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Essays, opinions and ideas on public policy

Winter 2014

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for human rights in
North Korea

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Miranda Stewart on global
solutions to taxing problems

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Director's introduction



Beyond teaching and research, what is the purpose of a public policy school?

At Crawford School, we see our purpose as providing high-quality teaching, world-leading research and active policy engagement—and we take that purpose very seriously. This latest issue of *Advance* demonstrates that at Crawford, and at ANU more broadly, contributing to public debate on matters of national importance is a key component of what we do.

Advance is one of a number of ways public policy researchers inform debate and the policy process. The magazine also draws on the expertise of academics publishing in *Asia and the Pacific Policy Studies* (APPS)—Crawford School's flagship academic journal. The journal is only on its second issue but has already forged a distinctive mission—to bring the best minds to write about public policy issues affecting Asia and the Pacific.

Just a few months after its launch, the free-to-access APPS papers have been downloaded more than 20,000 times. That's an extraordinary figure for a new academic journal, and one which shows the appetite for addressing the many public policy challenges our region faces.

But our engagement with public policy doesn't stop there. With the journal we also launched the Asia and the Pacific Policy Society. Through the Society, we want to create the region's most vibrant and influential network of policymakers, politicians, academics, students and engaged policy professionals. Membership to the Society is absolutely free—just like the papers in the journal—and brings with it a range of benefits.

If any of the pieces in this issue of *Advance* strike a chord with you as being important—and I hope that's the case—I'd encourage you to join the Society to help us make that strong voice to contribute to better public policy.

To become a member go to: <http://bit.ly/APPSociety>

Professor Tom Kompas
Director, Crawford School of Public Policy

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Australian Government
Department of Foreign Affairs and Trade

Crawford School of Public Policy proudly publishes *Advance* with the support of *Asia and the Pacific Policy Studies*. *Asia and the Pacific Policy Studies* has funding support of the Department of Foreign Affairs and Trade (DFAT) of the Australian Government.

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Cover image by (stephan) on flickr





Forward thinking

Imagination is the key to solving the challenges facing Australia's rapidly changing economy and universities, writes Don Russell.

Urbanisation and the rapid development of China and other countries in our region is impacting on the Australian exchange rate. This, in turn, is forcing extraordinary structural change upon Australian industry and our economy.

The changing structure of the economy, and dealing with inevitable and rapid adjustment, has implications for the future skill and education needs of the workforce and the way we go about managing our universities, TAFEs and other providers of tertiary education.

There are a very complex series of interrelationships involved.

The skills and education requirements demanded by industry and overseas markets need to be met. But the act of expanding the supply of skills, research and intellectual property can itself stimulate knowledge-intensive businesses to expand.

Creating an environment where such a circle of success can develop is not straight forward. But it can be done with astute decision-making. Unusually for a market economy, much of that decision-making will have to take place in the public sector.

photo by Jesus Solana on flickr

We have to get the right linkages between universities, skills development, research and industry.

At the same time, we have to deal with an imbalance in what the federal government spends and what it receives by way of taxation.

The fiscal imbalance has to be addressed, but solving that problem will not help deal with the education, skills and research challenges we face.

We have to be able to deal with all of the challenges. To do so, we need sophisticated and well considered decision-making.

While machinery of Government arrangements in Canberra might seem an esoteric subject, they are important when building linkages across responsibilities is an objective. It is what I have come to call the need to make the whole bigger than the sum of the parts.

Bureaucracies have a tendency to form silos and unfortunately these silos can become citadels when the silos are located in different departments. The benefit of internalising differences within a single department is that the Secretary and the Executive Board provide a mechanism to resolve disputes. Paralysing turf battles become more difficult within a single department.

Unlike the reforms of the 1980s and 1990s, which were all about making the Australian economy internationally competitive, the task for policymakers is in many ways more challenging now because it will require a dexterous approach to how we manage and fund universities and other providers of tertiary education. We will also have to get the right linkages between universities, skills development, research and industry.

There are important links between higher education and skills. Of the 39 universities, five are dual

sector and 20 are registered as Registered Training Organisations. Of the 61 TAFEs, more than 20 offer higher education qualifications.

Now that higher education and research have been split from skills, industry and science, it will prove more difficult to bring the required level of policy imagination and innovation to the whole sector. This will be even more of a problem when policy will have to be crafted against a background of fiscal consolidation.

For instance, the level of funding for research will be lower if it is viewed largely as support for research scientists and postgraduate students, rather than as an integrated part of the government's strategy to transform the Australian economy—a task more likely to resonate with decision makers if all the responsibilities lie within one department.

But sophisticated and well considered decision-making is not something that only governments need to aspire to. In particular, universities face significant challenges in coming years.

Universities have been the beneficiaries of increased resourcing particularly for research and infrastructure. As a result, Australia's top universities have fared well in the international league tables.

Commonwealth funding for research and infrastructure is unlikely to grow in the future and may well contract. Recognised world-class research is an important driver of a university's reputation and to maintain recognition, particularly with international students, universities are going to have to find new resources to fund research.

The options are limited.

Universities can prioritise existing research and run their operations more efficiently; they can extract more from their students; they can collaborate more with industry; they can find new ways of cross-subsidising research from teaching; or they can work with successful benefactors to build effective endowment funds. All of this will have to occur while universities work through the implications of open access to online courses around the world.

Australian universities have much to be proud of but it is fair to say that focused strategic decision-making has been difficult for them.

Hopefully the challenges that lie ahead will encourage our universities to become more imaginative and allow them to embrace the opportunities that doubtless lie among the challenges.



Dr Don Russell is an Emeritus ANU Public Policy Fellow and former Secretary of the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.

On the money

Coping with uncertainty is possible – but only if you use the right tools. Using monetary policy, Renée Fry-McKibbin and Timo Henckel show how.

The world we live in is uncertain. Yet the public expects meteorologists, economists and other experts to make confident predictions on a range of variables affecting well-being.

Our environment and the economy are much too complex to fully comprehend, let alone to make accurate predictions about, as evidenced by frequent—and occasionally large—forecast errors.

Despite this evidence, we are often unwilling to accept that uncertainties matter.

Monetary policy is a prime example of how a fundamentally uncertain decision is conveyed with a false degree of certitude.

On the first Tuesday of every month (except in January) the Board of the Reserve Bank of Australia (RBA) meets to decide on a target for the cash rate which determines a wide range of interest rates and prices in the Australian economy.

At 2pm, the target cash rate is announced as a single number, accompanied by a brief statement explaining the choice. But when a central bank sets the preferred target cash rate, the decision necessarily constitutes a compromise, a careful balancing and weighting of all salient upside and downside risks.

Despite its apparent public unanimity, the Board actually engages in several hours of discussion and debate before coming to a resolution, reflecting the uncertainties associated with its decision.

These uncertainties stem from the (in)accuracy of real-time measurements, unobservable variables, and the inherently unpredictable nature of the macroeconomy. Furthermore, although the Board usually has a good sense of the range of upside and downside risks, no one knows for sure which risks dominate. Whatever rate the central bank sets, there is a chance that a different rate would be more

appropriate or, at least, it is likely that a range of rates are justifiable given the uncertainties in the economy.

The Board will also have a view on whether a rate higher than the target rate should be chosen if the economy is stronger than thought (more upside risk), or a rate lower than the target rate if the economy is weaker than thought (more downside risk).

Most central banks provide little quantifiable information on the uncertainty confronting policymakers. Conventional central bank communication of interest rate settings does not formalise risk considerations and the probability of extreme events.

The probability that the interest rate should be substantially different from the ‘most preferred’ target rate receives little attention. Central banks don’t formally record the uncertainty experienced by individual Board members, nor by the Board as a whole. Estimates of the upside and downside risks surrounding the policy decision must be gleaned from any statement(s) accompanying the policy decision.

Our RBA Shadow Board, based at the Centre for Applied Macroeconomic Analysis (CAMA) at Crawford School of Public Policy, shows how uncertainty about the policy decision can be communicated in a formal and rigorous way.

The Shadow Board emulates the formal RBA Board in that it consists of nine voting members and one non-voting chair—all distinguished macroeconomists drawn from academia and private industry who offer their own policy recommendations several days before the official RBA decision.

Crucially, Shadow Board members offer their policy recommendations probabilistically. Each member records her or his uncertainty by giving probabilistic assessments of the target interest rate for the meeting in that month.



Renée Fry-McKibbin is Director of the Centre for Applied Macroeconomic Analysis (CAMA) at Crawford School.



Timo Henckel is a Lecturer in the Research School of Economics at the ANU College of Business and Economics, and Research Fellow at the Centre for Applied Macroeconomic Analysis (CAMA) in Crawford School.



The higher the percentage attached to a given interest rate, the more confident the member is that this rate is the appropriate target cash rate. The nine probability distributions are then pooled to give an aggregate distribution.

This is done for the current policy rate as well as for the policy rates six and 12 months out. For example, this month's opinion pool for the current cash rate provides considerably more information than a mere announcement that the current cash rate will remain at 2.5 per cent. The probability density associated with this number lies at 76 per cent. This is very high, signaling that the Board members are confident this is the appropriate policy setting for June.

