

RAIS CONFERENCE PROCEEDINGS

The 11th International RAIS Conference on Social Sciences

NOVEMBER 19-20, 2018

EDITOR SHAZIA NASIR

This publication presents the *Proceedings of the 11th International RAIS Conference on Social Sciences* held at Johns Hopkins University, in Montgomery County Campus, Rockville, MD, on November 19-20, 2018. The Conference was organized by Research Association for Interdisciplinary Studies.

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Edited by Shazia Nasir

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Preface

The *11th International RAIS Conference on Social Sciences* held at Johns Hopkins University, in Montgomery County Campus, Rockville, MD, on November 19-20, 2018 was organized by The Research Association for Interdisciplinary Studies (RAIS).

The RAIS Committee received 105 submissions. The papers were reviewed by at least two independent reviewers under a double-blind peer review process. Out of the received submissions, 54 papers were accepted for oral presentation during the conference and for inclusion in this volume. The acceptance of manuscripts was based on originality, scientific content, significance, and readability.

The RAIS Conferences encourage academics and researchers from around the world to share their experiences, achievements, research findings, and to discuss and exchange ideas on issues in the field of social sciences and humanities.

Conference participants, including presenters and attendees, had the opportunity to listen to the research insights and ideas presented by the scholars representing many foreign universities and research institutions from Bangladesh, Canada, Colombia, Czech Republic, Germany, Hong Kong, India, Nigeria, Pakistan, Romania, Saudi Arabia, South Africa, Sudan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the USA. I would like to express great appreciation to all members of the scientific and organizing committee, session chairs, presenters, and reviewers for making and putting this conference together.

Shazia Nasir,
Editor of the RAIS Conference Proceedings of the 11th International Conference
Head, School of Linguistics
Assistant Professor
Faculty of Social Sciences
Soft-Skill Trainer
Greenwich University
Pakistan-Mauritius
shazianasir.222@gmail.com

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Corporate Culture: Changing Board Responsibilities and Changing Governance Rhetoric

Alice Belcher

Professor of Law, School of Social Sciences, University of Dundee, United Kingdom, c.a.belcher@dundee.ac.uk

ABSTRACT: The UK's Financial Reporting Council is telling directors that they should not wait for a crisis before they focus on company culture. The board must set culture, embed it, assess it and report on it. This paper traces the company's formal legal liability for corporate culture as imposed in Australia and the UK and investigates the new focus on corporate culture in the wake of some notable corporate crises. It uses the Volkswagen emissions scandal as an example of cultural misalignment where the company and individual employees below board level (rather than a board collectively, or board members individually) have been the ones to be found liable despite the increase in rhetoric about the directors' responsibility for corporate culture. This critique is put into the context of decades of Management research in the field of Corporate Culture that has produced theory, empirical results and an array of practitioner tools, but has also ignited debates so intense as to be labeled the "culture wars". The paper points up the care that will be needed as **legal** liability for corporate culture increases before there is a consensus among **management** scholars on what it means and how it can be measured or assessed.

KEYWORDS: Corporate Culture, Directors, Governance, Law and Management, Responsibility, Volkswagen

Introduction

The preface to the 2016 edition of the UK Corporate Governance Code (the UK Code) stated that one of the board's key roles is establishing their company's culture (FRC, 2016a, preface para 4). The 2018 edition of the UK Code states that the board should assess and monitor culture (FRC 2018, provision 2). The propositions made in the paper are that; 1) there are forces operating within UK statute law and in relation to the UK Code that are making increasing demands on directors regarding their company's corporate culture; 2) The demands go beyond a responsibility to set corporate strategy and corporate policies, with the directors becoming increasingly responsible for "embedding" approved behaviours across the whole workforce; 3) These demands are being made against a lack of consensus in the academic literature on corporate culture that extends to its definition, its theoretical bases, ways of assessing it and the usefulness and comparability of such assessments; 4) That a misalignment between outward-facing claims about corporate values and internal workforce behaviours can produce a reputational crisis such as that experienced by Volkswagen following "dieselgate" in September 2015, and finally 5) That when boards implement the 2018 UK Code requirement to monitor and assess corporate culture they need to be aware of culture's conceptual and measurement difficulties.

The increasing demands of statute law

One purpose of this paper is to highlight the legal technicalities associated with "corporate culture", especially as it can impact on the legal liability of a company, the company directors and some employees. The earliest statutory use of "corporate culture" only applies to the first of these; the liability of the company itself. In 2007 UK law referred to corporate culture by including the phrase "... attitudes, policies, systems or accepted practices within the organisation" in section 8(3)(a) of the Corporate Manslaughter and Corporate Homicide Act 2007. "Policies" and "systems" can be written down and approved by the board whereas "attitudes" and "accepted practices" are behavioural elements that are more difficult for the board to know about throughout its organisation and even more difficult for it to control. The first statute to use the phrase "corporate culture" explicitly was the Australian Criminal Code Act 1995 (consolidated as of June 7, 2010) part 2.5, section 12.3(6) where corporate culture is defined as "an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place."

Section 12.3 of the Australian Criminal Code states:

“12.3(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly *authorised or permitted* the commission of the offence.

(2) The means by which such an authorisation or permission may be established include: (a) ...; or (b) ...; or

(c) proving that a *corporate culture* existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a *corporate culture* that required compliance with the relevant provision.” (emphasis added)

These provisions and the equivalent provisions of the UK’s Corporate Manslaughter and Corporate Homicide Act 2007 (the 2007 Act) can be used to attribute criminal liability to the company itself. Directors can cause their company to commit a crime through their management, or mismanagement, of the corporate culture. In Australia the relevant statute applies to all crimes that require intention. However, the Australian statute is a piece of Commonwealth legislation (Federal level) whilst prosecutions are, more usually, brought under the law of an individual State. At the time of writing there is yet to be a prosecution under the corporate culture provisions at a Federal level. At State level, the Australian Capital Territory (ACT) has reproduced the corporate culture route for attribution of corporate criminal responsibility. It has also enacted the Crimes (Industrial Manslaughter) Act 2003. When the ACT corporate culture attribution of criminal responsibility is coupled with the (State level) crime of industrial manslaughter the effect is to link mismanagement of a company’s culture with the possibility of a conviction for a form of corporate manslaughter; a result similar to the convictions now possible in England and Wales (for corporate manslaughter) and in Scotland (for corporate homicide). But, ACT is home to only 1.5 per cent of the Australian population, has no heavy industry, and most of its employers and employees are government departments and public servants who, as such, are exempt from the provisions of the 2003 Act.

Given the seriousness of a corporate manslaughter conviction, the use of “corporate culture” in the attribution of corporate criminal liability might have been a driver for every boardroom to focus on the culture they were shaping, or were permitting to exist in their company. Whilst UK boards noted the enactment of the 2007 Act, the corporate culture aspect of the new crime was not acted on with any urgency. It appears that it might take a “big” prosecution to hammer home the legal risks associated with the mismanagement of corporate culture under the 2007 Act. This might be the prosecution of a very large company, or a prosecution following a significant disaster, for instance there has been an indication that the 2007 Act may be used following the Grenfell Tower fire in London in which 72 people died. It has been other forms of corporate scandal where the mismanagement of corporate culture has come to the fore, with Volkswagen’s diesel emissions scandal being notable example.

The UK Corporate Governance Code

The introduction of the UK Corporate Governance Code in 1992 and its subsequent revisions have produced significant changes in UK boardrooms in the shape of many more non-executive directors, a general acceptance of the new norm that these non-executive directors will be used to form various governance sub-committees of the board, and a new general awareness of governance issues as matters to be evaluated, discussed, reported and improved. For listed UK companies the Financial Reporting Council (FRC) is the body that now sets the agenda for consultations and leads on the development of new UK Code provisions. The effectiveness of a voluntary UK Code that adopted the “comply or explain” mechanism to encourage compliance has been remarkable. It has been effective not only in producing change in the boardrooms of listed UK companies, but also through the diffusion of its general principals across the world and across different types of companies (Belcher 1996). The UK Code has been through many developments with most Code revisions bringing incremental change and only a few deserving to be described in terms of a significant shift.

From 1992 to around 1999 UK Corporate Governance Best Practice can be seen as systems-based. It was a set of rules that, if followed, might prevent executive directors from abusing their power. This was done by inserting an extra set of independent voices capable of challenging those executives. It was not dependent on the directors behaving well; it was rather a system devised with potentially badly behaving (executive) directors in mind. From about 1999 onwards a change can be detected. Under a Code development in 1999, boards had to decide on a risk management policy for their company and the directors were asked to ensure that the chosen policy was embedded throughout the company with an “emphasis on changing behaviour” (Jones and Sutherland, 1999, 21). Boards were encouraged to ask: “Does the company communicate to its employees what is expected of them and the scope of their freedom to act?” (Turnbull 1999, appendix). From this point on corporate governance best practice in the UK has been increasingly expressed as a set of systems *and behaviours* (Belcher 2014, 38).

The 2018 UK Code marks another shift. It has been hailed for being shorter and sharper, but another of distinct feature has been the influence of the directors’ statutory duty to promote the success of the company:

“A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company’s employees,
- (c) the need to foster the company’s business relationships with suppliers, customers and others,
- (d) the impact of the company’s operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company” (Companies Act 2006, section 172 (1)).

This duty, leaves the benefit of the shareholders (members) of the company at the heart a director’s decision-making, but is explicit about the need to have regard to the company’s relationships with its other stakeholders in pursuit of the long-term success of the company. This approach is called “enlightened shareholder value”. The stakeholders are not given any legal standing to challenge a director’s decisions. The company remains the legal person with standing to sue for any damage caused by a breach of the duty, but with the possibility of a derivative action where shareholders can ask the court to effectively force the company to sue a wrongdoing director where the directors do not themselves initiate an action by the company against the wrongdoer. With legal actions by stakeholders impossible, and legal actions by shareholders difficult and expensive to initiate, enforcement of section 172 appears problematic. On the basis that information can bring about shareholder activity, the Companies (Miscellaneous Reporting) Regulations 2018 (SI 2018/860) introduced a new reporting obligation (for large companies), called a “section 172(1) statement.” A strategic report for each financial year which “describes how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172” is required (Companies Act 2006 section 414CZA, also referred to in FRC 2018, provision 5). Provision 5 of the 2018 UK Code combines this reporting requirement with a requirement to understand the views of the company’s key stakeholders through “engagement mechanisms”, and (most controversially) a requirement for engagement with the workforce using formal methods. “[O]ne or a combination of the following methods should be used: a director appointed from the workforce; a formal workforce advisory panel; a designated non-executive director is required” (FRC 2018, provision 5).

The overt references to the section 172 duty in the 2018 UK Code parallels the introduction of the “section 172(1) statement”, but the influence of the section 172 duty was also foreshadowed in the work done under the umbrella of the FRC’s “Culture Coalition” during 2016. Whilst the introduction

of the UK's 2007 Act did not cause boards to focus on corporate culture, by 2016 boards were found to be spending more time discussing values, behaviours and culture than they had been five years previously (FRC 2016b, 8). News of the Volkswagen emissions scandal broke in September 2015, which may go some way to explaining boards wanting to discuss corporate culture in their meetings *and* to explaining the FRC's decision to set up its culture coalition. The coalition included partner organisations representing for instance, personnel managers and accountants. Research work was reported by coalition partners in 2016 (for instance FRC 2016b, CIPD 2016). In its 2016 report *Corporate Culture and the Role of Boards* the FRC employed a definition of culture that referred to the very stakeholders that are referenced in the section 172 duty:

“Culture in a corporate context can be defined as a combination of the values, attitudes and behaviours manifested by a company in its operations and relations with its stakeholders. These stakeholders include shareholders, employees, customers, suppliers and the wider community and environment which are affected by a company's conduct.” (FRC 2016b, 6).

This definition did not survive into the 2018 UK Code, but it establishes how a company's culture can include both its outward facing pronouncements about its values and its internal management of operations where those values need to be embedded. It impliedly connects the legal obligation for boardroom decisions to be made using the enlightened shareholder value approach with corporate culture. The corporate culture provision in the 2018 UK Code retreats somewhat from the idea of corporate culture as present in *all* of a company's relationships and uses a definition that is closer to the law on attribution of corporate criminal responsibility:

“The board should assess and monitor culture. Where it is not satisfied that *policy, practices, or behaviour* throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action” (FRC 2018, provision 2, emphasis added).

Thus, the 2016 definition in which the company's culture can be “found” in all a company's relations, has been replaced by a definition that emphasises the possibility of misalignment. The (actual) policy practices and behaviour (that which is to be assessed and monitored), is to be compared with the company's purposes, values and strategy (that which is to be set at board level and communicated to outside stakeholders).

Misalignment at Volkswagen

One of the “highly public” scandals that can be used to illustrate the dramatic consequences of a cultural misalignment is the Volkswagen diesel emissions scandal made public in September 2015. At the heart of this scandal there was the Volkswagen “vision of a hit US diesel car” (Smith and Parloff 2016) pursued by CEO Pischetsrieder until he was forced out in November 2006, and continued as an aim of his successor CEO Winterkorn. The main obstacle to that ambition was that the Volkswagen engineers would need to design an engine that could satisfy the stringent NOx regulations (emissions limits) demanded by the US without sacrificing performance or fuel economy, while remaining competitive on price (Smith and Parloff 2016). It has emerged that engineers had spoken among themselves about the impossibility of the task and the possibility of developing software to cheat the emissions testing system as early as 2005, i.e. before Winterkorn took office as CEO. Winterkorn has been described as “a hard-driving perfectionist.” His ten year strategy for the group, announced in 2008, was that by 2018 Volkswagen would be the “world's most profitable, fascinating and sustainable automotive manufacturer” (Muller 2013). This ambition meant overtaking Toyota and General Motors to be world number one “not just in units, but in profitability, innovation, customer satisfaction, everything” (Smith and Parloff 2016).

When the engineers could not meet the emissions targets “instead of telling management that they couldn't meet the parameters, the decision was taken to manipulate. No one had the courage to admit failure. Moreover, the engine developers felt secure because there was no way of detecting the deceit with the testing technology that existed at the time” (Smith and Parloff 2016 citing a whistle-

blower reported in *Süddeutsche Zeitung*). The action of the engineers in resorting to the manipulation of the NOx emissions controls has been described as “an act of desperation.” The accepted practice of always reporting success to top management, because failure was unacceptable, led engineers to pursue the appearance of perfection rather than pursuing perfection itself in meeting US emissions standards.

Following “dieselgate” Volkswagen appointed Matthias Müller as CEO and in June 2016 he announced and launched a new group “Strategy 2025” of which he said: “The New Group strategy is not the work of external consultants. It came straight from the heart of our company” (Volkswagen 2016). Setting a new culture and trying to embed it across the Volkswagen group has, however, proved very difficult. In May 2017 Mueller said “There are definitely people who are longing for the old centralistic leadership ... [and] I don’t know whether you can imagine how difficult it is to change the mindset” (Cremer 2017).

In the context of “dieselgate” the first person to be prosecuted was the company itself. It pleaded guilty to violations of the US Clean Air Act and agreed to pay billions of dollars in fines. With a guilty plea the issue of the company’s intent did not need to be tested, but many regulatory crimes do not, in any case, require proof of intent. The next set of people to face indictment in the US were Volkswagen engineers who were not members of the group management or supervisory boards. One man, James Robert Liang pleaded guilty to conspiracy to defraud. Then six men were charged with fraud when all six were all outside the US. In January 2017 one of the men, Oliver Schmidt, was arrested at Miami airport having taken a holiday with a journey via the US. He admitted to conspiring to mislead US regulators and to violating clean air laws, pleaded guilty in August 2017 and was sentenced to penalties at the top end of the relevant sentencing guidelines of seven years in prison and a \$400,000 fine. The crime of conspiracy is one that requires intent. Again a guilty plea meant that the court did not need to consider the evidence of that intent, but Volkswagen’s corporate culture, as imposed on these employees, could not be used in their defence or provide justification for their crime. The Volkswagen emissions scandal has illustrated how a misaligned corporate culture can produce very significant legal consequences for a company and for some of its employees, but without any evidence of that poor corporate culture being tested in court.

Corporate culture – a lack of consensus

This paper opened with a definition of corporate taken from statute law. Academic interest in “culture research” as applied to organisations began in the 1970s and was followed fairly rapidly by “culture as a popular management fad” (Chatman and O’Reilly 2017, 201):

“Instead of advancing theory and measurement, [Management researcher] interest turned to helping managers. We believe that this shift in focus may have slowed progress in developing a unifying definition of culture. It may also have contributed to prolonged debates among organizational culture scholars, debates that were so intense that they were labeled (sic) the ‘culture wars.’” (Chatman and O’Reilly, 2017 201)

The phrase “culture wars” was coined by Martin and Frost (2011). In the context of the new corporate culture provision in the 2018 UK Code, the important issues identified and discussed by Chatman and O’Reilly concern the numerous definitions (54 different definitions of “organisational culture” were counted by Verbeke, Volgering and Hessels 1998), the numerous diagnostic instruments (Jung et al. 2009 identified no fewer than 70), and problems associated with the drafting of questions to be asked of employees. Questions were discovered that were too colloquial, that were ambiguous because the employee may not know whether they are being asked for a personal answer (their own attitude), or an assessment of their workplace (how people who work here feel), and that were written so that the socially desirable answer could easily be identified. There is also a more fundamental problem because there are two very different approaches or views of organisational culture. These have been described as functionalist and interpretive. The functionalist approach sees organisational culture as something that can, and should, be manipulated to serve corporate interests. The interpretive approach

sees it as something that emerges; something that is not owned by any group within an organisation but is created by all the organisation's members.

“A functionalist perspective is ‘top down’ in that it serves the strategic imperative of members of the controlling group. An interpretive perspective represents a ‘bottom up’ approach, and allows for the existence of sub-cultures within an organisation. Most organisations display elements of both approaches” (Glendon and Stanton 2000).

Another problem concerns other concepts close to corporate culture for instance corporate climate. Chatman and O'Reilly found that many of the corporate culture tools they analysed measured aspects of an organisation that are better described as climate. Research on “organisational culture” is rooted in anthropology whereas research on “organisational climate” has developed from a social psychological framework (Glick 1985). Whilst culture is often characterised as an enduring aspect of the organisation with trait-like properties, climate can be conceived as a “temporal manifestation” of organisational culture exhibiting more state-like properties (Cox and Cheyne 2000).

All of the problems identified above suggest that provision 2 of the 2018 UK Code could be very difficult to implement and that an unsophisticated use by a board of, say, the annual staff survey in its assessment of corporate culture is unlikely to prove useful. Also, there is the potential for a gap to arise between the sorts of evidence routinely gathered by a company for assessment and monitoring purposes and the corporate culture as “lived” by its employees. The second part of the new provision 2 involves the board checking whether *policy, practices, or behaviour* throughout the business (i.e. culture as assessed by a culture tool, or in some other way) are aligned with the company's purpose, values and strategy. The final requirement is for the board to seek assurance that management has taken corrective action where any misalignment is discovered. This assumes that it is always possible to manage alignment, but Volkswagen's experience of attempting to re-set its corporate culture suggests this is far from easy, and may prove an intractable problem. The most usual way of aligning business operations with strategic aims is for corporate paperwork to demand a record of the strategic aim being pursued against everything that is proposed, assessed, requested or decided. Boards need to be aware that management assurance of “corrective action” will need to go beyond assurances “on paper”. Just as it would have been better for Volkswagen's CEO and management board to have heard from its engineers that NOx emissions targets could not be achieved (yet), boards need to be open to hearing that “corrective action” concerning cultural misalignment has not achieved the desired alignment (yet). Now best practice is asking boards to gather more information on their company's culture and to evaluate that information it will mean that there is more evidence available to either defend a board against accusations of failure, or to condemn the board if it fails to put its mind to such matters.

Conclusions

A poor corporate culture can now be used to attribute criminal intent to a company in Australia for any crime requiring intent, and to a company in the UK accused of a corporate killing crime (manslaughter or homicide). However, the evidential burden of the relevant statutory provisions remain to be tested and their enactment did not stir company boards into discussing corporate culture. In contrast, the Volkswagen diesel emissions scandal of 2015 provided a clear example of a damaging corporate culture. By 2016 boards of UK companies were devoting an increasing amount of time to discussing their companies' cultures and the FRC had initiated the work of its “Culture Coalition.” The 2018 UK Code requires boards to assess and monitor corporate culture check for any misalignment and demand corrective action by management if misalignment is discovered. However, at the same time, the ongoing Volkswagen story is revealing just how difficult it is to change corporate culture. Also, Management research on corporate culture, which has been conducted from as far back as at least the 1970s, is complex and disputed. The functionalist approach sees organisational culture as something that can, and should, be manipulated to serve corporate interests. To the extent that culture can be controlled it is sensible to use it to attribute intent for corporate crime, and it is sensible to have a Corporate Governance Code that makes directors responsible for

their company's culture. However, the interpretive approach sees corporate culture as created by everyone in an organisation, and as something not wholly controllable from the boardroom. The Management literature also reveals the immense conceptual, methodological and practical difficulties that UK boards will now face as they attempt to assess and report on their company's culture as required by the 2018 UK Code.

References

- Belcher, A. 1996. "The Invention, Innovation and Diffusion of Self-Regulation in Corporate Governance." *Northern Ireland Legal Quarterly* 47(3): 322-334.
- Belcher, A. 2014. *Directors' Decisions and the Law: Promoting Success*. Abingdon: Routledge.
- Chatman, J and C O'Reilly. 2017. "Paradigm Lost, Reinvigorating the study of organizational culture." *Research in Organizational Behavior* 36: 199-224.
- CIPD. 2016. "A duty to care? Evidence of the importance of organisational culture to effective governance and leadership." https://www.cipd.co.uk/Images/a-duty-to-care_2016-evidence-of-the-importance-of-organisational-culture-to-effective-governance-and-leadership_tcm18-14220.pdf.
- Cox, S.J. and A.J.T. Cheyne. 2000. "Assessing safety culture in offshore environments." *Safety Science* 34: 111-129, 114.
- Cremer, Andreas, 2017 "CEO says changing VW culture proving tougher than expected" *Business News*, May 23, 2017. https://www.reuters.com/article/us-volkswagen-emissions-culture/ceo-says-changing-vw-culture-proving-tougher-than-expected-idUSKBN18I2V3?utm_source=34553&utm_medium=partner Accessed January 31, 2018.
- Financial Reporting Council (FRC). 2016a. *The UK Corporate Governance Code*, April 2016.
- Financial Reporting Council (FRC). 2016b. *Corporate Culture and the Role of Boards: Report of Observations*, July 2016.
- Financial Reporting Council (FRC). 2018. *The UK Corporate Governance Code*, July 2018.
- Glendon, A.I. and N.A. Stanton. 2000. "Perspectives on safety culture," *Safety Science* 34: 193-214 at 194.
- Glick, W H, 1985. "Conceptualizing and measuring organizational and psychological climate: pitfalls in multilevel research." *Academy of Management Review* 10(3): 601- 616.
- Jones, M and G Sutherland. 1999. *Implementing Turnbull: A Boardroom Briefing*. London: ICAEW.
- Jung, T., Scott, J. T., Davies, H. T. O., Bower, P., Whalley, D., McNally, R., et al. 2009. "Instruments for reviewing organisational culture: A review of the literature." *Public Administration Review* 69(6): 1087–1096.
- Martin, J. and Frost, P. 2011. "The organizational culture war games: A struggle for intellectual dominance" in S. Clegg, & C. Hardy (Eds.), *Studying organization: Theory and method* (pp. 315–336). Thousand Oaks, CA: Sage Publications.
- Muller, Joann. 2013. "How Volkswagen will rule the world." *Forbes Magazine*, May 6, 2013. <https://www.forbes.com/sites/joannmuller/2013/04/17/volkswagens-mission-to-dominate-global-auto-industry-gets-noticeably-harder/>.
- Schein, E. H. 1985. *Organizational culture and leadership*. San Francisco, CA: Jossey-Bass.
- Smith, Geoffrey, and Roger Parloff. 2016. "Hoaxwagon." *Fortune*, 15 March 2016. <http://fortune.com/inside-volkswagen-emissions-scandal/>. Accessed January 22, 2018.
- Turnbull Working Party. 1999. *Internal Control: Guidance for Directors on the Combined Code* (the Turnbull Guidance) was published in April 1999.
- Verbeke, W., Volgering, M., & Hessels, M. 1998. "Exploring the conceptual expansion within the field of organizational behaviour: Organizational climate and organizational culture." *Journal of Management Studies* 35(3): 303–329.
- Volkswagen. 2016. *Strategy 2025*, <https://www.volkswagenag.com/en/group/strategy.html>, accessed January 31, 2018.

Financial Systems and Private Innovation Activity. A Research for OECD Countries

Alberto Méndez-Morales¹, Carlos Yanes-Guerra²

¹Universidad Militar Nueva Granada / Centro de Investigación en Ciencias económicas, Bogotá, Colombia, edgard.mendez@unimilitar.edu.co

²Universidad Militar Nueva Granada / Centro de Investigación en Ciencias económicas, Bogotá, Colombia, carlos.yanes@unimilitar.edu.co

ABSTRACT: This research shows the effect that financial markets development has on R&D private investment of OECD countries. The main porpoise of this research is to help policy makers to generate effective policies to spur innovation, especially in underdeveloped countries. Data used on this research comes from World Bank and Unesco for the period 2000-2016. Used methodology is a dynamic panel data in which macroeconomic, financial, innovation and structural variables are included. It was found that stock markets development is positively related with private expenditure on R&D, but bond markets are negatively related with it. Simultaneously, low inflation and stable exchange rates are positively related with R&D. This is a novel research given that we show that an effective innovation policy for private firms, should be accompanied of policies aimed to deepening financial markets as a way to spur investments on R&D.

KEYWORDS: Financial systems, stock markets, credit markets, R&D, innovation

Introduction

Innovation activity is uncertain and is affected by market failures on a deepest way than other type of firm activities, this causes that available financial sources for this type of ventures tend to be reduced and costly, increasing the financial cost of R&D and innovation projects. At the same time, innovation is a probed source of business growth and economic development, and therefore, one could think that governments around the world should develop strong policies in order to support R&D private financing to diminish market failures faced by firms trying to enroll on R&D&I activities. In line with this, the development of strong institutions and systems created to support the financing of R&D&I is fundamental to generate firms and economic growth.

At the same time, development of strong financial systems has been proved to be related with economic development; healthy, deep and well-regulated financial systems are related with regional and national growth. An explanation for this fact is that firms finding financial sources adjusted to their needs could deal with lower costs related to funding, and therefore, tend to be more profitable and generate economic growth.

Our hypothesis is that the development of strong financial markets on OECD countries tend to benefit the private investment on R&D and therefore, countries around the world need to develop policies to strengthen financial institutions if they want to be more competitive from the technological point of view.

The relationship between finance and innovation

The relationship between finance and innovation has been known for a long time now; since the seminal work of Schumpeter, innovation studies have tried to show the details of this connection, however, we still not fully understand the relationship between these two worlds. However, there are some examples of subjects that we know about this topic.

First, there are factors hampering private business expenditure on innovative activities. This issue has been researched since the seminal works of Nelson (1959) and Arrow (1972); in general, private investment on innovation is highly risky from the financial point of view, mostly because it requires high levels of cash flow, is a costly long-term venture, is highly uncertain, and sometimes produces outcomes that are intangible. Those factors are caused by market failures like information asymmetry and the impossibility of full outcomes appropriation; those market failures elevate the

risk and costs of innovation ventures relative to investments based on traditional capital assets (Hall and Lerner 2009).

At the same time, firms trying to implement innovation venture face strong impediments trying to raise money from internal and external sources. First, internal funds are scarce and sometimes available cash flow has to be used to cover other types of expenditures, especially if a company is cash restrained (Brown, Fazzari, and Petersen 2009), as is the typical case in young and small firms (Hall and Lerner 2009). In addition, innovative firms trying to raise money from external sources face high financial direct and sunk costs given the intangible nature of innovation and its uncertainty characteristics, therefore, a company facing internal and external restrictions could be taken to a situation where it has no internal or external funding for its R&D&I projects.

Second, some academics have proposed that differences in innovative inputs within countries may be due to the different organizational and institutional mixtures and relationships present in innovative markets across countries. For economies in which the private investment in R&D&I is low, it is consistent to think that the development of strong organizations backing up innovation is necessary, in that sense, one of the main functions of those organizations and institutions is to ease the way in which firms and more generally, the market, perceive and face impediments to innovation. This academic approach began with the seminal work of Freeman (1987; 1995), Lundvall (1999; 2010), and Nelson (1993); for Freeman, these relations are framed in what is known as the National Systems of Innovation (NSI), that he defined as “the network of institutions in the public and private sectors whose activities and interactions initiate, import, modify and diffuse new technologies”. In the same way, Edquist (2011), proposes that one of the fundamental activities of NSIs is the financing of private innovation activities facilitating commercialization and adoption of technologies; for countries with low amounts of private R&D expenditures, it is possible that some of the institutional and organizational framework already established in developed countries, still need to be generated. This is, an adequate form of institutional network directed to finance innovation, need to be developed. In this context, the study of the relationship of financial systems and finance of innovation, could give some clues about the policy actions related with the development of innovation and financial systems.

Financial systems and innovation

The study of the relationship between financial systems and innovation is not wide. Even when literature about NSI tends to highlight the fundamental role of financial institutions to generate innovations, there are few attempts to develop a holistic theory about this topic. However, there are some examples of researchers working on it.

Authors like Hsu, Tian, & Xu (2014), show that countries in which stock markets are strong, tend to have higher growths on innovation expenditures, at the same time, those authors highlight the importance of legal protection for stock holders as a way to generate positive outcomes one innovation, all this accompanied by good policies to foment import and export markets.

Tee et al. (2014) demonstrate that the development of banking markets and stock markets, tend to be related with strong developments on innovation. At the same time, Acharya and Xu (2017) shown that the development of strong banking markets is related with the growth of patent applications, therefore, if those patents tend to generate products and services, economic growth is guaranteed.

Acharya & Xu (2017) and Da Rin & Penas (2007) demonstrate that public traded and private equity firms, have completely different logics regarding R&D investments. Public firms tend to have more R&D expenditures and their patents, tend to have a bigger commercial impact than private firms. At the same time, firms with strong risk control systems tend to have more likelihood to receive government funds and a higher internal R&D expenditure, generally, this kind of firms are bigger and tend to be public on stock markets. These kind of results could highlight that the type of financial system in which a firm is immerse, tend to benefit some characteristics of innovation activity and therefore, the study of the relationship between innovation results and financial system frameworks is a fundamental one. At the same time, Maskus, Neumann, and

Seidel (2012) find that bond markets tend to have high impact on innovation intensities specially form firms financially restricted. In the same direction, Gur and Avşar (2016) demonstrate that financially restricted firms tend to export more R&D related products when they are financed by more specialized financial systems.

All these literature point out the relevance of financial systems as a key factor to support innovation expenditures and ventures. However, literature seems to be also contradictory, some studies demonstrate that bond markets tend to be the most related with innovation, on the other side, some point the importance of stock markets and some tend to signal the credit markets as the one supporting innovation in a strong way. This research is a small contribution to the literature, given that we include all OCDE countries in our study and we take account of stock markets, debt markets and bond markets as possible sources for R&D private expenditure. Our hypothesis are:

H1: Bank markets have a positive relationship with private R&D expenditures.

H2: Bond markets have a negative relationship with private R&D expenditures.

H3: Stock exchange markets have a positive relationship with private R&D expenditures.

Methodology

Using data collected from World Bank and UNESCO data banks between years 2000 and 2016, we developed an econometric strategy through estimations of longitudinal models. These models, group observations by cross-section and by time series, taking the X_{it} form, where (i) takes into account individuals, in our case, OECD countries, and (t) takes into account each year for the interval 2000-2016. At the same time, this method allows us to take into account the effect of heterogeneity among individuals over time.

Independent variable in our models is percentage of R&D performed by business sector, and the vector of covariates X_{it} is divided into three subgroups, the first one taking account of some macroeconomic country characteristics as GDP per capita, exchange rate index against dollar, and inflation rate. The second group, taking account of the possible financing sources of firms to perform R&D ventures and one variable measuring financial structure within countries like, private credit to firms, stock market capitalization, volume of corporative bonds traded in market and banking concentration; and third, we include a vector of variables related with national systems of innovation like government expenditure on R&D, and number of employees working directly on R&D of firms within countries.

Our estimations where performed with two strategies, in the first one, we consider the assumption of strict exogeneity of estimators. For this strategy, we performed a fixed effect model:

$$Y_{it} = \alpha X_{it} + \vartheta_i + \varepsilon_{it}; \forall i = Colombia, Spain, \dots, N; t = 2000, 2001, \dots, 2016 \quad (1)$$

Where (ϑ_i) parameter refers to the error term taken by each individual (countries), and that is named fixed effects estimator. This estimator needs to be correlated with covariates, should not vary among time, but should vary among countries. A good example of this type of variance could be local financial laws, which are not integrated in our model, and therefore are captured for (ϑ_i), are related with covariates like banking concentration or market capitalization, are generally fixed over time and could vary among OECD countries. If this term is correlated with covariates or independent variable, then the best approach is to estimate the model by a random effects model:

$$Y_{it} = \alpha X_{it} + \mu_{it}; \forall i = Colombia, Spain, \dots, N; t = 2000, 2001, \dots, 2016 \quad (2)$$

Where, $\mu_{it} = \vartheta_i + \varepsilon_{it}$, is taken as an independent term, and must be estimated with a generalized method of moments methodology.

For our second strategy, we relax the assumption of strict exogeneity of estimators, taking into account countries and time variance, and therefore, obtaining a dynamic panel model. We

began this model with the insertion of a lag term of independent private R&D expenditure variable (Y_{i-t}), which allows us to control for endogeneity of independent variables with dependent variable (Arellano 2003). In this case, we suspect the presence of endogeneity, because R&D expenditure tends to increase firm revenues in the long term, and this makes companies to look for internal and external financial sources like banks, bonds or stock markets to finance new R&D ventures, which will elevate the R&D private expenditure. Then, our model will be expressed as:

$$Y_{it} = \phi Y_{i,t-p} + \alpha X_{it} + \mu_{it} ; \forall i = Colombia, Spain, \dots, N; t \& p = 2000, 2001, \dots, 2016 \quad (3)$$

In this methodology, the error term is decomposed into three variance terms; According to Amemiya (1971), $\mu_{it} = \vartheta_i + \lambda_t + \varepsilon_{it}$, where $\vartheta_i, \lambda_t, \varepsilon_{it} \sim (0, \sigma^2)$, and are independently and identically distributed. The (ϑ_i) term, is the within fixed effect parameter, the (λ_t) term measures the time effect not included directly in the regression and that could be measuring a special situation like an oil bonanza or a financial crisis. In our case, these two phenomena are true, given that the world faced two financial crisis in our time span (2001, 2008) and oil prices raise enormously in 2009 and 2010. The (ε_{it}) term accounts for not observed time and countries effect of the model. To estimate this model a set of binary variables vectors were constructed:

$$U = Z_{\mu}\mu + Z_{\lambda}\lambda + \varepsilon \quad (4)$$

Where Z_{μ} is a vector of dummy variables for each country; Z_{λ} is a vector of dummy variables for each year (2000-2016), and ε' : ($\varepsilon_{11}, \dots, \varepsilon_{1T}, \dots, \varepsilon_{NT}$) is a vector of general residuals of the model. The estimation ends up being consistent and robust when the error term is controlled and decomposed into these three factor and if is estimated for a balanced panel, which is our case.

Results

Results of our regression can be seen in table 1. In first place, it is worth noting that the lag of our dependent variable is significant and positive in all cases, with this, we can assume that past expenditures on private R&D are related with present expenditures, this is, countries in which in the past firms invest in higher proportion on R&D tend to remain on this condition. In relation with GDP per capita, our finding suggests that wealthier countries are not necessarily, the ones in which private firms tend to invest higher proportions on R&D. This could be interpreted as counter-intuitive results, however, it is possible that countries in which inhabitants are wealthier, tend to expend a higher proportion of R&D from governments; in that case, our results are not counter intuitive.

Macroeconomic variables seem to have negative relationships with private R&D expenditures, this seems logic given that high exchange and inflation rates play against firm productivity. In that case, firms tend to expend less on R&D on an environment in which macroeconomic figures are against productivity.

At the same time, bank concentration seems to have positive relationship with private R&D, this is, countries in which a smaller proportion of banks have high proportions of market share, tend to expend more on private R&D. A possible explanation for this could be that banks on those countries need to compete with a smaller number of rivals and therefore, the likelihood of generate credit contracts with higher interest rates is higher, and given that R&D ventures are riskier, those type of contracts need to be issued with these type of rates; however, private credit variable and its lag, do not confirm those results, and as it can be seen on table 1, credit variables and its lag, are not related with private R&D expenditures, therefore, bank credit seems not be related with the proportion of private R&D expenditure. H1 is not confirmed.

Market capitalization seems to be positively related with private R&D expenditure, however this relationship seems to be strong on the medium term, this because our variable without lag have no explicatory power but the lagged variable is strong. This seems to be logical in the light of theory, stock markets could be a short-term market for investors, however, for firms, money received from those markets implies a long-term commitment with stock holders, therefore, if firms

are using stock markets to perform R&D ventures, this type of investments must be visible in the middle and long-term at aggregate level. H2 is confirmed.

Table 1. Regressions results

	R&D private expenditure as GDP %					
	Fixed effects (1)	Random effects (2)	Dynamic random effects (3)	Fixed effects t-1 (4)	Random effects t-1 (5)	Dynamic random effects t-1 (6)
R&D private expenditure t-1	0.396*** (0.046)	0.822*** (0.030)	0.560*** (0.015)	0.500*** (0.050)	0.827*** (0.028)	0.572*** (0.017)
GDP per cap	-0.0001 (0.0001)	-0.0001*** (0.00002)	-0.0001*** (0.00002)	0.00004 (0.0001)	-0.0001*** (0.00002)	-0.0001*** (0.00002)
Exchange rate index	-0.074*** (0.025)	-0.012 (0.024)	-0.064*** (0.009)	-0.071*** (0.024)	-0.007 (0.022)	-0.062*** (0.009)
Inflation	-0.244* (0.128)	-0.244** (0.100)	-0.299*** (0.042)	-0.230** (0.095)	-0.440*** (0.085)	-0.336*** (0.034)
Bank concentration	0.050** (0.025)	0.016 (0.016)	0.035*** (0.007)	0.080*** (0.024)	0.023 (0.014)	0.056*** (0.008)
Private credit	-0.020 (0.013)	0.001 (0.007)	-0.004 (0.004)			
Private credit t-1				0.003 (0.012)	0.003 (0.006)	0.002 (0.004)
Market capitalization	0.024** (0.011)	0.011 (0.009)	0.003 (0.004)			
Market capitalization t-1				0.024** (0.011)	0.015** (0.007)	0.014*** (0.004)
Corporative bonds	-0.604*** (0.217)	-0.727*** (0.172)	-0.500*** (0.083)			
Corporative bonds t-1				-0.338* (0.204)	-0.603*** (0.143)	-0.525*** (0.077)
Government R&D expenditure	-0.432*** (0.089)	-0.113*** (0.036)	-0.265*** (0.023)			
Government R&D expenditure t-1				0.079 (0.085)	-0.028 (0.034)	0.034 (0.026)
Full time researches on business	0.212*** (0.062)	0.107*** (0.023)	0.187*** (0.014)	0.343*** (0.054)	0.123*** (0.021)	0.267*** (0.016)
Constant		8.677*** (2760)	24.416*** (1420)		4.976* (2613)	12.663*** (1659)
Observations	262	262	262	266	266	266
R2	0.606	0.903	0.906	0.617	0.916	0.921
Adjusted R2	0.539	0.899	0.902	0.553	0.913	0.918
F Statistic	31.226*** (df=11; 223)	212.350*** (df=11; 250)	194.607*** (df=11; 250)	33.237*** (df = 11; 227)	252.760*** (df = 11; 254)	239.159*** (df = 11; 254)

Source: Own calculations

Corporative bonds as a percentage of GDP have negative and strong relationships with the proportion of private R&D aggregate expenditure. It seems that a higher volume of corporative bonds on OECD markets is related with low expenditures on private R&D. We have a possible explanation for this result. Strong bond markets could be identify as money markets in which investors prefer low risk and short-term available investments. R&D ventures are the opposite of this type of investments, they imply risky and long-term commitments from the firm's point of view; therefore, this result can confirm that logic, bond markets are not well suited for R&D investments. It is important to note that this relationship seem stable on time, given that on time, and lag bond variables, have negative and significant relationships with private R&D; H3 is confirmed. At the same time, government expenditure on R&D has a negative relationship with private expenditure, it seems that a crowding-out effect can be seen at aggregate level for OECD countries, at least for the on time variable. Those results seem to be contradictory, especially for results gathered at microeconomic level in which public subsidies are related with higher expenditures on private R&D (Aerts and Czarnitzki 2004; Czarnitzki and Lopes-Bento 2013; Chudnovsky et al. 2006), therefore, we need to study this result deeper.

Conclusions

We use panel models to verify the relationship between financial development and private R&D expenditure in OECD countries. Using data from 2000 to 2016, we found that banks seem not to be related with provision of finance to private R&D. Bond markets have a negative relationship with

private R&D and it seems that this type of markets are not suited for innovation ventures. Stock markets are related with private R&D but in the mid and long term, it seems that this type of markets reinforce the R&D infrastructure of OECD countries. It seems that there is a crowding-out effect between public and private investments on R&D, however, this effect seems to be only for the short term.

Our results reinforce the idea behind National Systems of Innovation; strong financial markets have an important role on the provision of money to develop R&D and innovation ventures. Those results send an important message to policy makers, it is important to develop strong specialized financial markets to spur innovation practice of firms. It looks that long term and risky markets are the ones related with innovation, i.e. stock exchange markets; at the same time, a stable and robust macroeconomic situation, represented on competitive foreign exchange and inflation rates, tend to incentive private R&D expenditure.

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References

- Acharya, Viral, and Zhaoxia Xu. 2017. "Financial Dependence and Innovation: The Case of Public versus Private Firms." *Journal of Financial Economics* 124 (2): 223–43. North-Holland. <https://doi.org/10.1016/J.JFINECO.2016.02.010>.
- Aerts, Kris, and Dirk Czarnitzki. 2004. "Using Innovation Survey Data to Evaluate R&D Policy: The Case of Belgium." *SSRN Electronic Journal*, no. 04 (August): 1–25. <https://doi.org/10.2139/ssrn.572086>.
- Amemiya, Takeshi. 1971. "The Estimation of the Variances in a Variance-Components Model." *International Economic Review* 12(1): 1–13. WileyEconomics Department of the University of Pennsylvania Institute of Social and Economic Research, Osaka University. <https://doi.org/10.2307/2525492>.
- Arellano, M. 2003. *Panel Data Econometrics: Advanced Texts in Econometrics*. Oxford: Oxford University Press.
- Arrow, K. J. 1972. "Economic Welfare and the Allocation of Resources for Invention." In *Readings in Industrial Economics*, 219–36. RAND Corporation. https://doi.org/10.1007/978-1-349-15486-9_13.
- Brown, James R., Steven M. Fazzari, and Bruce C. Petersen. 2009. "Financing Innovation and Growth: Cash Flow, External Equity, and the 1990s R&D Boom." *Journal of Finance* 64(1): 151–85. Wiley/Blackwell (10.1111). <https://doi.org/10.1111/j.1540-6261.2008.01431.x>.
- Chudnovsky, Daniel, A Lopez, Martín Rossi, and Dj Ubfal. 2006. "Evaluating a Program of Public Funding of Private Innovation Activities. An Econometric Study of FONTAR in Argentina," 1–42. <https://publications.iadb.org/handle/11319/2829>.
- Czarnitzki, Dirk, and Cindy Lopes-Bento. 2013. "Value for Money? New Microeconomic Evidence on Public R&D Grants in Flanders." *Research Policy* 42(1): 76–89. North-Holland. <https://doi.org/10.1016/j.respol.2012.04.008>.
- Edquist, Charles. 2011. "Systems of Innovation: Perspectives and Challenges." *African Journal of Science, Technology, Innovation and, 2011*. Sabinet. <https://www.ingentaconnect.com/content/sabinet/aaajstid/2010/00000002/00000003/art00003>.
- Freeman, Chris. 1995. "The 'National System of Innovation' in Historical Perspective." *Cambridge Journal of Economics*. Vol. 19. 5–24. [http://www.globelicsacademy.org/2011_pdf/Freeman NSI historical perspective.pdf](http://www.globelicsacademy.org/2011_pdf/Freeman%20NSI%20historical%20perspective.pdf).
- Freeman, Christopher. 1987. "Technology Policy and Economic Performance: Lessons from Japan." *London: Pinter*, 34. [https://doi.org/10.1016/0048-7333\(88\)90011-X](https://doi.org/10.1016/0048-7333(88)90011-X).
- Gur, Nurullah, and Veysel Avşar. 2016. "Financial System, R&D Intensity and Comparative Advantage." *The Journal of International Trade & Economic Development* 25(2): 213–39. Routledge. <https://doi.org/10.1080/09638199.2015.1045928>.
- Hall, Bronwyn H., and Josh Lerner. 2009. "The Financing of R&D and Innovation." *Handbook of the Economics of Innovation* 1 (1 C): 609–39. [https://doi.org/10.1016/S0169-7218\(10\)01014-2](https://doi.org/10.1016/S0169-7218(10)01014-2).
- Hsu, Po-Hsuan, Xuan Tian, and Yan Xu. 2014. "Financial Development and Innovation: Cross-Country Evidence." *Journal of Financial Economics* 112 (1): 116–35. North-Holland. <https://doi.org/10.1016/J.JFINECO.2013.12.002>.
- Lundvall, Bengt-Åke. 1999. "National Business Systems and National Systems of Innovation." *International Studies of Management & Organization* 29 (2): 60–77. <https://doi.org/10.1080/00208825.1999.11656763>.
- Lundvall, Bengt-Åke, Bjorn Johnson, Esben Sloth Andersen, Allan Naes Gjerding, Lars Gelsing, Birgitte Gregersen, Jesper Linggaard Christensen, et al. 2010. *National Systems of Innovation Toward a Theory of Innovation and Interactive Learning*. Anthem. <https://doi.org/http://dx.doi.org.ez.sun.ac.za/10.7135/UPO9781843318903>.

- Maskus, Keith E., Rebecca Neumann, and Tobias Seidel. 2012. "How National and International Financial Development Affect Industrial R&D." *European Economic Review* 56(1): 72–83. North-Holland. <https://doi.org/10.1016/J.EUROECOREV.2011.06.002>.
- Nelson, Richard. 1993. *National Systems of Innovation: A Comparative Study*. https://scholar.google.es/scholar?hl=es&as_sdt=0%2C5&q=National+systems+of+innovation%3A+A+comparative+study&btnG=.
- Nelson, Richard R. 1959. "The Simple Economics of Basic Scientific Research." *Journal of Political Economy* 67(3): 297–306. The University of Chicago Press. <https://doi.org/10.1086/258177>.
- Rin, Marco Da, and María Fabiana Penas. 2007. "The Effect of Venture Capital on Innovation Strategies." Cambridge, MA. <https://doi.org/10.3386/w13636>.
- Tee, Lain Tze, Soo-Wah Low, Si -Roei Kew, and Noor-A Ghazali. 2014. "Financial Development and Innovation Activity: Evidence from Selected East Asian Countries." <https://doi.org/10.18267/j.pep.478>.

Female Entrepreneurs' Pre-Exposure to a Business Environment and Its Influence on Selected Entrepreneurial Factors: A South African Perspective

¹Natanya Meyer, ²Jhalukpreya Surujlal

¹*North-West University, Vanderbijlpark, South Africa, natanya.meyer@nwu.ac.za*

²*North-West University, Potchefstroom, South Africa, babs.surujlal@nwu.ac.za*

ABSTRACT: The role of entrepreneurship in societies has become more profound in recent times. Studies suggest that pre-exposure to an entrepreneurial environment while growing up can greatly contribute to an individual's learning process as they see first-hand how entrepreneurial tasks and activities are performed. Growing up, or being exposed to such an environment might potentially reduce the uncertainty felt by a prospective young or new entrepreneur. The objective of this study was to explore the differences in several entrepreneurial variables between two South African female entrepreneurs' pre-exposure to entrepreneurship groups. Group 1 represented female entrepreneurs who had no previous exposure from an entrepreneurial parent, close friend or relative and Group 2 included those who had some form of previous exposure from an entrepreneurial parent, close friend or relative. The study made use of a self-reporting questionnaire and used a convenience sample to collect data from female entrepreneurs. The final sample equated to 510 usable questionnaires which included responses from all nine South African provinces. Data were analysed using reliability and validity analysis, Multiple Analysis of Variance (MANOVA) and Analysis of Variances (ANOVA). Results indicated that just one variable, internal motivation, was influenced by pre-exposure to entrepreneurship. Entrepreneurs who were raised in a business environment; that is, having a parent, close friend or relative who managed an entrepreneurial business, reported a higher mean for internal motivation compared to those who did not have this exposure. Several studies suggest that benefiting from an entrepreneur role model such as a parent, close friend or relative may lead to a more positive outlook on entrepreneurship and a stronger inclination to start a business. The results from this study prove interesting as, in the case of South African female entrepreneurs, pre-exposure to entrepreneurship had little effect on the identified entrepreneurial factors with the exception of internal motivation.

KEYWORDS: Female entrepreneurship, pre-exposure, entrepreneurship environment, South Africa, entrepreneurial factors

Introduction

Entrepreneurship, whose role in societies has become more profound in recent times, is regarded as a key driver for economic growth and development. For a developing economy such as South Africa, entrepreneurship may be described as the centre of economic progress, social adjustment and creation of jobs (Gürol & Atsan 2006; Kot, Meyer & Broniszewska 2016). Furthermore, entrepreneurship may be regarded as the introduction of new economic activity (Davidsson 2016) leading to financial independence (Sata 2013). Historically, and in some cases even to date, entrepreneurship is a phenomenon associated with male domination (Yadav & Unni 2016). Traditionally, females and males assumed contrasting roles within society with men being mainly involved in economic activities and public life while women were mostly homebound, and took care of the children, cleaning and cooking (Meyer 2018). However, recent statistics (GEM Consortium 2017, Yadav & Uni 2016) reveal that females have increasingly emerged as important contributors to the economy through their active entrepreneurial involvement in the past three decades.

Entrepreneurship may be grouped into sub-domains such as corporate entrepreneurship, opportunity entrepreneurship, necessity entrepreneurship and social entrepreneurship (Chipeta & Surujlal 2016). Turton and Herrington (2012) argue that men are mostly opportunity entrepreneurs and women are more necessity entrepreneurs. This implies that because females are more prone to necessity entrepreneurship, there may be a higher likelihood of them entering into entrepreneurial ventures less prepared and knowledgeable regarding their understanding of the requirements of such ventures (Bridget 2017). Given the high unemployment rate and socio-economic challenges in South Africa, a logical assumption would be that more females would embark on entrepreneurial ventures

out of necessity. However, according to statistics, in 2014 South Africa reported a ratio of 0.4 necessity to opportunity entrepreneurs in 2014 (four necessity-driven and six opportunity-driven entrepreneurs for every 10 entrepreneurs).

Factors influencing female entrepreneurship

There are several factors that influence female entrepreneurs towards entrepreneurship. Among these factors are previous work experience, role models and networking, attitude towards entrepreneurship, internal and external motivation, family commitments, financial constraints, socio-cultural barriers and government support.

More than two decades ago Lerner, Brush and Hisrich (1997) found previous work experience to be a positive determinant of business success. Meyer (2018) argues that if the experience was gained in a similar industry to which an entrepreneurial venture was started, it would impact significantly on business performance and success. The author further posits that previous work experience, which contributes to the development of soft skills, self-discovery and personal growth, may bring about several positive changes in individuals not just as employees but also as potential business owners. Furthermore, previous work experience may develop an individual for working in teams, communicating better, getting systems and processes in place, and developing presenting skills (Holzherr 2013). As previous work experience may be likened to on-the-job training, it may have a higher impact on learning compared to traditional learning programmes as it provides individuals the opportunity to identify their strengths and weaknesses. Among the other contributions that previous work experience develops in an individual are leadership qualities and critical thinking (Dragoni, Tesluk, Moore, VanKatwyk & Hazucha 2014), stress management (Verhofstadt, Baillien, Verhaest & De Witte 2017), ability to adapt to changing situations (Meyer 2018) and the development of social and professional networks.

Role models and networking have been identified as further important factors that contribute to individual's entrepreneurial aspirations (Meyer 2018). Role models, such as a family member, work colleagues, close friends or other relatives, especially those who are involved in entrepreneurial ventures, provide aspirant entrepreneurs valuable opportunities to learn and see first-hand how entrepreneurial tasks and activities are performed. Growing up close to successful entrepreneurs might potentially reduce the uncertainty felt by a prospective young or new entrepreneur (Wyrwich, Stuetzer & Sternberg 2016), decrease the fear of failure of new entrepreneurs and increase entrepreneurial intentions (Meyer 2018). The presence of a strong network such as suppliers, partners, customers, bankers, creditors, trade and business associations, government agencies and other businesses owners (Aldrich, Reese & Dubibi 1989) who are in regular contact may contribute to business growth and development (Granovetter 1985; Bogren, von Friedrichs, Rennemo & Widding 2013). While networks could be either social or professional, both contribute towards the success of entrepreneurial ventures. Carr and Sequeira (2007, 1090) suggest that being part of a family business may have a lasting impact on family members who grew up in such an environment. It may even have an effect on how someone would manage a business in a manner that is different from how they experienced it while growing up. Thus, growing up in a business environment may shape one's attitude towards entrepreneurship in either a positive or a negative manner.

Motivation, both internal (e.g. increased freedom, work-life balance and contributing to society) and external (e.g. wealth creation and autonomy) plays an important role in one's entrepreneurial intentions (Meyer 2018). Veena and Nagaraja (2013) found that personal autonomy and self-determination were high motivational factors for individuals to gain more control over their working conditions. Females, especially, have higher motivations than males to break free of their confined labour markets which are associated with low wages, strong supervisory and hierarchical structures and stereotyping (Veena & Nagaraja 2013).

Attitude has been found to be a strong predictor of behaviour, especially goal-orientated behaviour (Kim & Hunter 1993). It is influenced by interactions with the direct environment (Wiklund, Davidsson & Delmar 2003). Therefore, a positive attitude may develop in an individual if the business is successful while an unsuccessful business venture may result in a negative attitude.

Walker and Brown (2004) opine that attitudes towards business changes as the business matures. Meyer (2018) argues that if an entrepreneur has a strong commitment, satisfaction, passion and attachment to the business, she may develop a more positive attitude towards the business.

Family commitments contribute significantly to female entrepreneur's experiences (Cesaroni & Paoloni 2016). Children and other family commitments take time away from the business and have been viewed as obstacles towards entrepreneurship (Cesaroni & Sentuti 2014). In addition to female entrepreneurs experiencing challenges to establish a work-life balance, females are also required to cope with challenges such as stereotyping which views them as domestic beings whose primary duty is to care for the family and their household duties and give secondary importance to their entrepreneurial ventures.

Other factors such as financial constraints, lack of government support and socio-cultural barriers, access to finance, which include aspects associated with start-up capital and operational capital, has been identified as a huge challenge for female entrepreneurs (Meyer 2018). This comprises having smaller equity capital at their disposal, sector related capital restrictions due to many female entrepreneurs operating service industry-related businesses and financial institutions lack of willingness to provide loans to entrepreneurs in these sectors. Female-owned businesses tend to be smaller in size and less efficient, which may result in more failed loan applications (Makina, Fanta, Mutsonziwa, Khumalo, & Maposa 2015). When considering government support, political policies and lack of government support prevented many females in the past from starting businesses and thinking entrepreneurially. Policy restrictions associated with gender and colour prevented Black and coloured females from taking part in any business activity pre-1994 (Bobby-Evans 2015). In addition, socio-cultural aspects such as lack of respect from the community, stereotypical treatment, doubt about their ability to conduct business, discrimination in the labour market and other workplaces, and balancing work and home duties especially when raising children also contribute to female entrepreneur's intention to pursue entrepreneurial ventures (Meyer 2018). Therefore, in light of the above discussion, the objective of this study was to explore the differences in several entrepreneurial variables between two South African female entrepreneurs' pre-exposure to entrepreneurship groups.

Methodology

A descriptive single-sample cross-sectional design approach was followed for this study. The underlying philosophical underpinning that formed the foundation of this study comprised the positivist paradigm as it primarily made use of empirical data which was obtained objectively and interpreted through statistical analysis.

Study area and sample

The target population was South African female business owners and the sample frame was drawn from several business association's databases from all nine provinces. Criteria for being included in the final sample comprised being female, that a majority share in the business was owned by a female and that she was actively involved in the management aspects of the business. Two non-probability sampling techniques (purposive and convenience sampling) were used in the selection of the sample elements as identified from the target population. The final sample size comprised 510 female entrepreneurs.

Research instrument and procedure

A self-administered questionnaire was used to collect primary data from the sample. During the questionnaire design process various procedures were followed to ensure a well-designed questionnaire. These procedures included using existing scales, constructing new scales based on extensive literature reviews, conducting a content review by topic experts, pre-testing and finally conducting a pilot study before the final data were collected. The final questionnaires were distributed electronically and through trained fieldworkers. Contents included in the questionnaire included general demographic information and several constructs directed at obtaining information regarding various entrepreneurial factors. A combination of nominal and Likert scaled response questions and statements were included. The scaled

responses allowed for a selection of between 1 (strongly disagree) to 6 (strongly agree) and higher means represent a more favourable attitude towards the specific construct topic.

Data analysis

The collected data were coded, captured and analysed using the Statistical Packages for Social Sciences (SPSS) version 24.0 for Windows. Both descriptive and inferential statistics were used to interpret the data. Descriptive statistics included means, standard deviations, skewness and kurtosis of the identified factors/variables (internal and external motivation, intention to remain in business, intention to grow the business, entrepreneurship training and education, business growth factors and attitude towards the business) and are reported on in Table 2. Included in this table is the Cronbach Alpha used to measure the internal-consistency reliability and the average inter-item correlation values which provided an indication of the convergent and discriminant validity estimates of the constructs. Lastly, MANOVA and ANOVA analyses were done to determine the significant relationship between dependent variables and the individual characteristic – female entrepreneurs with and without pre-exposure to entrepreneurship. More specifically, these techniques were employed to test the following hypotheses:

- Null hypothesis (H_0I): There is no significant difference in internal and external motivation, intention to remain in business, intention to grow the business, entrepreneurship training and education, business growth factors and attitude towards the business between South African female entrepreneurs who have previous exposure to an entrepreneurial environment and those who have no such exposure;
- Alternative hypothesis (H_aI): There is a significant difference in internal and external motivation, intention to remain in business, intention to grow the business, entrepreneurship training and education, business growth factors and attitude towards the business between South African female entrepreneurs who had previous exposure to an entrepreneurial environment and those who did not have such exposure.

Results and discussion

The demographic composition of the sample is depicted in Table 1.

Table 1. Sample demographics

Race	(%)	Years self-employed	(%)	Children	(%)
African	72	< 1 year	15.3	None	49.8
White	16	1 to 3 years	46.9	1 to 2 children	34.9
Coloured	9	>3 years	35.1	3 to 4 children	13.7
Asian/Indian	3	Missing values	2.7	>5 children	1.6
Age	(%)	Marital Status	(%)	Education level	(%)
< 21 years	3.3	Single	34.9	Secondary school	18.8
21 to 30 years	37.3	Married	34.9	No Grade 12	4.1
31 to 40 years	5.9	Living together	11	Certificate	14.5
41 to 50 years	34.7	Divorced	10.6	Diploma	31
>50 years	18.3	Widowed	6.6	Degree	17.7
Missing values	0.5	Missing values	2	Post graduate	13.9

From Table 1 it can be observed that the majority of the sample were of African origin, comprising 72 percent, followed by Whites at 16 percent and Coloureds at 9 percent. Asian/Indian female entrepreneurs comprised the minority of the sample at 3 percent. The age distribution across the sample indicated that the majority were between 41 and 50 years (34.7%). In addition, an equal percentage were single and married (34.9%) and most of the females did not have any children (49.8%). Regarding the level of education, 22.9 percent only had basic education (secondary school or Grade 12 not completed) and 31.6 percent completed a degree or post graduate degree. Table 2 depicts the results of the descriptive and reliability statistics for the total sample.

Table 2. Descriptive and reliability sample statistics

Factor/variable	Mean	SD	Skewness	Kurtosis	A	Inter-item correlation
Internal motivation	5.067	0.509	-0.660	2.422	0.75	0.179
External motivation	4.867	0.724	-1.054	1.865	0.73	0.260
Intention to remain in business	5.071	0.757	-1.809	5.189	0.73	0.372
Intention to grow the business	5.170	0.815	-1.764	3.772	0.77	0.524
Training and education	4.754	0.827	-1.201	1.597	0.73	0.355
Business growth factors	4.882	0.564	-1.727	5.909	0.79	0.195
Attitude towards business	4.959	0.603	-0.970	2.635	0.82	0.248

Table 2 shows acceptable Cronbach alpha coefficients ranging from between 0.73 and 0.82 for all the constructs (Nunnally & Bernstein, 1994). In order to determine the construct validity, the average inter-item correlation values were used and all fell within Clark and Watson's (1995:316) recommended levels of 0.15 to 0.50, with the intention to growing a business being marginally higher. As such, it was reasonable to assume convergent and discriminant validity.

In order to test if any statistical significant difference between the two groups and the said variables (as set out in *HI*) exist, Multiple Analysis of Variance (MANOVA) and Analysis of Variances (ANOVA) were conducted. Table 3 and 4 depicts these results.

Table 3. MANOVA results

Variable	Wilks' Lambda	F	Df	P	η^2
Pre-exposure to a business environment	0.912	4.322	11.000	0.000*	0.017

$\eta^2 > 0.01 < 0.09$ = small effect; $\eta^2 > 0.09 < 0.25$ = medium effect; $\eta^2 > 0.25$ = large effect.

* Statistically significant difference: $p < 0.05$.

In Table 3, MANOVA was utilised to determine if any differences in scores between the two groups and the variables were present. A significant effect ($p = 0.000$) was observed. Next, ANOVA was performed to determine where the differences were present. Table 4 reports the results from the one-way between-groups ANOVA conducted to explore the differences in the variables between groups of diverse South African female entrepreneurs in terms of their previous exposure to a business environment. Respondents were divided into two groups according to their exposure (Group 1: no previous exposure from a parent, close friend or relative and Group 2: previous exposure from a parent, close friend or relative).

Table 4. ANOVA results for differences between variables and exposure to a business environment

Variable	No exposure	Had exposure	P	η^2
Internal motivation	5.022	5.191	0.001*	0.022
External motivation	4.907	4.799	0.123	0.005
Intention to remain in business	5.083	5.042	0.587	0.001
Intention to grow the business	5.192	5.121	0.380	0.002
Training and education	4.770	4.704	0.427	0.001
Business growth factors	4.865	4.934	0.215	0.003
Attitude towards the business	4.931	5.032	0.094	0.006

*Statistically significant difference: $p < 0.05$

From Table 4, it is evident that just one variable, internal motivation, returned a small effect ($\eta^2 > 0.01 < 0.09$) of statistically significant value ($p = 0.001$). Female entrepreneurs who were raised in an entrepreneurial environment; that is, having a parent, close friend or relative who managed an entrepreneurial business, reported a higher mean for internal motivation (mean = 5.191) compared to

those who did not have this exposure (mean = 5.022). Several studies suggest that benefitting from an entrepreneur role model such as a parent, close friend or relative may lead to a more positive outlook on entrepreneurship and a stronger inclination to start a business (Van Auken, Fry & Stephens 2006; Bosma Hessels, Schutjens, van Praag & Verheul 2012; Hoffmann, Junge, & Malchow-Møller 2015; Wyrwich, Stuetzer & Sternberg 2016).

As Wyrwich, Stuetzer and Sternberg (2016, 468) observe, various studies suggest that individuals who grew up or were exposed to entrepreneurs in their environments had more opportunities to learn valuable entrepreneurial skills, thus reducing the fear of the possibility of failure and increasing their entrepreneurial intention to a certain extent. No studies could be found which stated that role models influence existing female business owners to remain in business in the South African context. The results from the current study also indicated that there was no statistical significance between intention to remain in business and previous exposure to an entrepreneurial role model, which may suggest that other factors could contribute to remaining in business. Linking the impact of role models on internal motivation, those females who had previous exposure to an entrepreneurial role model reported a higher mean than those who had not had such exposure. This may suggest that the former group of females may have noticed the direct benefits linking to work-life balance, pursuing a challenge, contribution to society and family security, amongst others.

Therefore, in the case of external motivation, intention to remain in business, intention to grow the business, entrepreneurship training and education, business growth factors and attitude towards the business there is insufficient evidence to reject the null hypothesis (H_0I). Concerning the internal motivation variable, H_0I is rejected and the alternative (H_aI) is accepted.

Conclusion

This study set out to determine if any differences in internal and external motivation, intention to remain in business, intention to grow the business, entrepreneurship training and education, business growth factors and attitude towards the business between two South African female entrepreneurs' pre-exposure to entrepreneurship groups. The results of the study indicate that although current literature states that being part of a family business may have a lasting impact on family members who grew up in such an environment, this may not always be the case. Results from this study suggest that female entrepreneurs with or without pre-exposure to a business environment do not differ significantly with regard to the various entrepreneurial factors identified in this study with the exception of internal motivation.

Recommendations stemming from the findings of this study include the promotion of female business networks and associations and advancement of entrepreneurial training and awareness in the South African education system.

References

- Aldrich, H., Reese, P.R. and Dubini, P. 1989. "Women on the verge of a breakthrough: Networking among entrepreneurs in the United States and Italy." *Entrepreneurship & Regional Development* 1(4):339-356.
- Bobby-Evans, A. 2015. "Apartheid Legislation in South Africa". <http://africanhistory.about.com/library/bl/blsalaws.htm> Date of access: 3 Sept. 2015.
- Bogren, M., von Friedrichs, Y., Rennemo, Ø. and Widding, Ø. 2013. "Networking women entrepreneurs: Fruitful for business growth?" *International Journal of Gender and Entrepreneurship* 5(1): 60-77. DOI 10.1108/17566261311305210.
- Bosma, N., Hessels, J., Schutjens, V., Van Praag, M. and Verheul, I. 2012. "Entrepreneurship and role models." *Journal of Economic Psychology* 33(2):410-424.
- Bridget, N.O.I. 2017. "Women entrepreneurship in South Africa: Understanding the role of competencies in business success." *Southern African Journal of Entrepreneurship and Small Business Management* 9(1):a121. <https://doi.org/10.4102/sajesbm.v9i1.121>.
- Carr, J.C. and Sequeira, J.M. 2007. "Prior family business exposure as intergenerational influence and entrepreneurial intent: A theory of planned behaviour approach." *Journal of Business Research* 60(10):1090-1098.
- Cesaroni F.M. and Sentuti, A. 2014. "Women and family businesses. When women are left only minor roles." *History of the Family* 19(3):358-379.
- Cesaroni, F.M. and Paoloni, P. 2016. "Are family ties an opportunity or an obstacle for women entrepreneurs? Empirical evidence from Italy." <https://www.nature.com/articles/palcomms201688>. Accessed: 2018/10/12.

- Chipeta, E.M. and Surujlal, J. 2016. "Influence of attitudes towards social entrepreneurship, risk taking propensity and proactive personality on social entrepreneurship intentions." Paper presented at 2nd Global conference on Economics and Management sciences (GEMS 2016). (e-ISBN 978-967). 28th & 29th November 2016.
- Clark, L.A. and Watson, D. 1995. "Constructing validity: Basic issues in objective scale development." *Psychological Assessment* 7(3):309-319.
- Davidsson, P. 2016. *Researching entrepreneurship: Conceptualization and design*. Switzerland: Springer International Publishing.
- Dragoni, L., Oh, I.S., Tesluk, P.E., Moore, O.A., VanKatwyk, P. and Hazucha, J. 2014. "Developing leaders' strategic thinking through global work experience: The moderating role of cultural distance." *Journal of Applied Psychology* 99(5):867-882.
- GEM Consortium. 2017. "Global Entrepreneurship Monitor: Key indicators – Adult population survey measures." <http://www.gemconsortium.org/data/key-indicators>. Accessed: 2017/05/24.
- Granovetter, M. 1985. "Economic action and social structure: The problem of embeddedness." *American Journal of Sociology* 91(3):481-510.
- Gürol, Y. and Atsan, N. 2006. "Entrepreneurial characteristics amongst university students: Some insights for entrepreneurship education and training in Turkey." *Education and Training* 48(1):25-38.
- Hoffmann, A., Junge, M. and Malchow-Møller, N. 2015. "Running in the family: Parental role models in entrepreneurship." *Small Business Economics* 44(1):79-104.
- Holzherr, N. 2013. "Entrepreneurs work experience." <https://www.theguardian.com/careers/nick-holzherr-entrepreneurs-work-experience>. <https://www.theiet.org/students/work-careers/work-experience/benefits.cfm> Date of access: 15 Feb. 2018.
- Kim, M.S. and Hunter, J.E. 1993. "Relationships among attitudes, behavioral intentions, and behavior: A meta-analysis of past research, part 2." *Communication Research* 20(3): 331-364.
- Kot, S., Meyer, N., and Broniszewska, A. 2016. "A cross-country comparison of the characteristics of Polish and South African women entrepreneurs." *Economics and Sociology* 9(4):207-221. DOI: 10.14254/2071-789X.2016/9-4/13.
- Lerner, M., Brush, C. and Hisrich, R.D. 1997. "Israeli women entrepreneurs: An examination of factors affecting performance." *Journal of Business Venturing* 12:315-339.
- Makina, D., Fanta, A.B., Mutsonziwa, K., Khumalo, J. and Maposa, O. 2015. "Financial access and SME size in South Africa." Occasional Paper (001-2015). *University of South Africa*.
- Meyer, N. 2018. "South African female entrepreneurs' intention to remain in business." Unpublished Doctoral thesis. North-West University: Vanderbijlpark, South Africa.
- Nunnally, J.C., and Bernstein, I.H. 1994. *Psychometric Theory*. New York: McGraw-Hill.
- Sata, M. 2013. "Entrepreneurial intention among undergraduate business students." *International Journal of Research in Management, Economics and Commerce* 3(9):33-48.
- Turton, N. and Herrington, M. 2012. "Global entrepreneurship 2012 South Africa." UCT Graduate Business School, Cape Town, South Africa.
- Van Auken, H., Fry, F.L. and Stephens, P. 2006. "The influence of role models on entrepreneurial intentions." *Journal of Developmental Entrepreneurship* 11(02):157-167.
- Veena, M. and Nagaraja, N. 2013. "Comparison of male and female entrepreneurs: An empirical study." *International Journal of Engineering and Management Research* 3(6): 138-143.
- Verhofstadt, E., Baillien, E., Verhaest, D. and De Witte, H. 2017. "On the moderating role of years of work experience in the Job Demand–Control model." *Economic and Industrial Democracy* 38(2):294-313.
- Walker, E. and Brown, A. 2004. "What success factors are important to small business owners?" *International Small Business Journal* 22(6):577-594.
- Wiklund, J., Davidsson, P. and Delmar, F. 2003. "What do they think and feel about growth? An expectancy-value approach to small business managers' attitudes toward growth." *Entrepreneurship Theory and Practice* 27(3):247-270.
- Wyrwich, M., Stuetzer, M. and Sternberg, R. 2016. "Entrepreneurial role models, fear of failure, and institutional approval of entrepreneurship: A tale of two regions." *Small Business Economics* 46(3):467-492.
- Yadav, V. and Unni, J. 2016. "Women entrepreneurship: research review and future directions." *Journal of Global Entrepreneurship Research* 6:12-23.

An Analysis of the Impact of Economic Growth, Political Instability and Exchange Rate on Tourism Growth in South Africa

Daniel Francois Meyer

School of Economics, North-West University, Vanderbijlpark, South Africa, Daniel.meyer@nwu.ac.za

ABSTRACT: Globally the tourism sector is one of the main economic sectors in attracting and generating foreign revenue. The sector accounts for seven percent of global foreign revenue as an export industry. In South Africa the low growth environment over the last decade has resulted in the need to find alternative economic sectors in support to traditional sectors such as mining and manufacturing, to drive higher levels of economic growth in the country. The aim of this study was to analyse the relationship between tourism as the dependent variable, and economic growth, exchange rate changes and political stability, as independent variables. The study region selected is South Africa, which is classified as a developing country and is in many cases seen as the proxy for emerging economies. This study followed a quantitative research approach with time series data from 1996 to 2017. The relationships between the variables were analysed by means of the Johansen cointegration, Vector Error Correction and Granger causality econometric models. The results indicated that there are both long and short-run relationships between the variables. A number of policy recommendations that could potentially contribute to the extension of the role of tourism in development include improved political and currency stability in the country as well as the relaxation of visa requirements.

KEYWORDS: Economic growth, political instability, South Africa, tourism

Introduction

Tourism is an important economic sector as it acts as an export sector, it generates income and tax revenue, creates jobs and alleviates poverty (Saha & Yap 2014; Seddighi, Theocharous & Nuttall 2002). The tourism sector is however affected by external factors such as political instability, social unrest and terrorism (Saha & Yap 2014). Over the last two decades, the tourism sector has continued to be the fastest growing sector in the world (Reddy, Basha & Kumar 2014). Tourism is seen as a key driver of economic development and socio-economic progress (UNWTO 2018). The tourism sector as an income generating sector has surpassed industries such as the motor vehicle industry and is ranked third overall behind only the chemicals and fuels industries (UNWTO 2018). International tourist arrivals increased by 7 percent to a total of 1.3 billion people in 2017 (from only 25 million people in 1950), while tourism generated US\$ 1.6 trillion in export earnings. This growth is expected to continue subject to global political stability. The tourism sector is important for global economic growth as it is responsible for 1 in 10 jobs, 10 percent of world GDP and 7 percent of global exports (UNWTO 2018).

Tourism has proven to be an effective sector for economic growth allowing for the diversification of local economies, attracting foreign investment which could lead to the improvement of the balance of payments, regional development, creation of employment and income, as well as the stimulation of domestic household consumption (Steiner 2006; Meyer & Meyer 2015). The Huron Business Development Corporation (2004) listed a number of factors for successful local economic development (LED) with a focus on the tourism sector which include political stability and commitment, investment in infrastructure, effective policies and planning, broad participation by all stakeholders, capacity, building on strengths, promotion of entrepreneurship and partnerships.

The African continent is lagging behind in terms of tourism development. Africa only receives 5 percent of the total international tourists (although it is growing at 9 percent per annum), and only 3 percent of tourism receipts (UNWTO 2018). Table 1 provides a summary of tourism data with a comparison between the world, Africa and South African data for total international tourist arrivals and tourism receipts in 2017. The South African tourism sector has been growing at a significantly lower rate than the rest of Africa due to reasons such as policy uncertainty, crime and strict visa regulations. South Africa only received 0.78 percent of international tourists and contributed only 0.61 percent of tourism receipts in 2017. The latest report by Statistics South Africa (2018) for the period

2017 to 2018 indicates that income in the accommodation industry contracted by 2.3 percent, and foreign travellers to the country decreased by 4.8 percent. For the period from 1996 to 2017, the average annual growth rate in tourism was 4.7 percent and for tourism spending (receipts) the growth rate was 5.8 percent.

Table 1. Global tourism comparison, 2017

Region	International tourist arrivals 2017			International tourism receipts 2017		
	Total number (millions)	Growth from 2016 to 2017	Share of global (%)	US\$ (billion)	Growth from 2016 to 2017	Share of global (%)
World	1 326	7%	100	1 340	5%	100
Africa	62.7	8.6%	4.70	37.3	3%	2.78
South Africa	10.3	2.4%	0.78 of world and 16.4 of Africa	8.18	3%	0.61 of world and 21,9 of Africa

Source: UNWTO, 2018

In terms of the WEF Travel and Tourism Competitiveness Report 2017 (WEF, 2017), South Africa (53rd) (lost six places since 2016 on the index), Mauritius (55th), Kenya (80th) and Namibia (82nd) are the most competitive travel and tourism destinations in Sub-Saharan Africa. Air connectivity and travel costs remain challenges as well as visa policies and infrastructure. South Africa's tourism competitiveness has deteriorated on two elements, safety and security (120th) and environmental sustainability (117th). According to Statistics South Africa (2016), tourism is an important sector in the South African economy. In 2015 South Africa had a positive tourism trade balance of R 36 048 million, an annual growth of 4.8 percent in domestic tourism expenditure, and tourism contributed 3% to total GDP in 2015 compared to 2.8 percent in 2011. In addition, a total of 711 746 people were employed in the tourism sector in 2015, compared to 622 929 in 2011 (one job in 22 jobs is in tourism). A total of 29 percent of people working in the tourism industry are employed in the transport industry, 20 percent in food and beverage, 19 percent in accommodation and 16 percent in trade.

The primary objective of the study is to assess the impact of economic growth and political stability on the tourism sector. The main research question is what type of relationship exists between tourism and growth as well as what is the impact of ongoing political instability on tourism. These relationships have not been tested using recent data in South Africa, and the implications of these relationships could have an impact on future policy formulation.

Literature review

This section of the study has its focus on the analysis of literature related to the relationship between the tourism sector and economic growth as well as the impact of political instability on tourism. Firstly, the relationship between tourism and economic growth is analysed by means of empirical results from previous studies. A large number of studies have been conducted regarding this relationship. Payne and Merver (2010) argued that the relationship between tourism and economic growth could be uni-directional or bi-directional. Lee and Chang (2008), analysed both OECD and non-OECD countries from 1990-2002 and found that changes in tourism caused economic growth in OECD countries with a coefficient of 0.36, while for non-OECD countries there are bi-directional relationships with a coefficient of 0.50. Chou (2013) analysed 10 transition countries for the period 1988 to 2011 and found that tourism growth causes economic growth in countries such as Cyprus, Latvia and Slovakia, while a reverse relationship was found for the Czech Republic and Poland where economic growth causes tourism growth.

For African countries, Fayissa, Nsiah and Tadasse, (2008) analysed the situation in 42 countries on the continent from 1995 to 2004 and found that tourism causes economic growth with a low coefficient of 0.03, while Durbarry (2004) in Mauritius from 1952 to 1999, found a bi-directional relationship between tourism and economic growth with a coefficient of 0.77. In Kenya, Kumar (2014) found that economic growth causes tourism for the period 1978 to 2010 with also a low coefficient of 0.08. Asian studies also provided some mixed results. Kim, Chen and Jang, (2006)

tested the tourism and economic growth nexus from the period 1971 to 2003 in Taiwan and found bi-directionality with a coefficient of 0.10. In Malaysia, Tang and Tan (2015) found that tourism causes economic growth from 1975 to 2014 with a coefficient of between 0.24 and 0.31. In South American countries the results of previous studies are also not conclusive. In Mexico, it was found that tourism causes economic growth for the period 1980 to 2007 with a relatively high coefficient of 0.69 (Brida, Carrera & Risso, 2008), while Brida and Risso (2009) for the period 1988 to 2008 in Chile found that tourism also causes economic growth with a high coefficient of 0.81 and also for Uruguay a coefficient of 0.42 was estimated.

Secondly, the impact of political instability, which could include terrorism, on tourism is analysed. Tourists are rational consumers, and they will take decisions on a destination by weighing up risks and costs involved. Higher levels of political instability increase the risk and cost of a destination. For this reason, high costs of political instability leads to the substitution of a destination for a more stable destination (Gu & Martin 1992). According to Simon (1982) political instability could flow from aspects such as strikes, protests, boycotts, efforts for nationalization, leadership struggles, low growth and high inflation, bureaucratic politics, border and internal factional conflicts, high levels of debt and corruption, etc. Literature indicates that political instability could impact the tourism sector negatively and some research even indicate that political stability is a requirement for a growing tourism sector (Hall 1994; Santana 2001).

Issa and Altinay (2006) indicate that political unstable countries struggle to have policy certainty with poor planning and implementation, leading to low levels of growth in the economy and tourism. The role and effectiveness of government in coordination of economic activities including tourism determines growth (Balaguer & Cantavella-Jorda 2002). Eilay and Einav (2004) analysed the impact of political risk on tourism growth. They found a relationship between a country's political risk rating and tourism growth and that political risk has a significant impact on growth in tourism. Destination risk has a significant impact on tourism, more than trade in other goods and services. According to Sonmez (1998), even strong growth in tourism can not provide a barrier or shield against the impact of political instability which could include components such as terrorism with examples in the Philippines, Fiji, Egypt, Zimbabwe and Turkey to mention a few.

Saha and Yap (2014) analysed the impact of political instability on tourism growth for 139 countries from 1999 to 2009. The results reveal that political instability has a severe and long-run impact on demand for tourism with a coefficient of 0.254. Seddighi, Theocharous and Nuttall (2002) analysed the impact of instability on tourism in Cypress, taking into account the sensitive nature of the industry and ever increasing competition between regions and countries. The main conclusions from the research include that instability is multi-dimensional and could have a spill-over effect where instability in one country or region could lead to instability in a neighbouring region. In this regard, tourism and economic planners need to understand the impact of instability on the sector and must, through policy try to reduce the negative impacts. Floyd, Gibson, Pennington-Gray and Thapa (2004) analysed the impact of the September 11, 2001 attack in New York looking at perceived risks on travel and found that issues for consumers included safety concerns, social risks, travel experience and costs (income) were significant predictors for future travel intentions.

Brown (1999) analysed political risk and the impact on tourism development in Africa. The results from the study are that regional instability has a larger impact on tourism development than globalised risks. Political risk has an impact on investment and tourism investment could include investment in accommodation, food and beverage facilities, transport infrastructure and services. The main barriers for tourism development in Africa were identified as crime and safety issues; political issues; service related issues; economic risks; health risks; infrastructure problems; cultural differences and image and marketing. In conclusion, it is apparent that a positive relationship exists between tourism and economic growth, but the direction of causality differs from region to region. The impact of political instability on tourism has also been proven in literature and empirical results.

Methodology

A quantitative research methodology was utilized in this study from a functionalist paradigm (Teddlie & Tashakkori 2009). Time series data were used to analyse the impact of economic growth, changes in exchange rate and political stability on tourism growth in South Africa from 1996 to 2017. The study period was selected to exclude the time frame of separate development in the country. To ensure variation is reduced within the data sets, all data were transformed to natural logarithms. In conducting the analysis, the statistical econometric software package, Eviews 9 was used. The variables included in the study are:

- **Tourism Index:** This variable is used as the dependent variable. This is a composite index variable consisting of equal weight of Tourism expenditure (receipts) and number to international tourists. Data set was obtained from Global Insight, (2018) and Statistics South Africa (2018). The variable is listed as LTI.

- **GDP per capita:** GDP per capita at constant prices is used as the proxy for economic growth. Data was obtained from the South African Reserve Bank (SARB), (2018). The variable is listed as LGDPC.

- **Exchange rate:** The specific exchange rate variable used in the study is the South African currency, the Rand, and its exchange rate to the US\$. Data was obtained from the South African Reserve Bank (SARB), (2018). An increase in this variable means the depreciation of the local currency while a decrease in the variable means an appreciation of the local currency. The variable is listed as LEXCH.

- **Political Stability Index:** Political Stability Index measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism in a specific country. The data set for political stability was obtained from the World Bank Worldwide Governance Indicators, (2018). The data set is an estimate of governance (ranges from approximately -2.5 (weak) to +2.5 (strong) governance performance). The variable is listed as LPOLSTAB.

The study investigates the relationship between the variables using the following model:

$$LTI = f(LGDPC, LEXCH, LPOLSTAB, e) \quad 1)$$

Where: LTI is the log of the tourism index; LGDPC is the log of Gross Domestic Product per capita; LEXCH is the log of the Exchange rate; LPOLSTAB is the log of the political stability index and e is the error term. The objective of the study is therefore an analysis to provide estimates of the relationships between the variables with the Tourism Index as the dependent variable. Due to the nature of time series data, the study will have to test whether or not the data series are stationary or non-stationary (Thayaparan, 2014). This is because time series data more often than not, is faced with a problem where the independent variables can appear to be significant than it actually is, if it has the same underlying trend as the dependent variable (Achen, 2001). Consequently, this results in a situation where the non-stationary series appear to be correlated even if they are not. For that reason, it is essential to test for stationarity conditions of variables in order to avoid spurious results.

The study employs the Augmented Dickey Fuller (ADF) (1981) unit root test for all the variables to test whether the variables are stationary at either levels $I(0)$ or first difference $I(1)$. This permits testing for cointegration amongst the variables using the Johansen's (1991) cointegration test. The Johansen's cointegration test is then estimated to assess the long-run relationship between the study variables. It should be noted that the Johansen's cointegration test involves two test statistics, namely; the Max-Eigenvalue and the Trace statistic. If the output of the model indicates the existence of a cointegrating equation or long-run relationship among the study variables, the next step will be to estimate the VECM to capture the short-run dynamics of the study variables. The Granger causality test is then estimated to determine the causality among the study variables and to also confirm whether the change in any series is uni-directional or bi-directional. Lastly, model diagnostic and stability tests are conducted to test for the stability of the model.

Results and Discussion

This section includes the results from the estimations and discussions of results compared to empirical findings from previous research. Figure 1 indicates the raw data for the four variables which were

logged and differenced. The impact of the financial crises are clearly visible on all four sub-graphs for the period 2007 to 2009, with recovery during 2009 towards 2010. The tourism index has shown negative growth since the boost of the Soccer World Cup in 2010 with slight recovery in 2015. The GDP per capita has steadily increased from 1996 to 2008, with a slight recovery in 2010 after the financial crises. Since 2011 however, the GDP per capita trend is negative due to low growth, steady population increases and migration. The Rand/US\$ exchange rate has shown a steadily depreciating and volatile local currency. Regarding political stability, the trend is also volatile with strong periods of political stability such as in 1998 and 1999, in 2004, 2006 to 2008. But overall political stability has shown negative trends overall, especially from 2016 onwards.

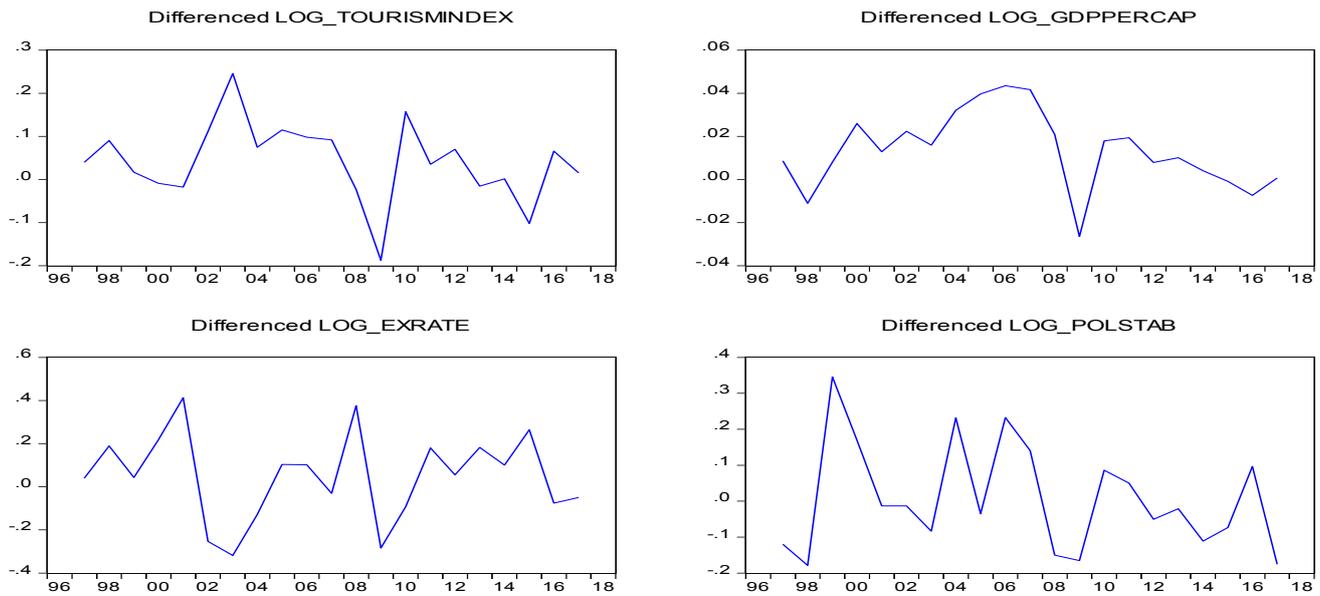


Figure 1. Trends analysis

Table 2 provides a summary of the correlation analysis with coefficients and significance values. The correlation between all variables are positive, and significant at the 1% significance level, except for the correlation between the exchange rate and political stability index. In terms of these results the correlation coefficient between the Tourism Index and GDP per capita is the highest at 0.96, followed by the coefficient between Tourism Index and political stability index.

Table 2. Correlation analysis

Variables	Tourism index (LTI)	GDP per capita (LGDPC)	Exchange rate (LEXCH)	Political stability index (LPOLSTAB)
Tourism index (LTI)	----			
GDP per capita (LGDPC)	0.9689 (0.0011)*	----		
Exchange rate (LEXCH)	0.5380 (0.0098)*	0.6485 (0.0011)*	----	
Political stability index (LPOLSTAB)	0.7725 (0.0025)*	0.7368 (0.0001)*	0.3173 (0.1500)	----

Note: The P-value is listed in (), and a 1% significance indicated as *.

Table 3 represents the Augmented Dicky-Fuller (ADF) unit root test results. Results reveal that all variables at levels have p-values above 0.05 significance level, suggesting that the variables are non-stationary at levels (I(0)). For that reason, based on the assumption of no stationarity, the null hypothesis is accepted. Accordingly, variables were tested at first difference, all variables have p-values below 0.05 significance level making them stationary. The null hypothesis of no stationarity is rejected at first difference or I(1). Therefore, the next step involves the use of the Johansen cointegration model to test

for long-run relationships or cointegrating vectors in order to establish whether the variable are integrated in the long-run.

Table 3. Augmented Dickey-Fuller (ADF) Unity Root Test

Variables	Level: I(0)		First difference: I(1)		Order of integration result
	t-stat	P-value	t-stat	P-value	
LTI	-1.5183	0.5050	-3.8460	0.0092*	I(1)
LGDP	-1.1490	0.6759	-1.9586	0.0490**	I(1)
LEXCH	-1.5406	0.4940	-4.1532	0.0048*	I(1)
LPOLSTAB	-1.7132	0.4105	-4.2709	0.0037*	I(1)

Note: * denotes P-value at 1% level of significance and ** at 5% significance.

A lag order selection criteria tests were conducted to obtain the optimal lag length for the Johansen cointegration examination and the VECM. Having determined that the variables are all integrated at first differences or I(1) order of integration, the study used four selection criterions, namely; HQ, AIC, FPE, and LR to determine the optimal lag to be used in the model. Therefore, one (1) lag was suggested as the optimal lag length. For that reason, one lag is used in Johansen cointegration test as well as VECM. Having established that variables are integrated at first difference and the optimal lag length, it is necessary to establish whether there exists a non-spurious and stable relationship with at least a single linear combination between the regressors. Therefore, the Johansen cointegration test was conducted based on the Trace statistic and Max-Eigenvalue statistics as reported in Table 4. Results indicate one cointegrating equation ($r \leq 1$) in Trace test statistic results as well as the Max-Eigenvalue revealed one co-integrating equation at 0.05 level of significance. Therefore, the null hypothesis of no cointegrating equation ($r=0$) is rejected. Henceforth, variables are cointegrated, simply implying that there exists a long-run relationship within the series.

Table 4. Johansen co-integration test results

Ho: No of CE(s)	Trace Test			Maximum Eigen-value		
	Trace Statistic	T-critical value	P-values*	Max-Eigen Statistic	T-critical value	P-values*
None*	58.1162	47.8561	0.0041*	37.7398	27.5843	0.0018*
At most 1*	20.3763	29.7970	0.3976	14.0358	21.1316	0.3621
At most 2	6.3404	15.4947	0.6553	5.6059	14.2646	0.6641

Note: * denotes rejection of the hypothesis at the 0.05 level.

The presence of a cointegrating relationship between the variables indicates that the long-run equilibrium in LTI can be explained by LGDPC, LEXCH and LPOLSTAB. Results of the Johansen cointegration test sufficed the requirements of at least one single linear combination between the variables, the aforementioned is thus expressed in Equation (2) below:

$$LTI = 33.28815 + 0.5620(LGDPC) + 0.1316(LEXCH) + 0.4203(LPOLSTAB) \quad (2)$$

Equation (2) reveals that the long-run exhibits a positive impact by all independent variables on LTI. This implies that any increase in LGDPC, LEXCH and LPOLSTAB, leads to an increase in the tourism index (LTI). Accordingly, a one percent increase in LGDPC leads to a 0.56 percent increase in the tourism index. This result is similar as found by Lee and Chang (2008) in non-OECD countries with a similar coefficient of 0.5; also by Durbarry for Mauritius with a coefficient of 0.77. Interesting to note that in most African countries, very low coefficients have been reported by for example Fayissa, Nsiah and Tadasse (2008) with a coefficient of 0.03 and Kumar (2014) with a coefficient of 0.08. Additionally a percentage increase in the exchange rate (LEXCH) (depreciating currency), leads to a 0.13 percent increase in tourism (LTI). Also, a one percent increase in improved political stability (LPOLSTAB) leads to a 0.42 percent increase in tourism (LTI). Similar results were also found by

Hall (1994); Saha and Yap (2014). Provided that a long-run relationship exists between the variables, the VECM is used to assess short-run disequilibrium adjustments towards reaching the long-run equilibrium or cointegration between the variables as indicated in equation (2) (Meyer & McCamel, 2017). Additionally, the error correction term (ECT) is further used to convey the speed of short-run dynamic adjustments towards long-run equilibrium (Blecker, 2013). Therefore, it follows that conditions for explaining short-run adjustments towards reaching equilibrium in the long-run requires a significant t-value and a negative adjustment coefficient or ECT (Mukhtar & Rasheed, 2010). Results of the ECT are presented in Table 5. All variables expect for LEXCH have equations which meet the adjustment requirements towards long-run equilibrium with negative coefficients. Further suggesting that the series LTI, LGDPC and LPOLSTAB present evidence of error correction in the cointegrating equation.

Table 5. Vector Error Correction Model

Error Correction	D(LTI)	D(LGDPC)	D(LEXCH)	D(LPOLSTAB)
CoinEq1	-0.4896 [-2.0560]*	-0.07830 [-1.9652]*	-0.9027 [-1.0646]	-0.4900 [-2.1524]*
D(LTI(-1))	-0.1529 [-0.5295]	0.0100 [0.2159]	0.1324 [0.1886]	0.6534 [1.2201]
D(LGDPC(-1))	3.0236 [1.9657]*	-0.0439 [-0.1242]	3.5373 [0.6668]	-5.1373 [-1.2699]
D(LEXCH(-1))	-0.3002 [-2.5679]*	-0.0277 [-1.4674]	-0.0019 [-0.0067]	0.1089 [0.5022]
D(LPOLSTAB(-1))	0.0292 [0.1754]	0.0310 [1.1519]	0.6520 [1.6109]	0.0160 [0.0519]

Note: T-value in [], * indicates significance at 5% level.

Granger causality tests results are indicated in Table 6 indicating possible direction of causation on the short-run. The results indicates limited causality between variables. The results suggest a uni-directional causal relationship from tourism (LTI) to GDP per capita (LGDPC). This implies that short-run changes in South Africa's tourism sector cause changes in economic growth. Research by Payne and Merver (2010) and Lee and Chang (2008) also found that tourism causes economic growth and not vice versa. In addition, short-run changes in political stability (LPOLSTAB) leads to changes in GDP per capita (LGDPC), which indicates that if the political environment improves it could have a positive impact on economic growth and also leading to improved tourism conditions. Similar results were also found by Saha and Yap (2014) and Seddighi, Theocharous and Nuttall (2002).

Table 6. Pairwise Granger Causality

Null Hypothesis	F-stat	Prob.
Tourism index does not Granger cause GDP per Cap	12.8830	0.0021*
GDP per cap does not Granger cause Tourism index	6.8E-05	0.9935
Tourism index does not Granger cause Exchange rate	1.4918	0.2377
Exchange rate does not Granger cause Tourism Index	0.0182	0.8941
Tourism index does not Granger cause Political stability	1.1808	0.2915
Political stability does not Granger cause Tourism Index	3.1589	0.0465*
Exchange rate does not Granger cause Political stability	0.2858	0.5994
Political stability does not Granger cause Exchange rate	0.8255	0.3756
Political stability does not Granger cause GDP per cap	5.6376	0.0289*
GDP per cap does not Granger cause Political stability	0.0057	0.9403
GDP per cap does not Granger cause Exchange rate	1.6615	0.2137
Exchange rate does not Granger cause GDP per capita	2.02923	0.1714

Note: * indicates the rejection of the null hypothesis of no Granger causality at 5% significance.

