires that there is agreement about what is, and is not, "shameful" to begin with. Constructivist approaches to persuasion show less variation. The established scope conditions travel relatively unscathed from existing literature to this study, although the cases emphasise awareness of the various strengths of standards (defined in term of how detailed they are, whether that detail is "in-house" and whether communities are promoting individual norms or composite norm-sets). Not all standards desired by communities are strongly enunciated, universally admired and unproblematically welcomed. Norms emerge through competition and contestation, and even at their earliest stage actors seek to promote them.⁶⁹⁷

In making these arguments, each individual study has its own role to play in painting this broad picture. This is not, however, to deny them their own unique voices. Each case is an addition to the scholarship that has focused on those communities. The ASEAN study indicates that the claims of those who seek to argue that ASEAN is a chimera in any practical sense are substantially

⁶⁹⁷ The question of norm origins is explored in Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," pp. 16-17.

off the mark.⁶⁹⁸ An appreciation of ASEAN's ability to act is a healthy rejoinder to those who all too quickly write it off as in some way deficient. Such assessments tend too often to cluster around a western-centric account of what constitutes a community. ASEAN has acted differently, through the articulation of broad standards. We can say that this is less successful than alternative modes of socialisation but we cannot, and should not, say that it is not acting in ways which, to itself and members, are revolutionary in scale and intention. The OAS study extends the work of those who have studied that community's standards of democratic promotion by examining the multifaceted way in which the community talks to its members, revealing a far subtler range of strategies deployed than existing accounts have admitted.⁶⁹⁹ The EU study develops a critique of existing approaches that have focused on the success of conditionality by delineating the outer boundaries of what it can, and cannot, achieve.⁷⁰⁰ Each of these contributions is complementary to the conceptual line of reasoning forwarded, but simultaneously talks to different people and differing research agendas.

THE ECLECTIC MOMENT IN SOCIALISATION STUDIES

Any attempt to theorise social life comes up against the (in)famous debate between rational choice theorising and the range of sociological theories that sit against it. Approaching this debate requires a firm footing. Rationalist accounts enjoy a degree of parsimony that their sociological cousins may never emulate because they interrogate the world for different purposes and with

⁶⁹⁸ Khoo, "Deconstructing the ASEAN Security Community: A Review Essay," p. 45.

⁶⁹⁹ Cooper and Legler, "The OAS Democratic Solidarity Paradigm: Questions of Collective and National Leadership."

⁷⁰⁰ Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe* p. 224.

different tools.⁷⁰¹ Socialisation flowing from clear power imbalances is easily identified and comparatively straightforward to conceptualise. Constructivist accounts, however, benefit from a far richer and more textured account of politics, although this comes at the cost of increased theoretical and methodological complexity, as they attempt to come to terms with the intense social relationships that shape the world.⁷⁰² This study speaks to that debate. It suggests that whilst theoretical conjecture is a vital part of academic enquiry for those whose focus is essentially practical in nature, this can never come at the expense of empirical insight. This is not a naive call for bland empiricism. Indeed, the focus on definitional issues here says much about how our appraisal of the world influences our assessment of it. It is, however, a call for the theorist to reflect back on their own reasons for definition, and the opening and closing doors that result from any one particular stance. Eclecticism all the way down may not solve the intractable relationship between viewer and vista, but it at least warns of the perils of not reflecting actively and critically on the gap between events in the world and our awareness of them.

When thinking conceptually, there comes a point where one must choose either to adopt a combative single perspective, or to develop an empirically driven account that rests on both rationalist and sociological traditions.⁷⁰³ The question as to which is preferable is intractable in any absolute sense, and any answer forwarded is attributable more to the nature of the questions being asked of theorising and the personal preference of the individual posing those

⁷⁰¹ For an investigation of the broader debate between these camps within International Relations, see Fearon and Wendt, "Rationalism Vs. Constructivism: A Skeptical View."

⁷⁰² The methodological aspect of investigating norms is well presented in Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," pp. 9-13.