Much more can be gleaned from this information.

The distribution is highly skewed; there is very little probability mass (only six per cent) to the left of the 2.5 per cent setting, while 18 per cent of the density lies to the right. RBA Shadow Board members clearly think that if the cash rate at 2.5 per cent proves to be wrong, the optimal setting is most likely higher, not lower. In other words, there are far more upside risks than downside risks. This

shows that interest rates have likely hit the bottom of the cycle and probably will rise in the near or medium term.

Since its inception in August 2011, the RBA Shadow Board's recommendations have tracked the Reserve Bank's actual policy decisions quite closely. But through its probabilistic approach, it has been able to convey a more nuanced picture of where it sees the economy heading.

There is information in the tails and in the height (or flatness) of the distribution which can facilitate planning and risk management. Understanding the probability of the appropriateness of interest rate settings, conditional on current economic circumstances, provides valuable information to market participants. A more resilient society and efficient economy are likely.

Hopefully, over time, this approach will gain currency in the policy world and acceptance by the public. As Nate Silver wrote in his bestseller book *The Signal and the Noise: Why So Many Predictions Fail—But Some Don't*, "We must become more comfortable with probability and uncertainty."

To find out more about the CAMA RBA Shadow Board: <http://bit.ly/CAMAShadowRBA>

Game changer

Australian politicians need to stop treating politics as a game, and get on with implementing good policy, writes John Hewson.



On the first day of 1993's new parliament, Paul Keating took me aside, ostensibly to "apologise" for all the "nasty names" he had called me over the years, and to record that he actually "quite respected" me, and that he could have accepted "losing to me."

However, he went on to say that I needed to understand that, to him, "politics is just a game, and I will say or do whatever I have to, to win."

As naïve as I obviously was, I had never thought of politics as a *game*.

I'd thought of government as a *business*; perhaps the biggest business in Australia. So Paul challenged me. I was challenged, that here was the man who, having just been rolled by Bob Hawke on his own tax reform proposals back in 1985, and who had promised in parliament to die fighting for a broad-based consumption tax, could so easily have run the mother of all scare campaigns against my Fightback GST proposal in 1993.

I was challenged too by the media failing to hold him accountable for such a change of heart, let alone lack of commitment.

I clearly should have read HL Menken, often regarded as one of the most influential American writers on politics of the early 20th century.

According to Menken, "the whole aim of politics is to keep the populace alarmed (and hence clamorous

to be led to safety) by menacing it with an endless series of hobgoblins, all of them imaginary."

More fool me for not believing in the monsters under the bed.

As Shadow Treasurer, and then Opposition Leader, I actually tried to be substantive and constructive, rather than political, attempting to lead the policy agenda in areas like monetary policy, tariff reductions, labour market and microeconomic reform.

I had entered politics as an advisor in the early Fraser years, in the belief that good policy is good politics, with a relatively short lag.

I moved to the office of the then Treasurer, Phillip Lynch, on secondment from the Reserve Bank of Australia. By then, I was already a frustrated bureaucrat, recognising that, in the end, under our system of government, policy is mostly (knights and dames excepted) finally made in the Cabinet Room.

While accepting that politics may be more rampant and unpredictable in that Room, I still believed that one should be able to win on the substance of the policy argument. If you wanted to be part of serious policymaking, I believed that you had to at least be heard in that Room.

Unfortunately, politics has progressively become even more of a game over the last couple of decades. Indeed, now almost an end in itself, the contest is to win the 24-hour media cycle, at all costs. Policy substance and debate has been almost totally eschewed.

The focus has become increasingly short-term, opportunistic, and pragmatic. Political positions and daily messages are driven mostly by polling, especially focus group responses, rather than by evidence-based policy, or even ideology.

The game moves almost daily, from one issue to the next, from one location to the next. As it does, the media and other independent commentators mostly get swept along, with little time or incentive to dig into the substance of an issue, or to attempt to insist on transparency and accountability. They are left to focus on the 'colour and movement' of it all.

The so-called policies taken to the last election were little more than dot points in a Powerpoint presentation—Stop the Boats, Repay the Debt and Build the Infrastructure of the 21st century.



Former Federal Opposition Leader John Hewson is Professor and Chair in the Tax and Transfer Policy Institute at Crawford School of Public Policy, ANU College of Asia and the Pacific.

The contest is to win the 24-hour media cycle, at all costs. Policy substance and debate has been almost totally eschewed.



The game has become very tribal, bitter, personal, and mostly negative. The whole process has been an attempt to 'dumb down' the electorate, as the key tribes produce their own evidence and accounting, and then chant it, or spin it, almost incessantly, as if it's fact.

But no matter how much you repeat a mantra, clinging to simple slogans is no way to 'move forward'.

Well-funded vested interests can easily buy their way into the game, presenting their own facts, easily intimidating mere politicians and their advisers to acknowledge the substance of their power, and their capacity to cause alarm.

Add to this a host of other factors—the drift to political apparatchiks as members of parliament; the creeping politicisation of the public service; the widening gap in many areas between public and private salary packages; and the weakened influence of academia and think tanks, just to name a few.

The bottom line has been very worrying policy drift, and the stalling of most genuine structural reform, especially over the last decade or so.

But as disturbing as these trends are, this debilitating process may have just about run its course.

While the whole process as described is essentially Canberra-centric, politics is not actually confined to Canberra. To the average voter, politics is actually policy outcomes. They do not see or experience policy as a political argument. They see it as a tax, or a benefit, or a freedom, or restriction, or a military deployment, and so on.

As the gap between expectations and outcomes has grown with many issues—with neglect of some issues seeing them drifting towards crisis—the pressure for real solutions is mounting. Ultimately, there is no way a government can spin its way out of a conspicuous policy failure, out of a recession (even if you try to argue that it is “the recession we had to have”), a skyrocketing cost of living, some climate change induced crisis, or a major military or diplomatic failure.

There is a limit to just how long a government can survive with poor policy, based on 'manufactured evidence' or argument. There is a limit to how long a government can survive failing to sustain a reform agenda. Scare campaigns ultimately lose their effectiveness, especially if they are replayed like a scratched record. The new Abbott Government is now under real pressure for substantive policy responses, virtually across the whole spectrum of economic, social and environmental policy issues.

The fact is, some issues like climate change require urgent action now, and that will need to be sustained through the life of several consecutive governments. The electoral challenge is intergenerational.

Most unfortunately, given the devastated state of political debate in Australia, other pressures and opportunities will probably have to drive a more substantive response by our governments—pressures from global leadership (like the US or China), international agreement(s) on emissions reductions, and/or technological advancements.

In these circumstances, there is a unique, but urgent, opportunity for leadership to break out of the short-term game of politics.

But it will only happen by being prepared to address key issues with substantive and sustainable policy responses. And, where necessary, being prepared to debate, educate and engage the community as to the necessity and desirability of these policies.

Naïve as I may be, I still live in hope.



A numbers game

Policymakers should look beyond hysterical headlines about the youth unemployment rate, writes Agnieszka Nelson.

If you are a youth in many parts of the developed world today, you could be forgiven for being pessimistic about your future employment prospects.

In Europe, the picture is decidedly grim—Italy has 38 per cent youth unemployment, Spain has more than 55 per cent unemployment, Greece is higher still at 59 per cent.

Australia—despite its two decades of economic prosperity—is no exception.

Since the Global Financial Crisis, youth unemployment in Australia has been on an upward trajectory, reaching 12.5 per cent by March 2014.

The high numbers have led to hysterical headlines with media and commentators suggesting youth unemployment is at a crisis point. Others claim that youth are at risk of becoming a lost generation, while some blame them for the increased burden on the welfare system.

But youth unemployment is not as pronounced as it is reported. In the main, reports have largely been based on just one common economic indicator—the youth unemployment rate. That rate is derived by dividing the number of young unemployed people by the number of young people in the labour force (employed plus unemployed).

This measure, though, has been widely discredited by academia and economists around the world as being too simplistic to reflect, on its own, the complex work and study transitions that often apply to young people.

Many commentators argue that the relative scale of youth unemployment is only properly understood in the context of the wider changes over the last few decades in the youth labour market. One of these changes is the increased participation in education by those aged 16 years or more, which has reduced the proportion of active 15 to 24-year-olds active in the labour market, thereby raising the measured youth unemployment rate.

Given the scope for miscalculating the plight of youth when relying on one measure of unemployment, policymakers should also take into account other, more indicative, measures—like the youth unemployment to population ratio, and the

NEET rate (people aged 15 to 24 not in employment, education or training).

The youth unemployment to population ratio differs from the youth unemployment rate in that it accounts for the whole population of young people, and not only those who are in the labour force.

The March 2013 youth unemployment rate of 13.6 per cent sits in stark contrast to a youth unemployment to population ratio (for young people looking for full-time work) of just 5.1 per cent—a difference of 8.5 percentage points.

The NEET rate, now a widely reported and accepted indicator across most of the OECD nations, is arguably of even more value to policymakers as it differentiates between active and inactive youth. Active youth are those who are available for/or seeking work, while inactive youth are those who are not able or willing to take up or seek education, training or work.