In order to test the robustness of results, underscored in the study are diagnostic tests as indicated in Table 7. Results showed that the model successfully passed the test for heteroscedasticity, serial correlation and normality. Therefore, the null hypothesis are not rejected.

Table 7. Diagnostic test results

<i>Test</i>	<i>H0</i>	<i>Probability</i>	<i>Decision</i>
LM Test	No serial correlation	0.6671	With a P-value above 5%, do not reject the H0. Therefore, there is no serial correlation in the model.
White (CT)	No heteroscedasticity	0.2261	With a P-value above 5%, do not reject the H0. Therefore, there is no heteroscedasticity in the model.
Jarque-Bera	Residuals are normally distributed	0.5132	With a P-value above 5%, do not reject the H0. Therefore, there is no heteroscedasticity in the model.

Finally, stability testing using the AR root may be conducted to further assess the stability of the model as indicated in Figure 2. Figure 2 reveals that all AR roots are contained within the unit circle, meaning that the model is stable and robust.

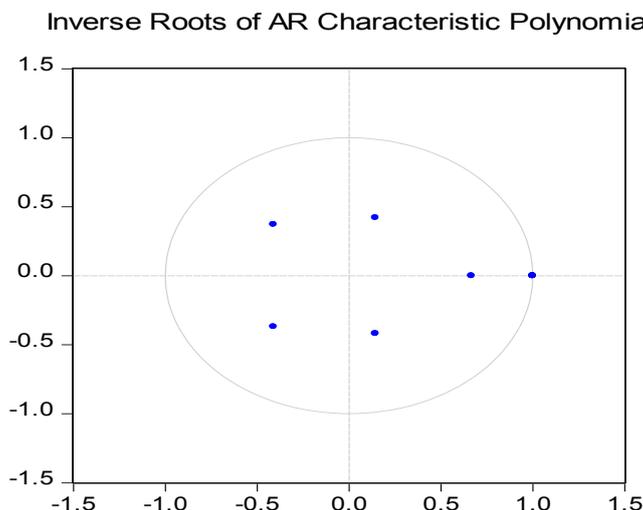


Figure 2. AR Root test

Conclusions and recommendations

Globally the tourism sector has shown continuous high levels of growth and is a main contributor to economic growth in both developed and developing countries. The main objective of the study was to determine the impact of economic growth and political instability on the tourism sector in a developing country. South Africa was used as a proxy for developing countries. The results of the study indicated that economic growth and political instability have a long-run impact on tourism in South Africa in terms of a Johansen cointegration model. Both long-run coefficients of economic growth and political instability are significant at 0.56 and 0.42 respectively. Globally these coefficients vary between from as low as 0.03 to up to 0.8. Significant short-run impacts were also identified between variables by means of the VECM. In addition, the Granger causality tests also confirms short-run relationships with tourism causing economic growth, and political stability also causes both growth in tourism and the economy.

Limitations to the study are that the global political instability index is only annual based data and only from 1996. Future studies could include more similar variables such as the effectiveness and government and even the size of government. The use of non-economic variables in conjunction with economic variables could provide interesting results for improved policy formulation. The results

from the study are interesting in that it not only confirms some of the findings from other empirical results, but the relatively high long-run coefficients indicate the relative importance of tourism for economic growth in developing countries and specifically for South Africa with its current low growth trap, and that the exchange rate changes has only limited impact on the tourism sector with a coefficient of 0.13. Also it was clearly established that political stability is a requirement on both the long and short-run for growth in tourism and the economy as a whole.

From this analysis and from the literature review, a number of recommendations are listed: the tourism sector is an important growth sector for both developed and developing countries and the sector should be the focus of any growth strategy; the tourism sector allows and support economic diversification with linkages to other sectors; the tourism sector can assist in the creation of jobs where limited skills exist; political stability is a requirement for tourism and economic growth with good governance and policy certainty; and political stability includes a save environment as a quality tourism destination.

References

- Achen, C. 2001. "Why lagged dependent variables can suppress the explanatory power of independent variables." Paper presented at the annual meeting of the political methodology section of the *American Political Science Association*, UCLA, 20-22 July 2000.
- Balaguer, J. & Cantavella-Jorda, M. 2002. "Tourism as a long-run economic growth factor: the Spanish case." *Applied Economics* 34(7): 877-884.
- Blecker, R.A. 2013. "Long-run growth in open economies." *The Oxford Handbook of Post-Keynesian Economics*, Volume 2: Critiques and Methodology, 390.
- Brida, J.G., Carrera, E.S. & Risso, W.A. 2008. "Tourism's impact on long-run Mexican economic growth." *Economics Bulletin* 23(21): 1-8.
- Brida, J.G. & Risso, W.A. 2009. "Tourism as a factor of long-run economic growth: An empirical analysis for Chile." *European Journal of Tourism Research* 2(2): 178-185.
- Brown, D.O. 2000. "Political risk and other barriers to tourism promotion in Africa: Perceptions of US-based travel intermediaries." *Journal of Vacation Marketing* 6(3): 197-210.
- Chou, M.C. 2013. "Does tourism development promote economic growth in transition countries? A panel data analysis." *Economic Modelling* 33: 226-232.
- Dickey, D.A. & Fuller, W.A. 1981. "Likelihood ratio statistics for autoregressive time series with a unit root. *Econometrica* (49): 1057-1072.
- Durbary, R. 2004. "Tourism and economic growth: The case of Mauritius." *Tourism Economics* 10(3): 389-401.
- Eilat, Y. & Einav, L. 2004. "Determinants of international tourism: a three-dimensional panel data analysis." *Applied Economics* 36(12): 1315-1327.
- Fayissa, B., Nsiah, C. & Tadasse, B. 2008. "Impact of tourism on economic growth and development in Africa." *Tourism Economics* 14(4): 807-818.
- Floyd, M.F., Gibson, H., Pennington-Gray, L. & Thapa, B. 2004. "The effect of risk perceptions on intentions to travel in the aftermath of September 11, 2001." *Journal of Travel & Tourism Marketing* 15(2-3): 19-38.
- Gu, Z. & Martin, T.L. 1992. "Terrorism, Seasonality, and International Air Tourist Arrivals in Central Florida: An Empirical Analysis." *Journal of Travel and Tourism Marketing* 1(1992): 3-15.
- Hall, C.M. 1994. *Tourism and Politics: Policy, Power and Place*. Chichester: John Wiley and Sons. .
- Huron Business Development Corporation. 2004. *Best Practice in Rural and Small Town Economic Development*. Huron County, Canada.
- IHS Markit. 2018. *Global Insight Regional Explorer*. Johannesburg: IHS Markit.
- Issa, I.A. & Altinay, L. 2006. "Impacts of Political Instability on Tourism Planning and Development: The Case of Lebanon." *Tourism Economic*, 12 (3): 361-81.
- Johansen, S. 1991. "Estimation and Hypothesis Testing of Cointegration Vectors in Gaussian vector autoregressive models." *Econometrica* 59(6): 1551-1580.
- Kim, H.J., Chen, M.H. & Jang, S.C. 2006. "Tourism expansion and economic development: the case of Taiwan." *Tourism Management* 27(2006): 925-933.
- Kumar, R.R. 2014. "Exploring the nexus between tourism, remittances and growth in Kenya." *Quality & Quantity* 48(3): 1573-1588.
- Lee, C.C. & Chang, C.P. 2008. "Tourism development and economic growth: A closer look at panels." *Tourism Management* 29(1): 180-192.
- Meyer, D.F. & McCamel, R.T. 2017. "A Time Series Analysis of the Relationship between Manufacturing, Economic Growth and Employment in South Africa." *Journal of Advanced Research in Law and Economics* 4(26): 1206-1218.
- Meyer, D.F. & Meyer, N. 2015. "The role and impact of tourism on local economic development: a comparative study: tourism and leisure." *African Journal for Physical Health Education, Recreation and Dance* 21(1.1): 197-214.

- Mukhtar, T. & Rasheed, S. 2010. "Testing long run relationship between exports and imports: Evidence from Pakistan." *Journal of Economic Cooperation and Development* 31(1): 41-58.
- Payne, J.E. & Merver, A. 2010. "The tourism-growth nexus in Croatia." *Tourism Economics* 16(4): 1089-1094.
- Reddy, P.C., Basha, A.M.M. & Kumar, M.V. 2014. "A study on tourism and poverty reduction." *International Journal of Trade and Global Business Perception* 5(1): 754-758.
- Saha, S. & Yap, G. 2014. "The moderation effects of political instability and terrorism on tourism development: A cross-country panel analysis." *Journal of Travel Research* 53(4): 509-521.
- Santana, G. 2001. "Globalisation, safety and national security." In Wahab, S. & Cooper, C., *Tourism in the Age of Globalisation*. London: Routledge. .
- Seddighi, H.R., Theocharous, A.L. & Nuttall, M.W. 2002. "Political instability and tourism: an empirical study with special reference to the microstate of Cyprus." *International Journal of Hospitality & Tourism Administration* 3(1): 61-84.
- Simon, J.D. 1982. "Political Risk Assessment: Past Trends and Future Prospects." *Columbia Journal of World Business*, Fall, 62-71.
- Sönmez, S.F. 1998. "Tourism, terrorism, and political instability." *Annals of Tourism Research* 25(2): 416-456.
- South African Reserve Bank. 2018. "Economic and financial data for South Africa." Accessed September 23, 2018. <http://www.resbank.co.za/webindicators/EconFinDataForSA.aspx>.
- Statistics South Africa. 2016. "Tourism National Accounts." Pretoria, Government Printer.
- Statistics South Africa. 2018b. "Tourism and migration." Pretoria, Government Printer.
- Steiner, C. 2006. "Tourism, poverty reduction and the political economy: Egyptian perspectives on tourism's economic benefits in a semi-rentier state." *Tourism Hospitality Planning and Development* 3(3): 161-177.
- Tang, C.F. & Tan, E.C. 2015. "Does tourism effectively stimulate Malaysia's economic growth?" *Tourism Management* 46: 158-163.
- Teddlie, C. & Tashakkori, A. 2009. *Foundations of mixed methods research: Integrating quantitative and qualitative approaches in the social and behavioral sciences*. Washington DC: Sage.
- Thayaparan, A. 2014. Impact of inflation and economic growth on unemployment in Sri Lanka: a study of time series analysis. *Global Journal of Management and Business Research* 14(5): 44-54.
- World Bank. 2018. Worldwide Governance Indicators. Accessed October 3, 2018. <http://info.worldbank.org/governance/wgi/#home>.
- World Economic Forum (WEF). 2017. *World Travel and Tourism Competitiveness Report 2017*. Accessed September 5, 2018. http://www3.weforum.org/docs/WEF_TTCR_2017_web_0401.pdf.
- World Tourism Organization (UNWTO). 2018. *Why tourism?* Accessed September 15, 2018. <http://www2.unwto.org/content/why-tourism>.
- World Tourism Organization (UNWTO). 2018. *UNWTO Tourism highlights, 2018 edition*, UNWTO. Madrid.

Coping Strategies and Household Dietary Diversity in a Low Income Neighborhood in South Africa

W C J Grobler

North West University, Vaal Triangle Campus, Vanderbijlpark, South Africa, Wynand.Grobler@nwu.ac.za

ABSTRACT: Several recent studies define food insecurity as a situation where the availability of nutritionally adequate and safe foods or the ability to acquire acceptable foods in socially acceptable ways is limited or uncertain. To overcome the challenges of food insecurity household's employ certain Coping Strategies to mitigate food shortages. A quantitative research method was deployed and a stratified random sample of 600 households in two low income neighborhoods was included during a study conducted in 2015, to measure food insecurity, coping strategies and dietary diversity. The study found that households employed coping strategies to mitigate food shortage, but this leads to low dietary diversity. The study found that the Coping Strategy to "Buy only necessities", "skip meals" and "purchase food on credit" is employed by a significant number of households. The study found that these coping strategies are associated with lower dietary diversity. This study aimed to increase the general understanding of food insecurity in low-income areas, and how coping strategies impact on dietary diversity in the context of food insecure households. The study concluded that although households may use coping strategies to mitigate the impact of food shortages it will directly impact on low dietary diversity with health consequences. In this context, there may be desperate need in low income neighborhoods to amend policy to include a more comprehensive approach that includes adequate information to households on health consequences of low dietary diversity.

KEYWORDS: Food Insecurity, Coping Strategies, Economic Development

Introduction

The Food and Agricultural Organisation of the United Nations defines food security as a situation where "all people, at all times, have physical, social, and economic access to sufficient, safe and nutritious food which meet their dietary needs and food preferences for an active and healthy life" (FAO 1996). Several studies in the context of food insecurity refer to **malnutrition** as a consequence of food insecurity (Hampton 2007; Mello et al. 2010; Nord and Parker 2010). In this regard, food insecurity is defined as a situation where the availability of **nutritionally** adequate and safe foods or the ability to acquire acceptable foods in socially acceptable ways is limited or uncertain (Anderson 1990). Rashid et al. (2006) highlighted the fact that most measurements/studies focused only on food intake and not on the quality of the food intake. To overcome the challenges of food shortages at the household level households employ coping strategies to mitigate the food shortages. The question however arises: To what extent do these coping strategies employed by food insecure households lead to lower dietary diversity at the household level? Several studies in this context indicated that higher dietary diversity in developing countries is linked with improved nutritional intake (Savy et al. 2005; Steyn et al. 2006). Thorne-Lyman et al (2010) indicated that higher food security is associated with dietary diversity. In this context, it can be assumed that food secure household's status does not always implicate dietary diversity status. Several studies showed that lower quality food intake can be associated with increased health risks (Bronte-Tinew et al. 2007; Hampton 2007).

The aim of this study is to analyse the coping strategies employed by households and the dietary diversity status associated with the coping strategies. The question can thus be asked: Can lower dietary diversity be associated with coping strategies used to mitigate food shortages? In this context households may use the strategy of "Buying only necessities", but that may lead to lower dietary diversity. This study aimed to increase the general understanding of food insecurity in low-income areas, and how coping strategies impact on dietary diversity in the context of food insecure households. The study concluded that although households may use coping strategies to mitigate the impact of food shortages it will directly impact on low dietary diversity with health consequences. In this context, there may be desperate need in low income neighborhoods to amend

policy to include a more comprehensive approach that includes adequate information to households on health consequences of low dietary diversity.

Section 2 of the study analyses the literature with regards to food insecurity, coping strategies and dietary diversity. Section 3 discusses the methodology and measuring instruments while section 4 discusses the findings, while section 5 draws a conclusion.

Literature Review

The literature review in this study focus on coping strategies used by households to mitigate food shortages and on dietary diversity at the household level. In the 1980's Lenhart and Read (1989) defined food insecurity in the context of nutrition as "a condition resulting from chronic under-consumption of food and/or nutritious food products. Other researchers (Steyn et al. 2006; Hilbruner and Egar 2008; Ajani 2010) indicated that dietary diversity is the result of adequate access, availability and utilisation of food. In this context, Ruel (2002) defined dietary diversity as "the number of different foods or food groups consumed over a given reference period. Dietary diversity can be seen as the number of food groups consumed over a given period (Vakili et al. 2013).

In the context of poverty, studies found a positive correlation between household income and dietary diversity (Ruel 2002; Rashid et al. 2006; Taruvinga et al, 2013). In this regard limited income normally leads to spending on lower quality food with lower nutritional value (Bloem et al. 2005; Dachner et al. 2010). The outcome of lower quality food leads to health related risks and chronic diseases (Alaimo et al. 2001; Bronte-Tinkew et al. 2007; Hampton 2007).

Considering the level of education studies (Smith et al. 2003; UNICEF 2011; Lucheo et al. 2013) found that lower education of women can be associated with malnutrition and food insecurity. In the context of this study a lack of education may lead to lower dietary diversity as households mitigate the consequences of food shortages. One single food group does not contain all nutrients and therefore it is important to realise that dietary diversity leads to meeting nutrient requirements (Labadarios et al. 2011).

To mitigate the risk associated with food shortages households may opt for different coping strategies. In this regard Maxwell and Caldwell (2008) identified a number of coping strategies to mitigate the impact of food shortages at the household level. In a study by Devereux (2002) it is revealed that a lack of food availability or affordability leads to "coping strategies". This study however aims to analyses whether coping strategies leads to lower dietary diversity at the household level.

Sample and Data Collection

This study is based on a survey conducted in 2015 in two low income neighborhoods in Gauteng Province, South Africa namely Sharpeville and Bophelong. A total of 600 household heads, both male and female were interviewed by trained fieldworker. A stratified random sample was drawn and every second household in a street was included in the survey. After cleaning of the data only 580 questionnaires were used in the analyses.

Methodology

To measure the Coping Strategies used by households the Coping Strategies Index used by Maxwell and Caldwell (2008) is used. The Coping Strategies considers the frequency and importance of different coping strategies used by households in order to mitigate some of the consequences of food insecurity at the household level. This Coping Strategy index considers 12-items to measures the frequency of coping strategies used by a household. In this regard, for example, a respondent can indicate whether they "buy only necessities" to mitigate the consequences of food shortages. Table 1 shows the Coping Strategies used by households.

Table 1. Strategies of households to cope with food shortages

Coping Strategy	
Dietary Change	<ul style="list-style-type: none"> • Rely on less preferred and less expensive food
Increase Short-term Household Food Availability	<ul style="list-style-type: none"> • Borrow food from a friend or relative • Purchase food on credit • Gather wild food, hunt, or harvest immature crops • Consume seed stock held for next season
Decrease Number of People	<ul style="list-style-type: none"> • Send children to eat with neighbors • Send household members to beg
Rationing Strategies	<ul style="list-style-type: none"> • Limit portion size at mealtimes • Restrict consumption by adults in order for children to eat • Feed working members at the expense of non-working members • Reduce number of meals in a day • Skip entire days without eating

Source: Maxwell and Caldwell (2008)

To measure the Household Dietary Diversity of households in this paper the 24-hour dietary recall scale of the Food and Agricultural Organization (FAO 2007) was used. This scale includes 12 different food groups as indicated in Table 2. Respondents must then indicate what they can recall from the previous 24 hours what food groups were included in the diet of household. To determine the Household Dietary Diversity Score (HDDS) of households, one point per food group is recorded adding up to a maximum of 12 food groups.

Table 2. Food Groups

	Food Group	Point allocation
1	Any bread, rice, noodles, biscuits or food made from millet, sorghum, maize, rice, wheat or any other locally available grain	1
2	Any potatoes, yams, manioc, cassava or any food made from roots or tubers	1
3	Any vegetables	1
4	Any fruits	1
5	Any beef, pork, lamb, goat, rabbit, wild game, chicken, duck, other birds, liver kidney, heart or other organ meats	1
6	Any eggs	1
7	Any fresh, dried fish or shellfish	1
8	Any foods made from beans, peas, lentils or nuts	1
9	Any cheese, yoghurt, milk or other milk products	1
10	Any foods made with oil, fat or butter	1
11	Any sugar or honey	1
12	Any other foods such as condiments, coffee or tea	1
		12

Source: FAO 2007

Results and Discussion

The descriptive statistics of the sample of 580 households is shown in Table 3. The mean household size of the sample is 4.16 members per household with a standard deviation of 1.662. The mean age of the head of the household is 49.47 years with a standard deviation of 13.803. The number of years schooling of the head of the household is 9.49 years of schooling with a standard deviation of 3.630. The mean income of the households in the sample is R 7254.50 with a standard deviation of R 5916.49. The mean household food expenditure of the sample is R 1203.8 with a standard deviation of R 672.76. When the Household Dietary Diversity Score of the households are considered it shows a mean score of 8.57 groups of food with a standard deviation of 2.699. With the aim of the study to analyse the dietary diversity of the households that indicated that they use coping strategies to overcome food shortages, the descriptive statistics of the households indicating coping strategies are analysed further.

Table 3. Descriptive Statistics

Socio Economic Variable	Number of respondents	Min	Max	Mean	Standard Deviation
Household Size	580	1.0	11.0	4.16	1.662
Age of the Head of the Household	580	22.0	83.0	49.47	13.803
Number of Years Schooling of Head of Household	580	0.0	15.0	9.49	3.630
Household Income	580	350.0	35000.0	7254.5	5916.49
Household Food Expenditure	580	95.0	5870.0	1203.8	672.76
Household Dietary Diversity Score	580	2.0	12.0	8.57	2.699

For the purpose of this paper coping strategies used by households for more than 5 days in a week were considered for the analyses. Table 4 shows the descriptive statistics of the households that indicated that they “buy only necessities” as a coping strategy for more than 5 days in a week. A total of 331 households indicated that they use “buy only necessities” as a coping strategy. In this regard the mean household size is 4.25 compared to 4.16 for the whole sample, indicating larger household sizes of those households using this coping strategy. The number of years schooling of the head of the household in households using the strategy “buying only necessities” is lower at 8.86 compared to 9.49 for the whole sample. When income is considered the households using the strategy “buy only necessities” have a mean income of R 4826.16 compared to a mean income for the whole sample of R 7254.50. Table 4 shows that the dietary diversity mean score of households using the strategy “buying only necessities” is 7.72 compared to a slightly higher mean score of 8.57 for the whole sample.

Table 4. Descriptive Statistics of Households who buy only necessities as coping strategy

Socio Economic Variable	Number of respondents	Min	Max	Mean	Standard Deviation
Household Size	331	1.0	11.0	4.25	1.621
Age of the Head of the Household	331	22.0	83.0	49.44	13.576
Number of Years Schooling	331	0.0	14.0	8.86	3.496
Household Income	331	600.0	16.000.0	4826.16	3017.42
Household Food Expenditure	331	250.0	3000.0	1055.49	542.544
Household Dietary Diversity Score	331	2.0	12.0	7.72	2.799

When the households using “skip meals” as a strategy is considered it shows that 343 households use this strategy for more than 5 days in a week to mitigate the consequences of food shortages. The mean household size is larger for this group at 4.22 compared to 4.16 for the whole sample. Similar to table 4, the mean household income is lower at R 5185.62 compared to R 7254.50 for the whole sample. The

households using the strategy “skip meals” spend less on food than the sample with a mean food expenditure of R 1142.98 compared to 1203.80 for the whole sample. The mean dietary diversity score for this group is 7.68 compared to 8.57 for the whole sample.

Table 5. Descriptive Statistics of Households who skip meals as coping strategy

Socio Economic Variable	Number of respondents	Min	Max	Mean	Standard Deviation
Household Size	343	1.0	11.0	4.22	1.749
Age of the Head of the Household	343	22.0	82.0	49.36	13.803
Number of Years Schooling of Head of Household	343	0.0	14.0	9.60	3.420
Household Income	343	320.0	16000.0	5185.62	3365.679
Household Food Expenditure	343	200.0	3500.0	1142.98	625.06
Household Dietary Diversity Score	343	2.0	12.0	7.68	2.884

A total of 322 households indicated that they use “purchase food on credit” as coping strategy for more than 5 days in a week to cope with food shortages. Table 6 shows the descriptive statistics of this group of households. The number of years schooling of this group is higher at a mean number of years schooling of 9.66 years compared to 9.49 for the whole sample. The mean income at R 5553.41 is lower than the mean income for the whole sample, and the expenditure on food higher at R 1258.73 compared to a mean expenditure on food of R 1203.80 for the whole sample. In this context the dietary diversity score of this group is also higher at 7.95 compared to 8.57 for the whole sample.

Table 6. Descriptive Statistics of Households who purchase food on credit as coping

Socio Economic Variable	Number of respondents	Min	Max	Mean	Standard Deviation
Household Size	322	1.0	11.0	4.17	1.699
Age of the Head of the Household	322	22.0	82.0	49.19	13.539
Number of Years Schooling of Head of Household	322	0.0	15.0	9.66	3.414
Household Income	322	320.0	16500	5553.41	3660.13
Household Food Expenditure	322	200.0	3800.0	1258.73	691.639
Household Dietary Diversity Score	322	2.0	12.0	7.95	2.867

In table 7 the households using coping strategies are analysed, in terms of the number of food groups they consume daily based on what they could recall in last 24 hours. The correlation between dietary diversity and the coping strategy used is shown and the mean dietary diversity score of the group using the coping strategy.

Table 7. Household Coping Strategies and Dietary Diversity

	N	Number of Food Groups				R ²	Sig.	Mean	Std Dev.
		1-3	4-6	7-9	10-12				
Buy necessities	331	10	127	62	132	-0.27	0.000	7.54	2.78
Rely on less	30	4	15	3	6	-0.35	0.000	6.10	3.57

expensive food									
Stick to the budget	35	3	21	7	4	-0.34	0.000	6.75	2.59
Limit portions at meal times	94	8	47	16	23	-0.37	0.000	6.78	3.02
Skip meals	343	13	133	63	134	-0.32	0.000	7.42	2.62
Purchase food on credit	322	8	118	54	142	-0.17	0.000	7.89	2.85
Maintain a food garden	91	3	44	16	27	-0.20	0.000	7.40	2.77
Borrow food from friends	24	2	9	10	2	-0.29	0.000	6.70	1.70
Restrict consumption of adults in order for children to eat	19	1	8	8	2	-0.23	0.000	6.55	2.06
Gather wild vegetables	19	1	7	8	3	-0.24	0.000	7.00	1.73
Sent household members to eat elsewhere	21	1	10	8	2	-0.17	0.000	6.84	2.45

The coping strategies mostly used by households in the sample are “buy necessities”, “skip meals”, and “purchase food on credit”. A total of 137 households who indicated that they “buy only necessities” consume 6 or less food groups, or 41.38 % of the households who use the “buy only necessities” coping strategy. A statistical significant negative correlation ($R^2=-0.27$, $P<0.000$) exist between households using the strategy “buy only necessities” and dietary diversity. This means that as households use the coping strategy the dietary diversity decreases. A total of 343 households indicated that they “skip meals” to mitigate the consequences of food shortages. A total of 146 of these households however consume 6 or less food groups, or 42.56% of the households using this strategy. A statistical negative correlation ($R^2=-0.32$, $P<0.000$) exist between the households using the strategy and dietary diversity, meaning that using the strategy decreases the dietary diversity of the household.

A total of 322 households indicated that they “purchase food on credit” as a coping strategy. However, 126 of these households consume 6 or less food groups. A statistical significant but weak correlation ($R^2=-0.17$, $P<0.000$) exist between this strategy and dietary diversity. The dietary diversity however of the households who use this strategy is the highest of all strategies at 7.89 food groups, indicating that credit may enable some households to increase household dietary diversity.

Conclusion

This study aimed to increase the general understanding of food insecurity in low-income areas, and how coping strategies impact on dietary diversity in the context of food insecure households. It is evident that households may use coping strategies to mitigate the consequences of food shortages but in the process of for example “buy only necessities” many households decrease dietary diversity. In the short run households mitigate the immediate negative consequences of food shortages but in the medium to long run decrease dietary diversity. This may lead to negative health consequences. Households may use coping strategies to mitigate the impact of food shortages but it will directly impact on low dietary diversity, and in this context there may be a desperate need in low income neighborhoods to amend policy to include a more comprehensive approach that includes adequate information to households on health consequences of low dietary diversity.

References

- Ajani, S.R. 2010. "An assessment of dietary diversity in six Nigerian states." *African Journal of Biomedical Research* 13: 161-167.
- Alaimo, K., Olson, C.M., Frongillo, E.A. and Breifel, R.R. 2001. "Food insufficiency, family income, and health in US preschool and school-aged children." *American Journal of Public Health* 91(5): 781-786.
- Anderson, S.A. 1990. "Core indicators of nutritional state for difficult to sample populations." *Journal of Nutrition* 120: 1559-1600.
- Bloem, M.W. De Pee, S and Darnton-Hill, I. 2005. "Micronutrient deficiencies and material thinness. First chain in the sequence of nutritional and health events in economic crises." *Primary and Secondary Preventive Nutrition*. Humana Press. pp. 689-709.
- Bronte-Tinkew, J. Zaslow, M., Capps, R., Horowitz, A. and McNamara, M. 2007. "Food insecurity works through depression, parenting, and infant feeding to influence overweight and health in toddlers." *Journal of Nutrition* 129: 510-516.
- Dachner, N., Ricciuto, L., Kirkpatrick, S.I. and Tarasuk, V. 2010. "Food purchasing and food insecurity among low-income families in Toronto." *Canadian Journal of Dietary Pract. Res.* 71: 50-56.
- Devereux, S. 2002. *Poverty, Livelihoods & famine*. Institute of Development Studies, University of Sussex.
- FAO (Food and Agricultural Organisation). 1996. "Rome Declaration on World Food Security." Available at: <http://www.fao.org/dorep/003/w3613e/w3613e00>. Date of access 27 September 2017.
- Hampton, T. 2007. "Food insecurity harms health, well-being of millions in the United States." *JAMA* 298(16): 1851-1853.
- Hillbrunner, C. and Egan, R. 2008. "Seasonality, household food security and nutritional status in Dinajpur, Bangladesh." *Food and Nutrition Bulletin* 29(3): 221-231.
- Labadarios, D., Steyn, N.P. and Nel, J. 2011. "How diverse is the diet of adult South Africans?" *Nutrition Journal* 10(33).
- Lenhart, N.M., and Read, M.H. 1989. "Demographic profile and nutrient intake assessment of individuals using emergency food programs." *Journal of the American Dietetic Association* 89(9): 1269-1972.
- Luchuo, E.b., Paschal, K.A., Ngia, g., Njem, P.K., Yelena, S., Nsah, B., and Ajime, T.T. 2013. "Malnutrition in Sub-Saharan Africa: burden, causes and prospects." *The Pan African Medical Journal* 15:120.
- Maxwell, D. and Caldwell, R. 2008. "The Coping Strategy Index, Field Methods Manual", 2nd Ed. Atlanta, GA: Cooperative for Assistance and Relief Everywhere, Inc. (CARE).
- Mello, J.A., Gans, K.M., Risika, p.m. Kirtania, U. Strolla, I.O. and Fornier, L. 2010. "How is food insecurity associated with dietary behaviours? An analysis with low income, ethnically diverse participants in a nutrition intervention study." *J Am Diet Assoc.* 110(12): 1906-1911.
- Nord, M. and Parker, L. 2010. "How adequately are food needs of children in low-income households being met?" *Children and Youth Series Review* 32: 1175-1185.
- Rashid, D.A., Smith, L., and Rahman, T. 2006. Determinants of dietary quality: Evidence from Bangladesh. American Agricultural Economics Association Annual Meeting; July 23-26 2006. <http://ageconsearch.umn.edu/bitstream/21326/1/sp06a11.pdf>. Date of access: 27 September 2017.
- Ruel, M. 2002. "Is Dietary Diversity as Indicator of Food Security or Dietary Quality? A review of measurement and research needs." *FCND Discussion Paper No. 140*. International Food Policy Research Institute, Washington D.C.
- Savy, M., Martin-Prevel, Y. Sawadogo, P., Kameli, Y. and Delpeuch, F. 2005. "Use of variety/diversity scores for diet quality measurement: relation with nutritional status of women in a rural area in Burkina Faso." *European Journal of Clinical Nutrition* 59:703-716.
- Smith, L.C., Ramakrishnan, U., Ndiaye, A., Haddad, L., and Martorell, R. 2003. "The importance of Women's status for child nutrition in Developing Countries." International Food Policy Research Institute (IFPRI) Research Report Abstract 131. *Food and Nutrition Bulletin* 24(3): 287-288.
- Steyn, N., Nel, J., Nantel, G., Kennedy, G., and Labadarios, D. 2006. "Food variety and dietary diversity scores in children: Are they good indicators of dietary adequacy?" *Public Health Nutrition* 9: 644-650.
- Tarvinga, A., Muchenje, V. and Mushunje, A. 2013. "Determinants of rural household dietary diversity: The case of Amatole and Nyandeni districts, South Africa." *International Journal of Development Sustainability* 2(4).
- Thorne-Lyman. A.L., Valpiani, N., Sun, K., Semba, R.D., Klotz, C.L., Kraemer, K., Akhter, N., de Pee, S., Moench-Pfanner, R., Sari, M. & Bloem, M.W. 2010. "Household Dietary diversity and food expenditures are closely linked in rural Bangladesh, increasing the risk of malnutrition due to financial crisis." *Journal of Nutrition* 140(1): 182-188.
- UNICEF. 2011. Situation Analysis of children and women in Nigeria. Date of access: 27 September 2017: https://www.unicef.org/nigeria/SITAN_UNICEF_NIGERIA_2011_FINAL_2012_SEPT.PDF
- Vakili, M., Abedi, P., Sharifi, M. and Hosseini, M. 2013. "Dietary Diversity and its related factors among adolescents: A survey in Ahvaz-Iran." *Global Journal of Health Science* 5(2): 181-186.

Climate Wealth of Nations

Julia M. Puauschunder

The New School, Department of Economics, Schwartz Center for Economic Policy Analysis, New York, NY, USA

Julia.Puauschunder@newschool.edu, <http://juliampuauschunder.com/>

Columbia University, Graduate School of Arts and Sciences, New York, NY, USA

Julia.Puauschunder@columbia.edu, <http://blogs.cuit.columbia.edu/jmp2265/>

Princeton University, Julia.Puauschunder@princeton.edu

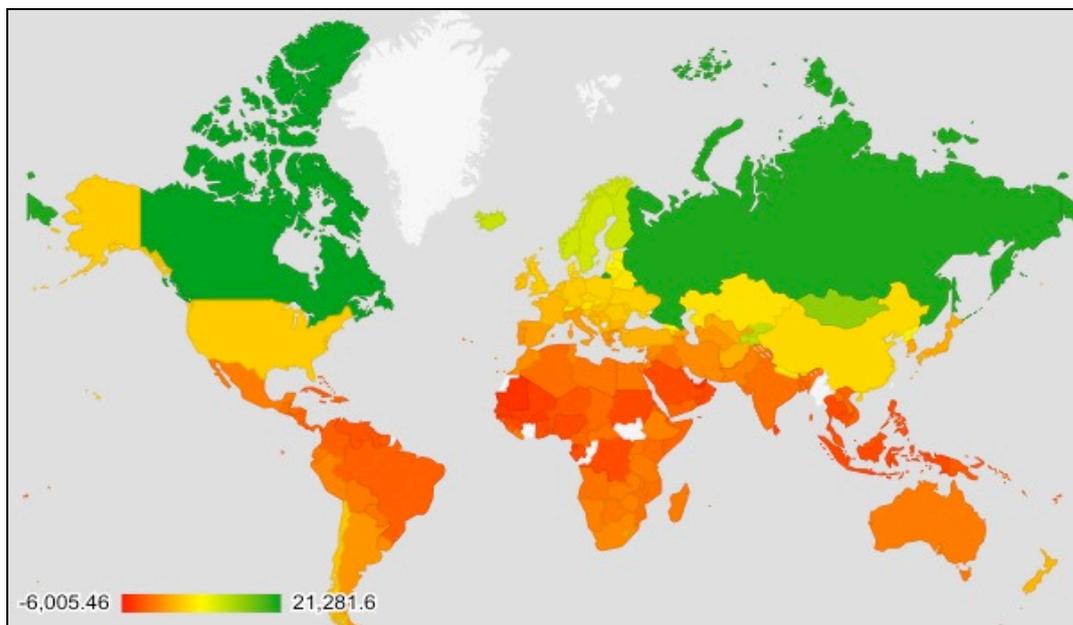
George Washington University, CIBER Center for International Business Education and Research, Washington, DC

jpuaschunder@gwu.edu, <https://blogs.gwu.edu/jpuaschunder/climate-gains-losses/>

ABSTRACT: A 3-dimensional climate justice approach introduces to share the benefits and burden of climate change in an economically efficient, legally equitable and practically feasible way around the globe. **Climate justice within a country** pays tribute to low and high-income households carrying the same burden proportional to their dispensable income through consumption tax, progressive carbon taxation and a corporate inheritance tax. **Climate change burden sharing between countries** ensures those countries benefiting more from a warmer environment bear higher responsibility regarding climate change mitigation and adaptation. **Climate justice over time** is proposed by an innovative bonds climate change burden sharing strategy (Puauschunder, 2018, forthcoming).

KEYWORDS: Adaptation, Climate Bonds, Climate Justice, Climate Wealth of Nations, Climate Finance, Fairness, Inheritance Tax, Intergenerational Responsibility, International Law, Mitigation, Progressive Tax

Theory. Climate change winners and losers around the world: Based on the cardinal temperatures for the Gross Domestic Product (GDP) pillars of agriculture, industry and service sector productivity, the average temperature per country around the world as well as climate projections of the year 2100 under a business as usual path, the world will macro-economically benefit more from climate change until 2100 than lose (Puauschunder, 2016a, b, c, d). Graph 1 holds Climate Change Winners (**Green & Yellow**) and Losers (**Orange & Red**) until 2100 around the world. **Green countries** are those with most time ahead until reaching a GDP production peak condition by climate, **yellow countries** have some time ahead. **Orange** and **red countries** will have run out of time by 2100 for GDP production peak. Winning and losing from a warming earth is significantly positively correlated with the Paris COP 21 emissions country percentage of Greenhouse Gas (GHG) for ratification, leading to the conclusion that the countries with the longest time horizon regarding a warming earth lack motivation to mitigate global climate change. Detected climate-induced migration streams and financial flows manifest that some parts of the world will be gaining from a warming earth and some are vanishingly melting.



Graph 1: Climate change winners and losers around the world

Study 1: Results

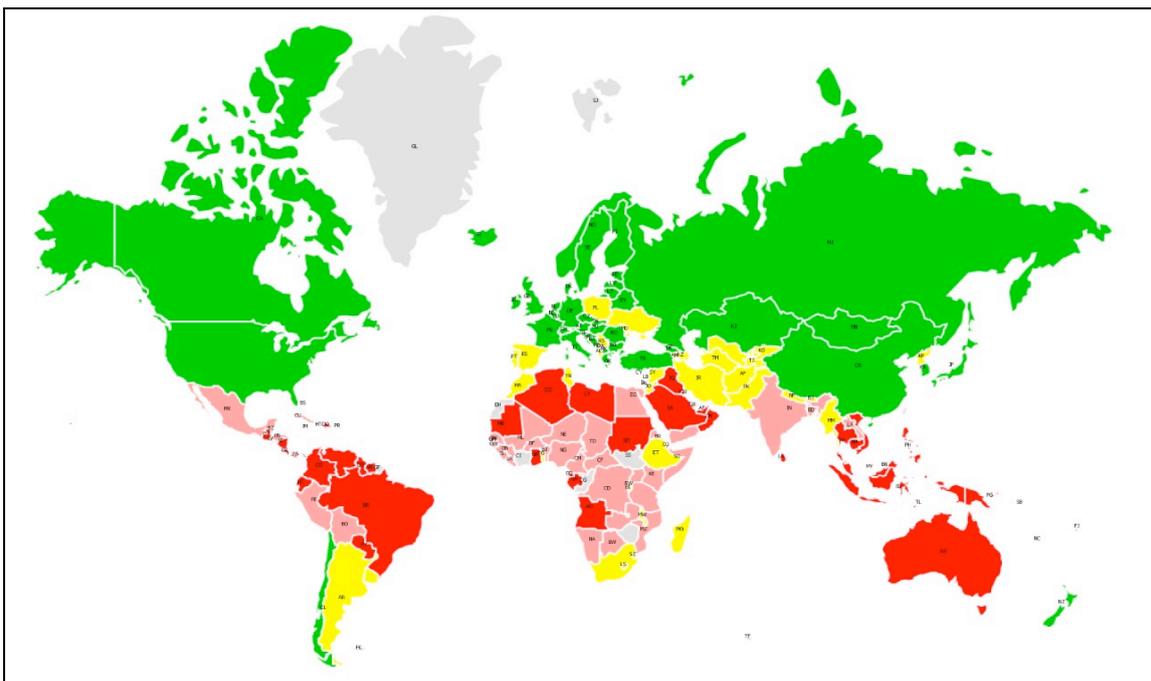
Based on a 187 country-strong dataset and under the implicit assumption of an open economy, a significantly positive inflow of migrants was found into the climate change winner countries. A statistically significant correlation outlines a positive Foreign Direct Investment (FDI) inflow into the winning countries. No significant remittances flow to climate change loser countries is reported. The results underline climate change benefits transfers needs to offset the losses incurred in the global warming-burdened areas of the world and demand for a recognition of climate refugees under the Geneva Convention.

Discussion and Implications

Tax-and-bonds transfer strategy A bonds-and-tax climate finance strategy bears the burden of climate in a right, just and fair way within society, around the globe and over time (Puaschunder 2017a, b, c). In **climate change winner countries weighted by GDP per capita** (graph 2 **Green & Yellow**), **taxation** should become the main climate stability financialization strategy. Foremost, the **industries winning from a warming climate** should be **taxed**. Regarding concrete climate taxation strategies, a carbon tax on top of the existing tax system should be used to reduce the burden of climate change and encourage economic growth through subsidies. Within a country, high and low income households should face the same burden of climate stabilization adjusted for their disposable income. Finding the optimum balance between consumption tax adjusted for disposable income through a progressive tax scheme will foster tax compliance in the sustainability domain.

Governments in **global warming loser countries weighted by GDP per capita** (graph 2 **Orange & Red**) should receive **tax transfers in the present from the winning countries**. The climate change loser countries should also **borrow by loans or issuing of bonds** to be paid back by future generations. Taxing future generations is justified as future generations avoid higher costs of climate change long-term damages and environmental irreversible lock-ins. Overall this tax-and-transfer mitigation policy thus appears as a Pareto-improving fair solution across the world and among different generations.

Tax-and-bonds transfers could be used to subsidize industry actors for choosing clean energy in order to shift the general race-to-the-bottom price cutting behavior to a race-to-the-top hunt for subsidies going into clean energy.

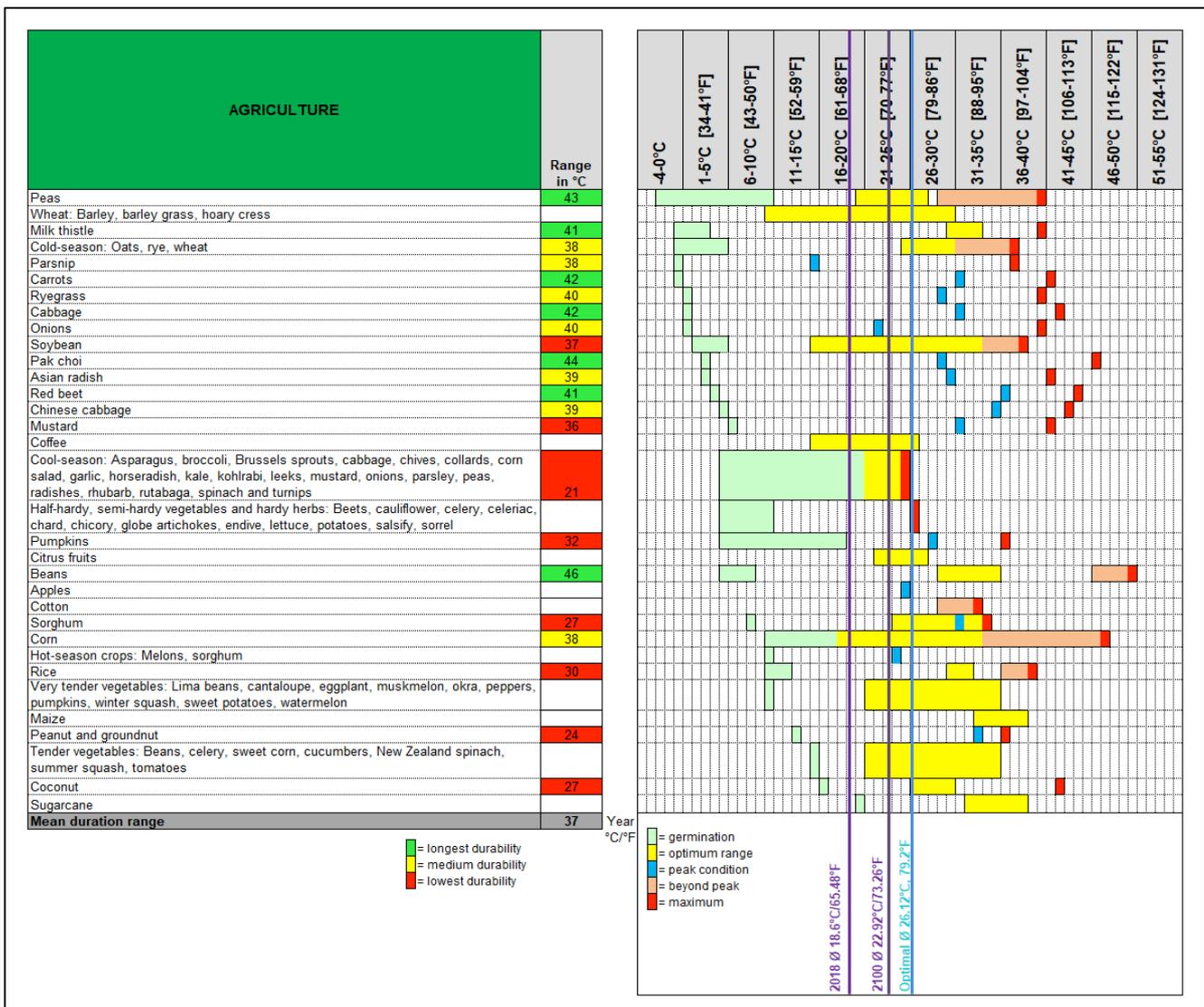


Graph 2: Climate change tax-and-bonds transfers strategies around the world

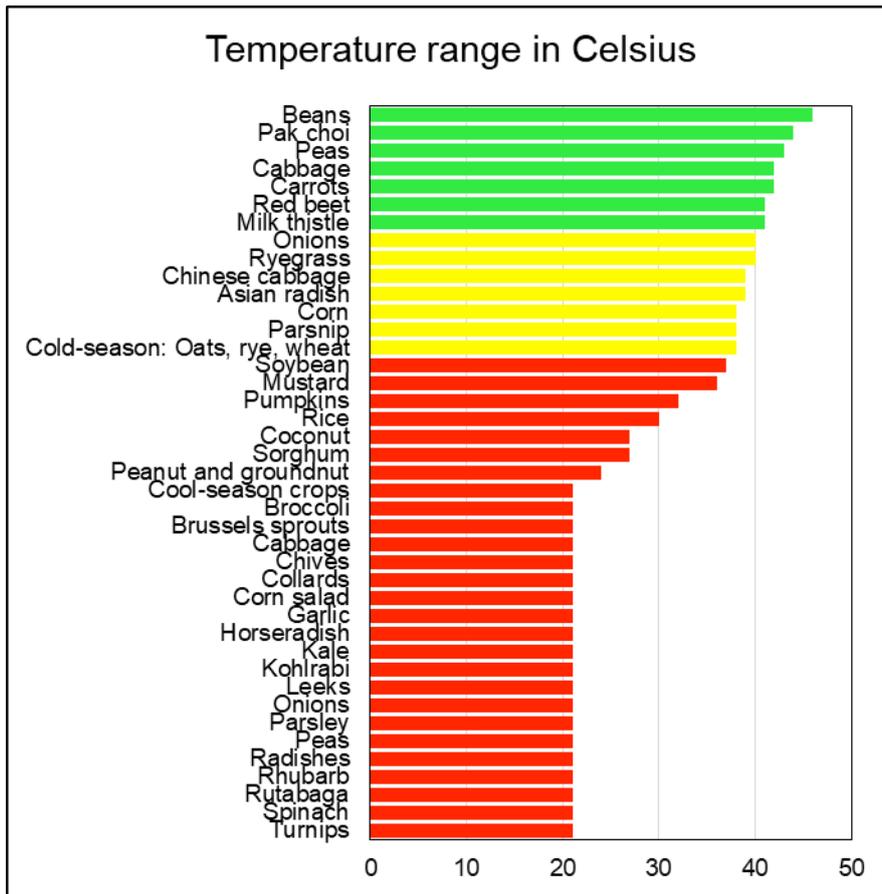
Concluding, climate change winning countries are advised to use taxation of the gains in sectors to raise revenues to offset the losses incurred by climate change. Climate change losers should issue bonds to be paid back by taxing future generations. Climate justice within a country should also pay tribute to the fact that low- and high income households share the same burden proportional to their dispensable income, for instance enabled through a progressive carbon taxation. Those who caused climate change could be regulated to bear a higher cost through carbon tax in combination with retroactive billing through a corporate inheritance tax to reap benefits from past wealth accumulation that contributed to global warming.

Study 2: Results

Climate change winning industries and economic sectors around the world: With rising temperature, economically there may be a **shift from industry** production with lowest optimum temperature **to service sector** activities with medium peak cardinal temperature and then **agriculture sector productivity** (see graph 3 and graph 4 below) with the highest optimum temperature. The peak temperature time for plant seed growth is still ahead, subjective well-being based on temperature is either currently prevalent or has passed. Heat waste production is prospected to become a luxury good in the future; as well all winter sports related activities. When it comes to safety, Legionella bacteria in the water will soon become a problem and medical and hygiene markets that combat these risks will likely prosper soon.



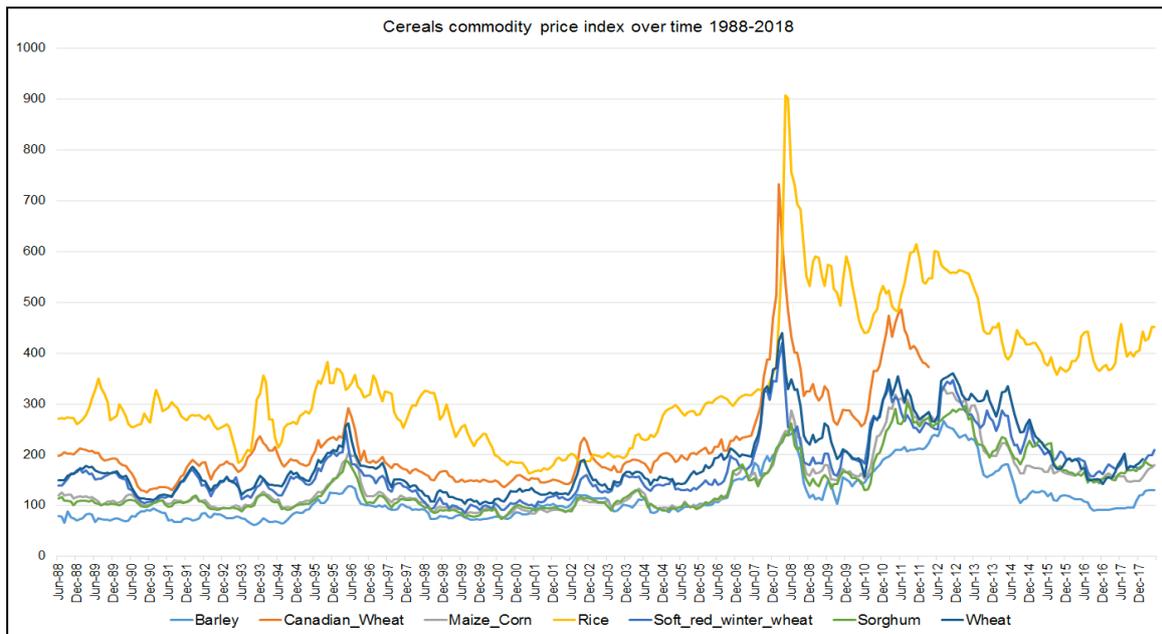
Graph 3: Agriculture climate-related peak condition



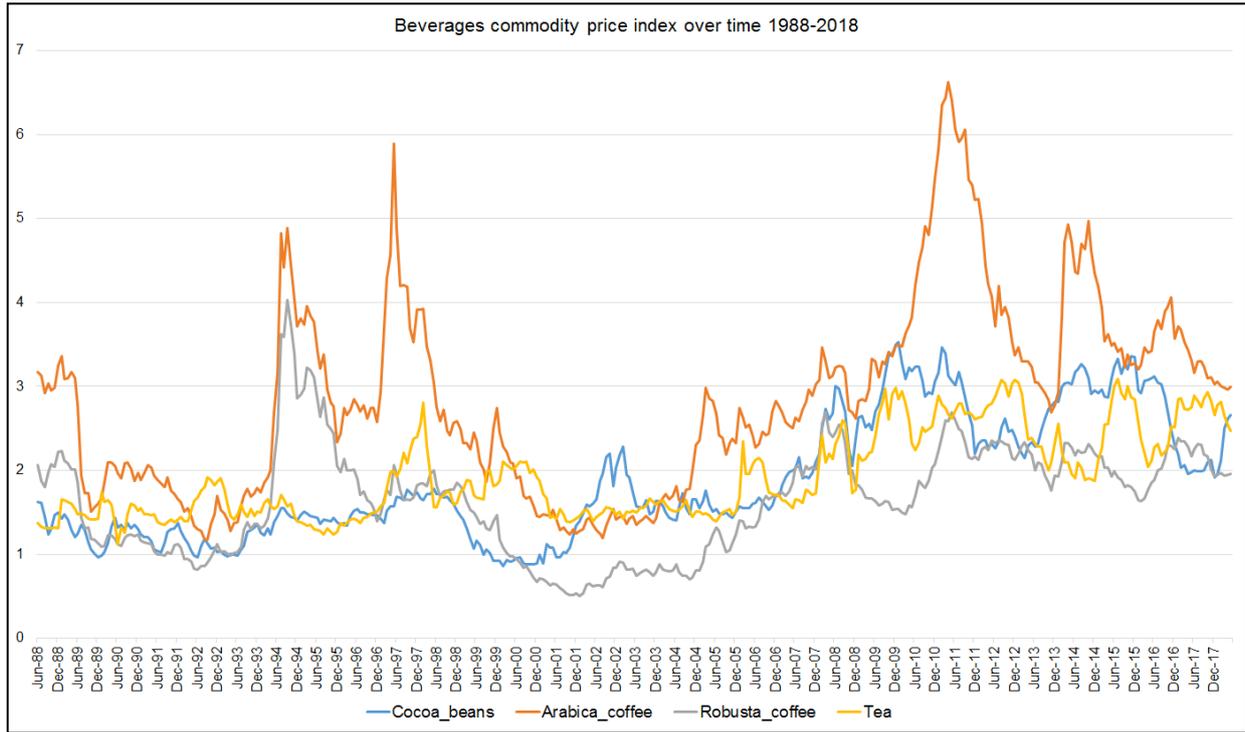
Graph 4: Agriculture climate-related peak condition per crop

Discussion and Implications

Contemporary attention to global warming is assumed to affect commodity and beverage prices hyperbolically at extinction (see graphs 5 and 6).



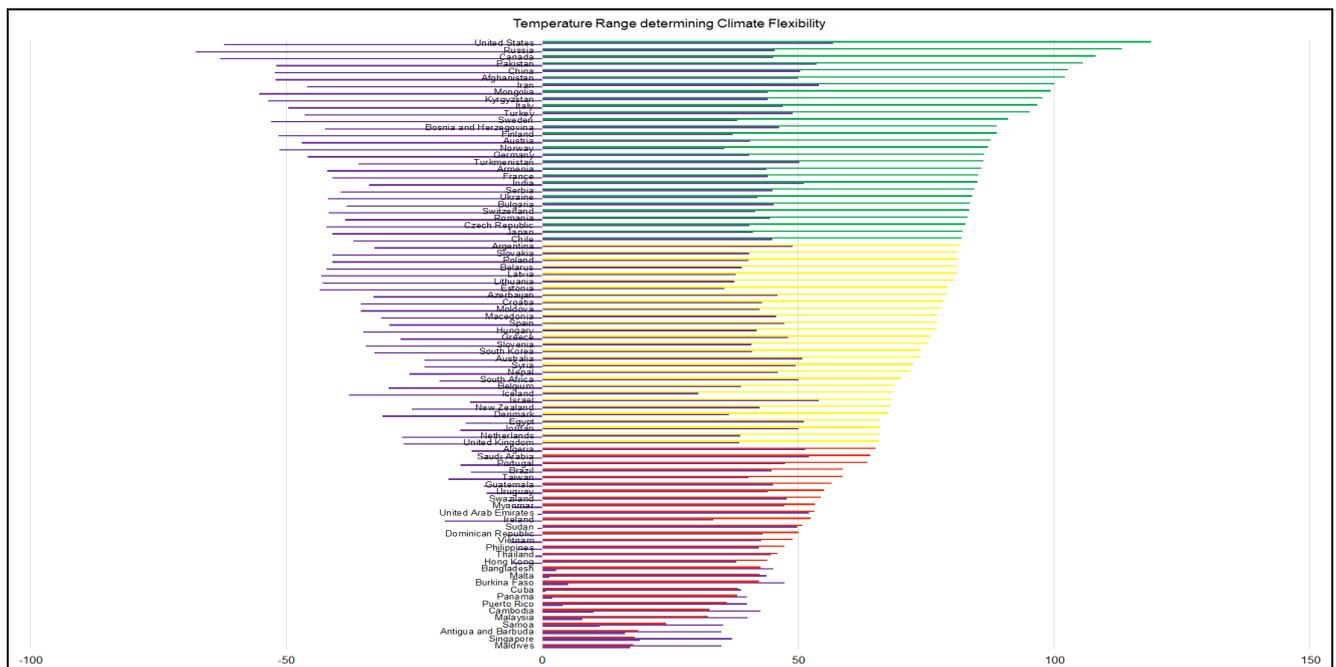
Graph 5: Cereals commodity price index over 1988-2018



Graph 6: Beverage commodity price index over 1988-2018

Conclusion

The paper concludes with a proposal of Future Climate Wealth of Nations being grounded in climate flexibility defined as range of temperature variation of a country. Climate change requires nations’ temperature flexibility for economic production. The more climate variation, the more degrees of freedom in temperature variability a country can offer. Already now human capital inflows are reported into climate flexible territories.



Graph 7: Climate flexibility by country

References

- Puaschunder, J.M. 2016a. “Intergenerational climate change burden sharing: An economics of climate stability research agenda proposal.” *Global Journal of Management and Business Research: Economics and Commerce* 16 (3): 31-38.
- Puaschunder, J.M. 2016b. *Mapping Climate Justice*. Proceedings of the 2016 Young Scientists Summer Program Conference, International Institute for Applied Systems Analysis (IIASA), Laxenburg, Austria.
- Puaschunder, J.M. 2016c. “On eternal equity in the fin-de-millénaire: Rethinking capitalism for intergenerational justice.” *Journal of Leadership, Accountability and Ethics* 13 (2): 11-24.
- Puaschunder, J.M. 2016d. The call for global responsible intergenerational leadership in the corporate world: The quest for an integration of intergenerational equity in contemporary Corporate Social Responsibility (CSR) models. In D. Jamali (Ed.), *Comparative Perspectives in Global Corporate Social Responsibility*, pp. 275-288. Hershey, PA: IGI Global Advances in Business Strategy and Competitive Advantage Book Series.
- Puaschunder, J.M. 2017a. “Climate in the 21st century: A macroeconomic model of fair global warming benefits distribution to grant climate justice around the world and over time.” *Proceedings of the 8th International RAIS Conference on Social Sciences and Humanities* organized by Research Association for Interdisciplinary Studies (RAIS) at Georgetown University, Washington, D.C., United States, March 26-27, pp. 205-243.
- Puaschunder, J. M. 2017b. “Mapping Climate in the 21st Century.” *Development* 59 (3) :211-216.
- Puaschunder, J.M. 2017c. “The climatorial imperative.” *Agriculture Research and Technology* 7 (4): 1-2.
- Puaschunder, J.M. 2018. *Intergenerational responsibility in the 21st century*. Wilmington, DE: Vernon.
- Puaschunder, J.M. (forthcoming). *Governance and climate justice: Global South and developing nations*. Cham, Switzerland: Springer Nature, Palgrave Macmillian.

Return on Equity and the Global Compact: Its Effect on Colombian Companies that Have Adhered to It

Liliana Ruiz Acosta¹, David Andrés Camargo Mayorga², Octavio Cardona García³

¹Full-time professor, Universidad Militar Nueva Granada, Bogotá, Colombia, liliana.ruiz@unimilitar.edu.co

²Full-time professor, Universidad Militar Nueva Granada, Bogotá, Colombia, david.camargo@unimilitar.edu.co

³Research Assistant, Universidad Militar Nueva Granada, Bogotá, Colombia, octavio.cardona.g@gmail.com

ABSTRACT: This document analyzes whether belonging to the Global Compact (GC) affected the Return on Equity (ROE) in 1,000 of the largest Colombian companies that reported their financial information to the Superintendency of Corporations in 2017. The impact was calculated using the Ordinary Least Squares (OLS) with standard errors and Feasible and Generalized Least Squares (FGLS) models; the variables ROE and GC were linked to each other by considering control variables such as financial variables (size and leverage) and non-financial variables (economic sector). Statistically, no significant relationship was found between the return on equity and these companies being members of the Global Compact; which is consistent with the neutrality hypothesis, which affirms that socially responsible companies do not experience changes in economic benefits or in the wealth of shareholders, hence showing that socially responsible investments have no effect. This research contributes to the empirical research on the relationships between finance and corporate social responsibility, which contributes to decision making in the field of sustainability by companies.

KEYWORDS: Profitability Ratios, Social Responsibility, Financial Statements, Linear Regression Model, Corporations

Introduction

Companies engage in Social Responsibility (CSR) for multiple reasons, including improving their financial performance. Engaging CSR is a choice and not an imposition by some agent within the economic system, which means the entrepreneur needs to be sensitive towards society and the environment.

When a company joins the Global Compact (GC), it does so because it wants to show its commitment to the environment and society. The GC is an initiative by the United Nations (UN) that implies fulfilling the ten Millennium Development Goals and the seventeen Sustainable Development Goals.

Having described above, the objective hereof is to analyze whether or not belonging to the Global Compact (GC) affected the return on equity (ROE) of the one thousand largest Colombian companies that reported their financial information to the Superintendence of Corporations in 2017. The effect was calculated using the Ordinary Least Squares with standard errors and Feasible and Generalized Least Squares models; the variables ROE and GC were related, the size and leverage (financial variables) and the economic sector in which each company performs (non-financial variable) were taken as control variables.

This document sets off with this introduction, moves on to the methodology, the results, and ends with the conclusions.

Literature review

Figure 1 shows the literature review about relationships between social performance and financial performance.

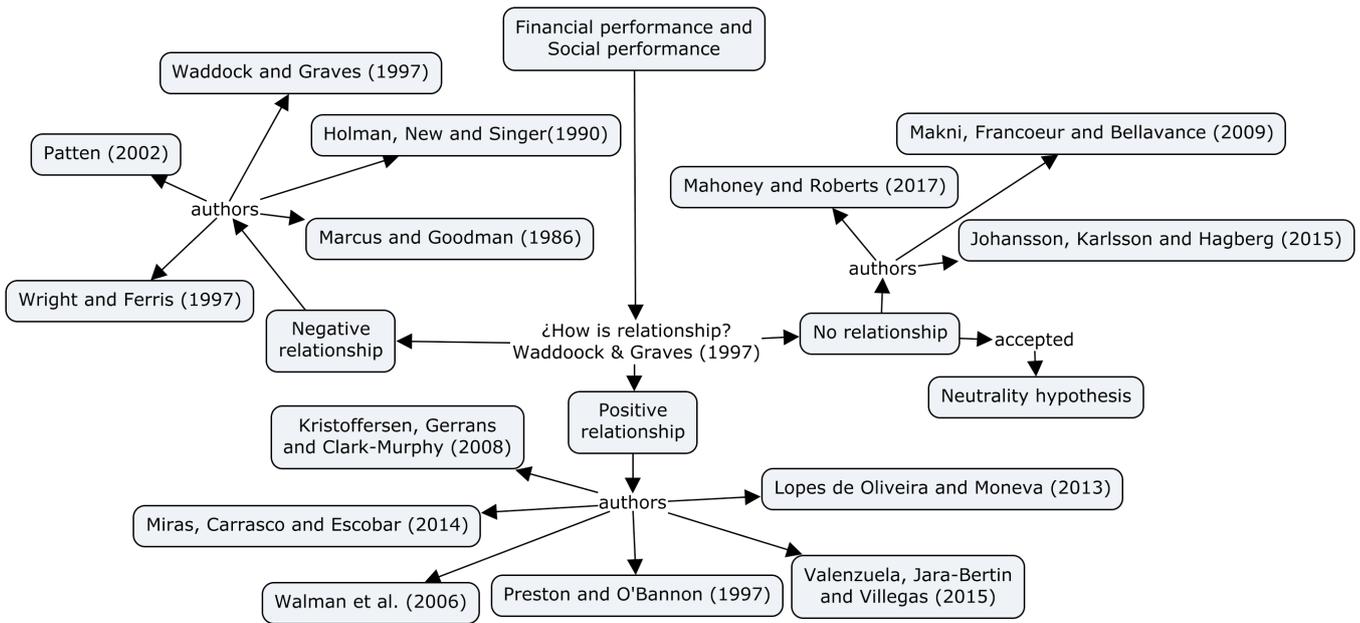


Figure 1. Summary of literature
 Source: Authors' Own elaboration

Methodology

The companies included in the sample numbered one thousand and were classified into six different sectors: agriculture, trade, construction, manufacturing, mining and services (categorical control variable). The observations of each company belong to the financial balance sheets reported in 2017, from which the variables profitability of equity (ROE) (dependent variable), size of the company (logarithm of assets), and level of leverage (quotient between liabilities and assets) were constructed. The last two are financial control variables.

Taking as a reference the companies included in the GC, a dummy variable was constructed which took the value of 1 when the company was affiliated to GC and 0 if not. The descriptive statistics of these variables are shown in table 1.

Table 1. Descriptive statistics of the variables for the whole base

Variable	Obs.	Average	Std. Dev.	Min	Max
ROE	1000	0.318	7.096	-24,31	220,83
GC	1000	0.102	0.302	0	1
Size	1000	19.39	1.296	14.97	25.41
Leverage	1000	0.623	0.493	0	12.37

Source: Authors' Own elaboration

In order to determine the effect of belonging to the GC on the member companies, the function proposed in the document by Ortas, Álvarez, and Garayar (2015) was used, with the difference that the dependent variable herein is the ROE (equation 1). This equation was estimated using the Ordinary Least Squares (OLS) with standard errors and Feasible and Generalized Least Squares (FGLS) models.

$$ROE = \beta_0 + \beta_1 GC + \beta_2 Size + \beta_3 Leverage + \beta_4 \sum Sector + \epsilon_i \tag{1}$$

Where:

$\beta_0, \beta_1, \beta_2, \beta_3, \beta_4$ are the regression coefficients.

ϵ_i is the error term.

Results

Table 2 shows the results of regressions by OLS and FGLS. The returns on equity were found to be statistically not different between those companies that belong to the Global Compact and those that do not. Furthermore, no strong correlation between the explanatory variables and the ROE was demonstrated.

Table 2. Regression results for ROE

ROE		
	OLS (Robust Errors)	FGLS
Constant	-3.776	0.415
	(4.321)	(0.414)
GC	-0.703	0.109
	(0.745)	(0.074)
Financial control variables		
Size	0.187	-0.014
	(0.216)	(0.021)
Leverage	0.420	-0.261**
	(0.432)	(0.059)
Non-financial control variables		
Trade	-0.022	0.0462
	(0.108)	(0.035)
Construction	0.018	0.0545
	(0.149)	(0.061)
Manufacturing	0.056	0.0485
	(0.060)	(0.036)
Mining	-0.241	0.0282
	(0.384)	(0.054)
Services	1.108	0.0144
	(0.867)	(0.068)
Test F	1.37	
Chi2 Test		41.55**
R2	0.0067	
N	1000	620

Source: Authors' Own elaboration

Conclusions

The non-existence of a statistically significant relationship between return on equity and companies' membership to the Global Compact, which is consistent with the hypothesis of neutrality, which states that socially responsible companies do not experience changes in economic benefits or in shareholders' wealth, thereby showing that socially responsible investments have no effect. For this specific case, it is suggested that there may be very different factors from those defined herein that affect the ROE, many of them probably discretionary and subject to the internal management of each company.

This research contributes to empirical research on the relationships between finance and corporate social responsibility which contribute to corporate decision-making in the area of sustainability.

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References

- Holman, Walter R., New, J. Randolph, and Singer, Daniel. 1990. "The impact of corporate social responsiveness on shareholder wealth." In *Corporation and Society Research: Studies in Theory and Measurement*, edited by Lee Preston, 265-280. Greenwich, CT: JAI Press.
- Johansson, Sebastian, Karlsson, Anton, and Hagberg, Christian. 2015. "The relationship between CSR and financial performance. A quantitative study examining Swedish publicly traded companies." Bachelor thesis, Linnaeus University (Sweden).
- Kristoffersen, Inga, Gerrans, Paul and Clark-Murphy, Marilyn. 2008. "Corporate social performance and financial performance." *Accounting, Accountability & Performance* 14(2): 45-90.
- Lopes de Oliveira, Miguel, and Moneva, José Mariano. 2013. "El desempeño económico financiero y responsabilidad social corporativa Petrobras versus Repsol." *Contaduría y Administración* 58(1): 131-167. doi: 10.1016/S0186-1042(13)71201-4.
- Mahoney, Lois, and Roberts, Robin W. 2007. "Corporate social performance, financial performance and institutional ownership in Canadian firms." *Accounting Forum* 31(3): 233-253. doi: 10.1016/j.accfor.2007.05.001.
- Makni, Rim, Francoeur, Claude, and Bellavance, François. 2009. "Causality between corporate social performance and financial performance: evidence from canadian firms." *Journal of Business Ethics* 89: 402-422. doi: 10.1007/s10551-008-0007-7.
- Marcus, Alfred Allen, and Goodman, Robert S. 1986. "Compliance and performance: toward a contingency theory." *Research in Corporate Social Performance and Policy* 8: 193-221.
- Miras, María del Mar, Escobar, Bernabé and Carrasco, Amalia. 2014. "Responsabilidad social corporativa y rendimiento financiero: un meta-análisis." *Spanish Journal of Finance and Accounting*, 43(2): 193-215.
- Ortas, Eduardo, Álvarez, Igor, and Garayar, Ainhoa. 2015. "The environmental, social, governance, and financial performance effects on companies that adopt the United Nations Global Compact." *Sustainability* 7(2): 1932-1956.
- Patten, Dennis M. 2002. "The relation between environmental performance and environmental disclosure: a research note." *Accounting, Organizations and Society* 27: 763-773.
- Preston, Lee and O'Bannon, Douglas. 1997. "The corporate social-financial performance relationship: a typology and analysis." *Business and Society* 36(5): 419-29. doi: 10.1177/000765039703600406
- Valenzuela Fernández, Leslier, Jara-Bertin, Mauricio, and Villegas Pineaur, Francisco. 2015. "Prácticas de responsabilidad social, reputación corporativa y desempeño financiero." *Revista de Administração de Empresas* 55(3): 330-344.
- Waddock, Sandra, and Graves, Samuel. 1997. "The corporate social performance-financial performance link." *Strategic Management Journal* 18(4): 303-319.
- Walman, David, et al. 2006. "Cultural and leadership predictors of corporate social responsibility values of top management: a GLOBE study of 15 countries." *Journal of International Business Studies* 37: 823-837. doi: 10.1057/palgrave.jibs.8400230.
- Wright, Peter, and Ferris, Stephen P. 1997. "Agency conflict and corporate strategy: The effect divestment on corporate value." *Strategic Management Journal* 18: 77-83.

Revisiting Hawes: Social Capital and Racial Disparity in Incarceration Rates

Daniel D. Oladejo¹, Kruti R. Lehenbauer²

¹*DBA Student, University of the Incarnate Word, San Antonio, TX, oladejo@student.uiwtx.edu*

²*Associate Professor of Economics, University of the Incarnate Word, San Antonio, TX, Lehenbau@uiwtx.edu*

ABSTRACT: Over the past twenty-five years, the U.S prison system has experienced continuous substantial increment in the prison population. At the same time, incarceration rates have risen by more than 300%, a phenomenon that many analysts have referred to as mass incarceration (DeFina & Hannon, 2013). This study investigates the various divergent impacts of social capital on policy egalitarianism in state outcomes. Notably, this paper reviews the relationships connecting social capital and incarceration rates, while analyzing the level of racial disparities in incarceration rates in the American states using a state-level panel data spanning 1980 to 2015. Building on work by Hawes (2017), we present a theoretical description and empirical examination for how social capital functions uniquely under different racial contexts using a newer dataset. The results suggest that there is a positive correlation between social capital and the incarceration of many African American which is more profound in some states than others.

KEYWORDS: mass incarceration, social capital, racial diversity, inequality, poverty, social control

Introduction

The growth in the number of incarcerations in the United States started in the early 1970s and has troubled both, academics and policymakers since then. Interestingly, the number of incarcerations continued to grow even after crime rates fell sharply in the 1990s. Between 1972 and 2001, the federal and state prison incarceration rate went from 93 to 470 inmates per 100,000 population (Pettit & Western, 2004). One of the disturbing aspects of these increased incarceration rates has to do with the racial inequality in the composition of those that are incarcerated. Although most prisoners are white (approximately 58%), blacks are remarkably over-represented in the prison population making up over 38% of the total prison population while comprising only 13.4% of the total U.S. population. According to Western (2006), black men are seven times more prone to be incarcerated than white men within the same age group, particularly if they are in their mid-30's.

One of the most profound reasons for this article is to traverse the factors that decisively affects mass incarcerations and the racial inequality of incarcerations in the American states. Diverse fields of works such as criminology, political science, and sociology have outstanding works of literature which elaborate on how social activities, monetary determinants, and public governmental policies exponentially have a substantial effect on incarceration rate. We focus more on how to explain incarceration rate explosion using the critical position of social capital and racial context. We build upon on the prior published work on social capital and inequality by Hero (2003, 2007) and Hawes (2017) and test if strong evidence exists to support the argument that social capital intensifies social empathy and trust, or can social capital be intensified by increasing social controls such as the correctional system. The hypothesis is that higher levels of social capital are likely to magnify social control mechanisms (rather than empathy) as racial diversity and racial intimidation rise, which would result in enhanced racial differences in incarceration rates. Using state-level panel data from the year 1978 to 2015 for 48 contiguous states in the USA, the dataset tests the hypothesis that the effect of social capital on incarcerations is dependent on racial context and that social capital worsens the racial gap in specific circumstances.

Literature Review

The privatization of public services has earned quite a reputation in recent years as concerns about government debt and deficits have risen. However, the concept of privatization in the US prison system is not a new one. The first privatization of prison efforts dates back to the 1870s when prisoners were

placed under contracts to work for private enterprises (Culp 2009). The advent of the current private prison system in the USA occurred in the late 1970s when the Immigration and Naturalization Service (INS) contracted with private companies to provide accommodation for illegal immigrants (Culp 2009). As of now, privatization has spread throughout the prison system with private services for medical care, food, finances, transportation, janitorial work, and security that are hired by both public and private prisons (Richard & Lipton 2013).

Brown and Potoski (2004) find that privatization of prison services motivates the inclination to monopolize the provision of these services. King and Pitchford (2008) also model the option of public versus private management as a trade-off between inefficiency (due to the many rules involved in public administration) and incentives (due to the cost-quality exchange in private company management system). Culp (2009) characterizes the US private prison industry as an oligopoly of three (now two) dominant corporations: Corrections Corporation of America (CCA), Geo Group, Inc. (GEO), and Cornell Companies, Inc. (CRN), which was acquired by GEO in 2010. This market composition is comparable to that in other countries that have experimented with privatization, including the UK and Australia. The Bureau of Prisons published the annual determination of average cost of incarceration for the Fiscal Years (FY) 2016 and 2017. The price to cover the average expense of incarceration for Federal inmates was \$34,704.12 (\$94.82 per day) in FY 2016 and \$36,299.25 (\$99.45 per day) in FY 2017. The average annual cost to confine an inmate in a Residential Re-entry Center was \$29,166.54 (\$79.69 per day) for FY 2016 and \$32,309.80 (\$88.52 per day) for FY 2017. Thus, from an economic standpoint, the business of incarceration is a profitable one as long a company can reduce its costs and continue to increase its prison-population to maximize their revenues. This creates the potential for encouraging laws and systems that result in higher incarceration rates of the population, regardless of race or ethnicity.

The primary aim of this paper is to analyze the pivotal role of social capital critically and racial context as it relates to disparities in incarceration rate in different states and years across the U.S. Work by Carson and Anderson (2016) agree with the idea that there is substantial racial inequality in incarceration rates in the U.S. The paper emphasizes that black men are six times more prone to arrest and jail term than white men.

Keeping in line with the privatization of prisons and their respective consequences, Fosten (2016) explores the competing panoramas on the policies for federal and state criminal justice systems. The study focuses on how the need for jails by citizens is impacted in conjunction with the private sector's appetite for profits and what these outcomes mean in the context of the incarceration rates of African-American males. Due to the prejudicial viewpoint on incarceration, racial disparity within incarceration rates is not fundamentally understood by every citizen, especially the regular individuals in the society (Western & Pettit, 2010) except by the means of media and popular movements, which tend not to be objective. Surprisingly, racial and stringent state laws create some unique social outliers whose collective effect is distinctive from most of the American society. Fundamental factors such as poverty, educational level attainment, unemployment, criminal record, gang membership in communities, and arrest history of arrests in the lineage drive how the judicial system makes certain specific laws, which could further enhance racial disparity (Western & Pettit 2010).

Putnam (2000) simply defined social capital as the continuous collective relationship between people or a group of individuals which may produce some form of a network built on trust. Others such as Coleman (2000) called it a fundamental structure that describes a social environment that creates social (interaction, ties, faith, and value). Taylor (1996) is a cross-sectional study that proposes the ideology that upon examining the residential stability and educational level of people living in regions struggling with more crime was more attached to and involved in their communities than those living in lower crime communities. The results suggest that higher crime rates in some areas can improve social organization and thereby cause an increase in social capital. Although, the long run potential impacts of increased social organization on lowered crime rates, however, are not considered in the Taylor (1996) cross-sectional study. In order to increase our

focus on the relevant variables we are proposing to use in our model, let us take a brief overview of the specific literature pertaining to those variables, next.

Social Capital: Adam & Roncevi (2003) recounts the extreme difficulty that researchers experience when measuring social capital stating that problems with separating form, source, and consequences are essential to consider. Trust is a vital integral part of social capital, Putnam (2000) equate trust as the backbone of social capital. As the discussion regarding the relationship between social capital and inequality has primarily centered around the arguments raised in Putnam (2000), this study will use a model of social capital that is in line with the conceptualization of social capital by Putnam (2000). There are five components to social capital as presented by Putnam (2000): Starting with three behavioral elements (Volunteerism, public engagement and life in the community) and ending with factors relating to attitude (sociability and social trust). A single composite index value is constructed using factor analysis of twenty-two behavioral components of social capital.

Racial Diversity: According to the U.S. Census Bureau, the country may see a significant shift from a majority-minority society as early as 2043. The country is recognized worldwide as the land of racial and ethnic immigrants with diverse sociocultural and economic backgrounds (Hirschman 2005; Tienda 2002). Some scholars such (Alba and Nee 2003; Hochschild et al. 2012; Lee and Bean 2010) see a future with integrated diversity; however, others see a lot of resistance with politics of racial diversity (Bobo 2011; Hero 2007). As recommended by Hero (2007) which enumerates the effect that social capital has on state policy, this research added racial diversity to expand on crime and criminal justice policy outcomes and its effect crime and incarceration.

Crime Rates: Crime rate has statistical interpretation with links to other essential variables thereby creating an enormous database of research paper cutting across numerous fields of studies including criminology, economics, law, politics and sociology (Becker, 1968; Cohen and Felson, 1979; Cantor and Land 1985; Smith 1997; Marvell and Moody 2001). Western (2006) highlighted the growth of crime rate between 1960 to 1990 (early years) was significant but has since reduced sharply afterward, in fact, the crime rate in 2005 was almost equal to the rate experienced in the early 1970s when the sudden rise in incarceration was impactful to the society.

There exists abundant literature when considering the implications of social capital upon crime on the one hand, and racial disparities in incarceration rates on the other. However, there is insufficient literature that focuses on the relationship between social capital and incarceration rates, or more precisely, the relationship between social capital and racial disparities in incarceration rates.

Data and Methodology

Mertens (2009) hail researchers that are trying to promote social justice with the overall effort to reduce the inequality experienced, however, the major hurdle is to find the right model to support their work. Hawes (2017) analyzed incarceration models using Seemingly Unrelated Regression (SUR) method and heteroscedastic panel-corrected standard errors created by (Beck & Katz 1995). This Hawes (2017) model for ratio models to manage heterogeneity in the dataset used is the model we are testing as well. While Hawes (2017) used the dataset for the years 1986-2008, we are using an updated dataset ranging from 1978 to 2015 obtained from the Bureau of Justice Statistics National Prisoners Statistics Study database created more robust data for this research. Table 1 shows the summary statistics for all variables used in the model.

Table 1. Summary Statistics for Dependent and Independent Variables

Variables	Name	N	M	SD	Source
Dependent variables					
Total inmates per 100,000 population	<i>jprison_totalrt</i>	1,561	330.12	211.58	BJS National Prison Statistics (ICPSR Study No. 36657)
White inmates per 100,000 population	<i>prison_whtrt</i>	1,559	189.98	96.78	BJS National Prison Statistics (ICPSR Study No. 36657)
Black inmates per 100,000 population	<i>prison_blkrt</i>	1,551	1362.00	662.72	BJS National Prison Statistics (ICPSR Study No. 36657)
Black–white incarceration ratio	<i>prison_Bwratio</i>	1,548	8.14	4.68	BJS National Prison Statistics (ICPSR Study No. 36657)
Independent variables					
Social capital index	<i>SC8609_ma</i>	1,296	0.197	1.03	Hawes, Rocha & Meier (2015)
Racial diversity (Blau index)	<i>racialdiversity</i>	1,550	0.30	0.16	U.S. Census Bureau
Percent black population	<i>pop_pctblk</i>	1,571	10.55	10.95	U.S. Census Bureau
Total violent crimes per 100,000 population	<i>VCRate_Total</i>	1,938	466.50	296.22	FBI Uniform Crime Report
Total property crimes per 100,000 population	<i>PCRate_Total</i>	1,938	3951.63	1278.15	FBI Uniform Crime Report
Government ideology	<i>govideo</i>	1,550	50.82	25.09	Berry et al. (2013)
Percent Democrats in state legislature	<i>totdempct</i>	1,550	55.21	16.97	Indiana State University—Klarner Politics
Percent females in state legislature	<i>women_leg</i>	1,200	20.49	7.76	Center for American Women and Politics
Percent African Americans in state legislature	<i>blk_leg</i>	1,500	6.33	6.27	National Conference of State Legislatures/Joint Center
Three-strikes law (yes/no)	<i>threestrikes</i>	1,581	0.29	0.46	National Conference of State Legislatures/Joint Center
Trial court clearance rate	<i>gtclear</i>	1,321	87.55	26.29	State Court Statistics (ICPSR Study No. 9266)
Drug arrests/population	<i>darrest2</i>	1,268	0.00	0.00	FBI Uniform Crime Report
GSP per Capita (2015)	<i>gsppc_k</i>	1,500	27.56	11.72	U.S. Department of Commerce, Bureau of Economic Analysis
Unemployment rate	<i>unemp</i>	1,500	5.80	2.08	U.S. Department of State
Poverty rate	<i>pov_rtfull</i>	1,500	12.89	3.88	U.S. Census Bureau Population Survey
Poverty inequality (black–white ratio)	<i>bwpovratio</i>	1,554	2.76	0.75	U.S. Census Bureau Population Survey
Percent with college degree	<i>edattain_ma</i>	1,530	22.10	5.80	U.S. Census Bureau Population Survey
Education inequality (black–white ratio)	<i>bwcolratio</i>	1,550	0.63	0.20	U.S. Census Bureau Population Survey
Divorces per 1,000 population	<i>divorcerate</i>	1,792	4.46	1.52	National Center for Health Statistics
Voting-eligible felons per 100,000	<i>felonspc</i>	1,571	1084.71	778.40	George Mason University, United States Election Project

Note. A moving average (when possible) or the most recent available years were used to replace missing years for the independent variables. BJS = Bureau of Justice Statistics; ICPSR = Inter-university Consortium for Political and Social Research; FBI = Federal Bureau of Investigation.

Dependent Variables: Putnam (2000) suggests that minorities will have some advantage in high a social capital vicinity because social capital is presumed to produce more beneficial policy in such area. Hero (2003) disputes Putman's argument which may lead to a nonconclusive view that maybe they are both correct. Hawes (2017) further analyzed the odds ratio for white and black prisoners giving a value of one for equality and any number higher represents higher odd ratio incarceration for the black population. The primary dependent variable used in this study is the Total Inmates per 100,000 population. Moreover, White Inmates per 100,000 population, Black Inmates per 100,000 population, Black/White Incarceration Ratio and Logged Black/White Incarceration Ratio are the inclusive endogenous variables in the model analysis.

Independent Variables: As discussed in the literature review, we take variables that pertain to Social Capital for creating a Social Capital Index, Racial Diversity variables, and variables related to Crime Rates in the state as our primary independent variables of interest. These independent variables consist of Poverty Rate in the state, Percent with College Degree, Racial diversity or composition, demographic factors, and Crime rates in each state used in conjunction with other political and economic control variables as shown in Table 1, in an effort to remain consistent with the model proposed by Hawes (2017). One critical variable (*politics*) can be broken down into the state-level political variables (1) government principles called *ideology* by Berry et al (2013), (2) the percent of females in state legislature (3) percent of Democrats in state legislature and lastly (4) the percent of African Americans in the state legislature.

The assumption with these specific control variables is that there exists a significant influence on crime and incarceration rates in states with a higher number of males, less African Americans, and majority conservative Republican lawmakers, who are all likely to pursue an agenda of a “war on crime” instead of an agenda to reduce the causes of crime in terms of policy. The Three-strikes law is a dichotomous variable that indicates whether the state has embraced a policy with enhanced sentences for perpetual offenders. Currently, there are 28 states with some form of three strikes laws, as compared to only two states in 1990. Most of the approvals of three strikes laws occurred in the mid-1990s with 23 adoptions in 1994 and 1995 precisely. Prior to that, California was considered to have the strictest three strikes law in the nation. However, in 2000, California began to ease the punishments when voters passed Proposition 36. Instead of drug possession carrying a potential 25 years to life, Proposition 36 acknowledged the possibility of drug treatment.

Recently in 2012, California voters enacted a new redaction of Proposition 36. The variable Drug arrests/population measures the total number of drug-related arrests (age 18 or older) per capita. States that target and massively enforce drug use are expected to have higher incarceration rates than others. These variables summarized in Table 1 show that these policy variables have a disproportionately immense effect on blacks relative to whites. Hence, these policies are expected to enhance the overall incarceration rate and especially African American incarceration rates. The last two measures recognize the level of racial inequality in poverty and educational attainment: the black-white odds ratios for poverty and college degrees, respectively. Higher values on these measures symbolize that blacks have a higher rate of poverty or educational attainment within the state than whites, respectively.

Results and Discussions

The model is presented using data that is closely related to the data used by Hawes (2017) and using STATA Version 15 for conducting the analysis. The difference is that Hawes (2017) used data from 1986 to 2009 from the Bureau of Justice Statistics' National Prisoners Statistics study whereas we are using the data from 1978 to 2015. We are running fundamentally the same models as Hawes (2017) to identify if the results are significantly different with the new data added to the original dataset.

Table 2. Social Capital and Prison Incarceration Rate.

	<u>Prison inmates per 100,000 population</u>			<u>ln(odds ratio)</u>
	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Black/white</u>
<i>Social capital</i>	1.652 (2.247)	-7.474 (1.781)	80.061*** (14.366)	0.060*** (0.013)
<i>Racial diversity</i>	371.221*** (20.687)	-62.239** (16.393)	444.612*** (132.237)	0.629*** (0.212)
<i>ln(% black)</i>	32.077*** (3.795)	17.349*** (3.005)	-103.297*** (24.236)	-0.095 (0.019)
<i>Total violent crime rate</i>	0.005 (0.013)	-0.0030 (0.010)	0.248 (0.084)	0.000 (0.001)
<i>Total property crime rate</i>	0.002 (0.002)	.0220*** (0.002)	0.072*** (0.016)	0.000 (0.000)
<i>Government ideology</i>	-0.261 (0.070)	-0.288 (0.052)	-0.763 (0.446)	0.000 (0.000)
<i>% Democrats in legislature</i>	-2.113 (0.139)	-1.257 (0.110)	-4.736 (0.885)	0.001* (0.001)
<i>% females in legislature</i>	-0.536 (0.294)	-0.188 (0.232)	9.127*** (1.875)	0.001 (0.002)
<i>% black legislators</i>	4.623*** (0.444)	0.389 (0.352)	-0.718 (2.839)	-0.019 (0.003)
<i>Three-strikes law</i>	-15.171 (3.577)	-19.935 (2.832)	8.796 (22.845)	0.143*** (0.018)
<i>Trial court clearance rate</i>	0.018 (0.061)	-0.093*** (0.048)	0.985 (0.390)	0.001*** (0.000)
<i>Drug arrests/population</i>	-875.155 (315.968)	241.689** (250.087)	-10326.950 (2017.852)	-6.400 (1.114)
<i>State GSP per capita</i>	6.266*** (0.310)	5.461*** (0.246)	21.239*** (1.982)	-0.003 (0.002)
<i>Unemployment rate</i>	-6.776 (0.962)	-3.685 (0.763)	-38.386 (6.155)	-0.001 (0.006)
<i>Poverty rate</i>	4.850*** (0.607)	4.214*** (0.481)	14.172 (3.878)	-0.018*** (0.004)
<i>Black–white poverty ratio</i>	-15.331 (2.721)	-40.243*** (2.151)	127.351*** (17.347)	0.328*** (0.015)
<i>% college degrees</i>	-6.967*** (0.609)	-3.244*** (0.482)	-10.279*** (3.886)	0.001 (0.004)
<i>Black–white college ratio</i>	190.171*** (14.557)	148.808*** (11.514)	53.528 (92.757)	-0.686*** (0.100)
<i>Divorces per 1,000 population</i>	17.167*** (1.315)	14.244*** (1.038)	49.366*** (8.375)	-0.034*** (0.005)
<i>Felons per 100,000</i>	0.0590*** (0.002)	0.032*** (0.002)	0.237*** (0.015)	-0.000*** (0.000)
<i>Constant</i>	— (0.163)	—	—	2.002*** (0.163)
Observations	1,143	1,143	1,143	1,143
R2	—	—	—	0.5559
Number of states	48	48	48	48

Note: Models 1 to 3—Seemingly Unrelated Regression (XTSUR). Model 4—Panel Corrected Standard Errors (PCSE). GSP = gross state product. Standard errors in parentheses. *p < .1. **p < .05. ***p < .01.

Table 2 displays the outcomes for the models exploring the relationship between social capital and incarcerations in state prisons. The first column shows total incarceration rates, followed by white and black rates, respectively. The dependent variables in the first three models are related to each other that is, it is incredibly possible that factors that affect white rates will also affect black rates. The SUR model was used to analyze the dataset incorporating the *xtsur* command in Stata to estimate the models (Nguyen & Nguyen 2010). Although other estimators produce similar results, the SUR models are more suitable given that the errors the analysis may be correlated across the models. Although several variables in the model are incredibly correlated/related with one another (e.g., percent black legislators and percent black population), multicollinearity does not appear to be a problem in the analysis performed. The average variance inflation factor (VIF) for the model is 3.53. Percent black population is the only variable with a VIF above 10 (12.42); though, the results are valid even if this variable is removed from the model. The essential findings are robust across various specifications, including bivariate models. Moreover, this estimation is consistent with past research studying these dependent variables (e.g., Yates and Fording 2005).

The most significant finding of these models is that the social capital is neither statistically significant nor is it related to total incarceration rates. However, it is a substantial predictor of race-specific rates, although in reverse directions. The analysis shows that social capital is negatively correlated to total and white prison incarcerations. However, the reverse is true for black incarceration rates because there is a strong positive connection between social capital and black incarcerations. An increase of approximately one standard deviation will cause an increase in social capital which is equally representing approximately ten fewer white incarcerations (per 100,000 white population) and almost sixty-six more black incarcerations (per 100,000 black population). The result is an update from Hawes (2017) research. This conclusion is powerful and is not susceptible to model specification in any manner. The implication is that the impacts of social capital are race specific and function differently for whites and blacks, to the disadvantage of the latter.

The final column in Table 2 displays the correlation between social capital and the relative likelihood of incarceration for blacks and whites. The result shows that social capital displays a high correlation with a higher incarceration rate for blacks relative to whites. The consequence of a one-point increase in social capital is a 6.0% increase in the logged prison ratio. Comparing the average 2014 data with 2015 data to analyze the black-white odd ratio, we found a value of 1.7. The value is currently lower than the value obtained by Hawes (2017) suggesting that a forecast of reduced disparity in incarceration rate in the future is not unreasonable. Racial diversity shows a high correlation with an increment in the black-white odds ratio. Interestingly, the percent of the population that is black is negatively correlated on the black-white odds ratio.

The SUR models in Table 2 imply that in general, incarceration rates show a positive correlation with the percent of a state's black population. However, the black incarceration rate decreases both in the absolute numbers and relative to whites as the percent of the black population rises. Smith (2004) found a positive correlation between black population size and overall incarceration rates, which shows that the relationship is not susceptible to whether racial diversity is inclusive or exclusive in the model. These results from Table 2 are highly consistent with the results obtained by Hawes (2017), which demonstrates that these issues are not only existent, but are also pervasive in nature since time has not impacted these values in any significant manner.

Table 3 shows Autoregressive Error correction models that enumerate the extended term association linking social capital and incarceration rates. The lag of social capital, the change in social capital, and a disequilibrium term ($DV_{t-1} - \text{Social Capital}_{t-1}$) that captures how quickly the short-term effects disappear (Zhu 2013). The influences of social capital seem to be long-lasting because the disequilibrium term is average in size, implying that the consequences of a change in the social capital do not diffuse instantly or immediately. The simulation used to develop the long-run impact was $1 - (\beta_2 / \gamma)$, where γ is the coefficient from the disequilibrium term (i.e., $DV_{t-1} - \text{Social}$

Capital_{t-1}). It is worth noting that a one-point increase in social capital is a valuable difference and very unlikely to occur from one year to the next.

Table 3. Long-Term Effect of Social Capital on Black–White Incarceration Ratios.

	Error correction models	
	DV: $\Delta \ln(\text{black–white prison ratio})$	
	β	(SE)
<i>ΔSocial capital</i>	0.01392	(0.015)
<i>Social capital(t–1)</i>	-0.14075 ***	(0.020)
<i>DV(t–1) – Social capital(t–1)</i>	-0.15337 ***	(0.023)
<i>Racial diversity</i>	0.17801 **	(0.087)
<i>ln(% black)</i>	-0.00781	(0.012)
<i>Total violent crime rate</i>	0.00004	(0.000)
<i>Total property crime rate</i>	-0.00001	(0.000)
<i>Government ideology</i>	-0.00002	(0.000)
<i>% Democrats in legislature</i>	0.00032	(0.001)
<i>% females in legislature</i>	0.00036	(0.001)
<i>% black legislators</i>	-0.00444 ***	(0.001)
<i>Three-strikes law</i>	0.02420 **	(0.010)
<i>Trial court clearance rate</i>	0.00018	(0.000)
<i>Drug arrests/population</i>	-0.66831	(0.564)
<i>State GSP per capita</i>	-0.00203 ***	(0.001)
<i>Unemployment</i>	-0.00265	(0.003)
<i>Poverty rate</i>	-0.00258	(0.002)
<i>Black–white poverty ratio</i>	0.04886 ***	(0.011)
<i>% college degrees</i>	0.00050	(0.001)
<i>Black–white college degree</i>	-0.05320	(0.066)
<i>Divorce per 1,000 population</i>	-0.00500	(0.003)
<i>Felons per 100,000</i>	-0.00001	(0.000)
<i>Constant</i>	0.28794 ***	(0.099)
Long-run effects $1 - (\beta_2 / \gamma)$		0.095
Observations		1,141
R2		0.0933
Number of states		48

Note. Panel corrected standard errors in parentheses. DV = dependent variable; GSP = gross state product. *p < .1. **p < .05. ***p < .01.

Table 4 (on the next page) displays the results from two responsive models that incorporate a multiplicative term linking social capital and racial diversity and percent of the population that is black, respectively. This incline that the model is constructed to show the link between racial diversity and black group size moderate the effect that social capital has on incarcerations.

The vital principal interest is to review how racial diversity and black group control the impact social capital can thrust on incarceration rate. The analysis indicates that the cardinal effect of social capital is dependent on the racial context. Furthermore, in same conditions it is challenging to link social capital with any increased incarceration for blacks when compared to the data result with whites. The results also show that the influence of social capital is negative, yet statistically significant. Moreover, the outcome also shows an increase in social capital and again statistically significant when aligned with the black-white incarceration odds ratio.