⁷⁰³ The analysis at Jeffrey W. Legro and Andrew Moravcsik, "Is Anybody Still a Realist?" *International Security* 24, no. 2 (1999) represents a distinct view on this in counterpoise to the eclecticism advocated in this work.

questions, than to the uncovering of any universal truth. I have consciously adopted the eclectic position, in the belief that doing so provides us the greatest opportunity to develop insights that are meaningfully based on the best appreciation of empirical evidence. To cut the Gordian knot of theorising socialisation one must draw on multiple perspectives. In doing so this study has found itself in good company. The move towards eclectic theorising as a corrective to the explanatory limitations of existing single conceptual frameworks is growing.⁷⁰⁴ Frustration with the internecine wars that have both framed, and arguably plagued, the discipline has resulted in a renewed emphasis on empirical insight over theoretic rigidity. The rationalist focus on parsimony and predictive power acts as an *aide-memoire* to a constructivism that is oft criticised for losing its predictive edge in the face of the welter of “facts” that emerge from its more nuanced account of history. The constructivist potential to present a more textured response to ideas, history and identity promotes a fuller appreciation of the context in which political actions occur.

Across the spectrum of membership, actors attempt to socialise states in different ways, and with different tales of success and failure. Conditionality is joined with persuasion, and community building results in various outcomes depending on both its substance and the nature of the community in which it is occurring. It is a complicated tapestry of processes, a melange of intentions and outcomes, a maelstrom of power and identity. Socialisation is complex and multifaceted, and former rival approaches can provide complementary accounts of the phenomenon. The studies reveal an oft-ignored relevance of constructivist appraisal in regional community driven socialisation across the membership

⁷⁰⁴ Although I note that many still argue the importance of discreet single theoretical frameworks as the hallmark of “good” academic debate.

spectrum. While persuasive mechanisms alone seem to not result in successful socialisation, the act of community building is a necessary precursor for the deployment of social influence processes. The ASEAN and OAS studies both indicate the preponderance of social influence mechanisms once a state is a member of a community, but it would be impossible to imagine those mechanisms in the absence of broader reform processes. The investigation into the origins of revised standards, and the necessity of including a discursive lens when analysing those, is a timely reminder as to the relevance of double interpretation when it comes to theorising social interactions.

Underpinning this eclecticism, and extending more broadly the claims of those who already think eclectically about EU socialisation is the suggestion forwarded in this study that we position analysis on a Critical Realist inspired definitional framework. The role of definitions is important to the nature of the analysis that is based upon them. Some definitional structures are exclusionary through linking specific understandings of an event or process to some universal claim. Just as we could never imagine snowflakes if we defined precipitation as falling liquid water so I have suggested that partisan accounts of norms and socialisation are obstacles to empirically driven comparative analysis. Norms are incontrovertibly complex, and their presence or absence invokes complicated responses from actors, which are sometimes identity related and arrived at through discursive means, and at other appear significant only in terms of behaviour. Our definitions must be inclusive not only if we are to capture significant empirical events, but also if we are to be true to eclectic theorising. Analytical eclecticism, and the bridge-building that it promotes, cannot happen in the absence of rigorous investigative parameters. Whilst conceptual

agnosticism is one thing, statements and discussions that rest on definitional “grey areas”, rival accounts and rival definitions, are not doing justice to the intention of eclectic theorists. I have argued that the provision of a basis for defining norms and socialisation cannot come from within established accounts. Through an analysis of how definitions are ultimately derived from understanding particular cause-effect relationship, I have suggested a Critical Realist counter-approach to defining norms and socialisation. These have emerged not from the strict necessity of behavioural regularity, but through an appreciation of the complex social world that norms exist in, and through which they exert multiple differing effects. Breaking this focus, and then reattaching existing rationalist and constructivist approaches on top of that has been a vital cognitive first step, one that facilitates comparison across case studies and meaningful eclecticism between theories.