The second category comprises youth with a disability or mental/chronic illness; young carers, young parents; youth in custody; gap year students; and those who are disengaged for other reasons. In March 2014, 11.5 per cent of Australian youth were NEET—6.6 per cent inactive and 4.8 per cent unemployed. The remaining 88.5 per cent of youth were still studying on a full-time basis (51.7 per cent) and 36.8 per cent were employed and no longer in full-time education.

So why should we care about how the numbers are measured? Because using the ‘wrong indicator’ or an indicator in isolation of the wider context, may distort debates on policy solutions to labour market problems, and potentially come at a cost to other age-cohorts.

Indeed, a recent ANU report found that between 1984 and 2010, the Australian Government’s policies have shifted their focus towards the elderly (65+ years) and 15 to 24-year-olds at the expense of other age groups, in particular the 25 to 34-year-olds and those aged 55-64 years.

Crafting good youth policy requires policymakers to look beyond the hysterical headlines and fear of a lost generation. Knowing which numbers to focus on will be a good way to start.



Agnieszka Nelson is a Sir Roland Wilson Foundation PhD scholar at the Centre for Aboriginal Economic Policy Research, ANU College of Arts and Social Sciences.

Moment of truth

**Is getting progress on human rights
in North Korea a pipe dream, asks
Michael Kirby.**

photo by Matt Paish on flickr



A recent article by a Canberra journalist, published in *The Age* online, suggested that I was “whistling in the wind” when I proposed that the Supreme Leader of North Korea would possibly be rendered liable for crimes against humanity committed during his watch as ruler of the reclusive nation.

The writer’s argument was that the young ruler was unlikely to respond to suggestions that he was at personal risk, except by battering the hatches more tightly and refusing to have anything to do with the global community. Better, the writer suggested, to try to accommodate him in some way, so that he would not feel threatened by the human rights guardians at the United Nations. After all, his response to being threatened (like his father and grandfather before him) was to excessively build the fourth largest army on the planet. Add to this abandoning the *Nuclear Non-Proliferation Treaty*, and the building of nuclear weapons and missile delivery systems that cause concern in neighbouring countries: South Korea, China and Japan.

To see if this criticism is justified we need to go back to the beginning. As I view it, it imputes a much grander role to me, and the Commission of Inquiry (COI) that I have been chairing, than we deserve.

The Commission was created by the Human Rights Council of the United Nations in March 2013. It arose out of the frustrations felt by the Council and the Special Rapporteur whom the Council had appointed (Marzuki Darusman, past Attorney-General of Indonesia) to look into human rights abuses in North Korea.

Effectively, the Democratic People’s Republic of Korea (DPRK), as North Korea is formally called, had refused to have any dealings either with the Council or Mr Darusman. It was the Special Rapporteur who recommended the creation of the COI, to upgrade the contacts and secure more information.

When the resolution of the Human Rights Council was adopted in March 2013, it passed without a vote; a most unusual step given that some countries always object to nation-specific inquiries on human rights, such as then proposed.

In the case of North Korea, it seems, the global community was increasingly fed up with the DPRK’s attitude of non-cooperation, although it had blithely signed most of the main human rights treaties. Gradually its supporters had drifted away. Soon after the COI was created, I was asked to join it, together with the Special Rapporteur and a human rights expert from Serbia, knowledgeable about crimes against humanity, Sonja Biserko.

Our job was substantial, but basically simple and limited. We were asked to conduct an inquiry and to prepare a report dealing with nine specified matters. These ranged from abductions, political prison camps and starvation of the population, to discrimination, lack of access to news and information, and the conduct of public executions.

Not for us was the luxury of deciding that we would give no report lest it upset the Supreme Leader. Or that we would pull our punches, in case telling it as it was would set back the cause of reconciliation and progress. Engaging in the highly nuanced world of international diplomacy was not our *métier*. We were not asked to do manipulative contortions with the facts. All we were asked to do was to inquire, make findings and, if appropriate, offer conclusions and recommendations. This is what we did.

Journalists (not our Canberra friend) repeatedly state that the COI took a year to complete its investigation. It is true the resolution to create the body was passed in March 2013. But it was not until May 2013 that the members were named. Not until July 2013 did the Commission have its first meeting. The entire report had effectively to be written by the first weeks of 2014, so that it could be translated into the five additional UN languages for presentation to the Council in March 2014. As it happens, we brought the report in on time; within budget; and unanimously. Contrary to the commentator, the report was not written in a hostile style, antagonistic to DPRK and its political or social system. I was unburdened by too much knowledge about the “hermit kingdom”. So it was possible for me and my colleagues essentially to



Michael Kirby AC, CMG is an Australian jurist and academic who is a former Justice of the High Court of Australia, serving from 1996 to 2009. In 2013 he was appointed by the United Nations Human Rights Council to lead an inquiry into human rights abuses in North Korea.

Not for us was the luxury of deciding that we would give no report lest it upset the Supreme Leader. Or that we would pull our punches.

stick to the evidentiary material placed before us. And it was plentiful.

At the outset, the government of DPRK refused to have anything to do with the Inquiry. They said that it was politically motivated by their enemies (primarily the United States, South Korea and Japan).

We offered to come to them; to answer questions; to listen to their concerns; and to invite them to send a representative. We sent them our draft report; we submitted it to Kim Jong-un as soon as it was ready; and we offered to come to Pyongyang to see officials and to answer questions from their citizens. All of these offers were rebuffed or ignored.

This is why we hit upon a procedure for inquiry which is common in English-speaking countries; but not so common in the rest of the world or in the United Nations system. Most UN inquiries operate in the low key, private fact-gathering way common to the legal tradition that spread from

Napoleonic France to most of humanity. But we did it in the more transparent, painstaking and careful way of the English tradition. Open hearing rooms. Public testimony. Non-leading questions. Hour after hour of evidence, spoken by often shattered victims, telling of the grim ordeals to which they and their families had been subjected.

Journalists asked us how we could be sure we were getting the truth. And would our sample not be biased because it was substantially made up of refugees who had fled North Korea?

Our answer was provided by an innovation we introduced on top of the public hearings. We recorded the testimony in digital format. We uploaded it to the COI website. We took necessary steps to exclude witnesses from the public hearings who had families surviving in North Korea. We saw them in private. But that left plenty of witnesses, with evidence specific to our mandate who could tell us, in direct language, what they had been through. It built up a powerful reservoir of believable testimony. Very rarely did we feel the witness was exaggerating. And much evidence was corroborated by other witnesses who did not know each other. Some was confirmed by objective testimony, including satellite imagery available to the COI, public speeches and assertions of the DPRK leaders, and statistical data gathered by UN agencies operating inside the country.

We had no difficulty gathering witnesses. In fact, we had to stop interviewing witnesses when it became clear we had covered our bases and time was running out for the essential tasks of analysis, writing the report and getting it published.

The result is, I believe, a powerful and convincing document which speaks directly to the reader. It is enlivened by countless extracts from the transcripts of witness testimony. This is not the dull prose of most UN documents, written in the passive voice. It is a potent story of great and continuing wrongs, of a type, variety, intensity and duration that have no parallels since Hitler's Nazi terrors and the Soviet gulags of Stalin.

The great power of the DPRK report is that it collects all this material in the one document. We have identified, with precision, the findings; making reference to the evidence we recount. We have added conclusions based on those findings. And to our report we have appended a long list of recommendations, most of which you will not see in journalistic accounts of the Commission's inquiry.

One of the specific points the Human Rights Council asked us to address was whether any of the violations of human rights that we found rose to the level of a 'crime against humanity.'

This is a well-defined crime under international law. It involves deliberate acts of violence targeted at particular groups in a society, as a matter of state policy, causing death and grievous harm. There was plenty of evidence of such activities.

We were then asked to identify who would be accountable for such crimes. We answered that question truthfully too. Such crimes are continuing in nature. Those who allow them to continue, when they might have prevented or stopped them, are liable under international law, even though they were not present when the crimes originally began or occurred. So this is where Kim Jong-un comes in. In submitting our report to him, as Supreme Leader and Head of the Korean Worker's Party, we would have been less than candid if we had not made his potential personal liability clear to him. And so we did.

When our report was uploaded in the English language version on the Internet on 17 February 2014, it rightly attracted much attention around the world. As I said then, this was like the discovery of the concentration camps after the Second World War. People at that time said "if only we had known".

Well, now we know. No one with access to the Internet can plead ignorance. The world is now aware of the dreadful crimes against humanity happening in the here and now.

When the report was formally delivered to the Human Rights Council on 17 March 2014, it

The world is now aware of the dreadful crimes against humanity happening in the here and now.

caused visible shock to the members of the Council. It was denounced by the Ambassador for DPRK. But the Council voted overwhelmingly to act upon its recommendations, including the one that proposed that the Security Council be asked to refer the case of North Korea to an international tribunal, such as the International Criminal Court. This had been done earlier in the cases of Darfur and Libya. But the case of DPRK is very much worse.

The last step in the drama of this Commission of Inquiry is the provision to the highest organ of the United Nations, the Security Council in New York, of a briefing of the conclusions of the North Korea COI. The fact that this was called on quickly, at the initiative of permanent members France and the United States together with Australia, shows how strongly feelings are running in international circles that something must be done to terminate the ongoing death and destruction of citizens and groups and to bring about change in North Korea.