Concluding Remarks

This study has attempted to expand upon and confirm the results of Hawes (2017) with an updated dataset from 1978 to 2015 to review the link between crime, incarceration and social capital across the U.S using longitudinal state-level data. The first update in the result is that social

capital is associated with a high incarceration rate but with a downward trend with a focus on African Americans. Furthermore, states with a higher proportion of African Americans experience the most substantial effect of social capital when analyzed with incarceration rates despite the control/other variables used in the model.

Table 4. Interactive Models: Social Capital, Racial Diversity, and Black Population.

	DV: ln(black–white prison odds ratio)	
Social capital	0.0142 (0.0334)	-0.0619** (0.0249)
Racial diversity	0.6254*** (0.2176)	0.5618*** (0.2093)
ln(% black)	-0.1063*** (0.0219)	-0.1488*** (0.0220)
Social Capital × Racial Diversity	0.1669 (0.1156)	— —
Social Capital × ln(% Black)	— —	0.0668*** (0.0112)
Total violent crime rate	0.0000 (0.0001)	0.0000 (0.0008)
Total property crime rate	0.0000 (0.0000)	0.0000 (0.0000)
Government ideology	0.0005 (0.0004)	0.0007* (0.0004)
% Democrats in legislature	0.0008* (0.0008)	0.0009 (0.0008)
% females in legislature	0.0014 (0.0019)	0.0007 (0.0020)
% black legislators	-0.01623*** (0.0030)	-0.00897*** (0.0029)
Three-strikes law	0.1430*** (0.0180)	0.1350*** (0.0168)
Trial court clearance rate	0.00064** (0.0002)	0.00051* (0.0003)
Drug arrests/population	-6.3837*** (1.0980)	-6.255*** (1.0892)
State GSP per capita	-0.0036* (0.0019)	-0.0052*** (0.0019)
Unemployment	-0.003 (0.0055)	-0.0044 (0.0058)
Poverty rate	-0.0172*** (0.0043)	-0.01551*** (0.0044)
Black–white poverty ratio	0.3283*** (0.0153)	0.3219*** (0.0150)
% college degrees	-0.0011 (0.0036)	-0.00281 (0.0037)
Black–white college ratio	-0.6939*** (0.1001)	-0.6725*** (0.0978)
Divorces per 1,000 population	-0.03474*** (0.0049)	-0.03351*** (0.0049)
Felons per 100,000	-0.00002** (0.0000)	-0.00491* (0.0000)
Constant	2.1509*** (0.1657)	2.3387*** (0.1637)
Observations	1,143	1,143
R2	0.58	0.58
Number of states	48	48

Note. Panel corrected standard errors in parentheses. DV = dependent variable; GSP = gross state product. *p < .1. **p < .05. ***p < .01.

Therefore, as an environment becomes more diverse, social capital fortifies racially earmarked social controls. Some fundamental critical recommendations for future research would be to analyze the result from the viewpoint of other ethnic groups. More in-depth analysis can be done with the policy of criminal justice to expand on high incarceration rate with social capital. The heavily privatized prison

industry does not leave much room for significant policy revisions and improvements unless it becomes widely recognized that the laws are encouraging incarceration rates in general, and particularly impacting the African American community in a more intensive manner.

References

- Adam, Frane, and Borut Roncevi. 2003. "Social Science Information." *Social Capital: Recent Debates and Research Trends* 155-183.
- Alba, R., and V. Nee. 2003. *Remaking the American mainstream: Assimilation and contemporary immigration*. Cambridge: Harvard University Press.
- Beck, Nathaniel, and Jonathan N. Katz. 1995. "What to Do (and Not to Do) with Time-Series Cross-Section Data." *American Political Science Review* 34-47.
- Becker, G. 1968. "Crime and punishment: an economic approach." *Journal of Political Economy* 169–217.
- Berry, William D, Fording C Richard, Ringquist J Evan, Hanson L Russell, and Klarner Carl. 2013. "A New Measure of State Government Ideology, and Evidence that Both the New Measure and an Old Measure Are Valid." *State Politics & Policy Quarterly* 164–82.
- Bobo, L. D. 2011. "Somewhere between Jim Crow & post-racialism: Reflections on the racial divide." *Daedalus* 111–136.
- Cantor, D, and K. Land. 1985. "Unemployment and crime rates in the post World War II United States: a theoretical and empirical analysis." *American Sociological Review* 317–332.
- Carson, E Ann, and E. Anderson. 2016. "Prisoners in 2015." *Bureau of Justice Statistics* 35.
- Cohen, Lawrence E, and Marcus Felson. 1979. "Social change and crime rate trends: A routine activities approach." *American Sociological Review* 44: 588–607.
- Coleman, James S. 2000. *Foundations of social theory*. Cambridge, MA: Belknap Press of Harvard Univ. Press.
- Culp, Richard. 2009. "Prison Privatization Turns Twenty-Five: The Evolution of a Mature Private Prison Industry in the United States." SSRN: <https://ssrn.com/abstract=1462792> 38.
- DeFina, Robert, and Lance Hannon. 2013. "The Impact of Mass Incarceration on Poverty." *SAGE Publications* 562-586.
- Fosten, Gerald K. 2016. "Perspectives on Social Inequality, Criminal Justice, and Race in the United States: A Critical Analysis." *The Journal of Pan African Studies* 20.
- Hawes, Daniel P. 2017. "Social Capital, Racial Context, and Incarcerations in the American States." *Sage publication* 339-417.
- Hero, Rodney E. 2003. "Multiple Theoretical Traditions in American Politics and Racial Policy Inequality." *Political Research Quarterly* 56:401–408.
- Hero, Rodney E. 2007. *Racial Diversity and Social Capital*. New York: Cambridge University Press.
- Hirschman, C. 2005. "Immigration and the American century." *Demography* 595–620.
- Hochschild, Jennifer Lee, Vesla M Weaver, and Traci R Burch. 2012. *Creating a new racial order: How immigration multiracialism, genomics, and the young can remake race in America*. Princeton, NJ: Princeton University Press.
- Lee, J, and F. D. Bean. 2010. "America's changing color lines: Race/ethnicity, immigration, and multiracial identification." *Annual Review of Sociology* 221–242.
- Marvell, T, and C. Moody. 2001. "The lethal effects of three-strikes laws." *Journal of Legal Studies* 89–106.
- Mertens, Donna M. 2009. "Transformative research and evaluation." In *Transformative research and evaluation*, by Donna M. Mertens, 10. New York: Guilford Press.
- Nguyen, Minh, and Hoa Nguyen. 2010. "Stata Module: Estimates of System of Regression Equations with Unbalanced Panel Data and Random Effects." *Working Paper*. <http://fmwww.bc.edu/RePEc/bocode/x/xtsur.html>.
- Pettit, Becky, and Bruce Western. 2004. "Mass imprisonment and the life course: Race and class inequality in U.S. incarceration." *American Sociological Review* 151–69.
- Putnam, Robert D. 2000. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster.
- Richard, Kish J, and Amy F Lipton. 2013. "Do Private prisons really offer savings Compared with their Public Counterparts?" *Blackwell Publishing* 15.
- Smith, Kevin B. 1997. "Explaining Variation in State-Level Homicide Rates: Does Crime Policy Pay?" *The Journal of Politics* 59: 350–367.
- Taylor, Ralph B. 1996. "Neighborhood responses to disorder and local attachments: The systemic model of attachment, social disorganization, and neighborhood use value." *Sociological* 41-74.
- Taylor, Ralph B. 1997. "Social order and disorder of street blocks and neighborhoods: Ecology, microecology, and the systemic model of social disorganization." *Journal of Research in Crime and Delinquency* 113-115.
- Tienda, M. 2002. "Demography and the social contract." *Demography* 587–616.
- U.S. Census Bureau. 2012. <http://www.census.gov/population/projections/data/national/2012.html>.
- Western, Bruce. 2006. *Punishment and Inequality in America*. Russell Sage Foundation.
- Western, Bruce, and Becky Pettit. 2010. "Incarceration & social inequality." *Daedalus* 8-19.
- Yates, Jeff, and Fording Richard. 2005. "Politics and State Punitiveness in Black and White." *Journal of Politics* 1099–121.

Creating and Developing Competition in the Banking Sector of the Republic of Serbia

Ivana Marinović Matović

Faculty of Mechanical Engineering, University of Niš, Niš, Serbia, ivana.m.matovic@gmail.com

ABSTRACT: The significance of the banking sector in the Republic of Serbia has grown over the last 20 years, as a result of a huge increase of market importance and, consequently, deregulation in this and other sectors. Deregulation and liberalization processes are followed by the processes of integration (mergers and acquisitions) of banks. The banking sector in the Republic of Serbia is characterized by a relatively large number of banks. Competition in general, and especially in the banking sector, is complicated and difficult to measure, for which there are no generally accepted and best indicators. Using the Concentration Ratio index (CR) and Herfindahl-Hirschman index (HHI), the author tries to determine the degree of concentration, for the purpose of evaluation the competition in the banking sector of the Republic of Serbia. The degree of concentration was checked on the basis of the financial statements of banks in the Republic of Serbia in the period 2008-2017. The results of the research will point to the current state and the best perspectives for creating and developing competitive conditions in the banking sector of the Republic of Serbia.

KEYWORDS: Banking sector, Republic of Serbia, concentration, competition, CR index, HHI index

Introduction

The level of competition present in a particular market is of great importance for the efficient functioning of the economic system. The national economic policy should be aimed at protecting and strengthening competition in all market segments. This is particularly important for the banking sector, where the level of competition is usually high.

In the last few decades, the scientific interest in analyzing the development of competition in the banking sector has grown considerably. One of the reasons is the importance of the banking sector in developing countries, which is linked to a huge increase of the market role and deregulation. In parallel, in the developed countries, the processes of deregulation and liberalization of the banking sector were accompanied by the processes of mergers and acquisitions of banks, which showed the need for an increased degree of market regulation in the domain of competition. Competition in the banking sector is characterized by high intensity and great diversity of forms and methods, and has an extremely important role, above all in terms of the level of banking interest rates. Low level of competition leads to high interest rates, that is, to the occurrence caused by various forms of imperfect competition such as monopoly and oligopoly. Therefore, the monitoring of the competition level in the banking sector is regulated, since it is necessary to provide a competitive environment for creating an efficient market system.

The banking sector in the Republic of Serbia has undergone significant changes since 2000. The banking sector transition in the Republic of Serbia started in 2001. In the period of 2 years, the number of banks halved in the processes of acquisition, privatization and liquidation. Instead of the 90 banks operating within the banking sector during 2001, there were 40 commercial banks left at the end of 2003. According to available sources from the National Bank of Serbia, the banking sector of the Republic of Serbia in 2017 consists of 29 commercial banks (National Bank of Serbia 2018), none of which holding a share that would significantly exceed the shares of others. For the Republic of Serbia, this is a significant number of banks, viewed from the perspective of competition development. The entry of foreign banks and the processes of deregulation and liberalization have also raised the level of competition in the banking sector of the Republic of Serbia.

The assessment of the competition development in the banking sector should not be based on subjective assessments and analyzes, but the level of competition should be determined using mathematical models. An analysis of the concentration level of the banking sector in the Republic

of Serbia can give an insight into the degree of competition in this market. The optimal and efficient level of competition in the banking sector is necessary to ensure a competitive environment in all segments of the market economy.

The market concentration indicators in the banking sector

Depending on the purpose of the research, market concentration can be measured by numerous indicators. Authors Bikker & Haff (Bikker & Haff 2000) have in theory synthesized several concentration indicators: Concentration Ratio, Herfindahl-Hirschman index, Entropy measure, Lorenz curve, Gini coefficient. Table 1 gives an overview of the above mentioned market concentration indicators, of their values' intervals, as well as explanations of the obtained values.

Table 1. Market concentration indicators

Concentration Ratio	$1/n \leq Cr \leq 1$	The index value approaches 0 when a large number of equal entities are present on the market, and the value of 1 takes place in a situation where the sum of "r" entities constitutes the entire industry
Herfindahl-Hirschman index	$1/n \leq HHI \leq 1$	Higher index value suggests a higher concentration. In the case of a monopoly, the value is equal to 10,000
Entropy measure	$0 \leq E \leq \log n$	A higher entropy value indicates a lower concentration. In the case of monopoly, the index value is equal to 0
Lorenz curve	-	It shows the distribution of the total to the units of the series. The concentration is greater if the curve is further from the equal distribution
Gini coefficient	$0 \leq G \leq 1$	The greater the value, the concentration is higher. In the event of complete inequality, the value is equal to 1

Source: Dumičić, K., Pavković, A., Akalović-Antić, J. (2012). *Measurement of concentration in banking in the Republic of Croatia, Proceedings of the Faculty of Economics in Zagreb, X, no.II, p.121*

Concentration Ratio (CR) is the indicator that is most often used when measuring concentration in the banking sector. It shows the sum of the participation of „n“ of the largest banks in the market, or how much of the total market is covered by a group of „n“ banks. The formula for calculating this indicator can be represented by the following expression (Kostić 2009):

$$CR_n = S1 + S2 + S3 \dots S_n = \sum_{i=1}^n S_i$$

n - number of banks whose share is calculated

S_i - share of the bank „i“ on the market within a set of „n“ banks

The participation of an individual bank on the market can be measured using the following formula (Kostić 2009):

$$S_i = q_i / Q \cdot 100 (\%)$$

q_i - offer of the bank „i“

Q - total offer of the whole banking sector

The number of banks participating in the concentration analysis using this index is not strictly defined, but it usually ranges between 4 and 10. In the literature, the most commonly encountered is the analysis of 5 banks, which is why this indicator is often referred to as the CR5, i.e. the concentration of the five leading banks (Iuga 2013). The concentration values range from 0 to 1. If the value of the ratio is closer to 0, there is a large number of banks with evenly distributed shares in the market (a larger number of smaller banks). In other words, there is a high degree of competition in a banking sector, since the participation of „n“ largest banks is of relatively low importance. Conversely, if the value of the concentration index is close to 1, there is a high degree of concentration on the market. For the sake of easier interpretation, the concentration ratio is shown in percentages, and the degree of concentration for CR4 can be interpreted in the manner shown in Table 2 (Stojanović et al. 2010):

Table 2. CR4 concentration level

CR4 < 25%	Unconcentrated markets
25% < CR4 < 50%	Moderately concentrated markets
CR4 > 50%	Highly concentrated markets

Source: Stojanović, B., Stanišić, T., Veličković, M. (2010), *The problem of protecting competition in retail in Serbia, School of Business, Vol.3, p.60*

The Concentration ratio belongs to the group of partial indicators, and its advantage is the simplicity of computation. It is not necessary to know the value for each bank, but it is enough to monitor the movement of the indicators for the largest banks. At the same time, this is a disadvantage, since the calculation does not include all market participants. Another significant disadvantage of this indicator usage is the fact that it does not show the dispersion of market shares within the set of observed banks, which often leads to wrong conclusions about the level of market concentration.

For this reason it is desirable to include several indicators of the concentration level in the analysis. For this purpose, the Herfindahl-Hirschman Index (HHI) is most commonly used. Herfindahl-Hirschman index is a collective indicator of concentration, and is considered the most precise indicator of the level of concentration, because it involves the participation of all banks and takes into account the size of market share between competitors.

The value of Herfindahl-Hirschman index is the sum of the squares of all banks' market share in the observed banking market. By squaring the market share of each bank on the market, the importance is given to those banks that have a higher market share. For this reason, it can be said that more asymmetrical markets have higher values of HHI index (Kostić 2009).

The formula for calculating the Herfindahl-Hirschman index can be mathematically presented in the following way (Kostić 2008):

$$HHI = S_1^2 + S_2^2 + S_3^2 + \dots + S_n^2 = \sum_{i=1}^n S_i^2$$

$i = 1, \dots, n$ - the total number of banks in the market being analyzed

S_i - share of the bank „i“ within a set of „n“ banks

The HHI index values range from 0 to 10,000. If the value of HHI is lower than 1,000, it is an unconcentrated (low concentrated) market. If HHI ranges between 1,000 and 1,800, this is a medium-sized market. The HHI value between 1,800 and 2,600 represent a highly concentrated market. If HHI is between 2,600 and 10,000, it is a very high concentrated market. Monopoly concentration exists if the value of the HHI index is 10,000 (Begović et al. 2002).

The main advantage of using the Herfindahl-Hirschman index in relation to the Concentration ratio is the fact that the market share of all banks in the observed market is taken into consideration. On the other hand, the biggest deficiency of this model is the fact that the quadrant of participation below 1% practically have no impact on the overall indicator value. This means that HHI index practically ignores the influence of banks with low market share on the development of competition. However, these deficiencies do not represent a significant obstacle to the application of the Herfindahl-Hirschman index, so today it is considered a very reliable indicator of market concentration on all market types (Lipczynski & Wilson 2001).

Analysis of concentration and competition in the banking sector of the Republic of Serbia

Unlike some empirical researches that divide the banking sector into small, medium and large banks (Bikker & Haaf 2002), the banking sector of the Republic of Serbia can be viewed as unity. Regardless of the relatively large number of banks, the banking market in the Republic of Serbia is scarce, according to all relevant indicators: total assets of banks as of December 31, 2017. amounted to 3.369 billion dinars (\$33,991 million), total capital was equal to 667 billion dinars (\$6,730 million) (*National Bank of Serbia 2018*). Therefore, the division of banking sector would not be appropriate for any

criterion. The analysis of concentration levels in the banking sector of the Republic of Serbia in this paper covers the period from 2008 to 2017. The measurement was performed using the data related to the value of the banks' balance sheet. When it comes to analyzing the level of concentration, it is important to take into account the number of banks that operated in the Serbian market in the observed period. The number of commercial banks operating in the Republic of Serbia in the period 2008-2017 is given in Table 3.

Table 3. Number of banks in the banking sector of the Republic of Serbia in the period 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of banks	34	34	33	33	32	30	29	30	30	29

*Source: Autonomous work of the author on the basis of the National Bank of Serbia
(National Bank of Serbia, 2009-2018)*

The first step of the research is the calculation of the CR5 indicator. The CR5 Concentration ratio is calculated based on the value of the balance sums of the five largest banks operating in the Republic of Serbia. These are Banca Intesa AD, Komercijalna banka AD, Unicredit Bank Serbia AD, Societe Generale Bank Serbia AD and Raiffeisen Bank AD. The obtained CR5 index values are shown in Table 4.

Table 4. Coefficient CR5 in the banking sector of the Republic of Serbia in the period 2008-2017

Year	Total assets of the top 5 banks (RSD bills)	Total banking sector assets (RSD bills)	CR5 (%)
2008	744	1777	41,9
2009	943	2160	43,7
2010	1097	2534	43,3
2011	1250	2650	47,2
2012	1384	2880	48,1
2013	1469	2846	51,6
2014	1591	2969	53,6
2015	1653	3048	54,2
2016	1773	3242	54,7
2017	1850	3369	54,9

*Source: Autonomous work of the author on the basis of the National Bank of Serbia
(National Bank of Serbia, 2009-2018)*

The average value of the CR5 coefficient testifies that the banking sector in the Republic of Serbia can be described as moderately concentrated. However, starting from 2008, there is a noticeable growth trend of this coefficient, which breaks the 50% limit in 2013, which puts the Serbian banking sector in the ranking of highly concentrated. Therefore, it can be concluded that the number of clients in the largest five banks is so great that it threatens to endanger competition in the market.

In the second step of the analysis, the values of the Herfindahl-Hirschman index are calculated. The values of HHI index, which show the sum of the squares of all banks' participation in the overall banking sector in the Republic of Serbia, are shown in Table 5.

Table 5. HHI index in the banking sector of the Republic of Serbia in the period 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
HHI	629	636	629	660	678	741	794	796	813	813

Source: Autonomous work of the author on the basis of the National Bank of Serbia

(National Bank of Serbia, 2009-2018)

The value of the Herfindahl-Hirschman index indicates a lack of concentration in the banking sector of the Republic of Serbia. Although in the observed period there is a growth trend, the value of this index in no case exceeds 1,000 points, which places the banking sector in the rank of unconcentrated. The increase in the value of the HHI index was also induced by the decrease in the number of banks in the market, which is predominantly due to the low intensity of the Serbian economy development.

If we present all the established values, i.e. the number of banks, the CR5 coefficient values and the values of the HHI index, we can conclude that it is noticeable that in the observed ten-year period, parallel to the decrease in the number of banks, the concentration of the banking sector increased (Figure 1).

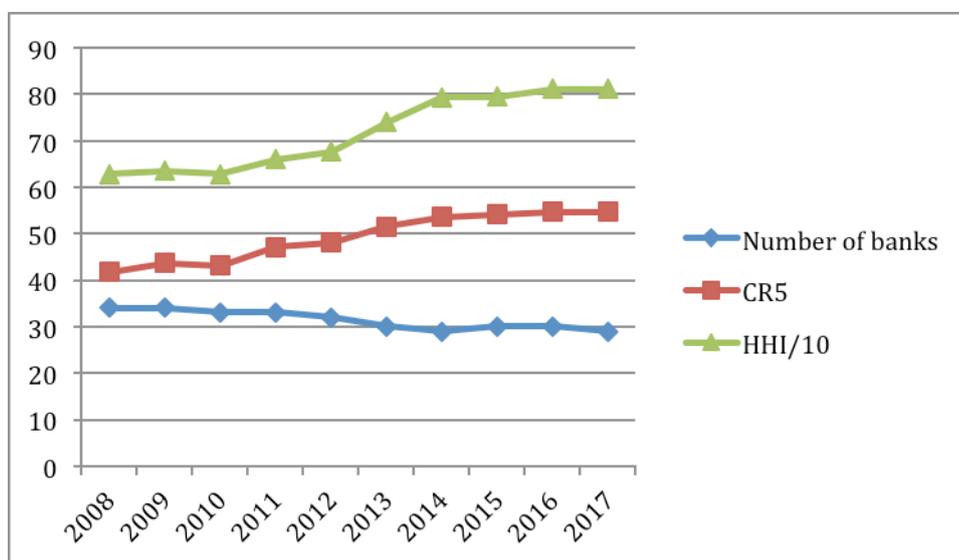


Figure 1. Presentation of trends in the concentration and number of commercial banks in the Republic of Serbia in the period 2008-2017

Source: Autonomous work of the author on the basis of the National Bank of Serbia

(National Bank of Serbia, 2009-2018)

Conclusion

The banking sector, where most of the national money is concentrated, should be responsible for its economic allocation. In recent years, the activity of commercial banks in the Republic of Serbia has grown, despite a recession whose effects are still strong in other parts of the national economy. Competition in the banking sector is desirable for the economy as a whole, and for that purpose free market access is protected by regulations aimed at removing, preventing and sanctioning those forms of banks' behavior that can lead to significant monopolistic operations. The primary goal of the legal framework, that protects free market access, is to secure the lowest price on the market for a particular product or service, as well as protecting smaller market participants, suppressing inflation, preservation of social and national interests, and the like. Competition in the banking sector stimulates efficiency, supply and quality of diversified products and services, reduces the difference between active and passive interest rates, which improves long-term development. In order to show the state of concentration and competition in the banking sector of the Republic of Serbia, a statistical analysis of the various variables measured by concentration in the banking sector was conducted. The following indicators were used: Concentration ratio and Herfindahl-Hirschman index. Based on the conducted

empirical research, several conclusions can be made. First of all, the values of the CR5 concentration indicator show that the banking market in Serbia is relatively limited, which means that large banks, which have numerous comparative advantages over smaller banks, threaten to take a market share that could jeopardize the development of competition in the future. However, the values of the HHI index testify to the fact that a large number of banks still operate in the market, whose distribution of market share provides a low concentration of the banking market, in total.

Second, the market conditions that prevail in the banking sector in the Republic of Serbia significantly influence the concentration values obtained. This primarily relates to the fact that the Serbian banking sector shows signs of saturation, which is confirmed by the decrease in the number of banks operating on the market. Factors such as the limited and relatively small number of clients, in relation to the total number of banks, the insufficiently dynamic economic growth, and the effects of the global economic crisis affecting many aspects of the economy, influence the prevention of the competition development in the banking sector of the Republic of Serbia.

Bearing in mind the trend of a decrease in the number of banks in the market and the prognosis of macroeconomic trends, based on the calculated values of the concentration indicators, one can expect a further trend of the consolidation of the banking sector in the Republic of Serbia (through mergers and acquisitions), which will increase the importance of analyzing and monitoring its concentration level in the future.

References

- Begović, B., Bukvić, R., Mijatović, B., Paunović, M., Sepi, R. Hiber, D. 2002. *Antimonopoly Policy in the FR Yugoslavia*. Center for Liberal-Democratic Studies, Belgrade.
- Bikker, J.A., Haaf, K. 2000. "Measures of competition and concentration in the banking industry: a review of literature." De Nederlandsche Bank, Research series supervision, No. 27.
- Bikker, J.A., Haaf, K. 2002. Competition, concentration and their relationship: An empirical analysis of the banking industry." *Journal of Banking & Finance* 26 (11): 2191–2214.
- Dumičić, K., Pavković, A., Akalović-Antić, J. 2012. "Measurement of concentration in banking in the Republic of Croatia." *Proceedings of the Faculty of Economics in Zagreb*, X, no.II, p.121.
- Iuga, I. 2013. "Analysis of the Banking System's concentration degree in EU Countries." *Annales Universitatis Apulensis Series Oeconomica* 15(1):184-193.
- Kostić, M. 2008. "Measuring branch concentration." *Economic horizons* 10(1): 95.
- Kostić, M. 2009. "Analysis of supply concentration in the insurance sector in Serbia." *Industry* 37(2): 59-77.
- Lipczynski, J., Wilson J. 2001. *Industrial Organisation – An Analysis of Competitive Markets*. Harlow, UK: Prentice Hall.
- National Bank of Serbia 2009. Banking Sector in Serbia, Report for IV quarter 2008, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_08.pdf (accessed 18.10.2018).
- National Bank of Serbia 2010. Banking Sector in Serbia, Report for IV quarter 2009, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_09.pdf (accessed 18.10.2018).
- National Bank of Serbia 2011. Banking Sector in Serbia, Report for IV quarter 2010, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_10.pdf (accessed 18.10.2018).
- National Bank of Serbia 2012. Banking Sector in Serbia, Report for IV quarter 2011, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_11.pdf (accessed 18.10.2018).
- National Bank of Serbia 2013. Banking Sector in Serbia, Report for IV quarter 2012, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_12.pdf (accessed 18.10.2018).
- National Bank of Serbia 2014. Banking Sector in Serbia, Report for IV quarter 2013, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_13.pdf (accessed 18.10.2018).
- National Bank of Serbia 2015. Banking Sector in Serbia, Report for IV quarter 2014, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_14.pdf (accessed 18.10.2018).
- National Bank of Serbia 2016. Banking Sector in Serbia, Report for IV quarter 2015, http://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_15.pdf (accessed 18.10.2018).
- National Bank of Serbia 2017. Banking Sector in Serbia, Report for IV quarter 2016, https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_16.pdf (accessed 18.10.2018).
- National Bank of Serbia 2018. Banking Sector in Serbia, Report for IV quarter 2017 https://www.nbs.rs/internet/latinica/55/55_4/kvartalni_izvestaj_IV_17.pdf (accessed 18.10.2018.).
- Stojanović, B., Stanišić, T., Veličković, M. 2010. "The problem of protecting competition in retail in Serbia." *School of Business*, Vol. 3, p. 60.

The Impact of Changes in Fuel Prices on Inflation and Economic Growth in South Africa

Daniel Francois Meyer

School of Economics, North-West University, Vanderbijlpark, South Africa, Daniel.meyer@nwu.ac.za

ABSTRACT: From a cost-push inflation point of view, the fuel energy sector plays a significant role in price stability and production costs. This sector has been volatile over the last decade, impacting on global economic stability. In South Africa, which is a fuel importer, fuel prices have been rising at an alarming rate of 21 percent since the beginning of 2018, causing inflation pressure within a low growth environment. The objective of this study was to analyse the impact of changes in fuel prices on inflation and economic growth in South Africa as a proxy for fuel importing developing countries. This study followed a quantitative research approach with time series data from 2001 to 2018. The impact of changes in the fuel price on inflation and economic growth were analysed by means of the Johansen cointegration and Granger causality econometric models. The results indicated both long and short-run relationships between the variables. The Granger causality tests indicated that causality is from changes in fuel prices to economic output and inflation. The results of the study could be used in monetary and fiscal policy, although not much control regarding the changes of the fuel price exists except for reduction in levies as a direct method of taxation.

KEYWORDS: Economic growth, fuel prices, inflation, South Africa

Introduction

Since World War II, fuel price increases and fluctuations have had major impacts from a supply side on the global economy. Fuel price shocks have significant impacts on most global economies, for both developed and developing countries (Cunado & Perez de Gracia 2005). Fuel as an energy source, still plays an undisputed significant role in the global economy. Fuel price changes affect global energy markets and the economy, including all sectors (Katircioglu, Sertoglu, Candemir & Mercan 2015). Rapid increases in fuel prices have preceded all but one of the global recessions since World War II (Brown & Yucel 2002). In terms of this study, the term “fuel” is used for similar terms such as oil, gasoline, petrol and diesel.

Current global trends regarding fuel prices, in this case Brent crude oil prices, indicates instability. For the period since the financial crises in 2008 to 2018, the prices changed drastically. Brent crude oil sold for \$40 per barrel in December 2008, increasing to \$126 per barrel in March 2012. In January 2016 however the price reached a record low of only \$30.5 per barrel, but since then has recovered to a price of \$81 per barrel in September 2018 (Macrotrends 2018). This volatility also affects fuel (petrol) prices in South Africa which is a fuel importing developing country. Figure 1 indicates fuel prices from 2012 to 2018 in South Africa. Fuel prices has increased by 40 percent over the period. Fuel prices also increased significantly from 2017 to 2018 by more than 21 percent (SAPIA 2018). This increase has resulted in rising inflation, although the country is experiencing low growth of below 1 percent over the same period. Due to this phenomenon of rising fuel prices leading to cost-push inflation and low growth, this study provides interesting insight on the effect of fuel price changes in the South African economy, which is a prominent developing country. As far as it could be established, no recent study has been conducted analysing this phenomenon. The main objective of this study is therefore to determine the extent of the impact of changes in the fuel price on macro-economic variables including economic growth and inflation in a fuel importing developing country.

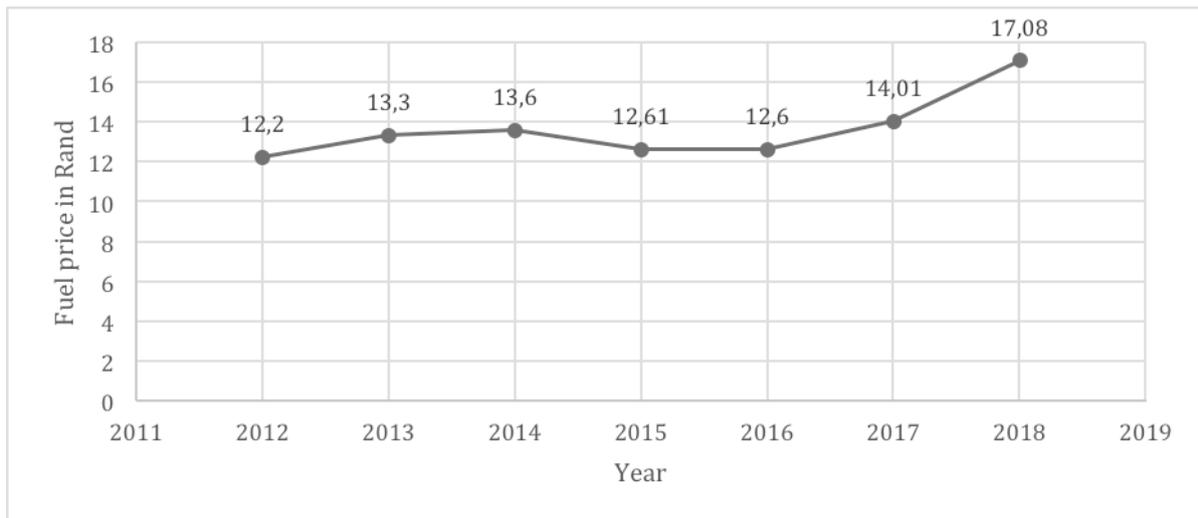


Figure 1. Fuel price trends in South Africa

Source: SAPIA, 2018

Literature review

From a theoretical point of view, changes in the fuel price has an impact on the economy. This relationship between the fuel price and the economy could be classified as a non-linear relationship. According to Cunado and Perez de Gracia (2005) this non-linear relationship is established when a fuel price shock leads to a decrease in aggregate demand in the economy due to general price increases and rising inflation leading to a decrease in real income and demand diminish. From the supply side, production costs rise with fuel price increases leading to reduction in aggregate supply, ultimately leading to less output with will affect labour and capital.

A significant body of academic literature indicates the negative impact of the increase in fuel prices or sudden shocks in the price of fuel on economic growth. The importance of increasing fuel prices are listed by Tang, Wu & Zhang 2010, which state that continuous rising fuel prices are in most cases an indication of an imminent recession; while Brown and Yücel (2002) state that rapid rising fuel prices preceded all but one of the recessions since World War II. An increase in fuel prices in most cases have a negative impact on output, production cost and inflation, although the strength of the impact is different depending on the region and other economic factors (Huang, Hwang, & Peng 2005; Cologni & Manera 2008).

According to Brown and Yücel (2002), and from a theoretical point of view, changes in the fuel price has a number of negative impacts on the economy of fuel importing countries which could include: supply-side impact resulting in cost-push inflation pressure; increased production costs; negative impact on consumer spending; negative impact on the country's trade surplus; changes in money demand and impact on interest rates and monetary policy; market uncertainty and volatile macro- economic environment. A fuel price increase presents possible inflationary shocks in the economy. Research is undecided on the level of the impact on inflation (Lescaroux & Mignon 2008; Hooker 2002; Barsky & Kilian 2004; LeBlanc & Chinn 2004).

Tang, Wu & Zhang (2010), analysed the relationship between the fuel price, output, investment and interest rates in China from 1998 to 2008. The results indicate that increases in the fuel price have both a negative a long and short-run impact on output and investment, but have a positive relationship with inflation and interest rates. Results also show that output is negatively affected by fuel price increases and inflation. The impact on the short-run is quantified as follows: a 1 percentage increase in the fuel price could lead to a decrease in economic output of 0.38 percent. Du and Wei (2010) also analysed the situation in China from 1995 to 2008. Major findings are that economic growth and inflation is significantly affected by fuel price changes and the impact is non-linear. Causality results indicate that fuel prices causes changes in economic growth as well as in

inflation and not vice versa. Cunado and Perez de Gracia (2005) analysed the impact of fuel price increases on economic activity and inflation in six Asian countries from 1975 to 2002. Results indicate that the fuel price has significant negative impacts on economic growth and inflation, but mostly on the short-run as no long run relationship was detected. Granger causality (short-run analysis) tests found that fuel price shocks affects economic activities and fuel price shocks also affect inflation rates. Also for Asian countries (Japan, Korea, India and Indonesia), Cunado, Jo and Perez de Gracia (2015), analysed fuel price shocks from the period 1997 to 2014, results indicate that fuel supply shocks do not have a significant impact on economic output in the Asian countries. Chang, Jha, Fernandez, and Jam'an (2011) analysed the impact of fuel prices changes on macro-economic variables such as GDP, inflation and unemployment in 17 Asian countries. Fuel price increases had a negative impact on most of the Asian countries on the short-run. Chang and Wong (2003) analysed the impact of fuel price increases on the Singapore economy from 1978 to 2000. Results indicate that fuel price increases has an adverse effect on economic activities, but the impact on variables such as GDP, inflation and employment is limited and marginal.

Katircioglu, Sertoglu, Candemir and Mercan (2015) analysed the impact of fuel price changes on macro-economic performance in 26 OECD countries (mostly developed countries) from 1980 to 2011. The results indicate a long-run relationship between variables and that the fuel price has a statistically negative impact on GDP, inflation and employment. Papapetrou (2011) tested the relationship in Greece and found that fuel prices significantly affects economic output and employment. Lardic and Mignon (2006) analysed the relationship in a number of European countries and also found that fuel price increases negatively impacted in GDP on the long and short-run and that the fuel price also affected inflation and employment in the region. Roeger (2005), in a DSGE model analysis of European countries, found short and long-run statistical significant impacts of fuel price shocks on economic output and inflation. The impact on GDP was mostly negative with a coefficient of -0.5 percent on the short-run and even a -1 percent impact over the long-run.

Cavalcanti and Jalles (2013) studied Brazil and US regarding the impact of fuel prices on the macro-economy. It was found for both countries, fuel price increases had a negative impact on GDP and a positive impact on inflation. Cologni and Manera (2008), analysed the relationship between changes in fuel prices, inflation and interest rates in the G-7 countries from 1980 to 2003. Results of the VAR analysis include that fuel price changes have an impact on all the countries involved. Inflation pressure is then translated to increased interest rates through monetary policy impacts. Peersman and Van Robays (2012) analysed in impact of fuel price shocks on industrialized countries from 1986 to 2010. The main results from the study are that results depend on the reasons for the price shock. If oil prices rise due to growth in global economic growth and demand, rising fuel prices resulted in decline in GDP and an increase in inflation. Fuel exporting countries are however not affected by such increases.

Korhonen and Ledyeva (2010) analysed both fuel exporting and fuel importing countries regarding the impact of fuel price increases on GDP. It was found that for Russia, a fuel exporting country, fuel price increases positively supported GDP growth. On the other hand, for countries such as Japan, US, China, Finland, Germany and the UK, fuel price increase had a negative impact on GDP. Lescaroux and Mignon (2008) analysed the influence of fuel prices on macro-economic variables in 36 countries which included fuel importing and exporting countries. Generally long-run relationships were found between fuel price increases and other economic variables with fuel price increases in all cases having negative impact on GDP, while on the short-run, Granger causality indicated that causality runs from fuel prices to other variables. The fuel price plays a major role in most of the importing countries. In Nigeria which is an oil-exporting country, Iwayemi and Fowowe (2011) studied the same relationships in the economy from 1985 to 2007. They found that fuel price shocks do not have a significant impact on other macro-economic variables in Nigeria.

Carruth, Hooker, and Oswald (2010), investigated the relationship between fuel prices, interest rates and unemployment in Turkey as an emerging economy. The results include a long-run relationship between variables, with fuel price increases having a negative impact on employment.

Nkomo (2009) analysed the impact of rising fuel prices in South Africa and states that the country has high levels of dependence on the import of crude oil for its energy needs. This exposes the country to price shocks, as crude oil prices increase and a possible weakening currency. Higher fuel prices is found to undermine economic growth and the dependence on international fuel prices leaves the country vulnerable to factors beyond the control of economic planners. In summary, rising fuel prices negative impacts on economies of especially fuel importing countries, with different levels and extent of impacts. While the impact on fuel exporting countries is mostly positive. The focus of this study is however on the impact in a fuel importing developing country.

Methodology

The study focuses on South Africa as a fuel importing country, and as a proxy for emerging developing countries, analysing the impact of changes in the fuel price on macro-economic variables. The study follows a quantitative approach based on a dataset of 70 quarterly observations from quarter one of 2001 to quarter two of 2018. 2001 was selected as the starting date due to availability of data. Variables included in the study are the price of fuel in South African currency (Rand); GDP at constant prices and CPI. The data was derived from Quantec (2018) data series for the fuel prices and from the South African Reserve Bank (SARB) for GDP and CPI (inflation) data. The main objective of the study was to determine the impact of fuel price changes on economic activity, measured as GDP and also on the inflation rate in South Africa. Two different equations are used as follows to achieve the objective:

$$\text{LINF} = f(\text{LFUEL}, \text{LGDP}) \quad (1)$$

$$\text{LGDP} = f(\text{LFUEL}, \text{LINF}) \quad (2)$$

Where: LINF is the natural logarithm of the inflation rate, LGDP is the natural logarithm of natural logarithm of the real gross domestic product and LFUEL is the natural logarithm of the fuel price in Rand. All variables were converted to their natural logarithms for the adjustment of any likelihood of scale effect and to estimate growth or elasticities. The Vector Autoregressive model (VAR) is thus used in regressing the multivariate relationships into a finite-order structure as suggested by Sims (1980). Prior to conducting the analysis, the Augmented Dickey-Fuller (ADF) test was used to test the variables for stationarity or unit root. If the observed variables are found to be stationary, then the VAR model in Equations (1) and (2) are estimated. However, if all variables are found to be non-stationary then a cointegration test is estimated to determine whether a linear combination of such non-stationary variables is stationary. This is known as a cointegration test for a long-run relationship (Nielsen 2005). Johansen's multivariate co-integration method was used in testing the long-run relationship amongst the variables. The existence of cointegrating relationships between the variables further implies undertaking the Vector Error Correction Model (VECM) (Kakes 2000). Alternatively, the study may proceed with the VAR model of the 1st differenced in case there are no co-integrating relationships. Preceding the interpretation of the VCM output, diagnostic tests are conducted to ensure that the model meets stochastic properties. Also Granger causality tests are estimated to determine the flow of impacts.

Results and Discussion

This section includes the results from the estimations and discussions of results compared to empirical findings from previous research. Figure 2 indicates the raw data for the three variables which were logged and differenced. The impact of the financial crises are clearly visible on all three sub-graphs for the period 2007 to 2009, with recovery during 2009 towards 2010. GDP has steadily increased from 2001 to 2007, with a slight recovery in 2010 after the financial crises. Since 2011 however, the GDP trend is negative due to low growth and technical recessions. The fuel price is more volatile than changes in GDP, with a number of periods where the price have spiked and decreased for example during 2003 to 2003, 2007 to 2009 and 2013 to 2015. Lastly, the CPI (inflation rate) graph indicates significant economic cycles from 2002 to 2003 where a recession

affected economic activity, with a recovery from 2004 to 2007, the financial crises from 2007 to 2009 and the constant low economic activity and growth period from 2010 to 2018.

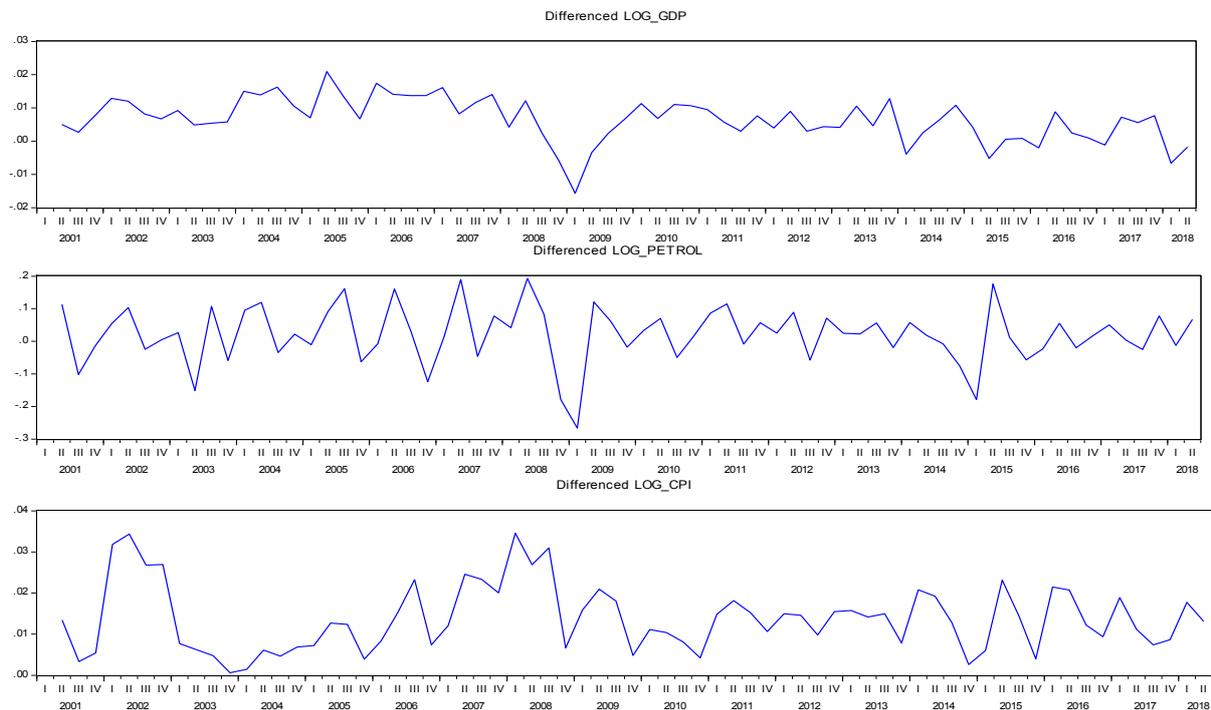


Figure 2. Trends analysis

Table 1 reports unit root test results of the Augmented Dickey-Fuller test. At levels, all variables are non-stationary as the p-values are greater than a 0.05 level of significance. Therefore, the null hypothesis of no stationarity is accepted. This means that the series exhibits a unit root. At first difference, all variables are stationary as the p-values are less than 0.05 level of significance. The null hypothesis is rejected at first difference at 0.01 significance level. Therefore, all variables reached the same order of integration at I(1) or first difference. The proceeding step is a test for cointegrating vectors or long run relationship using the Johansen cointegration approach to test whether the variables are integrated in the long-run.

Table 1. Augmented Dickey-Fuller (ADF) Unity Root Test

Variables	Level: I(0)		First difference: I(1)		Order of integration result
	t-stat	P-value	t-stat	P-value	
LINF	-0.4335	0.9829	-3.7944	0.0048*	I(1)
LGDP	-2.6592	0.0865	-4.4613	0.0006*	I(1)
LFUEL	-1.0905	0.7152	-8.3038	0.0005*	I(1)

Note: * denotes P-value at 1% level of significance.

Prior to conducting the Johansen cointegration test, a lag order selection process was used to select and determine the number of lags to be used in this test, including the vector error correction model (VECM). The optimal lag selection was based on five selection criteria, namely; LR, FPE, AIC, SC and HQ, where all criteria reached the same conclusion of two (2) lags. Therefore, 2 lags were used in the Johansen co-integration test and VECM. Table 2 reports results for the Trace test and Max-Eigenvalue statistics in the Johansen cointegration test. Both tests show one co-integrating equation ($r \leq 1$) at 0.05 level of significance. Thus the null hypothesis of no co-integrating equation is rejected. This suggests that variables are co-integrated or that a long-run relationship exists within the series. Similar long-run results were also determined by Tang, Wu & Zhang (2010), Chang, Jha, Fernandez, and Jam'an (2011) and Lardic and Mignon (2006).

Table 2. Johansen co-integration test results

Ho: No of CE(s)	Trace Test			Maximum Eigen-value		
	Trace Statistic	T-critical value	P-values*	Max-Eigen Statistic	T-critical value	P-values*
None	39.5673	35.1927	0.0158*	22.9545	22.2996	0.0405*
At most 1	16.6128	20.2618	0.1476	11.2041	15.8921	0.2371
At most 2	5.4086	9.1645	0.2416	5.4086	9.1645	0.2416

Note: * denotes rejection of the hypothesis at the 0.05 level.

The existence of a cointegrating relationship between the selected variables explain the long-run equilibrium. The long-run relationships are expressed in Equation (3) and (4) as follows:

$$LINF_{t-1} = +2.3960 + 0.1534(LFUEL_{t-1}) + 0.4152(LGDP_{t-1}) \quad (3)$$

$$LGDP_{t-1} = -5.7670 - 0.3696(LFUEL_{t-1}) + 0.4079(LINF_{t-1}) \quad (4)$$

In the long-run (Equation 3), with inflation (LINF) as the dependent variable, fuel (LFUEL) and GDP (LGDP) both have significant and positive relationships with the dependent variable. This means that an increase in the fuel price level will have an increasing impact on inflation. As such, a one percent increase in the fuel price induces a 0.15 percent increase in inflation, while an increase in GDP growth leads to an even higher impact on inflation. In terms of equation (4), with GDP as the dependent variable, the fuel price as a negative impact on GDP while an increase in inflation as a positive impact on GDP on the long run. Table 3 captures the speed of adjustment of the short-run dynamics towards the suggested long-run relationship using the error correction term (ECT) (Magee 2013). All variables being cointegrated, VECM can be estimated to explain short-run disequilibrium adjustments towards the long-run equilibrium (Noumbissie & Mongale 2014). Therefore, it follows that a negative adjustment coefficient (error correction term) and a significant t-value are conditions in explaining short-run adjustments towards the long-run equilibrium (Mukhtar & Rasheed, 2010). The VECM output (Table 3) indicates that CointEq1 constitutes one significant equation which explain short-run adjustment towards the long-run equilibrium and that is LGDP. These results provide a robust set of items of evidence of error correction in the first co-integrating equation. LGDP has a negative coefficient and t-value of -4.2407. The variable is significant at 0.05 significance level. This suggests that the LGDP has a short-run relationship with LINF. Therefore, 1.4 percent of the disequilibrium in LGDP is corrected in each quarter. Further short-run results indicate that both the first and second lag in LFUEL has a positive significant impact on LINF; LGDP (second lag) has a positive impact on LFUEL; both first and second lag of changes in LINF have an impact on LFUEL; the second lag of LINF has a negative impact on LGDP; and change in LFUEL (lag 2) has a negative impact on LGDP.

Table 3. Vector Error Correction Model

Error Correction	D(LINF)	D(LFUEL)	D(LGDP)
CoinEq1	-0.004511 [-0.9940]	-0.01328 [-0.2802]	-0.0144 [-4.2407]*
D(LINF(-1))	[4.7193]*	[4.0126]*	[0.9953]
D(LINF(-2))	[0.6199]	[4.1783]*	[-3.4759]*
D(LFUEL(-1))	[2.3140]*	[-3.2876]*	[0.1980]
D(LFUEL(-2))	[3.7815]*	[-1.5911]	[-2.2298]*
D(LGDP(-1))	[1.4038]	[2.9494]*	[2.6427]*
D(LGDP(-2))	[0.8991]	[-0.9519]	[-1.0560]

Note: T-value in [], * indicates significance at 5% level.

To confirm these short-run results, Granger causality tests, were conducted and the results are listed in Table 4. Granger causality tests indicate bi-directional causality between inflation and economic growth, and more importantly it is confirmed that changes in the fuel price causes changes in inflation as well as changes in economic growth. Similar results were also confirmed by Cunado and Perez de Gracia (2005), Lardic and Mignon (2006) and Du and Wei (2010).

Table 4: Pairwise Granger Causality results

Null Hypothesis	F-statistic	P-value
LFUEL does not Granger Cause LINF	2.8452	0.0464*
LINF does not Granger Cause LFUEL	4.1375	0.0960
LGDP does not Granger Cause LINF	6.0742	0.0163*
LINF does not Granger Cause LGDP	4.1392	0.0459*
LGDP does not Granger Cause LFUEL	17.5101	0.0952
LFUEL does not Granger Cause LGDP	2.8658	0.0252*

* reject null hypothesis of no Granger causality at 5% significance

The model passed diagnostic tests of no heteroscedasticity, no serial correlation, and normality with results shown in Table 5. AR root test estimates can further be estimated (Razali & Wah 2011). Results of the AR root test confirm the stability of the model as all AR roots lie within the unit circle.

Table 5: Diagnostic tests results

Test	H0	Probability	Decision
LM Test	No serial correlation	0.4283	With a P-value above 5%, do not reject the H0. Therefore, there is no serial correlation in the model.
White (CT)	No heteroscedasticity	0.0892	With a P-value above 5%, do not reject the H0. Therefore, there is no heteroscedasticity in the model.
Jarque-Bera	Residuals are normally distributed	0.4266	With a P-value less than 5%, reject H0. Therefore, the results show that the data is not normally distributed.

Inverse Roots of AR Characteristic Polynomial

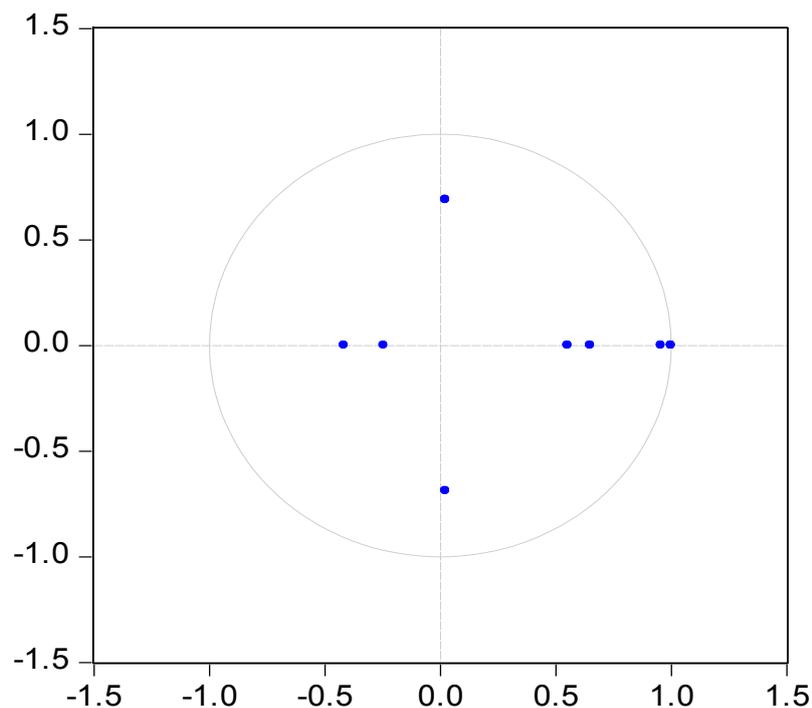


Figure 3: Inverse roots AR test

Conclusion

The main objective of this study was to determine the impact of changes in the fuel price on inflation and economic growth in a fuel importing developing country. The main objective was achieved by means of a comprehensive literature review and also through the use of a quantitative analysis of time series data for South Africa from 2001 to 2018. The most important results are that the relationship between the variables are non-linear and that rising fuel prices have a negative impact on the South African economy on both the long and short-run. This dual negative impact through lower output and rising inflation, has caused the South African economic to be caught in a low growth scenario while cost-push inflation is also having a significant impact on the local economy.

Empirical results from a global point of view also indicate that the fuel energy sector still has a significant impact on global economies, despite the growth of the green-economy. The volatility of fuel prices causes uncertainty in markets and price shocks. It is interesting to note that the causality for most economies runs from changes in the fuel price to economic activities and to inflation, leading to monetary policy changes. In South Africa however, the causality has been confirmed in the study. As with any quantitative study, limitations include the number and type of variables included in the study, as well as time periods and availability of data. Future studies could include the use of different variables such as employment and even the producer price index (PPI) and also the inclusion of more countries in the model such as a comparison of African countries and the BRICS countries. A comparative analysis between fuel importing and exporting countries could also be considered. For example, different impacts on different economies depending on the structure of the economy, sectoral composition and fuel importing or exporting countries could be investigated (Cunado & Perez de Gracia 2005).

The implications of the study are that the fuel industry still has a major impact on the global economy and specifically on developing countries and rising fuel prices can have a significant negative impact on economic activities. These impacts should be taken into account in the formulation of economic policy. The impact of the rising fuel prices also have an impact on both monetary and fiscal policy, and careful consideration should be given to price shocks and the effect on local economies. Fuel importing countries should investigate alternative sources of energy and to diversify their energy sector to reduce the dependence and possible future price shocks.

References

- Alvarez, L.J., Hurtado, S., Sanchez, I. & Thomas, C. 2009. The impact of oil price changes on Spanish and Euro area consumer price inflation. *Economic Modelling* 0904:9–36.
- Ashley, R. & Tsang, K.P. 2013. The oil price-real output relationship: does persistence matter? *Virginia Technical Working Papers* 2013: 1-31.
- Barsky, R.B. & Kilian, L. 2004. Oil and the Macro-economy since the 1970s. *Journal of Economic Perspectives* 18(4): 115-134.
- Brown, S.P.A. & Yücel, M.K. 2002. Energy prices and aggregate economic activity: an interpretative survey. *Quarterly Review of Economics and Finance*, 42(2002): 193-208.
- Carruth, A., Hooker, M. & Oswald, A. 1998. Unemployment equilibrium and input prices: Theory and evidence from the United States. *Review of Economics and Statistics* 80:621-8.
- Cavalcanti, T. & Jalles, J.T. 2013. Macroeconomic effects of oil price shocks in Brazil and in the United States. *Applied Energy* 104: 475-86.
- Chang, Y., Jha, K., Fernandez, K.M. & Jam'an, N.F. 2011. Oil price fluctuations and macroeconomic performances in Asian and Oceanic economies. Final Year Project, School of Humanities and Social Sciences; 1-47.
- Chang, Y. & Wong, J.F. 2003. Oil price fluctuations and Singapore economy. *Energy Policy* 31(11): 1151-1165.
- Cunado, J. & De Gracia, F.P. 2005. Oil prices, economic activity and inflation: evidence for some Asian countries. *The Quarterly Review of Economics and Finance* 45(1): 65-83.
- Cunado, J., Jo, S. & De Gracia, F.P. 2015. Macro-economic impacts of oil price shocks in Asian economies. *Energy Policy* 45(1): 65-83.
- Cologni, A. & Manera, M. 2008. Oil prices, inflation and interest rates in a structural cointegrated VAR model for the G-7 countries. *Energy Economics* 30(3): 856-888.
- Du, L., Yanan, H. & Wei, C. 2010. The relationship between oil price shocks and China's macro-economy: An empirical analysis. *Energy policy* 38(8): 4142-4151.

- Farzanegan, M.R. & Markwardt, G. 2009. The effects of oil price shocks on the Iranian economy. *Energy Economics* 31: 134–151.
- Gomez-Loscos, A., Montanes, A. & Gadea, M.D. 2011. The impact of oil shocks on the Spanish economy. *Energy Economics* 33: 1070–81.
- Hamilton, J. 1996. This is what happened to the oil price–macroeconomy relationship? *Journal of Monetary Economy* 38: 215–220.
- Hooker, M. 2002. Are oil shocks inflationary? Asymmetric and nonlinear specifications versus change in regime. *Journal of Money, Credit and Banking* 34: 540–561.
- Huang, B.N., Hwang, M.J. & Peng, H.P. 2005. The asymmetry of the impact of oil price shocks on economic activities: an application of the multivariate threshold model. *Energy Economics* 27: 455–476.
- Iwayemi, A. & Fowowe, B. 2011. Impact of oil price shocks on selected macroeconomic variables in Nigeria. *Energy Policy* 39(2): 603–612.
- Kakes, J. 2000. Monetary transmission in Europe: The role of financial markets and credit. Cheltenham, UK: Edward Elgar Publishing.
- Katircioglu, S.T., Sertoglu, K., Candemir, M. & Mercan, M. 2015. Oil price movements and macroeconomic performance: Evidence from twenty-six OECD countries. *Renewable and Sustainable Energy Reviews* 44: 257–270.
- Korhonen, I. & Ledyeva, S. 2010. Trade linkages and macroeconomic effects of the price of oil. *Energy Economics* 32: 848–56.
- Lardic, S. & Mignon, V. 2006. The impact of oil prices on GDP in European countries: an empirical investigation based on asymmetric cointegration. *Energy Policy* 34: 3910–3925.
- LeBlanc, M., & Chinn, M. 2004. Do High Oil Prices Presage Inflation? The Evidence from G-5 Countries (February 19, 2004). UC Santa Cruz Economics Working Paper No. 561; SCCIE Working Paper No. 04-04. Available at SSRN: <https://ssrn.com/abstract=509262>.
- Lescaroux, F. & Mignon, V. 2008. On the influence of oil prices on economic activity and other macroeconomic and financial variables. *OPEC Energy Review* 32(4): 343–380.
- Macrotrends. 2018. Brent crude oil prices. Date of access: 15 October 2018. <https://www.macrotrends.net/2480/brent-crude-oil-prices-10-year-daily-chart>.
- Magee, L. 2013. Unit roots, cointegration, VARs and VECMs. Date of access: 05 November 2017. <http://socserv.mcmaster/magee.pdf>.
- Mukhtar, T. & Rasheed, S. 2010. Testing a long run relationship between exports and imports: Evidence from Pakistan. *Journal of Economic Cooperation and Development* 31(1): 41–58.
- Nielsen, B. 2005. *Analysis of co-explosive processes*. UK: Nuffield College.
- Nkomo, J.C. 2009. Energy security and liquid fuels in South Africa. *Journal of Energy in Southern Africa* 20(1): 20–24.
- Noumbissie, F.F. & Mongale, I.P. 2014. The impact of monetary policy on financial markets in South Africa: A VAR analysis. *Journal of Economics and Behavioral Studies* 6(8): 636–646.
- Papapetrou, E. 2001. Oil price shocks, stock market, economic activity and employment in Greece. *Energy Economics* 23: 511–32.
- Peersman, G. & Van Robays, I. 2012. Cross-country differences in the effects of oil shocks. *Energy Economics* 34(5): 1532–1547.
- Quantec. 2018. Easy Data. Date of access: 12 September 2018. <https://www.easydata.co.za/>.
- Razali, N.M. & Wah, Y.B. 2011. Power comparisons of Shapiro-Wilk, Kolmogorov-Smirnov, Lilliefors and Anderson-Darling tests. *Journal of Statistical Modeling and Analytics* 2(1): 21–33.
- Roeger, W. 2005. International oil price changes: impact of oil prices on growth and inflation in the EU/OECD. *International Economics and Economic Policy* 2(1): 15–32.
- SAPIA. 2018. Fuel price history in South Africa. Date of access: 5 October 2018. <http://www.sapia.org.za/overview/old-fuel-prices>.
- Sims, C.A. 1980. Macroeconomics and reality. *Econometrica: Journal of the Econometric Society* 48(1): 1–48.
- South African Reserve Bank (SARB). 2018. Statistics. Date of access: 10 September 2018. <https://www.resbank.co.za/Research/Statistics/Pages/Statistics-Home.aspx>.
- Tang, W., Wu, L. & Zhang, Z. 2010. Oil price shocks and their short-and long-term effects on the Chinese economy. *Energy Economics* 32: S3–S14.

D&O Insurance and Arbitration

Katica Tomić, Ph.D, LL.M

Rechtsanwälte BVM, 1010 Vienna, Austrija, katicatomic123@gmail.com

ABSTRACT: Directors and officers ("D&O") are required to act in a good faith and in the best interests of the corporation and to ensure that, the corporation is managed in accordance with the corporation's articles of incorporation and internal by-laws. D&O are personally liable for actions committed by the corporation within their scope of authority, and their own personal assets are at the risk in the event of a lawsuit against the corporation and its management or corporate insolvency. Today's complex business, legal and regulatory environment have increased the number of disputes involving the personal liability of D&O and D&O insurance, and the option of the more efficient, flexible, expert, and enforceable dispute resolution mechanisms, becomes the substantial interest of the parties involved. In this article, we discuss the general principles of D&O liability and D&O insurance, and relevant court cases concerning D&O liability and insurance coverage disputes in EU Law. Having in mind basic characteristics of modern insurance regulations, in particular, the need to protect a policyholders' interests and insurance customers and the premise that classic (commercial) arbitration is not *a priori* suitable for D&O insurance disputes, the author advocates introduction of specific integrated arbitration proceedings for D&O insurance cases. By assessing arbitration proceedings in D&O insurance, this analyze allows us to draw conclusion on whether the resolution of D&O insurance disputes by means of arbitration should be considered more often, or court litigation is more suitable for D&O insurance cases.

KEYWORDS: D&O liability insurance, EU Law, arbitration provisions, insurance companies, insurance coverage, integrated arbitration proceedings

Introduction

Directors and Officers (D&O) liability insurance represents a type of property and casualty coverage for the corporate authorized representatives and executives, and include board members, directors and managers, and supervisory board members (Drave and Herdter 2018, 9). D&O liability insurance serves for two purposes: it protects the cooperation from some of potentially sizable losses resulting from breaches of duty by its own directors' and officers' (so called „internal liability cases“) and it protects the insured directors and officers directly from claims against them in person for certain losses against which the cooperation does not or cannot indemnify them (Sagalow 2000, 5).

The legal nature of the D&O liability policy is complex. The contract is concluded for the insured person who is responsible for or involved in important decision-making for the corporation, or for the organization(s) itself, and it provides insurance in respect of claims made against an insured during the policy period (Vojković 2008, 1025). If insured persons commit a breach of duty (wrongful act) to the detriment of the company, and if the company asserts damage claims against such person, the D&O insurance is triggered for the benefit of the insured person. According to the Austrian law, the liability of managing directors or members of the supervisory board is based on corporate law and D&O must conduct the affairs of the company with the standard care and diligence of a prudent businessman complying with applicable laws and adhering to the internal rules and regulations of the company (Sec. 64(2) Austrian Limited Liability Company Act).

The D&O liability insurance was created and developed as a products tailored to the needs of cooperation practice especially as a result to executives' integral role in the day-to-day business and the detrimental consequences any breach of duty may have on the company, companies and their shareholders. Most D&O policies in EU insurance market cover claims of the insured company *vis-à-vis* an insured person (for example, claims for damages of a company against a manager based on his or her breach of duty) and third-party claims against insured manager or executive (Wagner 2015, 74; Spann 2018, 853).

Litigation has been the forum of choice for disputes concerning D&O liability and insurance coverage in EU countries over the past 20 years. The most commonly litigated disputes could be divided into two types. First type are differences in interpretation of insurance policies (for example, insurance policy language can be considered ambiguous if the language has more than

one reasonable interpretation) and second, factual circumstances material to the possibilities for action on the insurer's side (for example, cases where the insurer proves that the policyholder violated its pre-contractual duty to disclose).

The terms and conditions of D&O insurance policies offered by insurance companies or insurance intermediaries often include a „pre-dispute arbitration clause“ which requires that any disputes that the parties have will be handled not in a court system, but through binding arbitration (Rohrbach 2011, 36). Many scholars and practitioners' opinion is deeply divided on this issue but the frequency, volume and value of disputes involving the personal liability of company directors and officers and D&O insurance are steadily expanding (Duve 2009, 196). D&O claims are presumed to rise in the years to come and the choice of effective dispute-resolution mechanism becomes an increasingly important issue for the companies and insurers.

In the following chapter, we will introduce advantages and disadvantages of arbitration proceedings in disputes involving the personal liability of company directors and officers and D&O insurance.

Directors and officer's liability insurance and arbitration

D&O Insurance Market in Europe was rather limited before financial crises and economic recession started in 2009. According to current economic constraints of the financial crisis and financial pressures on reducing insurance operating costs, deregulation and liberalization of the insurance market, technological progress and social trends have increased competition amongst insurance players. The number of European countries have implemented changes in their legal systems that make it easier for aggrieved shareholders to collectively bring actions against directors and officers (Advisen Ltd 2014, 2).

Litigation has been the forum of choice for dispute resolution in EU insurance industry for many years. Most disputes arising from insurance contracts, unit-linked life insurance contracts, disputes involving the personal liability of D&O and D&O insurance are resolved in a court of law and rarely in another formal setting, such as arbitration (Döring 2010, 50). There are a relatively small number of papers, which have been published in the field of arbitration proceedings in D&O insurance while disputes regarding insurance coverage, reinsurance contracts, often contain an arbitration clause (Noussia 2013, 1). Although, insurance arbitrations are held on an *ad hoc* basis, nevertheless many organizations (ARIAS·U.S, LCIA, ICC) provide rules for the conduct and administration of such arbitrations (Zelst 2016, 35).

When parties find themselves in disputes arising from D&O policies, general or special business liability insurance, professional indemnity policies as well as international personal injury insurance, there is often a lot at stake and the interests of many can be affected (Tomic 2016, 542). D&O litigation frequently involves complex cases, class action allegations and/or alleged violations of unfair trade practices (UTPs) under EU competition law. Bearing in mind that D&O claims can result in corporate and personal reputational and financial damage, regulatory investigations and prosecutions, D&O disputes are often handled strictly confidentially and often settled out of court (Duve 2009, 179).

The decisions regarding whether to include an arbitration clause in a D&O liability insurance policy and what provisions to put in it, as well as whether to take advantage of arbitration once a dispute arises, are very challenging. The popularity of arbitration for D&O cases is not based just on large number of its advantages (speed, cost-efficiency, primacy of party autonomy; free choice of arbitrators with legal/technical/commercial expertise; finality of the award; facilitation of amicable settlement; worldwide enforceability of the award under New York Convention), but upon the hope of the parties to the contract that by employing arbitration they can maintain confidentiality of the proceedings and a degree of control over the intensity of the dispute and the methods used to resolve it (Berger 2015, 284).

Notwithstanding the above advantages, there are certain disadvantages of using arbitration for D&O insurance cases over the judicial system. While speed and cost-efficiency have been regarded as advantages of arbitration, users today increasingly complain that the arbitration frequently turns

out to be extremely complex in practice. This is only relatively true because the time-and cost efficiency in arbitration depends on the parties, their representatives and the arbitrators themselves (Welser 2013, 1279). Generally, arbitration proceedings will result in quicker dispute resolution than in the court system if the parties, their representatives and the arbitrators truly aim at conducting efficient proceedings. This, in turn, reduces the costs of reaching a resolution even in disputes, which involve the personal liability of company directors and officers and D&O insurance (Lachmann 2008, 45).

In Germany, directors' and officers' liability has peculiarities and disputes regarding the personal liability of company directors and officers often end with early settlement of a dispute. Under Sec. 278(1) of the German Civil Procedure Code the judge is expected, throughout the proceedings, to look out for opportunities for an amicable solution of the dispute and this represents the advantage of arbitration and effective way of minimizing cost and cycle time in dispute resolution (Ehle 2010, 80). Moreover, where stock corporations (germ. *Aktiengesellschaften*) are involved, the provision in Sec.93(4) German Stock Corporation Act has to be taken into account. According to this provision, the members of the management board shall not be liable to the company for damages if they acted pursuant to a lawful resolution of the shareholders' meeting and the company may waive or compromise a claim for damages not prior to the expiry of three years after the claim has arisen. Thus, in individual cases at least, may seem the perfect tool if both parties have interest to postpone arbitral decision but it will not itself hinder an award.

D&O liability and insurance disputes often involve complex legal and factual relationships on insurance coverage, which appear in many different forms and often rotate around matters of interpretation and/or the scope of coverage between the insurance company and the insured. In D&O cases, arbitration proceedings above all come into play in practice in disputes concerning D&O policies and employment-practices-liability policies. Insurance contracts are formed based on ordinary rules of contract law and the arbitration clause is the only source of authority for which the law provides mechanisms of enforcement in an attempt to fill gaps left by the parties (Noussia 2013, 39). In this context, it is important to make sure, especially where several members of management may possibly participate in the same arbitration, that the arbitration agreements have been drafted properly (Berger 2015, 316).

Moreover, high profile D&O disputes often involve third parties, particularly in relation to liability insurance and indemnity matters, and raise commercial and/or technical aspects of the case. The decision to nominate certain person with commercial expertise and market knowledge for party-appointed arbitrator is extremely important and it lays the basis for a constitution of arbitral tribunal (Tomic 2017, 116).

The advantage of having members of the panel with commercial expertise and market knowledge can be disadvantage in the D&O cases. D&O cases raise the risk of conflicts of interest at the level of the selection of arbitrators higher than for state courts. This can be avoided if the selection of arbitrators is performed diligently on the grounds of their specialist knowledge of the insurance practice in question, and with due consideration of the each individual case. According to the Part 6, section 6.3 of the ARIAS Arbitration Rules (AAR), the ARIAS UK arbitration court prescribes as a requirement for the registration of an arbitrator on the list of arbitrators, qualification of with not less than ten years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisors serving the industry. Part 6, Section 6.2 ARIAS U.S. Arbitration Rules allows for a current or former managing officer of an insurance company or a reinsurer, or an arbitrator certified by ARIAS U.S. to become an arbitrator or umpire. Explanatory note to Article 4.1.4 of AAR, the ARIAS UK and ARIAS Fast track arbitration rules (AFTAR), recommend that the qualification requirements for arbitrators may be set by the litigants themselves, which is taken into consideration by some permanent arbitration courts in their arbitration rules, where they require the parties to provide brief personal details of qualification for arbitrator expertise in the industry or legal specialty in which they will handle disputes.

Arbitration clauses in D&O and other liability insurance raise concerns if it is possible to conduct arbitrations in a multiparty context (for example, an D&O insurer or members of governing

bodies of the company may be interested in involving an intervening in a D&O dispute). In a multiparty context of insurance disputes, the insurance contract may be reinsured by one or number of re-insurers who may have a dispute resolution clause providing for arbitration with the insurer but may not have a provision that allows for multi-party dispute resolution of a claim relates to a single cause of action (Noussia 2013, 227).

From this point of view, the litigation in court has significant advantage over arbitration because it is considerably easier to involve third parties in state court proceedings. However, securing an effective multiparty proceeding of D&O cases depend on the careful harmonization of the arbitration clauses contained in different but interlinked contracts.

This list of advantages and disadvantages of arbitration proceedings in D&O insurance is not exhaustive and this paper only includes some specific examples. Moreover, each D&O case has its own peculiarities and it is necessary to distinguish characteristics such as severity of claims, expression of consent to arbitration for D&O dispute, coverage disputes or possibly even combined treatment of liability and coverage topics in the same proceedings and reaching mutual consent to arbitrate.

Integrated arbitration proceedings of D&O cases

As the increasing of number of D&O liability and insurance contracts necessary increase disputes, there is an interest in developing efficient resolution for D&O liability and policy cases. Generally, there is no real difference between litigation and arbitration, as both are proceedings where a neutral and impartial third party decides the dispute between the parties and renders a final and binding decision. However, more important, there are practical differences between litigation in arbitration versus in court (Noussia 2013, 322). Although litigation and arbitration both have advantages, litigation, however, might be a better option for D&O disputes because it provides greater power to obtain provisional relief, a far more extensive discovery and the ability to join related parties.

It is often suggested that arbitration is not convenient for D&O disputes because these cases can involve complex legal issues arising out of a liability and coverage issues, which should be dealt with in the same proceedings. Recently there has been much discussion on integrated arbitration proceedings of D&O cases in order to improve the efficiency of D&O dispute resolution.(Sieg 2015, 1). The integrated concept of arbitration of D&O cases aims that all details of the case such as loss event, liability and coverage aspects should be resolved exclusively by the company and the D&O insurer. The characteristics of proposed D&O arbitration includes that the direct action between the company and the D&O insurer, the matter of liability will be dealt with as an ancillary matter that is a requirement for the indemnification entitlement (Sieg 2015, 4).

Applications of integrated arbitration proceedings induces additional practical problems such as the question of admissibility of integrated arbitration proceedings of D&O cases and jurisdiction (Pauker 2015, 2). For many companies, arbitration provisions are initially attractive but the selection of arbitrators could be very difficult because insurance companies use the same arbitrators in all their cases and the current “party-selection” potentially leads to a systemic bias in favor of D&O insurer (Park 2015, 15). D&O liability and insurance disputes are separated at the state courts because they often require special judicial expertise. However, in integrated arbitration proceedings, the same arbitrators will have to decide both liability and coverage issues. The decision to nominate certain person with commercial expertise and market knowledge for party-appointed arbitrator is extremely important but integrated arbitration proceedings demand a broad knowledge which raises the question whether the same arbitrators are competent to decide on both these subjects.

We can conclude that integrated arbitration proceedings bring a variety of practical problems but it can certainly turn out to be the settlement of disputes in individual cases.

Conclusion

The insurance market in EU has become more dynamic and the number of complex insurance disputes, including D&O cases, are on the rise. As the economic and legal environment of the twenty-first

century is characterized by an increase in the number of regulations regarding corporate directors, and by the permanent rising of the standards of their liability, it is difficult to imagine contemporary business without having the institute, which decreases corporate risks. For many years, insurance sector has shown a marked lack of faith in arbitration and had no incentive or particular advantage to utilize private and quicker dispute resolution methods for insurance disputes. The arbitration offers advantages for all the parties involved in an insurance dispute (the insurer, insured and injured party) and the importance of arbitration is growing, especially for disputes involving directors' and officers' liability, coverage disputes and D&O insurance. There are numerous advantages to arbitration, but, also, some disadvantages which is why some D&O liability and coverage disputes are better to resolve in the courts. Integrated arbitration proceedings or settlement of liability and coverage claims during the same proceedings, has to be viewed critically, especially the fact that it can create the issue of an uneven level playing field between the claimant and the D&O insurer in same disputes.

References

- Advisen Ltd. 2014. "The state of the European D&O market spring/summer 2014." Accessed October 25, 2018. <https://www.advisenltd.com/wp-content/uploads/European-DO-Insurance-Market-2014-6-10.pdf>.
- Berger, Klaus, Peter. 2015. *Private Dispute Resolution in International Business*. The Netherlands: Kluwer Law International BV.
- Döring, Nicola. 2010. "Teilung von fondsgebundenen Versicherungen im Rahmen des neuen Versorgungsausgleichs, Reihe „Versicherungswirtschaft“, edited by Dieter Farny, Heinrich Scharadin. Köln: Eul Verlag.
- Drave, Christian, and Herdter, Fabian. 2017. "Insurance Litigation in Germany 2017." Wilhelm Rechtsanwälte, August 2017. Accessed October 15, 2018. https://www.wilhelm-rae.de/sites/default/files/pdf/insurance_litigation_in_germany_2017.pdf
- Duve, Christian. 2009. "Arbitration and alternative dispute resolution in insurance law—a practitioner's approach." *ERA Forum* 10: 177–198.
- Ehle, Bernd. 2010. "The Arbitrator as a Settlement Facilitator, In: Walking A Thin Line - What an Arbitrator Can Do, Must Do or Must Not Do, Recent Developments and Trends." Colloquium CEPANI40. Bruylant, 77-95.
- Finnacord report. 2014. *D&O Insurance in Europe*. London, United Kingdom.
- Lachmann, Jens-Peter. 2008. *Handbuch für die Schiedsgerichtsbarkeit*. Köln: Verlag Dr. Otto Schmidt.
- Noussia, Kyriaki. 2013. *Reinsurance Arbitration*. Springer Heidelberg New York Dordrecht London: Springer. DOI 10.1007/978-3-642-45146-1.
- Park, William. 2015. "Arbitrator Bias. „In Transnational Dispute Management (TDM). *Boston Univ. School of Law* 15-39. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2675291###.
- Pauker, Saar A. 20118. "Admissibility of claims in investment treaty arbitration." *Arbitration International* 34: 1–78. <https://doi.org/10.1093/arbint/aiy009>.
- Rohrbach, Wolfgang. 2011. "An den quellen der Österreichisch - Serbischen Versicherungsgeschichte: 200 Jahre Versicherungsagent." *Insurance Law Review, Association for Insurance Law of Serbia* 1: 35-44.
- Sagalow, Ty R. 2000. *Directors and officers liability insurance: A director's guide*. Washington D.C: National Association of Corporate Directors.
- Sieg, Oliver. 2015. "Arbitration proceedings in D&O insurance." Noerr, November 9. <https://www.noerr.com/en/newsroom/News/arbitration-proceedings-in-d-o-insurance.aspx>.
- Spann, Elisabeth. 2018. "Directors' and Officers' Liability from an Insurance Law Perspective." In *Directors & Officers (D & O) Liability*. Berlin, Boston: De Gruyter. 845–854. <https://doi.org/10.1515/9783110491494-019>.
- Tomic, Katica. 2016. "Unit-linked life insurance contracts- question of liability." *Legal Word*, Lawyers Association of Republic of Srpska: Banja Luka 47-541- 558.
- Tomic, Katica. 2017. "Arbitration - The method of Choice in Insurance Industry." *Young Arbitration Review* 5:114-122.
- Vojković, Hrvoje. 2008. "Liability insurance of members of company management, supervisory boards and procurators." *Proceedings of the Faculty of Law in Zagreb* 58:4, 1025-1046.
- Wagner, Gerhard. 2015. "Officers' and Directors' Liability Under German Law — A Potemkin Village." *Theoretical Inquiries in Law*. Buchmann Faculty of Law, Tel Aviv University 16.69-106; Spann, Elisabeth. 2018.
- Welser, Irene. 2013. "Effizienz in internationalen Schiedsverfahren - Wunsch oder Wirklichkeit?" In *Festschrift für Hellwig Torggler*, edited by Fitz, Kalss, Kautz, Kucsko, Lukas, Torggler, 1293-1309. Österreich: Verlag Österreich.
- Zelst, B Van. 2016. "The Open Arbitration Clause: a Means of Arbitrating Insurance Disputes?" In *An assessment of opportunities and threats in arbitration insurance law disputes*. *European Insurance Law Review* 15:35 -37.

The Role of the Individual and of the Social Environment in the Value System

Galina Martea

*PhD member of the Romanian-American Academy of Sciences and Arts, The Netherlands
galinamartea@yahoo.co.uk*

ABSTRACT: The presence of the human being in the value system, as an identity and social personality, is the action that produces positive effects in the development of a society. In turn, society, a complementary identity in the existence of people, is that component that defines and motivates the importance of actions based on the ideas and decisions made by the individual. Thus, the human being promotes its content within the system of values, and society becomes accomplice both in man's existence and in the existence of values. Respectively, through his actions, the individual develops their own society and, at the same time, creates their image in evolutionary processes. Correspondingly, human actions are made available to society, them being a beneficial support in improving living conditions, in developing the level of culture and education, in preserving and supplementing spiritual values founded by humankind over time, etc. Thus, the social welfare element identifies a country, a community, based on its own system of values. And through its own system of values, the individual and their society are manifested, and each of them continually complements themselves, aiming at new things, evolutionary and full of essence. Thus, through the human intellect, the development process of society is constantly being developed and perfected, and the value, as a priority substance, maintains its verticality through the evolutionary processes of civilization and the process of identifying its own personality.

KEYWORDS: system of values, individual, society, identity, development, existence

Introduction

Being the main element in social existence, the individual is the one who gives life to all actions with effects both positive and negative, thus manifesting as attribute through art, science, engineering, education and other fields, all geared towards a system of values. At the same time, through their actions, part of the system of values, the human being produces the necessary changes continuously developing the cultural, material and spiritual set up of a society and, respectively, the level of civilisation of any nation. Directly, any nation with its values and culture contributes to the complexity of the qualitative development of their society. So, the need to exist by the value system forces the human being incessantly on track to invade this knowledge with new ideas and then helping change the future. The individual, in their existence, is bound to be dependent on one or more actions that all in turn produce significant effects in any field, available to a whole society. And with uninterrupted action beneficial to form their own existence, the human being becomes responsible for themselves and for their society. In such way, human tries to define value and identity in everything that is done and conceived, and through the value phenomenon the human action aims to achieve a certain goal in relation to the conditions of life. It is precisely this goal that enables one to draw onto oneself certain situations, thus forcing them to develop social connections, social actions and social integration. Respectively, through the process of social integration, the human being develops the actual value and value as a criterion in identifying and defining one's values. Correspondingly, the human being becomes the value through which a society expresses its contents.

The analysis on the role of the individual and of the social environment in the value system

Through the evolutionary processes, the human being made those changes that, as a result, modified the behavioural and social relations between people, the way of thinking expressed through the most advanced level of culture and intellect, the vision to design and implement objectives into a more progressive form, and many other aspects of the phenomenon of evolution. Meanwhile, by developing community relations, the human being realised that the society through which they maintain their existence is the sum of values, the latter requiring to be respected and reformed evolutionary depending on their own conduct. However, the man realised that through their conduct they can create those

actions that can positively influence the formation of values that develop the processes conditioned by the organic link between the individual and society. Consequently, the man realised that in the formation of a true society, as a priority, one has to capitalise on training and educational processes, a field that contributes effectively towards the development of both the individual and the society through the value system.

At the core of any society is the human being, with their intellect formed by evolutionary change. Respectively, the evolutionary process of these changes is reproduced through knowledge and communication, through the connection of an individual's educational level and the factors that are directly related to the social environment. Therefore, instructive and educational processes, the basic element in the formation of an individual, create at the same time one's society, which is conditioned to the system of values. In turn, the system of values, the landscape regulating and clarifying the theoretical and practical work of any field, determines the quality of the reference systems. The reference systems normally differ depending on their structure and conditions relative to the organisation and activity in each area. In any field of social systems and subsystems the individual presents themselves with their level of human development, and that development is acquired through the multitude of actions created by themselves while always aiming to know the vital processes that intersect with culture and personal intellect. In this way, the human intellect represents the capacity to develop and produce permanent changes and major developments in the relationship between the individual and society. *So, all actions performed by the human intellect can be attributed to value making, thus determining the importance and role of each individual in a social environment.* Those being interpreted by means of interpersonal and social methods of communication, in the end, express the true picture of individual development of a human being and their society. In their life, every person within a society operates on the basis of goals that tend to mark results in spiritual, intellectual and material growth. As a result, the human being becomes a product of the processes of development and evolution of life, who tries to experiment endlessly, crisscrossing actions within the totality of values that are determined by social needs. Their existence establish in themselves achievements founded on the value system that embodies creativity, motivation, knowledge and, not least, the human identity within their society.

Human existence in a society is dependent on people's own initiatives that are conditioned by their own manifestations, as a result these processes lead to the expression of personality and identity. Through their own behaviour the human being highlights actions and tasks that determine and promote their own intellect and culture, directly contributing to the development and promotion of their society. The individual, being the main element in social existence, is the one who gives life to all actions with effects both positive and negative, thus manifesting as attribute through art, science, engineering, education and other fields, all geared towards a system of values. At the same time, through their actions, part of the system of values, the human being produces the necessary changes continuously developing the cultural, material and spiritual set up of a society and, respectively, the level of civilisation of any nation. Directly, any nation with its values and culture contributes to the complexity of the qualitative development of their society. In the view of the philosopher, poet and playwright Lucian Blaga *"man is doomed to creation, he has a permanent and symbolic creative destiny that detaches him from nature"* (Blaga 1969, 502). As he said, it can be confirmed that *"man truly is the essence and structure of actions that give life value. The man, with his thought and intelligence, is able to create and develop with his own intellect those processes and phenomena that continuously complete all values and their identity. And, the identity of value expresses its character through the spiritual, material, moral and social capacity."* Thus, the human being by the existence of spiritual values is intended to produce significant changes in the evolution of culture, education, human relationships and contradictory phenomena of the changes taking place over time. The need to exist by the value system forces the human being incessantly on track to invade this knowledge with new ideas and then helping change the future. In their existence, the individual is bound to be dependent on one or more actions that all in turn produce significant effects in any field, available to a whole society. With uninterrupted action

beneficial to form their own existence, the human being becomes responsible for themselves and for their society. So, man tries to define value and identity in everything that is done and conceived.

The value content is the totality of all essential elements through which the individual tries to define themselves as a personality in different situations and circumstances. Through the value phenomenon the human action aims to achieve a certain goal in relation to the conditions of life, a goal that will produce satisfaction from the results. It is precisely this goal that enables one to draw onto oneself certain situations, thus forcing them to develop social connections, social actions and social integration. Through the process of social integration the human being develops the actual value and value as a criterion in identifying and defining one's values. The presence of human beings, as identity and personality, in the system of values is what can produce effects both positive and negative in the development of a society. Society as a value in the system of values is the one that defines the orientation of the actions that are based on ideas and relevant decisions determined by the individual. So, certainly, the human being is the value through which a society expresses its contents. The individual, through their actions, develops the society and creates its image in the evolutionary process. Accordingly, human actions are always available to society, them being the basis for improving living conditions, cultural and education standards. Human conditions are also part of the value through which the human being is required to carry as many actions that would produce positive effects to society. Based on its value system, the developed welfare becomes an identifier for a state, a nation, a society. Through all of this the human being is present with their society, both tending towards new things, evolution and perfection. Thus, with their intellect, the individual managed to achieve and improve the development process of some societies/countries that have promoted/ showed genuine value in the process of civilization. Having at the basis of their development the concept of value, the action of appropriate behavior expressed through culture and identity, some nations were able to identify to the value system, which represents the human being as an expression of society. The beneficial cooperation between individual and society was perfected only by the desire to produce as many positive results in terms of life and their livelihood. Social reciprocity demolished society's shortcomings and created perfection within the normal limits and real possibilities. At their base is again the individual with their intellect always evolving. In this context, Austrian economist Ludwig Von Mises says that *"society is a product of human action, the human urge to remove as much as possible the lack of pleasure"* (Von Mises, Ludwig 1966). Here it is necessary to refer to the nations that through the value of culture have managed to achieve successfully high living standards, prosperity and individual welfare. Through this evolutionary prosperity for the benefit of citizens, some countries have identified themselves through the notion of values and, in particular, the notion of genuine national identity, this being the supreme value in the value system. With this identity we can identify the anglo-saxon societies (if we refer to the European continent), which over time, have expressed through high levels of education and culture, human development, interpersonal and communitarian beneficial relations, freedom of expression and a level of civilization.

Through the system of values human society must find a good systematic relationship that can remodel each of the evolutionary processes of life. Within these well coordinated relationships, society will continuously maintain and motivate the individual, and the latter, in turn, through their personality will determine the actions that will further boost the value system. Therefore, the communication and interaction between society and the human factor will be the action that will develop and highlight the value system, so necessary to the human being and society. The relationship between individual and society will operate positively only when appropriate communication will be present, an action within the value system. The value of communication between individual and society for some nations is the underlying action expressed through the element of culture and that of national identity. *So, the national identity for every nation has to be the supreme action in the value system, being integrated though: the management system of education, culture, ideology, system of government, national history, dignity and personality of citizens, the national spirit and traditions, and language.* The message of these values can be found, for example, in the states of Western Europe such as Denmark, the Netherlands, Norway, Finland,

Germany, Sweden, Great Britain, Iceland, Ireland, Switzerland, Belgium, Luxembourg, Austria, but also Australia, New Zealand, Japan, USA, Canada. These countries through culture and national identity have built that action that truly represents society. The reality of actions is known through the lifestyle and culture of the people who show the true level of prosperity that is intersected by: - the education system, which is focused on the development of human personality, the proper writing national history according to the curricula aiming for transparency; - the health care system that displays the state's care and attitude towards the human factor, expressed by the general health of the population and the average life expectancy; - the identity of the value system in relation to *the human-society* relationship, etc. So, in promoting, developing and maintaining national identity a major role is played by the politics and ideology of the state and society, intersected vertically and horizontally through the education system. The school is and must be the priority role of society, it participating as a key element in the development of national identity. Through the training and education system the national spirit is developed with emphasis on national identity. The national identity of a nation is to be assessed on its elements such as: the unity of the national language; the national community oriented/ preoccupied with cultural, political and economic life; the national territory as a sovereign state; the system of beliefs expressed through religion. All these are actions that a nation, a society uses to update their role and importance in the development process. Moreover, national identity, as a supreme action in the value system, identifies itself in the whole by the devotion to the society it belongs to and it represents.

Simultaneously, the individual and the society define the system and action representing existence and human life. Life through existence causes human beings to various actions that give life values. Through the identity of values, the individual manages to create those actions whose values are born to have eternal life of interest for present and future generations. The individual's ability to be in constant contact with the action of value is the force which continually contributes to the development of society, thus promoting moral, material, spiritual or immaterial values. The identity of spiritual values, full of ideas/ traditions, are values which remain alive over time. These values are embodied in works of art, music, literature, science, art, philosophy, and their authors are the beings, subsequently called scientist, educator, musician, poet, composer, philosopher, physicist, etc. depending on the activity and action taken during one's life in a particular field. Spiritual values of the past and present are present in the works of great celebrities of all time, such as: Immanuel Kant (German philosopher); Aristotle (one of the most important philosophers of ancient Greece); Isaac Newton (English scientist, mathematician, astronomer, physicist); George Enescu (composer, violinist, pianist and conductor); Mihai Eminescu (poet, novelist, considered by the posthumous literary criticism to be the most important poetic voice of Romanian literature); and so on. Through the size of those works and actions, the individual creates the cultural and spiritual value that determines the essence of the human being in the totality of values. All of these values are qualities that correspond to social needs by which the individual develops, the latter having the intention to form one's character and to rediscover one's nature. These real phenomena of human life are evolutionary transformations that occur through and with the help of pedagogical science, and education and training systems of the society. Through the art of pedagogy and of educational processes, the individual improves and expands their capabilities, using this tool to act conditioned or unconditioned by the values that highlight their accomplishments. They, in turn, form the ratio expressed by the value, representing achievements.

Through cultural and spiritual values that individual becomes a founder of beauty and aesthetic values that really tries to define the essence and existence of life, and also the essence of the human value system. Through material values, the individual tries to make sense of life through essential needs and creates wealth and comfort to live in conditions that would ensure a civilised existence, pleasant and convenient. And moral values are determined by phenomena aimed at reflecting the inner world of human behavior and ethics within society. The existential meaning of life consists of a whole system of actions created and performed by individuals, which is a value of the human needs, material and spiritual. In the view of Romanian philosopher Tudor Vianu values are defined "like objects of desire, which means that value in itself does not exist; all that exists

is our desire for something which we define as value." Directly, Tudor Vianu affirms that *"value is to human beings the expression of certain possibilities, the possibility of a satisfactory adjustment between object and consciousness. People are always others, their needs are changing and the objects to satisfy them may disappear... Something permanent remains in the individual, namely value, as the ideal expression of an agreement between it and the thing that can always be achieved"* (Vianu 1982, 60-61). According to the above, I confirm with certainty that *"the human being is that action that wants and craves always to exist and to assert its personality and identity in the value system, and, at the same time, wanting to satisfy the real needs of life through human values embodied by truth, honesty, transparency, morality and through social values expressed by freedom and justice. The individual, through his actions, tends always toward the novelty through which the actual value is formed for themselves and society in which one lives one's existence, and these values, in turn, bring the satisfaction to exist in equity, welfare, justice and freedom."*

The human being in order to assert itself fully as action and value within existence needs to work according to social values that fall from the concept of freedom and justice. The individual is the one who has urgent needs to grow and develop into a free and responsible society. The human desire to live in a free and democratic society is a fundamental right which must be respected and considered a supreme value in human existence. Freedom, social justice and equity are social values by which one can be promoted/ protected within established laws in a democratic country. Those values can be achieved and experienced by the individual once they get into direct contact with the school, the educational institution that is able to promote the core values/ priorities of society and the being. The individual has always fought for equality and social justice, forming, at the same time, the ideal that creates their own action. For these phenomena to make sense in continuity of action, the individual, with one's contents, always tends to perfection and evolution, thus keeping alive the phenomenon of value which is dependent on consciousness and human thought. Within the values of a democratic society based on transparency and fairness, the individual can manifest oneself and easily perform the desired actions. Whereas the individual in a society based on inequality and injustice is subject to transgression, and their action that they represent is performed with difficulty, destined to discrimination.

Any action developed by humans should be regarded as a value, as an investment for themselves and society. This action to be viable and used for the good of the individual and the community it needs to be stimulated and encouraged by the system of values and the system of reciprocal action between individual and society. Both the individual and the society are actions of the system of values, respectively, their existence must express its action through respect and care toward one another, through moral, cultural, spiritual and material support, through the dignity and identity of aspirations towards development and evolution. Considering that every individual during one's life is compelled to perform one or more actions, then this action would be welcomed in the value system. And the importance of the human factor, as a social value, is to be respected by society that exists and manifests as action. In this context, Constantin Rădulescu-Motru, Romanian philosopher and psychologist, states that "a society, against external environment, is forming a reinforcement that we call culture, from its voluntary habits, that is from its reactions and only indirectly from its intellectual horizon... Therefore the solidity of a people's culture is preferably recognised by the way of its will and work, and not by its wealth of ideas produced by its thinkers... The culture of a society is measured by the support that it gives man in his struggle with the cosmic environment. A society, however, that surrenders to the cosmic environment some of its members proves that it still has not yet got the basis on which a unified culture can be developed within the material meaning of the word; this society has an artificial culture and only for a fraction of its members" (Rădulescu-Motru 1930, 377). Therefore, we can complete that with: *"when the value of the culture of a people is genuine, then the individual is better protected and supported morally and spiritually by their society. However, if the value of a people's culture is questioned, then the existence of the individual in such a society is destined to humiliation, degradation and is placed in inferiority to the system of values. In this case, through action, the individual is constrained to fight with difficulty for proper existence and well-being in that society."* Thus, the society limiting

human action through the authentic system of values undergoes a slow process of human development, especially within spiritual and material development. Through this behaviour, the individual in step with society fails to create a civilised action in the value system. Here is where a reference needs to be made to the education system or the school unit that often does not know to bring real contribution to the proper formation of human growth and an authentic society. Through the quality of education every nation/ society demonstrates its level of human development and culture. So, both the individual in the perfect society and the one in an imperfect society tend to achieve those actions that bring them continuously welfare to exist by the identity of authentic human values, which are embodied by the phenomenon of freedom, justice, truth, motivation. Consequently, the interaction "*individual-society-school-system of values*" is that component that maintains and continually motivates human evolution. And their existence is focused entirely on building the value system of education and training process, and all social measures that should protect the human being.