THE BROADER SIGNIFICANCE OF HUMAN RIGHTS SOCIALISATION

The study of regionalism, and regional communities within that phenomenon, would benefit from an appreciation of the role of human rights as both a process of integration but also a defining feature of the regional community phenomenon. The quest to study the nature of regional arrangements requires something to tie that region together, to make sense of the grouping as a region, as opposed to any other arrangement, assortment or assemblage of states that may be arranged. Quests to understand these groupings through a focus on

security, or through economics, ethnic similarity or cultural difference have provoked fierce criticism.⁷⁰⁵

This study has adopted a different approach, focusing on the role of human rights socialisation. Rights transcend the reified boundaries between states, and between the domestic and international. They can be a moment of transformation and also an agent of that change. An understanding of the origins of human rights commitments, and their role in defining how communities operate, is a vital part of a broader appreciation of the role of communities in giving texture to international relations. By linking the research agenda on international organisations as norm teachers and an explicit focus on regional communities, new light is shed on those communities and the functions that they perform.⁷⁰⁶ This focus, in comparative perspective, acts as an investigation both of the nature of those regional community activities but also a suggestion about the type of theoretical tools we need when discussing those bodies. Whilst this study has focused explicitly on the spreading of those rights, the interplay between rights and other aspects of the regional arrangement is significant. Especially central is the relationship between rights and security.⁷⁰⁷ The ASEAN development of a Security Community has become intimately linked to a broader sense of *human* security.⁷⁰⁸ The African Union has sought to advance human security as a pre-requisite for continental security. The linking between regional

⁷⁰⁵ International Political Economy particularly has its own take on regions, which has been fiercely fought over. See the debates in Edward D. Mansfield and Helen V. Milner, eds. *The Political Economy of Regionalism* (New York City: Colombia University Press, 1997).

⁷⁰⁶ Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Educational, Scientific and Cultural Organization and Science Policy," *International Organization* 47, no. 4 (1993).

⁷⁰⁷ James J Hentz and Morten Bøås, eds. *New and Critical Security and Regionalism: Beyond the Nation State*, The International Political Economy of New Regionalism Series (Aldershot: Ashgate, 2003).

⁷⁰⁸ The trend towards human security is a notable innovation within the broader global security literature. An excellent example of this is Ken Booth, ed., *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers, 2004).

arrangements and security can be better explored if we assess the relationship between different types of security, and the role of human rights and their diffusion in that agenda. Traditionalist interpretations of state security seem ill-prepared as a cognitive basis for appreciation regional political behaviour if a substantial part of security-building is linked to notions of human rights.⁷⁰⁹

This focus on human rights contained within this study also has relevance for the extensive literature that considers questions of the universality of human rights. What is truly universal, and what is particularist?⁷¹⁰ A fundamental part of answering this question is an examination of the process by which rights are claimed by people across the world. It is interesting that the study of ASEAN's efforts to socialise Myanmar reveal deep-seated and indigenous efforts to claim democracy and human rights from within the region. This was the same region that in the early 1990s was the source of an "Asian Values" debate that rejected the explicit universality that resided within the international human rights regime.⁷¹¹ Despite this, we can discern considerable effort on the part of various NGOs, governments and political groupings to claim exactly such rights as their own, and to use those as a cognitive map for the future development of ASEAN itself. Whilst the explicit question of Asian values has decreased in relevance, the quest to understand how rights become embedded in different societies,

⁷⁰⁹ A classical interpretation of regions and security is offered at David A. Lake and Patrick M. Morgan, eds. *Regional Orders: Building Security in a New World Order* (University Park: Pennsylvania State University Press, 1997) Despite its broad range of enquiry, notions of human rights are not explored systematically here in the formation and operation of regional bodies.

⁷¹⁰ The literature on the universality of rights is vast and ever expanding. Excellent introductions to it are offered by Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989). Also note Michael Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters," *Human Rights Quarterly* 19, no. 3 (1997). An innovative recent approach is offered in Anthony Langlois, *The Politics of Justice and Human Rights - Southeast Asia and Universalist Theory* (Cambridge: Cambridge University Press, 2001).