So is this still "whistling in the wind?" Is it so because China, and possibly the Russian Federation, will resist action on the report?

In the Human Rights Council, China was aggrieved by criticism of its own record in sending refugees who enter China back into North Korea, although it knows of the grave punishments that often await those returned. China is a great country that has made large strides in defending the human rights of its own citizens. It cannot be comfortable with an unstable neighbour at its doorstep, particularly one which has access to nuclear weapons and missile systems. Already, the Security Council has the issue of nuclear weapons in North Korea before it. It has imposed sanctions by votes in which all permanent members have joined.

Universal human rights are not completely separated from international peace and security; the major function of the Security Council. Countries that starve their populations and commit multiple crimes against humanity are prone to cause disputes and create situations dangerous to peace and security in the world. The very fact that one of the highest office holders in North Korea, Jang Song-thaek, uncle by marriage to the

Supreme Leader, was dragged away, tried and executed in the space of four days in December 2013, shows the instability of the current situation.

DPRK is not a land of glorious mass games and oddball leaders. The rigid military and student choreography is symbolic of totalitarian rule.

It is not a land of humorous encounters between Dennis Rodman and Kim Jong-un. It is a land of gross human rights abuses that must be acknowledged, terminated and redressed.

The principles of universal human rights, on which the United Nations was founded, demands that this be done. But so does the safety of the region and international peace and security; the other great principle of the UN Charter.

A moment of truth has arrived for our world. The Commission of Inquiry on North Korea has answered its mandate.

This is not “whistling in the wind”. This is a demand for human dignity and justice.





In the national interest

Foreign investment decisions need to be brought out of the shadows, writes Rebecca Mendelsohn.

In recent years, Australia's foreign investment regime has come under fire on a number of different fronts. Chinese companies like Chinalco have perceived the regime as discriminatory. Others—like Barnaby Joyce MP, now Minister for Agriculture—have historically criticised the regulation of foreign investment as insufficiently rigorous.

The longstanding problems inherent in Australia's foreign investment regime are revealed not by superficial criticisms, but by an analysis of actual foreign investment decisions. A case in point is the Australian Government's November 2013 rejection of the proposed 100 per cent takeover of Australian grain storage and distribution company, GrainCorp, by US firm Archer Daniels Midland (ADM). The government cited two main concerns that led to its rejection of the proposal on the grounds that it was contrary to the Australian national interest.

First, it was implied that allowing the foreign company to acquire a near monopoly on grain storage and distribution sites in eastern Australia might reduce competition, thereby enabling ADM to hold Australian grain farmers to ransom. Second, it was noted that ADM's bid was unpopular with interested parties and the Australian community at large.

The published decision to block ADM's acquisition of GrainCorp lacked substance, particularly on the central competition question: the public was not offered a reasoned assessment of the proposal's potentially anti-competitive effects.

Perhaps because the decision seemed unpersuasive, the Australian media widely speculated that the

rejection was more about appeasing the Liberal Party's junior partner, the National Party, than a genuine concern about the threat which the acquisition posed to fair competition.

Doubts over the motives for the decision can be traced to two related features of Australia's foreign investment regime: the Treasurer's sweeping discretion when reviewing foreign investment, and the opaque review process that leaves that discretion largely unsupervised.

While the *Foreign Acquisitions and Takeovers Act 1975* (Cth) allows the Treasurer to block large-scale foreign investment in Australia if he or she believes that it is contrary to the 'national interest', the Act does not define that term.

The legislative gap is to some extent filled by the government's Foreign Investment Policy, which sets out numerous factors that are relevant to determining whether a proposal contravenes the national interest.

The policy guidance does not, however, constitute a consistent and legally binding national interest test. For one, the policy is readily amenable to unilateral change by the government of the day. Moreover, it is clear that the policy is not intended to be an exhaustive list of factors that the Treasurer may take into account when making foreign investment decisions.

The broad ministerial discretion to determine the national interest creates a risk that considerations irrelevant to the merits of a particular foreign investment application may be taken into account in the Treasurer's decision making.

The Treasurer's sweeping discretion is magnified by the opacity of Australia's foreign investment regime.



Rebecca Mendelsohn is a PhD candidate at Crawford School of Public Policy, ANU College of Asia and the Pacific. Her research examines what the national interest means in the context of Australia's foreign investment regime.

There is no requirement for the Treasurer to keep the Australian public apprised regarding the details of foreign investment proposals. Nor is there a requirement that reasons be published for foreign investment decisions—indeed, only a tiny fraction of the decisions are made public.

Furthermore, foreign investment decisions are not subject to administrative review or parliamentary oversight. In practice, this means that much of the publicly available information on foreign investment proposals comes from company announcements to the Australian Stock Exchange and media reports. It also means that those who are adversely affected by a decision—including foreign investors and third parties—have little available recourse.

Criticisms of the foreign investment regime could be addressed by legislative amendments that codify the national interest, thereby reducing the Treasurer's discretion. But this may not be the best approach for a number of reasons, including that creating a fixed definition of the national interest could omit considerations that later become important.

The preferable approach may be to kick start an ongoing and reasoned public debate in Australia about what the national interest really means.

We should insist that our politicians openly and persuasively make the case for what they think is in the national interest. We therefore need to embark on a process of demystifying Australia's foreign investment regime and the Treasurer's largely unfettered discretion.

The foreign investment regime should be brought out of the shadows and opened up, through measures like a requirement to provide reasons for decisions and some capacity for parliamentary oversight and administrative review.

Those who are adversely affected by a decision—including foreign investors and third parties—have little available recourse.

Government officials and policy analysts have at times expressed reservations about such an approach. They argue that foreign investment is largely good for Australia, and that greater public scrutiny of the regulatory regime may produce calls for increased vigilance to the detriment of the Australian economy.

Although this argument may have some merit, it runs contrary to the democratic principles that are at the core of Australian society. The national interest is ultimately a matter for the Australian people to determine. It is served by greater openness that requires the government of the day to advocate convincingly for its own position on the national interest in the marketplace of ideas.

Now that's something worth investing in.



photo by thinkstock



Progress on poverty

Are social protection programs helping those most in need? Belinda Thompson reports.

Social protection is usually associated with high-income nations, not nations recovering from decades of conflict and bloodshed.

Yet the newest country in Asia and the Pacific, Timor-Leste, has protection for the elderly, veterans, people with disabilities and vulnerable households enshrined in its constitution as well as an active social protection program. But are those protections working to help the poorest and most vulnerable?

Writing in *Asia and the Pacific Policy Studies*, Pamela Dale, Lena Lepuschuetz and Nithin Umaphathi found that while the social protection programs had helped transition Timor-Leste from conflict to recovery, they hadn't reduced poverty as much as would be expected given how much money goes into the programs.

"We weren't surprised by the amount of the budget going into social protection, but the lack of progress on poverty reduction was a surprise," Dale said.

"The majority of the poor are children (aged 0–15 years) and most of the social protection programs don't target children, they target veterans and the elderly.

"To some extent there are people who are eligible but who don't get access. But most of the lack of impact wasn't eligible people not applying, it was that the programs weren't targeted enough."

Given the long history of conflict, the social protection program is particularly generous for veterans of the decades-long struggle for independence.

However, with a baby boom post-independence, veterans now represent a relatively small proportion of the population, but these payments consumed half of the total social protection budget.

Small cash grants through the *Bolsa da Mãe* (Mother's Purse) program to help vulnerable households with school-related costs was the only program specifically aimed at children.

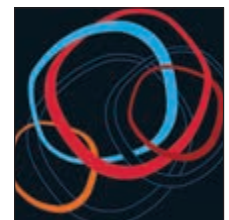
"There are no easy solutions. There needs to be reform of the targeting mechanism. It would mean an increase in the allocation to social protection unless there was a reform of the veterans' pension or other existing programs," Dale said.

"To increase the impact of social protection, reforms would need to be targeted to help children.

"The *Bolsa da Mãe* could be scaled up rather than starting something fresh."

Despite the issues with the targeting of payments for poverty-reduction, Dale said the social protection programs in Timor-Leste should serve as a model for other lower-income countries.

"There are always things that you wish would be done better, but the fact these protections are in place is really, really important," Dale said.



Pamela Dale's article is published in *Asia and the Pacific Policy Studies*. To read the paper visit: <http://bit.ly/APPSPamelaDale>



Australia's role in the Pacific

It's time to rethink Australia's alliance with the USA, writes Malcolm Fraser.

From our foundation in 1901 to World War II, Australia relied on Britain for defence. We thought the Empire, and the British Navy, would always be able to save us. After the war, the United States was coerced into agreeing to the ANZUS Treaty.

There was a rationale for our close relationship with the United States, during the Cold War and until the break-up of the Soviet Union. The international context of the time made strategic dependence on the United States a suitable policy, albeit not ideal. The Soviet Union was regarded as an outward looking, thrusting, aggressive force. Thus, the policy of strategic dependence upon the United States made sense during the Cold War.