Conclusions

So, the presence of the human being in the value system, as an identity and social personality, is the action that produces positive effects in the development of a society. In turn, society, a complementary identity in the existence of people, is that component that defines and motivates the importance of actions based on the ideas and decisions made by the individual. Thus, the human being promotes its content within the system of values, and society becomes accomplice both in man's existence and in the existence of values. Respectively, through his actions, the individual develops their own society and, at the same time, creates their image in evolutionary processes. Correspondingly, human actions are made available to society, them being a beneficial support in improving living conditions, in developing the level of culture and education, in preserving and supplementing spiritual values founded by humankind over time, etc. Thus, the social welfare element identifies a country, a community, based on its own system of values. And through its own system of values, the individual and their society are manifested, and each of them continually complements themselves, aiming at new things, evolutionary and full of essence. Thus, through the human intellect, the development process of society is constantly being developed and perfected, and the value, as a priority substance, maintains its verticality through the evolutionary processes of civilization and the process of identifying its own personality.

References

- Blaga, Lucian. 1969. *The Trilogy of Culture*. Bucharest: Editura pentru Literatura Universală. *Culture and globalisation*. 2014. <http://www.roportal.ro/articole/cultura-si-globalizare-4312.htm>.
- Rădulescu-Motru, Constantin. 1930. *The Power of Soul*. Bucharest: Editura Casei Școalelor.
- Vianu, Tudor. 1982. *Studies in the Philosophy of Culture*. Bucharest: Editura Eminescu. http://ssu.utm.md/Fisiere/Manuale/SDV_Introducere_in_filosofie/cap5.pdf.
- Von Mises, Ludwig. 1966. *Human Action. Chapter VIII: Human society*. Ludwig Von Mises Institute of Romania. www.mises.ro/53/.

A Review of Influential Factors Affecting Undergraduate Students' Creative Thinking

Puthyrom Tep¹, Sorakrich Maneewan², Saranya Chuathong³, Matthew A. Easter⁴

¹*Learning Innovation and Technology Program, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, puthyrom.tep@mail.kmutt.ac.th*

²*Department of Educational Communications and Technology, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, sorakrich.man@kmutt.ac.th*

³*Department of Educational Communications and Technology, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, saranya.chu@kmutt.ac.th*

⁴*Educational, School, & Counseling Psychology, University of Missouri, Columbia, Missouri, EasterMA@missouri.edu*

ABSTRACT: Creative thinking was listed among the skills that are required for upcoming graduating students' entry-level careers which become more important to global industries. Due to the importance of this concept, the need to investigate undergraduate students' creative thinking has been rising. This article presents an overview of influential factors on undergraduate students' creative thinking. The influential factors were reviewed in two main aspects – contextual and individual levels. Researchers have investigated the relationship between educational setting and parental factors affecting creative thinking in the contextual aspect, while in the individual level aspect, researcher has investigated the relationship between intelligence and personality affecting creative thinking. Based on various recent studies and related theories, key factors that influence undergraduate students' creative thinking are outlined along with a proposed conceptual framework. In the future, establishing and testing the proposed conceptual framework in terms of defining the influential paths and key factors affecting creative thinking will be conducted.

KEYWORDS: Creative thinking, Educational setting, Intelligence, Parental factors, Personality

1. Introduction

Developments in genetics, artificial intelligence, robotics, nanotechnology, 3D printing, biology, and other fields are all building on each other (World Economic Forum 2016) with impacts all over the globe. While these developments have brought about innumerable positive changes, they are also creating complex business, political, technological, health and environmental challenges (Partnership for 21st Century Skills 2008), leading to complicated problems that include global warming, pollution, financial crises, and new epidemics (Lau, John, and Sons 2015). Consequently, such complicated and varied matters in our rapidly changing surroundings demand creative, adoptable solutions. The more ideas one has, the more solutions will be at one's disposal, while new ideas can open up new worlds, new insights, and new ways of doing old things (VanGundy 2005). Creativity, therefore, can help people reinvent themselves and their organizations (VanGundy 2005). As Simone and Nel (2016) noted, creative thinking's effects are widespread. It offers us the opportunity to go outside our universe, produce artwork, create electronic devices, and treat diseases. Moreover, to survive in a fast-changing world, we also reasonably require suitable thinking skills that can help us make wise decisions and rapidly gain new knowledge (Lau, John, and Sons 2015). In addition, institutions require creative standpoints and solutions to develop new products, services, processes, marketing strategies, and ways of managing and using resources (VanGundy 2005). Creativity is like a spell of enchantment that can change an organization, company, division, or department (Lau, John, and Sons 2015). However, encouraging this potential mental ability usually is underdeveloped (VanGundy 2005).

According to para-academic organizations such as P21 (Partnership for 21st Century Skills 2008), there are 4 competencies to position and develop in a changing learning society. P21 promotes the 4Cs as a framework for 21st Century Learning, in multiple areas including communication, collaboration, critical thinking and creativity. Indeed, creativity and creative thinking are still prominent in skill frameworks (Lai et al. 2017) and can be considered one of the key competencies for the twenty-first century (Simone and Nel 2016). In the same vein, the World Economic Forum Future of Jobs Report highlights the 10 top skills that will be needed for students and workers in the digital and transdisciplinary world of tomorrow. By 2020, these competencies should include the ability to solve complex problems, critical thinking, creativity, ability to

coordinate with others, negotiation, cognitive flexibility and emotional intelligence. Therefore, educators and institutions should expend more effort towards improving upcoming graduating students' creative thinking, which is one of the skills required for startup careers (Wu, Siswanto, and Ko 2017) and starts to be essential for global industries, for their success and to catch up with current and future trends.

Nowadays, the way people perceive their own creativity has become a growing area of research (Hass, Katz-Buonincontro, and Reiter-Palmon 2016). Having said that, research related to creativity has captured enlarged attention and has been prioritized (Runco 2004). For instance, from 2001 to 2006 there were more than 200 theses and journal articles written and published pertaining to creativity in Taiwan (Li and Wu 2011). As creativity grows as a topic of research, researchers have used many different perspectives to develop various models of measuring creativity (Batey and Furnham 2006). Kālis, Roķe, and Krūmiņa (2013) stated that assessment of creativity should focus on creative potential more than creative people because creativity in the context of individuals was difficult to measure (Piffer 2012). In the motivational perspective, Hass, Katz-Buonincontro, and Reiter-Palmon (2016) investigated the fixed and growth creative mindsets, and their relationship to creative self-efficacy and creative identity. Furthermore, in the process-centered view, Rojas and Tyler (2018) and Tan and Teo (2017) examined the psychometric measurement of creativity in the aspect of creative process.

For decades, the factors affecting creative thinking have been the focus of many studies in many diverse perspectives (Verhaeghen, Trani, and Aikman 2017; Sarsani 2007; Chen 2016; Boonchan, Pupat, and Seesan 2017; Jankowska et al. 2018; Moltafet, Sadati Firoozabadi, and Pour-Raisi 2018; Yamaguchi and Sannomiya 2012). Verhaeghen, Trani, and Aikman (2017) investigated the relationship between creativity (interest, behavior and abilities) and different aspects of thought patterns. Sarsani (2007) conducted a survey with 373 students from India in order to explore the relationship between creativity and organizational or school variables, students' personal background variables, and cognitive and motivational variables. Similarly, Moltafet, Sadati Firoozabadi, and Pour-Raisi (2018) also conducted research with 3,372 undergraduate students in India, in which they sought to examine the relationship between parental styles and emotional creativity. They also investigated the mediating role of the fulfillment of basic psychological needs in this relationship. Chen (2016) studied the association between personality and everyday creativity and put more effort on examining how conscientiousness influences creativity among Chinese undergraduate students. Boonchan, Pupat, and Seesan (2017) developed a causal model by selecting variables affecting undergraduate students' creativity such as administration, teaching, instructional climate, motivation, and personality. Jankowska et al. (2018) also thoroughly investigated the relationship between subclinical autistic traits, cognitive (performance-based) and personality-related (self-reported) creativity. Furthermore, Yamaguchi and Sannomiya (2012) examined beliefs and attitudes towards creativity among Japanese university students. This article will present an overview of influential factors of undergraduate students' creative thinking. The influential factors will be reviewed in two main aspects – contextual and individual levels. In the contextual aspect, researchers have investigated the relationship between educational settings and parental factors affecting creative thinking, while in the individual level aspect, researchers have investigated the relationship between intelligence and personality affecting creative thinking.

2. Creativity and Creative Thinking

There is still considerable debate on the precise definition of creativity and creative thinking (Corazza and Agnoli 2016). According to Barbot, Besançon, and Lubart (2016), creativity typically is the consequences of creative thinking. With this in mind, Corazza and Agnoli (2016) stated that these two terms closely correspond to each other and can be used interchangeably. If this is the case, cultivating the ability to think creatively among students is equivalent to fostering creativity, which many researchers concentrate on in academic settings (Miller and Dumford 2015; Hu, Wu, and Shieh 2016; Garaigordobil and Berruero 2011). As a matter of fact, possibly because of ambiguous nature of creative thinking, there is no common agreement as to what defines creative thinking (Runco 2004).

Furthermore, creative thinking involves creating ideas to address problems using techniques such as brainstorming and visualization (Ruggiero 2003; McArdle 2018). Creative thinking has been defined as: (1) creating unique and original approaches to problem solving (Guilford 1956; Harris 2014; Saccardi 2014) and is required in order to develop innovative ideas for problem resolution (Lau, John, and Sons 2015); (2) a process that creators use to generate novel and valuable ideas, solutions, or products that still do not exist (Sarkar and Chakrabarti 2011); (3) involving characteristics such as cognition, personality, environment, and motivation, and the positioning of outcomes in the context of a wide knowledge domain (Black, Freeman, and Stumpo 2015); (4) an incidental occurrence, which does not have a very clear early goals of creating elaborated plans and processes (He 2017); (5) an intentional occurrence, the complete opposite of the incidental, that has a clear goal (He 2017); (6) creating new ideas, new strategies and developing approaches to performing tasks in order to obtain more productive results (Wong and Cheung 2011). As a means to synthesize these various views, creativity or creative thinking in this paper refers to the ability to generate new ideas and concepts, and the ability to think divergently and productively in an academic domain.

3. Conceptual Framework

Undergraduate students need to study well for their upcoming careers, and with this in mind, they require active creative thinking (Wu, Siswanto, and Ko 2017). As such, an overall conceptual framework to understand and assess undergraduate creative thinking is important to consider. Such a framework is presented in Figure 1 below. This framework considers both individual level and environmental level factors. The contextual aspect is comprised of educational settings and parental factors while the individual level aspects consist of intelligence and personality factors that affect creative thinking. What follows is a discussion of this proposed conceptual framework and its utility in better understanding and fostering undergraduate creative thinking.

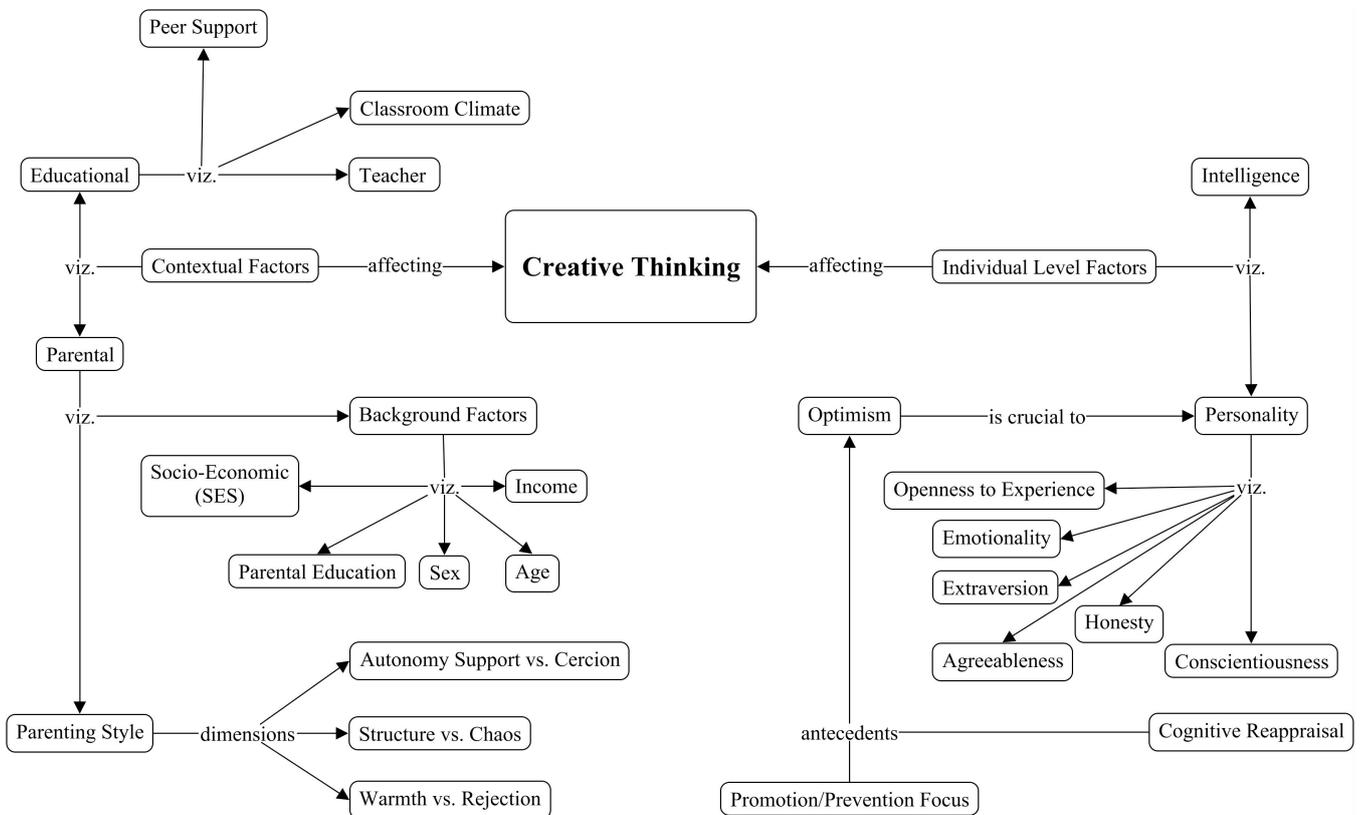


Figure 1. The Conceptual Framework

4. Factors affecting creative thinking of undergraduate students

4.1 Contextual Factors

4.1.1 Educational-Oriented Factors

To develop the creativity of adolescents, educational system require considerable expansion, and in this system, teachers are one of the essential components (Craft 2009; Davies 2006). Teachers are also defined as being in a particular position to be one of the important factors in impacting students' development (Bingham and Okagaki 2012; Li 2018). Davies et al. (2014) identified the creative learning environment which aims to promote creativity in students as illustrated in two perspectives – the physical and pedagogical environments. Teachers were recognized as one of the main elements in the pedagogical environment that prioritized the extent to which they prepare for teaching and learning (Davies et al. 2014). According to recent research on teachers and creativity, teachers should possess strong intrapersonal awareness (Reilly et al. 2011), teacher skills needed (Wood and Ashfield 2008) and role model of creative behaviors (Jeffrey 2006).

To bring out the highest level of student's creativity as much as possible, one should think about the influence and domination of classroom environment (Amabile 1998). Correspondingly, everything that happens in the classroom, eventually will be important to students' creative thinking (Beghetto and Kaufman 2014). Hennessey (2004) stated that the interaction between student and environment with the nearest suitable point may foster students' creativity. According to Florida (2014), classrooms should provide a more broad-minded and independent learning environment. Thus, the classroom environment has significant effects on students, so it should operate carefully and deliberately.

From the student's perspective, there are many elements that stimulate creativity, including the support of peers (Zhou and Valero 2016). Peer support within small groups brings about interaction between members and supports the accountable to creativity (Horng et al. 2005). Sternberg (1994) indicated that personal and professional relationships with peers help students' creativity and even career assists in development.

All things consider in the context of educational-oriented factors, the way that teachers prepare for teaching and learning, classroom environment where students can express their ideas freely and support of peers within small group may lead to fostering undergraduate students' creative thinking. As such, the proposed conceptual framework for undergraduate students' creative thinking may include teacher, classroom climate and peer support factors.

4.1.2 Parental-Oriented Factors

Parenting style refers to the methods that parents use in order to take care of their children while they are growing up and as well as the responsibility of parents' attitudes and belief in the family context (Darling and Steinberg 1993). Parenting styles have been grouped into different categories (Buri 1991; Schaefer 1959). According to Baumrind (1991), there are three parenting styles: authoritarian, permissive, and authoritative. Moreover, Skinner, Johnson, and Snyder (2005) intensively reviewed literature pertaining to how to measure parenting style. They identified six components such as warmth vs. rejection, structure vs. chaos, and autonomy support vs. coercion. Recent research shows that parenting styles seem to play an important role affecting creativity of students (Mehrinejad, Rajabimoghadam, and Tarsafi 2015; Fearon, Copeland, and Saxon 2013; Miller, Lambert, and Speirs Neumeister 2012). There is an agreement by researchers (Mehrinejad, Rajabimoghadam, and Tarsafi 2015; Fearon, Copeland, and Saxon 2013; Miller, Lambert, and Speirs Neumeister 2012) that authoritarian parenting style showed negative affect on creativity. Moreover, the study of Mehrinejad, Rajabimoghadam, and Tarsafi (2015) indicated that authoritative parenting style showed positive relationship toward creativity. Nonetheless, Miller, Lambert, and Speirs Neumeister (2012)'s study suggested that there is a positive relationship between permissive parenting style and creativity.

In addition, creativity among adolescents is an incorporated function of intelligent, socio-economic status (SES) and gender (Sharma as cited in Sarsani 2007). However, some studies reveal

that there is no significant difference in creativity and SES (Jarial and Sharma 1980). Students who had well-educated parents attained a high score in creativity, thus, the father and mother's education fostered the creative thinking ability of their children (Sudhir Kumar as cited in Sarsani 2007). Furthermore, background factors like type of family and number of siblings also could influence the creativity of students (Sharma as cited in Sarsani 2007).

Notably, authoritative parenting style may influence creative thinking of undergraduate students whereas parenting background such as SES also was found significant too. As such, the proposed conceptual framework for undergraduate students' creative thinking may include parenting style and their background factors.

4.2 Individual Level Factors

4.2.1 Intelligence

According to McKay, Karwowski, and Kaufman (2017), The Amusement Park Theoretical model (Baer and Kaufman 2005) argued that intelligence is an important factor for creativity. An appropriate degree of cognitive functioning is essential to learn across multiple domains of creativity (McKay, Karwowski, and Kaufman 2017). Jauk, Benedek, and Neubauer (2013) demonstrated the association between intelligence and creative achievement in general and proposed two reasons for how intelligence plays an important role in creativity, first, the association between intelligence and ideational originality (normal cognitive mechanisms focus on divergent and convergent thinking processes), second, creativity achievement may present the huge and complicated tasks which depend upon intelligence. Jauk, Benedek, and Neubauer (2013) also demonstrated the complex association between intelligence and creative ability. Hence, the studies show consensus on the relationship between intelligence and creativity, which means that intelligence is considered influential on creativity.

4.2.2 Personality

The personality of individuals causes the production of creative thoughts (Amabile 1996; Guilford 1971). One of personality theory that was widely used to study is The Big Five personality traits (Goldberg 1992; John and Srivastava 1999) or the Five-Factor personality traits (McCrae and Costa 1987). According to Kyllonen, Walters, and Kaufman (2005), the Five-Factor personality traits suggests that most individual differences in human personality can be classified into five dimensions: neuroticism (or conversely emotional stability), extraversion, openness to experience, conscientiousness, and agreeableness. The Five-Factor Model, or Big Five, offers a helpful classification of personality traits, moreover, these traits anticipate many important life consequences, that is, students' achievement and employment, healthy mind and body (Ozer and Benet-Martínez 2005). Result from many studies shows that openness to experience is the only factor that consistently and broadly related to creativity (Batey and Furnham 2006; Silvia 2008; Nusbaum and Silvia 2011). Openness to experience is connected intimately with all measures of creativity (Kerr and McKay 2013). In addition, according to McKay, Karwowski, and Kaufman (2017), people high in openness to experience personality trait are interested in creative activities.

Coupled with personality traits, Optimism was defined as positive outcome expectations and confrontation with setbacks (Li as cited in Li and Wu 2011). Optimists always produce positive thinking toward the future and believe that they overcome any obstacles (Li and Wu 2011). Li and Wu (2011) conducted research on optimism and found that optimism is crucial to the creative personality, which is compatible with Chen et al.'s (1996) as cited in Li and Wu (2011) proposition and proposed a future research on understanding the role of optimism and its influence on creativity.

Based on the finding that intelligence forms relationship with creativity and personality of individuals affects the creation of creative thought, as such, the proposed conceptual framework for undergraduate students' creative thinking may consider the intelligence and personality of individuals, such as openness to experience, as the influential factors.

5. Conclusions

Creative thinking was listed among the skills required for upcoming graduating students' entry-level careers which become more important to global industries. Due to the importance of this concept, the need to investigate undergraduate students' creative thinking has been rising. This article reviewed the influential factors of undergraduate students' creative thinking and proposed a model categorizing two main aspects – contextual and individual level factors. Based on various studies, we see that key contextual aspect to consider are educational setting and parental factors, while individual level aspects include to consider are intelligence and personality in terms of influencing creative thinking.

Future research will focus on establishing and testing the proposed conceptual framework in terms of further defining the influential paths and the other possible key factors affecting creative thinking.

References

- Amabile, Teresa. 1996. *Creativity in context update to the social psychology of creativity*. Boulder, Colo: Westview Press.
- Amabile, Teresa. 1998. *How to kill creativity*. Boston, MA: Harvard Business School Publishing.
- Baer, John, and James C. Kaufman. 2005. 'Bridging generality and specificity: The amusement park theoretical (APT) model of creativity.' *Roeper Review* 27: 158-63.
- Barbot, Baptiste, Maud Besançon, and Todd Lubart. 2016. 'The generality-specificity of creativity: Exploring the structure of creative potential with EPoC.' *Learning and Individual Differences* 52: 178-87.
- Batey, Mark, and Adrian Furnham. 2006. 'Creativity, Intelligence, and Personality: A Critical Review of the Scattered Literature.' *Genetic, social, and general psychology monographs* 132: 355.
- Baumrind, Diana. 1991. 'The Influence of Parenting Style on Adolescent Competence and Substance Use.' *The Journal of Early Adolescence* 11: 56-95.
- Beghetto, Ronald A., and James C. Kaufman. 2014. 'Classroom contexts for creativity.' *High Ability Studies High Ability Studies* 25: 53-69.
- Bingham, Gary E., and Lynn Okagaki. 2012. 'Ethnicity and Student Engagement'.
- Black, Catherine, Charles Freeman, and Gordon Stumpo. 2015. 'Conceptual model and strategies for creative thinking in apparel design.' *International Journal of Fashion Design, Technology and Education* 8: 131-38.
- Boonchan, Banjob, Phadungchai Pupat, and Boonchan Seesan. 2017. 'Causal Model of Variables Affecting the Creativity of Undergraduate Students.' *Creative Education*, 8(2): 15.
- Buri, John R. 1991. 'Parental Authority Questionnaire.' *Journal of Personality Assessment* 57: 110-19.
- Chen, Bin-Bin. 2016. 'Conscientiousness and everyday creativity among Chinese undergraduate students.' *Personality and Individual Differences* 102: 56-59.
- Corazza, Giovanni Emanuele, and Sergio Agnoli. 2016. 'On the Path Towards the Science of Creative Thinking.' in Giovanni Emanuele Corazza and Sergio Agnoli (eds.), *Multidisciplinary Contributions to the Science of Creative Thinking*. Singapore: Springer Singapore.
- Craft, Anna. 2009. *Creativity in schools: tensions and dilemmas*. London: Routledge.
- Darling, Nancy, and Laurence Steinberg. 1993. 'Parenting style as context: An integrative model.' *Psychological Bulletin* 113: 487-96.
- Davies, Dan, Divya Jindal-Snape, Rebecca Digby, Alan Howe, Christopher Collier, and Penny Hay. 2014. 'The roles and development needs of teachers to promote creativity: A systematic review of literature.' *Teaching and Teacher Education* 41: 34-41.
- Davies, Trevor. 2006. 'Creative teaching and learning in Europe: promoting a new paradigm.' *The Curriculum Journal* 17: 37-57.
- Fearon, Danielle D., Daelynn Copeland, and Terrill F. Saxon. 2013. 'The Relationship Between Parenting Styles and Creativity in a Sample of Jamaican Children.' *Creativity Research Journal* 25: 119-28.
- Florida, Richard. 2014. 'The Creative Class and Economic Development.' *Economic Development Quarterly* 28: 196-205.
- Garaigordobil, Maite, and Laura Berruero. 2011. 'Effects of a Play Program on Creative Thinking of Preschool Children.' *The Spanish journal of psychology* 14: 608-18.
- Goldberg, Lewis R. 1992. 'The development of markers for the Big-Five factor structure.' *Psychological Assessment* 4: 26-42.
- Guilford, J. P. 1971. *The nature of human intelligence*. London: McGraw-Hill.
- Guilford, Joy Paul. 1956. 'The structure of intellect.' *Psychological Bulletin Psychological Bulletin* 53: 267-93.
- Harris, La Verne Abe. 2014. *Idea engineering : creative thinking and innovation*. New York: Momentum Press.
- Hass, Richard W., Jen Katz-Buonincontro, and Roni Reiter-Palmon. 2016. 'Disentangling creative mindsets from creative self-efficacy and creative identity: Do people hold fixed and growth theories of creativity?' *Psychology of Aesthetics, Creativity, and the Arts* 10: 436-46.
- He, Kekang. 2017. 'A theory of creative thinking: construction and verification of the dual circulation model.'
- Hennessey, Beth A. 2004. *Developing creativity in gifted children: the central importance of motivation and classroom climate*. Storrs, CT: National Research Center on the Gifted and Talented, University of Connecticut.

- Hong, Jeou-Shyan, Jon-Chao Hong, Lih-Juan ChanLin, Shih-Hui Chang, and Hui-Chuan Chu. 2005. 'Creative teachers and creative teaching strategies.' *International Journal of Consumer Studies* 29: 352-58.
- Hu, Ridong, Yi-Yong Wu, and Chich-Jen Shieh. 2016. 'Effects of Virtual Reality Integrated Creative Thinking Instruction on Students' Creative Thinking Abilities.' *Eurasia Journal of Mathematics, Science and Technology Education* 12: 477-86.
- Jankowska, D. M., I. Omelańczuk, M. Czerwonka, and M. Karwowski. 2018. 'Exploring links between creative abilities, creative personality and subclinical autistic traits.' *Personality and Individual Differences*.
- Jarial, Gurpal S., and A. K. Sharma. 1980. 'Creativity and its components as affected by intelligence, personality and their interaction.' *Asian Journal of Psychology & Education* 6: 26-32.
- Jauk, Emanuel, Mathias Benedek, and Aljoscha C. Neubauer. 2013. 'The Road to Creative Achievement: A Latent Variable Model of Ability and Personality Predictors.' *European Journal of Personality* 28: 95-105.
- Jeffrey, Bob. 2006. 'Creative teaching and learning: towards a common discourse and practice.' *Cambridge Journal of Education* 36: 399-414.
- John, Oliver P., and Sanjay Srivastava. 1999. 'The Big Five Trait taxonomy: History, measurement, and theoretical perspectives.' *Handbook of personality: Theory and research, 2nd ed.* New York, NY: Guilford Press.
- Kālis, Emīls, Līga Roķe, and Indra Krūmiņa. 2013. 'Indicators of Creative Potential in Drawings: Proposing New Criteria for Assessment of Creative Potential the Test for Creative Thinking - Drawing Production.' *Baltic Journal of Psychology* 14: 22-37.
- Kerr, Barbara, and Robyn McKay. 2013. 'Searching for Tomorrow's Innovators: Profiling Creative Adolescents.' *Creativity Research Journal* 25: 21-32.
- Kyllonen, Patrick, Alyssa M. Walters, and James C. Kaufman. 2005. 'Noncognitive Constructs and Their Assessment in Graduate Education: A Review' *Educational Assessment* 10: 153-84.
- Lai, Emily, Kristen DiCerbo, Peter Foltz, Pearson, and P. 2017. *Skills for Today: What We Know about Teaching and Assessing Collaboration* (Pearson. One Lake Street, Upper Saddle River, New Jersey 07458. Website: <http://www.pearsoned.com/>).
- Lau, Joe Y. F., Wiley John, and Sons. 2015. *An introduction to critical thinking and creativity: think more, think better.* Hoboken, N.J.: John Wiley & Sons.
- Li, Cheng-Hsien, and Jing-Jyi Wu. 2011. 'The Structural Relationships Between Optimism and Innovative Behavior: Understanding Potential Antecedents and Mediating Effects.' *Creativity Research Journal* 23: 119-28.
- Li, Yongmei. 2018. 'Teacher–Student Relationships, Student Engagement, and Academic Achievement for Non-Latino and Latino Youth.' *Adolescent Research Review* 3: 375-424.
- McArdle, Karen. 2018. 'Freedom Research in Education: Becoming an Autonomous Researcher.'
- McCrae, Robert R., and Paul T. Costa. 1987. 'Validation of the five-factor model of personality across instruments and observers.' *Journal of Personality and Social Psychology* 52: 81-90.
- McKay, Alexander S., Maciej Karwowski, and James C. Kaufman. 2017. 'Measuring the muses: Validating the Kaufman Domains of Creativity Scale (K-DOCS).' *Psychology of Aesthetics, Creativity, and the Arts* 11: 216-30.
- Mehrnejad, Seyed Abolghasem, Sara Rajabimoghadam, and Mahdiah Tarsafi. 2015. 'The Relationship between Parenting Styles and Creativity and the Predictability of Creativity by Parenting Styles.' *Procedia - Social and Behavioral Sciences* 205: 56-60.
- Miller, Angie L., and Amber D. Dumford. 2015. 'The Influence of Institutional Experiences on the Development of Creative Thinking in Arts Alumn.' *Studies in Art Education* 56: 168-82.
- Miller, Angie L., Amber D. Lambert, and Kristie L. Speirs Neumeister. 2012. 'Parenting Style, Perfectionism, and Creativity in High-Ability and High-Achieving Young Adults.' *Journal for the Education of the Gifted* 35: 344-65.
- Moltafet, Ghavam, Somayeh Sadat Sadati Firoozabadi, and Asieh Pour-Raisi. 2018. 'Parenting Style, Basic Psychological Needs, and Emotional Creativity: A Path Analysis.' *Creativity Research Journal* 30: 187-94.
- Nusbaum, Emily C., and Paul J. Silvia. 2011. 'Are Openness and Intellect distinct aspects of Openness to Experience? A test of the O/I model' *Personality and Individual Differences* 51: 571-74.
- Ozer, Daniel J., and Verónica Benet-Martínez. 2005. 'Personality and the Prediction of Consequential Outcomes.' *Annual Review of Psychology* 57: 401-21.
- Partnership for 21st Century Skills. 2008. *21st Century Skills, Education & Competitiveness: A Resource and Policy Guide.*
- Piffer, Davide. 2012. 'Can Creativity Be Measured? An Attempt to Clarify the Notion of Creativity and General Directions for Future Research.' *Thinking Skills and Creativity* 7: 258-64.
- Reilly, Rosemary C., Frank Lilly, Gillian Bramwell, and Neomi Kronish. 2011. 'A synthesis of research concerning creative teachers in a Canadian context.' *Teaching and Teacher Education* 27: 533-42.
- Rojas, J. P., and K. M. Tyler. 2018. 'Measuring the Creative Process: A Psychometric Examination of Creative Ideation and Grit.' *Creativity Research Journal* 30: 29-40.
- Ruggiero, Vincent Ryan. 2003. *Making your mind matter: strategies for increasing practical intelligence.* Lanham: Rowman & Littlefield.
- Runco, Mark A. 2004. 'Creativity.' *Annual Review of Psychology* 55: 657-87.
- Saccardi, Marianne. 2014. *Creativity and children's literature : new ways to encourage divergent thinking.*
- Sarkar, Prabir, and Amaresh Chakrabarti. 2011. 'Assessing design creativity.' *Design Studies* 32: 348-83.
- Sarsani, Mahender Reddy. 2007. 'A Model for the Correlates of Students' Creative Thinking.' *Journal on School Educational Technology* 2: 35-48.

- Schaefer, Earl S. 1959. 'A circumplex model for maternal behavior.' *The Journal of Abnormal and Social Psychology* 59: 226-35.
- Silvia, Paul J. 2008. 'Another look at creativity and intelligence: Exploring higher-order models and probable confounds.' *Personality and Individual Differences* 44: 1012-21.
- Simone, M. Ritter, and Mostert Nel. 2016. 'Enhancement of Creative Thinking Skills Using a Cognitive-Based Creativity Training.' *Journal of Cognitive Enhancement* 1-11.
- Skinner, Ellen, Sandy Johnson, and Tatiana Snyder. 2005. 'Six Dimensions of Parenting: A Motivational Model.' *Parenting* 5: 175-235.
- Sternberg, Robert J. 1994. *Encyclopedia of human intelligence*. New York; Toronto: Macmillan; Maxwell Macmillan Canada; Maxwell Macmillan International.
- Tan, Chee-Seng, and Timothy Teo. 2017. 'Psychometric qualities of the Creative Process Engagement Scale in a Malaysian undergraduate sample.' *Swiss Journal of Psychology* 76: 35-42.
- VanGundy, Arthur. 2005. *101 activities for teaching creativity and problem solving*. San Francisco: Jossey-Bass.
- Verhaeghen, P., A. N. Trani, and S. N. Aikman. 2017. 'On Being Found: How Habitual Patterns of Thought Influence Creative Interest, Behavior, and Ability.' *Creativity Research Journal* 29: 1-9.
- Wong, Chi-Sum, and Millissa F. Y. Cheung. 2011. 'Transformational leadership, leader support, and employee creativity.' *Leadership & Organization Development Journal* 32: 656-72.
- Wood, Ruth, and Jean Ashfield. 2008. 'The use of the interactive whiteboard for creative teaching and learning in literacy and mathematics: a case study.' *British Journal of Educational Technology* 39: 84-96.
- World Economic Forum. 2016. *The future of jobs employment, skills and workforce strategy for the fourth industrial revolution*.
- Wu, Mingchang, Ibnu Siswanto, and Chenju Ko. 2017. 'The influential factors and hierarchical structure of college students' creative capabilities—An empirical study in Taiwan.' *Thinking Skills and Creativity* 26: 176-85.
- Yamaguchi, Yosuke, and Machiko Sannomiya. 2012. 'Beliefs and Attitudes About Creativity Among Japanese University Students.' *Creativity & Human Development* 14: 1-11.
- Zhou, Chunfang, and Paola Valero. 2016. 'A Comparison of Creativity in Project Groups in Science and Engineering Education in Denmark and China.' in Giovanni Emanuele Corazza and Sergio Agnoli (eds.), *Multidisciplinary Contributions to the Science of Creative Thinking*. Singapore: Springer Singapore.

The Impact of Culture and Intercultural Competence on the Performance of Students in Translation

Magda Madkour

College of Languages and Translation, Al-Imam University, Saudi Arabia, magdasiver@yahoo.com

ABSTRACT: The 21st century witnessed the emergence of Translation Studies, which include linguistics, comparative literature, sociology, semiotics, and communication. Translation Studies is also an interdisciplinary field that deals with the study of the theory, the description and application of translation, and cultural translation. Cultural Translation, which encompasses postcolonial translation studies, cultural gaps, and cultural manipulation, requires training the students of translation in the areas of social anthropology to help them achieve cultural and intercultural competence. Therefore, the purpose of the current quasi-experimental study was to provide the students with new translation training to help them understand the role of culture in translation. Examining the relationship between translation, linguistics, education, and social anthropology showed a shift in the purpose of translation from transferring information into a task of transmitting culture. Such a shift necessitates training the students to acquire socio-cultural skills by engaging them in discussions and dialogues about the culture of the original texts. The current study was an attempt to help students perceive the relationship between translation and culture to understand that some texts, specifically literary texts, do not only involve mastering two languages syntactically and semantically, but they also require communicative skills to analyze the social anthropological aspects of the texts, including culture, religion, and ideological and political issues. Therefore, this study applied the recent collaborative pedagogy for translation, which is based on improving social and cultural skills, for providing the students with the strategies for enhancing their professional practices within a social-constructivist educational environment. Moreover, emphasizing the concept of cultural turn in the work of polysystems in translation, the significance of this study lies in analyzing a number of theories to examine the relationship between translation, linguistics, and social anthropology and their impact on students' culture and intercultural competence.

KEYWORDS: collaborative pedagogy, cultural translation, linguistics, social anthropology, Translation Studies, translation theories

1. Introduction

Translation is connected with various fields of studies to describe the application of translation theory, especially in solving cultural issues. The current research was based on examining the relationship between translation and social anthropology. Understanding the cultural aspects of original texts is essential for bridging the gaps between different cultures to grasp the core message of the text and render such a message effectively. In this sense, translation is based on real life practices that require conveying different cultures while applying syntactic, semantics strategies as well as social approaches. Language Socialization (LS) is generally conceived as the socialization through which language is used socially in appropriate ways. Therefore, emphasis is placed on social skills since translators need to enhance their social capabilities to understand different cultures in various types of texts. The unit of translation is not only the language of a text in terms of words and sentences, but it is also the culture in which that text is developed. Understanding the culture of the text requires that students of translation examine the processes of encoding and decoding the message that comprises the task of translation. Such an examination should include the study of language as an act of socialization, i.e. the socialization through which the individual uses language in socio-cultural contexts. Language Socialization, as a part of linguistic anthropology, investigates how language creates new social relations in a cultural context when the individuals are socialized using the language to interact through the lenses of their diverse cultures. Social interactions help students not only to acquire language skills, but also to increase cultural awareness, which is necessary for cultural translation. Cultural Translation, which encompasses postcolonial translation studies, cultural metaphors, cultural gaps, and cultural manipulation, requires training the students of translation in the areas of social anthropology to help them achieve cultural and intercultural competence.

1.1. Problem Statement

The current research dealt with the problems of achieving the purpose of culturally-based translation. In their attempt to help students acquire translation skills, teachers of translation tend to focus merely on providing students with syntactic and semantic strategies to solve the problems of the source texts. Neglecting the cultural aspects of the text impacts the translation process as well as the quality of translation. Students complained that they were unable to deal with cultural problems because they did not have adequate training that embraced pragmatic approaches to translation. Previous research (Blakesley & Munday 2018; Ginter 2002; Lefevere 1999; Maitland 2017; Newmark 1988; Olalla-Soler 2015; Valerio 2013; Vermeer 1978; Reiss 1981) indicated that finding the equivalence in the target culture cannot be attained based solely on linguistic elements, but also on the function of the target text and its purpose for the readers. For instance, Maitland affirmed that cultural translation, in its non-linguistic and non-grammatical sense, offers a general process of communication between different cultural groups. Newmark (1988) emphasized that culture is derived from an anthropological perspective and that culture and language are interrelated concepts. Blum-Kulka (1986) defined translation as an act of communication, and that the process of translation cannot be restricted to two languages since translation also involves two cultures. However, while the functional approach to translation aims at expanding the possibilities of linking translation, especially cultural translation, to studies on cultures and civilizations, students lack training in acquiring communicative skills that can help them improve their culture and intercultural competence, which impacts their performance in a negative way. The problems of translating culturally-based texts are not restricted to achieving cultural equivalence through cultural-bound terms, but they also encompass such cultural issues as social identity, stereotypical images, cultural metaphors, gender discrimination, religious conflicts, social and political power, and social estrangements.

1.2. Purpose Statement

The purpose of the current quasi-experimental study was to provide the students with new translation training to help them understand the role of culture in translation. Such a training was fundamental for examining the impact of culture and intercultural competence on the performance of students in translation. Examining the relationship between translation and social anthropology pointed to a new purpose of translation, which is interpreting and transmitting different cultures. Hence, training the students to acquire socio-cultural skills by engaging them in discussions and dialogues about the culture of the original texts becomes inevitable. The linguistic-based approach, which is concerned with examining the correspondence between the source text language and target text language, is not adequate to produce correct translation. Previous research (Chesterman 1997; Katan 2009; Hewson & Martin 1991; Lefevere 1992; Snell-Hornby 1992; Vermeer 1978) described the translator as an “effective communicator”, a “cross-cultural specialist”, a “bi-cultural” expert, and a “cultural operator”. Such studies showed that translators become these experts when they increase their cultural awareness, and improve their cultural and intercultural competence. Therefore, the current study aimed to help students of translation to become competent translators by perceiving the relationship between translation and culture as a way of understanding culturally-bound texts. Culturally-based texts do not only involve mastering two languages, but they also require communicative skills to analyze the social anthropological aspects of the texts, including culture, religion, and ideological and political issues.

1.3. Significance of the Study

The current study applied the recent collaborative pedagogy for translation, which is based on improving social and cultural skills, for providing students of translation with the necessary strategies to enhance their professional practices within a social-constructivist educational classroom. The integration of culturally-oriented approaches to translation into social-constructivist teaching techniques, as implemented in the current study, fills some of the gaps in the literature. The present study also emphasized the concept of ‘cultural turn’ in the work of polysystems in translation, through examining the relationship between translation, linguistics, and social anthropology, as an attempt to emphasize the impact of language socialization on students’ cultural and intercultural competence. The

present study adopted a comparative method to reveal the differences of two approaches to translation, namely the linguistic-based approach and the culturally-based approach to demonstrate the effect of employing a functional, cultural-oriented approach to translation on students' performance. As such, the current study is expected to add a new insight into the view that translating culturally-bound texts, requires translators to have not only linguistic skills, but also cultural and intercultural competence.

1.4. Theoretical Framework

André Lefevere's (1992) theory of translation as a "rewriting and manipulation" of the original text constitutes the theoretical framework of the current study. Lefevere argued that because all rewritings reflect certain ideologies and poetics, they manipulate the purpose of the texts to meet the requirements of different readerships. Lefevere theorized translation as a form of "rewriting" that translators can produce based on a set of ideological constraints within the target language cultural system. Lefevere stated, "translation is the most obviously recognizable type of rewriting, and potentially the most influential because it is able to project the image of an author and/or a (series of) work (s) in another culture" (p. 9). According to Lefevere, 'culture' is the unit of translation. Consequently, Lefevere's cultural approach to translation was a part of the "cultural turn" in translation studies. Together with Bassnett (2014), Lefevere contributed in developing the intercultural and multicultural trend in the postcolonial era. The studies of Lefevere and Bassnett (2016) emphasized the role of translation in the development of politics, culture, and society, as well as in enhancing communication among nations. The importance of Lefevere's theory is that it does not limit translation to the linguistic approach, but expands the translator's task from the linguistic level to a more holistic social context.

Thus, the development of cultural studies embraced new perspectives including postcolonialism, orientalism and feminism. Lefevere views translation as a task with special purposes that are defined by certain political forces. Such forces help in developing translation as a means of cultural enrichment. In this respect, Lefevere pointed out that "rewriting" can play an important role in introducing new genres and new devices that can form the power of culture. In other words, "rewriting" can provide "innovative devices" or can also "repress innovation", based on the type of manipulation the translator undertakes. Using Lefevere's words, "rewritings are inspired by ideological or poetical motivations" (p. 7). The task of "rewriting" in translation encompasses adaptation and criticism. Lefevere asserted that translation must be studied in connection with patronage, ideology, and poetics. Lefevere also affirmed that poetics can be defined as what literature should be allowed to be, while ideology can be defined as what society should be allowed to be; therefore, ideology can control the main strategies that translators use, and can provide appropriate solutions to translation problems (p. 14). Moreover, patronage is "something like the powers (persons, institutions) that can further or hinder the reading, writing, and rewriting of literature" (p. 15). Lefevere also argued that the Universe of Discourse can be considered as "certain objects, customs, and beliefs that are unacceptable in translators' own culture (p. 87). So, translators need to find the balance between the universe of discourse which is acceptable to the author of the original text, and the universe of discourse which is acceptable to the translator's audience. Based on Lefevere's views, translation involves a complex number of decisions that translators need to make. Lefevere proposed seven methods for translating poetry, which include phonemic translation, literal translation, metrical translation, poetry-to-prose translation, rhymed translation, blank verse translation, and interpretation.

As an example of "rewriting", Lefevere mentioned Edward Fitzgerald's translation of the Persian poet Omar Khayyam. Reflecting on Khayyam's poem "Quatrains", 'cultural turn' in Translation Studies brings about a new awareness that the process of translation does not only involve a transference between two languages, but it is also concerned with a communication among cultures. For example, the Egyptian poet Ahmed Ramy (1892 -1981) rewrote Khayyam's poem in Arabic using the traditional Arabic poetry rules of rhymes and meters. Ramy did not perform 'through translation', i.e. Arabic translation from Fitzgerald's English translation. Instead, Ramy studied the Persian language for five years to read the original poem and rewrite it in Arabic. Ramy's "rewriting" can be considered an innovative task that shows the translator's ability to

reproduce Khayyam's mystical ideas in the culture of the Arabic language. While Ramy did not study Lefevere's theory, one can trace the manipulative methods in relation to the translation of Khayyam's poem, namely addition, omission, and rewriting, which can be used as an evidence that Lefevere offered the translators an applicable method to achieve the "rewriting" task. As Lefevere explained, the "rewriting" task involves linguistic exchange as well as cultural manipulation of the texts. Therefore, the relationship between the various processes of translation should reflect the essential principles that are related to the identity of the culture.

2. Literature Review

The literature review presented herein is based on analyzing four main concerns relevant to the current study research questions. The four concerns are: the differences between linguistic-oriented approaches and cultural-oriented approaches; the relationship between translation and social anthropology; cultural turn and Arab cultural issues; and culture and intercultural competence.

2.1 *Linguistic-Oriented Approaches vs. Cultural-oriented Approaches*

While the linguistic-oriented approaches to translation focus on emphasizing the linguistic equivalence to maintain the meaning of the original texts, the cultural-oriented approaches to translation are centered in expanding the process of translation beyond the text. The linguistic approaches to translation are based on applying the studies of structural linguistics such as that of Jakobson (1959), Catford (1965), Nida (1964, 2001) Newmark (1981, 1988), Koller (1979, 1995), Vinay and Darbelnet (1985), van Leuven-Zwart (1989), and Reiss (1971). Such studies are mainly involved with transferring the meaning by identifying and solving the translation problems using grammatical shifts, discourse analysis, semantics, stylistics, and pragmatics. For example, Jakobson's studies influenced the development of intralingual, interlingual, and intersemiotic translations. Vinay and Darbelnet developed seven procedures for translation, which include word-for-word, calque, and borrowing for direct (literal) translation, and transposition, modulation, equivalence, and adaptation for oblique (free) translation. Catford proposed a translation theory based on contrastive analysis to apply grammatical shifts, and category shifts to examine the relationship between textual equivalence and formal correspondence. van Leuven-Zwart suggested a model of shift analysis to build a discourse framework at micro and macro levels to achieve the 'transeme', i.e. a comprehensible textual unit by which the translation differs from the original text with regard to syntactic, semantic, stylistic and pragmatic aspects (pp. 153-155). Nida distinguished between formal correspondence and dynamic equivalence to emphasize the target language audience. Reiss developed a text typology model based on the informative, the expressive, the operative, and the audomediational textual functions. Newmark used the classification of text categories to develop a dual theory of semantic and communicative translation. Baker (1992) added another layer for the translation process through analyzing three pragmatic concepts, namely, coherence which relates to the audience's understanding of the source text author; presupposition where the receiver of the message is assumed to have some prior knowledge; and the implicature where the meaning is implied rather than clearly stated. Moreover, Holz-Manttari (1984) placed emphasis on some practical issues in translation through the translational action theory which embraces the Source Text (ST) and the Target Text users and producers.

The functionalist linguistic-oriented theories focus on equivalence, and translation purpose. Nord's (1991, 1997) theory of ST analysis is based on discourse and register analysis to examine how language conveys meaning in a social context. Vermeer (1984) proposed a new theory of translation based on translation as a purposeful activity, when the process of translation is determined by the function of the product. Vermeer (1984) emphasized the role of the translator as a creator of the Target Text (TT) to achieve the purpose (skopos) of the translation. Vermeer (2000) pointed out that the skopos "... expands the possibilities of translation strategies, and releases the translator from the corset of an enforced – and hence often meaningless – literalness; and it incorporates and enlarges the accountability of the translator" (p. 237). In this regard, research (Nord 1997; Reiss & Vermeer 1984; Vermeer 1978) indicated that cultural errors are often due to the translators' insufficient awareness of the TT's skopos. Therefore, Vermeer (2000) examined

skopos in relation to ‘intertextuality’ and ‘intratextuality’, stressing that TT should conform to the standard of ‘intratextuality coherence’ because establishing a strong connection between the text and readership is essential for achieving cultural transfer. Further studies on translation as a functional-oriented product were developed through House’s (1997) *Translation Quality Assessment model*, in which House expanded Halliday’s (1994) ideas of ‘field’, ‘tenor’, and ‘mode’ to assess the quality of translation by comparing all the linguistic and social variables between ST and TT to employ either overt or covert translation. Furthermore, Hatim and Mason (1990) emphasized the task of the translator as a ‘communicator’. Mason (2000) also discussed the connection between translation and institutional cultures.

The functional approach to translation helped in developing the field of Translation Studies, linking translation to studies on cultures and civilizations. Many scholars studied translation as the process of intercultural communication between two languages. Bassnett and Lefevere (2016) viewed translation as a ‘cultural turn’. Snell-Hornby (1992) described the translator as a ‘cross-cultural specialist’. Research (Chesterman (1997; Even-Zohar 2003; Venuti 2017) described translation as a task of transmitting culture. Chesterman (1997) argued that translating culturally-based texts requires understanding diverse cultures so that translators become proficient in interpreting cultural clues and communicating cultural concepts. Chesterman’s (1997) research on semiotics and communication enhanced the field of Translation Studies, highlighting the identification of norms of translation. Chesterman (2000) elaborated on the concept of ‘memes’ related to Translation Studies, emphasizing that a ‘meme’ is “an element of a culture that may be considered to be passed on by nongenetic means, especially imitation.” (p.5). Moreover, Toury (1995) views norms as social entities that require understanding translation as a task of manipulating the text to communicate its meaning. While Chesterman (1993) discussed “the product or *expectancy* norms, the *process* or *professional* norms, and the *communication norm*, and *the ethical norm* to establish an appropriate relation between ST and TT, Toury (1995) described norms as the “general values or ideas shared by a community – as to what is right and wrong, adequate and inadequate” (p. 55). Influenced by Even-Zohar’s (1978, 1981) research, Toury (1980) argues that translation is driven by the target culture, therefore, the translators are constrained linguistically, and socially by their norms. Such norms guide the translators in making appropriate decisions to solve the translation problems. In this respect, Venuti (1995) questioned the linguistic-oriented models, and proposed two translation strategies that translators can apply to make the text conform to the culture of the target language. The two strategies proposed by Venuti (1995) are domestication and foreignization. Domestication is the strategy of making the text conform to the culture of the language being translated to while foreignization is the strategy of retaining information from the source text. As such, Venuti argued that every translator should explore the translation process through the lenses of culture. Venuti opposed the strategies that reduce foreign culture, thus, placed more emphasis on cultural-oriented approaches to translation.

2.2 *The Relationship Between Translation and Social Anthropology*

From the 1950s to the 1970s, the translation of cultures has been increasingly connected to the tasks of social anthropologists. Lienhardt (1966) referred to translation as negotiating different modes of thought, thus perceiving translation as cultural understanding rather than a purely linguistic task. While Language Socialization (LS) is recognized as the socialization through appropriate language use in the society (Schieffelin & Ochs 1984), translation can be viewed as a social phenomenon, and a cultural practice (Hermans, 1999). Therefore, Cultural Translation is studied through cultural anthropology. In this sense, the translator can be considered an anthropological communicator of cultures. The relationship between translation and social anthropology is evident since the translators deal with complex cultural issues in the texts, including orientalism, feminism, postcolonial and postmodernist discourse, and globalization. These domains are related to Translation Studies, and dealing with these issues indicates that the untranslatability of some texts does not arise from language limits, but also from cultural barriers. For example, translating texts that deal with the Aboriginal, American Indians, African, and Arab cultures, necessitates understanding these distant cultures. In this respect, Bhabha

(1994) pointed out, “Translation is the performative nature of cultural communication” (p. 228). In a previous research, Goodenough (1970) argued that culture required understanding social activities. Hermans (2001) noted that anthropologists face many challenges when interpreting cultures, especially in the process of reconceptualizing the representation modes through translation. Agar (2011) argued that while the tension between outsider and insider descriptions of language and culture is a leitmotif of anthropology, translation can “illuminate the relationship between local specifics and human universals” (pp. 38-47). Bachmann-Medick (2006) used the term ‘translation turn’ to stress the relationship between translation and social and cultural studies. Bachmann-Medick (2006) argued that cultural translation involved not only cultural understanding, but also suggested a harmonious relationship among different cultures, when translation becomes a metaphor for change, and a concept of generating close relations among different cultures. Snell-Hornby (2009) identified different meanings of the word ‘turn’, which include a change of direction, a bend in a road, and the development of new tendency. In this regard, Bachmann-Medick (2017), argued that all ‘turns’ display a triadic structure, which includes a cross-disciplinary exploration of new common fields of inquiry, a metaphorization of the new object of inquiry, and a transformation into an analytical category. In this respect, Even-Zohar (1981) defines translation within the polysystem as a potential force for renewal of social transformation processes.

Hence, cultural translation can act as a metaphor that embraces holistic views. Bassnett (2004, 69-70) stated, “The notion of translation has become the metaphor for all kinds of processes of transformation, rewriting, encoding and decoding as well as a force for cross-disciplinary exchanges within humanities and between the humanities and the natural sciences.” Therefore, Cultural Translation stresses the relevance of social, cultural, and political contexts in the task of translation. As Bassnett explained, translating cultures is not about a text communicating itself, but about learning to live another form of life, speak another language, and meet different people. Translation in this sense is an attempt to reproduce the coherence of an alien discourse in the translator’s language. Hence, lies the relationship between translation and social anthropology since the reproduction process depends on the resources of the translators’ language, and the interest of the translators in their readership, to conduct ethnographic analyses.

2.3 Cultural Turn and Arab Cultural Issues

Cultural turn is the metaphor adopted by Cultural to refer to the analysis of translation in cultural, political, and ideological contexts. ‘Cultural turn’, was presented by the research on Polysystems and translation norms by Even-Zohar (1978), and by Toury (1980). Lefevere’s (1992) theory was evolved out of the polysystems and the Manipulation School. Bassnett and Lefevere (2004) adopted ‘cultural turn’ to emphasize the socio-political foundations of translation. Furthermore, Venuti (1995) discussed the powers that controlled translation, including governments, political parties, and politically motivated institutions which determined the decisions of promoting or censoring certain translations, beliefs, or an entire culture. Spivak (2007) indicated that cultural studies, specifically, post-colonialism focused on issues of translation, and that the colonizers’ ideologies affected the way texts were translated. Simon (1996) noted how Cultural Studies helped in understanding the complexities of certain issues such as gender. Simon argued that a language with its biased images of gender dominance affected women’s ideologies. Simon claimed that feminist translators applied linguistic and non-linguistic strategies to highlight the feminist in the translated texts. In this respect, Hatim and Mason (1997) argued that ideology embraces assumptions, beliefs, and value systems, which are shared collectively by different social groups.

Since cultures differ from one society to another, people use cultural contexts to express their hopes and frustrations. Some of the concerns that exist in Arab cultures include images of stereotypes that represent the Arab as being inferior to the Western man. Edward Said (1979) argued that the West considers the East not only backward, but also unaware of its history and culture. Said studied the Orient based on the political imperialism of Europe in the East. Said also argued that the idea of the Oriental is a myth in the European thought, which was developed after the 18th century. Said and Milligan (1997) noted that the Oriental stereotypes were developed as a

result of the assertion of an imperial right to impose moral, and commercial rejuvenation upon the East. These stereotypes continued to exist in the present time, and they affect a proper communication between the Western cultures and the Arab cultures.

2.4. Culture and Intercultural Competence

The concept of competence is used increasingly when discussing linguistics and translation. In linguistics, Chomsky (1965) explained competence in terms of the use of intrinsic abilities to learn a language. Hymes (1972) opposed Chomsky's argument about "grammatical competence," and developed a semiotic description of context and language use. Halliday (1994) emphasized the use of language as a communicative tool. According to Brumfit (1984), the communicative approach in language is concerned with using the language as a communication system. Therefore, Brumfit, and Hymes introduced the term *communicative competence* to refute Chomsky's notion of competence. Baker (1992) argued that a competent translator must have knowledge about the semantics and lexical rules of the source language. Baker also argued that a competent translator can develop strategies for dealing with non-equivalence semantic field.

On the other hand, culture and intercultural competence refer to the awareness that develops out of experience of culture. The translator can improve competence by increasing the awareness of the differences between cultures. Bassnett (2014) stated that translation is not just the transfer of texts from one language into another, but it is the process of negotiation between texts and between cultures. To improve the translator's competence, Newmark (1988) proposed two methods for translating cultural words after categorizing cultural words into Ecology (flora, fauna, hills, winds, plains); material culture (food, clothes, houses and towns, transport); social culture (work and leisure); organizations customs (activities, procedures, political, administrative, religious, and artistic concepts); and gestures and habits (local specifics). Newmark's first method of translation is transference which gives 'local color', i.e. keeping cultural names and concepts. The second method is componential analysis which excludes the culture and highlights the message of the text. However, Chesterman's (1997) developed his research on semiotics and communication to emphasize that the heuristic value of semiotics lies in studying different sign systems from a single point of view as well as explaining the sign as it occurs in different situations. Chesterman (2009) explored the extent to which the key semiotic features of similarity, difference, and mediation, are fundamental to translation. Chesterman (1997) highlighted the identification of norms of translation. Chesterman (1997) views norms as social entities that require understanding translation as a task of manipulating the text to communicate its full meaning. Moreover, Bassnett and Lefevere (2016) argued that cultural and intercultural competence impact the translator's performance. Furthermore, Tymoczko (2003) argued that competent translators are needed in any interlingual and intercultural settings because they mediate between two linguistic, cultural groups. Tymoczko differentiated between transference, which refers to physical or symbolic transfer, and transculturation, which involves translating beyond the transfer of verbal materials, which include transmitting ideas about religion, government, music, and visual arts.

3. Research Method

The current research followed a quasi-experimental design to examine the impact of culture and intercultural competence on the performance of students in translation. The sample of the study consisted of 100 undergraduate female students, selected randomly from the students who enrolled at the College of Languages and Translation at Al-Imam University, Saudi Arabia. The majority of the students, with the percentage of 95% were within the age category of 19 to 21 years old while 10% were within the age category of 22-23 years old. All 100% of the students studied English at preparatory and secondary schools for 6 years prior to their college study; in addition to one preparatory year at college level. The percentage of the participants who used bilingual dictionaries for completing the translation assignments was 98% while 2% depended on guessing or inferring the meaning of difficult words.

3.1 Instrumentation and Data Collection

An initial assessment was conducted, using a Likert scale questionnaire with 21 items to identify the participants' translation problems. A pilot study was conducted for achieving validity. The study instruments also included a translation pre-test and post-test, and a translation assessment validated rubric. The experiment of the study involved engaging the participants in analyzing, discussing, translating, and editing 16 English and Arabic texts for 8 weeks. The participants were divided into two groups: a controlled group and an experimental group. Each group consisted of 25 students who were enrolled in the undergraduate program of Level 5 to study literary and cultural translation during the summer course of 2018. This course required students to study 6 hours per week, in addition to another 6 hours at home to complete their home assignments. A Google Group was used to support the students' learning.

The literary English and Arabic texts for the participants' course were selected from different short stories, novels, and poetry. The cultural-based texts covered different cultural topics, including cultural festivals. The English literary texts included a number of selected passages from *Pride and Prejudice* by Jane Austen, *Oliver Twist* by Charles Dickens, *The Portrait of the Artist as a Young Man* by James Joyce, and "Sailing to Byzantium" by W. B. Yeats. The Arabic literary texts included selected passages from the Egyptian novel *Khan al-Khalili* by Naguib Mahfouz', *Qandeel Om Hashem* by Yahya Haqqi, and selected poems by Al Bohtori, and Andalusian poetry. The English cultural-based texts included topics on Chinese New Year Festival, French cuisine, Latin American dance, Eskimo's habitat, and Japanese weddings. The Arabic culturally-based texts embraced topics on Al Janaderia Saudi festival, Saudi weddings, Arab cuisine, north African food, and Gulf clothes. Both the controlled and the experimental groups were assigned the same texts. However, the approach of teaching the two groups was different. The participants in the controlled group focused on examining and translating the texts only linguistically while the participants in the experimental group were asked to examine the cultural aspects of the texts prior to the process of translation. The linguistic-based approach of teaching was centered in analyzing each text syntactically and semantically when the participants relied mainly on using English and Arabic dictionaries to solve the translation problems.

The cultural-based teaching approach was employed through a collaborative setting, using five classroom activities which included (a) discussions on western and eastern cultures; (b) watching videos on different cultural traditions; (c) studying the differences between Arab cultural festivals and international cultural festivals; (d) reading research on cultural metaphors; and (e) using social media to gain some experience of Western tradition and customs. A pre-test and a post-test were administered prior and after the quasi-experiment to record students' performance based on their grades. This quantitative correlational method aimed at examining the statistical relationship between cultural competence and students' performance in translation.

The pre-test and post-test required translating two passages from English into Arabic and vice versa, and each passage consisted of 400 words. The English passage was selected from the short story "The Last leaf" by O'Henry, and the Arabic passage was about Saudi traditional clothes. All the participants were allowed to use hard copies dictionaries. A validated rubric was used to grade the experiment tests. The rubric criteria aimed at measuring linguistic and culture skills. The linguistic skills included, the use of correct grammar, building up appropriate sentence structure, adhering to semantic rules, choosing appropriate lexical items, and achieving equivalence transfer. The culture skills included, using cross-culture knowledge, interpreting culture metaphors, understanding cultural clues, and achieving cultural transfer. Each scale of the rubric criteria carried 10 points. In addition, 20 points were assigned for applying Lefevere's translation strategies as stated in his theory. The correlation coefficient was measured to find out the differences between the pre-test and post-test results. The software SPSS was used for the questionnaire data analysis. The rubric results were used to compare the participants' performance before and after the treatment.

3.2 Research Questions

1) What is the statistically significant difference between the experimental group translation scores before and after the training sessions of using the cultural-based approach? 2) What is the process of using the cultural-based approach in the translation classrooms? 3) What are the impacts of culture and cultural competence on students' translation performance?

3.3 Research Hypothesis

There is a statistically significant relationship between culture and intercultural competence and students' performance in cultural translation. The *Null Hypothesis*: There is no statistically significant relationship between culture and intercultural competence and students' performance in cultural translation.

3.4. Data Analysis Results

Data analysis showed the presence of difficulties that students faced in understanding and interpreting culture, specifically cultural metaphors and symbols. The results of the pre-test and post-test showed a difference of 86% between the controlled group and the experimental group in their overall performance. The primary data analysis also showed lack of cross-culture interaction when the participants in the controlled group translated literary and culturally-based texts. The results also indicated that weakness in language socialization hindered understanding the anthropological cultural aspects of the texts. The analysis of the pre-test and post-test results showed statistically significant relationships between language communicative skills in the participants' performance in literary and culturally-based translation. The results also indicated that the challenges that the participants faced in translation included semantic and syntactical problems, understanding cultural terms, interpreting cultural metaphors, understanding cross-cultures issues, cultural identity, stereotypes issues, problems related to postcolonial and postmodernism issues. Table 1 displays the percentages of these problems.

Table 1. Participants' Problems of Translating Cultural Texts

Problems	Control Group		Experimental Group	
	n	%	N	%
Cultural Metaphors	22	88	11	44
Cultural Terminology	21	84	10	40
Semantic Problems	12	48	12	48
Syntactical Problems	6	24	7	28
Literary Devices	17	68	10	40
Cross-cultural Understanding	21	84	9	36
Cultural Identity	22	88	18	75
Stereotypes Issues	23	92	22	88
Culture Bias	22	88	18	75
Postmodernism Issues (nationalism/religion/politics/ideologies)	23	92	19	76
Postcolonial Issues (racial conflicts/social paradoxes)	17	68	15	60

Table 1 shows that the participants faced some challenges in interpreting cultural metaphors and symbols. The results indicated that 88% of the controlled group participants faced challenges in understanding and translating the cultural metaphors while in the experimental group the semantic competence was reported as the most challenging factor with the percentage of 48%. While the problems of translating cultural terms reached 84% in the controlled group and 40% in the experimental group, the problem of translating literary devices reached 68% in the controlled group and 40% in the experimental group. The percentage of understanding cross-cultural differences was 85% in the controlled group and 36% in the experimental group. The problems of cultural bias, postmodernism issues, and postcolonial issues pointed respectively to 88%, 92%, and 68% in the controlled group, and 75%, 76%, and 60% in the experimental group.

Primarily, the participants' problems were identified before conducting the study, through responding to the questionnaire, and the results showed that 83% of respondents had intermediate language level in the controlled group, while the experimental group had 84%. Furthermore, the advanced language skills were almost equal in the two groups with 71% for the controlled group compared to 70% for the experimental group. Data analysis results indicated that language was not a point of concern for translating literary and culturally-based text, as culture acted as the main barrier. The results of the questionnaire showed that 82% of the participants in the controlled group and 68% of the participants in experimental group faced culture problems that hindered their abilities to complete the translation assignments. Figure 1 displays the comparison of means and standard deviations of the controlled group and the experimental group based on the questionnaire 21 item results.

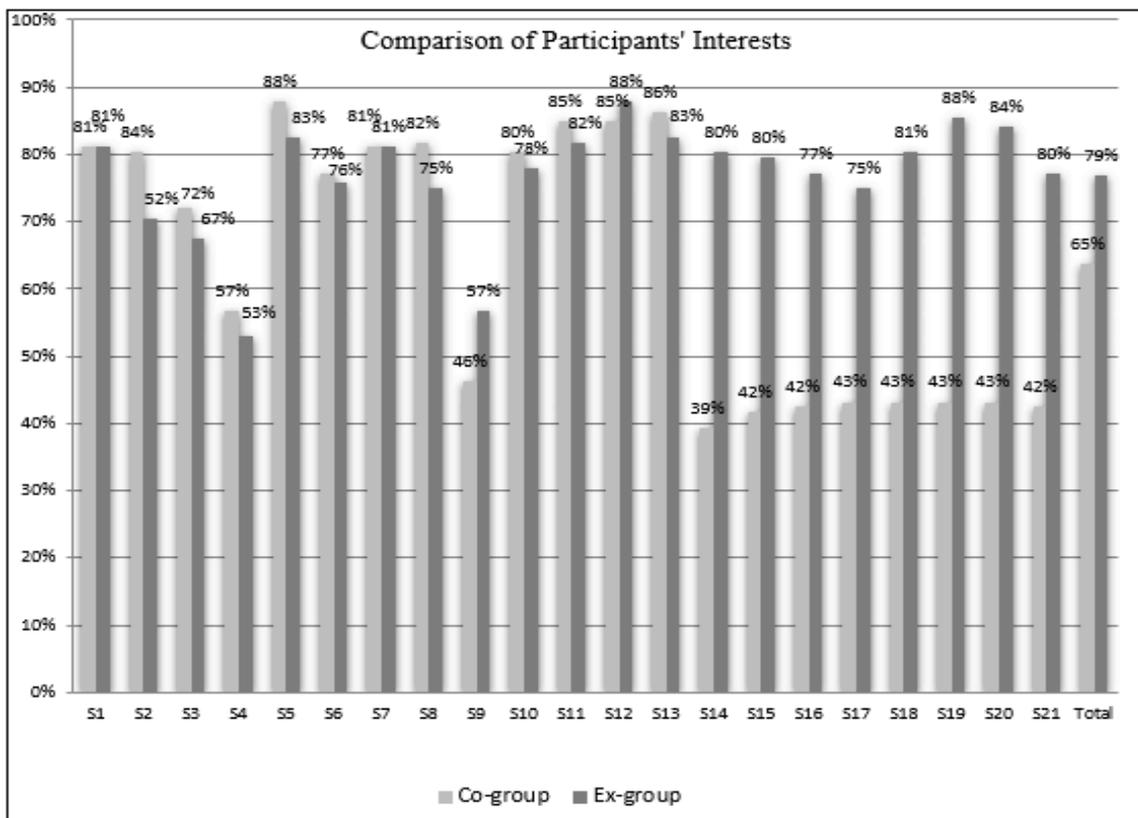


Figure 1. Comparison of results between controlled and experimental groups

As displayed in Figure 1, the analysis of data indicated a distinct difference between the controlled group and the experimental group, responding to the questionnaire items 14-21 which involved questions on the importance of understanding different cultures, the impact of filling cultural gaps on the translation process, the difficulties of translating cultural metaphors, and the strategy for achieving cultural transfer. While 80% of the respondents in the experimental group believed that understanding culture affected the

process of translation, only 37% of the respondents in the controlled group agreed. Regarding the impact of filling cultural gaps on the translation tasks, 80% of the respondents in the experimental strongly agreed to only 41% of the respondents in the controlled group. Further, 77% of the respondents in the experimental group agreed that translators faced difficulties in translating cultural metaphors while 42% of the respondents in the controlled group agreed to this same item. Moreover, 88% of respondents in the experimental group strongly agreed that the strategy for achieving cultural transfer was important while only 44% of the respondents in the controlled group agreed. The questionnaire items 1-13 investigated issues on the syntactical, semantic, and lexical problems of translation. While 81% of both the controlled and the experimental groups agreed that correct grammatical use was an important factor in producing successful translation, 87% of the respondents in the controlled group believed that using correct grammar was more important than understanding culture. Such results implied that translation was flawed due to lack of culture skills. Efficient translations showed that culture competence rather than the fluency of language alone helped students to achieve the purpose of translation. This in turn led to believe that language is not the actual barrier of translating literary or culturally-bound texts, and that variables related to culture and intercultural competence are strongly related to proficiency in translation. Regarding the application of Lefevre's theory, Table 2 shows the results.

Table 2. Participants' Grades Before and After Applying Lefevre's Theory

Participant (P) n	Grades of English Literary Text Trans. /10	Grades of Arabic Literary Text Trans. /10	Total Grade /20	Participant (P) n	Grades of English Literary Text Trans. /10	Grades of Arabic Literary Text Trans. /10	Total Grade /20	% Improvement
P1	5	4	9	P9	9	8	17	40%
P2	6	5	11	P12	9	8	17	30%
P3	5	4	9	P9	9	8	17	40%
P4	5	4	9	P14	9	9	18	45%
P5	5	5	10	P21	8	8	16	30%
P6	4	4	8	P6	7	7	14	30%
P7	4	3	7	P7	9	9	18	55%
P8	5	5	10	P22	8	9	17	35%
P9	5	4	9	P9	9	8	17	40%
P10	5	5	10	P22	8	9	17	35%
P11	7	4	11	P11	8	8	16	25%
P12	6	5	11	P12	9	8	17	30%
P13	6	5	11	P13	9	6	15	20%
P14	5	4	9	P14	8	7	15	30%
P15	6	4	10	P15	9	8	17	35%
P16	8	6	14	P16	9	9	18	20%
P17	7	5	12	P17	9	8	17	25%
P18	6	4	10	P18	9	9	18	40%
P19	5	4	9	P19	8	9	16	35%
P20	6	5	11	P20	7	7	14	15%
P21	5	5	10	P21	8	8	16	30%
P22	5	5	10	P22	8	9	17	35%
P23	6	5	11	P23	8	7	15	20%
P24	5	4	9	P24	9	9	18	45%
P25	6	4	10	P25	9	9	18	40%

Table 2 shows that that the highest grade in translating the English texts before applying Lefevre's theory is 8 out of 10 and the lowest grade is 4 out of 10 while the highest grade in translating the Arabic texts is 6 out of 10, and the lowest is 3 out of 10. The highest grade in translating the English texts after

applying Lefevere's theory is 9 out of 10 and the lowest grade is 7 out of 10 while the highest grade in translating the Arabic texts is 9 out of 10 and the lowest grade is 6 out of 10. The percentages of the participants' improvement ranged between 45% and 15%.

The qualitative analysis revealed that while the participants in the controlled group focused on identifying the linguistic problems of the source texts, the participants in the experimental group were involved in defining the cultural concepts of the texts. In the controlled group, the participants paid more attention to language problems rather than cultural aspects; thus, they were engaged in examining the artistic features of the language texts, grammar structure, grammar rules, syntax variance, semantics, neologisms, and vague terminology so that they could produce acceptable translations based on using a variety of language structures. For example, translating the passage from Jane Austen's *Pride and Prejudice*, they were examining different semantic choices from amongst various synonyms in the following passage: "A long dispute followed this declaration; but Mrs. Bennet was firm: it soon led to another; and Mrs. Bennet found with amazement and horror, that her husband would not advance a guinea to buy clothes for his daughter. He protested that she should receive from him no mark of affection whatsoever, on the occasion of her marriage. Mrs. Bennet could hardly comprehend it."

The semantic choices the participants made were selected by adequacy to the original context. For instance, the word 'dispute' has four meanings in Arabic: a dispute that occurs between two equally, strong parties, and expands over a long period of time; a slight disagreement or different points of view; an objection or a protest; and disapproval of paying. The English word 'dispute' in the passage refers to a domestic row between a wife and her husband, and it is not just a slight disagreement or different points of view as the situation is intense since the husband has made up his mind and is making a declaration that requires quick interference and riotous objection on the part of the wife; so, the appropriate meaning is 'disapproval of paying'. However, the participants in the experimental group were more aware of the cultural references in the texts. For example, in their analysis of personification in the novel *Khan Al-Kalili*, they did not merely provide an equivalent meaning, but they described the cultural context of the passage as follows: "He now began to read voraciously and quickly. He felt on edge and no longer enjoyed reading anything useful or serious; it gave a kind of mental indigestion. He may have learned all sorts of different things but he was master of none of them. His brain was not used to indulging ideas in and of themselves, He relied on books to do the thinking for him" (p.18). In another example, the participants kept some Arabic words in the English translation to maintain the Arab culture flavor as in the following example, which is a translation of *Tarjuman al-Ashwaq*, Muhyieddin by Ibn Arabi (1165-1240 CE): "A garden among the flames! My heart can take on any form: A meadow for gazelles, A cloister for monks, For the idols, sacred ground, Ka'ba for the circling pilgrim, The tables of the Torah, The scrolls of the Quran. My creed is Love; Wherever its caravan turns along the way, that is my belief, and that is My faith." Whereas in translating 'Sailing to Byzantium' by Yeats, the participants in the controlled group focused on transferring the linguistic meaning, and could not grasp the philosophical concepts expressed through the relationship between such words as 'old' and 'young', 'birds' and 'salmon', 'country', 'trees', and 'seas' as in these lines "That is no country for old men. The young, In one another's arms, birds in the trees,—Those dying generations—at their song, The salmon-falls, the mackerel-crowded seas". Such results show that the principles of the linguistic-bound translations are based on fidelity, i.e. accurate translation that is faithful to the original text.

Translating the cultural-based texts, the controlled group participants continued to lay emphasis on the linguistic aspects of the texts while the experimental group participants applied Lefevere's theory to understand the social and cultural contexts of each text. For example, the participants could not translate the expression 'wooden face' from this passage in *Oliver Twist*: "He walked with frozen feet, with a wooden face, Oliver glanced up the street." There is no equivalence in Arabic for 'wooden face', so the participants were engaged in groups to give the meaning based on a study of European cultures, and they concluded that in English it means 'inexpressive face' while in Portuguese, they say a person has a 'wooden face' meaning 'how dare you'. Another example in the use of cultural metaphors such as the use of the poppy flower in this line "He walked smartly down the lane until his red coat was no bigger than a poppy", from *Akenfield* by Ronald Blythe. While the controlled group participants translated the word 'poppy' by giving the name of the flower in Arabic, the experimental group participants were

engaged in a discussion about cultural symbols, and concluded that the ‘poppy’ flower is a symbol of sleep, peace, and death. The participant learned that in the cultures of Canada, the United Kingdom, the United States, Australia, South Africa and New Zealand, and Malta, the poppies are worn to commemorate those who died in war. Translating texts on Chinese and Japanese cultures, the participants were able to acquire cross-culture experience through classroom debates, and social media engagement. For example, they learned that the New Year celebration in China follows the lunar calendar, and that the Pingxi Sky Lantern Festival in the mountains in the northeastern Taipei County began in the region when the Han settled there. They also learned that the traditional French culture places a high priority on the enjoyment of food and fashion, dating back to the reign of Louis XIV, and that the major food of French cuisine is cheeses, French bread, and crepes. The participants were also interested in learning about the cultures of South America, which represent diverse cultural traditions, including the European cultures brought by the Spaniards, the Portuguese, the French, the Italians. They became interested in learning about the African cultures. Working in collaborative groups, the participants in the experimental group made a cook book to collect the recipes of some Latin American foods such as tortillas, tamales, and salsas. They also learned that the ‘kimono’ is a traditional dress in Japan while the ‘Jelbab’ is a traditional dress in the Arab culture. They also learned that in the Japanese culture, the ‘Iris flowers’ represent the power to protect the body from diseases and evil while the ‘Basil flowers’ are used in Arab cultures for physical and psychological healing. The participants encountered challenges to fill the cultural gaps of the habits of festivals and special occasions. For example, during the Japanese ceremony, the two families of the bride and the groom face each other and sip nine cups of bitter ‘Sake’, announcing the unity of the bride and groom. In Arab culture, families drink ‘sharbat’ (sweet non-alcoholic drinks made of fruit and flowers essence), wishing happiness for the newly married couple.

Moreover, filling the culture gap in the process of translation required the participants to watch videos on the shamanistic traditions of the Eskimo and their igloo traditional shelters in order to achieve equivalent effect in the target text. Therefore, translating cultural-based texts that deal with the month of Ramadan in the Arab world, the Saudi tradition of marriage and weddings, the Saudi folklore, and the Gulf region clothes required using Lefevre’s strategy of ‘explanatory note’. Translating words used for food such as ‘kabsa’, ‘jarish’, ‘masabeeb’, ‘gorsan’, ‘areka’, or words used for clothes such as ‘ghotra’, ‘shemagh’, ‘beshet’, ‘meshleh’, ‘thoob’, ‘abaya’, ‘borko’a’, ‘Isdal’, ‘tarha’, and ‘Jilbab’ requires cultural explanation because using transliteration alone does not provide the meaning of the words nor the cultural concepts that the words represent. The following passage is an example: “Althawb, ghuthtrah and iqal are the traditional outfit of men in the Arab Gulf countries. The thawb is a long-sleeved loose white garment. As for the ghuthtrah, it is a square piece of cloth placed on the head with or without iqal. There are two types of ghuthtrah, namely, the white and the red, which is also called shemagh – a kind of ghuthtra that is dotted in red. The iqal itself is a black band fixed on the ghetrah and shemagh”. Arab foods include kabsa (a mixture of rice and meat), ‘jarish’ (made of wheat and milk), ‘masabeeb’ (similar to pan cakes), ‘and metabak (similar to tortilla).

Data analysis results also showed the following: (a) while applying the translation theory, of the 50 participants of the two groups, only twenty-four participants analyzed the culture metaphors in the source text ; (b) twenty-five participants applied Lefevre’s strategy of ‘explanatory note’; (c) Twenty-six participants used literal translation when they faced difficulties in understanding culture; (d) twenty-one participants applied the strategies of structure-shifts, which are grammatical alterations between the structure of the source text and that of the target text; (e) ; twenty participants used class-shifts such as translating the verb with a noun; (f) Nineteen participants used the omission strategy while translating cultural contents; (g) Eighteen participants used the addition strategy while translating cultural contents; and (h) twenty participants interpreted cultural metaphors correctly. Additionally, the results indicated an explicit variation of the translation problems and the solutions that the participants of the controlled and experimental groups faced.

4. Discussions and Recommendations

Regarding the research questions, data analysis indicated that the hypothesis that ‘there is a statistically significant relationship between culture and intercultural competence and students’ performance in

cultural translation’ was positive; thus, the null hypothesis was rejected. The results also showed a statistical significant difference between the experimental group translation scores before and after the training sessions of using the cultural-based approach, pointing to a difference of 86% between the controlled group and the experimental group. Reflecting on such results shows that the communicative skills allowed students to use their cognitive and metacognitive abilities to discuss and analyze the texts prior to the task of translation.

The results of the study indicated that constructivist approach to teaching is important for examining the social settings of source texts, and can help in identifying the cultural metaphors that are instrumental in understanding the meaning of the texts. The socio-constructivist approach stems from a collaborative view of society vis-a-vis the way teachers need to guide translation students to develop their skills as ‘cultural communicators’. In this regard research (Baker 2005; Chesterman 1997; Kiraly 2014; Colina & Venuti as cited in Venuti 2017; Lefevere 1992; Yin-hua 2011) concluded that using translation cultural-based strategies had an impact on students’ performance. Lefevere (1992) argued that translation is not a mere linguistic process, but a rewriting process, which is guided by the ideology of the target language society.

Applying Lefevere’s theory, students can learn how to achieve the balance between the universe of discourse, which is acceptable to ST author, and the universe of discourse, which can be acceptable to translators’ readers. In this respect, Chesterman (1997) affirmed that translators need to acquire both linguistic and cultural skills. Linguistic skills help students to analyze the ST and the TT at various language levels while the social skills help students to deal with the norms in translation cultural transfer. Such a blend of linguistic-based and cultural- based approaches, allow the students to implement an interpretivists’ analytical approach to identify the symbolic, phenomenological, and ethnological foundations of social interactions. Yin-hua (2011) stressed that the role of the translator is to achieve the purpose of the ST in another culture in an acceptable and comprehensible way for the TT readers. While the translators encounter the complexities of cross-cultural differences, the issue of ‘cultural difference’ is still problematic. Williams (2013) recommends some tools that teachers can use to help students understand different cultures which include the Describe, Interpret, Evaluate (DIE) practice, the Ladder of Inference model, the Reviewing Critical Event Approach, and LENS experiential learning strategies. Based on the current research findings, Figure 2 display a suggested model that can be used to enhance students’ culture and cultural competence.

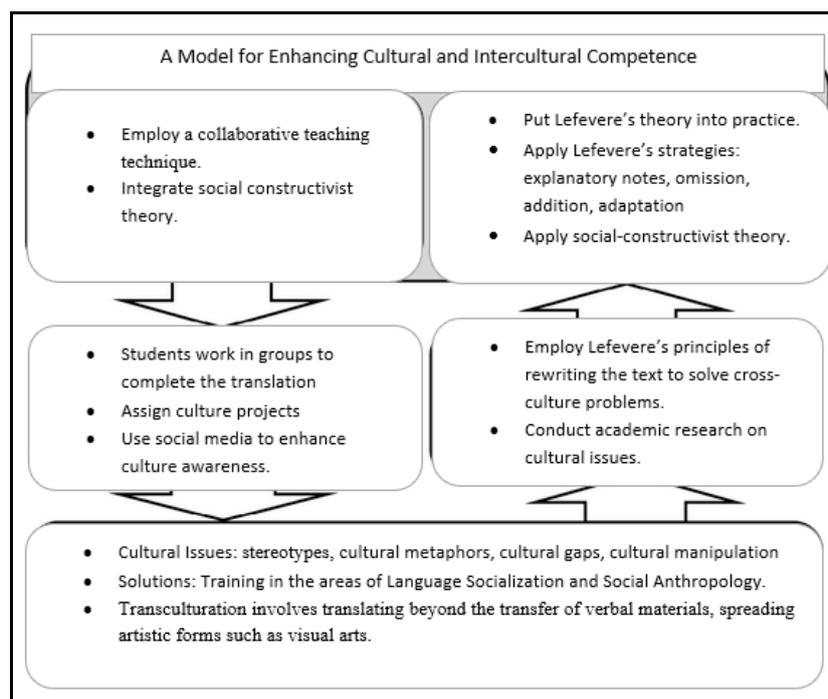


Figure 2. A model for enhancing culture and intercultural competence

Consequently, the current study recommends using a collaborative teaching technique to help the translation students become competent in translating culturally-based texts. Collaborative teaching techniques refer to teaching techniques that are based on providing collaborative activities for the students, and these techniques involve the production of authentic classroom when teachers incorporate in their teaching teamwork, cooperative class circles, group research assignments, group focused discussions, and team translation projects. Research on translation pedagogy (Kiraly, 2014; Gonzalez-Davies, as cited in Venuti, 2017) indicated that using translation strategies should be based on integrating translation theories into a constructivist social teaching techniques. In this regard, Venuti (2017) argued that “the concepts [of the new programs in translation] tend to be derived from varieties of linguistics, from literary and cultural studies, education, and from sociology; the skills are often taught in relation to specific genres or text types, ...and according to language pairs.... The variety of course offerings depends on the expertise of the instructors who staff the program” (p. 1). Moreover, Gonzalez-Davies (as cited in Venuti, 2017) supported the collaborative pedagogy for translation, guided by cognitive theories that are adopted to develop cognitive teaching methodologies, when “the classroom becomes a working environment in which students, guided by the teacher, work together, forming a community of practice that shares responsibility for the outcomes” (p. 71), and that “The primary objective of fostering collaboration is to reconcile theory and practice through the interaction of individual and group work that favors the acquisition of translation skills” (p. 71). Translator’s competence emerges through working together by means of collaboration. Tan (2008) stated, “Translator education goes hand in hand with this growth of translator/translation specialist competence and social development (through collaborative pedagogies) competence development and teaching practice are centered around the development of the students cognitively (pp. 589-608). Therefore, the second recommendation is to provide professional training programs for teachers to employ the collaborative techniques in the classrooms. Thirdly, enhancing cultural awareness necessitates equipping the classrooms with modern technology that allows students to watch videos on different cultures, be engaged in online socio-cultural activities, and gain knowledge through conducting academic research on cultural diversity.

5. Conclusion

The current study examined the relationship between translation, linguistics, and social anthropology. The results of the study showed that although textual and inferential analysis is an important component of understanding the source texts before performing the translation task, increasing cultural awareness is necessary to ensure accurate and adequate translation. Social interactions help students not only to acquire language skills but also cultural awareness that is necessary for cultural translation. Cultural Translation, which encompasses postcolonial translation studies, cultural gaps, and cultural manipulation, requires training the students of translation in the areas of social anthropology to help them achieve cultural and intercultural competence. Therefore, the purpose of the current study was to provide the students with new translation training to help them understand the role of culture in translation. The present study concluded that translator education through collaborative pedagogies must prepare students to become competent translators who are able to interpret and transmit different cultures.

References

- Agar, M. 2011. “Making sense of one other for another: Ethnography as translation.” *Language & Communication* 31:1-38-47.
- Bachmann-Medick, D. 2006. *Introduction: The translation turn*. New York: Routledge.
- Bachmann-Medick, D. 2017. “Cultural translation: A matter of management?” In Wendelin Kupers, Stephan, Sonneenburg, and Martin Zierold (editors). *Rethinking Management: Perspectives and Impacts of Culture Turns and Beyond*. New York: Springer.
- Baker, M. 1992. *In other words*. London: Routledge.
- Baker, M. 2005. *Translation and conflict*. London and New York: Routledge.
- Bassnett, S. 2014. *Translation studies*. New York: Routledge.
- Bassnett, S., & Lefevere, A. 2016. *Translation, rewriting and the manipulation of literary fame*. New York: Routledge.
- Bhabha, H. 1994. *The location of culture*. London: Routledge.

- Blakesley, J. & Munday, J. Eds. 2018 *Sociologies of poetry translation: Emerging perspectives* (Bloomsbury Advances in Translation). London: Bloomsbury Academic.
- Blum-Kulka, S. 1986. "Shifts of cohesion and coherence in translation." *Interlingual and Intercultural Communication: Discourse and Cognition in Translation and Second Language Acquisition Studies*, 17-35.
- Brumfit, C. J. 1984. *Communicative methodology in language teaching*. Cambridge: Cambridge University Press.
- Catford, J. C. 1965. *A Linguistic Theory of Translation*. London: Oxford University Press.
- Chesterman, A. 1993. *Translation as theory*. New York: Routledge.
- Chesterman, A. 1997. *Memes of Translation*. Amsterdam: John Benjamins Publishing Company.
- Chesterman, A. 2000. *Memes of Translation. The spread of ideas in translation theory*. Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Chesterman, A. 2009. "The name and nature of translator studies." *Journal of Language and Communication Studies* 42: 13-22.
- Chomsky, N. 1965. *Aspects of the theory of syntax*. Cambridge, MA: MIT Press.
- Even-Zohar, I. 1978. "The position of translated literature within the literary polysystem." In *Papers in Historical Poetics*. Amsterdam- Philadelphia: John Benjamins.
- Even-Zohar, I. 1981. Translation theory today: A call for transfer theory. *Poetics Today* 2(4): 1-7.
- Even-Zohar, I. 2003. "Culture repertoire and transfer." In Petrilli, Susan (ed). *Translation Translation*. Amsterdam: Rodopi, pp. 425-431.
- Ginter, A. 2002. "Cultural issues in translation." *Kalby studies* 3: 27-31.
- Goodenough, W.H. 1970. *Description and comparison in cultural anthropology*. Aldine, Chicago.
- Halliday, M.A.K. 1994. *An introduction to functional grammar*. London: Edward Arnold.
- Hatim, B., & Mason, I. 1990. *Discourse and the translator*. London: Longman.
- Hatim, B. & Mason, I. 1997. *The translator as communicator*. London and New York: Routledge.
- Hermans, T. 1999. *Translation systems. Descriptive and system-oriented approaches explained*. Manchester: St. Jerome Publishing.
- Hermans, H.J.M. 2001. "The dialogical self: Toward a theory of personal and cultural positioning." *Culture & Psychology*, 7: 243-281.
- Hewson, L., & Martin, J. 1991. *Redefining translation. The variational approach*. London and New York: Routledge.
- Holz-Manttari, J. 1984. *Translation: Theories and methods*. Helsinki: The Academic Bookstore.
- House, J. 1997. *Translation quality assessment: A model revisited*. Tübingen, Germany: Gunter Narr.
- Huertas Barros, E. 2011. Collaborative Learning in the Translation Classroom: Preliminary Survey Results. *JoSTrans – The Journal of Specialised Translation* 2: 42-60. 1740-357X.
- Hymes, D.H. 1972. "On communicative competence." In: J.B. Pride and J. Holmes (editors.) *Sociolinguistics: Selected Readings*. Harmondsworth: Penguin, 269-293.
- Jakobson, R. 1959. "On linguistic aspects of translation." In L. Venuti (2000), *Translation Studies Reader*. (2nd ed. New York: Routledge.
- Katan, D. 2009. "Translation as intercultural communication." *The Routledge Companion to Translation Studies*, 74-92.
- Kiraly, D. 2014. *A social constructivist approach to translator education. Empowerment from theory to practice*. Manchester: St. Jerome Publishing.
- Koller, W. 1979. *Contrastive linguistics and translation studies*. Heidelberg: Quelle and Meyer
- Koller, W. 1995. "The concept of equivalence and the object of translation studies." *Target* 7(2):191-222.
- Lefevere, A. 1992. *Translation, rewriting and the manipulation of literary fame*. London and New York: Routledge.
- Lefevere, A. 1999. "Mother courage's cucumbers: Text, system and refraction in a theory of literature." In Venuti, L. (ed), *The translation studies reader*. London: Routledge.
- Lienhardt, G. 1966. *Social anthropology*. Oxford: Oxford University Press.
- Maitland, S. 2017. *What is cultural translation?*. London: Bloomsbury Publishing.
- Mason, I. 2000. "Text parameters in translation: Transitivity and institutional cultures." In L. Venuti. *Translation Studies Reader*. (2nd ed.). New York: Routledge. 477- 481
- Newmark, P. 1981. *Approaches to translation*. Oxford: Pergamon Press.
- Newmark, P. 1988. *A textbook of translation*. New York: Prentice hall.
- Nida, E.A. 1964. *Towards a science of translation*. Philadelphia: John Benjamins.
- Nida, E.A. 2001. *Contexts in translating*. Amsterdam/Philadelphia: John Benjamins.
- Nord, C. 1991. *Text analysis in translation*. Amsterdam: Rodopi.
- Nord, C. 1997. *Translation as a purposeful activity*. Manchester: St Jerome.
- Olalla-Soler, C. 2015. "An experimental study into the acquisition of cultural competence in translator training. Research design and methodological issues." *Translation & Interpreting* 7(1): 86–110.
- Reiss, K. 1981. "Type, kind and individuality of text: Decision-making in translation." *Translation Theory and Intercultural* 2(4): 121-131.
- Reiss, K. 1971. "Type, Kind and individuality of text: Decision making in translation." In L. Venuti, *Translation Studies Reader*. (2nd ed.). New York: Routledge.
- Reiss, K., & Vermeer, H. J. 1984. *Groundwork for a general theory of translation*. Tübingen: Niemeyer.
- Said, E. W. 1985. "Orientalism reconsidered." *Race & Class* 27(2): 1-15.
- Said, E., & Milligan, T. 1997. "Orientalism: Western conceptions of the Orient." *New Internationalist*, 297.

- Schieffelin, B., & Ochs, E. 1984. "Language acquisition and socialization: Three developmental stories and their implications." In R. Shweder, & R. Levine (Eds.), *Culture Theory: Essays on Mind, Self and Emotion* (276-320). New York, NY: Cambridge University Press.
- Simon, S. 1996. *Gender in translation*. London: Routledge.
- Snell-Hornby, M. 1992. "The professional translator of tomorrow: language specialist or all- round expert?" *Teaching Translation and Interpreting: Training, Talent and Experience*, 9-22.
- Spivak, G. 2007. "Translation as culture." In Pierre, Paul and Kar, Prafulla C (Eds) *Translation. Reflections, Refractions, Transformations*, (263– 276). Amsterdam: John Benjamins.
- Toury, G. 1980. *In search of a translation theory*. Amsterdam- Philadelphia: John Benjamins.
- Toury, G. 2012. *Descriptive translation studies and beyond* (Rev. ed., Vol. 100). Amsterdam- Philadelphia: John Benjamins.
- Tymoczko, M. 2003. "Ideology and the position of the translator." In M. Perez (Eds.), *Apropos of ideology: Translation Studies on Ideology—ideologies in translation studies* (182–201). New York, USA: Routledge
- Valerio, A. 2013. Translation and ideology: a critical reading. *Procedia-Social and Behavioral Sciences* 70: 986-996.
- Venuti, L. 1995. *The translator's invisibility: A history of translation*. Abingdon, Oxon: Routledge.
- Venuti, L. 2017. (Ed.). *Teaching translation: Programs, courses, pedagogies* (1st. ed.). New York: Routledge
- Vermeer, H. J. 1978. *A framework for a general theory of translation*. Heidelberg: Heidelberg University.
- Vermeer, H. J. 2000. "Skopos and commision in translational action." In L. Venuti (ed.). *The Translational Studies Reader*, London, New York: Routledge.
- Vinay, J. & Darbelnet, J. 1958/1995. *Comparative stylistics of French and English: A methodology for translation* (Translated by Juan C. Sager and M.-J. Hamel). Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Williams, T.R. 2013. "Examining your LENS: A tool for interpreting cultural differences." *Frontiers: The Interdisciplinary Journal of Study Abroad* 22: 148-165.
- Yinhua, X. 2011. "Equivalence in Translation: Features and Necessity." *International Journal of Humanities and Social Science* 1(10):169-171.

Relationship between Gender, Year Levels, Assignment Completion and Academic Achievement for College Students

Wuttiporn Suamuang¹, Surachai Suksakulchai², Matthew A. Easter³

¹ Learning Innovation and Technology Program, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, wuttiporn@mail.kmutt.ac.th

² Department of Electrical Technology Education, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, surachai.suk@kmutt.ac.th

³ Educational, School, & Counseling Psychology, University of Missouri, Columbia, USA, EasterMA@missouri.edu

ABSTRACT: In order to effectively enhance students' learning, doing assignments is an accepted practice of improving content knowledge and self-regulated skills. However, individual differences may impact students' assignment behaviors. This study examined the relationship between specific assignment variables (i.e. amount of assignment completed, time spent on assignment), gender and grade level. The participants were 786 undergraduate students from five universities in Thailand. A two-way analysis of variance showed that differences of gender and year levels significantly affected the amount of assignments completed and time spent on assignments. The female students completed significantly more assignments and had more time spent on assignment than the male students. For year level differences, freshman complete more amount of assignments than other students (sophomore, junior and senior). On the other hand, junior and senior students spent more time on assignments than sophomores. Using a hierarchical regression analysis, gender and year levels were significantly associated with academic achievement. Moreover, the results revealed that the number of assignments completed was a strongest predictor on academic achievement and had positive associations with academic achievement after controlling gender and year level variables. Our findings then suggest there are differences between gender and undergraduate year levels in terms of assignment completion which may then affect students' learning outcome.