⁷¹¹ Much is written on this subject. Introductions are offered by Daniel A. Bell, "The East Asian Challenge to Human Rights: Reflections on an East-West Dialogue," *Human Rights Quarterly* 18, no. 3 (1996) ———, *East Meets West: Human Rights and Democracy in East Asia* (Ithaca: Princeton University Press, 1998).

especially those that seem intransigent, remains important to the academic investigation into those rights. This work shows how regional communities and the variety of actors that surround communities act as interlocutors in the process of rights spreading across the world. As a layer of governance between the global and the national they facilitate in mediating global norms into local contexts, an interpretation and re-valuation that is so vital if people are ever to accept those rights as “theirs” as opposed to a cold impersonal global enterprise. They are the very instruments through which the elusive over-lapping consensus, if one is indeed possible, shall be most likely made manifest. This mediation is not fast, nor is it easy, and it does not result in a clean translation of global norms to regional standards. A focus on the processes by which standards spread is vital to those whose interest is in the moral rightness of that expansion. Identifying who claims rights as their own, and why that should be the case, offers insight when we seek to understand whether rights are “ours”, “theirs” or “everyone’s”.

PROPOSED EXTENSIONS

I suggest two future directions to extend this work, the empirical and the theoretical. These are not mutually exclusive; indeed they help to shape each other and I hope to pursue both in order to develop a more complete picture of how membership varies, and the significance of that variation is to socialisation. As a comparative study the clearest extension for the project at hand would be an expansion of the range of studies, aimed at investigating how the relationship between membership and socialisation is managed in varying sites. The original impetus of this study was to expand the horizons of the scholarship that exists around the European example, especially that of the EU, and so the continuation

of that sentiment may well result in greater precision and insight to the conclusions offered in this study.

An initial avenue of extension via which to further this study therefore is to investigate more regional communities. Here perhaps the most interesting extension is that offered by the African Union (AU).⁷¹² The AU was founded in 2002 as the successor to the Organization of African Unity that had been formed in 1963. All states on the African continent, except Morocco, which withdrew in 1984, are members, although currently Mauritania has been suspended following the coup d'état of August 2008. The AU is organisationally complex, possessing a Parliament, a Commission and various committees and councils. Most interestingly, it subsumed a pre-existing African Commission on Human and Peoples' Rights. The Commission, established since 1986, has been joined by a parallel Court since 2006, which ultimately should merge with the pre-existing African Court of Justice. The Commission, based on the African Charter on Human and Peoples Rights of 1986, includes a bill of rights that protects in Article 9 the right to "express and disseminate his opinions within the law"⁷¹³ and possesses a Special Rapporteur on Freedom of Expression. In institutional form, then, it is surprisingly similar to the OAS. Where it differs is in its historical origins as a post-colonial enterprise of the 1960's and the nature of the states in Africa that it covers. An investigation of how these issues intersect with the question of socialisation remains unanswered in the literature that seeks to understand just how it is human rights are disseminated.

⁷¹² The academic response to African notions of human rights is limited at currents. A good overview is presented in Rachel Murray, *Human Rights in Africa: From the OAU to African Union* (Cambridge: Cambridge University Press, 2004), whilst a more specialised account of one aspect of the AU is Mei, "The New African Court of Human and Peoples' Rights: Towards an Effective Human Rights Protection Mechanism for Africa?"

⁷¹³ The African Charter on Human and Peoples' Rights, Accessible at http://www.achpr.org/english/info/charter_en.htm

The biggest area of intellectual development for this project is to deepen and widen the Critical Realist contribution to the study of socialisation. In this work Critical Realism has been used as a critique of existing bridge-building approaches between rationalist and constructivist accounts of socialisation as well as providing a stepping stone towards justifiable definitions of norms and socialisation, which do justice to the range of empirical outcomes this work reveals. There is, however, a deeper contribution that I feel Critical Realism can make. Ultimately this would require the operationalisation of a distinct Critical Realist methodology to frame an investigation of socialisation. This study has focused on using Critical Realism as an intellectual tool to both critique existing definitional accounts and to suggest ways forwards in that debate. In doing so, it has consciously situated the contribution at the “pre-theory” stage, which is as a setting for the empirical data, and conceptual innovation, that is to come. However, a broader line of enquiry is possible that builds upon those definitions and analytical eclecticism through the translation of a Critical Realist definitional frame to a full-blown Critical Realist methodological account.