In 1990, the Soviet Union disintegrated. The threat disappeared. America emerged supreme, the absolute power, no challenger. This was an opportunity for Australia to say, well now, we need to exhibit a little more strategic independence. We need to make our own decisions.

Instead, we chose quite deliberately to ally ourselves, and to tie ourselves, much more closely to America's coat-tails than ever. This was a major strategic error, a betrayal of Australia's national interest.

There are four reasons why this was an error and why Australia and its leaders need to display courage in order to rectify it.

The first major reason that continuing our policy of strategic dependence on America is an erroneous choice is that substantial changes have occurred within the United States.

The United States emerged from World War II as the wealthiest and the most powerful, single

nation. Her power however, was always held in check by the power of the Soviet Union. The two superpowers balanced each other. After 1990, that restraint was removed. There was no counter to American power.

As a result, we have witnessed a rise in American exceptionalism, unchecked and unbalanced. With its power unchecked and a sense of triumphalism brought about by victory in the Cold War, the idea of American exceptionalism, a nation chosen by God, endowed with a manifest destiny to bring democracy, freedom to the world, virtually as a God-given mandate, has risen to new heights. The simultaneous political rise of the neo-conservative movement, particularly under President Bush Jnr, has made sure these notions have become central to American foreign policy.

Secondly, we have followed America into wars of no particular importance to Australia, and we have done so simply because we are a dutiful American ally. We need to assert a significant degree of independence.

In the case of the invasion of Iraq it was the Bush Jnr Administration that decided to tell the world that Saddam Hussein had weapons of mass destruction, which many people in the intelligence world knew to be a lie.

We followed blindly in that course, not because of ANZUS—it has no relationship to Iraq—but because we wanted to cuddle up to America.

It is not the only time we have done this.

We have been heavily involved in three wars, one ongoing, because of our relationship with America. Vietnam was the first.



Rt Hon Malcolm Fraser served as Australia's 22nd Prime Minister from 1975. He resigned from federal politics in 1983 after 28 years as the Federal Member for Wannon.

During the course of the war, Prime Minister Holt made a decision to expand our forces in Vietnam to three battalions, which I then had the responsibility to administer. The CIA was already reporting that the war in Vietnam was virtually a busted flush. Their analysts had been remarkably far-sighted and more accurate than the American Army, upon whom President Johnson mostly relied. General Westmoreland was saying, "give me more troops and we will win". That led to an Army of 600,000 Americans in Vietnam.

The CIA had been saying the Viet Minh is more nationalist than communist. They have made a decision to endure any hardship, to make any sacrifice, to win the independence of Vietnam and to shake off the last vestiges of colonialism. They were not going to allow American imperialism to replace the French. They were not going to allow a government subject to American control.

I am sure Harold Holt did not see these CIA reports. You could hardly imagine President Johnson saying "well Harold, before you finally commit these additional forces to Vietnam, you had better read a contrary view, from our CIA. They are saying the ship is already sinking. I, the President,

say they are wrong, but in fairness, you should see the evidence they have". President Johnson was not that kind of President; he would not share that information with Harold Holt, who was one of the most decent people I have ever known.

I make this point to show that Iraq is not the only war in which we followed America on a lie. Although, in the circumstances of the time, we thought that lie to be the truth, but there were those in America who knew it was not and did not share it with their surrogate ally.

The third reason is we have become complicit in the unethical behaviour the changes in American politics now accepts as a legitimate means for achieving strategic aims.

For example, the intelligence gathered at Pine Gap is now integral to the drone killing program which President Obama has used massively. There are many American experts, including those who know Afghanistan and Pakistan well, who say that the program is totally counter-productive. For every terrorist killed, 10 or more are created, vowing revenge because of hatred of America.

I have no problem with drones as such, if they are used against enemy combatants, in a country with whom we are at war. In this case they are just another rather horrible weapon of war. If they are used against a country with whom we are meant to be at peace, with whom we are meant to have friendly relations, that is a member of the Commonwealth, like Pakistan, then that is a complete violation of Pakistan sovereignty.

President Obama says he respects the sovereignty of other states, but quite blatantly his drone program does not. We are complicit in it. Under what law does this operate?

The so-called legal basis that the drone attacks rely upon is the War Powers Resolution, and it is totally unlike any other which has passed through US Congress. The current power is a power without any restraint, enabling the President to order an attack, anywhere in the world.

That same power has also been used to establish a secret army, the Joint Special Operations Command or JSOC. Composed of the best of the most elite forces in the United States, it carries out secret raids and targets individuals for the 'kill lists'. It has been given delegated authority to establish its own 'kill lists'.

President Obama says he respects the sovereignty of other states, but quite blatantly his drone program does not. We are complicit in it.



Many would have hoped that President Obama would expose and wind back these aspects of Bush Jnr's Administration. He has not done that, he has ramped them up.

It has become such an important part of American operations, and Pine Gap is such an integral part of feeding in information which enables these operations, that at the very least, the Australian Government should be telling the United States, we do not like these operations, we do not want to be a party to them, we do not wish to be complicit in them.

The fourth and final reason I believe strategic dependence should end is that I do not want Australia to follow America into a fourth war, blindly, unthinkingly, with little regard for Australia's national interest, and little regard for our security. A fourth war would be in the Western Pacific. It would likely involve China.

America has a two-track policy in relation to China. One-track, consultation, an attempt to understand each other better, solve matters diplomatically. The second-track, in case that doesn't work, build a ring of armaments from Japan to the Philippines, to Australia to Singapore. Establish strategic alliances with Thailand and India. We are the southern linchpin of America's policy of containment.

If the next war America is likely to be involved in is in the Pacific, it becomes much more important to Australia's own security than anything that happens in Iraq or Afghanistan. It will have implications for our relations with our neighbours, with Japan, with China, with Indonesia, of fundamental and far reaching consequences.

What are the danger points in the Western Pacific? China's power is growing, certainly. She is expanding her military. She is developing a blue water navy, but America's military expenditure is 41 per cent of the world's total, China's is eight per cent. I don't see a problem with the Taiwan Straits, or over Taiwan.

There are also problems in the South China Sea. ASEAN is seeking to establish a Code of Conduct which does not resolve territorial disputes, but which will nevertheless govern behaviour of participants in the South China Sea, and avoid major conflict. They are seeking to engage China to join such a Code of Conduct. If it is left to ASEAN to do the negotiating with China, without outside interference, I believe over time, there would be success, but it won't happen quickly.

If such a process could be extended to cover the East China Sea, and involve Japan and South Korea, that would be even better.

I would see Japan, less probably the Philippines, both of whom believe they could rely on America for support, as being the most likely source of provocation to China and of conflict with China. There has also been pressure for us to establish a defence treaty with Japan, which would directly involve us in any such dispute. That is something we should resist, and say it will never happen. Any such conflict is well outside the terms of ANZUS, as Iraq was outside the terms of ANZUS. If the Americans say we must do our bit, we should tell them that we are not involved. It is not our fight, it is not our problem.

There is no inevitability about any of this. If America is prepared to share power, as ANU Professor Hugh White recommends, then there is not going to be a problem. But all the signs since 1990, and everything I have read over the last 20 years, suggest that that is not the American intention. They are number one and intend to stay number one and will fight to do so.

We have interest in a peaceful world and it is time we began to cut ourselves off America's coat-tails. We do not want to be caught between the United States and China.

There would be no real winners in such a war. Everyone would lose. A small country allied to the United States would lose most of all. In these circumstances, ANZUS would be no use to us.

You might say that is the worst case scenario. Well, in one sense it is, but in another sense it is not. I believe America's actions are short sighted, and incapable of conceiving anything other than

American success. The United States does not seem to realise, or at least appreciate, that her actions are already leading to talks between China and Russia. They could easily force those two into a strategic relationship, which would involve an attack on one being an attack on both that would lead to a serious escalation of any hostilities in the Western Pacific. On a worst case scenario, that could also involve NATO.

We should be telling the Americans, we are not going to be part of any of that. We are no longer going to follow you into your wars, especially since we can no longer rely on your intelligence and interpretation of intelligence. We have got to rely on our own people, and make our own judgements.

If America is prepared to accept ANZUS under those terms, that is fine, I have got no problem with the Treaty. But I don't want Darwin to be a southern linchpin of a policy of containment against China. Our government, so far, has been just as dishonest about these matters, as has the American government, and that also is no comfort.

Australia needs to decide where we are heading and we need to make this decision for ourselves. Do we attempt to carve a role for ourselves in the region through an independent, intelligent and consultative foreign policy? Or do we continue to rely on an ally whose strategic interests and domestic political values might not directly align with our own?

This is an abridged version of a paper in *Asia and the Pacific Policy Studies*:

<http://bit.ly/MalcolmFraserAPPS>



photo by Marines on flickr



A two-way exchange

Give students the opportunity to understand Asia, writes Talal Yassine.

As a businessman who travels frequently in Asia, I have always wondered why in general terms Asia knows so much more about Australia than the average Australian knows (or cares to know) about Asia, especially as our interests overwhelmingly lie in the region.

One of the most effective ways of building a lasting relationship is to encourage more Australian students to study at institutions in Asia.