KEYWORDS: Assignment completion, Academic achievement, Individual differences, Thailand, Undergraduate year levels

1 Introduction

Over several decades, many researchers have asked, "Do assignments boost students' academic achievement?" In previous studies, the researchers investigated assignment aspects for middle and high school, including how many assignments were completed, and the amount of time spent on assignments. The results show that students finishing assignments are likely to achieve high academic performance (Bembenuty & Zimmerman 2003; Cadime, Cruz, Silva, & Ribeiro 2017; Falch & Rønning, 2012; Núñez et al. 2014, 2015c; Planchard, Daniel, Maroo, Mishra, & McLean 2015; Rosário et al. 2015a; Valle et al. 2016; Xu, Fan, Du, & He 2017). Specifically, novice students with lower performance considerably improved academic attainment (Grodner & Rupp 2013). Recent research has also revealed the reason for students completing assignment is that they want to get higher grades (Rosário et al., 2015), and the more assignments students do, the better they do on exams (Cadime et al. 2017; Núñez, Fernández, Rosário, & Epstein 2015). Moreover, doing assignments encourages students to manage their time and environment, take responsibility, and seek help from other people or sources (Xu 2010, 2011, 2014). Additionally, students completing assignments have higher school retention rates and lower failure rates (Grodner & Rupp 2013).

The amount of time spent on assignments is another indicator that impacts students' academic achievement. Prior research shows that the more time students invest on assignments, the higher their academic achievement (Núñez et al. 2015; Rawson, Stahovich, & Mayer 2016). However, some studies claim that taking a longer time to do assignments did not improve academic achievement (Trautwein 2007; Trautwein et al. 2009). A possible reason for lower performance is that spending a long time on homework might suggest that students lack knowledge and skills in doing assignments (Trautwein et al. 2009). Accordingly, amount of time spent is a point of contention in the research. As mentioned above, the amount of assignments completed and time

spent on assignments are factors for enhancing students' academic performance. Therefore, this study focuses on those factors for undergraduate students as there are few such studies focused on this population.

1.1 Assignments in universities

Assignments are an essential tool not only for high school students but also for college students (Kitsantas & Zimmerman 2009; Rawson et al. 2016). Assignments in universities refer to coursework either inside or outside the classroom in many kinds of assignments, including projects, presentations, discussion, and writing. Traditionally, higher education students in the US are assigned homework each day (Snyder 1998) but more importantly, assignments are included in the total grade calculation along with class participation and examination scores (International Student n.d.; Olson 2016). Therefore, students need to allocate their time to finish assignments (Rawson et al. 2016). Compared with secondary school teachers, college instructors do not follow or check assignment completion, and for this reason, college students need to take more responsibility (Kitsantas & Zimmerman 2009). In the UK, assessing students' achievement on assignments has rapidly grown. Students show more desire to be evaluated in term of assignments, compared with evaluation in form of test alone (Richardson 2015). In addition, an assessment approach using only assignment or mixing assignments with examinations provides better learning outcomes accuracy than assessing with tests alone (Richardson 2015). In higher education in Thailand, instructors assign tasks in many forms similar to the US. Moreover, Assignments are a major part of assessing academic performance (Tuamsuk 2013). Since most of Thai students have low to medium academic achievement, instructors stress assigning tasks to enhance students' knowledge and skill. For the reasons mentioned above, assignments are an important element of educational system around the world, especially Thailand. The present study will deal with assignment completion aspects for Thai college students.

1.2 Effects of assignment completion on academic achievement by gender, year levels

Bronfenbrenner (1989) has stated that the individual differences such as gender and age are key issues for developing learning environment in different context. Interestingly, personal factors can affect choices of participating in learning activities Bronfenbrenner (1989). Consequently, assignment completion may be reflected differently by gender and year levels. Most previous studies comparing gender with assignment completion focused on middle and high school students, except for a study by Kitsantas and Zimmerman (2009) that investigated such relationships in US university students. However, their study showed no gender differences on assignment completion for college students. Regarding middle and high school students, to extend new outcome for college students, researchers have reported that females completed assignments and spent more time on assignment than males (Mau & Lynn 2000; Núñez et al. 2013; Xu 2010b). In terms of year level differences, there are not any studies focusing on time spent on assignment for college students. As such, we will compare year levels with time spent on assignment for college students. In the results from exploring elementary to secondary school levels, students are less likely to do assignments when they are in higher grade levels, and the longer time is likely related to more difficult content and more complex tasks (Kackar, Shumow, Schmidt, & Grzeticz 2011). Furthermore, recent research has suggested that assigning tasks is more suitable for older students than younger students (Valle et al. 2016).

2 Purpose and research questions

The purpose of this study was to identify the relationships between undergraduates' assignment completion and academic achievement in different gender and year levels. The specific research questions were:

- How do assignment completion variables (amount of assignments completed, time spent on assignments), gender, year levels and academic achievement relate to each other?
- Do gender and year levels impact the assignment completion aspects?
- Do assignment completion aspects impact academic achievement for college students?

3 Methods

3.1 Participants and Procedures

The samples of this study comprised of 1106 undergraduate students from five universities in Thailand, including freshman (49.7%), sophomore (18.7%), junior (19.8%) and senior (11.7%). The participants were studying in different academic departments (education, humanities, science, and social science). Table 1 shows descriptive statistic of this study.

Table 1: Frequency of gender and year levels in the study

Year levels	Male		female		total	
	number	percent	number	percent	number	percent
Freshman	114	28.1	436	62.1	550	49.7
Sophomore	108	26.7	99	14.1	207	18.7
Junior	113	27.9	106	15.1	219	19.8
Senior	70	17.3	60	8.5	130	11.7
	405	36.6	701	63.4	1106	100

3.2 Measures

We used questionnaires adapted from prior research (NELS: 88 and studies by Cooper et al., 1998). Based on self-reports, students assessed themselves pertaining to amount of assignments completed (2 items; e.g. in the main subject in your major, usually, how many tasks do you complete from the assigned homework?) and time spent on assignments (3 items; e.g. usually in a typical week spend doing assignment daily?) aspects. When students replied to the questionnaire, they were prompted to only consider assignments which were connected to the main subject in their academic major. The questionnaire was translated from English language to Thai language and Thai language to English language again by academic and language experts. In order to ensure reliability of the questionnaire, Cronbach's alpha of amount of assignments completed and time spent on assignments showed .72 and .69, respectively. Students answered questionnaires related to their last average grades with reference to academic achievement.

3.3 Data collection and analysis

The data are collected from five universities in Thailand. Student provided responses in their academic major class with pencil and paper and spent 5 to 10 minutes to complete the survey. For data analysis, we used a two-way analysis of variance (ANOVA) to compare the main effect of gender and year levels. This technique allowed us to assess potential interaction effects for gender and year. In order to assess potential models that could predict student academic achievement, we chose a hierarchical regression approach utilizing appropriate variables suggested by the initial ANOVA (e.g., should an interaction term be included in the models) along with assignment completion aspects to help us consider the strongest predictors of academic achievement.

4 Results

4.1 Relationship between HW Variables, Grade Level, Gender and Academic Achievement

Table 2 presents descriptive data (mean, standard deviations, skewness and kurtosis) and Pearson Correlations among all variables in this analysis. Normality violations were not a concern in our data. There was weak to moderate correlations in all variables (from 0.05 to 0.54), causing no concern over multi-collinearity (Kline 2005). Academic achievement positively related to gender ($r=.189$, $p<.001$), amount of assignments completed ($r=.345$, $p<.001$), time spent on assignments ($r=.131$, $p<.001$) and negatively related to year levels ($r=-.124$, $p<.001$). Time spent on assignments positively related to all variables: gender ($r=.201$, $p<.001$), year levels ($r=.100$, $p<.01$) and amount of assignments completed ($r=.189$, $p<.001$). Amount of assignments completed positively related to gender ($r=.172$, $p<.001$) but negatively related to year levels ($r=-.187$, $p<.001$).

Table 2: Descriptive data and Pearson Correlations among all variables in this study

Variables	1	2	3	4	5
1. Gender ^a	-				
2. Year levels ^b	-.022	-			
3. Amount of assignments completed	.172**	-.187**	-		
4. Time spent on assignments	.201**	.100*	.189**	-	
5. Academic achievement	.189**	-.124**	.345**	.131**	-
Mean	1.48	2.32	3.39	3.968	3.779
Standard deviation	.500	1.066	1.026	0.778	0.884
Skewness	.061	.164	-.647	-.590	-.072
Kurtosis	-2.001	-1.231	.233	-.157	-.843

Note: ^aGender (1 = male, 2 = female). ^bYear levels (1 = freshman, 2= sophomore, 3= junior, 4= senior)

* $p < .01$, ** $p < .001$

4.2 Effect of Grade Level and Gender on the HW Variables

In order to assess how gender and year levels could impact assignment completion aspects, we employed conducted two Two-Way (2x4) factorial ANOVA with assignment completion and time spent on assignments as the dependent variables, and gender and year levels as the independent variables. Table 3 shows descriptive data (mean and standard deviation) of gender and year levels on assignment completion aspects.

For assignment completion, the interaction between gender and year levels was not statistically significant ($F_{(3, 784)} = 1.91$, $p = .126$), but the main effect of gender and year levels were statistically significant ($F_{(1, 784)} = 19.72$, $p < .001$; $F_{(3, 784)} = 14.47$, $p < .001$ respectively) and represented a medium effect ($R_{adj}^2 = .08$). Given these results, follow up procedures focused on the main effects. Female students completed significantly more assignments than the male students. In order to test year level difference, Tukey post hoc test showed that there were only significant differences between freshman and the other three year levels (sophomore, junior and senior). The results indicated that freshman complete more amount of assignments than the other three year levels.

In terms of time spent on assignments, no statistically significant differences were found in gender x year level interaction ($F = (3, 784) = .78$, $p = .508$). Nonetheless, the results of main effect showed that there were significant difference both between gender ($F_{(1, 784)} = 32.81$, $p < .001$) and year levels ($F_{(3, 784)} = 3.21$, $p < .05$). The effect size was medium ($R_{adj}^2 = .05$). The female students spent more time than the male students. Moreover, considering year level difference, there were significant year level difference between freshman and junior, and freshman and senior. Specifically, the higher year level students spent more time on assignments.

Table 3: Descriptive data for year, gender and gender within year levels

	Amount of assignments completed		Time spent on assignments	
	Mean	Standard Deviation	Mean	Standard Deviation
Freshman				
• Males	4.04	.763	3.41	.921
• Females	4.46	.684	3.80	.816
• Total	4.37	.720	3.72	.852
Sophomore				
• Males	3.73	.858	3.67	.866
• Females	4.09	.668	3.90	.876

	Amount of assignments completed		Time spent on assignments	
	Mean	Standard Deviation	Mean	Standard Deviation
• Total	3.90	.792	3.78	.876
Junior				
• Males	3.73	.788	3.69	.920
• Females	3.87	.750	4.02	.759
• Total	3.80	.771	3.85	.860
Senior				
• Males	3.84	.769	3.70	.972
• Females	3.95	.711	4.10	.639
• Total	3.89	.742	3.88	.855
Total Samples				
• Males	3.84	.806	3.61	.920
• Females	4.27	.737	3.87	.808
• Total	4.11	.790	3.78	.860
Total	4.11	.790	3.78	.860

4.3 Prediction of Academic Achievement

Table 4 shows a hierarchical regression analysis using assignment completion aspects, gender and year levels to predict academic achievement. Assessment of diagnostics (e.g. discrepancy, leverage and influence case) and assumptions (e.g. multicollinearity, normality, homoskedasticity, and independence of the error) found no concerns. In the first model, we entered gender and year levels in prognosis on academic achievement. The results revealed that this model was statistically significant ($F_{(2,782)} = 20.96$, $p < .001$) which accounted 5% of variance of the outcome variable. So, it represented a small effect. Gender significantly predicted academic achievement ($\beta = .186$, $p < .001$) and year levels was negatively predicted academic achievement ($\beta = -.120$, $p < .01$). In the second model, we added amount of assignments completed variable in this model to analyze main effect of this variable while controlling for gender and year levels. We found that this model explained 9% of variance change in the academic achievement which was statistically significant ($F_{(3,781)} = 40.85$, $p < .001$). It represented a small effect ($R^2 = .136$). Amount of assignments completed was positively predicted academic achievement ($\beta = .310$, $p < .001$). Especially, students complete more number of assignment, they have higher academic achievement. Finally, time spent on assignments was added in the third model, accounting 0.3% of additional variance in the outcome ($F_{(4,780)} = 31.71$, $p < .001$). Therefore, time spent on assignments did not predict academic achievement ($\beta = .310$, $p = .101$). For comparison of three models, the second model is the best fit ($R_{\text{change}}^2 = .09$, $p < .001$). Amount of assignments completed had the strongest impact on academic achievement.

Table 4. Results of explained variance (R^2) and change (ΔR^2), regression coefficients (β) and statistic and associated significance ($t(p <)$) in the prediction of academic achievement.

Predictor variables	Model 1		Model 2		Model 3	
	β	$t(p <)$	β	$t(p <)$	β	$t(p <)$
Gender	.188	5.382***	.140	4.142***	.129	3.769***
Year levels	-.122	-3.491***	-.068	-2.020*	-.078	-2.287*
Amount of assignment completed			.300	8.751***	.287	8.226***

Predictor variables	Model 1		Model 2		Model 3	
	β	t(p<)	β	t(p<)	β	t(p<)
Time spent on assignment					.070	1.958t
R2	.050		.136		.140	
R2change			.086		.004	

5 Discussion

Many researchers have claimed that assignment completion can improve students' academic achievement, not only in young students but also in adult students. In order to investigate the impact of assignments on academic success for college students, this study examined the effects of assignment completion (measured by the amount of assignments completed, and time spent on assignments) on academic achievement. Considering the significant individual difference noted by Bronfenbrenner (1989), we also assessed how gender and year levels could impact the assignment aspects and academic achievement. The data were collected from self-reports of undergraduate students in five universities of Thailand. We analyzed the data by using three steps: a Correlation analysis, Two-Way ANOVA and Hierarchical Regression.

Overall, we found that gender and year level differences impacted both number of assignments completed and time spent on assignments. The results are consistent with a prior research (Núñez et al. 2013), and specifically, the finding that female Thai students completed significantly more assignments than male Thai students mirrors previous research in other cultures. For example Xu (2010b), focusing on 685 African American students in grade 8 and 11, examined gender differences in homework completion. Xu's findings explained causes, supporting our results that female students were more apt to manage their homework about time, environment and distractions, control their emotions and maintain their motivation while doing homework. In addition, they explored activity engagement, finding that male students were more prone to come to class without homework than female students. However, Kitsantas and Zimmerman (2009) showed inversed findings for college students. Their results demonstrated no gender difference on frequency of homework completed.

Meanwhile, in comparing year level difference, our findings demonstrated that only freshman completed more assignments than sophomore, junior and senior. To interpret this new finding, we can use previous research from middle and high school settings (Núñez et al. 2013). Research from Spain that investigated students in middle to high schools described that higher students have lower interest and bad attitudes towards homework because they think that homework is not valuable for them (Ricardo et al., 2015a). For this reason, the college instructors might need to stress the usefulness of assignments to upper level undergraduate students. However, my result contrasted with Xu (2010b)'s findings in term of secondary school grade levels. His study showed that there was no grade level different on number of assignments completed. Causes of this result may come from content knowledge in universities that is likely to become harder and more complex (Planchard et al. 2015).

In term of time spent on assignments, both gender and year level differences were significant in spite of the small effect size. Similar to past studies, the discovery showed that the female students spent more time than the male students (Núñez et al. 2013). In contrast, Kitsantas and Zimmerman (2009) surveyed college students in quantity of homework (amount of time spent) and their result showed that there were no gender differences for time spent on assignment. They claimed that college students have the same responsibility toward academic tasks and many strategies of learning (e.g., note taking, writing, reading). In consideration of year level differences, the result that junior and senior students spent more time on assignments than sophomores is similar to other findings (Núñez et al. 2015c). These students would spend more time due to harder

content and more tasks (Núñez et al. 2015). Differently, compared with the result of Núñez et al. (2013), no gender differences were found.

According to our findings on academic achievement, gender and year level were statistically significant even though effect size was small. This result supports with individual difference theory stated in previous introduction. One interesting finding in this study was that the amount of assignments completed variable had the strongest impact on academic achievement. Amount of assignments completed positively predicted academic achievement. Especially, students who complete more assignments have higher academic achievement. It may be that the students who finish assignments get some knowledge and skills (Xu 2014). The result was accordant with past research. For example, Bembenuty and BaryJ.Zimmerman (2003), studied college students in New York about assignment completion on academic performance and suggested that academic achievement leads students to be more task persistent. Furthermore, their research showed motivational beliefs and self-regulation processes play an important role for college students in completing assignments. Ramdass and Zimmerman (2011) have accounted that students use self-regulation skills to complete assignment by setting goal, planning strategies, paying attention, managing time and environment, and evaluating themselves. Moreover, this result is also in line with other studies (Núñez et al. 2014; Planchard et al. 2015; Valle et al. 2016). However, for consideration on time spent on assignments, this variable is not indicator for academic achievement. Instead, some researchers have suggested that taking more time does not promote the effective time management that leads to high academic achievement (Núñez et al. 2015). Moreover, Trautwein et al. (2009) noted that assignment engagement is more important than the amount of time spent for academic success, but he has agreed with benefits of doing assignment. On the other hand, some past studies revealed that amount of time spent on assignments influenced academic achievement (Kitsantas & Zimmerman 2009; Núñez et al. 2014).

Due to this non-experimental study using self-reports, levels of assessment in people are different, which can cause data errors. However, the next investigation should be an experiment to get more solid results. Various majors of education are another limitation of this research, as assigned homework could vary by department. Furthermore, this study is only the student view. So, the future researches should ask instructors to get their perspectives. Lastly, because of the small effect size, future research should investigate in another aspect, e.g., kinds of assignment, self-regulation skills, motivation for doing assignment.

This study raises some implications for education. First, there are differences between gender and undergraduate year levels in terms of assignment completion which may then affect students' learning outcomes. Hence, instructors should consider assigning tasks depending on personal differences (e.g., gender, year levels). For instance, instructors might need to stress both the importance and benefits of assignments to higher level students in order to enhance motivation for doing tasks. With respect to designing assignments, educators should set goals and expectations for students' assignments so that students would gain considerable advantage from this.

In conclusion, the key findings of the study showed positive associations between assignment completion and academic achievement for Thai college students. Therefore, assignments should be valued in higher education. Moreover, there was emphasis on gender and year level differences on assignment completions aspects and academic achievement. Individual difference also is a major concern to develop students' assignment abilities and learning outcomes.

References

- Bembenuty, Hefer, and Bary J. Zimmerman. 2003. "The Relation of Motivational Beliefs and Self-Regulatory Processes to Homework Completion and Academic Achievement." Paper presented at the Annual Meeting of the American Educational Research Association, Chicago, IL, April 21-25, 2003.
- Bronfenbrenner, U. 1989. *Ecological Systems Theory*. London: Jessica Kingsley.
- Cadime, Irene, Joana Cruz, Carla Silva, and Iolanda Ribeiro. 2017. "Homework self-regulation strategies: a gender and educational-level invariance analysis." *Psicologia: Reflexão e Crítica* 30: 1-10.
- Falch, Torberg, and Marte Rønning. 2012. *Homework assignment and student achievement in OECD countries*. Statistics Norway, Research Department.

- Grodner, Andrew, and Nicholas G. Rupp. 2013. "The Role of Homework in Student Learning Outcomes: Evidence from a Field Experiment." *The Journal of Economic Education* 44: 93-109.
- International Student. n.d. 'UK vs. USA Education System.' www.internationalstudent.com. Accessed October 6, 2018.
- Kackar, Hayal Z., Lee Shumow, Jennifer A. Schmidt, and Janel Grzetic. 2011. 'Age and gender differences in adolescents' homework experiences.' *Journal of Applied Developmental Psychology* 32: 70-77.
- Kitsantas, Anastasia, and Barry J. Zimmerman. 2009. "College students' homework and academic achievement: The mediating role of self-regulatory beliefs." *Metacognition Learning* 4: 97-110.
- Mau, Wei-Cheng, and Richard Lynn. 2000. "Gender differences in homework and test scores in Mathematics, Reading and Science at tenth and twelfth grade." *Psychology, Evolution & Gender* 2: 119-25.
- Núñez, José Carlos, Natalia Suárez, Rebeca Cerezo, Julio González-Pienda, Pedro Rosário, Rosa Mourão, and Antonio Valle. 2013. "Homework and academic achievement across Spanish Compulsory Education." *Educational Psychology: An International Journal of Experimental Educational Psychology* 35: 726-46
- Núñez, José Carlos, Natalia Suárez, Pedro Rosário, Guillermo Vallejo, Rebeca Cerezo, and António Valle. 2014. "Teachers' Feedback on Homework, Homework-Related Behaviors, and Academic Achievement." *The Journal Of Educational Research* 108: 204–16.
- Núñez, José Carlos, Natalia Suárez Fernández, Pedro Rosário, and J. L. Epstein. 2015. "Relationships between perceived parental involvement in homework, student homework behaviors, and academic achievement: differences among elementary, junior high, and high school students." *Metacognition Learning* 10: 375-406.
- Nunez, José Carlos, Natalia Suárez, Pedro Rosário, Guillermo Vallejo, Rebeca Cerezo, and António Valle. 2015c. "Teachers' Feedback on Homework, Homework-Related Behaviors, and Academic Achievement." *The Journal Of Educational Research* 108: 204-16.
- Olson, Halie. 2016. "'Homework' in College." In *Harvard College*. Harvard University
- Planchar, Matthew, Kristy L. Daniel, Jill Maroo, Chandrani Mishra, and Tim McLean. 2015. "Homework, Motivation, and Academic Achievement in a College Genetics Course." *Bioscience* 41: 11-18.
- Ramdass, Darshanand, and Barry J. Zimmerman. 2011. "Developing Self-Regulation Skills: The Important Role of Homework." *Journal of Advanced Academics* 22: 194-218.
- Rawson, Kevin, Thomas F. Stahovich, and Richard E. Mayer. 2016. "Homework and Achievement: Using Smartpen Technology to Find the Connection." *Journal of Educational Psychology* 109: 208-19.
- Ricardo, Rodrigues Nunes, Pedrosa Daniela, Fonseca Benjamim, Paredes Hugo, Cravino José, Morgado Leonel, and Martins Paulo. 2015a. "Enhancing students' motivation to learn software engineering programming techniques: a collaborative and social interaction approach." In *Universal Access in Human-Computer Interaction. Access to Learning, Health and Well-Being*, 189-201. Los Angeles, CA, USA: Springer International Publishing.
- Richardson, John T. E. 2015. "Coursework versus examinations in end-of-module assessment: a literature review." *Assessment & Evaluation in Higher Education* 40: 439-55.
- Rosário, Pedro, José Carlos Núñez, Guillermo Vallejo, Jennifer Cunha, Tânia Nunes, Rosa Mourão, and Ricardo Pinto. 2015. "Does homework design matter? The role of homework's purpose in student mathematics achievement." *Contemporary Educational Psychology* 43: 10-24.
- Snyder, Thomas D. 1998. "Trends in Education." *Principal*, 78.
- Trautwein, Ulrich. 2007. "The homework achievement relation reconsidered: Differentiating homework time, homework frequency, and homework effort." *Learning and Instruction* 17: 372e88.
- Trautwein, Ulrich, Inge Schnyder, Alois Niggli, Marko Neumann, and Oliver Lüdtke. 2009. "Chameleon effects in homework research: The homework–achievement association depends on the measures used and the level of analysis chosen." *Contemporary Educational Psychology* 34: 77-88.
- Tuamsuk, Kulthida. 2013. "Information Literacy Instruction in Thai Higher Education." *Procedia - Social and Behavioral Sciences* 73: 145-50.
- Valle, Antonio, Bibiana Regueiro, José C. Núñez, Susana Rodríguez, Isabel Piñeiro, and Pedro Rosário. 2016. "Academic Goals, Student Homework Engagement, and Academic Achievement in Elementary School." In *Front Psychol.*, 463.
- Xu, Jianzhong. 2010. "Predicting homework time management at the secondary school level: A multilevel analysis." *Learning and Individual Differences* 20: 34–39.
- Xu, Jianzhong. 2010b. "Gender and homework management reported by African American students." *Educational Psychology* 30: 755-70.
- Xu, Jianzhong. 2011. "Homework Completion at the Secondary School Level: A Multilevel Analysis." *The Journal Of Educational Research* 104: 171-82.
- Xu, Jianzhong. 2014. "Regulation of motivation: predicting students' homework motivation management at the secondary school level." *Research Papers in Education* 29: 457-78.
- Xu, Jianzhong, Xitao Fan, Jianxia Du, and Minyan He. 2017. "A study of the validity and reliability of the parental homework support scale." *Measurement* 95: 93–98.

Knowledge Management Process of Germinated Brown Rice Production Community Enterprise

Worasit Wongadisai¹, Sumalee Chanchalor², Jariya Neanchaleay³

¹*Ph.D.student, King Mongkut's University of Technology Thonburi, Bangkok, Thailand, worasit.wongadisai@mail.kmutt.ac.th*

²*King Mongkut's University of Technology Thonburi, Bangkok, Thailand, isumalor@kmutt.ac.th*

³*King Mongkut's University of Technology Thonburi, Bangkok, Thailand, ijarleay@kmutt.ac.th*

ABSTRACT: The objective of this qualitative research was to investigate the knowledge management process of Germinated Brown Rice Production Community Enterprise in Sakon Nakhon, Northeastern region of Thailand, a major processing source. The sample was selected based on purposive sampling. It was Ban-Noijomsri Community Enterprise with effective knowledge management. Methodologies included interview, focus group, and participant and non-participant observations. Data were analyzed by content analysis. The results of this study indicated that 1). Knowledge identification focused on the knowledge used in production and production process development and community enterprise and business management, 2). Knowledge creation and acquisition were conducted inside and outside community enterprise through discussion and knowledge exchange with members, participation in training, and field trip with external agencies, 3). Knowledge storage was conducted by storing knowledge through personal recognition and important information note, 4). Knowledge distribution was conducted through discussion and knowledge sharing, demonstration, manual and process sign board preparation, and 5). Knowledge application was conducted by integrating knowledge and experience into new academic knowledge to obtain new body of knowledge. The key factors contributing to successful knowledge management were leadership and organizational culture.

KEYWORDS: Knowledge Management, Germinated Brown Rice, Community Enterprise

Introduction

Community enterprise is a community business related to production, service, or other (Small and Micro Community Enterprise (SMCE) Extension Act, 2005) that were done and managed by members of the community on the basis of using the combination of local knowledge, new knowledge, and appropriate technology to create greatest benefit for the community and create jobs and income to make the community prosperous (Pongpit 2013). Therefore, community enterprise is an important government's policy and is a foundation to develop economy, society, and life of people throughout the country. In year 2003, the government began the campaign One Tambon One Product (OTOP) to encourage each community in developing products according to its culture and lifestyle using local resources (OTOP selection manual 2016).

Germinated Brown Rice is an OTOP rice processed from the ancient local knowledge of Phu Tai Tribe in the Northeastern Region of Thailand which was continued for more than 200 years. In the past, germinated brown rice was made for poor people who lack rice or their barn is emptied before the harvest to eat, especially Sakon Nakhon in the Northeastern Region of Thailand. The germinated brown rice gained more popularity when the government encouraged and establish a community enterprise to produces and sells it. The germinated brown rice eating tradition had changed from the past as it was not a solution for famine but is now a product for health lovers and could also create jobs and income for people in the community as well, resulting in the expansion of germinated brown rice maker and the spread of this knowledge to other communities in Sakon Nakhon, making it promoted to be a provincial product of Sakon Nakhon recognized as one of the best germinated brown rice production areas, and advanced to be the germinated brown rice central cluster of Thailand (Sakon Nakhon Province 2015). However, from the 2017 community enterprise performance evaluation report, there is only 25.57 percent of community enterprises evaluated to be in good quality, while many encountered the issues of management, marketing, finance, product quality, and product consistency when mass producing (Thamma-Apiroam & Udomwitid 2004; Chiarakul 2014). Therefore, related departments must have appropriate community enterprise and

knowledge management in order to improve the performance of the community to sustain the management of community enterprise and develop it to be professions for later generations. Knowledge is one of the important foundations of an organization to be operational, and the organization must manage the knowledge appropriately and not too complicate in order to bring out the best potential from it (Schiuma 2012).

Knowledge management is a systematic effort to create, collect, disseminate, and utilize knowledge (Davenport & Prusak, 1998). Knowledge is managed in an integrated manner with an aim to develop an organization and effectively solve the problems (Schiuma 2012) and in sustainable manner. It is value creation for the business and to maintain a competitive advantage (Tiwana 2001; Gharakhani & Mousakhani 2012). Knowledge management is not only used in large business organizations focusing on knowledge management strategies but also in other kinds of organizations such as community organizations or community groups gathered together to systematically manage goods and services within the community (Chimlee 2012).

From its importance and problems, the researcher decided to study knowledge management process of the community enterprise. The selected study group is the Germinated Brown Rice Community Enterprise that continuously produces and sells germinated brown rice and received 5-star standard certification. Performance evaluation on knowledge management process of Germinated Brown Rice Community Enterprise is to reflect its knowledge management process. In this study on knowledge management process of Germinated Brown Rice Community Enterprise, the researcher used synthesis of theories and concepts of corporate knowledge management (Tuamsuk et al. 2013; Durst & Edvardsson 2012; Intasiri 2015; Mishra, & Bhaskar 2011) as a framework, which consists of knowledge identification, knowledge creation and acquisition, knowledge storing, knowledge distribution, and knowledge application. The research result could be used as a guideline to encourage knowledge management in the community enterprise and could be used as a knowledge management improving model for other community enterprises, which would merit for the community enterprise and other related associates in supporting the strength of the community enterprise.

Research Methodology

This was a qualitative research targeting on studying the knowledge management process and other factors supporting Germinated Brown Rice Community Enterprise. The sample group used in this research is specified from Sakon Nakhon as this is a provincial product of Sakon Nakhon while the province is also the germinated brown rice central cluster of Thailand as well. The researcher used enterprise selection criterion concept from Songleknok et al.(2015), which are: 1. Characteristics of community enterprise including (1) The establishment of community enterprise is the result of the integration of people in the community. (2) Production activity mainly uses local resources and labors. (3) The group management and the allocation of benefits were done through the board from member representatives. (4) The community enterprise has fund and budget for operating itself. (5) The community enterprise has the mean to produces and sells its products. 2. The product is of high quality and meets 5-star product selection standard of OTOP. 3. The community enterprise was operating for more than 10 years. Moreover, the researcher also added the result of performance evaluation of corporate management and knowledge management for analysis as well to gain the appropriate study unit. From the result of the analysis on Ban-Noijomsri Community Enterprise, the community enterprise meets the criterion and rather more prominent than other groups.

The research instruments were a survey with focus group and participatory and non-participant observation, according to the knowledge management process, which consists of knowledge identification, knowledge creation and acquisition, knowledge storing, knowledge distribution, and knowledge application. The samples are the president, board members, and community enterprise members. The analysis of data was done by categorizing according to data types for data processing and to be used for content analysis in order to explain the knowledge management process of the sample community enterprise.

Result and Discussions

1. Background

Ban-Noijomsri Germinated Brown Rice Community Enterprise is located at 222 group 4, Ban-Noijomsri, Hang Hong Sub-district, Mueang Sakon Nakhon District, Sakon Nakhon. The community enterprise produces and sells germinated brown rice with Pornpid Thongkon as the founder and the president. In the past, she received a suggestion from her relative to make germinated brown rice as it is the local knowledge her family inherit in the past, while also persuaded and learned how to make germinated brown rice for sale from Wirachai Unsakon, an ex-teacher at Sakon Nakhon Technical College as well. She tried and tested many times until getting the desired result. With this, she sees a way to create job inside the community. The government also has a revenue promotion policy and the Agriculture Office of Sakon Nakhon had also help promoting and created Ban-Noijomsri Germinated Brown Rice Community Enterprise, making germinated brown rice a product that brings income for the community and province members. This is because germinated brown rice contains high nutrition value, has GABA that could nurture the brain, could help preventing cancer, and contains many necessary vitamins and minerals (Nakornriab 2012). Currently, Ban-Noijomsri Germinated Brown Rice Community Enterprise is considered a high quality germinated brown rice production site of Sakon Nakhon which received 5-Star Outstanding OTOP Product Award and also certified from National Agricultural and Food Standards. The community enterprise had produced and sell germinated brown rice and rice products under the brand “Inthanin.”

2. Knowledge Management Process

Knowledge Management Process of Ban-Noijomsri Germinated Brown Rice Community Enterprise consists of the following stages.

2.1. Knowledge Identification

Knowledge identification is an identification of the target required knowledge. Knowledge identification was mostly done by either formal or informal discussion of the leader and members focusing on how to use the knowledge in production and development of germinated brown rice as well as the knowledge for group management and business management. In this case (Bunpetch 2014), it is suggested that knowledge identification should be done to see the clear image and method of process, which the shared vision between members and responders is necessary to let the organization efficiently and effectively make knowledge management and resources layout.

2.2. Knowledge Creation and Acquisition

Knowledge acquisition could be done both inside and outside the group. From the inside, it could be done by discussion, asking, and exchanging information among the members or consulting the specialists inside the group, which is mostly a tacit knowledge. From the outside, it could be done by participating in a training program, participating in a seminar, visiting and workplace. The knowledge acquired from outside the group was passed down as explicit knowledge which could be used to create new knowledge using social cycle process (Nonaka a & Tekeuchi 1995) for learning together, leading to the organization practices.

2.3. Knowledge Storage

Knowledge storage is mostly done by the memory of members as the original local knowledge. Some of it was also stored in the form of notes and also inside computers, but is not orderly and complete. The data stored is including record the rules and regulations of the group, production process, yield record and sales data. (customer list and sales), and also financial accounting records as well. These data were recorded and stored by the leader. This discovery is in accordance with Tuamsuk et al. (2013). Knowledge storage of the community is not systematically as each member collect the data by themselves. From the observation, there is not much knowledge stored and would only appear in the notes such as the knowledge of production process and usage of material.

2.4. Knowledge Distribution

The group regularly distribute the knowledge within themselves. This includes the original knowledge and new knowledge. These knowledge would be distributed through speaking, teaching, suggesting, and demonstrating. Distribution by elaborate demonstration would make the receiver understand more (Chimplee 2012). Other than this, the knowledge was also distributed through manual books and process signs as well. The group focuses on participatory process and social interaction of the members, which could increase the method of distribution (Tsai 2002) of thoughts, which is an inside knowledge that would lead to corporal performance improvement (Hsiao 2013).

2.5. Knowledge Application

From the study, it was found and applying original knowledge and experience with new academic knowledge from outside could create new knowledge and could be used to improve working skills, production process, and developing new products with mutual counseling, resulting in the creation of new skills according to Tuamsuk et al. (2013). The success of the community business was created from systematically application and combination of local knowledge with and academic knowledge, thus allow further development of knowledge.

3. Important factors affecting knowledge management were leadership and organizational culture. From the study, the leader of Ban-Noijomsri Germinated Brown Rice Community Enterprise is capable and knowledgeable and also accepted by the members. The leader acts as the central of every operation within the group, influencing the decision of the group, encouraging knowledge management, and could pass down knowledge appropriately, which is in the accordance of Songleknok et al. (2015). The leader has an important role in continuously encouraging and managing the community enterprise to be able to continue doing business. The role of the leader of a community enterprise could be divided into 3 sides including being the director, supporter, and organizational culture network coordinator (Rukkarnsiumas et al. 2014). The leader will encourage unity within the group by including them in administration and problem solving, exchanging information, and relying on each other as mentioned by Keyser (2004) that organizational culture that encourages knowledge management is the organizational culture of knowledge sharing as well as making the organization atmosphere where the members are honest, have mutual target and interest, realized on mutual important tasks, and sharing knowledge together, which would affect the success of the organization knowledge management.

Conclusions

This study aimed to investigate knowledge management and factors supporting the knowledge management of the community enterprise according to the knowledge management process. The target of this research is to study the knowledge management process of the sample community enterprise. The study indicated that the sample community enterprise has the knowledge management following the knowledge management process which the members participate in the meeting, knowledge exchange, knowledge storing, and knowledge application by integrating original knowledge with new knowledge. The leadership factor and organizational culture factor that supporting mutual learning are the factors that would support the success of knowledge management of the community enterprise. This research result should be useful for community enterprises and associates related to their development and the researcher also hope that this study would be used for improving the performance of community enterprises as they are a type of organization that strengthens the community by combining the activities of economy, social, culture, and environment altogether.

References

- Chiarakul, T. 2014. "The Problems and the Adaptation of OTOP to AEC." *Executive Journal* 34(1): 177-196.
- Chimplee, K. 2012. "Knowledge Management Models for Local Wisdom in Wickerwork Handicrafts: A Case Study of Local Community Enterprises in Nakhon Ratchasima Province." PhD diss., National Institute of Development Administration. Thailand.

- Davenport, T.H. and Prusak, L., 1998. *Working Knowledge: How Organization Manage What They Know*. Cambridge, MA: Harvard Business School Press.
- Department of Agricultural Extension. 2005. "Small and Micro Community Enterprise (SMCE) Extension Act." Accessed February 20, 2016. https://www2.moac.go.th/ewt_news.php?nid=4062&filename=index.
- Durst, D. & Edvardsson, I. 2012. "Knowledge Management in SMEs: a Literature Review." *Journal of Knowledge Management* 16(6); 879-903. doi.org/10.1108/13673271211276173.
- Gharakhani, D. & M. Mousakhani, M. 2012. Knowledge Management Capabilities and SMEs' Organizational Performance. *Journal of Chinese Entrepreneurship* 4(1): 35 – 49. doi.org/10.1108/17561391211200920
- Hsiao, Y., Chen, C., & Chang, S. 2011. "Knowledge Management Capacity and Organizational Performance: the Social Interaction View." *International Journal of Manpower* 32(5/6): 645 –660. doi.org/10.1108/01437721111158242.
- Intasiri, N. 2015. "Knowledge Management of Role-Model Farmers in Premium-Grade Beef Production." *Veridian E-Journal, Silpakorn University* 8(4): 85-95.
- Keyser, Richard Lewis. 2004. "Assessing The Relationship Between Knowledge Management and Plant Performance At The Tennessee Valley Authority." PhD Diss. The University of Alabama.
- Mishra, B. & Bhaskar, A. 2011. "Knowledge Management Process in Two Learning Organisations." *Journal of Knowledge Management* 15 (2): 344 – 359. Doi.org/10.1108/13673271111119736.
- Nakornriab, M. 2012. "Health Benets of Germinated Brown Rice and Germinated Prabolied Rice." *The Science journal of Phetchaburi Rajabhat University* 9(1): 69-79.
- Nonaka, I. & Takeuchi, H. 1995. "The Knowledge Creating Company" New York. Oxford University Press.
- OTOP selection manual, 2016. "OTOP Product Champion." Accessed March 16, 2016. <http://www.oic.go.th/FILEWEB/CABINFOCENTER11/DRAWER022/GENERAL/DATA0000/00000012.PDF>
- Pongpit, S. 2013. "Community Enterprise is not Community Business." *Community Enterprises: Economic Mechanism for Grass Root*, 6th ed. N. Petprasert, and P. Wongkul, Ed. 205-219. Bangkok: Edison Press Production.
- Rukkarnsi, S., Siripanumas, P., & Pholcharoen. S. 2014. "Leadership Roles on Knowledge Management Process in Successful Community Enterprise Under the Project of the 5 Stars Award (OTOP) in Buriram: Lessons Learned." *Rajabhat Maha Sarakham University Journal*. 8(3): 139-151.
- Sakon Nakhon Province. 2016. "Summary Information of Sakon Nakhon Province, Thailand." Accessed March 16, 2016. <http://www.sakonnakhon.go.th/th/etc/plan/chapter3.pdf>.
- Schiuma, G. 2012. "Managing Knowledge for Business Performance Omprovement." *Journal of Knowledge Management* 16(4): 515 – 522. doi.org/10.1108/13673271211246103.
- Songleknok, S., Loipha, S. & Vongprasert, C. 2015. "Knowledge Management Process of Indigo Dyed Cloth Community Business." *Khon Kaen University Research Journal (Graduate Studies)* 15(3):1-14.
- Thamma-Apiroam, R. & Udomwitid, S. 2004. "An Approach for OTOP Development in the North Eastern Region of Thailand." Research Project. Kasetsart University.
- Tiwana, A. 2003. *The Knowledge Management Toolkit: Practical Techniques for Building a Knowledge Management System*. Atlanta: Prentice-Hall.
- Tsai, W. 2002. "Social Structure of 'Coopetition' Within a Multiunit Organization: Coordination, Competition, and Intraorganizational Knowledge Sharing." *Organization Science* 13(2): 179-90. Doi.org/10.1287/orsc.13.2.179.536.
- Tuamsuk, K., Phabu, T., & Vongprasert, C. 2013. "Knowledge Management Model of Community Business: Thai OTOP Champions." *Journal of Knowledge Management* 17(3): 363-378. Doi.org/10.1108/JKM-10-2012-0321.

Are Codes of Business Ethics Ethical?

Willy Tadjudje¹, Clément Labi²

¹*University of Luxembourg, Luxembourg and CRIDES Centre at Université Catholique de Louvain, Louvain, Belgium*
willytadj@gmail.com

²*University of Luxembourg, Luxembourg, Belgium, clementlabi@gmail.com*

ABSTRACT: In response to a quickly evolving legal environment and more generally to changing conceptions about the role and responsibilities of the corporation and its executives, many firms have adopted codes of ethics whose legal relevance is uncertain, and whose relation to actual ethics is largely problematic. First, it is necessary to analyze the theoretical model of these codes, as business environments tend to be assessed in terms of “business ethics”, which is conceptually difficult not to discount, since ethics should possess a universalist vocation, hence the necessity to seek whether there could be a variety of ethics which could bear the same validity. More generally, can individuals (or corporations) bestow upon themselves any set of chosen ethical rules? We propose that ethical codes actually mimic and anticipate what legislators or judges have (or will have) considered as ethical behaviors. Since the law is itself an imitation of ethical rules, codes of business ethics are therefore imitations of imitations. The works of Kant and Levinas, in particular, will serve as points of reference.

KEYWORDS: ethics, business ethics, ethical codes, corporate governance

Introduction

1. The Holy Roman Empire, wrote Voltaire, was neither holy, Roman nor an Empire. Likewise, codes of ethics are not codes. More aggravatingly, they have very little to do with ethics. Many see the temporary trend towards privately-issued codes as novel and surprising, however, one must keep in mind that among all the branches of law, business law is probably the one whose reliance on self-regulation and generally a polycentric model of legal production is the most significant. The same tendency towards a stateless law is verified by the constant recourse to non-governmental means of resolutions of conflict, such as indemnity clauses, mediation, arbitration etc.

The most striking feature of these codes of business ethics (here the observed terminology hesitates a bit in practice between the aforementioned term and “code of ethics”, and “ethical code” – as the article demonstrates, the latter is rather incongruous), however, is that they predicate rules for the very party which, in principle, apply exclusively to the very entity that has established them. To such extent, they are comparable to oaths or wills. A more malicious analogy would mention conflict of interest policies, with the same existential doubt at stake: can a corporation be virtuous enough that we should trust it to define how virtuous it ought to be? Does one get to elect the ethical rules one wishes to live under? Would it be more intellectually coherent if the content of those ethical rules were imposed upon me by another person? More generally, can one split Ethics in discrete sets of rules and pick the set one wishes to comply with? We stumble here upon some of the many paradoxes that would propel the research in many directions. Essentially, we propose that the main source of difficulty lies in the fact that ethical codes present themselves as solutions, whereas there are only ethical problems.

2. A rigorous epistemological approach requires at least a summary recension and/or taxonomy of the existing ethical codes, which appear to be either adopted directly by companies or, in other cases are adaptable standards.

3. *Company-scale ethical codes.* An ethical code is an official statement of values and business practices. This document formalizes a number of actions and standards, and aims to engage the company. By making public its ethical code, a company commits itself directly to implement it, and to make it apply by all actors revolving around it. Thus, many companies are designing their own ethical codes. This might be because they are better able to propose rules that are appropriate to their context and therefore easier to implement.

Ethical codes are an affirmation of core values of companies. It is a document that guides actions and decision-making. Ethics in this regard is essential because it creates trust and

transparency within the framework of companies' activities. Ethical codes are normally intended to help each employee or company's stakeholder to go beyond simply complying with applicable laws.

4. Current economic and trade relations are characterized by the need for companies to position products (goods and services) on the market in order to guarantee certain profitability. To achieve this, they need to build a new image, necessarily positive. To this end, multinational companies, in particular, want to impose their own rules, typically to fill a legal vacuum. This is why ethical codes are above all engaging acts. They are the guideline of companies, the thread of their action. Ethical codes are the textual translation of corporate commitments (Paredes 2011, 94-101).

5. *Ethical standards.* We will distinguish between standards developed by international organizations, or those proposed by consortia or private companies. Many international organizations have issued a number of rules for multinationals to promote, for example, respect for the most fundamental human rights.

For example, Conventions of the International Labor Organization (ILO) set standards for all aspects of working conditions and industrial relations (Gendron 2013, 49-62). Another example is the OECD Guidelines for Multinational Enterprises (1976 and revised 2000), which set out recommendations made by governments to multinational enterprises covering nine areas of business conduct (Brabet 2011, 38-50).

If the implementation of these recommendations by companies is purely voluntary, Governments having subscribed to the principles are however obliged to contribute to their implementation and to promote their application by companies which operate on their territory or from their territory.

6. Among the private instruments used as reference, we can mention:

1. BS OHSAS 18001, Occupational Health and Safety Assessment Series (Rossignol, Drais and Favaro 2016, 153-173).

This is an internationally applied British Standard (BS). Its objective is to help all kinds of organizations to put in place demonstrably sound occupational health and safety performance.

2. ISO 26000 standard. This model is an ISO (International Standards Organization) standard for corporate social responsibility. It defines how organizations can and must contribute to sustainable development (Cadet 2010, 401-439).
3. The Coalition for Environmentally Responsible Economies (CERES). It is an initiative of a non-profit American network of investors, environmental organizations, and interest groups. This network created in 1989 an environmental code of conduct (Oberoi 2013, 31-48).
4. The social certification standard SA 8000 (published in 1998) which defines procedures in the fields of corporate social responsibility (El Abboubi and Nicolopoulou 2012, 392-414).

The AA 1000 standard that manages the balance between economic, social and environmental performance through self-assessment tools put in place for firms.

The Global Reporting Initiative (GRI). This is a repository listing the topics to be addressed in social and environmental relationships (Gendron, Ivanaj and McIntyre 2013, 3-14).

There are many ethical and corporate social responsibility initiatives. However, some of these initiatives are only symbolic, while others have a contractual and binding value for both signatory countries but also for companies, which are then required to honor the commitments entered into. Thus, for lack of legal value, they have a real value due in particular to the multipartite recognition of the relevance of their content. In this sense, they constitute a social constraint for companies that could be subject to charges in the event that they do not respect their commitments with reference to those instruments (Payne 2007, 18-28).

7. *Content of the ethical codes.* However, we propose that, in essence, a vast majority of the "ethical" norms set forth by codes of ethics can be summarized by the following excerpt, found in the code adapted at the level of the *XPO Logistics* company:

“XPO complies with all laws and regulations that govern dealings with federal, state, provincial, county and local governments, including entities working on behalf of a government, or owned or controlled by a government.”

Or, if one could summarize even more briefly: “the Company will comply with the law”.

8. Certainly, one could object to the proposition above that many stipulations found in codes of ethics do not only affirm reverence for the law, but actually go beyond it in an attempt to purport values that the company will strive to foster. To this rebuttal, we respond, in anticipation of the developments below that the intention of the draftsman is probably to manifest its intent that the company will comply with the *intention* of the law, or (and these two formulations may be equivalent one another) to what a judge might decide the application of the law to acts might consist in. To the extent that the above rationale might not be the only one, skepticism as to the ethical intentions surrounding the promulgation of a code of ethics (or manifestation of intent to adhere to an ethical standard) is difficult to rebuke.

9. To support our position, let us seek not what is *ethical* (i.e. what conforms with ethics) but rather what *is* ethical, or in other words, what criteria can be applied to determine if any given action is ethical.

10. The Kantian approach on metaphysics is made explicit in his 1785’s opus *Groundwork on the Metaphysics of Morals* (Kant 1785). For Immanuel Kant, an action is not moral because it is compliant with one’s duty. It can accede to morality because it was motivated by duty (Kant 1785). The counter-example offered by Kant is that of a wise merchant, who elects not to overcharge a novice customer in order not to sully his reputation of honesty. It is obviously difficult to call such behaviour moral or ethical, insofar as compliance with ethics is in that instance, so to speak, coincidental. It results from the Kantian view on ethics that, in particular, compliance with ethics caused by fear of a legal sanction, or an adverse reaction from the corporation’s shareholders or partners should be assessed as not only unethical, but perversely anti-ethical. Schopenhauer, in an essay which, otherwise, is profoundly critical of Kant’s views clearly states that an action motivated by selfishness is utterly devoid of moral worth (Schopenhauer 1844).

11. Therefore, the criterion proposed by Kant for *ethicity* is remarkably clear. *A contrario*, any deed whose motivation is outside of the ethics is simply not ethical, and it might be the opposite of that: as Pascal put it “he who pretends to be an angel is a beast” (Pascal 1670) - in other words, there is probably more monstrosity in affecting saintliness than being honest about one’s genuine intentions. Perhaps (but this is subject to a discussion far outside the realm of the present article), the only corporate social responsibility (and thus, conversely the only valid ethics) is that proposed by Milton Friedman: maximise the shareholders’ profit (Friedmann 1962).

12. Authors have argued that the legal system should be content with resulting in a “good enough” justice:

“The perfect justice might be the cleanest in theory, but can be quite messy in practice; a good enough justice accepts compromise to various degrees in common circumstances and while it doesn’t exclude the dramatic exception, it doesn’t live constantly under the pressure of tragedy. It is true that “good enough” would be a hermeneutical concept and it might be that finally, it says not much more than prudence. Therefore, in order to have the advantages of prudence, of a serious devotion to practice that is nonetheless not insensitive to contingent circumstances, such prudence has to be given its proper place in ethical reflection.” (Wolff 2011).

This probably true for *justice*, but not for ethics. The excerpt below is from a quite serious and earnest attempt to reconcile the real-life demands of any legal system and Levinasian ethics. What is Levinas’ proposal?

13. The works of Lithuanian-born French philosopher Emmanuel Levinas have been immensely influenced by the Jewish tradition, by phenomenology, but also, somewhat incongruously by the works of Schopenhauer on the foundations of ethics. If we were to summarise his complex, difficult philosophy, we could say that he regarded the experience of the face of the Other, the realization of the Other’s vulnerability, in particular, as the source for *unconditional*,

unlimited responsibility which is indissociable with an equally unconditional, unlimited and transcendent ethics. Through the face of the others, Ethics *imposes itself upon me*, and this irruption occurs *ab origine* – it is not a man-made means of organizing human interactions but the root of human interaction. It would seem incongruous to admit that one can *elect* to be governed by ethics, and even more so by a particular sub-set of ethical rules (as is the case with ethical codes) – in a Levinassian sense, this would make exactly as much sense as electing to be governed by physics, *except* the third law of thermodynamics (or even worse, with the stipulation that Newtonian laws of viscosity must be followed *diligently* by all staff members, but within the limits of good practices regarding bullying in the workplace).

14. In a sense, the mere fact that the phrase “Business Ethics” exist and is used unironically is a nonsense from a Levinassian perspective. It seems to imply that a particular subset of ethical rules should apply to the world of business, excluding all others, or worse that *altogether different* rules (which reasonable suspicion would hold to be not genuinely ethical in nature) would be used in that instance as an ersatz to Ethics proper. Those hypotheses lay seem exceedingly harsh, but thinking of the example proposed by Kant brings to mind all-too-real example. If business must be governed by ethics, it must be by unqualified ethics, not by “business ethics.

15. Of course, the rationale for the adoption of such an ethical trompe l’oeil would be impossible to understand if corporations, most often represented by their board, did not carry the weight of actual legal responsibilities.

16. Although different taxonomies do exist depending on the legal system at stake (and arguably, on the predominant variety of capitalism in the relevant jurisdiction), the responsibilities of the directors can be summarised as follows: do what is best for the interests of the company (in the British terminology, “promoting its success”) in compliance with the rules applicable under the company’s bylaws and the rules applicable by application of the law, which can themselves be divided under those deriving from the private law subset and those which are applicable as a matter of criminal law. The particular criteria set forth by the law are vague, or at least formulated so as to comprise the immense variability of issues presenting themselves in the course of business activities: “due care”, “loyalty”, “proper purposes”, “adequate consideration” to be received by the corporation etc. – thus, even though it is universally presumed that the decision or the behaviour is good until proven otherwise, it is impossible to be *certain to be compliant*.

17. Let us examine for instance the case of director’s liabilities in Delaware, the place of incorporation of a disproportionately large number of large American corporations, so much that Delaware law is often considered as “common law” in terms of corporation law. For instance, in *Aronson v. Lewis* the Delaware Supreme Court held that “*a presumption that in making a business decision, the directors of a corporation acted on an informed basis in good faith and in the honest belief that the action was taken in the best interests of the company*” which must have signalled a presumption of immunity for directors of Delaware-based companies in the scope of their duty of care. However the case of *Smith v. Van Gorkom*, the Court narrows so much the scope of the solution found in *Aronson* that authors compared the opinion to the explosion of a bomb (Sharfman 2008, 288).

Indeed, the Delaware Supreme Court nearly overturned the *Aronson* findings only one after they were stated, by deciding that in establishing that the directors have complied with their duty of care as construed through the business judgment rule, the court must establish “*whether the directors have informed themselves 'prior to making a business decision, of all material information reasonably available to them'*” so that, from the moment the judge’s gavel fell down, not being informed became a breach of a director’s fiduciary duty of care owed to shareholders.

18. Most of the contemporaneous literature harshly criticized *Smith v. van Gorkom*, calling it “*surely one of the worst decisions in the history of corporate law*” (Sharfman 2008, 288) or “*atrocious*” (Sharfman 2008, 289). The dissent in the opinion compared it to a “comedy of errors” (Sharfman 2008, 289). Even though some others have found merit in the decision, what is difficult to deny is that it was unpredictable for the directors subject to the trial or to any directors, who could not have reasonably construed the phrase “duty of care” or, with further reason, the recent

Aronson solution as a signal that they should have started to gather information and document that gathering as fast as they could so as to stand the test of evidence. Hence, what other choice do boards have than striving to pile up as many elements as possible in order that they satisfy the “almost ethical” provisions of the law?

19. The classical distinction holds that law governs our external behaviour whereas the realm of morals or ethics is the conscience (De Naurois 1971, 309). However this geographical criterion does not account for the fact that the law, *at the very least*, aims to reach ethical purposes, or worse to imitate morals (for instance when the judge explores the range of directors’ “duty of care”, it employs a quintessentially moral terminology. Therefore, when a code of ethics attempts to anticipate or replicate the legal rules approximating ethics, it actually *imitates an imitation*.

20. If the corporate rules were effective, ethical codes would not be so popular. The latter are most often adopted to fill a legal vacuum, thus attesting to the ineffectiveness of corporate law. Black is one of the authors that strongly support this argument.

21. *Black’s thesis on the triviality of corporate law*. According to Black (Black 1990, 542-597), State corporate law contains a mix of mandatory and default rules. This author believes that mandatory rules are not effectively compulsory. Their mandatory characteristic is only apparent, it is just a mirage. Black underlines that State corporate law is trivial, in the sense that it lets companies (managers and investors together) establish any set of governance rules they would reasonably want.

Black acknowledges that rules that appear mandatory may be trivial for four good reasons:

1. Some mandatory rules would be universally adopted if people thought about them.
2. Some rules can be avoided by advance planning, including choice of capital structure and state of incorporation.
3. Some mandatory rules are unimportant, in the sense that they cover situations that occur rarely or matter little.
4. Some rules that used to be market mimicking, avoidable, or unimportant may matter, but precisely because these rules matter, they will soon be changed (are circumstances usually change). The political forces that led to the trivialization of corporate law will see to that.

Black supports that many apparently mandatory corporate law rules are trivial in one of these senses. Moreover, proving that nontrivial rules exist is hard, says Black. It is not trivial to disprove the extreme null hypothesis that all of State corporate law is trivial (Black 1990, 542-597).

To convince, Black argues that investors and managers are able, at least with the help of clever lawyers to establish any set of governance rules they want. Therefore, “the mandatory/enabling balance (...) isn't really there” (Black 1990, 542-597). Corporate law is in fact fully enabling because any mandatory rules are “either avoidable or have no bite” (Black 1990, 542-597).

22. *Applicability to codes of business ethics*. The thesis defended by Black is more verified at the international level. At present, there is no regulatory framework that can strictly control companies’ international activities. Indeed, multinational companies do not have an international legal status. By relocating their production, they are freed from a certain number of rules and decline their responsibility vis-à-vis rights violations committed by their subsidiaries and subcontractors abroad. This situation puts multinationals in a position of strength vis-à-vis States that lack regulatory mechanisms (Renouard 2007).

To fill this gap, most companies have developed ethical codes, as a strategy of self-regulation of the framework of their responsibility.

Referring to Black's abovementioned work, we can assume that ethical codes provisions either:

- Market mimicking
- Avoidable
- Unimportant
- Prone to obsolescence

But according to Orts (1993, 1565-1623), even if Black's "triviality hypothesis" proved correct, corporate law would nonetheless remain important. All the same, even if corporate law were entirely enabling, it would describe the rules by which economic power is socially structured, which is not a trivial matter, although corporate law would then collapse into a specialized category of contract and property law (Orts 1993, 1565-1623).

Concerning ethical codes provisions, if we only think about imposing rules to make them work, we might make things more complicated. Knowing that humans have the ability to distinguish right from wrong, we agree with Dodd when he says that "there is in fact a growing feeling not only that business has responsibilities to the community but that our corporate managers who control business should voluntarily and without waiting for legal compulsion manage it in such a way as to fulfill those responsibilities" (Dodd 1932, 1145-1163).

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References

- Black, Bernard. 1990. "Is Corporate Law Trivial?: A Political and Economic Analysis." *Northwestern University Law Review* 84: 542-597.
- Brabet, Julienne. 2011. "Corporate social responsibility and its models in a contested field." *Revue de l'organisation responsable* no. 2: 38-50.
- Cadet, Isabelle. 2010. "La norme ISO 26000 relative à la responsabilité sociétale: une nouvelle source d'usages internationaux." *Revue internationale de droit économique* no. 4: 401-439.
- De Naurois, Louis. 1971. "Discordances entre droit et morale." *Revue Théologique de Louvain* 307-26.
- Dodd, Merrick. 1932. "For Whom Are Corporate Managers Trustees?" *Harvard Law Review* 45: 1145-1163.
- El Abboubi, Manal and Nicolopoulou, Katerina. 2012. "International social-related accountability standards: Using ANT towards a multi-stakeholder analysis." *M@n@gement* 15: 392-414.
- Gendron, Corinne. 2013. "Social responsibility and international law: reflections about labour issues." *Revue de l'organisation responsable* no. 2: 49-62
- Gendron, Corinne; Ivanaj, Silvester and McIntyre, John. 2013. "Introduction. Corporate social responsibility and attitudes towards regulation of multinational companies." *Revue de l'organisation responsable* 8: 3-14
- Friedman, Milton. 1962. *Capitalism and Freedom*. Chicago: University of Chicago Press.
- Kant, Immanuel. 1785. "Grundlegung zur Metaphysik der Sitten." 1998 Groundwork of the metaphysics of morals, tr. Mary J. Gregor (1928–1994), with an introduction by Christine Korsgaard (1952–). Cambridge, U.K., New York: Cambridge University Press.
- Levinas, Emmanuel. 1982. *Ethique et Infini*. Paris: Fayard.
- Oberoi, Roopinder. 2013. "Complexity in regulating multinational corporates in global era: understanding the taxonomy of 'power' and 'corporate responsibilities.'" *Revue de l'organisation responsable* 8: 31-48.
- Orts, Eric. 1993. "The Complexity And Legitimacy Of Corporate Law." *Wash. & LeeL. Rev.* 1565-1623.
- Paredes, Carmen Lucía Carmona. 2011. "Decision: The Space between the Code of Ethics and the Ethical Behaviour." *Finance & Bien Commun* 39: 94-101.
- Pascal, Blaise. 1670. *Pensées*. Editions Rencontres (first edition 1960).
- Payne, Clare. 2007. "Ethics or Bust: Beyond Compliance and Good Marketing." *Finance & Bien Commun* no. 2: 18-28.
- Renouard, Cécile. 2007. *La responsabilité éthique des multinationales*. Paris: Presses Universitaires de France.
- Rossignol, Karen; Draï, Éric and Favaro, Marc. 2016. "Évaluer l'organisation de la prévention des risques professionnels. Genèse et institutionnalisation d'un outil de mesure au sein d'une branche de la Sécurité sociale." *Terrains & travaux* 28: 153-173.
- Schopenhauer, Arthur. 1844. *The World as Will and Representation*. New York: Dover Press, Volume I, Appendix, "Criticism of the Kantian Philosophy."
- Sharfman, Bernard. 2008. "The Enduring Legacy of Smith v. Van Gorkom." *Delaware Journal of Corporate Law* 33: 287-309.
- Wolff, Ernest. 2011. *Political Responsibility for a Globalised World*. Bielefeld: Transcript Verlag.

Embracing Children’s Right to Decisional Privacy in Proceedings under the *Family Law Act 1975 (Cth)*: In Children’s Best Interests or a Source of Conflict?

Georgina Dimopoulos

Melbourne Law School, University of Melbourne, Melbourne, Australia, dimg@unimelb.edu.au

ABSTRACT: Privacy and family law are both dynamic, subjects of passionate debate, and constantly changing with developments in society, policy and technology. This paper develops a normative understanding of the meaning and value of privacy in the context of proceedings under the *Family Law Act 1975 (Cth)* (Family Law Act) that embraces children’s decision-making autonomy. The focus is privacy’s decisional dimension, which has received scant scholarly attention in the Australian family law context. Recognising and respecting children’s (as distinct from their parents’) decision-making autonomy, and children’s right to make decisions that might conflict with their parents’ (and the state’s) wishes, remain significant, and unresolved, challenges for the Australian family courts. This paper explores these issues using court authorisation of special medical procedures for children diagnosed with gender dysphoria as a case study. This paper argues that the construction of children as vulnerable to harm and the hierarchical nature of the parent-child relationship under the Family Law Act, coupled with judicial approaches to determining the ‘best interests of the child’ as the paramount consideration, have inhibited the Family Court of Australia from embracing children’s decisional privacy. This paper addresses concerns about the perceived conflictual consequences of doing so. It emphasises the relationality of children’s rights, the significance of the family unit, and the public interest in promoting children as active participants in proceedings as a policy goal of family law.

KEYWORDS: privacy, family law, autonomy, decision-making, children, best interests, welfare, children’s rights, family courts, gender dysphoria, medical treatment, Australia

Introduction

Privacy and family law are both dynamic, subjects of passionate debate, and constantly changing with developments in society, policy and technology. Observations made about the concept of privacy apply with equal force to family law: they are ‘incoherent’ and subsist in a state of ‘chaos’ (Inness 1992, 3; Dewar 2000, 61; Diduck 2011). The focus of this paper is on decisional privacy in Australian family law. This paper adopts a children’s rights approach to develop a normative understanding of the meaning and value of privacy in proceedings under the *Family Law Act 1975 (Cth)* (Family Law Act) involving children. It first presents an overview of competing conceptions of privacy, and explains how privacy serves the liberal ideal of autonomy through its three dimensions: spatial, decisional and informational. The focus then narrows to privacy’s decisional dimension, which has received little scholarly attention in the Australian family law context. Decisional privacy protects the individual’s ability to make decisions which contribute to defining the individual’s identity, free from the interference of other individuals or the state (DeCew 1997, 77-8). Also known as ‘expressive privacy’, it creates an area for choices, and the development of a ‘life plan’ and a sense of self.

Recognising and respecting children’s (as distinct from their parents’) decision-making autonomy, and children’s right to make decisions that might conflict with their parents’ (and the state’s) wishes, remain significant, and unresolved, challenges for the Family Court of Australia. The Family Court’s exercise of its welfare jurisdiction to authorise special medical procedures for children with gender dysphoria provides a prime illustration. This paper argues that the construction of transgender children as vulnerable to harm and the hierarchical nature of the parent-child relationship under the Family Law Act, coupled with judicial approaches to determining the ‘best interests of the child’ as the paramount consideration, have inhibited the Family Court from embracing children’s decisional privacy in gender dysphoria proceedings.

The final part of this paper addresses concerns about perceived conflicts between children and their parents that may arise from recognising and respecting children’s decisional privacy rights. It

presents three key features of a children's rights approach to rebut these concerns: the relationality of children's rights; the significance of the family unit; and the notion that children's participation in the decision-making process grants them 'a voice, not a choice' (*Duffy & Gomes (No 2) 2015*, [71]). This paper concludes with some observations about the social value of privacy in the family law context, and the public interest in promoting children as active participants in proceedings as a policy goal of family law.

Privacy: what does it mean and why is it valuable?

Privacy is often labelled an 'umbrella term', capturing a broad range of interests and things (DeCew 1997, 1; Solove 2006, 486; Lever 2012, 4). Some theories endeavour to explain privacy's meaning through a single defining feature. The most enduring and influential of these accounts include: the right to be let alone (Warren and Brandeis 1890); secrecy (Bok 1983; Jourard 1966); limited access to the self (Gavison 1980); control over information (Westin 1967; Kang 1998); intimacy (Inness 1992; Gerety 1977; Schoeman 1984); and personhood (Reiman 1976; Benn 1984; Bloustein 1964). Recent privacy law scholarship has emphasised theories which position social context as pivotal to understanding, defining and justifying privacy (Nissenbaum 2010; Solove 2002). A minority of scholars has argued against any definition of privacy or an independent right to privacy. The most noteworthy in this 'sceptical' or reductionist school is Judith Jarvis Thomson, who contends that a right to privacy does not exist. Thomson's challenge is that privacy is 'derivative', and derives its value from other, more fundamental rights or interests, particularly property rights and rights over the person (Thomson 1975).

To 'reduce' the notion of privacy in the family law context to these 'more fundamental' rights would be to generate both conceptual and practical difficulties in the determination of children's matters under the Family Law Act. The contemporary justification for the rights of parenthood is that such rights exist so as, and only so far as, to protect and nurture children until they reach adulthood and independence (Barton and Douglas 1995, 23). Any notion of privacy that entertained the view that parents had property rights over their children would be fundamentally antithetical to the foundations of contemporary family law. An additional, related problem with the reductionist conception of privacy in the family law context is that notions of 'ownership' over property and over the person – that 'our bodies are ours and so we have the same rights with respect to them that we have with respect to our other possessions' (Rachels 1975, 332) – are bound up with the notion of children's evolving autonomy. If, as is argued below, the value of privacy inheres in upholding autonomy – the condition that enables people to pursue their own conceptions of the 'good life' – then privacy is not derivative, but rather, provides the preconditions required for individuals to consider their existence their own (Reiman 1976, 43), and to be able to claim meaningfully personal and property rights.

Pinpointing the value of privacy is vital to the task of conceptualising privacy; yet demonstrating that privacy is valuable can be difficult. The widespread disagreement about 'privacy' as a concept emanates from disagreements about the values that privacy serves, and from different views on how those values are conceptualised. This paper contends that privacy is valued as a prerequisite for the achievement of the liberal ideal of autonomy. Privacy is normatively important because it protects the diversity of personal choices, actions and ways of life; it operates to enable a freedom to act according to the individual's own independently and rationally derived understanding of what is valuable and good (Mitnick 2006, 21). The capacity to understand what one considers to be the good life involves being able to both construct, and act upon, one's own set of values and life goals that provide the individual with direction, and scope for self-reflection. However, the good life does not merely entail pursuing and promoting one's own happiness, but also fostering relationships with others and fulfilling one's responsibilities (Herring 2014, 48-9). And fulfilment of this liberal ideal of being able to lead an autonomous, self-determined life depends on the conditions of privacy and on claims to privacy. A person is thus autonomous if he or she can ask what Beate Rossler (2005) has coined the 'practical question', and live accordingly. That question is, 'how do I want to live, what sort of person do I want to be, and how I should best strive for my own good in my own way?' (Rossler 2005, 50-51). The answer to the practical

question lies simultaneously with the individual themselves (the subjective aspect), and in general social conditions external to the individual that facilitate the achievement of autonomy (the objective aspect). Privacy facilitates the autonomy of diverse social relationships – including family relationships – by providing individuals with the capacity to control access to information about themselves, and to present themselves to others in different roles and in different ways (Gerety 1977; Inness 1992; Gavison 1980).

The liberal concept of privacy is premised upon an ideological separation of life into seemingly opposite spheres of ‘private’ and ‘public’ responsibilities and activities. The ‘private’ has historically been equated with the domestic sphere, comprising intimate, familial and sexual relationships, while the ‘public’ has been used to denote a realm of politics, market and power. The three domains around which privacy is constructed are predicated on this normative distinction between ‘public’ and ‘private’. The first domain is personal space and relationships, which covers seclusion and selective access to certain areas, as well as the intimate and the family (‘spatial’ privacy). The second domain is information, which includes control of and access to information, and issues of confidentiality, anonymity, secrecy and disclosure (‘informational’ privacy). The third domain is decision-making, which involves an individual’s ability to make his or her own decisions and to act and behave without undesired interference from others (‘decisional’ privacy). The spatial, decisional and informational dimensions of privacy serve the ideal of autonomy in different ways, by regulating access to the individual; the selective withholding and disclosure of information by, and about, the individual; and by protecting the individual’s capacity to make decisions, behave, take action and pursue a way of life of his or her choosing.

Decisional privacy, the family and children as autonomous beings

Decisional privacy, which is the chief focus of this paper, has been relied upon in United States constitutional law jurisprudence to describe the exercise of individual autonomy in decision-making on matters such as reproduction, contraception and abortion (Allen 1987, 466; Fineman 1999, 1211). Anita Allen (1988, 115-16) has described decisional family privacy as ‘a right of family members to be free from uninvited, unwarranted interference with the rearing, education, discipline, health, and custody decisions, made by family members (usually adults) on behalf of members of the same family (usually infants, children, teenagers, the elderly or the infirm)’. Allen’s description duly recognises the power dynamics within families, and power disparities between family members, that the decisional dimension of family privacy embodies. Decisional privacy protects the right of individuals to make choices and decisions about their lives; yet the notion of ‘family’ or ‘entity’ privacy involves the right of the family as an entity to determine fundamental aspects of its own welfare. Those communal rights are only compatible with individual autonomy to the extent that the individuals within the family agree. By virtue of the power imbalance between parents and children, parents are both a source of, and a potential threat to, their children’s autonomy, such that attaching privacy to ‘the family’ as an entity is problematic for children (Nedelsky 1989, 235).

Decisional privacy in Australian family law has generally been understood from the perspective of adults, such that children are ‘relegated to the shadows’ of privacy discourse (Hearst 2012, 14). Difficulties persist in recognising and protecting children’s – as distinct from their parents’ – decisional privacy interests. These difficulties emanate from the assumption that families are best placed ‘to protect and advance children’s interests and children’s interests are ... congruent with those of the family’ (Hearst 2012, 14). They also stem from the view that children lack the capacity and rationality to exercise decision-making autonomy. In the famous words of Onora O’Neill (1988, 463), a child’s ‘main remedy is to grow up’.

The notion of autonomy, entailing as it does ‘a strong rejection of paternalism’ (Herring 2014, 48), sits uneasily with conceptions of children and childhood in Western liberal societies, which emphasise children’s vulnerability to justify the disparity in rights and responsibilities bestowed upon children and adults respectively. The key feature of childhood as a ‘legal’ status, according to John Eekelaar (1994, 43), is that ‘adults have a generalised legal power (exercisable either by parents or by legal authorities) to impose a course of action on minors on the basis of their

assessment of the minors' best interests'. Children are conceptualised as human beings who do not yet have the essential attributes of citizenship – including autonomy, reason and the capacity for self-determination – but who will have these in the future. The notion of autonomy therefore 'rest[s] uneasily with the reality of children's lives' (Tobin 2017, 55).

When the realisation of autonomy is understood as a gradual process – that is, individuals learn to become, and to be, autonomous in and through social relations – then children can be understood as autonomous individuals, whose identities are a 'work in progress' and a 'process of becoming' (Rossler 2005, 62). The family provides a space for children to develop their identities, and socialisation within the family provides the conditions that enable children to develop an understanding of themselves as autonomous individuals, and as individuals who value autonomy (Rossler 2005, 167; Oswell 2013, 91-8). Conceiving of autonomy as an evolving, rather than absolute, concept enables children to be treated as active subjects with agency, consistent with their developing capacities.

So far, this paper has explained that privacy is a distinct right or interest, valuable because of the value placed on autonomy in contemporary liberal societies. And it has explained the notion of autonomy as a relational, gradual concept, which emphasises the importance of social relationships, and enables children to be recognised as autonomous beings. The next part of this paper examines the nexus between privacy and autonomy through the case study of transgender children seeking medical treatment for gender dysphoria. In doing so, it advances the contention that the construction of children and the parent-child relationship under the Family Law Act, and judicial approaches to determining the 'best interests of the child' as the paramount consideration under the Act, have inhibited the recognition of, and respect for, transgender children's decisional privacy rights.

The Family Court's welfare jurisdiction in special medical procedure cases: a case study of the privacy-autonomy nexus under the Family Law Act

Parental responsibility and consent to children's medical treatment

The Family Law Act is the primary piece of Australian legislation that deals with parental responsibility for children. The notion of 'the best interests of the child' as the paramount consideration remains the key reference point for decision-making under Part VII of the Act, which deals with children's matters (Chisholm 2002; Eekelaar 2002). The former Chief Justice of the Family Court of Australia, Diana Bryant AO QC, remarked that the 'best interests' test 'is at odds with a child's right to privacy, autonomy, self-determination and freedom of expression' (Bryant 2009, 199). Whether such values and rights do in fact conflict or co-exist depends to a large extent on how, and by whom, the 'best interests' test is defined. The best interests principle enshrined in the Family Law Act is drawn from the welfare model, the 'dark side' of which, according to John Eekelaar (2007, 13), is that the obligation to promote and protect the child's interests also involves adults exercising the power to determine the content and nature of those interests. As a result, there lies a risk that the best interests principle will become a 'proxy' for the interests of adults (van Krieken 2005, 39), including the child's parents, treating doctors, and even judicial officers.

The Family Law Act reflects the assumption that parents are best placed to protect the interests of their children, and recognises the primacy of the parental role in relation to the child's best interests. Subject to any court order in force, parents have a 'bundle of rights' which the Family Law Act defines as 'parental responsibility': '[a]ll the duties, powers, responsibilities and authority which, by law, parents have in relation to children' (Family Law Act, ss 61B, 61C; *Re Lucy (Gender Dysphoria)* 2013, [82]). However, the Family Court has acknowledged that 'parental responsibility is not absolute authority', and it does not prevent a child from making decisions for himself or herself. Rather, '[p]arental responsibility merely provides the time frame within which it can be assumed by others, such as hospitals and schools, that parents are empowered at law to make decisions for the protection and benefit of the child' (*Re Tahlia* 2017, [35]).

While it is generally within the bounds of parental responsibility for parents to be able to consent to medical treatment for and on behalf of their child, there are 'special medical procedures'

which fall beyond that responsibility and require determination by the Family Court as part of its welfare jurisdiction. Section 67ZC of the Family Law Act provides that, in addition to the jurisdiction under Part VII in relation to children, a court has jurisdiction to make orders relating to the welfare of children. In deciding whether to make such an order, the court must regard the best interests of the child as the paramount consideration. In the 1990s, the Family Court's welfare jurisdiction was increasingly invoked to decide the complex questions of a child's competence to consent to medical treatment, and whether the proposed treatment was in the child's best interests. Around the same time, the children's rights movement began to gain momentum, most notably through the United Nations *Convention on the Rights of the Child*, which came into force on 2 September 1990.

The decision of the High Court of Australia in *Secretary, Department of Health & Community Services v JWB & SMB ('Marion's Case')* remains the seminal Australian authority in relation to the scope of the welfare jurisdiction under section 67ZC of the Family Law Act. The proceedings involved an application by the parents of a 14-year-old girl with severe intellectual disabilities for her sterilisation. Prior to *Marion's Case*, major medical and surgical procedures for children were generally consented to by the child's parents or guardians and/or the child themselves (where the child was deemed competent to decide), in consultation with the child's treating medical professionals. The High Court held that the Family Court has jurisdiction, pursuant to section 67ZC, to make decisions about a child's proposed medical treatment where that treatment is invasive, permanent and irreversible, and therapeutic (that is, not carried out 'to treat some malfunction or disease') (*Marion's Case* 1992, 250). Other factors that made sterilisation a special medical procedure were the significant risk of a wrong decision being made, and the particularly grave consequences of such a decision (*Marion's Case* 1992, 250). The High Court also identified the potential for a conflict of interests between the child and the child's parents, which warranted court intervention to protect the child's best interests (*Marion's Case* 1992, 251-2). The crux of the High Court's decision was that a child must either be capable of giving informed consent to the medical treatment (commonly referred to as 'Gillick competence' from the 1986 House of Lords decision in *Gillick v West Norfolk and Wisbech Area Health Authority*); or if the child is not Gillick competent, the Court, rather than the child's parents, should grant authorisation for the procedure. As a result of *Marion's Case*, the decision-making autonomy of families was subverted, and Family Court authorisation was necessary, as essentially a 'procedural safeguard' (*Marion's Case* 1992, 249), in medical treatment cases that invoked the factors or features identified by the High Court.

Gender dysphoria as a 'special medical procedure': the decisional privacy implications

Marion's Case clearly did not relate to, nor did it make any reference to, gender dysphoria, which involves a person experiencing a conflict or dissonance between their self-perception of being female or male, and their natal or phenotypical body (Kelly 2014, 83). Diagnosis of gender dysphoria is governed by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), and the accepted medical treatment occurs in two stages. The first stage involves the administration of puberty-suppressant hormones. The second stage, which occurs when the child is approximately 16 years of age, involves the administration of either testosterone or oestrogen. The diagnosis of children with gender dysphoria in Australia has grown significantly over the past 15 years. The Family Court has remarked that '[n]ot so long ago, these sorts of applications were a rarity; now they are commonplace and the number of them being made rapidly increasing' (*Re Lucas* 2016, [3]). The Family Court has also recognised that the decision-making process in gender dysphoria cases is 'exquisitely difficult and, in many cases, likely to involve much pain and proper prevarication' (*Re Sean and Russell* 2010, [84]).

The decision of the Family Court in *Re Alex: Hormonal Treatment for Gender Identity Dysphoria* ('*Re Alex*') extended the definition of special medical procedures requiring court authorisation, as established by the High Court in *Marion's Case*, to applications for medical treatment for childhood gender dysphoria. *Re Alex* involved an application by the legal guardian (a government department) of a 13-year-old young person, Alex, pursuant to section 67ZC of the Family Law Act, for the authorisation of medical treatment that would precipitate Alex's transition

from a female to a male. It was common ground that Alex had ‘a long-standing, unwavering ... identification as a male’ (*Re Alex* 2004, [80]). Chief Justice Nicholson, as his Honour then was, held that a child who has been diagnosed with gender dysphoria requires the Family Court’s authorisation to commence stage one or stage two treatment. His Honour found that Alex could not, and did not, have the capacity to understand and consent to treatment for his diagnosed condition, and that the medical treatment itself amounted to a ‘special medical procedure’ to which Alex’s guardian could not consent. In reaching this conclusion, Nicholson CJ placed the medical treatment of childhood gender dysphoria into the same class as sterilisation of children with intellectual disabilities (*Marion’s Case*), and other similar ‘non-therapeutic’ procedures that posed the risk of a conflict of interests between the child and his or her parents (Wallbank 2004, 488). *Re Alex* thus extended the state’s purportedly protective intervention in family decision-making to children with gender dysphoria. In doing so, it restricted the ability of transgender children to exercise decision-making autonomy in relation to their fervently-sought medical treatment, and shifted the dynamics between transgender children, their parents and the state. However, Nicholson CJ observed that the ‘protective’ and ‘paternalistic’ welfare jurisdiction, ‘in modern thinking about children and young people ... must be understood with regard to their rights’ (*Re Alex* 2004, [154]).

Almost a decade after *Re Alex* was decided, the Full Court of the Family Court in the case of *Re Jamie* was asked to reconfigure the decisional privacy dynamics of the relationship between children seeking medical treatment for gender dysphoria, their parents, and the state. The child the subject of the proceedings, Jamie, was born with the anatomical features of a boy, but had identified as a girl from two-and-a-half years of age. On appeal, Jamie’s parents argued that gender dysphoria was not a ‘special medical procedure’ which displaced parental responsibility to decide the appropriate treatment for their child because, unlike sterilisation, it was reversible; it was for therapeutic purposes, as gender dysphoria is a diagnosed psychiatric condition that has been medically recognised with well-recognised treatment strategies; and no-one other than the child stood to benefit directly from the treatment. Jamie’s parents also appealed against the trial judge’s conclusion that stage two treatment for gender dysphoria should be the subject of a further application to the Court.

The Full Court in *Re Jamie* acknowledged the harshness of requiring ‘parents to be subject to the expense of making an application to the court with the attendant expense, stress and possible delay when the doctors and parents are in agreement’ (*Re Jamie* 2013, [138]). Nevertheless, the Full Court considered itself ‘bound’ by the decision in *Marion’s Case*, and held that stage two treatment for gender dysphoria required court authorisation pursuant to section 67ZC of the Family Law Act, unless the child was *Gillick* competent to give informed consent. Importantly, the Full Court concluded ‘with some reluctance’ that the nature of stage two treatment required the Family Court to determine the child’s *Gillick* competence (*Re Jamie* 2013, [136]-[137]). The Full Court’s construction of Jamie as vulnerable to harm, and as a child with a mental illness and under a disability, enabled it to justify its protective oversight role in the assessment of *Gillick* competence.

The Full Court’s decision in *Re Jamie* – which affirmed that transgender children, insofar as their bodies and identities were concerned, were far from active shapers of their own lives – generated considerable dissatisfaction, including amongst the Family Court judiciary, legal commentators, and the medical profession (Kelly 2014; Bell 2015; Telfer, Tollit and Feldman 2013). In the absence of legislative reform (despite the ardent activism of the child the subject of the *Re Jamie* proceedings herself), the task befell the Full Court in the case of *Re Kelvin* to recognise and uphold the decisional privacy rights of transgender children. The *Re Kelvin* proceedings arose from an application by the father of a 16-year-old transgender young person, ‘Kelvin’, for authorisation of the administration of stage two treatment. A special bench of the Full Court did not follow its decision in *Re Jamie*. However, reluctant to find that *Re Jamie* was ‘plainly wrong’, the Full Court justified its departure from that decision on the basis of medical developments in the intervening period, noting that ‘the judicial understanding of [g]ender [d]ysphoria and its treatment have fallen behind the advances in medical science’ (*Re Kelvin* 2017, [152]). The practical effect of the Full Court’s decision in *Re Kelvin* has been to swing the pendulum of decision-making authority

for transgender children's medical treatment from the Family Court back to the child, the child's parents and the child's treating doctors: it is once again a 'private' issue.

Re Kelvin has been touted 'the greatest advancement in transgender rights for children and adolescents in Australia' (Perkins 2017). Until the Full Court's decision, Australia remained the only country in the world in which court authorisation was required for the medical treatment of childhood gender dysphoria (Hewitt et al 2012). Yet the Full Court left open the possibility of court involvement where there is a 'genuine dispute or controversy' (*Re Kelvin* 2017, [167]) about whether treatment should be administered – such as if the child, the child's parents or treating doctors are unable to agree. Such potential conflicts are not confined to the dynamics of the parent-child relationship, but extend to the scope of institutional encroachment into the lives of children and families. The issue is how to protect and promote children's decision-making autonomy within what Jennifer Nedelsky (2012, 118) has called 'the (many) spheres of state power', and in particular, the dynamics of family relationships. The next section of this paper responds to the perceived conflictual consequences of recognising and respecting children's decisional privacy in family law proceedings.

Bestowing children with decisional privacy rights: allaying the anxieties about potential conflict

A primary anxiety of detractors of the notion of children as rights-bearers is that giving rights to children will diminish parental authority, incite conflict between children and their parents, and ultimately justify violations of family privacy by the state (Tobin 2017, 53). According to Barbara Bennett Woodhouse (1992, 1839), '[a]ny acknowledgement of the sometimes conflicting interests of children seems to trigger the fear that a revolution of children's rights will overthrow parental authority'. However, to recognise children's decisional privacy in the family law context does not 'abandon' (Hafen and Hafen 1996) children to their rights. Children's interests are intertwined with those of their parents, and indeed these entangled interests can on occasion conflict – which the Family Court itself noted in *Re Kelvin*. However, the relationality of privacy and autonomy is such that it would be 'obviously awkward', as Jennifer Nedelsky (2008, 145) has observed, to conceptualise the parent-child relationship in circumstances of conflict or controversy as 'essentially one of competing interests to be mediated by rights'. This emphasis on relationality also assuages the fear that respecting children's decisional privacy will grant children a licence to do whatever they choose, and will chaotically invert the parent-child relationship and disrupt family dynamics.

Further, a relational approach to decisional privacy rights in practice means that, first, a child's rights cannot simply be 'weighed' or 'balanced' against the rights and interests of the child's parents and other family members; and secondly, that any issue involving decision-making in relation to a child (whether it be about healthcare, education, parenting arrangements or something else) cannot be dichotomised to a choice between the child or the parent making the decision. Rather, a child's exercise of his or her right to decisional privacy will involve discussion between the child and his or her parents, and the exchange of ideas, views and aspirations. It will also involve the provision of direction and guidance by the child's parents, consistent with the child's evolving capacities. And these actions will be bounded and regulated by the diversity of social norms that operate within families, or what John Eekelaar (2012, 94) has labelled the 'internal morality' of family life. The notion of children's evolving capacities, when applied in practice, envisions that a child may reach a level of understanding and maturity on a matter – even as controversial as medical treatment – that is such as to obviate the need for parental guidance and direction. This unique role of parents – to support and enable, yet also to 'back off' (Seymour 2016, 101) as the child matures – explains why a perceived 'conflict' between a child and his or her parents in relation to a decision to be made would not always amount to a 'genuine' conflict that would justify state intervention.

The social value of privacy: children as rights-bearing subjects of family law

The final part of this paper briefly considers the social value of acknowledging and embracing children's decisional privacy in family law proceedings. In contemplating both the theoretical and

practical implications of re-conceptualising the meaning and value of privacy in proceedings under the Family Law Act, it is worth reciting Parkinson and Cashmore's (2008, 8) observation that '[t]he way we see children and construe their competence has considerable implications for the way society, the law and other institutions treat them.' The value of recognising and respecting the decisional privacy of an individual child in one family law proceeding, or a group of children – such as transgender children, following the Full Court's decision in *Re Kelvin* – should not overlook the importance of such recognition and respect for the dynamics of the relationship between parents, children and the state, and for the conceptualisation of children and childhood in society more broadly.

Supporting and enabling transgender children to exercise decisional privacy in relation to their medical treatment promotes the values of respect, tolerance, and equality. The Family Court's role in this process also promotes a particular conception of children as active rights-bearing subjects and autonomous beings with distinct rights and interests, who can – and indeed, must – actively participate in decision-making about matters that fundamentally affect them. Privacy's value in this context thus also inheres in enhancing children's participation in community and public life, making it a 'profound dimension of social structure' (Solove 2008, 93). Taking a less myopic view of the value of children's decisional privacy – that is, conceptualising it as valuable for not only the child as an individual – enables us to recognise its significance as a societal good. On this view, decisional privacy has what Priscilla Regan (1995) has identified as a 'common value': it promotes and enables the values of autonomy, freedom of expression and preservation of identity, which are vital for children's development, and by extension, the development of liberal societies. Children's decisional privacy is also valuable in the family law context because giving children a 'voice' does not only, or simply, involve affording children the opportunity to speak, but also presents an opportunity for adults – including policy-makers, judges and academics – to consider what children's views and perspectives can offer to inform the development of family law research, policy and practice.

Conclusions

The decisional dimension of privacy in relation to children has been largely overlooked, or at best, treated as a peripheral, latent consideration in proceedings under the Family Law Act. The aim of this paper has been to articulate a conception of privacy in Australian family law which embraces children's decision-making autonomy. The significance of the privacy-autonomy nexus in this context is that understanding children's privacy through its decisional lens, and moving beyond an understanding of children as vulnerable objects of family law proceedings, does not merely impact on judicial interpretations of the 'best interests' principle. Questioning the status of children under Australian family law challenges fundamental values and beliefs upon which the Family Law Act was drafted, the role of the state in the regulation of parenting, and the distinct rights and interests of parents and children within the family. As David Oswell (2013, 4) has remarked, 'it is impossible now when talking about children not also to talk about their stake in the decision-making process and their role in shaping the institutions and organisations that shape them'.

Childhood gender dysphoria proceedings before the Family Court illustrate the relationship between decisional privacy and autonomy, and tensions between children's rights, parental responsibilities and the duty of the state to protect children and to promote their welfare. A defining feature of the welfare jurisdiction is its regulation of decision-making *for* or *on behalf of* children, premised upon an assumption of children's vulnerability, dependence and passivity. To protect children from the harm that might be inflicted by the (even well-intentioned) decision-making of their parents, judicial decisions in the exercise of the welfare jurisdiction have been made according to the 'best interests' principle; although the assessment of what is 'best' for the child in each case is made by judges, relying on the evidence and expertise of other adults (including the child's treating medical professionals and parents). This paper has shown that section 67ZC of the Family Law Act originally served to protect children whose interests might otherwise be eroded by the problematic liberal notion of family privacy. However, the development of this jurisdiction through Family Court jurisprudence in special medical procedure cases illustrates that this protectionist rationale has

been superseded by perceptions of incursion, oppression and denial of transgender children's decisional privacy rights. The issue of whether judges are best placed – above parents, medical professionals and children themselves – to make what are arguably value judgments about the desirability of medical treatment for children, has necessarily shifted over time in response to changing community attitudes, advancements in medical science, and developments in understandings of children's rights and privacy. Disputed normative perspectives about the boundaries of state intervention in the 'private' family, and the changing dynamics of the parent-child relationship, will continue to present difficult choices for family law policy-makers, legislators and judges, about the extent to which children are, can be, and should be, recognised as rights-bearing subjects before the law.

References

- Allen, Anita. 1987. "Taking Liberties: Privacy, Private Choice, and Social Contract Theory." *University of Cincinnati Law Review* 56: 461-491.
- Allen, Anita. 1988. *Uneasy Access*. Totowa: Rowman & Littlefield.
- Barton, Chris and Gillian Douglas. 1995. *Law and Parenthood*. London: Butterworths.
- Bell, Felicity. 2015. "Children with Gender Dysphoria and the Jurisdiction of the Family Court." *University of New South Wales Law Journal* 38: 426-454.
- Benn, Stanley. 1984. "Privacy, Freedom and Respect for Persons." In *Philosophical Dimensions of Privacy: An Anthology*, edited by Ferdinand Schoeman, 223-244. New York: Cambridge University Press.
- Bloustein, Edward. 1964. "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser." *New York University Law Review* 39: 962-1007.
- Bok, Sissela. 1983. *Secrets: On the Ethics of Concealment and Revelation*. New York: Vintage Books.
- Bryant, Diana. 2009. "It's my body, isn't it? Children, medical treatment and human rights." *Monash University Law Review* 35: 193-211.
- Chisholm, Richard. 2002. "The Paramount Consideration": Children's Interests in Family Law." *Australian Journal of Family Law* 16: 87-115.
- DeCew, Judith Wagner. 1997. *In Pursuit of Privacy: Law, Ethics and the Rise of Technology*. London: Cornell University Press.
- Dewar, John. 2000. "Family law and its discontents." *International Journal of Law, Policy and the Family* 14: 59-85.
- Diduck, Alison. 2011. "What is Family Law for?" *Current Legal Problems* 64: 287-314.
- Duffy & Gomes (No 2)* [2015] FCCA 1757 (21 May 2015) (Harman J).
- Eekelaar, John. 1994. "The interests of the child and the child's wishes: the role of dynamic self-determinism." In *The Best Interests of the Child: Reconciling Culture and Human Rights*, edited by Philip Alston, 42-61. Oxford: Clarendon Press.
- Eekelaar, John. 2002. "Beyond the Welfare Principle." *Child and Family Law Quarterly* 14: 237-249.
- Eekelaar, John. 2007. *Family Law and Personal Life*. Oxford: Oxford University Press.
- Eekelaar, John. 2012. "Self-Restraint: Social Norms, Individualism and the Family." *Theoretical Inquiries in Law* 13: 75-95.
- Fineman, Martha Albertson. 1999. "What Place for Family Privacy?" *George Washington Law Review* 67: 1207-1224.
- Gerety, Tom. 1977. "Redefining Privacy." *Harvard Civil Rights – Civil Liberties Law Review* 12: 233
- Gavison, Ruth. 1980. "Privacy and the Limits of Law." *Yale Law Journal* 89: 421-471.
- Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112.
- Inness, Julie. 1992. *Privacy, Intimacy and Isolation*. New York: Oxford University Press.
- Hafen, Bruce C and Jonathan O Hafen. 1996. "Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child." *Harvard International Law Journal* 37: 449-491.
- Hearst, Alice. 2012. *Children and the Politics of Cultural Belonging*. Cambridge: Cambridge University Press.
- Herring, Jonathan. 2014. *Relational Autonomy and Family Law*. Cham: Springer.
- Hewitt, J, Paul, C, Kasiannan, P, Grover, S, Newman L and G Warne. 2012. "Hormone treatment of gender identity dysphoria in a cohort of children and adolescents." *Medical Journal of Australia* 196: 578-581.
- Jourard, Sidney M. 1966. "Some Psychological Aspects of Privacy." *Law and Contemporary Problems* 31: 307-318.
- Kang, Jerry. 1998. "Information Privacy in Cyberspace Transactions." *Stanford Law Review* 50: 1193-1294.
- Kelly, Fiona. 2014. "Treating the transgendered child: The Full Court's decision in *Re Jamie*." *Australian Journal of Family Law* 28: 83-94.
- Lever, Annabelle. 2012. *On Privacy*. New York: Routledge.
- Mitnick, Eric J. 2006. *Rights, Groups, and Self-invention: Group-differentiated Rights in Liberal Theory*. Aldershot: Ashgate.
- Nedelsky, Jennifer. 1989. "Reconceiving Autonomy: Sources, Thoughts and Possibilities". In *Law and the Community: The End of Individualism?*, edited by Allan Hutchinson and Leslie Green, 219-252. Toronto: Carswell.
- Nedelsky, Jennifer. 2008. "Reconceiving Rights and Constitutionalism." *Journal of Human Rights* 7: 139-173.
- Nedelsky, Jennifer. 2012. *Law's Relations: A Relational Theory of Self, Autonomy and Law*. Oxford: Oxford University Press.