The Critical Realist contribution to socialisation studies may well represent the de-fetishisation of the hunt for specific and exacting causal relationships and a refocus on the methodological accounts of the notion of *inference* to establish plausible arguments about how and why socialisation occurs.⁷¹⁴ This shift from critique to operationalisable research agenda is a difficult one. Critical Realism remains largely a philosophical argument that works at a meta-level when compared to other debates within International

⁷¹⁴ Lynn Savery, "Womans Human Rights and Changing State Practices: A Critical Realist Approach," *Journal of Critical Realism* 4, no. 1 (2005). Savery's study takes a very different approach to that forwarded in this work, but she does much to substantiate the ability to translate Critical Realism into a fuller analytical framework.

Relations.⁷¹⁵ However, I take inspiration from how Critical Realism has shifted from this level to a more substantive research agenda in different fields of enquiry.⁷¹⁶ A Critical Realist methodology would rest on the acceptance of a social world that is ultimately unknowable, and link that ontological statement to a methodology that rests on identifying the presence, if not the totality, of social structures of the world that permit certain forms of behaviour.⁷¹⁷ The ultimate end of this reorientation is to frame the whole investigation within a fully-fledged Critical Realist methodology. The operationalisation of this methodology is one that offers a solution to a known problem with the main methodological choices of positivist epistemologies. Even process tracing, which I have deployed in this study to bind my eclectic aims to an operationalisable project that talks to rationalist and constructivist approaches, may well ultimately rest on epistemological accounts that are fundamentally at odds with the interpretivist epistemology that underpins the vast majority of constructivism.⁷¹⁸ The total shifting of the philosophical foundations of how we approach socialisation away from Humeanism offers a way to avoid this danger by relocating how we understand what socialisation is and how we identify it at any one given time. I note that in taking this step we would indeed be moving beyond an eclectic account of socialisation towards a full Critical Realist project.

⁷¹⁵ See Brown, "Situating Critical Realism," and the worry that "what we have here are sophisticated and intelligent contributions to debates in the epistemology and ontology of the social sciences, but it is much less clear.... that these are debates that ordinary practising social sciences need to get too worked up about". pp. 415-416.

⁷¹⁶ See Dobson, "The Philosophy of Critical Realism - an Opportunity for Information Systems Research."

⁷¹⁷ A sophisticated account of which is offered at Dave Edler-Vass, "Emergence and the Realist Account of Cause," *Journal of Critical Realism* 4, no. 2 (2005).

⁷¹⁸ Checkel, "Constructivist Approaches to European Integration." p. 9.

FINAL REMARKS

The role that regional communities play in world politics is multi-faceted. They regulate the behaviour of states and act as channels through which those groupings relate to others. Communities help define regional identities and at the same time are defined by the actions of their members. They exist to serve their members and evolve largely at the behest of their constituent states. They are part of the interlocking assemblage of norms and institutions that characterise the globe and at their most complicated they transect the global, regional, national and local levels. In so doing, they have come to intersect with questions of human rights, their diffusion and the notions of enforcing compliance in the period since the end of the Cold War. At the confluence of regional communities and human rights are questions of socialisation, of how communities condition the behaviour and identities of their members, and of how other member states use that common membership to promote their own goals. The processes by which this occurs are various, and of interest to both academics and practitioners. Some rest on the powerful telling the weak how to behave, whilst others rest on a more consensual discussion about what is correct.

The various, and varying, pressures that states encounter as they progress from the application to join a community, through to the constant requirement to maintain that membership, all serve the same purpose. The delineation of distinct schemes of cooperation draws boundaries between various clusters of actors, helping to engender pools of more or less homogeneity. It defines what is European, in the same way as it defines what is Southeast Asian. Sometimes these boundaries are contiguous with geographic providence, other times communities carve themselves out of a variety of potential configurations. The

drawing of boundaries, and the role of rights within that process, is a motor of both defining common identities within the global system, and in constantly revising those attachments. The changes identified in this work, and their occasional success, are part of broader efforts to bear and then nurture, cooperative schemes of the social good. The process of creating ownership of rights and institutionalising them in varying ways is a vital part of assuaging the most damaging consequences of globalisation. Rights as the defence against the inequities generated by the unchecked spread of market forces and the ever-present threat of social and political degradation can play a positive role in a variety of contexts. Generating a sense of ownership of various rights propositions by linking them to nascent identities and indigenous regional communities is a process that holds great promise for those who believe in the power of rights to create, and reinterpret, the future.

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