While previously the emphasis has been on Australia's provision of education services to Asia, more needs to be done in the political and corporate spheres to promote the benefits of the education experience flowing in the other direction. This is a significant shift in policy focus from the iconic 1950s Colombo Plan.

The original Colombo Plan was one of Australia's early educational, economic, cultural and diplomatic engagement projects in Asia. Under the Colombo Plan thousands of Asian students were sponsored to study in Australian universities. Today, a so-called new Colombo Plan is in train.

In 2013, the Coalition pledged \$100 million to support more Asians studying in Australia and vice versa, committing the money over a five-year period. The commitment included sponsoring more Australian students to train at Asian centres of education, where they could tap into local knowledge and make contacts to draw on as their careers' progress. Such practical experience would forge stronger cultural and economic links, and

allow Australians to gain a deeper understanding of our nearest neighbours.

After the coalition's election to office, Prime Minister Abbott invited Indonesia to participate in a pilot phase of the plan, the first step towards implementation. Indonesia's President, HE Dr Susilo Bambang Yudhoyono, welcomed the initiative, both leaders agreeing it would encourage the best and brightest young Australians to work and study in Indonesia.

This is an important strategy to help prepare young Australians for the highly competitive and globalised job market. Unlike a typically short-lived overseas holiday, studying abroad is one of the best ways to learn and understand another culture. Studying at a foreign institution—even just for a semester—will enable students to gain experience that is both international and uniquely cultural.

In this Asian century, there will no doubt be a growing appetite among Australian businesses to recruit workers who possess Asian language skills, and who are familiar with the Asian region. It follows then that students who have spent time studying overseas will improve their employment prospects. Also at a distinct advantage will be those who have this period of study in an Asian country recorded on their CV.

These students of Asia will be able to demonstrate to a potential employer that not only can they stand on their own feet, but that they have experienced the fast-paced and evolving nature of Australia's economic integration in the region.



Talal Yassine OAM is the Managing Director of Crescent Wealth, a non-executive director on the board of Australia Post and a professorial fellow at The Australian National University



Navigating international tax

MNEs, G20, OECD and BEPS: by building a global network of tax agencies we may be able to chart a course through the alphabet soup of international tax, multinational enterprises and tax havens, writes Miranda Stewart.

There are a lot of new initiatives swirling about in the alphabet soup of international tax. They range from new legal and technological systems to enhance tax administration, to new ideas that challenge the fundamental principles of international taxation.

The common theme is how national governments can tax capital that is mobile across borders—and whether they should try.

All global capital investment takes place through corporations, trusts, investment funds and banks established under national laws and subject to national tax rules. Ultimately, these legal intermediaries are owned and controlled by—and employ and sell their goods and services to—individuals. The use of legal intermediaries poses challenges but also may be the key to success of countries seeking to tax global capital.

Australia and other developed countries have established highly effective systems for tax collection from corporate and financial intermediaries operating within national borders. Yet these governments have not yet established a viable system to collect tax from legal intermediaries that operate in the global economy.

Recent developments in global tax administrative cooperation are unprecedented. They focus mostly on high-wealth individuals who invest through trusts, companies and bank accounts in tax havens. While there are many hurdles, it is getting easier for national tax agencies to identify taxpayers with offshore investments, to ascertain the amounts of income and assets and to actually collect the tax. Effective transnational networks will enable automatic information exchange under the OECD's 'universally agreed' standard, joint country audits and mutual assistance in collection of tax debts. The next controversial step is to eliminate the secrecy

benefits of intermediaries by changing national laws so as to require disclosure of beneficial ownership of offshore investment vehicles.

The G20 has been critical in pushing forward the Multilateral Convention on Mutual Administrative Assistance in Tax, which 64 countries have now signed, while it has been extended to 10 dependent tax haven territories. It will take a strong push to ensure that this momentum continues.

The global taxation of offshore financial investment has also received a push from the US Foreign Account Tax Compliance Act (FATCA) regime, which is being implemented in bilateral treaties between the US and other countries including Australia. FATCA requires financial institutions to supply information about account holders, backed by the threat of a 30 per cent withholding tax. FATCA is in many ways an over-reach and it has been criticised as extraterritorial and burdensome for little gain. Yet it is a significant step towards embedding both banks and governments in an international tax disclosure system that could benefit more countries in the future.

An even more difficult task is taxing multinational enterprises (MNEs) as a proxy for the individuals who ultimately benefit from global capital investment. The OECD's base erosion and profit sharing (BEPS) initiative is a step in this direction, but it raises many more questions than it answers.

Of course, we know who MNEs are, although a lack of transparency means that we often do not know where, and how much, profit is located in subsidiaries located in tax havens around the world—this is the arena in which the Googles and Apples of the world are facing increasing public scrutiny. Transparency in tax reporting is being mandated by some governments, including Australia. It could help tax agencies and contribute to a culture shift in tax planning by MNEs.



Miranda Stewart is the Director of the Tax and Transfer Policy Institute at Crawford School. Before this appointment Miranda was a Professor at Melbourne Law School, University of Melbourne where she retains an affiliation.

Australia's tax office has identified 86 'at risk' companies that it considers may be engaged in substantial transfer pricing activity.

The bigger problem in taxing MNEs is to work out *what to tax, and which country can tax*. Current international tax rules and treaties do not have the basic purpose of taxing global corporate profits. Where two states assert tax jurisdiction, current rules identify tax residence of individuals and companies; establish the geographical source of the income liable to tax; and seek to prevent 'double taxation'.

Countries can, and do, define the company tax base differently, levy different tax rates and take different approaches to enforcement of tax rules. MNEs which have globally centralised control can, and often do, take advantage of diverse national tax rules. Overall, this can generate very low taxation of profits derived in MNEs.

Taxation by a country where the company is resident might succeed in collecting tax from shareholders, although they may in fact reside elsewhere. But if the MNE is resident in a tax haven, or can locate its corporate profit in a tax haven subsidiary, the profit will go untaxed by any country. For example, current US international tax rules allow MNEs resident in the US to keep their business profits in tax haven subsidiaries until actually distributed to US shareholders. The consequence is a massive build-up in foreign profits of US companies, free of taxation in either the source country where the MNE operates, or the US where the MNE and at least some of the shareholders, reside.

This brings us to the more fundamental question of whether we should tax MNEs at all.

Companies are not people and do not bear tax. If shareholders ultimately benefit from returns to corporate investment, then the corporate tax should aim to collect tax as a proxy for collection from those shareholders. But who bears the corporate tax (and who benefits from corporate investment) is a complex question. It depends on many factors including the economic relationship between

shareholders, managers and employees in a MNE and the mobility of capital investment globally.

Some economic models suggest that, globally, taxation on capital is trending to zero, and moreover, that it should do so – that is, countries both cannot and should not, try to tax mobile corporate investment. Other models, including a recent Australian Treasury paper, suggest that the corporate tax is borne partly by workers through lower wages or unemployment—and so a cut in company tax, perhaps not to zero, would benefit Australian workers not just shareholders. As in most economic models, this conclusion is about long run, not short run, effects—in the short-term, shareholders would benefit.

The central assumption of these models is that capital is internationally mobile. They also assume that countries set tax policy independently of each other. If these assumptions are correct, then Australia's economic growth may depend on us engaging in international tax competition with other countries. But is tax competition inevitable? What happens to national and global welfare, and tax collection, if we instead aim for tax coordination?

The problem is not just about mobile capital. Even for so-called 'immobile' investment such as mining, transfer pricing enables value to be shifted out of the source country into tax havens through royalties, interest, service fees and prices for goods. Australia's tax office has identified 86 'at risk' companies that it considers may be engaged in substantial transfer pricing activity. There is also increasing interest from governments in strengthening tax rules to address so-called 'abusive' behaviour that locates profits in a low tax jurisdiction where the MNE is not really conducting economic activity. But it is difficult to define 'abuse'.

If we accept that tax coordination between countries may be worthwhile and that we should try to tax MNEs as proxy for capital owners benefiting from profits on global investments, where is that return located and how do we value it? Which country gets to capture the tax revenue from value creation? The physical location of economic activity may become less and less important, as value is located in brands, intellectual property, insurance and financial assets which are easily held in tax havens.

One pathway is to develop a new international tax framework through which nation-states *agree to tax* international profits of MNEs. Countries would have to establish some framework rules, accepted on a multilateral basis, for defining and sharing the company tax base. If we could capture more tax from this capital base, then globally company tax rates could be quite low. But this requires very significant cooperation by governments. Is the G20 up to the task?



Law and peace

Can the Philippines build a just peace in Mindanao, ask Veronica Taylor and Imelda Deinla.

The Philippines is often seen as a democratic corner of Southeast Asia: authoritarian ex-military President Ferdinand Marcos was famously ousted through peaceful civilian protest in 1986 and Filipino ‘people power’ has been a potent check on governments ever since.

Manila is also an Asian rule of law success story: the steps of the Supreme Court of the Philippines are flanked by two bronze heroes—the first Chief Justice Cayetano L Arellano, who served under the American Civil Government from 1901 to 1920, and the fifth Chief Justice, José Abad Santos y Basco, killed by the Japanese occupation forces in 1942 for refusing to cooperate.