- Nissenbaum, Helen, 2010. *Privacy in Context: Technology, Policy, and the Integrity of Social Life*. Stanford Law Books.
- O'Neill, Onora. 1988. "Children's Rights and Children's Lives." *Ethics* 98: 445-463.
- Oswell, David. 2013. *The Agency of Children: From Family to Global Human Rights*. Cambridge: Cambridge University Press.
- Parkinson, Patrick and Judy Cashmore. 2008. *The Voice of a Child in Family Law Disputes*. Oxford: Oxford University Press.
- Perkins, Miki. 2017. "'I want control over my body': Transgender kids in landmark court win." *The Age*, November 30. <https://www.theage.com.au/national/victoria/i-want-control-over-my-body-transgender-kids-in-landmark-court-win-20171130-gzw6z4.html>
- Rachels, James. 1975. "Why Privacy is Important." *Philosophy and Public Affairs* 4: 323-333.
- Re Alex: Hormonal Treatment for Gender Dysphoria* (2004) 31 Fam LR 503.
- Re Jamie* (2013) FLC 93-547.
- Re Kelvin* [2017] FamCA 78.
- Re Lucas* [2016] FamCA 1129 (22 December 2016).
- Re: Lucy (Gender Dysphoria)* [2013] FamCA 518 (12 July 2013).
- Re: Sean and Russell (Special Medical Procedures)* [2010] FamCA 948 (26 October 2010).
- Re Tahlia* [2017] FamCA 715 (8 September 2017).
- Regan, Priscilla. 1995. *Legislating Privacy: Technology, Social Values and Public Policy*. Chapel Hill: University of North Carolina Press.
- Reiman, Jeffrey. 1976. "Privacy, Intimacy & Personhood." *Philosophy and Public Affairs* 6: 26-44.
- Rossler, Beate. 2005. *The Value of Privacy*. Oxford: Polity.
- Schoeman, Ferdinand. 1984. "Privacy and Intimate Information." In *Philosophical Dimensions of Privacy: An Anthology*, edited by Ferdinand Schoeman, 403-418. New York: Cambridge University Press.
- Secretary, Department of Health & Community Services v JWB & SMB ('Marion's Case')* (1992) 175 CLR 218.
- Seymour, John. 2016. *Children, Parents and the Courts: Legal Intervention in Family Life*. Sydney: Federation Press.
- Solove, Daniel. 2002. "Conceptualizing Privacy." *California Law Review* 90: 1088-1155.
- Solove, Daniel. 2006. "A Taxonomy of Privacy." *University of Pennsylvania Law Review* 154: 477-564.
- Solove, Daniel. 2008. *Understanding Privacy*. Cambridge, Massachusetts: Harvard University Press.
- Telfer, Michelle, Tollit, Michelle and Debi Feldman. 2015. "Transformation of health-care and legal systems for the transgender population: The need for change in Australia." *Journal of Paediatrics and Child Health* 51: 1051-1053.
- Thomson, Judith Jarvis. 1975. "The Right to Privacy." *Philosophy and Public Affairs* 4: 295-314.
- Tobin, John. 2009. "Judging the Judges: Are they Adopting the Rights Approach in Matters involving Children?" *Melbourne University Law Review* 33: 579-625.
- Tobin, John. 2017. "Fixed Concepts but Changing Conceptions: Understanding the Relationship Between Children and Parents under the CRC." In *Handbook of Children's Rights: Global and Multidisciplinary Perspectives*, edited by Martin D Ruck, Michele Peterson-Badali and Michael Freeman, 53-67. New York: Routledge.
- van Krieken, Robert. 2005. "The 'Best Interests of the Child' and Parental Separation: On the 'Civilizing of Parents'." *Modern Law Review* 68: 25-48.
- Wallbank, Rachel, 2004. "Re Kevin in perspective." *Deakin Law Review* 9: 461-502.
- Warren, Samuel D and Louis D Brandeis. 1890. "The Right to Privacy." *Harvard Law Review* 4: 193-220.
- Westin, Alan. 1967. *Privacy and Freedom*. New York: Atheneum.
- Woodhouse, Barbara Bennett. 1992. "Hatching the Egg: A Child-Centered Perspective on Parent's Rights." *Cardozo Law Review* 14: 1747-1865.

Towards Scientific Guidelines for Interdisciplinary Research in the Field of Law

Nikita Punchoo

The Graduate Institute, Geneva, Switzerland, nikita.punchoo@graduateinstitute.ch

ABSTRACT: This paper sets out to explore the absence of criteria in the field of law, to guide the legal researcher's choice to use interdisciplinary knowledge to explain or clarify certain types of subject-matter, under consideration in the field of law. It advances the view that interdisciplinary research proves desirable because it allows for connections and delineations to be made between different disciplines in an integrated way, that serve to clarify, broaden or benefit legal knowledge about a subject-matter in the field of law. This is particularly important for the legal researcher, when considering subject-matter in the field of law that requires insights from other disciplines, to bolster its legal understanding. However, assessing the appropriateness of the choice to use interdisciplinary knowledge, in a research context to clarify or explain subject-matter in the field of law could require that the use of interdisciplinary knowledge not be made. Even in such circumstances, it is an exemplar of interdisciplinary knowledge, informing research in the field of law.

KEYWORDS: interdisciplinary, research, law, scientific, prospect

1. Introduction

Interdisciplinary research is a type of research carried out by teams or individuals. It sets out to integrate a variety of components that constitute a discipline or field of study with the scientific aim to advance understanding, enhance knowledge or to solve problems, whose solutions lie beyond the scope of a single discipline or area of research practice (Schrama 2011, 148). These components generally include concepts, theories, tools, techniques, structures, information, data, views, explanations or perspectives, from two or more disciplines or bodies of specialized knowledge.

In the field of law, interdisciplinary research involves combining study and research tools from non-legal disciplines, to clarify or explain a given subject-matter under legal consideration (Jones 2009, 76). The use of interdisciplinary tools, in this way, in the field of law, provides pathways that enable the handling of a subject-matter in law to be considered in conjunction with other fields. It informs the development of certain core areas of law and proves particularly useful to clarify a topic under consideration in the different bodies of law. However, there are no fixed criteria in legal research to assess the appropriateness of the choice, to use interdisciplinary knowledge to explain or clarify subject-matter in the field of law. In the absence of indicators in legal research, to guide the legal researcher's decision to use interdisciplinary knowledge as such, reliance on it, although capable of being justified, by the legal researcher, can turn out to obscure the legal understanding of a given type of subject-matter, limit its legal understanding altogether or provide a piecemeal explanatory account, defeating the original aim of recourse to interdisciplinary knowledge, as a means to more comprehensively clarify or inform the given subject-matter, under examination in the field of law (Roux 2015, 57-61).

In such instances, the choice to use interdisciplinary knowledge would have to be reappraised and its employ rejected. This rejection, however, does not consist in a rejection of the use of interdisciplinary research in the field of law (Beck 1995, 122). Instead, it highlights the complexity and prudence connected to an appropriate handling of interdisciplinary knowledge, in the field of law (Vick 2004, 165). Moreover; it constitutes a way to assess the viability of the use of interdisciplinary knowledge, in legal research, with a view to optimize its utility in the field of law.

2. Advantages and Disadvantages of Interdisciplinary Research in the Field of Law

Although there is no general dispute concerning the utility of interdisciplinary knowledge in core disciplines, advantages and disadvantages have been detected regarding its use, in the field of law. (Jones 2009, 75-81).

Some of the main arguments advanced in support of interdisciplinary research in the field of law have been linked to its utility. It assists the legal researcher in his or her field to understand his or her own discipline, by providing a point of reference for how it relates to other disciplines. Secondly, interdisciplinary approaches provide for the use of techniques, data and understandings that are consonant with improving knowledge in the field of law (Bodig 2015, 44).

Thirdly, interdisciplinary research has become a useful component in degree programs, in the different fields of study. The interdisciplinary approach has no monopoly on any particular field of research, therefore, it can offer a wider framework of exploration for legal researchers. In this regard, it provides for comprehensive explanations and predictive capacity that can facilitate improved normative understandings. It also provides insights to confront less obvious questions that lie within the framework of the law (Argyrou 96, 2017).

It can serve to reduce the exigencies of *hyper-specialization* in a single field which tend not to concern itself with the bigger research field. In the field of law, it provides a basis to confront questions, argument and research methods from other fields of study about a subject matter, in that discipline and lays a pathway with the potential for creative solutions. Interdisciplinary approaches also possess the appeal of a larger framework because they induce the legal researcher to engage with different perspectives, synthesize the disciplines and accordingly solve legal problems from an informed standpoint.

Some of the main arguments advanced against the use of interdisciplinary approaches are related to attitudinal resistance displayed among scholars, communication limitations and differences of specialized methods (Kramer 1959, 565). More specifically; some opponents of interdisciplinary research advance the view that interdisciplinary approaches, function in a way that isolates understandings from the central part of the specific discipline. Secondly, they argue that it is a type of research that falls within two or more spheres of study, which by this fact, obscures understanding a subject-matter, grounded in the core of a specific discipline. Other arguments in opposition reflect nuanced viewpoints of these mentioned challenges (Cottrell 1986, 10-11).

The point herein, however, is not that the legal researcher's recourse to interdisciplinary knowledge in the field of law is a barrier to or detracts from enhancing legal understanding; rather dealing with the subject-matter in the field of law requires the use of certain criteria (Shrama 2011, 151). The consideration of these criteria can often only be adequately carried out according to those scientific tools belonging to the field of law. For instance, in a research context (illustrated in Figure 1 below) where a given subject-matter (X) under consideration in the field of law also constitutes the subject-matter in the field of a non-legal discipline that hyper-specializes and possesses well established frameworks for the handling of that subject-matter (X); it would be fitting to make recourse to knowledge from the said field (NLF).

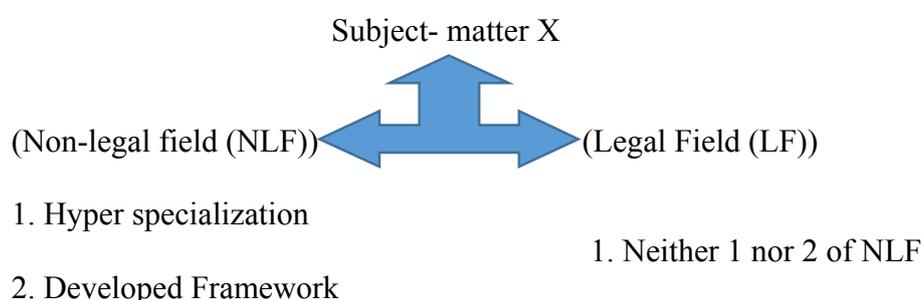


Figure 1: Same subject-matter in Different Disciplines

Yet, having regard to interdisciplinary knowledge in the sense of NLF may not prove adequate to clarify the given subject-matter in LF. In other words, the choice to opt for interdisciplinary knowledge, in such a research context, would be inappropriate for the legal researcher (Cairns 1941, 16). What would prove appropriate for the legal researcher's satisfactory handling of the subject-matter under legal consideration, in the research context, would amount to what is scientific

(Feldman 2009, 3). This reposes on what is in the service of the many goals set out scientifically, in the field of law.

Given that each field of study has its own concepts, theories, methods, logic, terminology, data, organization and perspectives which bear on the scientific elucidation of a given subject-matter, in different ways and to different degrees, it would be scientifically consonant in certain legal research contexts, to opt not to use interdisciplinary knowledge to adequately clarify a given subject-matter (Levit 1989, 265-289).

3. Legal Science and Social Science and the Field of Law

Science (Lundberg 1952, 373), however, is heterogeneous (Jørgensøhn 1974, 87). It has a posited objective reality (Levine 1985, 173) in the sense that it does not contain the scientist's ideas about it (Hussey 2013, 307) and is separate from extra-scientific motives such as funding or political incentives. Different sciences exhibit different purposes and features that combine to enable a fuller understanding of the field of research and in turn, the world that it influences. The particular focus of the choice confronting the legal researcher lies in the field of law and the option to use knowledge from the field of social science.

Social science involves systematic and disciplined studies of society, its institutions and the reasons for why and how people as individuals or groups behave the way they do. Its scientific character lies in the way, that it acquires knowledge that is verifiable (Bhattacharjee 2012, 1).

Legal science involves the systematic study and methods of law. The scientific knowledge of the positive legal system, that is the system of positive rules of law, can be pursued in three fundamental ways. These ways include the study of a subject - matter in law, through consideration of its legal history, its interpretation or legal dogmatism (Jørgensøhn 1974, 87).

Legal dogmatism is a way of undertaking legal research that considers the entire system of positive law. According to this way of carrying out legal research, the legal order's isolated parts belong to the legal system and are ordered according to classification and definition (Gareis 1911, 303).

The interpretative way of undertaking legal research considers the text. It is distinct from that of its dogmatic interconnections and its historical evolution. It commences from a given standard, demonstrates the legal rule itself and sets out to establish a systematic organization (Gareis 1911, 304).

The legal historical way of undertaking legal research is based on the view that legal knowledge can be ascertained by way of history that involves legal order as a progressive unity, through a consideration of the evolution, origin, alterations and modifications of institutions under which regulative precepts of conduct develop into legal rules. These three ways of undertaking legal research can be used individually or in combination (Gareis 1911, 303 - 304).

For the legal researcher confronted with the choice to opt for a way to clarify a legal subject – matter in the field of law, the research capacity of these three fundamental ways of undertaking legal research, would be a satisfactory choice (Argyrou 2017, 96 - 98). However, when the subject-matter may have emerged or has been emerging in legal practice, under different legal branches, in the different legal orders and cannot be reconciled with normative precepts of legal areas, located in the traditional framework of the law, the legal researcher's general choice to opt for interdisciplinary knowledge is triggered, in the field of law, in such a way, that it militates for use of knowledge in the field of the social sciences as an appropriate option (Lundberg 1952, 377; Husa 2014, 28 - 31).

4. Assessing the Appropriateness of the Choice to Use Interdisciplinary Knowledge in the Field of Law

How social science informs law, however, is unsettled. Without fixed criteria to guide the legal researcher's choice to use interdisciplinary tools, in legal research, the decision to use knowledge from the field of social science, in the field of law, can be under-informed (Bodig 2015, 44-54).

Social science adopted in the service of the law cannot be carried out in the same way as it is carried out to advance the aims of social science (Levine and Howe 1985, 174). The authoritative input of social science knowledge in the field of law may depend on the degree of relevance, utility and acceptance contained in research results, paradigms or theories and the object under research in the field of law (Redding 1999, 586).

In certain instances, there may be sound reasons to compel the legal researcher to use interdisciplinary tools such as methods, techniques concepts or knowledge from the social sciences to clarify, explain or account for the inadequacy of the given subject-matter, in the field of law. For instance, a concept in the field of law, may be unable to adequately explain a subject-matter's range of forms in legal practice because the concept is either too narrow or unable to accommodate the developments, in the field of law or it lacks the degree of complexity required, in certain areas of law, to facilitate practices, in the law, that are not sufficiently uniform.

In certain other instances, a subject-matter under consideration, in the field law, may be so broad as to conform to other disciplines, in an analogous but not strictly identical way. In such a case, it is essential for the legal researcher to preserve the subject-matter's separateness and therefore retain the disciplinary distinction, in order to accord to the subject-matter under consideration, the requisite specificity for its use, in the discipline of law.

In yet, certain further instances, the legal researcher may be confronted with a related problem of this type, of setting parameters from other disciplines when a subject-matter under legal consideration is the object of shared disciplinary interests. A legal consideration of societal values is an example of the type of subject-matter that gives rise to this kind of concern. Legal systems reflect core societal values. As such, the legal researcher is obliged to consider the connection between the axiological and the legal, in conjunction with its relationship to society. This means taking into consideration those elements required to maintain a certain degree of coherence between a society and values, to alleviate problems that adversely affect the potential of the law to carry out its legal regulatory function. If the legal researcher were to clarify a type of subject-matter, such as "justice" the legal researcher in this configuration, would be required to deal in such a research undertaking with "justice" as a value in the field of law, the field of law per se and the common nexus between society, the law and justice as a value. These considerations would be essential to an appropriate scientific handling of the subject-matter in the field of law by the legal researcher because it maximally rules out preferences, biases, current social uses and policies. It habituates the legal researcher to bring the requisite epistemological quality to the subject-matter under legal consideration with scientific responsibility.

5. Conclusion

This paper has set out to problematize the legal researcher's choice to use interdisciplinary knowledge, in the field of social science, as a research tool to clarify or explain subject-matter under consideration in the field of law. In this pursuit, it prospects for scientific guidelines of interdisciplinary research in the field of law.

References

- Argyrou, Aikaterini. 2017. "Making the Case for Case Studies in Empirical Legal Research." *Utrecht Law Review* 13:95-113.
- Barzun, Charles L. 2004. "Common Sense and Legal Science." *Virginia Law Review* 90:1051-1092.
- Beck, Robert J. 1995. "International Law and International Relations: The Prospects for Interdisciplinary Collaboration." *Journal of International Legal Studies* 1:119-141.
- Bhattacharjee, Annol. 2012. "Social Science Research: Principles, Methods, and Practices." *Textbooks Collection* 3:1-143.
- Bodig, Matyas. 2015. "Legal Doctrinal Scholarship and Interdisciplinary Engagement." *Erasmus Law Review* 8:43-54.
- Cairns, Huntington. 1935. "Law as a Social Science." *Philosophy of Science* 2:484-498.
- Collier, Charles W. 1993. "Interdisciplinary Legal Scholarship in Search of a Paradigm." *Duke Law Journal* 42: 840-853.
- Cottrell, Roger B.M. 1986. "Law and Sociology: Notes on the Constitution and Confrontations of Disciplines." *Journal of Law and Society* 3:9-34.
- Duncanson, Ian. 1996. "Degrees of Law - Interdisciplinary in the Law Discipline." *Griffith Law Review* 5:77-103.
- Feldman, Robin. 2009. "Historic Perspectives on Law & Science." *Stan. Tech. Law Review* 1:1-47.

- Freeland, Deborah M. Hussey. 2013. "Speaking Science to Law." *Georgetown International Environmental Law Review* 25: 289-340.
- Gareis, Karl. Translated by Kocourek, Albert. 1911. *Introduction to the Science of Law: Systematic Survey of the Law and Principles of Legal Study*. Boston: The Boston Book Company.
- Husa, Jaakko. 2014. "Interdisciplinary Comparative Law - Between Scylla and Charybdis." *Journal of Comparative Law* 9:28-42.
- Hussey Freeland, Deborah M. 2013. "Speaking Science to Law." *Georgetown International Environmental Law Review* 25: 289-340.
- Jackson, Vicki C. 2016. "Comparative Constitutional Law, Legal Realism, and Empirical Legal Science." *Boston University Law Review* 96: 1359-1374.
- Jasanoff, Sheila. 2006. "Just Evidence: The Limits of Science in the Legal Process." *Journal of Law, Medicine and Ethics* 34:328-34.
- Jones, Casey. 2009. "Interdisciplinary Approaches Advantages, Disadvantages and the Future Benefits of Interdisciplinary Studies." *ESSAI* 7: 75-81.
- Jones, Silas. 1842. "Introduction to Legal Science: Being a Concise and Familiar Treatise." New York: John S Voorhies.
- Jørgensøhn, Stig. 1974. "Ideology and Science." *Scandinavian Studies in Law* 18: 87-107.
- Kramer, Robert. 1959. "Some Observations on Law and Interdisciplinary Research." *Duke Law Journal* 1959: 563-570.
- Lakshman, Deshamanya W. D. 2007. "Interdisciplinary for Relevance and Comprehensiveness." *Sri Lanka Journal of International Law* 19: 373-386.
- Levine, Murray and Howe, Barbara. 1985. "The Penetration of Social Science into Legal Culture." *Law & Policy* 7:174-198
- Levit, Nancy. 1989. "Listening to Tribal Legends: An Essay on Law and the Scientific Method." *Fordham Law Review* 58: 263-307.
- Lorenzen, Ernest G. 1941. "Qualification, Classification, or Characterization Problem in the Conflict of Laws." *Yale Law Journal* 50:743-761.
- Lundberg, George A. 1952. "Science, Scientists, and Values." *Social Forces* 30: 373-379.
- Minemura, Teruo. 1970. "Dogmatic Legal Science and Sociology of Law." *Archiv für Rechts-und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy* 56:351-366.
- Redding, Richard E. 1999. "Reconstructing Science through Law." *Southern Illinois University Law Journal* 23:585-610.
- Roux, Robert T. 2015. "The Incorporation Problem in Interdisciplinary Legal Research." *Erasmus Law Review* 8:55-64. Doi: 10.5553/ELR.000039.
- Schrama, Wendy. 2011. "How to Carry out Interdisciplinary Legal Research - Some Experiences with an Interdisciplinary Research Method." *Utrecht Law Review* 7:147-162.

Internationalization of African SMEs: Context, Trends and Challenges

Hamza El Guili

University of Abdelmalek Essaadi, Tangier, Morocco, hamza.el.guili@gmail.com

ABSTRACT: There has been an important increase in the international and inter-continental operations of African SMEs over the last decade, because of the emergence of regional “champions”, able to compete with foreign multinationals, present in the continent since many decades, but also because of the emergence of innovative and creative SMEs, capable to meet the market needs of various consumers of Africa. Understanding the particular international business landscape in Africa draws attention to several ignored research questions and research aspects, requiring further research and exploration, to contextualize the SMEs’ internationalization of African firms. This paper highlights relevant areas/aspects needed while studying the internationalization of SMEs, by bringing back the historical context of the continent. Next, this paper contributes to the understanding of the internationalization of African SMEs by analyzing the trends and opportunities of the research in this field. Finally, the challenges and the risks of the internationalization of African firms will be analyzed, in order to set the limits of the nature of internationalization of the continent’s SMEs.

KEYWORDS: Africa, SMEs, emerging markets, firms internationalization

Introduction

Many researchers have recognized the importance of small and medium enterprises (SMEs), as being vital for economic growth and employment (Benzing & Chu 2009). In Africa, It has been suggested that SMEs contribute about 50 % of GDP (gross domestic product) and at about 60 % of total employment (DANIDA 2013).

Over the past three decades, most African countries have experienced positive economic growth, which is encouraging. Despite these positive trends, however, the livelihoods and unemployment conditions of most Africans need much to be desired (Nafukho & Muyia 2010).

It is generally known that entrepreneurship in Africa is a way by which the African population can promote country development and reduce poverty (Ortmans 2015). In the same vein, sub-Saharan Africa has the highest number of people engaged in embryonic entrepreneurship (14.1%) or early-stage entrepreneurial activity (26%) in the world (GEM 2015).

In order to develop entrepreneurship in Africa and create a large community of active entrepreneurs, the role of SMEs cannot be neglected. As in many other countries, most African businesses are SMEs or micro business, and these businesses contribute to poverty reduction and job creation (Abor & Quartey 2010). In this regard, entrepreneurship within Africa cannot be developed without a certain focus on SMEs and micro businesses (Agyapong 2010).

Nevertheless, the SMEs that belong to the African continent are facing several challenges because of the globalization, but also due to the increased need for internationalization, as it has been considered as a driver of competitive advantage and firm international performance (Mutalemwa 2015). In fact, internationalization of SMEs has become crucial for growth strategy of these businesses (Doole & Lowe, 2008). These strategies include exportation, licensing, joint venture, foreign direct investment (FDI). Ocloo et al. (2014) perceive that the SMEs in Africa are experiencing different challenges as they are trying to internationally globalize their operations, so they become more competitive.

It is common knowledge that African SMEs are impeded by the poor quality of governance and institutions, limited or bad government support, trade restrictions, and weak financial, economic, and physical infrastructure (Benzing & Chu 2009).

However, research focusing on the internationalization of African SMEs from remains scarce. SMEs' internationalization is vital for the growth of many countries (Ruzzier et al. 2006). According to Matanda (2012), there is a need for research to examine the established internationalized SMEs for a better understanding of the patterns of activities linked with successful internationalization.

With the progress made by several African economies, especially in industrial, business and social-economic growth in recent years (Pinkovskiy & Sala-i-Martin 2014), there are several non-business-friendly events- including incidence of civil conflicts- have disrupted efforts by many Sub-Saharan African countries to increase their global market competitiveness (Amankwah-Amoah et al. 2018).

1. Africa: A continent experiencing several mutations

In recent years, some Sub-Saharan African countries such as Rwanda, have been significantly undergoing important and fast economic mutations, despite experiencing civil conflicts (De Vries et al. 2016).

Because of good and reflected governance, political stability, and important reforms-both institutional and economic-many African countries have experienced progress in several fields (Noman & Stiglitz 2014). Moreover, it has been debated that the increased growth experienced by some African nations are experiencing is hypothesized by a growing young population, estimated to be about 1.2 billion and expected to exceed 2 billion by 2050 (UN 2015). Consequently, the fact of economic growth and demographic advantage gives many opportunities for new business creation and growth in Sub-Saharan Africa (Nyuur et al. 2016).

Despite the weak participation of Africa in the international business and trade, that remains discouraging and mostly concentrated in the extractive sector, evidence and facts presume that many parts of Africa are increasingly overcoming the institutional and infrastructural barriers that weaken the ability of African firms, especially SMEs, to contribute deliberately to the global economy (Boso et al. 2016). The quick emergence of African MNEs (multinationals) has been a concrete outcome of these transformations. It is widely acknowledged that evidence implying that the scope, speed and scale at which African SMEs or MNEs have been investing in Africa or the global economy in the last years have been exceptional (Ngwu et al. 2015).

For instance, during the last two decades, many South African firms have shaped and increased the speed of their international growth and international commitment. The examples of Telkom that operates in 38 countries, MTN in 24 countries and Standard Bank in 20 countries, can testify this evolution. Other African actors can affirm this tendency, such as Togo-based Ecobank (40 countries); Nigeria's UBA (20 countries) and Dangote (15 countries); and Mali's Bank of Africa (18 countries) (Boso et al. 2016; Ibeh 2015). Thus, the continuous evolution of socio-economic and demographic landscape in Africa has given opportunities for operating businesses to explore new consumption patterns across several countries present in the continent, for growth drivers (Amankwah-Amoah et al. 2018).

It has been debated that the emerging growth opportunities showing up in many Sub-Saharan African markets have mainly been driven largely by emerging markets, such as the Brazilian, Chinese, Turkish and Indian multinationals moving toward African markets. However, this flow of foreign multinationals is not the only reason explain the emergence of growth opportunities. In fact, the increasing intra-African cross-border activities are due to the growing entrepreneurial spirit extending across many African countries (Adeleye et al. 2015).

While the remarkable performances of many African multinationals in recent times is still undergoing, it has been identified 40 African global challengers: 18 from southern Africa, 17 from northern Africa, 3 from western Africa and 2 from southeastern Africa (BCG 2010), classified into five categories (table 1).

Table 1. The categories of African challengers and current trends (Updated by the author, adapted from BCG (2010) & Boso et al. (2016))

Category	Definition	Examples
<i>Big local players</i>	African multinationals with 90 % of assets and sales derived from domestic markets. Nevertheless, the big local players accomplish an important and gradually growing amount of international activity.	Al Mada (formerly known as Société Nationale d'investissement, SNI) is the biggest Moroccan industrial, financial and services conglomerate, which has mainly focused on building its value creation and leadership and within business activities in Morocco, the Maghreb region (Tunisia, Egypt, Algeria) and across the African continent.
<i>Exporters</i>	Firms that have the major part of their sales derived from export operations but whose assets are mostly based at a local level. Export firms are usually operating in the mining and oil sector.	Sonangol is a parastatal business that manages petroleum and natural gas production and export in Angola.
<i>Regional players</i>	African firms that have at least 10 % of their assets established outside of their home country but within the African continent.	Maroc Telecom, the main Moroccan telecommunications operator, with operations mainly in West Africa (Mauritania, Burkina Faso, Mali, Gabon, Ivory Coast, Togo, Benin, Central African Republic, Niger) is one of these regional players. Headquartered in Togo, Ecobank, a pan- African banking conglomerate has banking operations in nearly 36 African countries, is the leading independent regional banking group in West Africa and Central Africa. ShopRite Group of Companies, a South African retail regional player, is Africa's largest food retailer, that operates 2843 outlets in 15 countries across Africa and the Indian Ocean Islands.
<i>Multi-continental players</i>	Firms having at least 10 % of their assets outside of Africa. They were originally regional players but converted into multi-continental players.	Based in Egypt, Global Telecom Holding S.A.E. (formerly Orascom Telecom Holding S.A.E.) (GTH) is an international telecommunications company operating mobile networks in three emerging markets serving almost 100 million customers. Aspen Pharma, the largest generic drug maker based in South Africa, is now present in more than 40 countries, including Australia, Hong Kong, Kenya, Nigeria, Philippines, United Arab Emirates, Japan, Ireland, Germany, France, the Netherlands, Brazil, Mexico, Venezuela and the United States. In 2013, the company announced important acquisitions, which have taken its

		operations to emerging markets in the Commonwealth of Independent States.
<i>Global players</i>	Comprise three African multinationals with more than half of their assets outside of the African continent.	Anglo American plc is a multinational mining company based in Johannesburg, South Africa and London, United Kingdom. It is the world's largest producer of platinum, with around 40% of world output, as well as being a major producer of diamonds, copper, nickel, iron ore and metallurgical and thermal coal. The company has operations in Africa, Asia, Australia, Europe, North America and South America. SABMiller, the world's second-largest brewer measured by revenues (after Anheuser- Busch InBev), develops its operations in 80 countries spread across the world. Its brands included Fosters, Miller, and Pilsner Urquell. It has operated in 80 countries worldwide and in 2009 sold around 21 billion litres of beverages. Since October 2016, SABMiller has been a business division of Anheuser-Busch InBev SA/NV, a Brazilian-Belgian corporation with headquarters in Leuven.

2. Internationalization of African SMEs

The increased level of internationalization of firms in Africa can be explained by the progress in the private sector, its development and regional integration, but also the capacity of pan-African companies to reduce institutional voids in the challenging scene that defines many countries on the continent. With these factors supposed to stay unaffected within the next years, it is more likely to assist to the emergence of opportunities offering internationalization activities (Boso et al. 2018).

Despite the improvement of the infrastructure, it has been that firm's productivity is usually slowed by an estimated 40% because of weak infrastructure (World Bank 2013). Thus, inadequate transportation infrastructure is known to be a considerable driver of Africa's incapacity to attract foreign investments (Aker & Mbiti 2010). Regarding the lack of infrastructure in the continent, SMEs internationalization is substantial for increasing the pace of industrialization in Africa. However, significant progress has been made in the last decade, especially in the air transport sector, but also concerning the future of railway sector seems to be promising. For instance, African markets are beginning to be linked by high-speed electric railway lines supported by the Chinese Government and some private investment funds (Morlin-Yron 2017), such as the 466 miles line from Djibouti to Ethiopia with an estimated cost of 4 billion USD (Jacobs 2017). Consequently, the decrease of travel costs is more likely to increase the connectivity of African markets that will become easy for businesses to be connected, both with distributors and consumers in a large number of African markets (Amankwah-Amoah et al. 2018).

Research admits that it may be in the best interests of many SMEs to go international (Devine & Kiggundu, 2016). Omer et al. (2015) show that internationalization helps SMEs permit to avoid government barriers to accelerate growth. In fact, internationalization allows SMEs to engage in foreign markets and also to create an important information network to make export activities easier (Gimede 2004). Nevertheless, while African firms can overcome some difficulties in their home countries through internationalization, lack of government support is more likely to hurt their export efficiency (Omer et al. 2015).

Existing research in the African context proposes that SMEs engage at an international level in order to escape saturated domestic markets, maximize profit, look for foreign market opportunities, enable firm growth, enhance sales of products (e.g. seasonal) and stabilize their business reputation by delivering customers in foreign markets instead of using mediators (Matanda 2012).

The author proposes that the major factors that drive African SMEs' internationalization are including: experience in international trade, managers' education, access to technology, ability to adapt to environmental changes, competitive existing in the domestic market, but also in the foreign markets (e.g. culture and language). Other key factors can include survival of SMEs (e.g. political instability existing in domestic market) and include support of formal institutions, business networks and development partners, that provide capacity building and financial support.

There are typical factors that slow down African SMEs' internationalization (Misati et al. 2017). They include the lack of capital and international marketing skills. Thus, they include poor technology; imperfect and imprecise foreign market information; inefficient legal and regulatory frameworks; wasteful government policies for the SMEs; cultural differences; barriers to export such as high tariffs and permanent volatile input and output markets (Matanda 2012; Omer et al. 2015).

Legitimately, African SMEs operate at simple levels; these businesses have a high-cost base, limited range of products and do not usually benefit from the economies of scale (Okubadejo 2014). Despite being less clear, some of the advantages and benefits of African SMEs' internationalization, we can note the increase of sales volumes, productivity improvement, foreign exchange generation, local industry developments, and employment creation for the local citizens (Matanda 2012).

3. Challenges of African SMEs

Sub-Saharan Africa generally represents complex linguistic issues by virtue of its Diaspora of mixed cultural groups and values. The need for the continent's people to embrace their own models of resolving regional problems because of their diversity has been recognized (Mutula 2005).

Due to the heterogeneity of the continent, we limit our challenges to the following elements: Globalization challenge, technology challenge, non-price competition and export opportunities.

The global economy is marked by rapid growth of the economies in developing nations, to the range where the conventional wisdom majoring international business activities are initiated by multinational enterprises coming from developed economies has come under analysis (Sun & Lee 2013). While the recent success stories continue to be reported about the big emerging markets of Asia (India and China for example), of Latin America, and the transition economies of the former Soviet Union, success stories reporting the emerging markets in Africa (e.g. Nigeria, Kenya and South Africa) are seldom regarding the discussion in international business research and policy debates (Boso et al. 2016).

Indeed, Africa is usually perceived negatively in the news for many reasons: a past that compromises extreme conditions such as civil wars, famines, several coup d'état, diseases and stories of corruption. Nevertheless, this reality is changing, especially when it does concern business and SMEs activities.

Although that the "Proudly Made in Africa" campaign has become significantly popular across many parts of the continent, internationalizing African firms are facing several challenges in winning the hearts and minds of African consumers (Boso et al. 2018). With expanding globalization and the emergence of a strong middle class in Africa, there is a strong interest for global brands and foreign goods (Ojaide 2018).

Because of the globalization, that has many features shaping and facilitating the spread of SMEs activities and operations in Africa and elsewhere, it has given new competitive pressures on SMEs, whether from within and beyond their national borders (Mutalemwa 2015). According to the author, it is common knowledge that the integration of economic activities resulting from advances in technology, competition and policy changes towards economic liberalization diffuses positive signals to the industry sector by increasing the export orientation of the industry, through encouraging firms to arrive to challenging markets. Thus, it enables imports to be more available

within domestic markets and finally, it encourages the creation of new competitors via foreign direct investment (FDI) or non-price competition. As a consequence, these advances encourage firms to handle technologies and cope with technical change.

It is generally known that the issue of global competitiveness and globalization remain challenging for African firms, whether at national and corporate levels (Adeleye & Esposito 2018). If we consider the firm lever, there are some basic obstacles to African competitiveness such as infrastructure, regulations and regulations (Newman et al. 2016). Moreover, in the case of limited or non presence of economies of scale, plus the poor quality of service, it can contribute to the lack of competitiveness of African firms (Amankwah-Amoah 2018). Regarding the internationalization of SMEs, they are generally confronting the responsibilities of smallness and newness, as they may have problems while competing against stronger and more established firms (Ogbechie et al. 2014).

In the last century, the arrival of the internet has become central and essential for firms worldwide. Because of that, a wide range of opportunities to undertake business have emerged. Thus, exchanging information with customers, suppliers and partners has started to enhance their efficiency and to develop new alternatives to conduct cross-border business operations and transactions. As digital platforms increased and evolved, they have given remarkable benefits to SMEs in terms of cost savings, and also in terms of information sharing among various supply chain members. SMEs have developed tools to more rapidly and effectively internationalize their operations and realize their expansion in global market bases.

In the developing world, the escalation of use of ICTs (information and communication technologies) brings more opportunities to reduce the gap by diminishing economic distance and supporting instant and economical access to information (Mutalemwa 2015). Moreover, ICTs permit SMEs to reach markets in new ways that were inconceivable in earlier times. Due to the underlying economic reality and mutations experienced worldwide, many African local governments are developing national ICT strategies in order to build “knowledge societies” (UNCTAD 2011). The impact of ICTs on African SME development has not been neglected by the literature (Ismail et al. 2011).

According to Mutalemwa (2015), SMEs can gain from ICT development in Africa. The reason behind this development is that producers and users of ICT will have access to infrastructure that will help them to reduce communication and transaction costs, improve the availability of information, broaden the access to global markets, reduce barriers for SME entry and give new sources of revenue. Thus, technological institutions are also important for SME development and have a key role in the liberal market environment (Mutalemwa 2015). Over the past decades, African governments have created several technology-related institutions, attached to ministries or state/public companies most of the times. These institutions arrange supply support services, in many areas as technology selection and adaptation, innovation and assimilation.

The globalization process has enabled non-price competition to become extremely important. SMEs are more likely to respond rapidly to non-price competition in order to be successful. Furthermore, literature on SMEs has mentioned that local and national firms are progressively pushed to perform by global standards, especially in terms of quality, speed of response and flexibility (Mutalemwa 2015).

In this regard, collaborative partnerships (i.e. clustering) and other forms of inter-firm industrial networking provide the flexibility that allows SMEs to meet such requirements (Knorringa 1999). In Africa, it is known that there has been restricted sharing of knowledge, information, resources, and expertise that enable to contribute to SME cluster integration into global value chains (Yoshino 2011).

Although the importance of quality, African SMEs have traditionally tended to focus attention on production rather than quality (Hussain 2000). SMEs need to develop awareness structures toward non-price elements (i.e. packaging, international standardization, quality, just-in-time delivery).

In the regional markets, exporters are more likely to find similar demand patterns to those of their own domestic consumers (Thoburn 2000).

The participation of SMEs in export markets could also take advantage from existing networks that reduce the transactions costs of networking into export markets disregarding of the firm size (Mutalemwa 2015). Network can take various forms. For instance, although important infrastructural constraints, SMEs in the automobile cluster in the Nnewi region (East Nigeria), have achieved export activities to bordering countries because of existing links that had been developed over considerable years with producers and wholesalers in Asia. Therefore, the existing links took the form of technical assistance, advices on technologies and skills needed to operate adroitly (Brautigam 1997).

Export-oriented of SMEs has been a concern of various governments in Africa, who have taken conscious to promote export through the creation of EPZ (Export Processing Zones). These EPZ aim to raise employment creation, to attract FDI, and to generate foreign exchange using exports. These EPZ also support legislative, administrative, infrastructural and regulatory assistance for the formation and operation of flourishing SMEs (Mutalemwa 2015). However, most zones in the African continent have remained small, according to the author, with few networking with the local economy and small foreign-exchange earnings.

In this regard, policy interventions in Africa should aim to encourage entrepreneurial thinking and international orientation among business owners of African SMEs, and to assist these firms to acquire better competencies (i.e. relationship, marketing, management, product/process technologies, etc.), which might improve their capacity to challenge in international markets (Ibeh et al. 2012). Also, African existing exporters need to be challenged to make their level of international involvement more intense.

Conclusion

In the last decade, African economies have experienced significant growth. This growth was estimated at 11.8% in 2004, and drifted around 5% for many years until the dive in products' prices that lowered Africa's growth rate to 3% during the recent years, and down to 1.3% in 2016 (World Bank 2017a).

Growth is expected to rise to 3.2% in 2018 and to 3.5% in 2019 as commodity and products markets stabilize, and the two regional economic champions exit recession (World Bank 2017b). In sum, the African continent has accomplished more than a decade of important economic expansion.

Yet, given the fast-moving and dynamic environment in which internationalizing African SMEs are operating, there stays a need for further strong empirical studies into these emerging phenomena. Policymakers, researchers and practitioners with specific interest in Africa's firms' internationalization asked to stabilize their focus on the important task of investigating and illuminating the outcomes of Africa-to-Africa internationalization strategy, and to what extent can managerial networks help or slow down the internationalization of African SMEs (Boso et al. 2018).

While going to the international, Amankwah-Amoah et al. (2018) propose that African SMEs have to be aware of five key drivers to succeed.

According to the authors, African SMEs need to develop the ability to understand diversities within the value chain system in different Sub-Saharan African markets.

Thus, they need to have the propensity to fix marketing strategy models constantly to respond to unanticipated market changes. The third driver is having an enthusiasm to innovate with the targeted African consumers. Moreover, African firms must develop the ability to devise innovative ways to access consumers.

Finally, African SMEs need to work on cultivating the capacity to associate with local governmental and non-governmental agencies, in order to influence the brand and to communicate high-impact marketing messages.

References

- Abor, J., & P. Quartey. 2010. "Issues in SME development in Ghana and South Africa." *International Research Journal of Finance and Economics* 39(6): 215–228.
- Adeleye, I., & M. Esposito. 2018. *Africa's competitiveness in the global economy*. Springer.
- Adeleye, I., K. Ibeh, A. Kinoti, & L. White. 2015. *The changing dynamics of international business in Africa*. Springer.

- Agyapong, D. 2010. "Micro, small and medium enterprises' activities, income level and poverty reduction in Ghana—A synthesis of related literature." *International Journal of Business and Management* 5(12): 196.
- Aker, J. C., & I. M. Mbiti. 2010. "Mobile phones and economic development in Africa." *Journal of Economic Perspectives* 24(3): 207–32.
- Amankwah-Amoah, J. 2018. "Why are so many African companies uncompetitive on the global stage? Insights from the global airline industry." In *Africa's Competitiveness in the Global Economy*, p. 195–216. Springer.
- Amankwah-Amoah, J., N. Boso, & Y. A. Debrah. 2018. "Africa rising in an emerging world: an international marketing perspective." *International Marketing Review* 35(4): 550–559.
- BCG. 2010. *The African challengers: Global competitors emerge from the overlooked Continent*. Johannesburg: BCG
- Benzing, C., & H. M. Chu. 2009. "A comparison of the motivations of small business owners in Africa." *Journal of Small Business and Enterprise Development* 16(1): 60–77.
- Boso, N., I. Adeleye, K. Ibeh, & A. Chizema. 2018. "The internationalization of African firms: Opportunities, challenges, and risks." *Thunderbird International Business Review*.
- Boso, N., Adeleye, I., & White, L. 2016. "Africa-to-Africa internationalization: Emerging trends and key issues." In *Africa-to-Africa internationalization* p. 3–34. Springer.
- Brautigam, D. 1997. "Substituting for the state: Institutions and industrial development in Eastern Nigeria." *World development* 25(7): 1063–1080.
- DANIDA. 2013. *Capital injection in the African guarantee fund for small and medium-sized enterprises (AGF)*. Danish Ministry of Foreign Affairs: Copenhagen, Denmark.
- Devine, R. A., & M. N. Kiggundu. 2016. Entrepreneurship in Africa: Identifying the frontier of impactful research. *Africa Journal of Management* 2(3): 349–380.
- De Vries, M. F., J. C. Sexton & B. P. Ellen III. 2016. "Destructive and transformational leadership in Africa." *Africa Journal of Management* 2(2): 166–187.
- Doole, I., & R. Lowe. 2008. *International marketing strategy: analysis, development and implementation*. Cengage Learning EMEA.
- Gimede, V. 2004. "Export propensities and intensities of small and medium manufacturing enterprises in South Africa." *Small Business Economics* 22(5): 379–389.
- Hussain, M. N., & S. Planning. 2000. *Linkages between SMEs and large industries for increased markets and trade: an African perspective*. Abidjan, Cote d'Ivoire. African Development Bank.
- Ibeh, K. 2015. Rising Africa and its nascent multinational corporations. In *The changing dynamics of international business in Africa*, p. 123–147. Springer.
- Ismail, R., R. Jeffery & J.-P. Van Belle. 2011. "Using ICT as a value adding tool in South African SMEs." *Journal of African Research in Business & Technology* 2011, 1–12.
- Jacobs, A. 2017. "Joyous Africans take to the rails, with China's help." *New York Times*. Available at: www.nytimes.com/2017/02/07/world/africa/africa-china-train.html.
- Knorrinda, P. 1999. "Agra: an old cluster facing the new competition." *World development* 27(9): 1587–1604.
- Matanda, M. 2012. "Internationalization of established small manufacturers in a developing economy: A case study of Kenyan SMEs." *Thunderbird International Business Review* 54(4): 509–519.
- Misati, E., F. O. Walumbwa, S. Lahiri & S. K. Kundu. 2017. "The internationalization of African small and medium enterprises (SMEs): a South-North pattern." *Africa Journal of Management* 3(1): 53–81.
- Monitor, G. E. 2015. 2016 Global Report. Retrieved on September, 26, 2017.
- Morlin-Yron, S. 2017. "All aboard! The Chinese-funded railways linking East Africa." *CNN report*. Available at: <http://edition.cnn.com/2016/11/21/africa/chinese-funded-railways-in-africa/>.
- Mutalemwa, D. K. 2015. "Does globalisation impact SME development in Africa?" *African Journal of Economic and Management Studies* 6(2): 164–182. <https://doi.org/10.1108/AJEMS-01-2015-0012>.
- Mutula, S. M. 2005. Peculiarities of the digital divide in sub-Saharan Africa. *Program* 39(2): 122–138.
- Nafukho, F. M., & M. A. Helen Muyia. 2010. Entrepreneurship and socioeconomic development in Africa: a reality or myth? *Journal of European Industrial Training* 34(2): 96–109. <https://doi.org/10.1108/03090591011023961>
- Newman, C., J. Page, J. Rand, A. Shimeles, M. Söderbom & F. Tarp. 2016. *Made in Africa: Learning to compete in industry*. Brookings Institution Press.
- Ngwu, F., I. Adeleye & C. Ogbechie. 2015. Africa-to-Africa internationalization: Rhetoric, reality and risks of intra-African regional expansion. *The Routledge companion to business in Africa*, 9–31.
- Noman, A., & J.E. Stiglitz. 2014. "Economics and policy: Some lessons from Africa's experience." In *The Oxford Handbook of Africa and Economics, Vol. II: Policies and Practices*, Celestin Monga and Justin Yifu Lin (eds.), Oxford, UK and New York: Oxford University Press, pp. 830–848.
- Nyuur, R. B., D. F. Ofori & Y. A. Debrah. 2016. "The impact of FDI inflow on domestic firms' uptake of CSR activities: The moderating effects of host institutions." *Thunderbird International Business Review* 58(2): 147–159.
- Ocloo, C. E., S. Akaba & D. K. Worwui-Brown. 2014. "Globalization and competitiveness: Challenges of small and medium enterprises (SMEs) in Accra, Ghana." *International Journal of Business and Social Science* 5(4).
- Ogbechie, C., I. Adeleye & F. Ngwu. 2014. "Africa-to-Africa internationalization: rhetoric, reality and risks of intra-African regional expansion." In *The Routledge Companion to Business in Africa* (p. 37–59). Routledge.
- Ojaide, T. 2018. "Literature in Colonial Africa." In *The Palgrave Handbook of African Colonial and Postcolonial History*, p. 413–428. Springer.

- Okubadejo, D. 2014. Financing for the future: How can financial services best support inclusive growth in Africa.
- Omer, N., E. Van Burg, R. M. Peters & K. Visser. 2015. "Internationalization as a "work-around" strategy: How going road can help SMEs overcome local constraints." *Journal of Developmental Entrepreneurship*, 20(02), 1550011.
- Ortmans, J. 2015. *Entrepreneurs Called to Ignite Economic Growth for Africa and Beyond*. Kansas City, Missouri: The Kauffman Foundation.
- Pinkovskiy, M. & X. Sala-i-Martin. 2014. Africa is on time. *Journal of Economic Growth* 19(3): 311–338.
- Roberts, S., & J. Thoburn. 2003. "Adjusting to trade liberalisation: the case of firms in the South African textile sector." *Journal of African Economies* 12(1): 74–103.
- Ruzzier, M., R. D. Hisrich, & B. Antoncic. 2006. "SME internationalization research: past, present, and future." *Journal of small business and enterprise development* 13(4): 476–497.
- Sun, S. L., & R. P. Lee. 2013. "Enhancing innovation through international joint venture portfolios: From the emerging firm perspective." *Journal of International Marketing* 21(3): 1–21.
- Thoburn, J. 2000. "Finding the right track for industry in Africa-some policy issues and options." *UNIDO Discussion*.
- UNCTAD 2011. "Information and Economic Report 2011." ICT as an Enabler for Private Sector Development, United Nations, New York, NY and Geneva.
- United Nations 2015. "Population facts, youth population trends and sustainable development."
- World Bank. 2013. Fact Sheet: Infrastructure in Sub-Saharan Africa. Washington, D.C. World Bank. (2017a). Data.
- World Bank. 2017. World Bank in Africa.
- Yoshino, Y. 2011. Industrial clusters and micro and small enterprises in Africa: From survival to growth. World Bank.

The Role of Spirituality on the Quality of Life Among Elderly People in the Multicultural Context

Kristyna Troneckova

Masaryk Univerisity, Czech Republic, troneckova.k@gmail.com

ABSTRACT: The aim of the research is to compare the well-being and social life of people over sixty years of age depending on the degree of national spirituality. The goal is to capture and describe the quality of life and spirituality among the Bhutanese, Norwegian and Chinese populations in comparison with Czech participants, mainly by semi-structured interviews and the use of interpretative phenomenological analysis serving as a tool for evaluating given interviews. For research work, it is crucial to contribute to the understanding of phenomena that can lead to greater seniors' satisfaction, which is important because the amount of these people is still increasing. The current results have shown a big difference between the religion in Norway and Bhutan, the country of happiness. There was found a strong belief in Tibetan Buddhism among Bhutanese participants so far. None of the participants considered himself an atheist or a person with non-religious spirituality. All respondents showed a high level of satisfaction with life, and they often experienced joy. They come from well functional families and are happy with themselves. Norwegian participants are mostly agnostic or non-religious spiritual persons. None of them has proved to be a practicing believer nor a strict atheist. They felt the sense of life primarily in sport and in nature, they often mention cross-country skiing as a way of getting closer to the spirit. Furthermore, the intention is to extend the research on other nations.

KEYWORDS: well-being, spirituality, belief, Christianity, Buddhism, quality of life

1.0 Introduction

The topic of this article is the study of the connections between the different types of spirituality and the well-being of the elderly. The research should be based on the findings of the diploma thesis, in which I examined the mental well-being and attitude towards the spirituality of the participants with Czech nationality. The present work extends the acquired knowledge about the multicultural context. This is the inclusion of other nationalities in research. The aim is to capture and describe the quality of life and spirituality in the Bhutanese, Norwegian and Chinese populations in comparison with Czech participants, mainly based on semi-structured interviews and the use of interpretative phenomenological analysis serving as a tool for evaluating given interviews. For research work, it is crucial to contribute to the understanding of phenomena that can lead to greater seniors' satisfaction, which is important since the number of these people is still increasing.

In their research, Lun and Bond (2013) found differences in the perception of quality of life and satisfaction, depending on the concept of spirituality in national contexts across all continents. In countries with more widespread spiritual life, a higher level of life satisfaction was found than in countries with a lower degree of spirituality.

The positive influence of faith on the feeling of happiness among older people is presented in the Euroamerican sample of respondents Argyle (1999), Blazer and Palmore (1976) and Velasco-Gonzalez and Rioux (2013). Yoon and Lee (2008) also found a positive relationship between spirituality, religiosity, social support and well-being in the elderly, which is in line with the research findings of my previous diploma thesis focusing on wellbeing and spirituality in the Czech population (Tronečková, 2016). Fry (2010), who found that religiosity and spirituality contribute significantly to the mental well-being of older people, came to similar conclusions.

However, in some researches with Euro-American respondents, the positive effect of spirituality on the well-being of seniors was not found. An example is the Telliys-Nayaka study (1982). McFadden (1995), in his study, states that religiosity may in some cases also act negatively. Conclusions of the Vidovičová and Suchomelová (2013) research aimed at Czech respondents show that religious seniors do not have a higher quality of life, and impaired subjective health is associated with a higher religiosity/spirituality that was religiously considered in their research.

Courtenay et al. (1992) did not find the relationship between mental well-being and spirituality in his study.

In my present work, I deal with more of these confusions stemming from the researches mentioned above. I focus more on the quality of life and spirituality of selected nationalities. The work can find out what contributes to the elderly's life satisfaction regarding different kinds of spirituality and cultural differences, which due to population aging and multicultural development is a relatively actual topic.

Vohralíková and Rabušic (2004) and Řičan (2007) agree that people of senior age are constantly growing and humanity is the oldest in its entire history. Usually, in old age, there is a desire to get closer to God, for it is the age when one is closer to death (Sale and Khan 2015). That is why I consider it a matter of dealing with the research with the spirituality of older people at selected nationalities.

2.0 Materials and Method

2.1 The aims of the thesis and the research question

The research focuses on the exploration and description of the connections between the different types of spirituality and the quality of life of seniors. *From this broad range of work, the aim is to describe the important relationships of seniors to their spiritual life and personal satisfaction in a multicultural context.*

The research work intends to contribute to understanding the factors that can lead to greater seniors' satisfaction, which is important because these people are still increasing. By capturing the unique experience of spirituality in the context of quality of life. In the research, I could consider the possible inclusion of more than two ethnicities according to the context of the results. To achieve the research goal, the interpretative phenomenological analysis (IPA) was chosen as a research strategy. The research question is: *What is the experience with experiencing the quality of life among seniors with different types of spirituality in a multicultural concept?*

2.2 Research file

Respondents in the research should characterize the given ethnicity. Respondents must be senior citizens, i.e., over sixty years old. In the research, there should be 12 from each country, including six women and six men. The choice of respondent takes place using the snowball method. The condition is also the possibility of conducting an interview in English. Another criterion for the selection of respondents of all nationalities is education and the number of children. All respondents should have high school education and 2 to 3 children. Respondents from this research should live in marriage and a common household. Thanks to these criteria, greater sample homogeneity will be guaranteed, which is desirable for the interpretive phenomenological analysis that is used for this research (Smith, Flowers, Larkin 2009).

2.3 Method of collecting and processing research data

For this research, a qualitative approach was chosen, which corresponds to the type of problem being investigated, i.e., a case study (Yin 2014). As a kind of qualitative approach, an interpretative phenomenological analysis (IPA) is used. It is an approach that provides more space for creativity and freedom of research than other qualitative approaches (Willig 2001). Experience is understood here as the result of sharing the researcher and the participant, while both views should be and clear. However, the goal is the lived experience of the participant (Larkin, Watts, and Clifton 2006). Thanks to the IPA, it is possible to look for common denominators and differences of the studied ethnicity. I obtained the data for my diploma thesis in semi-structured interviews, which is also recommended by IPA (Smith, Flowers, Larkin 2009). In the same way, I proceed in the research.

The questions in this research are divided into five areas covering life satisfaction and spirituality. The origins of this division are the Areas of Life as a source of life satisfaction (Hawis and Fahrberg), where life satisfaction includes intimate relationships, relationship to one's own

person, relationship to the environment, social relationships, and spirituality. The issues of this research should reflect the area. For new respondents, I use similar questions that were created together with prof. PhDr. Vladimír Smékal, CSc. for the diploma thesis. I was also inspired by the questionnaires called Expressions of Spirituality Inventory (MacDonald 2000) and The Ryff Scales of Psychological Well-Being (Ryff 1989; Ryff and Keyes 1995). In some areas, however, questions will be more specifically specified to address the issue of quality of life more fully.

For more detailed information on the respondent, I also administer The Life line method according to Tyl (1985). The Living Environment Scheme (provided for this research by prof. PhDr. Vladimír Smékal, CSc) as a source of life satisfaction (Hawis and Fahrberg n.d.) should serve as an orientation point for the interview, as well as for the orientation of the participants, with whom I develop the issues within each area. However, the resulting IPA does not hold the original ones, and the topics in the interview analysis are determined independently of the original scheme. Classification of participants' topics corresponds to IPA requirements (Smith, Flowers and Larkin 2009).

The data are processed using an audio recording, which according to Miovisky (2006) can capture all the qualities of the spoken word, is impartial and completely authentic. This method is therefore perfectly suitable for this research.

3.0 Results

A sample of the Czech population found (Tronečková 2016) that most of the participants were agnostics and persons with non-religious spirituality. Only two respondents experienced intense spirituality and showed satisfaction with life and with themselves. Healthy feel good. Other participants searched for the meaning of life difficult and also experienced less joy, support them are children, but the marriage tends to be a rather problematic. These respondents tend to be less satisfied with themselves. They complain about their health and the economic situation regarding a bad functioning state. Most of the participants were forced to go to church in their childhood, which deepened their dislike for the church.

For Bhutan participants, a firm belief in Tibetan Buddhism has so far been found. None of the participants considered himself an atheist or a person with an unreligious spirituality. All respondents showed a high level of satisfaction with life and often enjoyed joy. They come from working families and are happy with themselves. They often refer to personal questions about the Buddha's teachings, which help them solve their life situations satisfactorily. There is a great humility among respondents, an effort to help and take care of the other and a tendency to adhere to Buddhist rules. Most of them regularly pray for an hour and a half in the morning and for an hour and a half in the evening.

Norwegian respondents are mostly agnostics and persons with non-religious spirituality. None of them appeared as a practicing believer or as a strict atheist. The meaning of life is mainly seen in sports and nature, often mentions cross-country skiing as a way of getting closer to the spirit and way of meditation. They are more skeptical about direct faith, but they do not strictly deny religious things. Most of them are not concerned with the question of spiritual life; their reflection is reflected in the uncertainty of the future. Respondents are predominantly open to different viewpoints and do not strictly disclose their views. About half of them are happy with family life. They rate themselves satisfactorily but see big gaps in where they are now and where they want to get.

Themes that crossed across the groups of studied nations are spirituality, contentment, interpersonal relationships, and approach to life. Common themes and subtopics based on IPA for given nationalities are shown in Table 1.

Table 1: Topics based on IPA for given nationalities

1. Spirituality			
	Czech Republic	Bhutan	Norway
Inner Spiritual Experience		*	
Openness to religion		*	*
Obligation to go to the church	*	*	
Meditation and prayer		*	*
Spiritual elder age		*	
Religious foundation		*	
2. Satisfaction			
	Czech Republic	Bhutan	Norway
Satisfaction with oneself	*	*	
Everyday joy	*	*	*
Self-sufficiency	*	*	*
Physical health	*		*
3. Interpersonal relationships			
	Czech Republic	Bhutan	Norway
Family background	*	*	*
Happy marriage	*	*	*
Caring for others	*	*	*
4. Attitude to life			
	Czech Republic	Bhutan	Norway
Freedom	*	*	*
Satisfied view of the world	*	*	*
Meaning of life	*	*	*
Volunteering			*

4.0 Discussion

The research data was made up of twelve semi-structured interviews with the respondents from each country. The interviews were processed utilizing an interpretative phenomenological analysis, which gave rise to several themes and subtopics for each group of respondents. Themes that appeared across the groups of chosen nations are spirituality, contentment, interpersonal relationships, and access to life.

Bhutan, the constitutional monarchy, known as the Land of Happiness, has a deeply rooted Tibetan Buddhism. GHN (Great National Happiness) became popular and it is prioritized over GNP (Gross National Product). The most important in the functioning of the country is the inner and spiritual experience of the happiness of the population, which is often recognized simply by the smiling face (Tshering 2013).

Norway, the constitutional monarchy, is one of the richest countries in the world with the strongest economy and social security. According to the World Happiness Report (2017), it is the happiest country in the World. The economic situation, health care, social security are taken into account. Therefore, the results are based on the Euro-American perception of happiness based on material values. The Czech Republic ranks 58th and Bhutan 97th. In Bhutan, the Euro-American material concept of happiness is not as important as the inner and spiritual experience of happiness.

So far, the results of the research do not correspond to the World Happiness Report (2017), but the content of the participants shows life satisfaction mainly with Bhutanese, although their material security is not high. Support in their happiness is in Buddhism. They try to live according to dharma, including gratitude for life, humility, helping others, and experience joy. Norwegian respondents do not complain about the conditions in their lives; they often mention that they are sufficiently secure, which corresponds to the results of the World Happiness Report (2017).

They often find the sense in their lives in nature and cross-country skiing, which may correspond with their good physical health. Satisfaction with oneself is manifested in only a few of

them. Spirituality is not an important part of their life. Czech participants mostly find difficult to experience daily joy and a sense of life. They find their support in the family. They often complain about their lives and economic situation and politics.

The results so far are consistent with findings from the research conducted by Lun and Bond (2013). They found differences in the perception of quality of life and satisfaction depending on the concept of spirituality in national contexts across all continents. In countries with more widespread spiritual life, a higher level of life satisfaction was found than in countries with a lower degree of spirituality.

The results are influenced by the researcher's personality and its context of life. Another limitation is the willingness to answer the questions because some respondents could partly conceal their true stories and the answers could be distortive. The limit was also the choice of respondents when they were chosen by the snowball method as part of the selection.

Research in the countries will continue and will be extended to other participants. At the same time, research will be launched in China where is a different concept of spirituality, which is reflected in the diversity of cultures. The final research will then be able to reflect on their experience with spirituality and life satisfaction with selected participants, with an emphasis on cultural and religious differences in the countries of the world.

References

- Ali, J., Marhemat, F., Sara, J., & Hamid H. 2015. "The relationship between spiritual well-being and quality of life among elderly people." *Holist Nurs Practice* 29 (3): 128-35.
- Argyle, M. 1999. "Causes and Correlates of happiness." In Kahneman, D., Diener, E., & Schwarz, N. (Ed.), *Well-being: The foundation of hedonic psychology* (pp. 353-373). New York: Russel Saga Foundations.
- Blazer, D., & Palmore, E. 1976. "Religion and aging in a longitudinal panel." *The Gerontologist* 16: 82-85.
- Courtenay, B. C., Poon, L.W., Martin, P., Clayton, M G. 1992. "Religiosity and adaption in oldest-old." *International Journal of Aging and Human Development* 34: 47-64.
- Fry, P. S. 2000. "Religious involvement, spirituality and personal meaning for life: Existential predictors of psychological wellbeing in community-residing and institutional care elders." *Aging & Mental Health* 4 (4): 375-387.
- Gnhcentrebutan.org [online]. 2016 [cit. 2017-7-29]. Available from www: <http://www.gnhcentrebutan.org/what-is-gnh/> [online, available 29. 7. 2017].
- Halík, T. 2005. O ateismu, pochybnostech a víře. *halik.cz* [online]. Přístup dne 29. 7. 2017, z www: <http://halik.cz/cs/tvorba/clanky-eseje/nabozenstvi-spolecnost/clanek/45.html>.
- Krause, N. 2002. "Religious Meaning and Subjective Well-Being in Late Life." *The Journals of Gerontology* 58 (3):160-170.
- Larkin, M., Watts, S., & Clifton, E. 2006. "Giving voice and sense making in interpretative phenomenological analysis." *Qualitative Research in Psychology* 3: 102-120.
- Lun, V. M., & Bond, M. H. 2013. "Examining the relation of religion and spirituality to subjective well-being across national cultures." *Psychology of Religion and Spirituality* 5 (4): 304-315.
- MacDonald, D. A. 2000. *The Expressions of Spirituality Inventory: Test development, validation, and scoring information*. Unpublished test manual.
- McFadden, S. H. 1995. "Religion and well-being in aging persons in an aging society." *Journal of Social Issues* 51 (2): 161-175.
- Miovský, M. 2006. *Kvalitativní přístup a metody v psychologickém výzkumu*. Praha: Grada Publishing.
- Ryff, C. D. 1989. "Happiness is everything, or is it? Explorations on the meaning of psychological wellbeing." *Journal of Personality and Social Psychology* 57: 1069-1081.
- Ryff, C. D., & Keyes, C. L. 1995. "The structure of psychological wellbeing revisited." *Journal of Personality and Social Psychology* 69 (4): 719-727.
- Řičan, P. 2007. *Psychologie náboženství a spirituality*. Praha: Portál s.r.o.
- Saleem, R., & Khan, S. A. 2015. "Impact of spirituality on well-being among old age people." *The International Journal of Indian Psychology* 2 (3): 172-181.
- Smith, J. A., Flowers, P., & Larkin, M. 2009. *Interpretative Phenomenological Analysis. Theory, Method and Research*. London: Sage Publications.
- Tellis-Nayak, V. 1982. "The transcendent standard: The religious ethos of the rural elderly." *The Gerontologist* 22: 359-363.
- Tshering, G. 2014. *Štěstí nalezené v království Bhútán*. Praha: Pragma.
- Tronečková, K. 2016. Úloha spirituality pro životní spokojenost ve stáří. (Master's thesis). Retrieved from: https://is.muni.cz/auth/th/357914/ff_m/Diplomova_prace_FINAL.pdf
- Tyl, J. 1985. *Časové horizonty. Příspěvek k problematice pojmu životního času a metodám jeho zkoumání*. Nepublikovaná diplomová práce. Praha: Filozofická fakulta Karlovy univerzity.
- Velasco-Gonzales, L., & Rioux, L. 2014. "The spiritual well-being of elderly people: A study of a french sample." *Journal of Religion & Health* 53 (4): 1123-1137.

- Vidovicová, L., & Suchomelová, V. 2013. "Otázka příspěvku religiozity/spirituality ke kvalitě života českých seniorů." *Kontakt 15* (4): 445-455.
- Vohralíková, L. & Rabušic, L. 2004. *Čeští senioři včera, dnes a zítra*. Praha: Výzkumný ústav práce a sociálních věcí, Výzkumný ústav Brno.
- Willig, C. 2001. *Introducing qualitative research in psychology*. Maidenhead: Open University Press.
- World Happiness Report. 2017. [Worldhappiness.report](http://worldhappiness.report) [online]. [cit. 2016-4-26]. Available from [www: http://worldhappiness.report/wp-content/uploads/sites/2/2017/03/HR17.pdf](http://worldhappiness.report/wp-content/uploads/sites/2/2017/03/HR17.pdf) [online, available 29. 7. 2017].
- Yin, R. K. 2014. *The Case Study Anthology*. London: Sage Publications.
- Yoon, D. P., & Lee, E. O. 2006. "The impact of religiousness, spirituality, and social support on psychological well-being among older adults in rural areas." *Journal of Gerontological Social Work* 48 (3-4): 281-298.

Prevention and Fight Against Harvest and Revenge Motivated Crimes

Bogdan David

*“Dimitrie Cantemir” Christian University, Faculty of Juridical and Administrative Sciences, Bucharest, Romania,
asr.bogdan@yahoo.com*

ABSTRACT: Hate crimes are a serious concern in the world and the objective of approaching and combating discriminatory motivated crimes is pursued at international level as well as at national level in many countries that have adopted specific and strategic actions and/or policies. “Hate crimes” is a generic term that refers to all those offences committed by the offender on the ground of discriminatory motivation. We want to draw the attention to the fact that hate crimes based on religious criteria (but not only) are a very sensitive matter and the evidence of this lies, for example, in the terrorist actions of certain Islamic groups that have detonated a bomb in the editorial of a magazine that had published a caricature of an Islamic prophet, in Paris on 7th of January 2015. We believe that the religious affiliations of every nation must be respected, but it is inconceivable that terrorist attacks should occur as a reaction to disapproval of certain inadequate attitudes of the press.

KEYWORDS: crimes, fighting offences, hatred, methods of combating, punishments, vile reasons

Introduction

Although not explicitly mentioned in national law, the category of hate crimes helps practitioners and theoreticians in the field of criminal law to address a type of crime that the European Court of Human Rights and international organizations have highlighted as having a particular negative impact on democratic societies. In national criminal law, offences caused by hatred, envy or revenge could be classified as criminal offenses, which would lead to an aggravating circumstance in the individualization of punishment. In the Romanian Criminal Code are inserted at art. 77, the aggravating circumstances, and at subsection h are inserted the following grounds: “committing the offence for reasons of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or for other circumstances of the same kind considered by the perpetrator to be the causes of inferiority of a person in relation to the other”. Furthermore, if we analyze the structure of the offence, hatred is the immediate cause of the subjective side of these crimes.

The Organization for Security and Co-operation in Europe (OSCE), acknowledges that hate crimes contain two elements: (1) there are facts that criminal law provides as crimes and (2) to commit the crime, the perpetrator acts on the basis of prejudices. The injured person becomes the target of the offense on the basis of membership or presumed membership of a particular group that shares a certain characteristic (e.g. gender, race, ethnicity, sexual orientation, etc.). Another narrow definition offered by the OSCE (OSCE 2009, 34) for hate crimes is “offenses motivated by intolerance towards certain groups in society”.

State criminal law treats hate crimes differently, depending on the characteristics of the criminal law systems to which we refer. The differences relate, among other things, to their being treated as an offense or as a ground for increasing punishment, as well as to the number of protected features explicitly recognized by law as part of the discriminatory motivation. The way in which hate crimes are effectively defined in state criminal law also influences how authorities collect data on these offenses. For example, data on offenses that contain discriminatory (stand-alone) motivation in their definition is easier to collect than data on the number of offenses to which the penalty for discriminatory motivation has been applied.

Ways of combating hate and revenge offenses

We want to reveal what we are referring to when we talk about preventing and combating hate crime and revenge. A first aspect would be to ratify the legislation on hate crimes and to oversee its

implementation. From this point of view, a first step in addressing hateful facts is the adoption of legislation sanctioning such behaviors. The existence of special stipulations on these crimes is important from several points of view involving other aspects. This is an explicit message on the importance that the phenomenon is treated with and is an opportunity to increase public awareness on this type of crime. Likewise, an essential fact is that it allows data to be collected on the phenomenon with the purpose of prevention.

The second aspect is about collecting additional data on the hate crime phenomenon. In addition to the data collected from the authorities, it is necessary to carry out surveys on the victims of hate crimes in the population, containing questions about this category of crimes. The results of these questionnaires provide useful information about the black crime rate (unreported offenses), the experiences of injured persons and the relationship between injured parties and authorities.

Thirdly, it is about increasing the exposure of hate crimes and punishing their perpetrators, as well as increasing the trust of the injured in the authorities. The OSCE believes that the reason why the victims get discouraged from addressing the police is because of the obstacles that occur when hate crimes get reported and overseen. Injured people (crimes victims) and witnesses should be encouraged to report hate crimes through criminal complaint or denouncement. But the authorities must also inspire confidence, address these offenses in an appropriate manner, and protect the injured. One of the reasons that discourage injured people from reporting the misconduct of these categories of offenses is the fear that their identity or affiliation to a particular group will be revealed in the course of research conducted by the authorities. In this regard, the proper handling and management of these files and the protection of personal data is important.

Romania, like all the other signatories to the European Convention on Human Rights, is bound to have positive obligations stemming from the Convention, which means that the state must not only refrain from human rights violations, but also take measures to prevent the violation of human rights guaranteed by the Convention (Leach 2011, 5-18). Positive State Obligations also apply to hate crimes in connection with respect for the Convention's rights. For example, state authorities are required to investigate the possible link between racial attitudes or different religious confessions, and the violence that has been committed; if investigations show evidence of a racist motivation (such as racist language used by perpetrators) or some another nature, the authorities have an obligation to verify these evidence and to thoroughly investigate all the facts in order to disclose any racist or other motivation the nature. In cases of violence, authorized institutions must take all reasonable steps to disclose any racist motivation and any possible link between violence and hatred or prejudice based on the ethnic origin of the victims. This is an obligation for the authorities to gather evidence, to explore any practical measures through which they can find the truth and make reasoned, impartial and objective decisions without omitting suspicious elements that could lead to racist motivation. The duty is a means of diligence because the authorities must follow all reasonable steps and make every effort, depending on the circumstances of the case, without being forced to reach a certain result.

Differences between religious affiliations must be handled with utmost responsibility by the authorities. The suicide and terrorist attacks that have taken place over the last 20 years around the world have been motivated by religious provisions (as motivated by the groups that have claimed these actions that have disturbed and terrified mankind by their abominable character), saying they have started a “holy war”. The terrorist attacks in the USA (September 11, 2001) and those in the European area (France, England, Spain) have inevitably had the same hatred and revenge from Islamic terrorists. It is, therefore, that certain religious precepts misunderstood by some adherents of Islamic religion have led to real social and human catastrophes. What we want to emphasize is that the recourse to these religious policies in the public space is an extremely sensitive situation, and the factors of responsibility should take a much more careful attitude than they have done so far in order to avoid unbalanced communication of certain points of view in this area. We remind you that the prevention function is superior to punishment!

Parallel between hate speech and hate and revenge offenses

In the Recommendation (97) 20a of the Committee of Ministers from the Council of Europe, the hate speech is defined as: *“all forms of expression that increase, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance which expresses itself in the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and people from immigration”* - (Annex to Recommendation No. R (97)20, Application Domain). The hate speech is treated differently in the member countries of the Council of Europe and there is no generally accepted and binding definition for this concept. If we use the meaning of Recommendation (97) 20 to compare hate speech with hate crimes, we note that hate speech is by no means an offense, but may become, in certain contexts. For example, the Romanian Penal Code punishes incitement to hatred or discrimination (art. 369 Penal Code), which can be accomplished, by definition, *“by any means”*, including through hate speech, most of it being the manner in which and manifest itself.

Relative to the ways in which the hate speech is transmitted, they can be verbal, in the online environment, in paper publications, or even through comic symbols. The hate speech in the online environment deserves special attention from the authorities, regarding the multiplier effect the internet has on the dissemination of the message (Weber 2009, 67). For example, hate speech in the form of racist and xenophobic propaganda propagated through the Internet are facts that the Council of Europe considers to be sufficiently serious to propose their sanction by criminal penalties when they are the following: distribution of racist and xenophobic materials through computer systems; the threat based on a racist and xenophobic motivation; denial of grossly minimizing, approving or justifying genocide or crimes against humanity (Council of Europe 2003, ratified by Romania by Law no. 105/2009).

Hate speech becomes relevant to hate crimes discussion when evidential material is analyzed. More specifically, the evidence of the hate speech expressed by the perpetrator in connection with the commission of a particular offense can help the court to withhold the application of the aggravating circumstance under art. 77 let. H) of the Criminal Code or to define the facts as justified crimes of self-hate (by completing as a new category) in the Criminal Code.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by criminal law (referred to below as the Framework Decision) qualifies racism and xenophobia as direct violations of the very principles that European Union is based on. They are considered as serious threats that all states need to have an adequate response. Therefore, the Framework Decision provides for the need to unify the criminal law provisions of the EU Member States with regard to the definition of racist and xenophobic offenses and the establishment of effective, proportionate and dissuasive penalties. The criteria that are protected by this decision are race, color, religion, descent or national or ethnic origin, but it is foreseen that Member States may adopt criminal legislation that also protects other criteria than those mentioned (Council Framework Decision 2008/913/JHA, Preamble, paragraph 10).

The Framework Decision obliges Member States to ensure that criminal law legislative provisions contain effective, proportionate sanctions for a series of acts such as public incitement to violence or hatred against protected groups (Framework Decision 2008/913/JHA of the Council, Article 1, paragraph (1), letters a and b). The protected groups to which these provisions refer are those referred to in the preamble to the Decision, paragraph 10, the apology, denial or publicly minimizing the gravity of genocide, crimes against humanity and war crimes where such conduct is likely to hatred or violence against protected groups (Council Framework Decision 2008/913/JHA, art. 1 (1), c) and d). In the understanding of the Framework Decision, a criminal penalty that is effective and proportionate to the facts set forth in its content is that punishment whose particular maximum is at least one to three years' imprisonment.

Conclusions

We recommend that in Romanian criminal law, offenses motivated by hatred, revenge, jealousy should have a separate character, therefore, be categorized.

We also make recommendations to the institutional decision-makers in this field to trigger or to continue (where appropriate) the activity of preventing and combating these criminal resolution factors, namely, hatred and revenge, because prevention can avoid the committing of crimes and there will no longer be human victims, thus protecting the most important human value, namely life and freedom, if we take into account that, unfortunately, personal abductions take place for the purpose of paying them sums of redemption, as happened also in Romania in the case of Romanian journalists kidnapped in Iraq by a terrorist group.

References

- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- Council of Europe. 2003, 28 January. Additional Protocol to the Council of Europe Convention on Cybercrime, on the criminalization of acts of a racist and xenophobic nature committed through computer systems, ratified by Romania by Law no. 105/2009.
- Leach, Philip. 2011. *Taking a case to the European Court of Human Rights*. Oxford: Oxford University Press.
- OSCE. 2009. *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*. Romanian Criminal Code.
- Weber, Anne. 2009. *Manual on Hate Speech*. Council of Europe.

Intercommunity Violence in Ghardaia between Heavy Fire and Compromise. Meanings and Mechanisms

Hamdi Lahcene

Tlemcen University, Algeria, hamdilahcene@ahoo.fr

ABSTRACT: The city of Ghardaia in Algeria has experienced violent incidents, in recent years. As a result, this resulted in a deep fissure in the social fabric that had proved far from homogeneous, while the two religious communities of the local society, the Sunni Arab Maliki and the Ibadi community had coexisted for centuries in good intelligence. It can be seen from the course of events that the issue is far from being a simple conflict between the parties concerned; and we can not deny the involvement of a third party, namely political power and this through local authorities. In this tripartite equation, the precarious calm resulting from an interindividual and inter-communal compromise remains a subject of debate. From there we could apprehend the related meanings of discourses advocated by the actors of both parties, both at the individual and collective level. It is a question of exploring the places of confrontation and its observation following the verbal exchanges as well as the speeches marked, the paths taken by the two communities, in order to reach a compromise based on concessions previously considered as intangible principles. Also, the interventions of the security and political authorities to try to fill the differences and to bring closer the visions give rise to an analysis because by their responsibilities in the preservation of the security of the goods and the people, bring various justifications to guarantee an existence while maintaining the compromise in order to preserve the economic and political interests of the Mozabites.

KEYWORDS: pragmatic sociology, conflict, compromise, justification, violence

Introduction

Algeria, like the other countries of the Maghreb, brings together a few different ethnic groups, particularly on the doctrinal level, which make up its population. The media tries to commercialize the image of a doctrinaire and identity harmony of the social fabric, however, the political and economic practices of the authorities in the management of the public life led to the emergence of centers of tension and their expansion. In other words, let's say that their strong emergence does not serve the community project, and reflects the consequences of a treatment based on the absence of justice and a horizon of hostilities between two groups opposing the linguistic plans. Doctrinaire. However, the events that took place over the last decade followed another course. Disputes over pastures between tribes and Berber spring, the uprising of the population of southern Ouargla through the events of Brian Ghardaia are a perfect illustration. They exposed the fragility of social cohesion produced by the country's political elites.

The characterization of these events conveyed by official circles does not reflect the reality of events. In fact, these circles do not talk about it until the foreign media or the Social Media seize it, describing these events as protests, or even teenagers' hiccups, attributing to the outside hands who blame themselves for them, to destabilize the country and thereby undermine the peace and tranquility of the region.

Speaking of the events that occurred in the city of Beriane and whose causes persist, research leads us in this area to analyze the speech of citizens and dignitaries of the two communities to understand the reasons for each other, their justification in this trial of strength as well as the arguments of both parties in the negotiation and search for the compromise.

Research methodology

On the basis of the above, we have tried in this article to stick to the most important alternatives offered to the actors to build after the dispute a level of compromise within the urban perimeter of the city of Berian Ghardaia. The urban fabric of this city suggests the existence of structural differences, both social and economic, between neighborhoods. It can be seen through this, and as the common sense vehicle, that the Mozabites are organized and have developed proven business skills, far more than the

Arab chaanba. Indeed, the Mozabites scrupulously ensure the maintenance of the cohesion and integration of their community, its component, its symbols and this through a division of roles, leaving the decision to a centralized level embodied in the djemaa, religious essence, Elazzabah, concerning the settlement of disputes that the daily life of the Mozabites carries with it. El Azzaba meets at the mosque from which it draws its strength, but its action also extends to secular spaces.

Religious fervor is a primary characteristic of society in the M'zab Valley. This society has been able to respond, in terms of inter-individual relations, and social in general, to the physical constraints and the adversity of geography and climate. In this society, the group of dignitaries represents is depositary of a power whose spectrum spreads from the management of the interindividual disputes to the political affairs, the development of the region among others. This group ensures political dialogue and eases tensions during conflicts with other parties. In addition, he appoints representatives of the people in local and legislative elections. In fact, the discourse produced by the majority of individuals, common sense, within Mozabite society can not leave the circle of the discourse held by Elazzaba. "But the social dynamics that remains relative despite its inevitability feeds on the enthusiasm of although El Azzaba does not allow them to negotiate or decide, but their point of view is taken into account. The compromise is sought between maintaining the economic interests of the Mozabites deemed to be great traders, "people of dirhams" and the preservation of Amazigh identity that considers the challenge one of the most important for its viability and that brings the modernization.

In their struggle for survival, the Mozabite Amazighs act in a closed circle as a united bloc to protect their interests, unlike the chaanba Arabs who arrived later, and found themselves too weak to compete with the Mozabites on the economic plan. Therefore we find some social plagues in their communities and find them in order to hold a Doctrinal and ideological discourse.

Some studies on the subject of the Ghardaia events have been subjected to different approaches, but they have been analyzed as a whole, whether economic, political or anthropological, but have not relied on elements of rhetoric and linguistic connotations. in the conflict circle. and on this basis we have tried to approach this subject with a pragmatic sociological perspective and what it offers in this field of tools.

Research field

Through the individual and collective interviews of some of the dignitaries who participated in the reconciliation process, as well as some security and intervention officers who experienced the events closely, our contacts with some university students in the area, some sentences have reproduced in a way that binds us to carefully analyze their speech.

The field research in the city of Ghardaia, with all its contradictions, is a sensitive and complex process that needs means that are different from those we use in empirical research in other phenomena, it is not always easy to get the information, especially from the mizabites because of the knowledge that we are Arabs, so we contacted colleagues we knew in the university, and as well as national symposia held at the University of Tlemcen and summer camps and modest commercial relations with them, unlike we received an answer from the Sunni Arabs, who extended to talk about the conflict and its causes and the means that can solve the problems, of course, according to their views, but the language of blaming others still dominates in the discourse of both community "in the lawsuit the gen they raise criticisms and provide justification (Nachi 2006, 85).

Violence in Ghardaia. Causes and manifestations

One of the most rigorous studies at the research center in social and cultural anthropology on this topic has been addressed by the non-side of the subject we are studying. The question was why do community-based conflicts occur in Ghardaia (the region)? The undeclared question of this project, and builds its study on the procedural dimensions of the concept of community can give an image of the objective elements that cause all conflicts of a community nature in this region. The objective causes can

be classified in three elements, One of them is enough to mobilize the local society with all its components, And these elements are :

Strike "territory" as a factor of violence

It is enough to attack the "territory" to be the main factor of a violent (not to say bloody) communal conflict, and here we mean that the territory is the cartier or the "qseur" the store or the housing, the cemetery or the mosque as a place of worship. The aggression does not include the physical aggression of attempting to acquire or damage the property of others in areas of community nature, but even betting of competition to name these areas (conflict over the refusal of a name of a middle school or secondary school for a local character, conflict to impose to name a street in the name of a community figure, conflict to name the university in Ghardaia ,).

The recent attack on the "Qseur" of Malika and the local Ibadites cemetery has been the direct cause of the renewal of bloody conflicts in Ghardaia since January 2014. Before that, the land (the lands of Al-Yidr), which separates the Tanniya (Arabic) and "Qseur Béni-isguen" the cause of the conflict that took place in 1974. It is sufficient for a local group to attack areas that the community system considers an attack on one of its components. the basis of the machine of violence, especially when we know very well that the Ghardaia regions are essentially communal, that is, the Arabs live in their own neighborhoods and others live in their own neighborhoods / "qseur" and that the spaces of meeting between the two communities leave the frame of the residence.

Aggression on "memory" as a factor of violence

Attacks on memory are among the three causes of violence. Doubting participation in the Revolution (1954-1962) is on the list of aspects of the conflict between the two different collective memories, it is enough to publish an article or book raises this question or tries to answer it to bring about violence, and this is the case of Garara events (DEC 2013), which has extended For some of the municipalities of Ghardaia, which knows domain contact between the two groups. there is a difference between the two collective memories in the region, as the Ibadite group seeks to consolidate its presence in the region through urbanization dating back more than seven centuries. The rival memory seeks to consolidate its presence by recalling the sacrifices of his people (of the people of the region) and his martyrs of liberation revolution. Attacks on the near or distant past are a direct factor of community violence, by naming streets, schools, universities, airports or ... can be an opportunity to trigger rivalries or local community violence.

Aggression on one of the elements of the affinity system "women"

Brian's events began with the attack of the Ibadhite girl, The slowness of public intervention, local administration or security administration (the state of all conflicts) was a catalyst for the spread of violence and tension between the two Berian communities. This conflict did not stop, like other recurring conflicts among the inhabitants of the municipality itself, but moved to all the municipalities that know a contact between the two groups. The affinity system is almost entirely closed at the local level, mixed marriages are almost impossible, and if that happens requires drastic measures that begin with the exclusion of housing in the Mozabite "Qseur". Aggression against women as a structural element of the community affinity system is one of the direct causes of manifestations of inter-communal violence. In general, this attack does not occur in community territories, but often occurs at the points of contact between the two distinctly different urban spaces or in the common spaces.

Blaspheming the Mozabites and describing them as living in sin and accusing them of Khwarijs was evident in the speech of the Arabs, especially the young, they are sometimes described as Shiites and sometimes as "Almotazila" historical works have referred to the community of Bani Mzab with several denominations, like Spenser, for example, which says: "They are refugees from the Ibadite Kharijites who founded a league of religious doctrinal cities in the depths of the Sahara in the tenth century" (Oukad 2009-2010, 58).

When the Arab accuses his Mozabite opponent of approving the temporary marriage and taking some fatwas from the Ibadi clerics, he selectively disputes his filiation and his descent and

his right to be on this earth. These charges are directed against the Shiite community, which is rejected by the majority of Algerian society, especially after the broadcast of the media. And the social networking sites that represent them as an entity that wants to dominate the Arab and Islamic worlds. These representations have intensified after the Arab Spring wave, these events that we will mention later.

During our conversation with the respondents, who were affected by the spark of violence, one of them said that the Mozabites were treacherous and treacherous for a long time and that they did not answer the call. Of the liberation revolution when Sunni Arabs offered regiments of martyrs. France did not force them to serve in the army and was not exposed to them, they sold them, unlike the Arabs and until now they continue to follow the same approach. At the same time, Mr. Yousef the student faces who is not right: the Mozabites financed the revolution and fed the revolutionaries, they supported the Arabs and exploited the confidence of the French to support the revolution far from the eyes of the enemy, and these are great secrets that only Ibadi can bear that they are known for their secret, and to keep the information within the group only, they saved many families and protected the villages against the extermination. He also adds that the spark of violence was the result of the recent attack on the Quiseur de Malika and on the Ibadite cemetery, and before, the attack on one of the women of the Quseur. The Arabs are attacking our holy sites and our honor

The justice system is strong in this conflict, which is in itself a search and a proof of itself, and get recognition from the other, each community seeking a presence, the Arabs justify their behavior as the oldest tribes and welcoming martyrs, and they sacrificed for this country, on the other hand, the Mozabites consider themselves the oldest inhabitants of the region, being the Berbers, who are the indigenous peoples of the region. They close to protect their entity as they consider themselves marginalized and socially excluded at all levels, there is no alternative but to maintain the identity and economic model of the community. Thus, the distance taken by the Mozabites from the Arabs, and the question of Taqiyya increase the tension of the Sunnis who "generally treat the Taqiyya with great circumspection, being convinced that this practice, despite its legitimation in the Qur'an and hadith has been largely abused by all kinds of heretics, in order to hide their heresies and to deceive orthodox Muslims" (De Smet 2011,150-151). This distance, both in its symbolic level and in its spatial level, is considered as the first dimension of marginal life: for them their living conditions and social existence may be opposed to what they regard as the true standard of living.

According to the sociologist Luc Boltanski and Laurent Thévenot, the incompatibility between the situations in which the actors themselves are based on their representations of their actions in which they try to emphasize the concept of justice or rather the concept of the city. To model the kind of operations in which, in the disputes between them, the actors are engaged when confronted with an imperative of justification " (Boltanski and Chiapello 1999, 62).

Through our interviews with young actors from both communities, both parties try to apply justice to them by organizing a justification of the magnitude test, forcing the actors to go from strength to strength. The test of greatness in the context of the orders of magnitudes "which, so to speak, are the scales of value that actors mobilize to judge, to justify the attribution of states to people and things according to the variety of situations, in accordance with pragmatic requirements of justice and order" (Nachi 2006, 104).

Whether notable or young, the Sunni Arabs say that what drives him to compromise is to ensure the stability and safeguarding of the country's assets and the gains of independence as well as the establishment of the foundations of the revolution of independence. Moreover and despite the overthrow of which they were victims, the Mozabites recognize the gravity of the situation by trying not to train for an Algerian popular revolution from Ghardaia that will be a replica of the current of the so-called "Arab Spring" that many Arab countries know. They plead for the maintenance of state institutions and the application of institutional and security laws in order to safeguard citizens and their property. Indeed, it is about not amalgamating morale and the legal. It is a beginning for the preparation of a compromise on the main values that should govern the action (Dortier and Cabin 2010, 342).

Trade areas and the common domain

The media space

All the witnesses of the dramatic events that overthrow the city of Ghardaia and the way in which the media covered them will know that the problem is hardly easy to dissect. Despite the presence of journalists and Arab and foreign channels in the conflict, the opacity of the scene and the accusations exchanged between the two parties and the contradiction that appeared from one moment to another in the actors conflict or media professionals, suggested that the case goes beyond apparent causes. In fact, the ideological presence is so important that objectivity has been spared in the media coverage of events. This has been noted in the alignment of some channels on the side of the Mozabite Clan by giving him more space to express himself on the grounds of the violence and suggesting that it is an oppression of a minority under a cover of state security institutions. However, other chains, especially so-called Islamist channels took the part of the Arabs by showing that the Ibadi doctrine is deviant.

To this end, they have given free rein to the statements advocating the Arabs' vision that accused the Mozabites of having created this problem to attract the attention of public opinion by posing as a victim in order to be entitled to territorial cessation of Algeria, invoking as proof the repeated victory of the Kabyle FFS. They also claim that the majority of its Mozabites want to separate from Algeria and establish an independent state and hide behind the claims of political activist Ferhat Mhenni. These chains mobilized themselves by adopting a vision which falls on all the accusations on the backs of Mozabites.

In addition, there are other channels that align themselves with the Mozabites by accusing the Arabs by the publication of images of acts of vandalism suffered by businesses and property of the Mozabites. They also show the police as spectators of violence such as the attack on Molotov and stone throwing, attributed to the Arabs. Through media programs devoted to this subject, these channels try to shape the scene to give it a dramatic form in order to acquire the sympathy of the listener and to play on the feelings of other Amazigh tribes both in the country and in the country. Elsewhere. As we have already mentioned, the relationship between secondary identities remains tense, easy to degenerate.

The selectivity that marked the media coverage of the events of Ghardaia will have its motives if we resume the analysis of ideologies that have prevailed on television programs and newspaper articles. However, this does not hide the will of the opponents to conclude an agreement that will preserve the common interests of all parties through a speech by which they try to propose alternatives against violence and a return to "cohabitation" and ending the bloodbath. This is indicated in the work of Mohammed Nachi "The compromise brings together people and objects belonging to different worlds; its purpose is the common property" (Nachi 2006, 119).

During a televised debate between specialists of Ibadite and Mozabite doctrines, the speakers tried to give an image of each doctrine by demonstrating existing convergences between the two doctrines. Among other things, one of the pillars of the Association of Muslim Ulema, which has never ceased to defend the Malikite doctrine, has claimed that "the Ibadi doctrine does not differ from that of Malikite with respect to the foundations that can reach 98 %. Differences, on the other hand, only affect subsidiary questions, such as raising one's arms in prayer. This is confirmed by Mr. Mostéfa Rachoum, philologist at the University of Constantine, in the daily El Khabar (Flouri 2013).

On the other hand, Sheikh Bayouhd Sheikh of Ibadi doctrine during and before the Revolutionary War was going to Ghardaia to lecture Malikites on Malikite doctrine. In addition, the Malikite Mosque included both Malikites and Torokia. It is a temptation to reach a compromise based on the common interest in this case the Islamic Union. It shows how the Ibadi doctrine managed to preserve the union of the state and the participation of the Ibadites in the Revolutionary War by citing examples.

We note that most of the parties to the two parties in conflict have tried to reach a compromise concluded by a truce that remains precarious given the referential multiplicity. This stability is closely linked to even partial concessions for the general interest. In this regard, Olivier Abel

indicates that "the compromise remains the precarious result of a practice, with its unique actors, in a here and now singular. It is the mark of a social, political or legal coherence capable of reinventing itself in new contexts, by reinterpreting figures of past compromises."

The religious space

The mosque is the center of all social, political and social interactions in addition to religious interactions in Ghardaia which is a religious city par excellence. Indeed the majority of statements made on the minbar are considered social laws that must be respected. Thus religious discourse has been spared by social rule and the circle of conflict. This is hardly excluded if Islamic history is called "the birth of the Umayyad dynasty, religious conflicts in the first century AH, the overthrow of this dynasty by the Abbasids. As a result, this new approach to ideological and ethnic forces has led to the end of the reign of Arabs on the historical stage (Djaït 2000, 5).

By taking a historical look at the Umayyad and Abbasid era until the modern era we find that each dynasty coming to power will make the mosque a place to hinder the other dynasty. As already quoted, the circle of "Azzaba" advocated the Ibadi religious space so it framed the verbal clashes in a conflict with the Arabs who pledged themselves to adopt the statements their notables. The latter are often permanent members in religious associations of mosques. In this context, the two adversaries try to preserve their being. The concern of the Mozabites and their discourse is centered on the safeguarding of the identity threatened according to them as well as their doctrine which is in a critical situation within a society adopting the Malikite doctrine. They claim that their social classification is the fruit of sacrifices and patience a very rigorous social discipline as well as respect for religious teachings; which distinguishes them from the Arabs. In fact, their discourse is analyzed in an investment axiom, ie "knowing that because of their common humanity that identifies them as human beings, all men have equal power of access to higher states, we do not understand [...] why all the members of the city are not in the highest state. The solution to this contradiction lies in the reference to an investment formula that links the benefits of a higher state to the cost or sacrifices required to access it."

While the Arabs, the majority of whom are economically marginalized, adopt a discourse that privileges security, the rejection of violence and terrorism in favor of social justice, which is the essence of the creation of the universe. The lively religious discourse among the Sunni Arabs places them in a lower class within the axiom of the classification of greatness.

In conclusion, each party is obliged to judge the situation, but the principle of the common good in religious discourse remains the bridge over which the two parties would gain a safe place.

One of the axioms is that the common life requires compromise to materialize, Islamic societies are not excluded from this rule, as evidenced by the historical events that took place after the death of the Prophet and the conflict that took place. Took place around authority and the caliphate. This step goes through arbitration and chura. "Even if it is one of the first situations of" compromise "of the young Muslim state, dictated by the politico-religious situation of the moment, it can not be considered however as a "founding moment" in the field of compromise because it floats above these events far too much suspicion and distrust. On found nevertheless, in the Qur'anic text, an occurrence of this lexeme carrying a much more positive value. "

Conclusion

While it is difficult to overcome the structural or functional analysis of the phenomenon of sectarian conflict in the city of Ghardaia due to the interaction of political, historical, economic and social factors, the sociological analysis of the pragmatic approach of the phenomenon and the direct treatment of common sense. Different systems, trying to delve into the depth of the problems posed by individuals spontaneously or artificially each party based on its position to justify its actions and involve them in multiple worlds allow it to negotiate and dress as much justice

The situation in which all parties are present, be it Sunni, Mozabite or political, has held the question of the common good as a point of intersection to achieve reconciliation, despite its fragility, peace rather than violence.

References

- Boltanski, Luke and Eve Chiapello. 1999. *The New Spirit of Capitalism*. Paris: Gallimard.
- De Smet, Daniel. 2011. *The practice of taqiyya and kitman in Shia Islam: compromise or hypocrisy?* (in.) Nachi (eds.) *Actuality of the compromise, the political construction of the difference*. Paris: Armand Colin.
- Djaït Hichem. 2000. *The Great Discord, Religion and Politics in the Islam of the Origins*, 4 Ed, Arabic translation Kalil Ahmed Khalil Libnon, dar attaliaa.
- Dortier, Jean-François and Cabin Philippe. 2010. *Sociology, History and Ideas*. Arabic translation, Ias hassan alfarkad edition. Damascus.
- Flouri, Abbas. 2013. "Almadhab alibadhi karib min almadhab almaliki illa fi baad alfawarikalbassita." *Alkhabar*, 02/09/2013, [<https://www.djazairiss.com/352603/>] *elkhabar*, Accessed at 03/08 / 2017.
- Foulon, Brigitte. 2011. *Lexicological research on the notion of compromise in classical Arab culture*, (in.) Nachi (ed.) *Compromise figures in Islamic societies*. Paris: Karthala edition.
- Hamza, Houari. 2015. "Social Networks and the Problem of Public Space." *Journal of Humanities and Social Sciences*. University of Algeria 3, Number 20, September 2015.
- Nachi, Mohammed. 2006. *Introduction to Pragmatic Sociology, Towards a New Sociological "Style"*. Paris: Armand Colin.
- Oukad, Mohamed. 2009-2010. *Jamaat beni Mizab wa tafaoulatiha aliktissadia wa lijtimaia bimadinat aljazair awakhir alahd al othmani 1700/1830*. Thesis of magister in modern history, University of Algiers.

Forensic Investigation of Homicide or Bodily Injury of a Newborn by His Mother

Ferariu Petronela Diana

*“Alexandru Ioan Cuza” University of Iași, Faculty of Law, Romania
Legal Adviser, Company EuroAsia of Iași, Romania, dianaferariu@gmail.com*

ABSTRACT: In criminal law from Romania, the offense of homicide or bodily injury of the newborn committed by the mother is a special mode of homicide, with specific sanctioning rules in conditions of physical or psychological disorders. In our country, the term of homicide of a newborn has a narrower meaning than the term infanticide. Infanticide refers to murder a child and is considered in the laws of other states as a form of qualified murder. The homicide of the newborn does not refer to the suppression of the life of any child, but only to the homicide of his newborn by his mother, immediately after birth but no later than 24 hours. Forensic investigation involves expanded and complex activity, caused usually by the mother's actions from the moment of birth time to the moment of mutilation, hiding or abandoning the corpse. It is necessary to reconstruct the crime scene by identifying the place where the birth occurred, where the mother committed the offense, the area where the newborn corpse was discovered, parts of the body or traces that indicate that it was incinerated, buried, devoured by animals and so forth. Very important as well is the identification of the trail between the place of birth to the one where the corpse was abandoned or hidden, the place where the tools used to commit the crime were discovered, objects that were used at transporting the corpse or suppressing the life of the newborn as well as issues related to the legal medicine.

KEYWORDS: bodily injury, crime scene, forensic, homicide, infanticide, investigation, murder of a newborn, offenses committed against a family member, psychical disturbance of the mother

Introduction

Current Romanian Penal Law provides a distinct title of the infractions against the person. Through these incriminations life is protected, physical integrity and the person's health from the time of the birth to the moment his death occurs in a natural way. The offence of murdering a newborn by the mother, is a variety of murder offence committed in specific circumstances and that justifies distinct incrimination with a penal sanction attenuation. The act of homicide committed by the mother has a narrower meaning than the term of the infanticide. The latter refers to the murder of a child after 24 hours of birth and is considered in the laws of other states as a form of qualified murder (Iftenie and Boroi 2002, 99). In Romanian Law, the attenuation involves the existence of certain psychological-physiological states caused by birth, that are not equivalent with a state of unconsciousness, but they are capable of explaining, to a certain extent, the action of homicide a newborn. The legislator sanctions more easily, in comparison to the delict of murder, this type of act committed by the newborn's mother, recognizing the possibility of occurrence of such states of disorder. In order to protect the mother who has murdered her own newborn in physical or mental disorder conditions, with less discernment, from a more severe punishment, it was considered necessary to introduce a distinct article that would delimit the homicide of the newborn by the offense of murder (Vasile 2013, 107).

The victim of the offence must be a newborn having no importance if the infant is a child from marriage or outside marriage. The condition of the newborn involves the birth process. Such a process starts with specific uterine contractions, accompanied by pain and then gradual detachment of the child from the mother's body, completed with his expulsion. The newborn is considered to be the child who still carries the signs of the recent birth, but no more than 24 hours afterwards (Cristiean and Buzatu 2008, 310). In order to accomplish the offense, it is essential that the newborn be alive at the time when the murder deed is committed. It is important that the birth process is completed, that the fetus expelled and to begin a life independent of the mother's life. If the act was committed before the end of the birth process, the offense of bodily injury to the fetus will be retained. In the judicial practice in our country, it was decided that he does not commit this homicide, not fulfilling the condition that the deed should be committed immediately after birth but not more than 24 hours thereafter, the mother who murder newborn two weeks after her birth, after

discharge from the hospital regardless of the mental state in which she was at the time of committing the criminal act. The 24-hour delimitation period leads to significant consequences in terms of legal classification of the offence. A homicide or injury of the newborn is the killing or injury caused by the mother only up to the 24-hour limit (Iftenie and Boroi 2002, 101). The same offense is also sanctioned when the homicide took place during this period, but the newborn death occurred subsequently. If the 24-hour period passes, even if the state of postnatal psychiatric disorder persists, the act will no longer constitute the offense of homicide or injury of the newborn committed by the mother but the offense of murder. Determination the state of psychological disorder is based on scientific and medical data, following a forensic expertise. The mother's attitude of pursuing or accepting the result of her actions must be spontaneous, determined only by the state of psychological disorder, and must manifest itself simultaneously, within the time when that condition exists, premeditation being impossible. If the mother acted intentionally, she would be criminally responsible for committing the offense of homicide or bodily injury a newborn (Iftenie and Boroi 2002, 103).

The forensic investigation of the offense of homicide of a newborn is a very important issue as it requires a lot of attention, focus, objectivity and involvement from the entire team taking part in the investigation at the crime scene. In the case of the homicide offense of a newborn, the crime scene includes a fairly large and varied area, determined by the mom's actions from the moment of birth to the moment of mutilation, hiding or abandoning the corps. The victim's forensic characteristic in the case of homicide offense of a newborn includes the following defining signs and the research must establish the newborn condition, the lifetime of intrauterine and extrauterine life and the degree of maturity and viability of the fetus. Obstetric science considers that the length of a mature newborn is 47-62 centimeters (more frequently 50-52 centimeters) and that of premature less than 45 centimeters (Huidu 2010, 204). It is considered that the weight of a mature newborn is around the limits of 2500-3500 grams. The weight of the fetus in the 7th month of intrauterine life is between 1000-1400 grams, in the eighth month from 1500 to 2400 grams, and in the ninth month around 2500-3500 grams (Huidu 2010, 204). Viability is to be understood as the ability of the baby to survive outside the maternal body. From a clinical point of view, the fetus born in the second half of the 6th month of intrauterine life is considered viable, with a length of not less than 35 centimeters and a weight of at least 900-1000 grams, which may exist outside the body woman in special conditions (Huidu 2010, 206). The absence of a newborn child's condition leads to the different legal classification of the offence and the application of other investigative techniques than those characteristic of the offense of the homicide the newborn.

The criminal investigation team at the crime scene must reconstitute the scene of the offense by identifying the place where the child was born, where the offense was committed, the area in which the newborn's cadaver was discovered, parts of the body, or traces in which resulted it was incinerated, buried, devoured by animals and so forth (Lăpăduși and Iancu 2004, 164). Also, they must establish the mother's trail from the place of birth to the place where the newborn baby's corpse was abandoned, as well as discovering instruments, objects, containers and so forth used in the birth, packaging, transporting of the body or suppressing the life of the newborn (Vasile 2013, 110).

The criminal forensic investigation at the place of birth

A first aspect that research should make clear is the place where the child was born, was injured or homicide occurred. Following the determination of the place of birth, the criminal investigator can determine if the mother gave birth in conditions assisted by a nurse, a child whom he injured killed or abandoned immediately after birth. Although the place is not relevant to the legal classification of the offence of the homicide, its is particularly important for establishing evidence of the criminal offense of homicide of the newborn. In order to achieve the objectives inherent in the investigation of the homicide of the newborn, the limits of the space where the child was murdered (room, apartment, dwelling, courtyard, forest, field, and so forth) must be established (Bulgaru-Iliescu, Costea, Enache, Gheorghiu, Astărăstoae 2013, 604). Considering the legal provisions and the practice of the judiciary, it is argued

that the place where the crime was committed differs from case to case, in relation to the nature of the deed, with the multitude of methods and resources used for that purpose, with the specifics of the illicit activity led by the perpetrators. The notion of a crime scene in the case of a crime of homicide of a newborn child comprises a fairly diversified area, generated mainly by the actions of the perpetrator from the time of the birth and to the moment of hiding or abandonment of the corpse. For example, in the case of unassisted births by the medical nurse, due to its physiological state, the pregnant woman can not move for a longer distance place. Thus, births of this kind occur in places close to the house where the mother usually lives. Therefore, the place of unassisted birth often becomes a place of committing injury or of homicide the newborn child by his mother (Tudor 2010, 183). Among the specific traces of recent births the following can be mentioned: the presence of afterbirth on the mother's body, of blood, amniotic fluid, rupture of the perineum, the presence on the newborn body of blood traces, meconium and the vernix caseosa substance (a white cheese-like protective material that covers the skin of a fetus), signs of umbilical cord, and so forth. In the place where the birth took place bloody clothes can be found, gauze, obstetric instruments, containers used for collecting birth-related liquids, and so forth (Dermengiu, Alexandrescu 2014, 134).

At the crime scene, on the corpse and on objects that have entered the perpetrator's sphere of interest, the prints of her hands can be traced. Fingerprints can also be found on objects, instruments used by the perpetrator to commit the crime, scissors, obstetric instruments, ropes, and so forth. These traces can also be found on the objects in which the newborn was abandoned: boxes, plastic bags, bags, and so forth. In addition to papillary prints, traces of foot or footwear can also be found at the crime scene. By analyzing them, the expert can solve the following problems: determining the approximate age, waist and weight of the perpetrator, as well as her anatomo-pathological particularities. Knowing the typical information about the place where the crime of homicide a newborn happened, has a special significance for carrying out procedural, forensic and investigative-operative activities in order to investigate and fully discover the deed (Lăpăduși and Iancu 2004, 169). The objectives of the crime scene investigation are to discover, research, preserve and collect the present traces, determine the circumstances in which the offense was committed and the data to help identify the perpetrator (if her identity is unknown) (Vasile 2013, 113). The investigation at the crime scene includes a static stage and a dynamic stage. The static phase implies the research of the traces that are found there, the state of the place where the newborn body was found, the biological human traces such as birth, menstruation, breastfeeding, bleeding of various causes or other fragments of tissues or organs. It is worth noting the characteristics of wounds when they exist, the type of lesions, location, number, color, shape, dimensions, orientation, appearance of the edges and angles and their contents, as well as objects that are not to be cleaned or packed in cotton wool, so the traces are not erased (Budăi and Gavriș 2006, 44). The examination corresponds to a close collaboration between forensic doctor and criminologist. Photos of orientation, photographing of main objects and sketches should be made by the criminologists from the team. The sketches render the entire recording of the relationship between the child's body and the surrounding objects. To describe the location the cardinal points are envisaged, nearby buildings, if they are in an open space, room objects and biological traces. It must be mentioned that the place where the newborn's body is discovered does not always coincide with the place where the body injury occurred. Most of the time, the aggressor mother attempts to hide the traces of her deed, abandoning the newborn's body in a variety of places, such as garbage, canals, stairwell, trains, less populated places, and so forth.

In the dynamic stage, the objects in the investigated perimeter are examined, after which they are moved. There is an external body examination after the complete undressing. Violent injuries, biological and non-biological traces, external signs of different illnesses, particular signs and resulting from therapeutic procedures are noted (Budăi and Gavriș 2006, 46). The photographic recording of the traces and the body of the child takes place, as far as possible in color, to highlight traumatic injuries. If the child's body was dismembered by the mother in order to conceal identity or make the identification impossible, each part of the body, the place and the position in which it was found are photographed, and after reconstitution, the body is photographed in its entirety. The

probable date of death is determined, as far as possible, and the significance of the lesions of violence.

The collection, packaging and sending of evidence shall be carried out for laboratory examinations. If it is suspected that it was a mechanical asphyxiation by compressing the throat with a chain, the material evidence is raised to the extent that it is identified. If it is supposed to be a drowning, water evidence is collected. If the victim's body was buried, exhumation is required for the examination of the body by autopsy. The forensic doctor that performed the autopsy will draw up an expert report, which will contain his conclusions about the way of death, the medical cause of death, traumatic wounds pre-mortem, the mechanism of their production, the legality of criminal offences between traumatic injuries and death, results of laboratory investigations performed on the biological matter taken from the corpse and suspected discovered substances, the biological traces found on the body of the newborn, the probable date of death, and any other elements that may contribute to the elucidation the case.

Forensic examination of the mother

The status of the mother, which the law requires, must be established by the criminal investigation authority each time. The jurisprudence demonstrates, within the research, that the most frequent homicide offense or injuring of newborn is committed under the conditions of an unassisted birth by a medical nurse, which excludes the certificate of the birth, capable of contributing to the identification of the perpetrator. It is of great importance to clarify this aspect of the obstetrical examination of the mother. In some situations, women suspected of committing the crime of the newborn are detected at relatively short intervals, and it is possible to find the signs of the recent birth. Other times, the examination is done at longer intervals, favoring the finding of multipara signs (women who have had more than one pregnancy). It has to be demonstrated whether the suspect woman gave birth or not, for example she fulfills the mother personal circumstances, from a legal point of view and whether she was in the childbed period, from a medical point of view (Dermengiu and Alexandrescu 2014, 136).

The forensic expertise of the woman suspected of committing a crime of killing a newborn involves three stages. Forensic examination is made in order to establish the retrospective diagnosis of pregnancy and childbirth, how the child was born and the following period. During the clinical examination of the mother, a general clinical examination, a genital examination, and an examination of products and objects found at the place of birth will be performed. General clinical examination will be carried highlighting the characteristic changes in pregnancy (hyperpigmentation, breasts raised in volume, presence of colostrum secretion in the early days, dairy secretion after 2-4 days, recent stretch marks with a rosy color, old stretch marks are white pearl shades). In the genital examination, the uterus involution will be highlighted, with an average rate of 1.5-2 centimeters a day. There may be cases of super involution, at a rate of over 2 centimeters a day, or underinvolution, at a slow rate of less than 1.5 centimeters per day. In the first hours, the uterus is reduced to the size of a pregnancy corresponding to the fourth month, after 12-16 days the pelvic organ is recovered. Within 5-6 weeks, the uterus returns to the usual shape and volume and the cervical canal is wide open for the first 3-5 days (Beliş 1995, 399). The inferior segment of the uterus returns to isthmus to 5-6 days with the permeable holes, the external opening is wide open, edematous, with small fissures after the first 2-3 days. The internal opening allows the penetration of a finger, and the external one in the transverse slot with some lateral edges permits the penetration of 1-2 fingers. The cervix with the internal opening closed and the external opening extensible allows the penetration of a finger to 10-12 days. The cervical canal has normal size at 12-14 days, and the external opening is completely restored after 14-16 days (Beliş 1995, 399). The vaginal canal is wide in the case of women with multiple births, the vaginal walls are extensible, the folds are wiped, and the mucus is purple. The intact hymen is an absolute proof of the lack of birth on vaginal way. The perineum may show ruptures or scars. The scarring of perineal ruptures is carried out and at the end of the first week, the granulation tissue appears. Colostrum occurs after birth as a mammary secretion and is replaced by dairy secretion after 5-6 days. The breast milk occurs 5-6 days after birth and lasts after the childbed period too. If the woman will not breastfeed, mother's secretion will gradually decrease, going to disappear after 8-10 weeks (Beliş V., 1995).

400). In laboratory examinations, biological pregnancy tests remain positive up to 10 days after birth, and the smear of mammary secretion reveals muriform corpuscles.

As for the examination of the products and objects found at the place of birth, the placenta will be revealed, umbilical cord, amniotic fluid, meconium, blood stains, and so forth. Maternal death after giving birth exclude the criminal action for the act of homicide of the newborn. For this reason, it is necessary to evaluate pregnancy or birth signs of the body. These signs involve macroscopic and microscopic visceral changes, placental and ovarian remnants or the presence of dead fetus in the uterine cavity. In this situation, the fetus may be mummified, reduced in volume in the absence of amniotic fluid and yellowish-brown color (Iftenie and Dermengiu 2014, 495). In the 5th-6th months, the fetus may pass a maceration process, the tissues are soaked with serosity, the skin is brown, covered with fistulae containing a reddish serotype. It should be noted that in the 7th month the umbilical cord reaches 40 centimeters, and at birth 47-52 centimeters. The premature fetus has no hair but lanugo (lanugo is hair with a puffy look). The newborn also has secondary hair, 2-3 centimeters long (Dermengiu and Alexandrescu 2014, 342).

Psychiatric forensic examination of the mother

The psychiatric forensic examination will be carried out immediately after birth in order to determine the psychiatric disorders that could have caused the offense of homicide of the newborn or, if it is impossible, at an undetermined interval after birth, for reconstitution, on the basis of the case files and the circumstances in which the child was born, any psychiatric disorders that caused the act to be committed. The examination must be complete and detailed and is considering basic psychic functions. It is of an overwhelming importance because it captures the psychological picture of the perpetrator and the psychic state that he had at the time of committing a crime. The psychiatric forensic examination is mandatory in the case of homicide or injuring the newborn child or the fetus by the mother. The psychiatric examination follows the etiology of the woman's mental disorders during childbirth. They can be systematized in pathological conditions related to pregnancy and its development, psychiatric disorders in pregnancy toxicology, confusing states through cerebral anemia due to hemorrhage, mental disorders accompanying the obstetrical act, pre-existing latent psychiatric conditions and triggered or aggravated by pregnancy, birth or psychosis (Dragomirescu, Hanganu and Prelipceanu 1990, 80).

Starting from the premise that the psychiatric expertise has as objective the establishment of a person's mental state, it can be noticed that in the case of investigating and judging the crime of homicide or bodily injury of the newborn, the main purpose of the expertise is to prove the state of psychological disorder in which the mother was at the time of injuring or homicide the newborn child. In the investigation of the offense, the psychiatric expertise should clarify whether there was any mental illness, the causation between the psychological disorder and the committed criminal activity and the fact of whether his mother was found, at the time of birth, in a state of disorder caused by it (Dragomirescu, Hanganu and Prelipceanu 1990, 81). From a medical point of view, it is accepted that any birth causes profound changes in the body of the woman. In the notion of psychological disorder, elements and facts have to be taken into account which have as a consequence of exacerbation the special mental states, relating to in some cases to the process of birth. For legal classification of the offence it is necessary to establish with certainty the existence of the mother's disorder at the time of committing the deed. The expertise should be complex, to contain psychological tests and decide on the structure of the personality of the examined woman (Ionescu 1997, 205).

In order to obtain conclusions within the psychiatric expertise performed on the investigated mother, the competent judiciary bodies must collect data including the social and family conditions of the subject under the examination, as well as the medical history of the subject. In jurisprudence, on the occasion of performing psychiatric expertise, in many situations there have been identified conditions related to limited intellect, abolished maternal instinct, oligophrenia of varying degrees of severity or impulsive psychopathy, these being envisaged in the determination of the state of disorder during childbirth. The conclusions of the forensic expertise report, first, it must specify the basic diagnosis and diagnosis of the suspect or defendant's current state, with the exclusion of

simulation (Vlădoiu 2007, 236). The report should also include the essential features of the personality of the person being examined, reflected in the diagnosis mentioned and the deviant behavior, as well as the disorder that characterizes the current state. It is worth mentioning the evolutionary stage of these disorders, whether or not they are episodic, whether they were triggered at the time of committing the deed and whether they pose a risk of aggravation or become chronic. Last but not least, the report should mention whether, through the pathological traits and personality and behavioral disorders, favored by exogenous or endogenous factors, the perpetrator presents a social or potentially criminal danger, which may also be the basis of the argumentation of the proposed preventive and recovery measures. The conclusions must also mention the causation between the features, personalities or main manifestations of the mental illness and the constituent elements of the offense, and whether these psychopathological disturbances or manifestations alter the discernment (Vlădoiu 2007, 238). The most important aspect in the psychiatric forensic examination report should clarify whether at the moment of homicide or injuring the newborn, the mother was in a state of psychological disorder or not, because otherwise she will not be detained liability for the offense of homicide or injuring the newborn, but for the crime of murder or injury. Women who have homicide newborns, often suffer from anxiety and depression. Anxiety usually occurs as a reaction to stress or other complex pathological disorders. It can often cause diminishing the individual's intellectual performance, leading to behavioral disturbances and even criminal behavior (Cartwright 2010, 167). In order to differentiate the offense of homicide or bodily injury of the newborn from the murder offense, the investigation must make clear whether or not the mother who has killed the newborn child immediately after birth, but not later than 24 hours, is or not in a state of birth-related disorder.

The forensic expertise of the newborn

Concerning the clarification of the cause of injury or death, it is of particular importance if we consider that it is one of the indispensable conditions for the crime of homicide of the newborn. For the offense of homicide of the newborn, it must be clear from the evidence's element that the injury or death is violent and is because of the action/inaction made by the mother. The aptitude of the act of violence to suppress the life of the newborn child is deduced from its materiality, including: the instrument used and considered killing, the large number of strokes applied, their intensity and their orientation to the vital regions of the victim's body, and so forth. In the case of an offense of homicide or bodily injury of the newborn, given the child's fragility and total dependence on the person who has given birth to him, the actions used against the victim are usually of lower intensity (Dungan, Medeanu and Pașca 2010, 148). At the same time, the research needs to clarify whether it is an accidental death or homicide of a newborn. In this regard, the forensic doctor must conduct a thorough examination to determine whether or not the signs of a violent death are present, and the causes of the triggering, determining whether death is accidental or provoked.

Diagnosis of children born at term

The diagnosis of children born at term is based on some morphological elements. In terms of weight, at birth the girls must have approximate 2800-3200 grams and the boys 3000-3500 grams. Girls have to measure 48-51 centimeters and boys 50-54 centimeters. If they are less than 45 centimeters, they are considered premature. The cranial perimeter should measure about 35 centimeters and the thoracic perimeter approximate 31 centimeters (Moraru 1967, 461). The skin should be pinkish, elastic, lanugo (hair very thin, soft, usually unpigmented) on the forehead on the forehead and and vernix caseosa substance on the body. The hair has 1-3 centimeters, and the fingernails exceed the finger pulp. External genital organs are normally conformed, with testicles in scrotum, the closed vulvar slit and the large labia covering the small ones. From the third month, the embryo becomes a human fetus, and in the last three months of pregnancy the external appearance undergoes major changes, the disproportion between the head and the other segments diminishing centimeters (Ioan 1967, 466). Age can be calculated by the length of the fetus, after the identification of the ossification nuclei or after the appearance of the dental

alveoli. In the sixth month, the alveoli of the incisors begin to form, and in the seventh and eighth month the molars are formed.

The case of homicide or bodily injury of newborn committed by the mother

In the case of assisted birth by the medical nurse, in terms of violence on the newborn, round or oval shaped bumps and semilunar excisions can occur on the scalp, at the facial and cervical. In contrast, injuries from criminal asphyxia by strangulation are unevenly located, having an irregular shape. Other traumas may consist of rupture of the buccal walls, facial lesion and the production of semilunar echinoses mimicking nails, clogging of the eyeball through digital pressure, cervical damage by hyperextension, cranial fracture produced by pressing the two parietals and last but not least a jaw fracture in the medial portion (Tudor 2010, 182).

In the case of homicide committed by the mother, a forensic autopsy of the fetus or newborn is ordered. A forensic autopsy of a fetus is ordered to establish intrauterine age, extrauterine survival ability, the type and cause of death, and the establishment of parentage when required. The forensic autopsy of a newborn is ordered to determine whether a living child was born and to determine the viability, duration of extrauterine survival, the way and cause of death, the date of death, and whether medical care were given after birth. The objectives of this operation are general and specific. The general considerations are whether the newborn is of the presumed mother, whether it was born alive, whether the death occurred immediately after birth, the duration of the extrauterine life, the quality of care given to the newborn, the precise setting of the date and the type of death, as well as establishing the traumatic lesions of the production mechanism and their causation with death. The specific objectives are to demonstrate the existence of extrauterine life and the violent nature of death (Scripcaru, Astărăstoae and Scripcaru 2005, 112).

Externally, the fetus or newborn's body will be examined, as well as the textile material used for its wrapping, the packaging it will be described and any of the evidences. These are collected as biological proof for forensic and serological-genetic analysis. Identification and customization take place, mentioning the gender, height, weight, gestation age, extrauterine life, and other anatomical features that the forensic doctor appreciates. Then the signs of the real death are noted, such as lividity and stiffness postmortem, and signs of putrefaction. The body is weighted and measured. Weight is appreciated taking into account the dehydration processes through which the fetus has passed. The unviable fetus, which after the first seven months did not reach 1000 grams, is considered abortion (Dermengiu and Alexandrescu 2014, 331). The head size is mentioned, cranial diameter and circumference, circumference of the chest and abdomen, bihumeral, bitrohanterian, and bicistar diameters, and the distance between the xifoid appendix and the umbilical ring and the distance from the umbilical to the pubis. The umbilical cord insertion level on the abdominal median line is lower for the low age fetus. The external exam records the appearance of the skin, with hairs or hair with a look of puff on the back and on shoulders at fetuses and premature babies. In the case of prematures, the nails of the upper limbs do not cover the finger pulp. The subcutaneous tissue is poorly represented, the head is small, the face is triangular, the abdomen is voluminous, and the chest is enlarged at the base. Meconium is present at the newborn. Also, in the external examination, the existence of possible deformations should be mentioned, the length of the hair, the condition of the oral cavity, the consistency of the nasal cartilage and pavilions of the ears, the presence or absence of the testicles in the scrotum or if the big labia covers the small ones. The umbilical cord should be described in detail, with the indication of its length if it is attached to the placenta and what is the general appearance. The newborn recently has a consistent pearly white cordon. In case of death by intrauterine asphyxia, the umbilical cord is greenish and impregnated with meconium. Its end may be cut or broken. The umbilical plaque is scarred after about 2 weeks. On the placenta, the shape, face aspect, diameter, weight, color, consistency and structure should be described. It should be specified if it is completely removed or attached via the cord to the fetus and the mature newborn should have 500-550 grams (Moraru 1967, 464).

The external examination is performed on anatomical regions. In the facial the eyeballs are envisaged. On a premature newborn child, the pupillary membrane is rich in capillary and it

disappears in the eighth month of pregnancy. In the cases of death under 24 hours, the cornea is opalescent. In the auricular region, secretions may appear in the external auditory conduit. As for the anal region, the permeability is tested with a probe. On boys, the testicles penetrate into the inguinal canal in the 7th month, being present in scrotum in term. The bone system targets skull skeletal mobility in dehydration and aerated fetus the dehiscence of sutures in obstetrical trauma, and possible malformations such as hydrocephalus or meningocele.

The internal exam begins with an anterior medial incision, cranio-caudal, at the level of the lower lip, lowering the neck, chest and abdomen. Determining the medical cause of injury or death of the fetus or the newborn. According to the way of death, intrauterine deaths are divided into violent deaths and nonviolent deaths, the violent ones can be accidental or homicide. They may be due to mechanical factors such as traumatic injuries to the pregnant or fetus, physical factors such as irradiation, burns with hot liquids or with flame or chemical factors, such as poisoning. In the seventh month, strong abdominal trauma can affect birth. A differential diagnosis of the lesions due to obstetric maneuvers must be made in relation to those resulting from acts of violence. If there has been a non-violent death, there may be general maternal causes such as pneumonia, viral infection, malaria, syphilis, cardiopathy, local maternal causes, fetal causes such as placental stroke or twisted umbilical cord and so forth. During pregnancy, it may be a pathological death or a death in consequence of the traumas suffered (Budăi and Gavriș 2006, 78). The Following maternal and fetal causes, death can be due to infections, uterine and vaginal malformations, fetal edema, macrosomes, placental detachment, risk of massive amniotic fluid aspiration, or umbilical cord pathology. At birth, asphyxia may occur during normal labor as a result of uterine contractions with a decrease in gas exchange. Postpartum death of the newborn may be due to a pathological cause or to the violence suffered. Aggression exerted on it involves mechanical asphyxia by obstruction of breathing holes by hand or with a textile material, drowning in lakes or rivers, burial in sand or ground, mechanical asphyxia toraco-abdominal compression, asphyxia by inserting a child in plastic bags or exposure to high temperatures or electric shock. The medical examination of the newborn body must meet the general and specific objectives. It must be settled down whether the newborn belongs to the presumptive mother, if it was born alive, if the death occurred immediately after birth, the duration of the extrauterine life, the quality of care, the date and cause of death, the traumatic lesions, the mechanism and their causation with death (Beliș 1995, 412). Essential in homicide offense or bodily injury of newborn by his mother, is the demonstration of extrauterine life. The most important criterion is the achievement of lung breathing. It does not matter if the newborn has completely detached or not from the mother's body, if the umbilical cord has been removed or the placenta has been expelled.

Methods of homicide or bodily injury of newborn

In forensic practice, the notions of homicide or injuring the newborn, active and passive, are used. Homicide or injuring active newborn indicate, according to statistics, the most commonly used method is asphyxia in various ways, used in 48.5% of cases. In most cases, there are no traces of violence, only the general signs of asphyxia, which require certification through a histopathological. Asphyxia by introducing foreign bodies into the mouth and pharyngeal appears in 4% of cases. Foreign bodies can be clothes, cotton, paper, toys, identified in their entirety or in the form of fragments in the oropharynx (Cartwright 2010, 177). In many cases, there are also traces of violence in the form of bruising/ecchymosis, excoriations or erosion on the mucous membranes. Suffocation occurs less frequently, by burial in the ground. The hypoxic process is prolonged, in the respiratory apparatus grains of sand being identified, soil, or other foreign bodies. Strangulation is present in 7% of cases, being committed with soft objects such as scarf, handkerchief or harsh and semi-rigid chains, belt, or wire, and so forth. Toraco-abdominal compression occurs in 3% of cases. The drowning of the newborn occurs in 13.5% of cases. Repeated injuries with hard objects in the cephalic extremity was found in 12% of cases. The hitting is usually multipolar with multiple hematomas and fractures and it is accompanied by meningeal haemorrhage. The homicide of the newborn by/through physical factors, burning or scarring of the newborn occurs in very rare cases, and the one committed by poisoning does not appear in the

statistics. Passive homicide or injuring the newborn is manifested by abandoning of the newborn under cold conditions or the abandonment of the newborn in isolated places after birth.

Conclusions

Forensic medical and medical-social studies in cases of homicide or bodily injury of a newborn by his mother, as well as experimental research, allow conclusions to be drawn that represent the essence of all the research on the offense of homicide of the newborn over the years. The place where the woman lives or the environment in which she spends her daily life has a decisive influence on the number of facts that happen in our country. Inhuman living conditions refer both to the inherent shortcomings of any critical situation and to the affective state of the mother. Similarly, the problem of those who do not have a job is questioned, this aspect generating an insufficient moral balance, being a factor of negative influence. Following the statistical surveys conducted, was concluded that two thirds of the perpetrators are very young women, many of them even minors and without occupation. The lack of training, both in the family and in society, on sexual life leads, to homicide deeds. In examining the causes that have led to the homicide or bodily injury of a newborn, forensic expertise has a particularly important role. This important role is conferred by the existence of a complete dossier showing all the phases and means used as accurately and objectively as possible. However, the homicide or bodily injury of a newborn by his mother is difficult to investigate, due to impediments to determining the cause of death, of the probation regarding the viability of the newborn or to establishment the death of the newborn immediately after birth but not later than 24 hours.

References

- Beliș, Vladimir. 1995. *Tratat de medicină legală-volumul al II-lea (Treatise in Legal Medicine-Volume II)*. Bucharest: Editura Medicală Publisher.
- Budăi, Remus, Gavriș Radu. 2006. *Ghidul anchetatorului de omoruri (Guide to the Murder Investigator)*. Pitești: Argessis Print Publisher.
- Bulgaru-Iliescu, Diana. Costea, Gabriela. Enache, Alexandra. Oprea, Liviu. Gheorghiu, Valentin. Astărăstoae, Vasile. 2013. *Expertiza Medico-legală psihiatrică. Abordare interdisciplinară (Forensic Psychiatric Expertise. Interdisciplinary Approach)*. Iasi: Timpul Publisher.
- Cartwright, Duncan. 2010. *Minți criminale-Psihanaliza violenței și crime (Psychoanalysis, Violence and Rage-Type Murder. Murdering Minds)*. Bucharest: Trei Publisher.
- Cristian, Victoria. Buzatu, Nicoleta-Elena. 2008. "Pruncuciderea. Aspecte de ordin juridic, criminalistic și medico-legal". In România – Uniunea Europeană. De la aderare la integrare, vol. I. ("Infanticide. Aspects of Legal, Forensic Science and Forensic Medicine". In *Romania - European Union. From accession to integration*). Bucharest: Pro Universitaria Publisher.
- Dermengiu, Dan. Alexandrescu, Gheorghe. 2014. *Medicina legală prosecturală (Forensic Medicine)*. Bucharest: Viața medicală românească Publisher.
- Dragomirescu, Virgil. Hanganu, Octavian. Prelipceanu, Dan. 1990. *Expertiza medico-legală psihiatrică (Forensic Psychiatric Expertise)*. Bucharest: Medical Publisher.
- Dungan, Petre. Medeanu, Tiberiu. Pașca, Viorel. 2010. *Manual de drept penal. Partea specială. Infrațiuni contra persoanei vol. I (Criminal Law Handbook. The Special Part. Crimes Against the Person Volume I)*. Bucharest: Universul Juridic Publisher.
- Huidu, Alexandra. 2010. *Reproducerea umană medical asistată (Medical Assisted Human Reproduction)*. Iasi: Lumen Publisher.
- Iftenie, Valentin. Boroi, Alexandru. 2002. *Infrațiunile de lovire și vătămare a integrității corporale sau a sănătății. Cadrul juridic. Aspecte medico-legale (Offenses of Bodily Injury of Integrity or Health. Legal Framework)*. Bucharest: Editura Juridică Publisher.
- Iftenie, Valentin. Dermengiu, Dan. 2014. *Medicină legală. Curs universitar, ediția a II-a (Forensic Medicine. University Course, 2nd Edition)*. București: C.H. Beck Publisher.
- Ioan, Moraru. 1967. *Medicină legală (Forensic Medicine)*. Bucharest: Medicală Publisher.
- Ionescu, George. 1997. *Tulburările personalității (Personality Disorders)*. Bucharest: Asklepios Publisher.
- Lăpăduși, Vasile and Iancu Ștefan. 2004. *Investigarea criminalistică a locului faptei (Forensic Investigation of the Crime Scene)*. Bucharest: Luceafărul Publisher.
- Scripcaru, Gheorghe. Astărăstoae, Vasile. Scripcaru, Călin. 2005. *Medicina legală pentru juriști (Legal Medicine for Legal Adviser)* Iași: Polirom Publisher.
- Tudor, Georgiana. 2010. *Răspunderea juridică pentru eroarea medicală (Legal Liability for Medical Error)*. Bucharest: Hamangiu Publisher.

- Vasile, Viorel. 2013. *Investigarea și cercetarea infracțiunilor îndreptate împotriva vieții, integrității corporale și sănătății persoanei (Investigation of the Crimes Against the Life, Body Integrity and the Health of the Person)*. Bucharest: Ministry of Internal Affairs Publisher.
- Vlădoiu, Nasty Marian. 2007. *Protecția constituțională a vieții, integrității fizice și a integrității psihice (Constitutional Protection of Life, Physical and Mental Integrity)*. Bucharest: Hamangiu Publisher.

An Investigation of Self-Efficacy and its Relationship to College-Going Self-Efficacy Among Middle School Students

Yajaira Fuentes-Tauber

California Coast University, Santa Ana, CA, United States, yfuentes.tauber@gmail.com

ABSTRACT: For many decades, policy makers have struggled in closing the academic achievement gap present in schools across America. Most recently charter schools were integrated into federal law as one of many approaches to narrow the academic achievement and attainment gaps. Previous research has shown that there are differences in self-efficacy beliefs and that these beliefs can help account for the academic achievement and attainment differences that exist. Furthermore, with post-secondary goals and choices often made before students are upperclassmen in high school, middle school is the prime time for decisions. This study used an empirical research approach method to investigate the self-efficacy scores of students and its relationship to college-going self-efficacy using two research instruments: Bandura's Children's Self-Efficacy Scale, a questionnaire used to measure students' confidence on school-related tasks, and Gibbons and Borders' College-Going Self-Efficacy Survey, a questionnaire used to measure students' confidence on college related tasks. The results of the Pearson Correlation revealed a strong positive correlation between self-efficacy and college-going self-efficacy scores.

KEYWORDS: self-efficacy, college-going self-efficacy, middle-school, charter school, academic achievement gap, attainment gap

Introduction

In the United States, citizens are blessed that all children have the right to receive equal access to education (National Education Association 2015; United States 1965). However, despite educational initiatives at the federal, state, and local levels and even though students should have an equal opportunity to education regardless of their gender or ethnic background, in reality, they do not (National Center for Educational Statistics 2012; National Education Association 2015). The problems presented by the academic achievement gaps between students of different ethnicities and gender have "deprived the U.S. economy of as much as \$2.3 trillion in economic output in 2008" (Auguste, Hancock, & Laboissiere 2009, para. 1).

A Nation at Risk (United States 1983) sounded the alarm that the United States educational system was failing to educate students and therefore lagged behind that of other countries around the world. One of the solutions to the failure of public schools in the U.S. arising from the report by The National Commission on Excellence in Education was to add school choice in the form of charter schools (Peterson 2016). Unlike private schools, charter schools are public and therefore must accept applicants of all demographics. With charter schools being the "fastest-growing choice option in the U.S. public education," they are prone to experience similar challenges in closing the academic achievement gaps (National Alliance for Public Charter Schools 2015, p. 2). According to the NEA's report by McLaughlin (2016), 30% of charter schools have been classified as having low graduation rates with the national average graduation rate being 15% lower than that of regular high schools.

Charter schools have been able to develop innovative curriculum, because unlike public schools, they are able to "structure their own curriculum and school environment" (Angrist, Cohodes, Dynarski, Pathak, & Walters 2013, p. 7). The National Center for Education Statistics (2017) reported that schools are experiencing an increase in student ethnic diversity and an increase in females enrolling in school. Now the question is how the curriculum could equally and positively impact all students enrolled at these charter schools regardless of their demographics. As charter schools become more diverse, some demographic subgroups might need more support than others in order to be convinced of their potential. This may be by means of boosting their self-efficacy as

well as by nurturing their academic potential in order to support the closing of the academic achievement gaps.

The present study investigated the potential effects of gender and ethnicity on self-efficacy and its relationship to college-going self-efficacy. Gender and ethnicity served as the independent variables for this study and perceived self-efficacy and college-going self-efficacy scores served as the dependent variables investigated in this study. Furthermore, with post-secondary goals and choices often made before students are upperclassmen in high school, middle school is the prime time for decisions and therefore this was the group of interest investigated (Hossler, Schmit, & Vesper 1999). To gain a better understanding of students' beliefs and confidence in their abilities to succeed, this study used both Bandura's Self-Efficacy Survey (2006) and Gibbons & Borders' College-Going Self-Efficacy Survey (2010).

Background Information

In the last three decades, evidence points to self-efficacy as an influential factor in students' lives, impacting academic achievement and other measures student success (Karaarslan & Sungur 2011; Merritt & Buboltz 2015). As an indicator of motivation and perseverance towards reaching a goal, self-efficacy has been a recurring predictor for students' academic success (Bandura, Barbaranelli, Caprara, & Pastorelli 2001). For example, in Turcios-Cotto and Milan's (2013) study, Latino students were found to be less likely than other minorities to endorse or picture themselves continuing their education in the future as indicated by their levels of self-efficacy.

Self-efficacy theory has roots in Bandura's social cognitive theory (1986) which defines self-efficacy as a person's belief in one's abilities to succeed or accomplish tasks and goals. Research suggested that self-efficacy directly affects motivation and persistence and therefore the type of goals and expectations individuals will set for themselves (Bandura 1997; Kim 2014). The degree of self-efficacy drives students' goal orientation, which translates into effort and academic performance and serves as a predictor for academic attainment. Although self-efficacy is influenced by several factors (Bandura et al. 2001), researchers have found that self-efficacy can be enhanced and regulated and follows students throughout their educational career (Caprara et al. 2008).

The belief that one can be successful or unsuccessful at any task is the result of the components that make up self-efficacy. Bandura (1997) described self-efficacy as coming from four major sources: mastery experiences, social modeling, social persuasion, and psychological responses. Research supports Bandura's theory about the importance of successful or mastery experiences which strengthen self-efficacy (Cantrell et al. 2013; Fong & Krause 2014; Lopez, Lent, Brown & Gore 1997). A student who successfully completes tasks will have a boost in self-efficacy. According to Bandura (1994), observing a peer relatively similar to oneself be successful in similar tasks also causes a boost in self-efficacy. Research further asserts Bandura's (1997) concept of social persuasion is a significant influence in self-efficacy through giving individuals a boost in helping them to believe they possess the skills and abilities necessary to be successful in accomplishing a specific task (Chin & Kameoka 2002; Wang & Pape 2007). Therefore, receiving encouragement from others whether it be from parents, friends, or teachers helps individuals strengthen their self-efficacy. Furthermore, an individual's attitude, if positive, can boost their degree of self-efficacy, while on the other hand, they may experience a decrease in self-efficacy in stressful situations (Bandura 1994).

Self-efficacy has been recognized to influence a person's engagement decisions, efforts exerted to successfully complete a task or goal, and persistence (Bandura 1986). Consequently, self-efficacy plays a pivotal role in an individual's goals and the approaches taken to accomplish these goals throughout their lifetime. As shown by their persistence to reach success, individuals with high levels of self-efficacy are more likely to engage in more challenging tasks and meaningful goals and to remain committed to attaining their goals (Bandura 1989; Schunk 1990; Zimmerman, Bandura, Martinez-Pons 1992). What is more concerning are the implications of low levels of self-efficacy in students given the links to achievement. The beliefs that feed one's self-efficacy form in childhood, beginning with parental influence (Bandura et al. 2001) and can be enhanced and

nurtured over time (Cantrell et al. 2013; Chin & Kameoka 2002; Fong & Krause 2014; Lopez et al. 1997; Wang & Pape 2007).

However, Bandura's (1986) construct of self-efficacy established that self-efficacy is domain specific, and therefore assessing students' beliefs about specific tasks should be evaluated separately from their perceived self-efficacy scales. In his guide for constructing self-efficacy scales, Bandura provided the guidelines for researchers to develop self-efficacy scales, a challenge taken up by a few researchers such as Gibbons and Borders (2010). In order to evaluate students' beliefs about attending college, Gibbons and Borders (2010) developed a scale used to measure students' self-efficacy related to completing college-going tasks, such as getting accepted into college, finding the means to pay for college tuition, and earning good grades. Self-efficacy is a concept that continues to be explored as new scales are developed and new links are found between self-efficacy and increased academic achievement (Buchanan & Selmon 2008).

Participants and Methods

The population from which the sample was drawn were all middle school students at a charter school located in a rural area of the Colorado Front Range Corridor. The sample consisted of 89 subjects of which 34 were in sixth grade, 28 in seventh grade, and 27 in eighth grade. Table 1 represents the distribution of subjects by grade level. The sample included 56 females and 28 males. Of the subjects, 27.38% indicated to be other than non-Hispanic white students.

Table 1. Distribution of Subjects by Grade Level

	<i>N</i>	%
6 th grade	34	30.20
7 th grade	28	31.46
8 th grade	27	30.34
TOTAL	89	100

The Children's Self-Efficacy Scale created by Bandura was used to measure confidence based on students' belief in whether they possess the skills and abilities to carry on a task or activity (Bandura 1997). The scale is composed of 55 items which address self-efficacy in the areas of: a) enlisting social resources, b) academic achievement, c) self-regulated learning, d) leisure time skills and extracurricular activities, e) regulatory efficacy, f) meeting others' expectations, g) social self-efficacy, h) self-assertive efficacy, and i) enlisting parental and community support. For each item, the participants rated their degree of confidence in accomplishing each task. A scale from 0 to 100 with 0 indicating *cannot do at all* and 100 indicating *highly certain can do* was used to measure students' perceived ability to complete each of the tasks listed. An example of an item included in the scale questionnaire is the student's ability to "live up to what my parents expect from me" (Bandura 2006, p. 326). Multiple studies with various population samples and settings have demonstrated an acceptable consistency level of reliability and validity in items from the Children's Self-Efficacy Scale (Bandura et al. 1996, 2001).

The CGSES was used to measure students' self-efficacy when completing college-going tasks such as getting accepted into college, finding the means to pay for college tuition, and earning good grades in college. This instrument consists of 30 questions and includes two sections: 14 attendance questions and 16 persistence questions. All of the questions in the CGSES follow a 4-point Likert-

type scale ranging from 1 = *not sure* to 4 = *very sure*. The possible composite score ranges from 30 to 120 with higher scores indicating a higher self-efficacy for post-secondary success.

Research Findings

A Pearson Correlation was conducted to assess the relationship between general self-efficacy and their beliefs about college by using students' survey scores on the SES and college-going self-efficacy (CGSES). The data analysis came from students with both SES and CGSES scores ($N = 88$) and was analyzed using Microsoft Excel Analysis Toolpack. The correlation test revealed a positive correlation ($r = .38$) between the students' scores on the SES ($M = 4176.55$, $SD = 775.96$) and CGSES scores ($M = 110.24$, $SD = 9.85$). A correlation of 0 would have represented no relationship between the SES scores and the CGSES scores. In order to reject the null hypothesis a positive or negative r-value was needed to establish the strength of the relationship. The value produced by the Pearson Correlation was $r = .38$ with a $p < .001$; therefore, the null hypothesis was rejected. There was a relationship between the students' self-efficacy scores. See the Correlational Scatterplot in Figure 1.

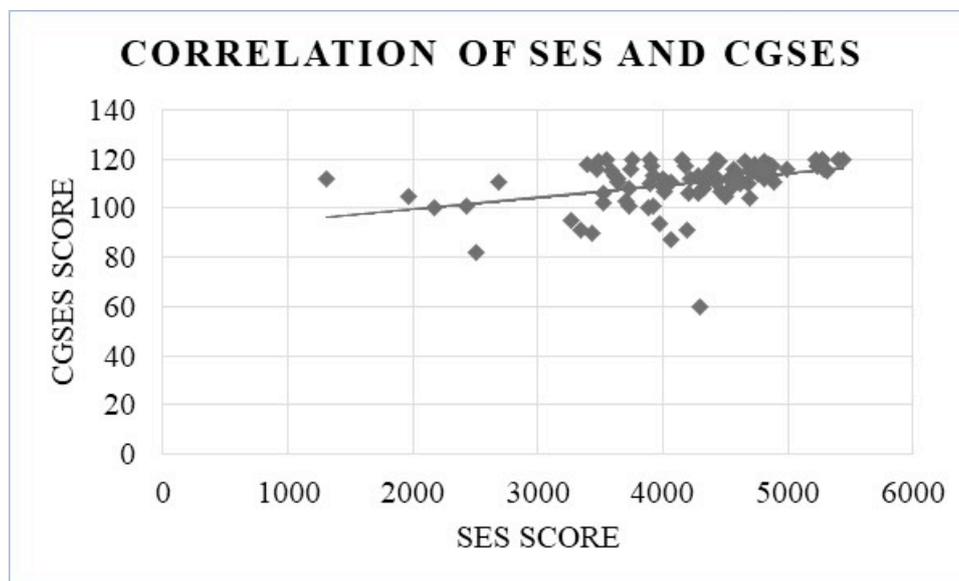


Figure 1. Correlation of scores on SES and CGSES. This figure illustrates the positive correlation between students' SES scores and CGSES scores.

After establishing that a relationship existed between SES and CGSES, [$r = .379$, $N = 88$, $p < .001$], the r-value was used to calculate Cohen's standardized effect size to indicate the magnitude of the effect of SES and CGSES on each other. The value produced by the standardized mean difference calculation was $d = .8216$. According to Cohen's standard a value of .80 or higher indicates a strong or a high association between the two variables investigated. The effect size for this analysis ($d = .8216$) was found to exceed Cohen's convention for a large effect ($d = .80$) thus suggesting that a strong positive relationship exists between SES ($M = 4176.55$, $SD = 775.96$) and CGSES ($M = 110.24$, $SD = 9.85$).

Therefore, the Pearson Correlation and Cohen's standard value revealed a strong positive correlation between the SES and the CGSES scores [$r(87) = .38$, $p < .001$]. This showed that students' current self-efficacy level was correlated with their beliefs for their future in college. Therefore, students who showed to be more confident engaging in middle school-related tasks in general had more confident beliefs in their ability to succeed in college.

Conclusions

Educators and those in school decision-making positions, as well as educators, need to better understand students' education beliefs and the factors influencing these beliefs in order to design lessons and

intervention programs around students' needs. The data collected using the scores from the SES and CGSES suggested that there is a correlation between self-efficacy scores and college-going self-efficacy. The findings hold potential in helping more students improve their self-efficacy scores. With higher self-efficacy scores, students may be able to view obstacles as challenges they can overcome rather than a stop to their goals (Bashant 2016). Hossler, Schmit, and Vesper's (1999) research indicated that post-secondary goals and choices are often made before students are upperclassman in high school. Therefore, middle school is the prime time in helping students' general self-efficacy beliefs as well as self-efficacy beliefs about college. If students believe in their ability to succeed in educational goals, they may be more likely to pursue a post-secondary education.

The self-efficacy surveys also revealed how students view the factors that contribute to their education. An individual analysis of all survey statements showed that students' academic achievement portion of the self-efficacy which assesses students' belief in their ability to learn multiple disciplines such as algebra, science, and social studies was higher than their belief in obtaining academic and social support. Because family involvement, social persuasions, and psychological and affective states have been linked to self-efficacy scores and achievement, these are areas that need to be addressed to help students as they face challenges with the appropriate resources to overcome these challenges (Carlton & Krause 2014; Kim 2014). Educators perhaps may assume that students view their abilities to accomplish a task or a goal in a certain way, but students need the opportunity to express their true beliefs so that educators can better understand students.

Another area of concern was that the Leisure Time Skills and Extracurricular Self-Efficacy was among the lowest scoring categories among all subjects. According to the universities nearby the charter school where data collection took place, the office of admissions emphasized that extracurricular activities play a part in college admissions and scholarships because these reveal qualities about the applicants in ways that a transcript cannot (Northridge Counseling Department, personal communication, January 10, 2018). Therefore, if organizations, colleges, and universities are looking at students' engagement in extracurricular activities to make decisions regarding scholarships and acceptance, then these students are less competitive candidates than those who are actively engaged. Administrators and teachers can use the data from assessing self-efficacy to design interventions that cater to students' individual needs such as offering and promoting extracurricular activities that benefit and are of interest to the students based on their background.

Limitations and Areas of Future Research

The findings of the present study suggest several directions for future self-efficacy and college-going self-efficacy research. While a positive correlation was found between self-efficacy scores and college-going self-efficacy scores, the generalization is limited to charter schools in rural areas of the Colorado Front Range with similar demographics; therefore, further research is needed about students in other schools of choice as well as public schools to see if findings can be generalized to a larger group of students. In addition, if students in this study had a difference in self-efficacy level as middle schoolers, it would be beneficial to conduct a longitudinal study in which students are tracked throughout middle school and high school to assess changes in both self-efficacy and college-going self-efficacy. Further studies that collect longitudinal data could help account for the differences in self-efficacy among students of various ethnic groups as well as an understanding of the changes that contribute to the differences in self-efficacy scores.

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References

- Angrist, J. D., Cohodes, S. R., Dynarski, S. M., Pathak, P. A., & Walters, C. D. 2013, May. *Charter Schools and the Road to College Readiness: The Effects on College Preparation, Attendance, and Choice*. Retrieved from http://users.nber.org/~dynarski/Charters_and_College_Readiness.pdf.
- Auguste, B. G., Hancock, B., & Laboissiere, M. 2009, June. *The economic cost of the U.S. education gap*. Retrieved from <https://www.mckinsey.com/industries/social-sector/our-insights/the-economic-cost-of-the-us-education-gap>.
- Bandura, A. 1986. *Social foundation of thought and action: A social cognitive theory*. Englewood Cliffs, NJ: Prentice Hall.
- Bandura, A. 1989. "Regulation of cognitive processes through perceived self-efficacy." *Developmental Psychology* 25(5): 729-735.
- Bandura, A. 1994. *Self-Efficacy. Encyclopedia of human behavior*. New York, NY: Academic Press, 71-81.
- Bandura, A. 1997. *Self-efficacy: The exercise of control*. New York, NY: W. H. Freeman.
- Bandura, A. 2006. "Guide for constructing self-efficacy scales." In F. Pajares & T. Urdan (Eds.) *Self-Efficacy Beliefs in Adolescents* 5: 307-338.
- Bandura, A., Barbaranelli, C., Caprara, G. V., & Pastorelli, C. 2001. "Self-Efficacy beliefs as shapers of children's aspirations and career trajectories." *Child Development* 72(1): 187-206.
- Bashant, J. L. 2016. "Instilling hope in students." *Journal for Leadership and Instruction*, 15(1): 14-20.
- Buchanan, T., & Selmon, N. 2008. "Race and gender differences in self-efficacy: Assessing the role of gender role attitudes and family background." *Sex Roles* 58(11): 822-836.
- Cantrell, S. C., Correll, P., Clouse, J., Creech, K., Bridges, S. & Owens, D. 2013. "Patterns of self-efficacy among college students in developmental reading." *Journal of College Reading and Learning* 44(1): 8-34.
- Caprara, G. V., Fida, R., Vecchione, M., Del Bove, G., Vecchio, G. M., & Barbaranelli, C., & Bandura, A. 2008. "Longitudinal analysis of the role of perceived self-efficacy for self-regulated learning in academic continuance and achievement." *Journal of Educational Psychology* 100(3): 525-534.
- Carlton, J. F., & Krause, J. M. 2014. "Lost confidence and potential: a mixed methods study of underachieving college students' sources of self-efficacy." *Social Psychology of Education* 17(2): 249-268.
- Chin, D., & Kameoka, V. A. 2002. Psychosocial and contextual predictors of educational and occupational self-efficacy among Hispanic inner-city adolescents." *Hispanic Journal of Behavioral Sciences* 24(4): 448-464.
- Fong, C. J., & Krause, J. 2014. "Lost confidence and potential: A mixed methods study of underachieving college students' sources of self-efficacy." *Social Psychology of Education* 17(2): 249-268.
- Gibbons, M. M., & Borders, D. 2010. "A measure of college-going self-efficacy for middle school students." *Professional School Counseling* 13: 234-243.
- Hossler, D., Schmit, J., & Vesper, N. 1999. *Going to college: How social, economic, and educational factors influence the decisions students make*. Baltimore, MD: Johns Hopkins University Press.
- Karaarslan, G., & Sungur, S. 2011. "Elementary students' self-efficacy beliefs in science: Role of grade level, gender, and socio-economic status." *Science Education International* 22(1): 72-79.
- Kim, M. (2014). "Family background, students' academic self-efficacy, and students' career and life success expectations." *International Journal for the Advancement of Counseling* 34(4): 395-407.
- Lopez, F. G., Lent, R. W., Brown, S. D. & Gore, P. A. 1997. "Role of social-cognitive expectations in high school students' mathematics related interest and performance." *Journal of Counseling Psychology* 44(1): 44-52.
- McLaughlin, C. 2016, May 16. National Education Association Report: Low-Graduation-Rate Schools Concentrated in Charter, Virtual School Sectors. Retrieved from: <http://neatoday.org/2016/05/16/low-graduation-rate-charter-virtual-schools/>
- Merritt, D. L., & Buboltz, W. 2015. "Academic success in college: Socioeconomic status and parental influences as predictors of outcome." *Open Journal of Social Sciences* 3(5): 127-135.
- National Alliance for Public Charter Schools. 2015, November. *A Growing Movement: America's Largest Charter School Communities*. Retrieved from: http://www.publiccharters.org/sites/default/files/migrated/wpcontent/uploads/2015/11/enrollmentshare_web.pdf.
- National Center for Education Statistics, U.S. Department of Education. 2017, May. *Racial/Ethnic Enrollment in Public Schools*. Retrieved from: https://nces.ed.gov/programs/coe/indicator_cge.asp.
- National Center for Education Statistics. 2012, September. *Writing 2011: National Assessment of Educational Progress 8 and 12*. Retrieved from: <https://nces.ed.gov/nationsreportcard/pdf/main2011/2012470.pdf>.
- National Education Association. 2015. *Understanding the gaps: Who are we leaving behind and how far?* Retrieved from: https://www.nea.org/assets/docs/18021_Closing_Achve_Gap_backgrndr_7-FINAL.pdf.
- Peterson, P. E. 2016. September. *Post-Regulatory School Reform*. Retrieved from: <https://harvardmagazine.com/2016/09/post-regulatory-school-reform>.
- Schunk, D. H. 1990. "Goal setting and self-efficacy during self-regulated learning." *Educational Psychologist*: 25(1) 71-86.
- Turcios-Cotto, V. Y., & Milan, S. 2013. "Racial/ethnic differences in the educational expectations of adolescents: Does pursuing higher education mean something different to Latino students compared to white and Black students?" *Journal of Youth and Adolescence* 42(9): 1399-1412.
- United States. 1965. *Elementary and secondary education act of 1965*: H. R. 2362, 89th Cong., 1st sess., Public law 89-10. Reports, bills, debate and act. [Washington]: [U.S. Govt. Print. Off.]

- United States. National Commission on Excellence in Education. (1983). *A Nation at Risk: the imperative for educational reform: a report to the Nation and the Secretary of Education*, United States Department of Education. Washington, D.C.: The Commission on Excellence in Education.
- Wang, C., & Pape, S.J. 2007. "A probe into three Chinese boys' self-efficacy beliefs learning English as a second language." *Journal of Research in Childhood Education* 21(4): 364-377.
- Zimmerman, B. J., Bandura, A., & Martinez-Pons, M. 1992. "Self-motivation for academic attainment: The role of self-efficacy beliefs and personal goal setting." *American Educational Research Journal* 29 (3): 663-676.

Stages of Research in the Field of Road Accidents

Lucia Cerasela Balan

*Faculty of Economic Sciences and Public Administration, Law specialization from Suceava, Romania
Master in Criminal Sciences at "Dimitrie Cantemir" Christian University of Bucharest, Romania
Lucya_9212@yahoo.com*

ABSTRACT: Like any on-the-spot investigation, which also applies to criminal offenses, and in the case of the on-site investigation where the road accident occurred, we distinguish two stages: the static and the dynamic stages. With the examination of the place of the deed, especially in this situation, there is an interpenetration between the static phase and the dynamic phase, the methods specific to each phase are often performed at the same time. The intersection of the two phases is the consequence of the many situations that can be found in the road accident, such as: both the vehicle and the driver have remained on site or have recovered; the vehicle is abandoned by the driver on site; the driver responsible for the road accident has left the scene of the accident with the vehicle; the driver left the accident site by abandoning the vehicle involved; the victim leaves the scene of the accident.

KEYWORDS: impact, photo, road accident, traces

Introduction

On-site research is one of the criminal and criminal forensic tactical activities normally carried out at the beginning of the prosecution, for immediate knowledge of the place of the act, the discovery, fixation and removal of the traces created at the occasion of committing the offense, as well as for listening to eyewitnesses, victims or even perpetrators. The on-site research activity is regulated under Art. 192, par. 1, 2 of the New Criminal Procedure Code is the activity ordered by the criminal investigation body and, in the course of the trial, by the court, where a direct finding is necessary for the purposes of determining or clarifying certain circumstances which are important for establishing the truth, and whenever there are suspicions about the death of a person.

Static Stage

The stage is governed by the principle of remotely observing the entire scenario of the place. An overview of the position of the means and objects is examined, delimiting the required perimeter, but it is not allowed to touch or modify the objects identified on the spot. In order to establish and mark the access road in the perimeter of the offense and the point of exit from its boundaries, the division of the place of deeds for a more systematic research, the priority examination of the traces that are at risk of degradation or even destruction, the discovery and fixation of objects and traces, their interpretation, comparing them (Stancu 2007, 611).

After delimiting the site and sealing it, first aid will be given to the victims and their transport will be ensured at the nearest health facility.

In the case of road accidents resulting in death or injury, the investigation of the place shall be carried out with the examination of the victims when they are still at the place of deed or the place where they were and will continue with the surface of the roadway to the vehicle remaining at the accident site; to the victim in the direction it is supposed to have disappeared. It will then examine the part of the road traveled before impact to detect traces of braking.

Dynamic Stage

The most meticulous stage of road accident research since it goes beyond the static orientation stage as a whole and enters the scene. It will include analyzing in detail the place, traces and objects that can move objects from the place and from the original position, by methods typical of research. At this stage, the details of objects and traces will be taken, when the objects rise and place on a contrast surface to be easy to see. The detail photos will be made as much as possible with the lens perpendicular to the subject being photographed and accompanied by the measuring gauge or

measuring tape. Objects that can be transported will be carefully packaged and transported to forensic laboratories for detailed analysis.

In road accidents, during or before a road accident, the most widespread trace of the spot is the trace of the tire printed on the asphalt road. But it is not the only trace of traffic accidents, so of the plurality of track traces that can be encountered in road accidents, we mention:

Contact Points (Friction, Compression)

In the case of a road accident, either impact between two vehicles or impact with a fixed obstacle, the process of friction or compression or even plunging, leads to the creation of specific traces that will be found on different surfaces present on the spot. The impact force produces deformations of the various smooth surfaces of the bodywork and/or other static objects. With on-the-spot investigation, criminal investigators must analyze the deformations and traces left at the impact, in particular, in detail. Friction or deformation traces can provide essential information about vehicle travel directions, their position, vehicle model, etc.

Traces of tires

Vehicle tires are designed to ensure safe travel in different seasons, and these do not leave asphalt prints in specific situations. The first such situation is accelerated acceleration when moving off, tight turns at high speeds or sudden turns, heavy braking and skidding.

This type of tire tread specific to the hurrying of the vehicle is known to have lengths of less than 2 to 3 m, with an accentuated print on the front and losing intensity to the end. It is also specific that the traces contain rubber parts all over the surface and more severely on the edges. In the end, the traces are unclear, losing their tire print intensity.

The traces of braking tires reflect the way the brake pedal, the braking rate, the braking qualities of the vehicle are reflected in their appearance. In order to estimate the vehicle's speed in relation to the footprints left by the tire on site, the most common equation is: $V = ST \times 254 \times Q / K$, where ST represents the trace length, 254 is a coefficient, Q coefficient of adhesion, and K the operating coefficient of the brakes. Obviously, there is a proportionate ratio between braking and vehicle speed: when the vehicle's travel speed is higher at the time of braking, and the braking result is longer. Generally, the braking system does not operate effectively on wheels whose tires have not traced traces on the road. Note that at speeds above 40-50 km / h due to uneven braking on all wheels the skidding of the vehicle can lead to the appearance of traces on tires that have left no traces in the first part of the brake.

Traces of liquids

As with the traces of the bodywork, the traces of liquids are caused by the impact and force it produces when a road accident occurs. The means of road transport, implicitly the cars, are provided in the front with refrigeration, heating, freon installations, engine oil baths, brake fluid pipes, hydraulic fluid, etc.

When the stains are in the form of elongated splashes or continuous streaks, then these traces point to the trajectory described by the vehicles. If the footprints are found before the impact site, then the cause that caused the loss of fluid is not related to the impact; if the trace lies only after the impact site, then the leakage is due to it. In the case of traces of brake fluid, it is necessary to establish precisely their place in relation to the impact site (Romanian Journal of Forensic Sciences 2011, 714).

The most obvious traces of liquids are those caused by oily substances, as they affect the surface of the asphalt, while other fluids can easily evaporate

Tracks taken from vehicles as a result of impact

The impact force in the case of a road accident is directly proportional to the rolling speed of the vehicles at the time of impact. Because of the impact often parts of the vehicles or even the cargo can

be scattered on the surface of the research site. In the case of traffic accidents, different pieces or debris from the bodywork, namely bumper, mask, headlamp, rearview mirror, gaskets, connections, which will be described in the minutes and fixed, can also be found in the investigation of the scene by shooting in detail, and then lifted with great care to be used to identify the vehicle they come from. In the event of a collision between two vehicles, most of the shards are retained by them, the particles that are projected outward are initially influenced by the friction with the vehicles they come from, so the speed of their detachment is not the same as the impact velocity.

After designing on the road, glass fragments, depending on their size and shape, roll, slip or cling to the road asperities. Consequently, in the estimation of the coefficient of friction, 150% error can occur, which substantially compromises the precision of the calculation of the speed. Even when those conditions that introduce calculation errors narrow down, imprecision remains unacceptable. By restricting the types of suspected vehicles, it is possible to get to the one in question, and implicitly to the driver who left the place of the traffic accident (Romanian Journal of Forensic Sciences 2011, 713-714). And in such situations, there must be reservations in applying the relationships for calculating the impact velocity, as it is difficult to determine if those elements were not projected after the impact was consumed, when any screens were removed, for example, by starting the vehicle's rotation movements (Aionițoaie and Sandu 1992, 34-38).

Biological trace

When we mention the biological traces we refer to the many traces that can be left on the spot that come from / on the surface of the human body and which identify with the investigation of road accidents. These traces can help to find out the key elements that lead to the elucidation of the case entirely, by clarifying and clarifying some unclear aspects.

In the field research, to determine the peculiarities of length and thickness, shape and distances are made with the measuring tape. This is made of plastic, 10 cm wide. and divided into squares of 10 cm, alternately colored in black and white. Scaling tape helps photographic measurements.

In traffic accidents, in all cases of papillary holes, they will be photographed next to a metric, so that they can then be redeemed by the Automatic Identification System (AFIS), where the mandatory condition is that the trace or photogram will be in natural size.

Detected biological traces can help establish the mechanism of road accident, the vehicle involved, the causes of the accident, the time of death, etc. Difficulties in examining victims or their clothing are encountered when they are moved from the place where they were found or transported to the hospital, meaning that the judicial organs will have to distinguish the traces subsequently produced by those that have been created on the occasion of the accident (Romanian Journal of Forensic Sciences 2006, 37).

The main biological trace is the blood trail, which is found on the road on the road, on the vehicle involved in the accident or on the body of the victim, in the form of spots, drops, splashes, spills, crusts. Analyzing the patterns of blood tracing, it identifies: the victim's position, knowing that fallen blood droplets leave traces with regular margins and a smaller diameter than the same drop of blood on the road if they fall from a higher height. The traces of blood are fixed by a word process by color photography.

The second most common biological trace is the human hair, which is frequently detected on wheels, protective bumper, on the mask door, the headlights, the inside, the steering wheel, the road, etc. The hair threads are raised with a tweezer and inserted into the test tubes, which will be marked accordingly.

The search for, retrieval and exploitation of digital traces is particularly important in the case of traffic accidents in which vehicles have been abandoned on the spot either by the owners or persons entrusted with their management but also in the event of theft after the accident, thieves abandon the stolen vehicle.

In these situations, the digital-palm traces will be searched on the glossy surfaces of the doors, the steering wheel, the mirror, the dashboard, the radio cassette and other surfaces inside the car.

The detection and fixation of these trace categories will be carried out according to the methods and means recommended by the forensic technique and will then be compared with the impressions of the suspected persons in order to identify the author of the traffic accident.

Conclusions

The research is carried out urgently in the first place so that traces do not degrade or disappear, and secondly, because the urgency of conducting research ensures a good follow-up. Research requires it to be made, and reasoning is elemental if we consider that it is only from the on-site research that the evidence can be sampled and the traces that help to find out the truth in essence. The first people who arrive at the site are the police authorities who have been notified beforehand. They will be obliged to observe a series of tasks to take urgent measures to save the victims and secure the place of deeds against intentional or natural changes. On-the-spot research is unrepeatable because the very fact that the team of researchers intervenes in the perimeter of the crime scene involves the alteration of the scene and the impossibility of restoring the original traces to be intact.

References

- Aionîtoaie, Constantin; Sandu, Ion Eugen. 1992. *Forensic Tactics Treaty*. Bucharest: Carpați Publishing House.
- Buzatu, Nicoleta-Elena. 2009. "Investigation of road traffic accidents. Criminalistics aspects and forensic medicine". In *Magazine of students and masters students of the Faculty of Juridical and Administrative Sciences*. Bucharest: Pro Universitaria Publishing House.
- Iftenie, Valentin. 2006. *Legal medicine*. Bucharest: Great Romania Foundation Publishing House.
- Ionescu, Mircea. 2010. *Criminalistica*, ed. II. Bucharest: Lumina Lex Publishing House.
- Romanian Journal of Forensic Sciences. 2011. Romanian Association of Forensics, no 3.
- Stancu, Emilian. 2007. *Forensic Treaty*, ed. IV. Bucharest: Universul Juridic Publishing House.

An Influx of Refugees into Jeju Island and its Effects on the Jeju Residents' Cultural Sensitivity

Yun Bin Cho¹, Yun Gi Cho²

¹*Yun Bin Cho, North London Collegiate School Jeju, Yongin-si, Republic of Korea, ybcho0918@gmail.com*

²*Yun Gi Cho, Fayston, Yongin-si, Republic of Korea, yungi707@gmail.com*

ABSTRACT: This research investigated how recent issues surrounding refugees in Jeju had affected the residents' cultural sensitivity. The responses of 109 Jeju residents were used for an analysis. An independent *t*-test was conducted to see the difference in cultural difference in two groups: the residents who view refugees as potential neighbors and those who don't. Based on the result of Pearson's correlation analysis, a multiple linear regression analysis was conducted to see how refugee-related variables explain the change in residents' cultural sensitivity. The result revealed that people open to refugees have a higher level of cultural sensitivity, and women in Jeju fear refugees more so than men. Also, Korean identity is negatively correlated with cultural sensitivity. Most importantly, the findings of this research suggested that accepting refugees can foster Jeju residents' cultural sensitivity, which is vital to the Jeju economy and its community.

KEYWORDS: Refugees, Jeju Island, Cultural Sensitivity, Human Rights, Korean Identity

Introduction

To bridge Korea and the rest of the world, Jeju Island serves as a gateway through which foreigners come and experience Korean culture. Because the number of foreign visitors and immigrant has grown exponentially over the past decades, a series of new policies had been devised and implemented to improve the residents' acceptance about different cultures and their differences (Chung & Ko 2013). Because the Jeju economy is largely dependent upon tourism, the residents' genuine opinions about outsiders cannot surface explicitly. However, a recent influx of Yemeni refugees into Jeju has denuded the bare face of how the residents perceive of foreigners.

According to Jeju Immigration Service (JIS), the number of Yemeni refugees applied for a refugee status reached 549 as of June 2018. Compared to 42 in 2017, the number had grown more than ten times within a year. This exponential growth of Yemeni refugees had stirred Jeju community; having heard the news, an online Jeju community was flooded with anti-Yemeni or anti-Islamic postings (Oh, 2018). More than 220,000 people signed the Blue House Citizen's petition asking for the government to deport the refugees from Jeju (Park 2018).

When looking at the statistics regarding refugee status in Korea, more than 5,000 people applied for refugee status in Korea as of December 2012, but the status was granted to merely 324 of them (Ahn & Yoon 2013). Looking at 1143 refugee applicants of 2012, 348 of them applied for the status, seeking a political asylum; 291 of them did so because of religious persecution, 35 of them did it because of racial discrimination; 52 did because they were from a unique social group, 29 of them did so because they wanted to reunite with their family living in Korea; and 3 of them did so for Korean citizenship (Ahn & Yoon 2013).

Korea, an export-oriented economy, benefited immensely from globalization, which brought down fences around the world and raised the country from post-war devastation. Now, Korea is perceived to be one of the top economic powerhouses in the world. Therefore, how Korea will live up to the expectation of the international community as a responsible member is the question that must be addressed. To this end, a set of reliable evidence about the residents and their perception toward foreigners must be made available. This research, therefore, investigates how residents' cultural sensitivity with regard to refugees.

Literature Review

1. Foreigners in Jeju

From the 1980s, the number of people who live away from their countries of birth had increased to 191 million by 2005 (The Department of Economic and Social Affairs, UN 2006). An increasing ethnic or

racial diversity of a society is the byproduct of migration, making a previously uniform society into a multi-cultural (Lee 2016).

Looking at the influx of foreigners into Korea, Korea Immigration Service (KIS) has reported that 2,298,949 foreigners are found in South Korea as of July 2018. KIS reports that 431,335 of these people are those that have Korean ethnicity with foreign nationalities, 666,218 of foreigners are visiting Korea temporarily, and a total of 1,201,396 foreign residents are residing in Korea. Looking closely, approximately 46% of the foreigners are Chinese, 8% are Vietnamese, 8% are Thai, 7% are American, and 3% are Uzbekistani (Korea Immigration Service, 2018). Since the number of foreigners in Korea went beyond a million in 2007 (Roh 2013), the number more than doubled over a decade.

According to statistics, 1,161,677 foreigners, from the total of 52,857,893, were living in Korea as of 2016. In comparison, 19,593 foreigners were living in Jeju from its total of 661,190 (Government Policy Coordinator 2017). Compared to the fact that 2.2% of people living in Korea are foreigners, the foreigners in Jeju take up 2.9%. Not only are more foreigners living in Jeju, but more foreign travelers are coming to visit Jeju than anywhere else in the country. This means that the residents' cultural sensitivity is of critical concern that must be thoroughly explored and investigated so that the community can better understand how they perceive foreigners and take appropriate measures to promote accommodating air for foreigners.

2. Xenophobia and Theories Pertaining to Refugee Crisis

Known for a group threat theory, Blalock (1967) claims that when people native to a land feel like their interests are being threatened because of an influx of immigrants, they are inclined to take measures to protect themselves. Simply put, the group threat theory purports that culturally or ethnically distinct groups living in proximity causes hostility and conflicts (Roh 2013). If this group threat theory holds true and grows worse, the native may feel like they are the majority being threatened by a minority group, and this is called a predatory identity (Appadurai 2006).

Xenophobia—attitudes, prejudices, or behavior that reject or exclude people based on their origins outside of a community, society or a nation (ILO 2001)—is not a new social phenomenon. The history of human civilization is filled with stories by which immigrants had been hated or persecuted. Xenophobia differs from racism in that discrimination by race is derived from skin colors and outer appearances, whereas discrimination, a byproduct of xenophobia, is derived from repulsion stemming from regional, cultural, and ideological differences (Choi 2016). If this xenophobia is not successfully controlled for, it can lead to hate crimes by natives. And this hate crime has a broader impact on victims than ordinary crimes because it sends a message to an entire immigrant community (Lee 2016).

3. Cultural Sensitivity

Cultural sensitivity, or multicultural acceptability, is defined to be a community's degree of accepting disparate groups that have ethnic or cultural differences; it can also mean how much a government accepts multi-cultures or implements related policies (Bechetti, Rossetti & Castriota 2010; Lee & Kim 2012). Cultural sensitivity is also defined as an attitude accepting and advocating multiethnic and multicultural changes (Hwang et al. 2007). Yoon and Song (2011) defined it as a degree to which people in a community accept those with different ethnic or cultural backgrounds into the community.

Hwang et al. (2007) analyzed factors determining multicultural acceptability and found that the acceptability differs by age groups; those who were in the 20s or 30s were more open to multi-cultures, whereas those who were older than 40 showed limited, or negative attitude toward different cultures. Lee et al. (2010) investigated the correlation between people's educational background and social distance. They found that people with higher educational attainment show less social distance.

Federico (2005) found that people with high educational attainment internalize the value of accepting those with differences. Ahn's (2012) study revealed that people with low socio-economic status (SES), as compared to those with high SES, were less likely to accept multi-cultures. Choi (2016) argued that people with low SES would be less likely to receive multi-cultures because they

perceive foreigners or immigrants as potential competitors who threaten their job security and others. And followings are the research questions to be explored in this research.

Q1. Do people who accept refugees into their community have different levels of cultural sensitivity?

Q2. How does Jeju residents' demographics explain their cultural sensitivity?

Q3. How does Korean identity affect Jeju residents' cultural sensitivity?

Q4. How do Jeju residents' attitudes toward refugees explain their cultural sensitivity?

Table and figures

The data collected by the Ministry of Gender Equality and Family (MOGEF) and the Korean Women's Development Institute (KWDI) had been used in this analysis. 4,000 people from 17 cities and provinces across the Republic of Korea had been collected over three weeks from September 1st, 2015. This door-to-door survey had been collected every three years to examine the trends of cultural diversity, multicultural resistance, Korean identity, perception toward the multicultural environment. Therefore, the population from which this sample was drawn consisted of men and women aged 19 through 74 in Korea. Because this research was targeting Jeju residents specifically, the original sample was sorted to extract Jeju responses only. As a result, the remaining 109 responses collected in Jeju were used in this analysis.

Table 1. Descriptive Statistics

	N	Mean	SD	Minimum	Maximum
Age	109	44.35	14.97	19	74
Gender	109	1.55	0.50	0	1
Job Priority to Koreans	109	0.56	0.50	0	1
Can live with Refugees	109	0.63	0.48	0	1
Refugee's Human Rights	109	2.66	0.58	1	4
Korean Identity	109	2.88	0.55	1	4
Global Citizenship	109	2.92	0.48	1.67	4
Cultural Sensitivity	109	3.26	0.71	1	5
Valid(listwise)	109				

1. Controlling Variable Explained

Table 2. Importance of Korean Identity Variable

In the list below, indicate the importance of each factor to be recognized as a Korean in a 4 point scale	Completely Unimportant	Unimportant	Important	Very Important
1. Having born in Korea	1	2	3	4
2. Having the same ancestry	1	2	3	4
3. Biological father being a Korean national	1	2	3	4
4. Biological mother begin a Korean national	1	2	3	4
5. Spending most of one's life in Korea	1	2	3	4
6. Sharing Korean cultural traditions	1	2	3	4
7. Speaking Korea	1	2	3	4
8. Respecting Korea's law and political system	1	2	3	4
9. Feeling like a Korea	1	2	3	4
10. Having a Korean citizenship	1	2	3	4
11. Contributing to the development of Korea's politics, society and culture.	1	2	3	4

As illustrated in *Table 2*, the total of 11 questions indicating Korean identity were used as a controlling variable included in a regression analysis below. Cronbach's coefficient *alpha* was .908; therefore the 11 questions had been merged together into a single variable. Korea has prided in its singular ethnic composition and its resilience despite hundreds of invasions from the outside. Given this national pride and emphasis on uniformity, Korean identity variable was deemed necessary to be controlled for.

Table 3. Global Community

How much do you agree with the following?	Strongly Disagree	Disagree	Agree	Strongly Agree
1.I consider myself to be a citizen of global community	1	2	3	4
2.I consider myself to be a part of Northeast Asian community	1	2	3	4
3.I consider myself to be a part of Korean community	1	2	3	4
4.I consider myself to be a part of local community	1	2	3	4
5.I consider myself to be a part of my family	1	2	3	4
6.I consider myself to be an independent being	1	2	3	4

Six question items indicating the respondents' sense of community was measured. Cronbach's coefficient alpha of the four items was .813; as a result, they were also merged into a single variable. People in Jeju have more chances to meet and interact with foreigners because, unlike mainland Korea, no visa is required to enter Jeju. That is, they have more chances to see the outsiders; through them, Jeju residents have more chances to foster global citizenship.

Table 4. Care about Human Rights of Refugees

How much do you agree with the following?	Strongly Disagree	Disagree	Agree	Strongly Agree
1.Korean government's acceptance standard must be a more lenient embrace more refugees.	1	2	3	4
2.Korean government must provide medical insurance, social welfare as a humane gesture to those who are granted refugee status and those who are under review.	1	2	3	4
3.I consider myself to be a part of Korean community	1	2	3	4
4.I consider myself to be a part of local community	1	2	3	4
5.I consider myself to be a part of my family	1	2	3	4
6.I consider myself to be an independent being	1	2	3	4

Four question items indicating different degrees of accepting refugees were measured. Cronbach's coefficient *alpha* of the four items was .844; as a result, they were merged into a single variable. This variable must not be confused with the other dummy variable asking whether or not the respondents want to be neighbors with refugees. The refugees' human rights variable is more about viewing refugees as those who are entitled to the same degree of care and protection that Korean citizens are enjoying.

Prior to running an analysis, the questions asking respondents whether or not they want to live with people with following characteristics were carefully examined: Drug addicts, those with different races, AIDS patients, immigrant or migrant workers, homosexuals, people with different religious beliefs, alcoholics, singles, and refugees.

Table 5. Categorical Variables

Variables	Do not want to live	Want to live
Drug addicts	100%	0%
Those with AIDs	95%	5%
Alcoholics	84%	16%
Homosexuals	79%	21%
Refugees	37%	63%
Singles	34%	66%
Those with different race	31%	69%
Those with different religion	27%	73%
Immigrants or Migrant workers	22%	78%

As illustrated in Table 5, all respondents did not wish to live together with drug addicts. 95% of the respondents said that they do not wish to live with AIDS patients. 84% of them said they do not wish to live with alcoholics. 79% of them said they do not want to live with homosexuals.

On the other hand, 63% of the Jeju residents said they want to live with refugees. 66% of them said they want to live with singles. 69% said they want to live with people of different race. 73% said they could live with people of different religions. 78% of them said they can also live with immigrant or migrant workers. All these variables were recorded to be used as categorical variables for further analysis. Since the focal point of this research was to examine the residents' perception toward refugees, two groups were divided into those who do not want to live and those who want to.

Table 6. Giving Job Priority to Koreans over Foreigners

How much do you agree with the following?	Agree	Neutral	Disagree
“When jobs are scarce, job priority must be given to Korean citizens over foreign nationals.”	1	2	3

This variable illustrated in Table 6 was recoded into a categorical variable to be included as a controlling variable. Giving job priority to Koreans was considered by far the most representative indicator as viewing refugees not as an outsider but as a genuine neighbor. Out of 109 respondents, only 3 people disagreed with giving priority to Koreans and 45 people stayed neutral when jobs opportunity is limited.

2. Dependent Variable Explained

Table 7. Cultural Sensitivity

The following questions are asking you about an increased interaction between Korean and immigrants	Strongly Disagree	Disagree	Average	Agree	Strongly Agree
1.An increasing racial, religious, and cultural diversity strengthens our nation's competitiveness	1	2	3	4	5
2.In any country, racial, religious and cultural diversity is desirable	1	2	3	4	5
3.An increase number of foreign immigrants will make Korean culture more fertile than now.	1	2	3	4	5
4.Accepting foreign born immigrants to Korea will debilitate our country's unity	1	2	3	4	5
5.Korea's long-lasting genealogy and single identity is something that its citizen must be proud of.	1	2	3	4	5
6.Korea	1	2	3	4	5

When the validity of the six question items illustrated in Table 4 was examined, the upper three from the lower three items did not seem to share a common psychological construct. The first three questions seemed to ask about the desirability of racial, religious, and cultural diversity, whereas the other three (questions 4,5,6) seemed to indicate the opposite. Cronbach's coefficient alpha of all six question items was .660, which corroborated this doubt. When the reliability of the first three questions was measured, the Cronbach's coefficient alpha was .845.

Based on this figure, the first three questions were merged into a single variable indicating the respondents' cultural sensitivity.

Table 8. *t-test* for who want to be neighbors with refugees and those who do not.

		Can Live w/ Refugees (n=69)	Cannot Live w/ Refugees (n=40)	Mean Difference	t	p-value
Job Priority to Korea	Means (SD)	0.507(0.504)	0.630(0.483)	-0.143	1.464	0.147
Refugees' Human Rights	Means (SD)	2.678 (0.611)	2.631(0.543)	-0.046	-0.397	0.692
Global Citizenship	Means (SD)	2.964 (0.441)	0.2850 (0.531)	-0.114	-1.204	0.231
Cultural Sen	Means (SD)	3.401 (0.692)	3.017 (0.688)	-0.384	-2.801	0.006

When compared the mean differences between people who do *not* want to be neighbors with refugees and those who do, *no* statistically significant difference was found for giving job priority to Korean over foreigner, people perception toward refugees' human rights, and their global citizenship. However, the

cultural sensitivity of the people who wish to be neighbors with refugees was higher than that of those who do not wish to live together with refugees, $t(109) = -2.801, p = 0.006$

Table 9. Pearson's Correlation of included Variables

	Age	Gender	Job Priority	Live w/ Refugee	Refugee' Rights	Korean Identity	Global Citizenship
Gender	.027						
Job Priority	.173	.016					
Live w/ Refugee	.068	-.191*	-.139				
Refugees' Rights	-.039	-.012	-.303**	.038			
Korean Identity	-.005	.351**	.154	-.135	-.116		
Global Citizenship	.231*	-.019	-.094	.116	.333**	-.047	
Cultural Sensitivity	.093	-.172	-.379**	.261**	.505**	-.278**	.391**

* $p < .05$ ** $p < .01$ *** $p < .001$

Followings are the Pearson's correlations of the variables incorporated in this analysis:

1. Age is correlated with global citizenship ($r = .231, p = .016$).
2. Gender is correlated with the desire to be neighbors with refugees ($r = -.191, p = .047$) and Korean identity ($r = .351, p < .001$). Since men are coded as 0, we can see that females are less likely to want to be neighbors with refugees. However, females show a stronger Korean identity.
3. Job priority variable is correlated with refugees' human rights ($r = -.303, p = .001$) and cultural sensitivity ($r = -.379, p < .001$). This means that those who advocate giving job priority to Korean are less likely to care about refugees' human rights, and these people also show less cultural sensitivity.
4. As illustrated in the t -test (See Table 8), those who wish to be neighbors with refugees are correlated with cultural sensitivity ($r = .261, p = .006$).
5. Refugees' human rights variable is correlated with global citizenship ($r = .333, p < .001$) and cultural sensitivity ($r = .505, p < .001$). This means that the refugee human rights advocates have much higher global citizenship and higher cultural sensitivity than those who are indifferent about the human rights.
6. Korean identity variable is correlated with cultural sensitivity ($r = -.278, p = .003$). This means that those who place a greater value on Korean identity tend to have lower cultural sensitivity.
7. Global citizenship is correlated with cultural sensitivity ($r = .391, p < .001$). Therefore, those who have higher global citizenship tend to have a stronger cultural sensitivity.

Table 10. Regression analysis of Cultural Sensitivity

	Unstandardized Coefficient		Standardized	t	p-value
	B	Standard Error	Beta		
Constant	1.803	.489		3.685	.000
Want to Live with Refugee	.250	.112	.170	2.237	.027
Refugee Acceptance	.413	.101	.340	4.112	.000
Agree with Giving Job Priority to Koreans	-.291	.113	-.204	-2.574	.011
Korean Identity	-.224	.093	-.174	-2.293	.024
Global Citizenship	.345	.118	.231	2.909	.004

Dependent Variable: Cultural Sensitivity

After I fitted a regression model predicting the participant's cultural sensitivity, F-statistics (5,103) is 4.726 ($p < .001$), meaning that the above model's predictability is higher than a model using mean values of the independent variables to predict cultural sensitivity. The intercept shows that the level of cultural sensitivity is approximately 1.803 when the rest of the variables are zero, $p < .001$. The result of the analysis has revealed the followings:

1. Those who want to live with refugees have .250 higher cultural sensitivity than those who do not wish to live with refugees ($p = .027$) when holding the other variables constant.

2. When the hospitability toward refugees increases by one-point, cultural sensitivity is expected to increase by .413 ($p < .001$) when holding the rest of the variables constant.
3. Those who agree with giving Koreans job priority over foreign or immigrant workers are expected to have .291 ($p = .011$) lower cultural sensitivity than those who either disagree or have a neutral position when holding the rest of the variables constant.
4. When the importance of Korean identity increases by one, cultural sensitivity is expected to decrease by .224 ($p = .024$) when holding the rest of the variables constant. (5) When global citizenship increases by one, cultural sensitivity is expected to increase by .345 ($p = .004$) holding the rest of the variables constant.

Though not presented in Table 10, the R-squared value is .432, meaning that about 43% of the variance in cultural sensitivity is associated with the variables included in the regression model. To check the assumptions required of a sound regression model, the scatterplot (See <Figure 1>) has been examined, and the linearity assumption is not violated. Also, the histogram (See <Figure 2>) seems to show that residuals have a normal distribution, and the P-P plot (see <Figure 3>) indicates that the values fall neatly over the line. Therefore, no concern for normality or homoscedasticity is present.

*Below is the regression equation

$$\hat{Y} = 1.803 + .250(\text{Live with Refugees}) + .413(\text{Refugee Acceptance}) - .291 (\text{Job Priority to Korean}) - .224 (\text{Korean Identity}) + .345(\text{Global Citizenship})$$

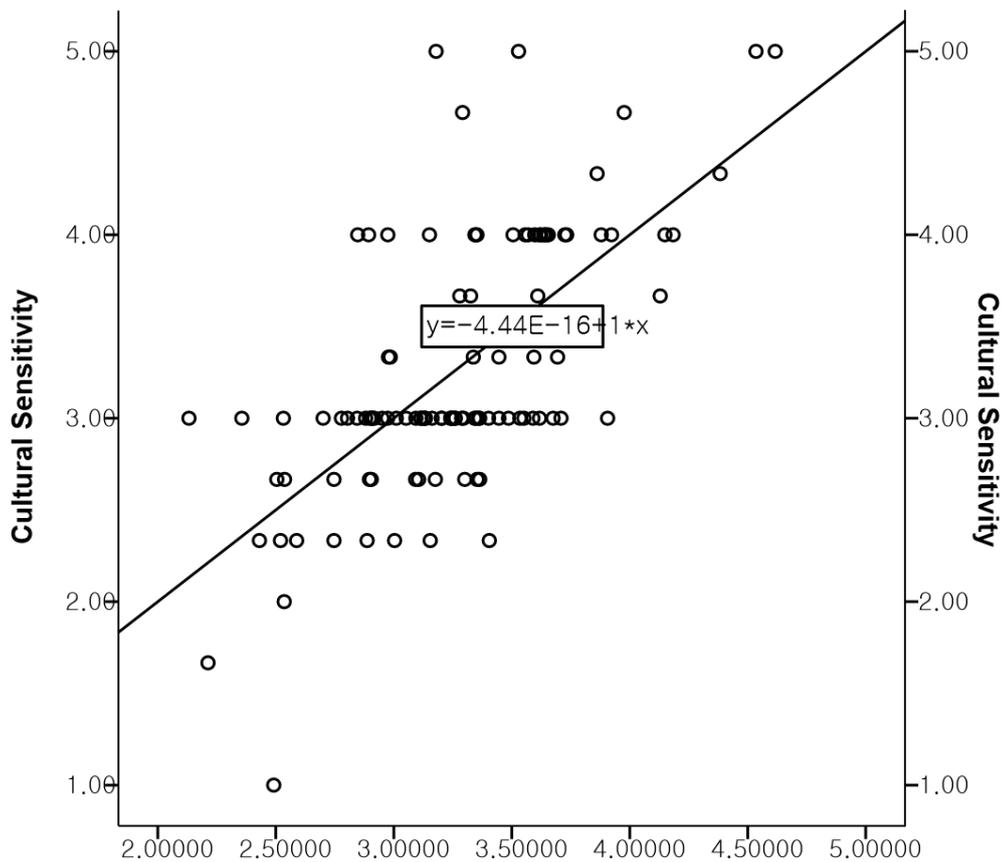


Figure 1. Scatterplot for Checking Linearity Assumption

Histogram

Dependent Variable: Cultural Sensitivity

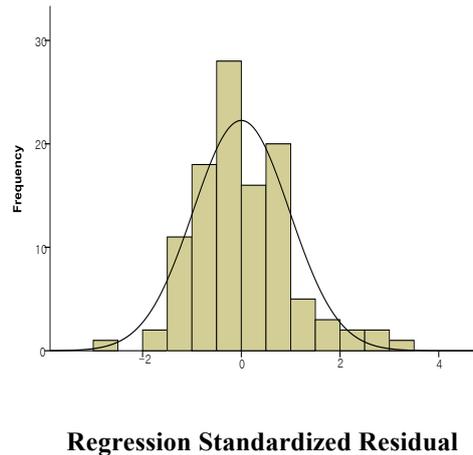


Figure 2. Histogram for Checking Normality Assumption

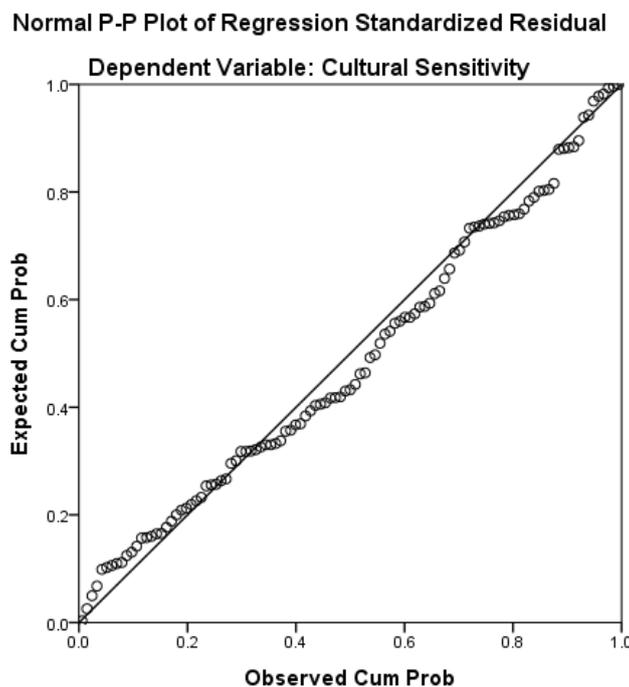


Figure 3. P-P Plot for Checking Homoscedasticity Assumption

Conclusions

Q1. Do people who accept refugees into their community have different levels of cultural sensitivity?
 People who answered that they wish to live with refugees have higher cultural sensitivity, or multicultural acceptance, than those who did not. Whether or not people want to live with refugees has nothing to do with global citizenship and the concern for the refugees’ human rights.

Q2. How does Jeju residents’ demographics explain their cultural sensitivity?
 Though it is widely known that young people better identify themselves as global citizens because they are exposed to multicultural offerings more than the older generation, this notion doesn’t seem to apply in Jeju because the data show that older people in Jeju are more likely to have higher levels of global citizenship.

Women in Jeju are less likely to want to live with refugees. Carefully, one can argue that women in Jeju have more xenophobia than men. But women have a stronger sense of Korean

identity. Future research must be conducted to investigate this relationship and Jeju women's xenophobia.

Q3. How does Korean identity affect Jeju residents' cultural sensitivity?

Apparently, Korean identity is negatively correlated with cultural sensitivity. And people who prioritize Korean in job opportunity seem to care less about refugees' human rights. Though job opportunity is hardly categorized into the human rights' issues, the variable that meant placing Korean before foreigners is correlated with human rights issues. In addition, people who have higher cultural sensitivity are less likely to believe that job priority must be afforded to Koreans over foreigners.

Also, it is unclear whether global citizenship and cultural sensitivity foster human rights awareness, or it is the other way around. But the result that refugees' human rights awareness is strongly correlated with cultural sensitivity suggests that we should investigate more about this finding through further research.

Q4. How do Jeju residents' attitudes toward refugees explain their cultural sensitivity?

The primary focus of this study is the refugee crisis, and one can see that accepting refugees does explain the of cultural sensitivity. Also, people who see refugees as potential neighbors have a higher level of cultural sensitivity. Based on this finding, we can cautiously argue that accepting refugee can promote cultural sensitivity, or multicultural acceptance, throughout Jeju.

As is argued above, cultural sensitivity is more important for Jeju than elsewhere in Korea. Because of religious, cultural, and ethnic differences, some people are reluctant to view the refugees as potential neighbors. If, however, people in Jeju have a chance to live together with the refugees and see for themselves that they are harmless friends, they may be able to foster a rich cultural sensitivity, thus making Jeju more inclusive, more accommodating, more like a paradise.

References

- Ahn, S., & Yoon, E. 2013. "A critical analysis of legalization of status and accommodation of procedure for refugees." *European Constitution* 13: 127-150.
- Ahn, S. 2012. "Multicultural acceptability and gender." *Gender Review* 25: 42-52.
- Appadurai, A. 2006. *Fear of small numbers: An essay on the geography of anger*. Durham, NC: Duke University Press.
- Bachetti, L., F. Rossetti, & Castriota. 2010. "Real household income and attitude toward immigrants: an empirical analysis." *The Journal of Socio-Economic* 29: 81-88.
- Blalock, H. 1967. *Towards a theory of minority group relations*. New York: Capricorn Books.
- Choi, Y. 2016. "A study on xenophobia." *Journal of Multi-cultural Contents Studies* 21: 109-144.
- Chung, S., & Ko, M. 2013. "Selecting priority of tourism preparation policy for foreign free independent travelers in Jeju." *Journal of Tourism Sciences* 37(4): 97-116.
- Federico, C. 2005. "Racial perceptions and evaluative responses to welfare: Does education attenuate race-of-target effects?" *Political Psychology* 26(5): 683-697.
- Government Policy Coordinator. 2017. *Press release: Resident demographics* (as of December 2016). Jeju Special Self-Governing Province.
- Hwang, J, Kim, I, Lee, M., Choi, H. & Lee, D. 2007. A study on multicultural acceptability in Korean society, Korean Women's Development Institute.
- ILO, IOM and OHCHR. 2001. International Migration, Racism, Discrimination and Xenophobia. World Conference Against Racism Discrimination, Xenophobia and Related Intolerance (WCAR).
- Jeju Immigration Service. 2018. Report about refugee status. Jeju Immigration Service Korea Immigration Service (2018). Immigration and Foreigner Policy. Monthly Statistics of Korea, 7.
- Lee, H. 2016. "Xenophobia in multicultural society: Focusing on hate crime laws in Australia." *Korean Journal of Converging Humanities* 4(2): 1-23.
- Lee, M., Choi, Y., & Choi, S. 2010. "Multi-cultural society and social distance for foreigners in Korean society." *Investigation Research* 11(1): 63-85.
- Lee, J. & Kim, K. 2012. "Determinants of Korean's multicultural acceptability: Focusing on the effect of educational attainment." *Educational Sociology Review* 22(3): 1-24.
- Lofland, L. H. 1973. *A world of strangers: Order and action in urban public place*. Illinois: Waveland Press.
- Ministry of Justice. 2013. The implementation of refugee act starting from July 1st, the first in Asia: practical aid will be afforded to refugee because of this passage. Ministry of Justice.
- Oh, K. 2018, June 28. "Jeju Yemen: The status of Yemeni refugee applicants." *BBC Korea*, Retrieved from <https://www.bbc.com/korean/news-44632261>

- Park, S. 2018, June 19. Over 200,000 Koreans sign petition calling for deportation of Yemeni refugees in Jeju. Hankyoreh. Retrieved from http://english.hani.co.kr/arti/english_edition/e_international/849739.html.
- Roh, S. 2013. "Increased foreigners and fear of crime: Focusing on group threat theory." *Korean Criminology Review* 9:151-184.
- The Department of Economic and Social Affairs, UN. 2006. International migration report 2006: A global assessment. United Nations.
- Yoon, I. & Song, H. 2011. "South Koreans' perception of national identity and acceptance of multiculturalism." *Unification Research* 55: 143-192

Methodological Particularities on the Criminal Investigation for Offenses in the Business Field

Nicoleta-Elena Hegheș

*“Dimitrie Cantemir” Christian University, Faculty of Juridical and Administrative Sciences, Bucharest, Romania,
nicoleta.heghes@ucdc.ro*

ABSTRACT: Financial - banking crime affects fundamental areas of the functioning of society, economics, financial systems, banking, commercial and civil circuits of goods, the labor market, etc. In carrying out the activity, the investigators must know in detail the facts have a thorough knowledge legislative framework in the field and to establish the exact facts, the means used by the perpetrator as well as all the circumstances of the deeds. This can be achieved through a variety of specific activities such as search, obedience perpetrators, witnesses, seizure of documents and objects, disposing of expertise, damage assessment, reconstruction succession of facts, cooperation with the media, international organizations etc. In the field of business crime, the evidence most often administered is the flagrant, the suspects or defendant's' statements, the recording and intercepting of the conversations and the expertise. In essence, any investigation in this area involves the adaptation of principles and the initiation of investigative acts that we will present in this paper. Advanced technology serves both the offender and the investigator for discovering the offenses. There is practically a perpetual struggle between their knowledge, among whom is better prepared and more updated with the new technical discoveries. The subject of study is inexhaustible, and the methods of fighting and investigating are constantly moving, innovation and improvement.