They tell a story of legal independence and national triumph over colonisers: the Spanish, the Americans and the Japanese. Filipino lawyers enjoy high prestige and are proud of the public interest litigation that has propelled significant legal and social reforms in their country.

Fly south from Manila, however, and this narrative of progressive politics and sophisticated law evaporates in one of the world’s most heavily militarised places: the southern island of Mindanao. Here and in the surrounding islands, armed separatists have been waging war on the government and each other for more than 35 years. The intensity of conflict since the 1970s

has seen a rising death toll and the internal displacement of hundreds of thousands of civilians.

President Benigno Aquino, however, has taken an historic step by negotiating a comprehensive peace settlement with the largest of the separatist groups, the Moro Islamic Liberation Front. A Framework Agreement between the parties was mediated by Malaysia in 2012 and a Comprehensive Agreement signed in March this year. Currently the stakeholders are drafting the implementing legislation: the *Bangsamoro Basic Law*. This would create a politically and legally self-governing sub-region that will be ‘the home of the Moro’, or Muslim Filipinos: the Bangsamoro.

The Bangsamoro is designed to replace the Autonomous Region of Muslim Mindanao (ARMM)—a grouping of five Muslim majority provinces within Mindanao that came into being in 1990. ARMM has been largely unsuccessful.

It is the poorest region in the country, with a social development level that is closer to that of a central African republic than it is to metropolitan Manila. With an estimated population of just over four million, its economy is largely informal and based on financial transfers from the central government. Education, health, infrastructure and communications are all at profoundly low levels.

So why substitute one form of ‘autonomy’ for another?



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One of the long-standing grievances that inflamed the conflict between the separatists and the centre was Manila's refusal to recognise and respect both indigenous and Muslim cultures and tenure in the southern part of the archipelago. These significantly pre-date the Spanish colonisation and Catholicisation of the Philippines. The assertion of a separate Muslim identity and homeland has thus been a convenient rallying cry for armed and disaffected groups engaged in violent crimes against locals and outsiders. These range from the terrorist organisation Abu Sayaff through to current negotiating partner, the Moro Islamic Liberation Front—anticipated to emerge as the dominant political force in Bangsamoro.

One of the Moro Islamic Liberation Front political demands is regional autonomy over law and policing. Viewed from Manila, the Philippines has a unitary legal system with constitutional approval given to a limited form of political and economic autonomy for ARMM.

Yet Muslim communities see their Muslim identity inextricably bound up with the Islamic norms, including *shari'a* (Islamic law). These were layered upon indigenous customary law and this custom endures, particularly in relation to family relations and land. So the 'law' that actually applies to communities in Mindanao, depending on their ethnic and religious make-up, is a complex mix of local custom, clan and family norms, *shari'a* and—much more remotely—national law.

Urban elites in Manila prefer to ignore this legal pluralism, even although Muslim Filipinos and indigenous peoples live in many communities outside ARMM. Although the government established *shari'a* courts as a division of the Supreme Court from 1983, their jurisdiction remains limited to marriage, divorce, custody and inheritance among Muslims. Few universities teach Islamic law, so few, if any, lawyers who pass the national bar examination are conversant in contemporary *shari'a* as it applies within the Philippines or elsewhere. Indigenous legal norms in the Southern Philippines remain undocumented and largely unstudied.

By neglecting both formal and informal justice in Mindanao, the Philippine Government has allowed the real adjudicators to flourish—armed insurgent commanders, local political strongmen, and the army. The people who lose when law comes at the point of a gun are women, children, internally displaced people, and the unlucky minority in that locality.

Creating a Bangsamoro would be both a legal and a political watershed for the Philippines; at the very

least it would make a unitary state into a de facto federal system. For this reason, the passage of the *Basic Law* will almost certainly be challenged constitutionally. How the Supreme Court of the Philippines will respond is unknown, but the indications are not hopeful. What the *Basic Law* would require is both a formal and an attitudinal renegotiation of the national legal system, including the recognition of, and respect for, both Islamic law and indigenous law.

In whatever final form it takes, the *Basic Law* will seek to elevate and legitimise Islamic norms and actors in new ways. The Moro Islamic Liberation Front, as a movement has both conservative and progressive religious and legal elements. Moro women lawyers who lead progressive NGOs are concerned about which *shari'a* principles and institutional norms will be supported in the new Bangsamoro. In particular, there is great concern about ages of consent and marriage; trafficking of women and children; gender equality and the expansion of *shari'a* court jurisdiction to cover criminal offences. Indigenous peoples are anxious about their long-standing customary land claims and how human rights and equality guarantees for all Filipino citizens will be delivered within the Bangsamoro.

The projected deadline for the *Basic Law* is 2014—at least two years before the end of President Aquino's term of office in 2016. Racing against this legislative clock, we have been working to map users and providers of the basic legal services in ARMM. We know that state courts in Mindanao are underutilised and weak, and that the *shari'a* courts are sparsely distributed, and lack prestige.

Most people use village (*Barangay*) or Church-affiliated processes, and for Moro people, clan-based adjudication and retributive justice through intergenerational violence, or *rido*. None of these institutions receive a fair share of the national and donor resources channelled to justice institutions in Manila; all of them are siloed. Yet we also know anecdotally that 'people's courts' and the revolutionary Islamic courts, which are criticised as illegitimate and violative of human rights norms, are also formal and apparently effective.

Knowing more about all the justice actors in Mindanao and how they interact with each other and with potential users of their services, can provide evidence for policymakers and local actors as they try to design legal institutions that can contribute to local peacebuilding.

This research builds on a project led by Dr Imelda Deinla on post-conflict approaches to gender justice – Pluralist Justice for Women after Violence: An Experiment in Building Justice Webs in the Philippines (AusAID Development Research Award 2013).



Keep it simple

For leading strategy and defence thinker Hugh White AO, good policy comes from good ideas. By Belinda Thompson.

As an academic, analyst, senior public servant, political staffer, think tank specialist and journalist, Professor Hugh White has been part of the policy process from almost every angle.

Yet the centrifugal force that has directed his career has always been strategic policy questions and the art of injecting simplicity into the knot of complexity that surrounds policy decisions.

“One of the things policymakers and academics have in common is an aversion to simplicity,” White says.

“There’s a perception that if you make it simple it can’t be clever; that is 100 per cent wrong. It’s often just laziness; it is harder to make something simple.

“If (as an academic) you produce very opaque work, that is fine if that’s what you want to do. But, don’t expect it to have any impact on policy and don’t blame the policymakers when you don’t.”

The Asia and the Pacific Policy Society Fellow and Professor at the Strategic and Defence Studies Centre in the ANU College of Asia and the Pacific describes his career as both peripatetic and compact.

“I’m not a public service generalist. Strategy policy is what I do. It’s a very compact career, always working on the same sort of issues,” he says.

“As a policymaker I always worked in an environment in which academia played a big role in informing debate, particularly the work of people like my strategic and defence studies colleagues professors Paul Dibb and Des Ball.

“High-level defence policy questions have a pretty well-established academic component.

“But, quite properly, academia is focused on building new knowledge, and not focused on what you do with that knowledge. Policy-making is different: it is what you do with that knowledge.”

While tradecraft—having the skills and networks to get your policy through government and implemented—is important, White argues that is only half the story.

“Policy-making is promiscuous—you take ideas from anywhere,” White says.

“Government is full of people who have excellent tradecraft but just don’t have any ideas.

“What follows from the ideas work is good strong policy. It should be one and the same thing; you need rigorous argument, carefully drafted consistent foundations.”

White attributes part of his academic and policy-making success to his former trade—journalism.

“Working in journalism made a huge difference to my career in government. It teaches you how to write, to structure your ideas, how public issues work, how to distil and process issues.

“Government is just like any other business, juggling two different things: running the business day-to-day and building future business. It’s like a petrol station: there’s the day to-day business and then the forward planning questions like do I put in a coffee machine? Do I stay with BP or go to Shell?

“The day-to-day you can do with your eyes closed, but the rest is absolutely the ideas business.

“To be good in the public service you’ve got to be conscious of what you are bringing to the table—what is your professional expertise? What is the intellectual property you own, what are you actually there to contribute?”

White, who worked in the public service for almost 20 years from 1980, became the first Director of the Australian Strategic Policy Institute in 2001, leaving Department of Defence for a fresh challenge.

“I had the good fortune in government that I had a chance to do the things I most wanted to do,” White says.



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Policy-making is promiscuous—you take ideas from anywhere.

“Being a ministerial staff member for former Defence Minister Kim Beazley [from 1984–1990] gave me the chance to observe the policy process at the highest level for a remarkable minister.

“The role of Deputy Secretary for Strategy and Intelligence (from 1995–2000) was everything I was interested in. It was a terrific opportunity to do a lot of things that I wanted to do. I had a role in dealing with the East Timor crisis—which was,

and remains, the most important strategic crisis Australia has had since Vietnam.”

White also had a pretty big role in the 2000 defence white paper—something which he says he made as plain and simple as he could.

“In making ideas as clear and simple as you can, there is very little you have to conceal. I did the first draft and then went back to think about: what can’t I say? The answer was very little changed.”

Looking back, White says the key to his successful career was to take opportunities as they arose and to look for roles you would enjoy.

“I’m a great advocate of non-planned careers. I’ve never taken a job because it would be ‘good’ for my career,” he says.

“My father gave me this advice: if in doubt, move closer to where the bigger decisions are being made.”

And when it comes to strategic and defence policy, White—who has been called Australia’s most consummate controversialist by some—is always at the centre of the action.



Balancing act

Australia needs to balance regional economic interests against potential security challenges if it is to prosper in the Asian century, writes Amy King.

Since the end of the Second World War, Australia's security policy towards Asia has moved at a different pace to our economic policy.

At times, such as in the immediate post-war decades, this has produced a divergent view of the region. At other times, our economic and security planners have converged.

In the first three decades after the Second World War, this divergence between economic and security policy was most obvious in Australia's policy towards Japan.

Trade Minister Sir John 'Black Jack' McEwen was an early champion of closer economic ties

with Japan. In 1957, amid high levels of post-war anti-Japanese sentiment within the Australian community, McEwen ushered in a bilateral trade agreement between the two nations.

By 1975, Japan would be responsible for one-third of Australia's total trade. Today it is our second largest trading partner.

Yet Australia's post-war defence and foreign affairs community remained far less sanguine about Japan. The Minister for Foreign Affairs, William McMahon, who fearing Japan's potential rearmament, sought to limit Australia's engagement with Japan (and McEwen's policy influence).



Dr Amy King is a Lecturer in the Strategic and Defence Studies Centre, ANU College of Asia and the Pacific.

We risk returning to the post-war decades when there was only a fragile consensus in Australia's policy towards Asia.

This divergence between economic and security policy towards Asia shifted in the 1980s and 1990s when the Hawke-Keating Government came to power. Australia's security planners began to conceptualise the regional security environment in highly economic terms. This was partly the result of global trends at the end of the Cold War.

With the collapse of the Soviet Union and no sign of renewed 'hot wars' in Asia, academics and politicians alike envisaged a 'new world order' in which the prospect of a major power war appeared remote.

Asia was now considered critical to Australia's economic prosperity and its security.

This convergence continued during the Howard era. A combination of skilful diplomacy, and a lack of pressing traditional security challenges, meant that the Australian Government could benefit from economic prosperity in Asia and a relatively stable Asian security environment.

During Prime Minister John Howard's tenure, Australia enjoyed the immense prosperity brought about by China's economic growth and its increasing demand for Australian raw materials, without having to think very hard about how China's rise would affect Asia's security environment.

In this relatively benign environment, Australia's economic and security policies towards Asia appeared to be working in harmony.

At the end of the 21st century's first decade, however, Australia's economic policy towards Asia has once again begun to drift from our regional security policy.

While economic planners remain optimistic about the opportunities for Australia in the Asian century, Australia's security planners are far more pessimistic. Prime Minister Abbott's April 2014 visit to China, Japan and Korea reflects this.

Abbott was accompanied by hundreds of business leaders and officials, eager to capitalise on Australia's long-term economic ties to the region as well as new free trade opportunities.

But the Prime Minister also arrived in Asia at a time when the region is troubled by territorial disputes, popular nationalism, and military modernisation.

As the Abbott government drafts its new defence white paper, and forges ahead with free trade agreements and other economic partnerships in the region, it must ensure that its economic planners are talking to its security ones.

Otherwise we risk returning to the post-war decades when there was only a fragile consensus in Australia's policy towards Asia.

Yet allowing economic concerns to take precedence over security concerns—the approach taken during the Hawke-Keating years—would be a similarly dangerous approach. Asia faces a range of pressing security challenges, and so far economic interdependence has been unable to fully constrain the behaviour of Asia's great powers.

Fortunately, we are not the only country in the region grappling with these new policy demands. Australia must pay closer attention to how states in the region, including allies such as the United States, envisage their relative economic and security interests, and the implications of this for Australia.

Australia does not need to 'choose' between our economic and security interests. But we do need to better understand how these different areas of policy are connected.

A more detailed version of this argument can be found in Dr King's forthcoming publication: 'Australia and Northeast Asia', in Brendan Taylor, Peter Dean and Stephan Freuhling (eds), Australia's Defence in 2014: Towards a New Era?, Melbourne University Press, 2014.



Back to the future

A failure to learn from past mistakes in child protection policy means we risk repeating them, writes

Valerie Braithwaite with Nathan Harris, Sharynne Hamilton, Mary Ivec and Linda Gosnell.

Child protection weighs heavily on the conscience of our nation. We have developed something of a tradition for saying we are sorry for failing to protect children. Or to put it more accurately, for thinking we are doing what is best for children, but realising much later that we have acted unwisely.

Our past mistakes read like a bad rap sheet; the stolen generations, the forgotten Australians, forced adoptions, and our century-long shaming of women for giving birth outside marriage.

As a nation, we know what we have done. Yet once again we are hurtling down a path where we fail to disentangle what is best for government from what is best for children.

This time it takes the form of removing at-risk children from families through coercive adoption processes, and protection authorities.

As the number of children coming to the attention of child protection authorities increases, government appears keen to shift responsibility for the care of the children they remove to private citizens through adoption.

New South Wales has led the way through passing legislation to make adoption easier, and Prime Minister Tony Abbott has committed his government to lifting the 'red tape' that slows down the process of adoption.

Adoption is an important pathway to providing children with safe and loving environments, often outside the child protection system, and can be done with the goodwill of all parties.

But the evidence we have available suggests that this new emphasis on the use of adoption by child protection authorities has not started well. The

institutional path for fast-tracked open adoptions is being progressed on the back of the same old rhetoric of scandalising and stigmatising families, and by association, their children.

The Australian historian and social researcher, Professor Shurlee Swain, has highlighted how stigmatisation leads to pressure being placed on those most vulnerable in our society to relinquish their babies for adoption.

The collateral damage to mothers, fathers and children from this stigmatisation can be immense, and it can also prevent biological parents from receiving the support they need to stop putting their children at risk.

Risk factors that trigger child protection investigation fall into three main categories: domestic violence, mental illness and disability, and substance abuse.

But it is government that often leads the way in harm creation by refusing to honour the rights of those belonging to these groups who are labelled as 'undeserving' of the privilege of parenting.

Once authorities have armed themselves with moral superiority, many of the 'undeserving' are dealt with harshly. The community turns against them. It becomes hard to advocate for even the most worthy cases. We turn away.

A slippery slope ensues; a pathway for a minority of mothers and fathers who should be separated from their children is applied to many more for whom separation was never warranted.

Then there is the problem of how these situations are dealt with by government, and the authorities they charge with protecting children.

Child protection authorities (CPAs) have invested in bureaucratisation more than skill development and building relationships with families and communities.



Professor Valerie Braithwaite is an ANU Public Policy Fellow in the College of Asia and the Pacific, and leads the Capacity Building Research Group.

Child protection agencies currently have too few friends and too little influence to bring improvements in the lives of children.

Assessment protocols, tougher laws, mandatory reporting, contracting and monitoring, and exhaustive documentation and legal processes—they all make today's child protection agencies powerful, police-like institutions. They have power to disrupt lives, but too often are not sufficiently resourced or connected to communities to rebuild them.

Child protection agencies currently have too few friends and too little influence to bring improvements in the lives of children. Improving coordination between government and service providers has been consistently recommended in Australian child protection enquiries, which in number are now approaching the half-century mark.

In 2011, we undertook an online survey of third parties working alongside CPAs; it produced staggering findings on just how poor their relationships were. Only 28 per cent expressed trust in CPAs, with police most likely to see CPAs as trustworthy (58 per cent), and welfare workers least likely (18 per cent).

Two-thirds (67 per cent) of respondents felt that CPAs did not consult enough with families before intervening. The same percentage felt that CPAs did

not have sufficient understanding of family situations before intervening and did not consult enough with support services.

When third parties were asked about their cooperation with CPAs, almost half (47 per cent) expressed active resistance. Only 43 per cent were willing to defer to CPAs judgements.

Interestingly, 99 per cent expressed support for the mission of CPAs; they just objected to the way they went about their work.

These findings raise questions about CPAs capacity to make wise decisions about the separation of children from their families.

Highly appropriate and highly inappropriate interventions are par for the course in child protection.

For the child protection worker, it is not clear where harm lurks. Most children are enmeshed in networks of care and love. Addressing harm and neglect is a responsibility that governments should and do take seriously.

But removing children permanently from family networks reduces harm of one kind, while inflicting harm of another kind. The loss of a parent's love is no small thing.

Supporting and empowering these networks is likely to prove far more productive than increasing the power of authorities to monitor, direct and coerce adoption.

Whether adopted from birth or living in out-of-home care, children eventually return to their families, seeking answers. It seems that the 'lost love' of parents and children haunts for a lifetime.

This means that adoption cannot be a decision made by authorities on the basis of a set of rules and performance based indicators.

Adoption is a decision that has to be made by parents, families and communities, with trusted service providers and case workers to lend support, with extensive deliberation, and with plans laid to ensure that the best interests of the child remain the priority throughout the child's life.

It may also prevent yet another Australian apology to parents and children forcibly kept apart.



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