KEYWORDS: business field, criminal investigation, expertise, flagrant, recording and interception of calls, suspects and defendants' statements

Introduction

From the point of view of the criminal investigation of this area, the opinions of Prof. Marcel Le Clere and Commissioner Rene Lechat, the reputant of the criminals, have addressed this issue as “business banditism” consisting of „scams, tax fraud, often accompanied by trafficking of influence or corruption officials, delicate scholarship and bank” (Le Clere 1973,101; Stancu 2015, 639). Regardless of the terminology used, it is obvious that the field we are dealing with has a particular impact on all individuals and businesses, such as businesspeople who appear on this field as professionals, as well as all other citizens who can not avoid the condition the consumer being subjected to every day enforcement tracking, as well as violation of the legal norms governing it.

By analogy with other crimes committed intentionally, every fraudulent scam or maneuver is a special case. The imagination of the perpetrators in this field is not limited, manifesting itself in unpredictable fields and directions, thus emphasizing the dangerous nature of the facts in question by affecting many honest businessmen and taxpayers through the damage they bring to the state (Stancu 2015, 651).

In the field of business crime, the evidence most often administered is the flagrant, the suspects or defendants' statements, the recording and intercepting of the conversations, the expertise. In essence, any investigation in this area involves the adaptation of some principles and the initiation of investigative acts which we will set out below.

Interception of conversations and communications. Audio and video surveillance

Criminalization of business crime often involves the use of technical means such as audio-video recordings, voice and speech expertise, graphic expertise, technical expertise, multimedia expertise, etc. Since those committing such crimes communicate coded for their capture, specialists need to intercept, record and decode the conversation.

Intercepting involves the use of technical means through which the contents of the conversations are. Given the fragility of interceptions in terms of the protection of human rights and fundamental freedoms, the legislator provided for their admissibility if national security is at stake.

Recording involves the storage of information on a medium with the ability to be read, modified, transmitted, and so on.

Audio-video recordings must be made in accordance with the rights and freedoms of citizens as provided for in the Romanian Constitution and the European Convention on Human Rights. Per a contrario, it is a touch to privacy. The provisions of the Resolution of the Council of Europe on the fairness of legal proceedings in cases of espionage or disclosure of state secrets should also be observed, according to which the legitimate protection of state secrets must not become a pretext to unduly restrict freedom of expression or information, international scientific cooperation and the work of lawyers and other human rights defenders.

The provisions of art. 29 of the Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and amending and supplementing normative acts containing criminal procedural provisions does not oblige the secret services or the prosecutor to submit to the file of the court seized with criminal accuracy the documentation on which they relied when they requested and authorized the interception of calls. An important issue in the matter of registrations is the issue of inadmissibility as evidence of registrations made by parties or other persons under conditions other than those covered by Art. 8 of the European Convention on Human Rights as they fall into the generic category of unauthorized registrations.

On the occasion of certification by the Prosecutor of the authenticity of the minutes of the intercepted conversations and conversations intercepted and recorded, as well as in the case of the technical check performed with regard to the equipment or the equipment used for environmental interception in the environment, by a finding technical/scientific expertise or forensic technical / forensic expertise, under the conditions of a Standard Operational Procedure, it is possible to establish the correctness and completeness of the records and the reliability of the devices used simply by confronting the rules and norms of good practice established with the notes in the minutes and the physical examination equipment (Cristescu and Enescu 2013, 23-24).

Supervision of bank accounts

Criminal investigation bodies encounter great difficulties in banking secrecy and excessive money mobility from one name to another from one account to another from one country to another, so it is almost impossible in some cases to locate the deposits belonging to suspects.

Supervision of banking activity, which relies on global, regional, sub regional and bilateral cooperation between judicial authorities, investigative and repression services and financial regulators, is carried out on two levels, namely:

a) Internal - by the National Bank of Romania, in order to protect the interests of the depositors and to ensure the stability and viability of the entire banking system, being the authority responsible for checking and controlling the enforcement of the provisions of Law no 656 of 2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures to prevent and combat the financing of acts of terrorism.

The control exercised by the National Bank of Romania shall be established in relation to the frequency and degree of detail of the verifications and evaluations, taking into account the principle of proportionality, at least once a year. On-the-spot checks shall be carried out by staff of the National Bank of Romania by financial auditors or experts appointed by it.

Credit institutions must conduct their entire business in accordance with the rules of prudent and sound banking practice. In doing so, it must adopt rigorous administrative and accounting procedures, adequate internal control mechanisms and internal rules for the implementation of international money-laundering sanctions. In this respect, a person with responsibilities in coordinating the implementation of internal rules for the implementation of international sanctions of funds, as well as on the permanent updating of the information held by the institution on international money-laundering regimes, the administration of alerts received from the National Bank of Romania, etc. The reports to the National Bank of Romania shall be transmitted to the Supervisory Board within the National Bank of Romania.

b) External - by the criminal investigation bodies. Criminal investigation bodies carry out activities to ensure the knowledge of the content of financial transactions through a bank or other competent institution. It also carries out activities relating to the obtaining of documents or information in the possession of the bank or financial institution relating to a person's accounts or transactions. If the competent authorities request in writing, credit institutions are required to provide information of a banking secrecy after the commencement of criminal proceedings against a client.

The personal data of people using the banking system is a valuable source of information for banking institutions, but also for those who violate the law. For this reason, the banking system has to provide customers with the confidentiality and security of the information, provided by the holders and used only with their consent.

Flagrant is one of the most effective investigative methods used to obtain evidence against criminals in the field of organized crime.

The objectives pursued in the case of flagrant organization are (Medeanu 2006, 34; Olteanu 2003):

- preventing the consumption of illicit activity and diminishing the social danger;
- capture of the perpetrator at the time of committing the act or as soon as possible;
- collecting all evidence attesting the existence of the offense and proving the perpetrator's guilt;
- restoring the previous situation, recovering the damage caused and lifting objects, goods owned or trafficked illegally and taking criminal charges within a time frame as close as possible to the moment of the act.

Being aware of the offense, the investigators interfere with the illegal activity preventing the amplification of the results.

The location and timing of the offense become known from the very beginning of the research. Capturing at least one of the perpetrators can lead to the identification of all participants.

The flagship involves a series of prior measures such as surveillance, interception of telephone conversations, other means of communication, obtaining search warrants as well as finding and retrieving evidence.

In order to organize a flagrant prosecution, the prosecutor competent to conduct criminal prosecution may authorize, by reasoned order, the use of undercover or real-life investigators to discover the facts, identify perpetrators and obtain evidence for a period of up to 60 days, which can be prolonged reasonably.

Minutes concluded by undercover investigators or those with real identity are evidence and can only be used in the criminal case for which authorization was given. There is an opinion that the data and information recorded in the undercover investigator's reports may be used in other cases or in connection with persons other than those covered by the authorization issued by the prosecutor if they are useful and conclusive (Udroiu, Slăvoiu and Predescu 2009, 196).

Also, undercover investigators or real-life investigators can be heard as witnesses. The area of action of the burglary after its execution must be released quickly to prevent the concentration of curious persons, the intervention of other criminals or other negative events.

Financial investigations that are considered the cornerstone of research into any case of economic crime must go through several stages (Leția 2014, 179):

- identification of the proceeds/property obtained from the offenses;
- taking measures to seize/confiscate them;
- detection of transnational financial/economic structures/networks and their destruction;
- gathering the necessary information on the procedures used by the offenders;
- their collation and analysis.

Financial investigations should determine what is the profit generated by illegal activities and involves researching different records, bank information that marks the movement of money, etc. therefore, financial investigations must identify and document the movement of money that has served to commit the crime, establish the motives, links between people and places, means of transport and

communication, identify witnesses, suspects and victims. This involves the creation of a mixed, multidisciplinary team consisting of a prosecutor, criminal experts, financial experts, financial analysts. The team aims to conduct investigations, convict criminals and confiscate their assets. Survey versions and expert conclusions should be based on valid information that links new investigative techniques to traditional ones. In order for samples to be used, they must be obtained by legal means.

Witness statements

In the judicial probation, in order to learn the truth, the criminal prosecution bodies always have to establish a multitude of concrete facts, which were done before the notification, and will proceed to a reverse knowledge, from what is known, to what is unknown in the case for instrumentation. On the basis of the primary information resulting from the referral (complaint, denunciation, ex officio referral), the criminal investigating authorities must re-establish with the evidence all the criminal path so that they express the belief that they represent the truth.

By defining the witness, the Romanian criminal procedural law (Art. 114 para. (1) of the Romanian Criminal Procedure Code) indicates that he is the person who has knowledge of facts or factual circumstances constituting evidence in the criminal case. In order to become a witness, it is necessary for such a person to be called, as a witness, by a criminal judicial body. In a criminal case, any natural person, whatever his social situation, age, sex, religion or nationality, may be called as a witness. At the same time, people with certain sensory deficiencies (blind, deaf) or of psychic nature can also be witnesses.

When the criminal investigation body takes the witness statement, it does the provisions of Art. 861 of the Code of Criminal Procedure.

Listening to witnesses is a particularly complex task, which must be conducted in accordance with criminal procedural rules and forensic tactics, requiring the judiciary to have a lot of calm, special attention, perseverance and objectivity in analyzing and assessing the value of the statements.

After performing the training activities in the sense mentioned above, listening to the witness involves the following six main stages, namely: the question stage regarding the person being heard; the stage of communication of rights and obligations; the oath and the solemn declaration stage; the stage of free speech and listening; the stage of asking questions; the state of filing the declaration.

The whistleblower's statement is an important means of proof in the case of economic crimes (the most common being the giving and taking of bribes), which may play a decisive role in the discovery and sanction of offenders. The characteristic of economic crimes is that of the confidentiality and mutual trust of those involved in committing the deed, especially in the context in which the essential value that unites the perpetrators is the economic one, namely the financial resources (Leția 2014, 182).

Witness statements are recorded in written form by the criminal investigation bodies, on a standardized form of the witness, in the single person I, with the questions they have as well as the answers given by the witness to the questions. The statement shall state the time of commencement and the time of the end of the witness's hearing, and whether or not the statement was recorded audio-video. The written statement is signed on each page of the witness and the criminal investigating body that audited the injured person and the lawyer of the injured person, the suspect or defendant, the civil party or the civilly responsible party, if they were present, as well as the interpreter when the statement was taken through an interpreter. If the witness can not or refuses to sign the declaration, the statements corresponding to the situation will be made, specifying the causes justified by the witness in this respect.

The assessment of the testimonies of the witnesses is to establish their sincerity and the truthfulness of the statements made by them, as well as the main purpose of the training and tactics used by the criminal prosecution bodies for listening. Only statements of the denouncing witness will be retained, which do not contradict the rest of the evidence.

The search

The importance of the search is undisputed and the judicial practice is that it shows that in the absence of the search the probation in the case of business crimes would be in a great difficulty, so that the perpetrators could remain unidentified or the acts committed by them could not be proved in scientific way or criminal case could not be clarified in all respects.

In any case, the success of a search depends on how it is prepared. For this purpose, the criminal investigative body should pay special attention to all circumstances that may affect the conduct of the search under the best conditions, such as: the nature of the deed investigated; objects, writings and computer data sought, as well as their characteristics; behavior and anticipated manifestations of the person undergoing the search; the characteristics of the searched place; the date and time frame for the search; search participants and the necessary technical means; the start of the search, the way of entering the search area; how to prevent leaving the search site on the arrival of the team by the persons searched; the measures to be taken to ensure the safety of the persons involved in the search, etc.

The search can be home, body, computer or vehicle. From a tactical point of view, the preparation of the search involves the following steps (Niță 2017, 58-59):

- studying and in-depth knowledge of existing materials in the criminal case so as to ensure a clear picture of the object, the enrollment, the equipment and the computer data that are being sought, as well as their generic characteristics regarding the form, size, color, structure, weight, smell, etc.;
- establishing the purpose of the search based on the necessity and timeliness of its disposal based on the reasonable suspicion of the criminal investigative body about the possibility of discovering evidence and means of evidence useful to the case;
- establishing the methods used to conduct the searches and the necessary technical means, depending on the purpose of the search
- conducting minimum investigations to ensure the knowledge of the place of the search, of the person being searched and of other persons living with him, in order to establish the main elements of tactics needed to be used to ensure the success of the action;
- establishing the date and time of the search, based on rigorous risk analysis regarding the possibility of missing or destroyed items and documents sought, as well as risks related to the integrity of goods and the safety of people present or in the vicinity of the site Hers;
- establishing ways of blocking any possibility of escaping the person searched at entry and surprise by the team conducting the search, as well as blocking its ability to destroy the evidence and trial material for which the search was conducted;
- establishing the means of penetration into the searched place by using any opportunity on the ground, in particular by preparing a scenario to determine the person being searched or another person in that place to open the door or gate at the entrance;
- the determination of the participants in the search, taking into account the nature and extent of the searched areas or areas, the nature of the objects sought, the degree of difficulty involved in their discovery, the data characterizing the personality of the person to be searched, certain tactical considerations about the actual conduct of the search, etc.; it should be noted that the search necessarily involves the presence of the person being searched, even when he is detained or arrested; in the absence of the person being searched, this activity can be carried out in the presence of a representative or a member of the family and, in the absence thereof, of a neighbor who has the capacity to exercise;
- to carry out the legal formalities for ordering the search so as to ensure that the procedure in the Code of Criminal Procedure is followed in the most rigorous manner.

Based on the conclusion, the judge immediately issues the search warrant, which must include, *inter alia*, the period for which the authorization was issued, the place where the search is to be conducted, the name of the person at the place of residence or residence, the purpose for which it was issued, etc. The place where the search is conducted, as well as the persons or objects found can be photographed or recorded audio-video. They are attached to the search report and form an integral part of it.

The record of the search and the removal of the objects and the documents shall be mentioned in terms of its execution, the place, the time and the conditions in which the objects and the documents have been discovered and removed, their enumeration and detailed description, the objects which have not been as well as those that have been left in storage. A copy of the report shall be left to the person under investigation or to the person from whom objects and documents have been removed.

Conclusion

To investigate and prosecute offenses of the business field, the criminal investigation must carry out a thorough dismantling of the mercenaries used by the perpetrator, which is often at the narrow border between licit and illicit. In the specialized literature it has been stated that a research framework in this field is difficult to stabilize. Business investigation is characterized by complexity and it needs to be done with determination, with much patience, tenacity, perspicacity and courage. None of these attributes should be lacking if it is desired to restore the balance between still insufficient criminal provisions and the ability of offenders in the business world, some with special relationships or having economic, social or political positions.

References

- Cristescu, D.I. and Enescu, V.C. 2013. Prolegomene privind administrarea și expertizarea probelor multimedia (Prolegomena on administration and expert evaluation of multimedia evidence). Timisoara: Solness Publishing House.
- Le Clere, M. 1973. *Manuel de Police technique*, Editura Police Revue, Paris. In Stancu, E. 2015. *Tratat de criminalistică*, ed. a VI-a. Bucharest: Universul Juridic Publishing House.
- Leția, A.A. 2014. *Investigarea criminalității de afaceri: spălarea banilor; corupția și fraudă fiscală; aspecte teoretice și practice (Investigating business crime: money laundering; corruption and tax fraud; theoretical and practical aspects)*. Bucharest: Universul Juridic Publishing House.
- Medeanu, T.C. 2006. *Flagrantul în traficul de droguri, în Criminalistica (Flagrant in drug trafficking in forensics)* – Magazine for information, documentation and opinion, no. 5/2006, p. 34.
- Niță, N. 2017. *Tactica criminalistică (Forensic tactics)*. Bacău: ProUniversitaria Publishing House.
- Olteanu, G.I. 2003. *Aspecte specifice pe care le îmbracă constatarea infracțiunii flagrante în cadrul investigării infracțiunilor de trafic de droguri (The specific aspects of the flagrant offense in the investigation of drug trafficking offenses)* in Symposium Realities and perspectives in forensics, Bucharest.
- Romanian Criminal Procedure Code. Available at:
https://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiw0cuo-JXeAhXFVywKHbDGC0QQFjAAegQICRAC&url=http%3A%2F%2Fwww.just.ro%2Fwp-content%2Fuploads%2F2016%2F01%2FNoul-cod-procedura-penala-EN.doc&usg=AOvVaw1IcdJjStcO_2bVSwbLPadb
- Udroiu, M.; Slăvoiu, R. and Predescu, O. 2009. *Tehnici speciale de investigare în justiția penală (Special investigative techniques in criminal justice)*. Bucharest: C.H. Beck, Publishing House.

Civil Servant Corps in Romania – Facts and Prospects

Agata Mihaela Popescu

*“Dimitrie Cantemir” Christian University of Bucharest, Faculty of Juridical and Administrative Sciences,
av.agata@yahoo.com*

ABSTRACT: The world boasts a rather rich experience with regard to both public function itself and public function institution, hence civil servant category. Public servants appeared along with the organised state, a relevant culture, even a patrimony developing throughout millennia and centuries. Civil servants (even if not always called as such) have existed in all societies all over the world. Certainly, the meaning of this concept and of civil service differed in time. For some, civil servants were a kind of clerks dealing with the paperwork needed in the relation of the powerful with their subjects, of the authorities with the citizens, for others they included state administration, clerks in ministries, those responsible with tax collection, more or less all those remunerated from the state budget, except dignitaries and military. Presently, all states have civil servants who work in keeping organic laws which regulate the activity pertaining to the operation of a state, to public order and to state security, to optimising the relationships between authorities and citizens etc. In Romania, the activity of civil servants is regulated by Law no 188/1999, amended in 2018, on the Statute of Civil Servants, and by Law no 156/2018 amending Law no 188/1999.

KEYWORDS: bodies, civil servant, citizen, public administration, public function, state

Introduction

A society has always been a dynamic and complex system, associated with specific processes, which generate and implement, timely and adequately, the characteristics indispensable to its existence and proper functioning: unity, diversity, coherence, ability to adapt to new conditions, integrality, flexibility, adaptability, efficiency and durability. Unity and diversity are both structure and functioning related components, which make up the structural universe of an identity. They are ensured, we believe, particularly by the congruence between the value systems generated in time, which form the cultural and mostly the axiological foundation of any type of society, the modality which all kinds of managers (political, economic, social, administrative, educational, military, communicational etc.) use in order to identify, make work and connect – within the same concepts – vital national interests with value support systems, under the conditions provided by the international, global and regional environment.

Each of the aforementioned domains, both related and supplementary, has its structure and complexity, its role and purpose, but the vital centres which gather and interconnect all the elements and structures on which and through which actions are taken, are two, integrated and interdependent: *the individual* and *the society*. All the components of the social and societal structure operate specifically within this framework, but the median and coagulant factor and, equally, the pawn, the pivot and the ant which set up, test, build and keep together and coherent this unitary, viable and flexible edifice is what laws everywhere in the world call *civil servant*. Far from being a factotum (actually, each civil servant is but a toiler in the anthill and for the anthill, a bee in the beehive), this individual who works hard in a kind of synopsis, actually providing, in an interactional and pragmatic manner, what the law calls “professional, transparent, stable, efficient and impartial civil service, both in the interest of the citizen and of authorities and institutions (Law no 188/1999, on the Statute of Civil Servants, amended in 2018, republished, art. 1(2)), and ensuring the consistency and vitality of the synopsis, is only a tiny dot in an immense and complex dimension.

Civil servants – as old as the organised human society – exist, perpetually renewed, commented and reconfigured, under two extreme and categorical authorities: the *individual* whom they serve and the *authority* which they attend. And even if the law defines, quite clearly, civil servants’ role, duties and competences, the mechanism within which and by means of which they work, determinations and, mainly, perturbing factors upset the linearity of this profession and of this indispensable and often unsatisfying social function (which some consider to be friendly and easy) and turn it into a non-linear, very complex, highly diversified and extremely demanding dimension.

That is why it seems that there is no perfect civil servant always adapted to the requirements of the variable dynamics of the social and individual life, in such a complicated and unpredictable society.

Public Function and Civil Servants

The two jaws of a huge vise – *the state authority and the individual and insatiable group need* – squeeze the civil servant in a corset woven from law rigours, complex determinations, equally rigid and aleatory, and eternally specific and sophisticated demands. They turn this profession as well as this social and professional category into a distinctive species, suffocated by shells, regulations and bureaucracy and left alone and helpless in the elegant or primitive jungle of a complicated society, made up of complex civilisations and different, more than often dissatisfied people.

Particularly for the present Romanian society, which experienced, due to the extremely complicated and controversial revolution in 1989 and the following years, a complex, austere and dramatic transformation process from the socialist society, with a different brand, a different configuration, a different system of values, laws and institutions, with a different concept of freedom, equality, security, responsibility etc. to a liberal, capitalist-type society, with determinations contrary to those of the former society, the price of this maieutic is dazzling and extremely high. We talk about millions of people forced to leave the country in search of a job, about a severe disturbance of social order, about several thousands getting rich by means of fraud, about the enhancement of social anomalies, about the recrudescence of corruption and violence, about the striking, uncontrolled and paradoxical weakening of state administration and institutions etc. etc., with destructive or, in any case, perturbing effects on legality, legitimacy, social order and way of life.

The new political, economic, social, moral and security configuration, according to the western model, which respects the market, freedom and property, and not by merely resuming the one that existed until 1945, that is the old pre-war rules and customs, but by fully, furiously and sometimes wrongly destroying in anger and without discernment all the structures, components, values, heritage and effects of an epoch that lasted only half a century, in the name of another epoch, partly recovered, partly rebuilt not from values but from all kinds of rifts, frustrations, scenarios and hopes, has destroyed not only a concept but a perennial universal foundation, that of civil service, existing in every type of society, part of mankind's heritage and ensuring the actual functioning of the society. It is the professional category that serves the citizen and the society as a *modus vivendi* of people, as an institution of the economic and social life.

As well known, civil servants are part of this heritage. They do not and should not have political, ideological or party membership, but a necessary existence and intrinsic civic and professional determination. Their conscience and vocation is not affected by socialist, liberal or non-liberal political concepts, but only by civic, economic, social and professional concepts. They do not issue or legitimise policies, strategies, wide-scope operations and tactics, they just enforce and implement those accepted, selected, issued or validated by the lawful authorities, by the most appropriate means. Civil servants are not communists, socialists, liberals or anarchists, but professionals in the service of the society, of the people, intelligent and tenacious performers, mediators, clerks. But they are also creative, intelligent and diligent, they are experts, specialists.

They may be intelligent or less intelligent, they may have likings or preferences, but in their profession they can only be the conveyors, the professionals that enforce the law, promptly meet citizens' demands, requirements and needs, operate the economic and social mechanism, certainly not as a blind interface between decision makers and doers – being instruments and performers – but also as intelligent and qualified elements of human potential, as conscientious and rigorous clerks, as creators in an interface pool between law and the beneficiaries of its effects, between authorities and citizens.

Nonetheless, civil servants are not a mere conveyor that goes on and off according to an algorithm, to the will of the powerful or to the demands of individuals. They are elements of a determined, intelligent and moderate construction, who solve problems, within their competence, who connect the will of the authorities with the needs of the citizens, participate in the drafting of

policies, strategies and of the other elements pertaining to the dynamics and philosophy of public policies, documentations, support and surveys required by the processes specific to the state of law.

All these are highly important. The way various countries and administrations address them is both similar and specific, but not definitive, rigid and categorical. That is why we believe that a thorough analysis of public function, of civil servants and of this numerous, interdependent, rigorous and creative category is both beneficial and necessary. This derives from the changes in the political, economic, social and administrative paradigm occurred over the past decades in Europe and the world over, as well as from the significant degradation of the international security environment and of human condition in our zone of direct strategic interest.

We set out from two expectancy horizons and two categories of premises when we chose this subject:

- the new dynamics of the demands for a configuration and reconfiguration of the public function in a democratic state, conditioned by the new internal and external, geopolitical and geostrategic exigencies and determinations, within which interdependencies, pressures, dangers and threats, just as vulnerabilities to all these go beyond what we call state of law and greatly complicate its support parameters;

- specific determinations resulted from internal organisational processes, from deep-going mutations – some of them destructive – occurred in the implosive and divided Romanian society, in the European and Euro-Atlantic context.

None of these horizons is clear with regard to their pillars and projects, which actually do not exist, or if they exist they are late, timid, arguable, not unanimously accepted or even prolix. This whole legislative and executive tumble, generated by the lack of political and strategic projects and of appropriate matrices of intrinsic safety, of stability, security and hope has created a dominant feeling of temporariness, of uncertain and tense expectation, of fear and, eventually, of disappointment and even resignation, when some developed only their accumulative, corruptive, arriviste functions, whereas most of the inhabitants developed only their survival functions, all while the social project and the long-term country project and the strategic concept on durable development lacked altogether.

This reality is corroborated by specific internal determinations which failed to boost honesty, endogenous responsibility, trust, hope, as well as responsibility and commitment to designing and implementing a country project able to bring together all inhabitants, not even in the year when we celebrate the centennial of the Great Union and of the foundation of the modern unitary and indivisible national state.

The absence of a unitary and integrated vision and of a national enthusiasm able to promote a genuine and absolutely necessary country project has proliferated negative qualities, the will and even the need to emigrate, the temptation of the jobless to make do with the social benefits the state give to almost all those without a stable income.

At first glance, the effect of such policies, poor in nuances and realism, on the public function was to render it superficial and levelled, to take it out of the exigencies of our epoch and of its deontic logic. Deviations appeared at all levels from the deontology of public function and of the profession of civil servant, respectively.

A first assessment of this deviation, based on both study and practical experience, evinced the idea that until 1999, when Law no 188 on the statute of civil servants was passed, and even afterwards, even after it was amended in 2018, there were at least three trends in exercising this profession:

- excessive bureaucracy, materialised in the fussy, blind, narrow-minded and unimaginative clerk, the messing up clerk;
- relative proliferation of endogenous corruption, petty, conditioned and extended;
- development of the typology of present and future civil servant, very modern, intelligent, motivated, imaginative, communicative and responsible.

The type of rigid, fussy, excessively bureaucratic, messing up clerk who does not understand the flow, connection, or his role in the economic, social, administrative, military, security and public order

mechanism, evolved for a while to the detriment of the intelligent, motivated clerk able to accept demands and understand in a nuanced and realistic way the exigencies of a public function, and to abide by the optimal parameters of its philosophy and physiognomy. This type of clerk, extensively criticised over the past years, helps neither the citizen nor the institution where he works (town hall, agency, ministry etc.). He terrorises the poor citizen and renders the correct enforcement of the law extremely difficult. Certainly, such a clerk cannot be accepted or tolerated for long, but it is very difficult to identify him among the numerous civil servants and to prove his incompetence and ill faith. Consistent, even excessive fussiness and bureaucracy are not necessarily a bad thing. But the line between excess and exigent, between rigour and terrorist excessiveness, between the inflexible clerk who just does his duty and the one who always finds something wrong – for real or not – is hardly detectable or even demonstrable. That is why the institutions monitoring the rule of law and the proper enforcement of law provisions in the relation with the citizen often fail to notice the inadvertencies, dishonesty and incompetence of the civil servant. In the end, it is not the exclusive job of the specialised institutions to monitor whether a public function is exercised correctly; the relevant institution should have this expectancy horizon included among its competences.

The public function and, consequently, the civil servant are of strategic importance for any state. That is why we believe that this issue should be tackled at all levels, but the strategic level is always the basic, fundamental one. When we speak about public function and civil servant, we should bear in mind not only the approach to actions specific to this type of activity, what the civil servant does on a daily basis, but also the way in which he works in this highly important domain. Just as today, in the battlefield, each soldier is a pawn in an extremely risky aggregate, whose action always has a strategic effect, the public function and the one exercising it must be understood as having a strategic importance in the social-economic reality.

As stressed before, in Romania, the activity of civil servants is regulated by Law no 188/1999, amended in 2018, on the statute of civil servants and by Law no 156/2018 which amends Law no 188/1999. Art. 2 of Law no 188 defines both the public function (*the aggregate of duties and responsibilities, set under the law, for the central public administration, the local public administration and the autonomous administrative authorities to carry out their prerogatives*) and the public servant (*the person appointed, under the law, in a public function*).

Paragraph (3) of the same article lists the activities performed by civil servants. The fact is interesting that the first provisions of this article of Law no 188/1999, as amended, takes the civil servant out of the narrow, strictly executive context, once limited to solving petitions and applications and to other fussy and annoying bureaucratic activities, extending it to other domains, such as the *drafting of norms and other regulations specific to public authorities or institutions and their endorsement, the drafting of the projects, policies and strategies needed to put in place and implement public policies...*, of the documentation required by law enforcement etc.

The concept of public servant has been extended, is more complex and diversified, the public servant being compared with bees in a beehive, or, more suggestively, with highly skilled workers of an enterprise, actually of the state, in the service of both authorities and citizens.

While carrying on my activity within the National Agency of Civil Servants (for some time now) I noted that self-verification, the feedback relation and the improvement of own functionality were not so simple to achieve; it is just the opposite, especially in recent years due to the changes occurred in legislation, to the changes, transformations, reforms and substantial improvements made to Public Administration.

Since Caragiale (renowned Romanian writer of the 19th century), the more or less institutionalised culture of the public function, hence of the civil servant seems, at least at a first glance by an outside observer, to have a more pamphlet-like than a brand resonance. Still, the latest reforms and recent updates and amendments have brought some fresh air in this domain.

The image of the Romanian civil servant, just as of the public function institution is not firm or rigid, like that of the German or English civil servant, for example; it is rather conditioned by times and by the whims of the regimes that have ruled our country along the years.

That is why we believe that scientific research – both fundamental and applied – still has a lot to explore and many problems to solve in this domain.

The Romanian society, especially in the European, Euro-Atlantic and global context, and despite the debatable situations it is going through, evolves rapidly. Sophisticated technologies, IT, networking, digitisation, fast communication in real time, as well as the complex and sudden transformation processes imposed by corporations and fluid economy trigger a new, specific dynamics with regard to public function and civil servant.

It is highly probable that in the future a large share of the civil servant's current duties will be taken over by automated systems and solved via robotisation and cybernetics. This may entail new characteristics, new dimensions, new consonances and a specific flow of resonances, but by no means a degradation of this function; on the contrary, it will be modernised and freed from excessive bureaucracy, human error and ill faith, which has never disappeared, not even in the best moments of our civilisation on Earth.

On the one hand, this survey will truthfully and thoroughly X-ray this domain, the complex dynamics of processes, reality and current projects of the public function and of the socio-professional category of civil servants, with all their determinations and conditions – political, economic, social, legal, hierarchical, networking etc. – and on the other hand will identify new potential and integrated management resources, the prospects of these processes.

I state this since it is common knowledge that our country suffers from negative, excessive, stressful, even terrorising bureaucracy, with a worrying inefficiency index, which affects not only the citizens and the community, the working team and management of any organisation, but also the intrinsic, endogenous security of systems and processes, durable development, everyday life and human condition as a whole.

It is true that the National Agency of Civil Servants and the National Institute of Administration have many achievements as regards the founding of the public function, of the civil servant and of the Civil Servant Corps on new modern and up-to-date co-ordinates, but it is still hard to clear this domain and only a few swallows do not make a summer.

There still is a lot to be done, and scientific research needs to contribute more substantially to flattening and smoothing this still rough and uneven ground. This process has already started, strongly and efficiently. For instance, the specialised department of the National Institute of Administration is to provide continuous professional training for important categories of personnel already specialised in central and local public administration. They are the future candidates for jobs as high civil servants, civil servants or staff working under individual labour or management contracts, persons that have been designated, elected or appointed in public functions, or people of other categories.

All the current programmes of continuous specialised professional training tackle complex, innovative topics which ensure the development and updating of competences and skills in high demand, abreast with the requirements of modern, flexible and high-performance public administration (INA 2018b). Unfortunately, the Romanian society, in all its component parts, just as the present administration, is still divided, unstable, incoherently reformed whenever governments change, which renders almost impossible clear long-term projects, country or public function related.

Nevertheless, in order to attain such a goal of strategic importance, like that of recruiting and brushing up the knowledge of trainers that train highly skilled trainers and civil servants, the National Institute of Administration recruited for 2018, at national level, specialised staff (trainers) to provide brush-up programmes in 2018 in its territorial centres in the following 18 domains (INA 2018a): Public policies; Regulation drafting; Human resources; Financial management: programme budgeting; Internal audit (including the use of the Managerial Internal Control System); Project management; Institutional representation; Public acquisitions; Quality management; Territorial planning; Urbanism; IT&C application administration; Communication and PR; Emergency situation management; Ethics and integrity; Social service management; Strategic management; Register Office. The mere enumeration of such important domains, which belong to what we call

public function and public project, evinces the broad and complex character of this undertaking of the Institute.

That is why we intend to analyse the new political, strategic, operational and tactical management of the public function and civil servant domain, imposed by the new form of Law no 188 and promoted by the National Institute of Administration, as well as the feedback effect generated by inter-level and inter-domain interactions.

Conclusions

In conclusion, this scientific demarche, regarding a highly important structure of the present but more particularly future Romanian society, showed that the major goal was to identify the main elements and co-ordinates of the evolution of public function and of the institutions that define, modernise and support it, particularly of the modern civil servant and the civil servant corps of Romania. We believe that its contribution to the proper functioning of the state and of the relation among the various components of the society should be substantial, supported by law, procedures, practice and scientific research so that best results should be obtained in the shortest possible time.

References

- INA (National Institute of Administration - Institutul Național de Administrație). 2018a. *INA continues the recruitment of specialized staff (trainers)*. Accessed October 20, 2018. <http://ina.gov.ro/2018/06/rpp2/>
- INA (National Institute of Administration - Institutul Național de Administrație). 2018b. *Specialized training*. Accessed October 20, 2018. <http://ina.gov.ro/formare-specializata-2/>
- Law no. 156/2018 amending Law no. 188/1999* (Legea nr. 156/2018 pentru modificarea și completarea Legii nr. 188/1999).
- Law no. 188/1999 on the Statute of Civil Servants* (r2): which includes the duties of the National Agency of Civil Servants (Legea nr. 188/1999 privind Statutul funcționarilor publici (r2): ce cuprinde atribuțiile ANFP).

Immigrant Detention of Families and Post-Traumatic Stress Disorder

Seunghan Han¹, Hyunkyung Choi²

¹*Northern Valley School at Old Tappan, Norwood, New Jersey, USA primeins@gmail.com*

²*Ramapo Indian Hills, Franklin Lakes, New Jersey, USA hyunx2b@gmail.com*

ABSTRACT: Family separations and detention due to immigration policies are traumatizing events that have a profound impact on the children and young adults involved. American society responded strongly and vociferously in 2018 to the news that children were being separated from parents, partially because the experience is widely recognized as being traumatic. The after-effects from harrowing occurrences might cause immigrants to suffer from Post-Traumatic Stress Disorder (PTSD), a condition of persistent mental and emotional stress occurring as a result of severe psychological shock. PTSD can even manifest into physical symptoms that lead to illness and other impairments. The purpose of this paper is to explore how young victims react emotionally to the difficult challenges of risking entry, being detained, waiting for judicial hearings and then fearing deportation for years. The presentation will also evaluate the issues policymakers and judges face in solving these critical problems to address the mental well-being of those involved.

KEYWORDS: Immigration Policy, Family Separations, Unaccompanied Minors, PTSD, Youth Detention

Introduction

The Trump administration's policy of separating children from immigrant families drew widespread condemnation from a broad spectrum of politicians, religious organizations, human rights groups and many segments of society. Laura Bush, the former First Lady, said, "I appreciate the need to enforce and protect our international boundaries, but this zero-tolerance policy is cruel" (Schallhorn 2018).

The current First Lady, Melania Trump, expressed her opposition by stating, "We need to be a country that follows all laws, but also a country that governs with heart" (Schallhorn 2018, Fox News). The detention of asylum-seeking families with children and other immigration-related events in the United States have consequences - many of the immigrants suffer a severe psychological toll. The aftermath of family detentions, separations and deportations often results in post traumatic stress disorder (PTSD). This research paper details the PTSD symptoms that scientists and mental health experts have found after evaluating people involved with difficult immigration-related experiences and discusses public policy challenges surrounding the issue of enforcing immigration law.

The primary factors that compel many immigrants in family units to seek asylum are hunger, violence, extreme poverty, violations of human rights, an environmental crisis and/or Chronic Exposure to Potentially Traumatic Events (PTEs) (Bayram 2014). If the asylum seeker and their children are placed in detention, it might have devastating effects on immigrants who are already suffering from pre-existing trauma experienced in their home countries or enroute. International law prohibits detention of asylum seekers except as a measure of last resort and only for reasons such as concerns about dangers to the public (Human Rights Watch. 2015).

Changes after the Flores Settlement was Upheld in 2016

There are close to 200 immigration detention facilities in the United States, located far from cities: Some house several thousand detainees at any one time, mixing foreigners with criminal records with families that don't. However, the goal of reducing the number of children held in detention led to profound undesired consequences/results. The established legal settlement between the Executive Branch of the Government and the Federal Judiciary is known as the The Flores Settlement Agreement (Acer 1997) which imposed several obligations on the authorities that include: release of children from detention without unnecessary delay, placement of children in the "least restrictive" setting appropriate to their age and implementation of standard care and treatment of children. In 2016, when U.S. District Judge Dolly Gee of the Central District Court in California affirmed that Flores applies not only to all children,

but their parents should be released as well, there was a 95% increase in people seeking to cross the US borders with families - from 40,000 in FY 2015 to 78,000 in FY 2016. (Chishti and Bolter 2018). Asylum seekers were less afraid to take the risk of getting into the US illegally if they made the risky journey with children.

Apparently, parents and children were emboldened to attempt to get into the US even without adult supervision. Over 2 million unauthorized immigrants were deported from 2008-2016, but only 24,000 of those deported were under 18 years old in this 8 year period. (Raphel 2014). Simultaneously, the number of children illegally entering the United States surged, from 20,000 in 2009 to over 62,000 in 2014. According to the US Customs and Border Protection, in the five year period of 2009-2014, there was a significant increase in the number of unaccompanied children who arrived at the border from El Salvador (+707%), Guatemala (+930%) and Honduras (+1272%). Interestingly, the number of unaccompanied children arriving from Mexico fell (-28%) (Raphel 2014). Therefore, the number of children in US detention facilities skyrocketed as they awaited adjudication. See Chart 1.

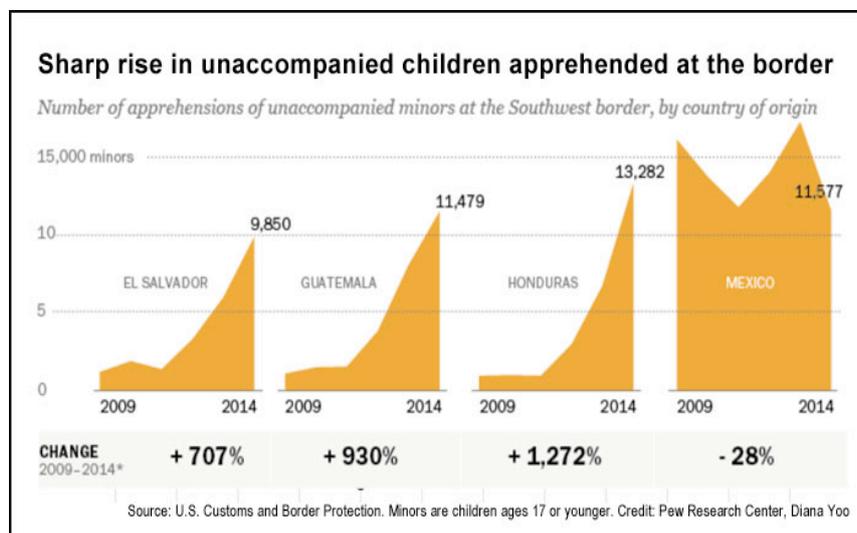


Figure 1. Number of unaccompanied minors at the Southwest border

Source: Pew Research Center

The Challenge of Balancing Criminal Prosecution with Humanitarian Concerns

The following summative history is from the Migration Policy Institutes July 2018, White Paper, explaining how the policies of prosecuting unaccompanied minors evolved:

“Operation Streamline, launched in 2005 by the George W. Bush administration in Texas’ Del Rio border sector, aimed to increase immigration prosecutions in response to an uptick in non-Mexican border crossers {coming from the three countries named in Figure 1}. Streamline continued through the Obama administration, and remains in place today. Criminal immigration prosecutions reached a peak of 97,000 in FY 2013. As originally defined by the Homeland Security Act of 2002, an unaccompanied minor is a child under age 18 who either has no parent or legal guardian in the United States, or none available to provide care and physical custody. Under 2009 guidance issued by the Obama administration, if unaccompanied minors (as classified by CBP or ICE) applied for asylum, USCIS asylum officers were to make independent determinations of their unaccompanied minor status. The Trump administration is clearly seeking to restrict who qualifies. In September 2017, the General Counsel of the Executive Office for Immigration Review (EOIR), the Justice Department entity in charge of the immigration courts, issued a legal opinion that immigration judges may make their own unaccompanied minor determinations—and those deemed not unaccompanied would lose protections” (Chishti and Bolter 2018).

Significant Increase Due to Reduces Deportations

Overcrowding in detention centers because of lower deportations of minors led to strong deterrence from both President Obama in 2014 and his successor President Trump - both introduced “Zero Tolerance” policies via Homeland Security and the Justice Department. Despite publicizing the fact in Mexico and Central America that children would be taken away from parents, many emigres “took the chance” of entering the US illegally. This led to massive occurrences of family separations. The latest statistics according to Trump administration officials - 10,773 migrant children were in US custody in May, which is up 21% from the total of 8,884 in April. Between April 19 to June 9, 2018, 4,337 children have been forcibly separated from their parents at the US-Mexico border (Lind 2018).

Family Detention Centers and PTSD

The correlation between family detention centers and post traumatic stress disorders in children has long been noted by immigration advocates. Mares (2002) recorded that children in detention centers experienced “dehumanization” and went through depression. And because their parents are often traumatized, detained children also lacked proper parental care and protection. The current documentation of the facilities in the U.S are very poor. As Robjant and Katona (2009)’s review proves, detention not only negatively affected children’s mental health but also worsened/harmed their mental and physical development. According to the American Civil Liberties Union, the growth in detention has caused horrible conditions of confinement, such as grossly improper health care, physical abuse, overcrowding, and discrimination. NGOs received complaints from detainees regarding “problems such as lack of access to necessary medications for persons with chronic illnesses; shackling; use of segregation or tasers for disciplinary purposes; inability to visit with family members and problems with access to telephones” (American Civil Liberties Union 2018, 1).

Regarding mental health, the current treatment system is sorely lacking in the U.S and other detention centers. In addition, detainees who are survivors of torture or trauma may be re-traumatized due to detention or the inability to obtain necessary mental health treatment. A consistent problem is the overuse or misuse of suicide prevention segregation. Detainees have claimed that the wrong and unnecessary use of “segregation” led them to hide depressing thoughts from facility counselors because of fear that such thoughts or request of mental health treatment could put them in segregation. One detainee stated she needed mental health medications and “just wanted to talk to someone about her fears,” but was unwilling to seek medical care for fear of being placed in segregation. Some segregation rooms are unsanitary, allowing extreme temperatures, or malodorous foul-smelling (American Civil Liberties Union 2018).

Once PTSD is diagnosed, it should result in a long-term regimen of individual psychotherapy and addiction treatment where appropriate, with an emphasis on the mental health component. “PTSD does not have to last forever but when it remains untreated, it can certainly last a lifetime”. Post Traumatic Stress Disorder (PTSD) is formed by traumatic events that happen before detention procedure and after if “institutional abuse” occurs during detention procedure. The following are the six symptom/signs that could be encountered by the children and family immigrants: “(1) intrusive memories and flashbacks to episodes of severe institutional abuse; (2) intense psychological distress and physiological reactivity when exposed to cues triggering memories of the institutional abuse; (3) episodes of dissociation, emotional numbing, and restricted affect; (4) chronic problems with mental functioning that include irritability, outbursts of anger, difficulty concentrating, sleep disturbances, and an exaggerated startle response. (5) persistent avoidance of anything that would trigger memories of the traumatic events; (6) hypervigilance, generalized paranoia, and reduced capacity to trust caused by constant fear of abuse from both correctional staff and other inmates that can be generalized to others after release” (Mandal 2015). See Chart 2.

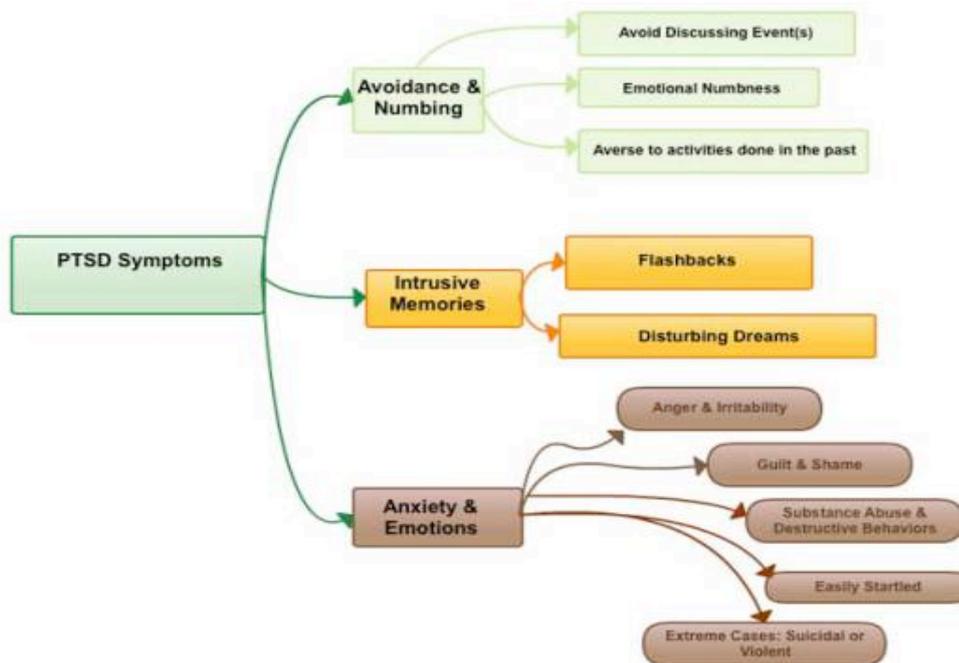


Figure 2. Main PTSD Symptoms

Source: Social Work Helper

A 16-year-old immigrant from Guatemala recalled back to his experience in U.S. Immigration and Customs Enforcement (ICE) detention facility and described the “office sized cell” being held with 30 other men. The room had a terrible smell. As a young child of age 7, he recounts himself screaming and crying for his parents along with the other kids while the guards were being negligent. (USA Today and Fox News 2018)

Different forms of PTSD symptoms are exhibited in children. Under harsh conditions and barriers to treatments of detention centers, the effects of untreated PTSD almost always are dangerous and results in misdiagnosis of mental health disorders, which prevents medical practitioners from providing proper clinical courses of rehabilitation and recovery (Linton, Griffin, Shapiro 2017).

Australian research on the correlation between detention and PTSD

In a 2006 study conducted with refugees in Australia, Steel observed that detaining families increased the risk of PTSD, depression and mental-health related disabilities - [and] longer detention periods had correlation with “more severe mental disturbance” (Simmons et al. 2016). Therefore, family detention contradicts the values on international standards, especially the idea that the “best interest of the child” should control the government’s actions toward children (Simmons et al. 2016). Traumatic experiences at young ages change the development of brain structures during adolescence. The trauma of detention is likely to worsen these harmful effects, which may even last long after the completion of the immigration process. For any country or region, childhood is “a sensitive and vulnerable period”; traumatic experiences and hardships can result in harm that continues into adulthood stage. Thus, “This inescapable knowledge should inform policy on the release of children from detention and remind us of the care and support they will need when they are finally released” (Simmons et al. 2016).

Conclusion

To ameliorate the issue of resolving family separation cases and lowering the incidences and repercussions of PTSD, the Department of Homeland Security should consider promoting the unauthorized immigrants to use ports of entry to claim asylum in order to avoid prosecution. Along with

a sensible modification of US immigration policy, the Trump administration should increase financial resources for Federal courts to meet the staggering case-load demand. It is inevitable that the immigration court system will be overloaded with work since the backlog is already more than 698,000 cases. The Justice Department sent 35 additional prosecutors to the border region, but the five Federal courts with jurisdiction are still struggling with the number of undocumented immigrants and cases they have to deal with. In fact, in FY 2017, the immigration prosecutions made up $\frac{1}{2}$ to $\frac{3}{4}$ of all Federal sentences. Finally, some judges and prosecutors are expressing their concerns about adjudicating the high number of crimes since most of the border cases are relatively low-level. All of these actions could reduce PTSD cases too.

References

- Acer, Eleanor. 2016. "The Flores Settlement: A Brief History and Next Steps". *Human Rights First*. Accessed July 24, 2018. <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>.
- American Civil Liberties Union (ACLU). 2018. *Conditions of Confinement in Immigrant Detention Facilities*. Accessed July 24, 2018. <https://www.aclu.org/other/conditions-confinement-immigrant-detention-facilities>.
- Bayram, Burcu. 2014. "Mental health of detained immigrant children." *Duck of Minerva*, Texas. Accessed July 24, 2018. <http://duckofminerva.com/2014/07/mental-health-of-detained-immigrant-children.html>.
- Chishti, Muzaffar, and Jessica Bolter. 2018. "Family Separation and "Zero-Tolerance" Policies Rolled Out to Stem Unwanted Migrants, But May Face Challenges." *Migration Policy Institute*. Accessed July 24, 2018. <https://www.migrationpolicy.org/article/family-separation-and-zero-tolerance-policies-rolled-out-stem-unwanted-migrants-may-face>.
- Human Rights Watch. 2015. "US: Trauma in Family Immigration Detention." Accessed July 24, 2018. <https://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention-0>.
- Lind, Dara. 2018. "New statistics: the government is separating 65 children a day from parents at the border." *Vox*. Accessed July 24, 2018. <https://www.vox.com/2018/6/19/17479138/how-many-families-separated-border-immigration>.
- Linton, Julie, Marsha Griffin, and Alan Shapiro. 2017. "Detention of Immigrant Children: American Academy of Pediatrics." Accessed July 24, 2018. <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.
- Mandal, Shreya. 2015. "Barriers to Treating PTSD in Prisons and Immigration Detention: Social Work Helper." Accessed July 24, 2018. <https://www.socialworkhelper.com/2015/03/20/barriers-treating-ptsd-prisons-immigration-detention/>.
- Mares S. et al. 2002. "Seeking Refuge, Losing Hope: Parents and Children in Immigration Detention." *Australasian Psychiatry* 10 (2): 91–96. <https://doi.org/10.1046/j.1440-1665.2002.00414.x>.
- Raphel, Alexandra. 2014. "Unaccompanied migrant children in the United States: Research roundup." *Journalist's Resource*. Accessed July 24, 2018. <https://journalistsresource.org/studies/government/immigration/unaccompanied-migrant-children-united-states-research-roundup>.
- Robjant, Hassan, and Katona. 2009. "Mental health implications of detaining asylum seekers: systematic review." *The British Journal of Psychiatry* 194 (4): 306-312. <https://doi.org/10.1192/bjp.bp.108.053223>.
- Schallhorn, Kaitlyn. 2018. "What Trump's 'zero-tolerance' immigration policy means for children separated from families at border". Fox News. Accessed July 24, 2018. <http://www.foxnews.com/politics/2018/06/19/what-trumps-zero-tolerance-immigration-policy-means-for-children-separated-from-families-at-border.html>.
- Simmons, Julian, Meg Dennison, and Nick Haslam. 2016. "The trauma of immigration detention centers may damage children's brains: Business Insider." Accessed July 23, 2018. <https://www.businessinsider.com/trauma-immigration-detention-centers-children-brains-2016-10?r=UK&IR=T>.
- USA Today via Fox 23 News Website, June 22, 2018. "Migrant teen held in ICE detention center: 'You could hear them crying all the time'". <https://www.fox23.com/news/national-news/migrant-teen-held-in-ice-detention-center-aosyou-could-hear-them-crying-all-the-timeapos/774995740>.

Criminal Aspects of Voluntary Slavery and Delinquent Unconscious

Gabriel Tănăsescu

University of Craiova, Craiova, Romania, gabrieltanasescu@gmail.com

ABSTRACT: From a philosophical point of view within a free system, an individual has the possibility, and thus is allowed by his own autonomy of will, to sell himself as a slave without being sanctioned by the rules of society, or by bearing the consequences of these rules (in his book *Anarchy, State and Utopia*, in one of the chapters *A Framework for Utopia* Robert Nozick deals with the problem of voluntary slavery). From a psychocriminological point of view, voluntary slavery is closely linked to the unconscious delinquency and the pulsation of destruction. Entry into Street Gangs can only be accomplished by respecting the rituals and the Code Matrix. A member of Banda (a woman or a man) accepts to lose her social freedom in order to enjoy the respect, reputation and esteem of the veterans. The exit of a street gang member is not accepted by the essence of the behavioral code, the sanction being death.

KEYWORDS: code matrix, delinquent unconscious, libido, pulse of destruction, semiotics of violence, street gangs, voluntary slavery

Introduction

The renunciation of social life to penetrate into street gangs transforms the individual's existential behavior. From the psychic point of view he fails to understand the inner conflict between the dark forces of the ego, dominated by neuroticism, pulsations and lifeless experiences without exertion, and the weak power of the Supra, incapable of imposing its moral judgments. The delinquent personality of those who are part of street gangs can be characterized as an antisocial personality. In the *Personality Psychology Treatise* “this type of disorder is strongly correlated with criminality, and this behavior has led clinicians to characterize individuals with this type of disorder as insensible, incapable of love, incapable of learning from their own experiences and lacking of shame and remorse” (Aniței, Chraif, Burtăverde, Mihăilă 2016, 305). The disorder is also affected by the aggressive family climate, drug and alcohol use, depression, school dropout, difficulty finding a job, difficulty in maintaining a relationship with a partner. Internal aggression directed against one's own person as a feeling of guilt as a sign of the destruction pulse (the inferiority complex of the Ego) can turn into external aggression against the world against those guilty of its socio-human situation and failure. In the middle of the gang, the young individual is condemned to reinvent themselves, to begin to create a destiny, learn other rules, and accept other challenges and consequences. Getting into a street band means agreeing to a voluntary slave contract. A gang member loses his social identity, belongs to the group and obeys the rules imposed by his leader. He must be prepared to give up his life, to rape or kill, to steal and rob, to carry drugs and to hide weapons. It will do everything it takes to enjoy the respect of the group members.

Philosophical legal aspects

In *Anarchy, State and Utopia*, Robert Nozick believes that a truly free system can exist only within a minimal state, “no state with wider powers than those of the minimal state can not be justified” (Nozick 1997, 355). The minimal state is viewed in classical liberal theory as the night watchman “limited to the functions of defending all its citizens against violence, theft and scams, and ensuring compliance with contracts” (Nozick 1997, 68). Nozick appreciates that there may also be an intermediate social structure between the system of private protection associations and the night watchman. The ultraminimal state is considered to be this social structure and has the role of providing protection through its specific mechanisms only to those who buy its protection and its policy of coercion. Depending on this, the minimal state is redistributive in that it forces some individuals to pay for the protection of others by ensuring the extra costs of income from the taxes of contributors. What is imputed to the minimal state is that it lacks the glory and glory, meaning that during a great danger that threatens its stability, performance and identity, it will fail to create a

state of heroism, nor will it could cause people to fight with devotion or sacrifice. John Stuart Mill, in his book *About Freedom*, “states that the individual must be freed from that part of his life that pertains to the individual; society that part of the life of its members, which looks at society as a leader. Although the company is not based on a contract and therefore does not respond to any positive objective, we have to conclude a contract to deduct from it the series of social obligations” (Mill 1996, 139). Every individual must have a fair attitude towards community members, as long as they are protected, and are obliged to contribute to the benefits they receive. Any state, which has the most important attributions and has the ability to control citizens, is immoral and violates people's natural rights. Every individual must enjoy his total independence and have the opportunity to freely associate and realize his existential projects. Nozick believes that only in a utopian system any rational being will have the same rights as those that the members of the community possess. If an individual is not satisfied with his existential situation, he can choose to leave the world and live in another world. In the modern state the legal system is well regulated, any violation of normative acts implies the presence of coercive force, the institutions also establishing the mode of imposition.

In the philosophical legal sense through the voluntary slavery contract we understand the agreement between two persons to constitute a subordinate report in the sense that one of the parties procures without any advantage an advantage to the other and undertakes to execute any moral or material service under the authority of the other. The contract is consensual and unilateral, which means that it is formed by the simple agreement of the parties, only the slave obliges himself to the master, and he does not have certain predetermined obligations. The voluntary slave contract is neither legal nor moral, the voluntary slave has no rights, but only obligations, and must comply with the form and terms of the contract. The offer of the contract must be accepted without reservation from the slave. The essential elements of the contract establish the life and death rights of the master over the slave, and other secondary elements may subsequently be established. Contract terms may be violated only by the master. The voluntary slavery contract is considered to be beginning when the slave commits an act or convincing fact for the benefit of the master. The will to contract can be expressed verbally or by manifesting behavior, which according to the convention of established parties and practices leaves no doubt about the slave's intention to entrust his life and liberty to the master. In some cases, oath is essential and obligatory. By the valid contract, the master of slaves has absolute power over the slave's life. The contract changes or terminates only with the consent of the master. The absolute character of the contract stems from the absolute will of the individual to sell himself to a master. The owner's right to property on the slave is an absolute, exclusive and perpetual right.

In a utopian community, the individual can impose any coercion, may abuse his own person even by making it the object of a sales contract. The question is whether society can accept the right of the master to profit and prosper from the slave's absolute will to obey the inhuman conditions of the contract. In this utopian construction, only the master may modify or cancel the terms of the contract, no decision taken by other third parties as members of a moral community can violate the expression of his contractual freedom, because he has contracted the voluntary slavery contract on the basis of the will agreement expressed in freely and discerningly by the slave. The community is seen as an association of individuals in which everyone realizes the world, his utopian existence, in this community the individual expresses freedom and happiness by trying to respect the happiness and freedom of others to create the best possible world. But any community, whether utopian or real, is based on certain rules. The individual can accept and integrate in the community or reject the rules, considering that they affect their natural freedom and happiness and are no longer the best possible world. The community has to find solutions to compensate for the individual for existential dissatisfaction, the lack of unhappiness caused by the coercive enforcement of community rules, and the fact that the individual undertakes not to harm his activities. Violation of the rules raises the sanction of the community, the individual must explain his antisocial behavior before the courts. Because no one can remain forced into a society that does not provide the individual with the satisfaction of realizing his personal projects and self-happiness, the individual has the opportunity to leave this community, to emigrate and to create his own world where he does not need consensus

and respect for others to exist. In *Being and Time*, Martin Heidegger considers "that when, by virtue of being in the world (the fact-of-the-fact-world) we make the intramundal being to be met, we give space" (Heidegger 2003, 152). The individual must capitalize on his space in the opening of his being in society. The space of the human being is gained with the engagement of social consciousness in the writing of existential projects. The positive concern of a social being to achieve its public space is the confirmation of the value of the community it belongs to.

Street Gangs

Dismissal of liberty means giving up justice. The intrusion into street gangs implies the refusal of the young person to benefit from his socially positive status and at the same time his intention to fully engage in the illicit activities of the gang. Both boys and girls must observe the ritual of initiation and co-optation among the gang. Girls, though minor, are forced to have sex with veterans and band leaders (those who lead, who have the best reputation), and the boys are stoically beating members' battles to test their physical or mental resistance. Sometimes they are required to commit a theft, seriously hurt a person, or even commit a crime to be accepted as members. In his work, Luca Vincenti street gangs believe that taking a weapon, or transporting drugs, can be the first condition for becoming a member of the band. "The custody of the weapon can often be a subtle sample by itself, having the sole purpose of keeping the young man under observation, of discovering whether he is trustworthy. Instead, possession is a real instrument. The kid, without being suspected because of his early age, can be a real shopkeeper, not just guns and drug gangs" (Vincenti 2018, 128). Baptism of band members or initiation rituals is accomplished in several stages and has a specific complexity according to gang's habits and leader's decision. Usually the ritual involves a beating of the young man by veterans and effective members, the violent act ending with a group hug in order to consecrate the unity of the family.

"Ten new members are in fact 10 new transports, 10 new races on which the package can be reached, a race supported by a bold, bold, clean, faultless criminal carrier, who is not given anything but a slap on his shoulder and a beautiful hat hanging on the throat ... For the new member who really wants to be part of the band, about which so many important facts have been said (a real gesture), it is an honor to be in charge of the boss, to enjoy his approval and conquer a reputation beginning" (Vincenti 2018, 131). The new member must respect the gang's hierarchy, learn the normative code, fight for the common interests of members, affirm and gain reputation, defend the territory of the gang, and carry out the occasional assignments assigned to it. Other general rules may impose total restrictions on cooperation with the police, the disclosure of information about illicit activities of the gang, betrayal being punished with death. Crime on the territory of the gang is forbidden, murder must always be carried out outside the districts that the street lane occupies. Women and members of family members must be protected, churches and cinemas are considered neutral areas, territories where criminal activities are not accepted. The new member's career is dependent on the observance of these rules, as well as on the inner motivation that causes him to go out of anonymity and assert himself to join the group hierarchy. Sometimes the ferocity of crimes, exaggerated violence surprises even veterans, young people being aware that climbing into the street organization is an important step for receiving in large criminal organizations. Entering into prison for criminal acts committed in the interest of the aggressive gang contributes to the reputation of the convicted person, the fact that he does not betray his gang, leader and friends leads to the increase of prestige and honor.

"By the semiotics of violence, we understand to refer to all those processes of communication and significance used by gangs to other gangs in their aggressive expressions. The study of the communication channels and their actions is the way to understand the contents and the modalities of the spoken language (verbal, analogical, symbolic) their valiological, normative, sense sense" (Vincenti 2018, 104).

The street gang leader is the one acting for the common good of the members, he is the one who decides the street actions, the conflict and the war with other rival gangs, the alliances and the measures that the gang needs to take. Depending on hierarchy, experience and training, the leader is

followed by veteran gang members, those who live in the gang's illicit actions and are able to sacrifice themselves for the survival and activity of the street gang. In the lower area, the band members, members with a decorative role, gregarious members and young people aspiring to join a day of the street band appear in the lower area. The leader establishes the value-normative code, band hierarchy, morphology, communication, daily activities and priorities, access systems, land establishment and control, mobility and rewards for all members of the gang. Depending on age we encounter multiple structures on multiple levels, so the bottom band consists of boys aged 6 to 12 years, the average band comprises members between 12 and 24 years of age, and the high band is made up of peaks, after 24 years, experienced members.

Respect, reputation, esteem, vendetta, honor, omerta, and notoriety form the Street Band Code Matrix. Identity in the middle of the gang is based on these members' qualities. The Code requires the individual to be a spokesman, to be brave and faithful to the group to which he belongs, to observe the band hierarchy, leader, veterans and all experienced members. Every member must wear the right dress, use hand marks and any other symbols necessary to differentiate himself from opposing gangs. During the confrontations, the hard look and the eccentric colors must impress, the reputation of the members increases and according to the mutual observation of the street behavior. When the band suffers an offense, the Code forces the leader and members to counterattack and revenge (vendetta). The honor of the members and the gang must remain permanently defended, an honorable member is marginalized and despised. The honor of the group must be protected, it is inviolable, maintaining it as a vital condition. Omerta (the silence law) is punished with death if any member speaks about the criminal actions of the group (murders, drug trafficking, robberies). Tape career, street villas and reputation in group battles define the reputation and notoriety of members and the street gang, a condition for controlling important territories and the growth of illicit business.

Psychoanalytic aspects

Utopia of street gangs is seductive. The young member is stripped of the complexity of guilt he knows in the school and family environment, the abandonment of social life taking place in unfortunate circumstances: rejection, marginalization, existential failure in the realization of positive projects, sometimes discrimination and lack of equal opportunities. "Failing to comply with social rules, the teenager, who prefers behaved behavior by inhibiting brakes, will acquire the habit of acting immediately or whenever he has the opportunity to acquire a sense of accomplishment and action independence, post factum thinking about the consequences, sometimes to show how strong it is" (Tănăsescu 2012a, 121). Unhappy childhood, lack of affection and love, disorientation in the overwhelming real world by imposing social engagements, emotional instability, lack of livelihood, delayed social assistance, inconsistencies in juvenile delinquency, and failure to provide stable social assistance complete the teenager's image thrown into the world without reason, direction and justification, forced to decay, using his rebellious spirit and the pride of persecuted being to enter a much closer world that can give him respect and bring revenge.

The delinquent unconscious is the host of the suppression of the neurotic Ego exhausted by the conflict of destruction pulses, which seeks to satisfy the Se requirements without moral restrictions.

"In the male delinquency structure there are found organizational models suitable for the aggressive operating environment, in which each individual will obtain the greatest advantages" (Tănăsescu 2012b, 151). In society the individual finds only the pleasures of futility. Being marginalized by school colleagues, teachers, the intellectual atmosphere becomes aggravating and finds abandoning the way to change the perspectives of its existence in society. You just have to have the courage to leave this unpleasant and inappropriate relationship to the revolted person. The ruin in the middle of the community, the feeling of indifference and misunderstanding of legal norms, the hidden joy of a perverse lucidity in the face of fatalities, the lack of a moral barrier, the inhibition of social actions prepare for the decline of the future member of the street gang and make it much easier.

“Personal competence is the ability to be permanently aware of your emotions and to manage your behavior and trends” (Bradberry and Greaves 2016, 30). The young delinquent understands and accepts his voluntary slavery within a gang because he considers himself privileged to achieve another destiny, to become useful by using all his aggressiveness and criminal powers, his antisocial anger becomes a necessary capital to gain respect and for to promote in his new group. Freud believes the Superego main activity is to impose restrictions to stop satisfying the inborn needs of the Se. “The ego tends to pleasure, wants to avoid the discomfort” (Freud 2014, 175).” The whole energy of Eros, which we will now call libido, is present in the Ego, is still undifferentiated and serves to neutralize the existing destructive inclinations simultaneously” (Freud 2014, 179). Becoming a member of the gang, the individual escapes the author's supreme voice that imposed the rules of conduct. Removing the Superego also means annihilation of the complex of guilt, the young aggressor wants to release his libido, wants to escape any moral constraints and to participate without inhibitions in committing illicit activities.

But when in the inner life of the individual the energy of the Eros (compulsion of love) begins to gradually quench, then the libido as a function of this energy will leave behind the coming of a forgotten energy, the pulsation of destruction (compulsion of death) that wants to reinstate without limits the force to which it was dropped.

References

- Aniței, Mihai; Chraif, Mihaela; Burtaverde, Vlad and Teodor, Mihăilă. 2016. *Personality Psychology Treaty*. Bucharest: Three Publishing House.
- Bradberry, Travis and Greaves, Jean. 2016. *Emotional Intelligence 2.0*. LITERA Publishing House. English translation by Irina Brates, digital version.
- Freud, Sigmund. 2014. *About Psychoanalysis*. Bucharest: Three Publishing House. German translation Daniela Ștefănescu.
- Heidegger, Martin. 2003. *Being and Time*. Bucharest: Humanitas Publishing House.
- Mill, John Stuart. 1996. *About Freedom*. Bucharest: Eminescu Publishing House.
- Nozick, Robert. 1997. *Anarchy, State and Utopia*. Bucharest: Humanitas Publishing House.
- Tănăsescu, Camil. 2012a. *Criminology*. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, Camil. 2012b. *Judicial Psychology*. Bucharest: Universul Juridic Publishing House.
- Vincenti, Luca. 2018. *Street Gangs*. Iași: Auto-Publish.

Linguistic Complexity of Mixed Episode in Sadegh Hedayat's Letters: The Effect of Bipolar Mood Disorder

Elmira Esmaeelpour¹, Farhad Sasani²

¹Alzahra University, Tehran, Iran, e.esmaeelpour@gmail.com

²Alzahra University, Tehran, Iran, fsasani49@gmail.com

ABSTRACT: This paper investigates the syntactic complexity of mixed episode in Sadegh Hedayat, supposedly suffering from Bipolar Disorder. The first study studies depressive and hypomanic states in the episode. The results illustrate that Hedayat shows the highest complexity in the hypomanic state, whereas he has a significant simplicity in syntax in depressive state. The results are analyzed by studying three types of sentences (i.e., simple, paratactic and hypotactic) and embedded clauses. Moreover, in the second study, the complexities of the hypomanic episode and the hypomanic state in mixed episode are compared.

KEYWORDS: Bipolar Mood Disorder, mixed episode, syntactic complexity, hypomania

Introduction

One of the most significant current discussions in Linguistics is complexity. In recent years, there has been an increasing interest in the issue, which has drawn a host of scholars' attention; such as Flesch (1948), Ure (1971), Halliday and Matthiessen (2004) and Castello (2008). Complexity, when of interest in Linguistics, encompasses several comprehensive fields in general. Syntactic complexity is at the heart of this study specifically.

It is difficult to define syntactic complexity. Still, a variety of definitions of the term syntactic complexity have been put forth; such as the one suggested by Halliday (2009), who considered it as the measure of clause complexity in the text. For instance, Halliday (2004, 1985) claimed that language complexity is divided into three categories: lexical, syntactic and metaphoric. In detail, the mentioned syntactic complexity is directly related to the number of subordinate clauses in proportion to their complex sentences. Moreover, in a study regarding the issue of complexity, Newnham (2013) found that in low levels of text reading, independent clauses were predominant among the other types of sentences (i.e. paratactic and hypotactic sentences). On the other hand, in higher levels, paratactic and hypotactic sentences were observed. He asserted that hypotactic sentences are more complex than paratactic sentences. The most uncomplicated form of these sentences is a simple one.

Recent developments in complexity have heightened the need for conducting a variety of studies concerning the types of disorders in which language plays a fundamental role. For example, Raghidoost and Malekshahi (2009) claimed that people suffering from Down Syndrome showed much less capability in terms of understanding simple and complex structures (i.e. paratactic sentences and hypotactic sentences) than the control group. Likewise, disability in comprehending complex structure was more obvious. Dasjerdi Kazemi (2009) demonstrated that children with mental retardation have the weakest comprehension of hypotactic sentences.

Durrleman et al. (2015) have recently discovered that individuals suffering from ASD, apart from their background in language development, perform widely worse than the control group when it comes to objective relative clauses. In addition, people with ASD, given a history of language delay, perform worse on subject relatives in comparison with those affected by ASD without language delay. It can be concluded that people with ASD have more difficulties in complex sentences, including relative clause.

Thomas (1996) investigated schizophrenic patients with negative symptoms suffering from reduced syntactic complexity, observing that they produced shorter sentences, which, in turn, were consisted of lower classes of embedded clauses.

Despite the fact that grammatical complexity has been increasingly studied with respect to various kinds of disorders, as mentioned above, there has been little research on Bipolar Mood Disorder in terms of language complexity. This paper sets out to focus on syntactic complexity in

Bipolar Mood Disorder, particularly in mixed episode and hypomania. A case study approach is used to give an account of the issue in a framework of an analytic study.

So far, a few studies have been conducted regarding language and Bipolar Mood Disorder. For instance, Landis (1964), Sadock and Sadock (2007), Sanfillipo and Hoffman (1999) and Forgeard (2008) mentioned some linguistic characteristics of these disorders, such as similarity in sound and rhyme in a string of words, using joke and humor, speaking of taboos with high tendency, shifting from one issue to another topic without reaching a goal and excessive pressure of speech leading to an overproduction of speech, which are related to hypomanic or manic episode. On the other hand, less production of speech, i.e. poverty of speech, and persistent thoughts of suicide and death in a patient's language, are some symptoms of depressive episode. Furthermore, Sanfillipo and Hoffman (1999) painted a portrait of a linguistic trait in hypomania, i.e. circumstantiality, which says that speech is considerably postponed by excessive details and parenthetical comments.

More recently, Esmaeelpour and Sasani (2015) demonstrated that Sadegh Hedayat, one of the most renowned Iranian writers, presumably suffered from Bipolar Mood Disorder by using linguistic tools, i.e. semantic field and move. They analyzed Sadegh Hedayat's letters to one of his friends (Shahid Nourai), categorizing his letters into four episodes of Bipolar Mood Disorder (i.e. depressive, hypomanic, euthymic and mixed) linguistically.

Bipolar I disorder is growingly considered as the occurrence of both depressive episode and manic episode. On the other hand, bipolar II disorder is characterized by the occurrence of depressive episode and hypomanic episode, which is the milder type of mania without any psychotic symptoms (Sadock and Sadock, 2010). Furthermore, 40 percent of patients affected by Bipolar Mood Disorder experience mixed episode, which is a mixture of depressive and manic or hypomanic episode (Miklowitz 2001). Interestingly, bipolar II disorder is widely known as a disorder overshadowing creativity and a myriad of artists (poets, writers, musicians, painters and actors/actresses) suffer from this type of disorder (for example Jamison 1995; Jones et al. 2002).

As pointed out before, this study aims to analyze Sadegh Hedayat's letters to Shahid Nourai in terms of syntactic complexity in mixed episode divided into two episodes, i.e. depressive and hypomanic, and draws a comparison between hypomanic episode and mixed episode regarding syntactic complexity, given the fact that Sadegh Hedayat may have had Bipolar Mood Disorder.

Method

Participants and Materials

A case study approach was chosen to carry out an indepth analysis of syntactic complexity with respect to Bipolar Mood Disorder. As Esmaeelpour and Sasani (2015) claimed Sadegh Hedayat was supposedly affected by Bipolar Mood Disorder using linguistic tools, and Fadai (2009) provided evidence that Sadegh Hedayat suffered from Bipolar Mood Disorder in the framework of descriptive psychiatry, therefore Sadegh Hedayat's letters were used as the subject matter of this paper.

Materials

The private letters of Sadegh Hedayat addressed to Shahid Nourai (Pakdaman 2000) were chosen for the study. Importantly, the addressee was kept fixed to diminish effective elements, such as linguistic differences among different registers and styles (for example see Esmaeelpour and Sasani, 2015). Esmaeelpour and Sasani divided Sadegh Hedayat's letters into 4 episodes based on certain semantic fields and moves: 40 letters were related to hypomanic episode, 36 letters were related to mixed episode, 5 letters were associated with euthymic episode and 1 letter was related to depressive episode. In this research, the letters related to hypomanic episode and mixed episode are analyzed to shed a light on the syntactic complexity observed in mixed episode and hypomania.

Procedure

To date, methods of one form or another have been developed and introduced to measure syntactic complexity. But it was decided that the best method to adopt for this analysis was to

measure the number of simple sentences, paratactic and hypotactic sentences and embedded clauses within a sentence in each text, which is introduced in Bateni's description of syntactic language in agreement with the Persian language (1969).

In language, there are three types of sentences: simple, paratactic and hypotactic. A sentence contains at least one clause or more, which can be divided into two classes: the main clause and the subordinate clause or coordinate clause. A sentence can be consisted of one main clause, which is obligatory, and several subordinate or coordinate clauses, which are optional. Therefore, a sentence can enjoy two parts: main clause and subordinate or coordinate clause(s). In hypotactic sentences, the main clause can be independent, while subordinate clause(s) depends on the main clause. Table 1 presents some examples. In order to transcribe the examples in the Persian language, the symbols based on IPA are used.

Table 1: Examples of hypotactic sentences

Subordinate clause	Main clause	Subordinate clause
	/to hatman boro/ You must go	
	/to hatman boro/ You must go	/agar u telefon kard/ If he calls you.
/zirq u hasps ast/ Because he is sensitive	/to hatman boro/ You must go	/agar u telefon kard/ If he calls you.

A sentence can enjoy recursion, which is of 2 types: paratactic and hypotactic recursion. In paratactic recursion, all elements have equal value. That is, they are paratactic. Moreover, this type of recursion encompasses free clause per se. In general, these clauses are connected to each other by "va (and)", "yo (or)" and "but (amma)" in the Persian language. The following sentence shows an example of paratactic recursion:

- 1- /man be madrese raftam, moalemam ro didam va dar kelbs ketobam ro xondam/
'I went to school, saw my teacher and read my book in the class.'

In hypotactic recursion, not all elements exhibit equal value. In other words, they are hypotactic. In addition, this kind of recursion encompasses both main clauses and subordinate clauses. Predominantly, these clauses are related to each other by several connectors, such as "ke (which)", "vaqti ke (while)" and "zirq (because)" in the Persian language. An example of hypotactic recursion is presented in the sentence below:

- 2- /man hads zade budam ke to mitavoni dars bexoni zirq to bohu hasti/
'I had guessed that you could study because you are smart.'

Moreover, Halliday (2009) considered syntactic complexity as the density of paratactic and hypotactic clauses. Another type of clause includes embedded clauses, which are definitions of nouns accompanied by "ke" in the Persian language (Halliday and Mathiessen 2004). It is exemplified in the sentence below:

- 3- /doxtari ke onjo bud ketob mixond/
'The girl, who was there, was reading a book.'

To begin with, all 36 letters related to mixed episode (Esmaelpour and Sasani, 2015) were analyzed using chi-square in SPSS, including 3 types of sentence (i.e. simple, paratactic and hypotactic) and embedded clauses (for example see Bateni 1969; Halliday 2009) to clarify the syntactic complexity of mixed episode. Secondly, all the letters associated with hypomanic episode, as well as all the letters related to mixed episode (Esmaelpour and Sasani 2015), were studied using chi-square in SPSS including the 3 abovementioned types of sentence and embedded clauses in order to identify whether there is a considerable difference in syntactic complexity between the hypomanic state in mixed episode and hypomanic episode. If the number of paratactic and

hypotactic sentences and embedded clauses was high in comparison to the low number of simple sentences in hypomanic state in mixed episode compared to depressive state in mixed episode, it could be concluded that those parts of letters related to hypomanic state in the episode might show syntactic complexity. In addition, if the number of paratactic and hypotactic sentences and embedded clauses was low and the number of simple sentences was high, those parts attributed to depressive state could exhibit syntactic simplicity.

Results

As said above, in the first study, all 36 letters related to mixed episode given the 2 types of states (i.e. hypomanic and depressive) were analyzed using chi-square in SPSS, regarding 3 types of sentence (i.e. simple, paratactic and hypotactic) and embedded clauses. The results of the analysis were evidently in agreement with the expectations. The table below illustrates the percentages of the mentioned types of sentences and clauses in the states.

Table 2: Percentage of each type of sentences and clauses in mixed episode

Mixed episode	sentence			
	simple	Paratactic	Hypotactic	embedded
Depression	94.75	6.25	0	0
Hypomania	18.53	36.58	34.39	10.50

Comparison among types of sentences regarding their psychological state was made using chi-square test. There was a significant difference ($\chi^2(df = 3) = 117.126$ and $p = 0.00 > 0.001$). In addition, Table 2 shows that most of the more complex sentences were mostly written in hypomanic state in mixed episode (i.e. those sentences with subordinate and coordinate clauses as well as embedded clauses account for 81.47% of the total percentage, which is to say only 18.53% of all sentences are simple.) This could be associated with pressured speech and circumstantiality. In contrast, most of the sentences were written in simple form in depressive state of mixed episode; only approximately 6% of the total sentences were complex.

In the second step, due to the lack of sufficient data concerning depressive episode, only the letters related to hypomanic episode were analyzed in terms of syntactic complexity. Then, a comparison between syntactic complexities was drawn in hypomanic episode, as well as in hypomanic state associated with mixed episode, to see whether there is a noteworthy difference. The table below provides information about the issue.

Table 3: Percentage of each type of sentences and clauses in hypomanic episode and hypomanic state in mixed episode

episode	Sentence			
	simple	paratactic	hypotactic	Embedded
Hypomanic state in mixed episode	15.82	35.67	39.69	8.82
Hypomanic episode	18.53	36.58	34.39	10.50

Chi-square test was used to analyze the data. There was no significant difference between the two conditions based on Table 3 ($\chi^2(df = 3) = 0.957$ and $p = 0.812 > 0.05$). The figures of both states are so close together. It clearly shows that the mood of individuals in hypomanic episode and hypomanic state in mixed episode is approximately the same.

In more detail, sentences below (Esmaeelpour and Sasani 2015) could be considered as examples of the four types of sentences in both states in mixed episode and hypomanic episode.

1. Simple sentence:

Letter 46: /ruye-ham-rafte bekr o ma^lqulkonande bud./
'Overall, it was unique and interesting.'

2. Paratactic sentence:

Letter 2: /az hame t^liz e ot^oqam asab^oni hastam va oqam mine^linad./
'I am angry at everything in my room and I feel nauseous.'

3. Hypotactic sentence:

Letter 78: /xejli tajob kardam ke dar asar e fa^obljath^o je mihanparast^one je m^o k^or be j^oji ke^lide ke dar modat e jek ruz k^oqaz az P^oris be Tehr^on miresad./
'I was so surprised that our patriotic activities had such an impact that a letter came from Paris to Tehran over a day.'

4. embedded clause:

Letter 31: /b^o in modat e kami ke dar pi^l d^orid, jek dore je mod^ov^o nax^ondan e ruzn^ome bokonid xejli mo^oasser ast./
'Given the short time you have, you must practice not reading newspapers as a cure. It would be very effective.'

Discussion

The current study firstly aimed to examine syntactic complexity in two states regarding mixed episode (i.e. hypomanic and depressive) and to find out whether there is a significant difference between these two conditions. According to some experts, such as Newham (2013) paratactic and hypotactic sentences are the most complex, and the simple ones are the most uncomplicated. The results of the first study indicate that there is a significant difference in syntactic complexity between hypomanic and depressive states with respect to mixed episode. Depressive state exhibits syntactic simplicity in all types of sentences with its high rate of simple sentences, whereas the other state shows most syntactic complexity including a high percentage of complex sentences (i.e. hypotactic and paratactic sentences and embedded clauses).

The second study made a comparison between hypomanic episode and hypomanic state in mixed episode in terms of syntactic complexity. The results of this study did not show any significant differences between the two conditions. That is, Sadegh Hedayat, supposedly suffering from Bipolar Mood Disorder, experienced a similar mood in both mentioned states.

As mentioned in the literature review, bipolar people are able to produce excessive complex sentences in certain moods (i.e. hypomanic episode and hypomanic state in mixed episode), while, according to Thomas (1996), schizophrenic ones only have the capability of producing shorter sentences, including lower types of embedded clauses. Likewise, Durrleman et al. (2014) claimed that people suffering from ASD have deficiency in relative clause production.

As mentioned before, Landis (1964), Sadock and Sadock (2007), Sanfillipo and Hoffman (1999) and Forgeard (2008) noted some linguistic traits of Bipolar Mood Disorder; for instance, shifting from one topic to another, and excessive pressure of speech leading to overproduction of speech, which are related to hypomanic or manic episode, which, in turn, can be considered as one of the root causes of syntactic complexity in the episode. In addition, less production of speech, i.e. poverty of speech is one of the symptoms of depressive episode, which can lead to the simple production of simple sentences. Moreover, Sanfillipo and Hoffman (1999) shed light on a linguistic trait in hypomania, i.e. circumstantiality, asserting that speech is considerably delayed by too much detail and parenthetical comments, resulting in more embedded clauses and complex sentences.

It is demonstrated that mixed episode in bipolar disorder based on Sadegh Hedayat's letters enjoys mixed syntax. In hypomanic state, there is a strong syntactic complexity, while in depressive

episode simplicity in syntax is clearly observed. Furthermore, there is no significant difference between hypomanic episode and hypomanic state in mixed episode regarding syntactic complexity.

Conclusion

This study has provided an explanation of syntactic complexity in mixed episode of Bipolar Mood Disorder in Sadegh Hedayat's letters. The research has shown that Hedayat experienced simplicity in syntax while being in depressive state, and he showed syntactic complexity in hypomanic episode and hypomanic state in mixed episode alike.

References

- Batani, M.R. 1969. *Description of Persian Language Structure*, Tehran: Amirkabir Publication (In Persian).
- Castello, E. 2008. *Text Complexity and Reading Comprehension Texts*. Bern: Peter Lang.
- Dasjerdikazemi, M. 2009. "Description of some syntactic features in speech of the students suffering from mental retardation." *Journal of Koodakaneestesnai* 35: 81-96 (In Persian).
- Durrleman, S., Hyppolyte, L, Zufferey, S, Iglesias, K & Hadjikhani, N. 2015. "Complex syntax in Autism Spectrum disorders: A Study of Relative Clauses." *International Journal of language and Communication Disorders* 50: 260-267. DOI: 10.1111/1460-6984.12130.
- Esmacelpour, E & Sasani F. 2015. The Effect of Bipolar Mood Disorder on Sadegh Hedayat's Letters. *Journal of psycholinguistic research*. DOI 10.1007/s10936-015-9355-5.
- Fadai, F. 2009. "Sadegh Hedayat from the descriptive psychiatry view-point." *Iranian Journal of Psychiatry and Behavioral Sciences* 3: 19-26.
- Flesch, R. F. 1948. "Linguistic styles A New Readability." *Journal of Applied Psychology* 32: 221-233.
- Forgeard, M. 2008. "Linguistic styles of eminent writers suffering from unipolar and Bipolar Mood Disorder." *Creativity Research Journal*, 20, 81-92.
- Halliday, M. A. K. 1985. *Spoken and Written Language* (1st ed.). Vic: Deakin University.
- Halliday, M. A. K., & Matthiessen M. I. M. 2004. *An Introduction to Functional Grammar* (3rd ed.). London: Arnold.
- Halliday, M. A. K., & Webster, J. (Eds.). 2009. *Methods – Techniques - Problems*. In Continuum Companion to Systemic Functional Linguistics. (pp. 59–86) London: Continuum.
- Jamison, K. R. 1995. Manic-depressive illness and creativity. *scientific American* 272: 125-134.
- Jones, S., Hayward P., & Lam D. 2002. *Coping with Bipolar Disorder: A Guide to Living with Manic Depression*. Oxford: Oneworld Publication.
- Landis, C. 1964. *Varieties of Psychopathological Experience*. New York: Rinehart and Winston.
- Miklowitz, D. J. 2001. "Bipolar disorder." In D. Barlow (ed.), *Clinical Handbook of Psychological Disorders*. (pp. 523–562). NY: Guilford Press.
- Newham, S. A. 2013. *Text Complexity in Graded Readers: A Systematic Functional Look*. (pp. 498). Theses, Dissertation and Capstones.
- Pakdaman, N. 2000. *Sadegh Hedayat: 82 Letters to Hasan Shahid Nourai* (2nd Ed.). Paris: Cheshmandaz (In Persian).
- Raghibdoost, S & Malekshahi, A. 2009. "Ability of children suffering from Down Syndrome in comprehension of simple and compound structures." *Journal of Zabanvaadab* 39: 57-78 (In Persian).
- Sadock, B. J., & Sadock, V. A. 2007. *Kaplan & Sadock's Synopsis of Psychiatry* (10th ed.). Baltimore: Lippincott Williams & Wilkins.
- Sadock, B. J., & Sadock, V. A. 2010. *Kaplan Pocket Handbook of Clinical Psychiatry* (5th ed.). Baltimore: Lippincott Williams & Wilkins.
- Sanfillippo, L. C., & Hoffman, R.E. 1999. Language disorders in the psychoses. In F. Fabbro (ed), *Concise*.
- Thomas, P. 1996. "Syntactic complexity and negative symptoms in first onset schizophrenia." *International Journal of Cognitive Neuropsychiatry* 1 (3): 191-200.
- Ure, J. 1971. "Lixical density and register differentiation." In G. E. Perren & J. L. M. Trimm (Eds.), *applications of Linguistics: selected papers of the second International Congress of Applied Linguistics*. (pp. 443–452). London: Cambridge University Press.

An Insight into the History of the Engagement Institution

Astrid Isabela Bogdan

„Dimitrie Cantemir” Christian University, Faculty of Juridical and Administrative Sciences, Bucharest, Romania,
astrid.isabela@yahoo.com

ABSTRACT: The foundation stone of any society affirms on many occasions that it is the family, also called the basic cell of society, but before we can talk about the founding of a family, we consider it necessary to make a history for a stage that precedes the engagement. This institution, although it is an important element and often encountered in the history of many people, we can say that today it is gradually losing its essence. Moreover, we consider that the engagement term has undergone an intense process of metamorphosis, bearing in mind that initially, in many communities, this covenant first reflected a covenant belonging to the two families of which the two fiancées came from. Of course, this custom has been kept strictly, but only in certain communities. In addition, affirming the realization of such a ritual, if you wish, was a true event for which it was necessary to involve not only the two fiancées but the whole family. Also, this event has always been reported over time to another fundamental event – the marriage, and with the passage of time, it is interesting to note that the time interval has been incredibly shortened, but it is noteworthy that the engagement ring has preserved his sacred role in the whole process.

KEYWORDS: agreement, engagement, family, family law, habits

Introduction

Most dictionaries, globally, define the term engagement as a covenant that is intended to substantiate a future marriage. Moreover, we must note the distinction between the institution of engagement that precedes the institution of marriage, this latter institution having a legally ending path, and with much more problems in its abolition. Actually, engagement is the starting road that every couple has to go through in search of real-world finalization of their common feelings. Of course, depending on certain customs, we can say that the engagement term is changing its shape, but it essentially remains the same.

Since ancient times, the basic cell of any community was considered family (Emese 1997, 3). Practically, *pater familias*, meaning the head of the family, was entitled and also obliged to establish a fair marriage that at micro level represents the community at the macro level. Moreover, not only the role of *pater familias* was important, because the woman was the one who handled both children and the home. In addition, we can say that there is a merge between the responsibilities of the husband and wife, attributions that bring a fundamental element to any authentic home. However, we must bear in mind that before talking about marriage, an extremely important step has become remarkable throughout history - the engagement.

Regarding the moment when this proposal can be made, we should remind ourselves that, initially, this gesture was done with great fame by all family members, and there was a multitude of customs for this, depending on the geographic area we want to report to. Of course, there are some communities that have kept this custom of involving parents in substantiating the covenant between two people, but they will not make the subject of this study.

Turning nowadays, this moment is often marked by beautiful events like Christmas. So, in this regard, we can invoke a poll, according to which "Christmas is the most popular day of engagement, followed by Valentine's Day and Christmas Eve."

Another aspect worth noting is that nowadays it is being done in any place, more or less conventional, compared to the old traditions, according to which this event was held in a familiar setting in which the two fiancées could declare their desire to unite, and the presence of the family was a vital element for them. Regardless of where it is, this event is an extremely important moment for the two, and at the bottom it carries the veil of a love that goes from the Platonic plane to the tangible plane. The symbol of this union is, in most cases, in the engagement ring. Basically, this piece represents the eternal union of the two future spouses. The origin of this tradition has its origins in Ancient Egypt, where it was believed that wearing this ring on the fourth finger of the left hand represents the connection between it and the heart, which is done through a vein which later was called *the amoris vein*, name that remained until today (Nițescu 2010).

Of course, if in Prehistory it was believed that the binding of certain types of grass around the ankles or the waist of the partner would bring the spirit under its power, the custom of giving a ring was grounded in Egypt, and as all cultural elements and not only, this new object and new symbols in the Roman and Greek civilization, where the idea that it truly symbolized the pure love between the two, was grounded (Nițescu 2010).

Moreover, another aspect worthy of being noticed is the passage from perishable materials to some carefully crafted and made of precious materials (Șerb n.d.). In addition, another controversial aspect is the lack of these rings during the fourth century, when St. Augustine begs the priests to formalize the union between two people without a ring. Also, during this period, it was important the existence of an engagement period, a period that can be extended today and only within a few days (Nițescu 2010).

Another aspect worth noting is the demitization of this institution over time. In practice, if a couple agrees to appeal to this institution, in many cases, this decision does not imply the old rituals imposed by tradition, where gifts, family and myths played a fundamental role, but it may be more a confirmation in the public (often virtual) space of a love relationship between two people, a confirmation that, of course, involves their consent.

In addition, we can say that this institution actually translates in reality, a just research process of the metamorphosis of the relationship between the two, this period being extremely important in the completion or not of a link.

Engagement institution in the view of the legislator

Going beyond the symbolism of this institution, which is analyzed briefly, we can furthermore say that besides the fulfillment of certain legal conditions (for example, background and formal conditions), different from one country to another, it can be mentioned another controversial subject - breaking the engagement. In this case, we can state a few points to note, such as:

- The fiancés can break the engagement, not being constrained, to marry
- Does not require formalities in this sense
- Gifts received on engagement must be returned
- The party guilty of breaking the engagement may be required to pay damages

Thus, in doctrine, it has repeatedly been said that this institution, in the contemporary sense, does not generate too many legal effects, in the sense that although there are some situations where, for example, the wedding gift is returned, in many cases, we can say that this commitment is repercussions less. Moving on to a historical analysis of this controversial term, we can make a fair analysis of it legally, but the difference between the norms of some states over others is considerable, and for this reason we decided to make an analysis of the legal framework of a European country, in this case, Romania. Firstly, the engagement's legal characters assume 6 defining elements (Motica 2017, 25):

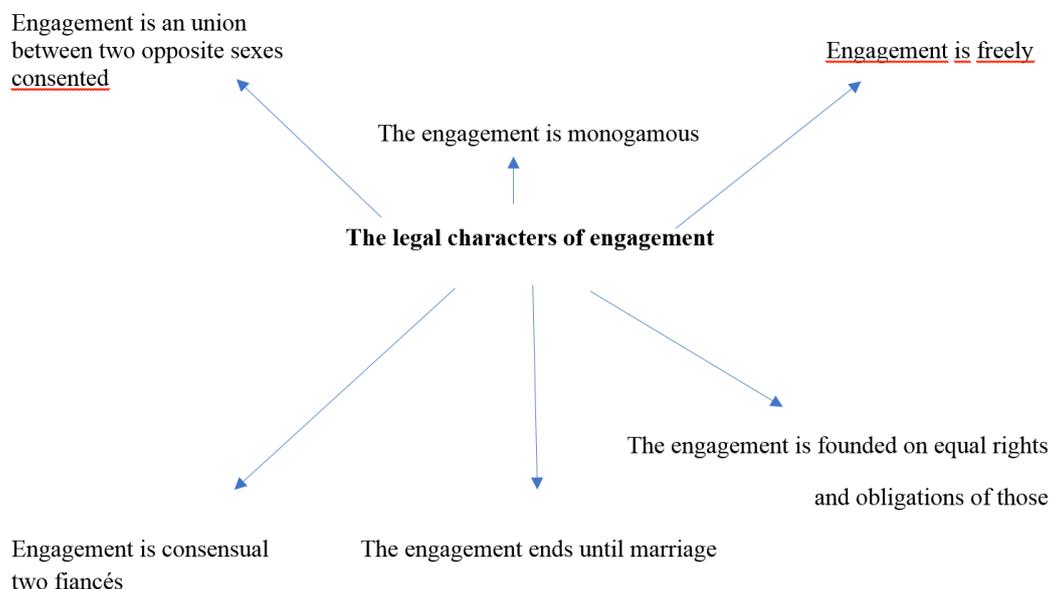


Figure 1. The legal characters of engagement

These characters are not just simple concepts, such as the seeds of what has been sown over time, as it is, in essence, even about certain customs that have separated from the common social values of several human communities.

Of course, in some states (such as those according to which the first principle in the top register of the above scheme is applicable), some elements are highly controversial. Moreover, some trends (such as those generating the last character in the lower register of the scheme above) are the expression of long-standing efforts at global level in terms of equal opportunities and non-discrimination. In addition, we can increasingly notice this transfer from adhering to fundamental principles of international law.

Moreover, when we relate to this term: engagement, we also need to take into account certain aspects that would conflict with a dissolution (Motica 2015, 27).

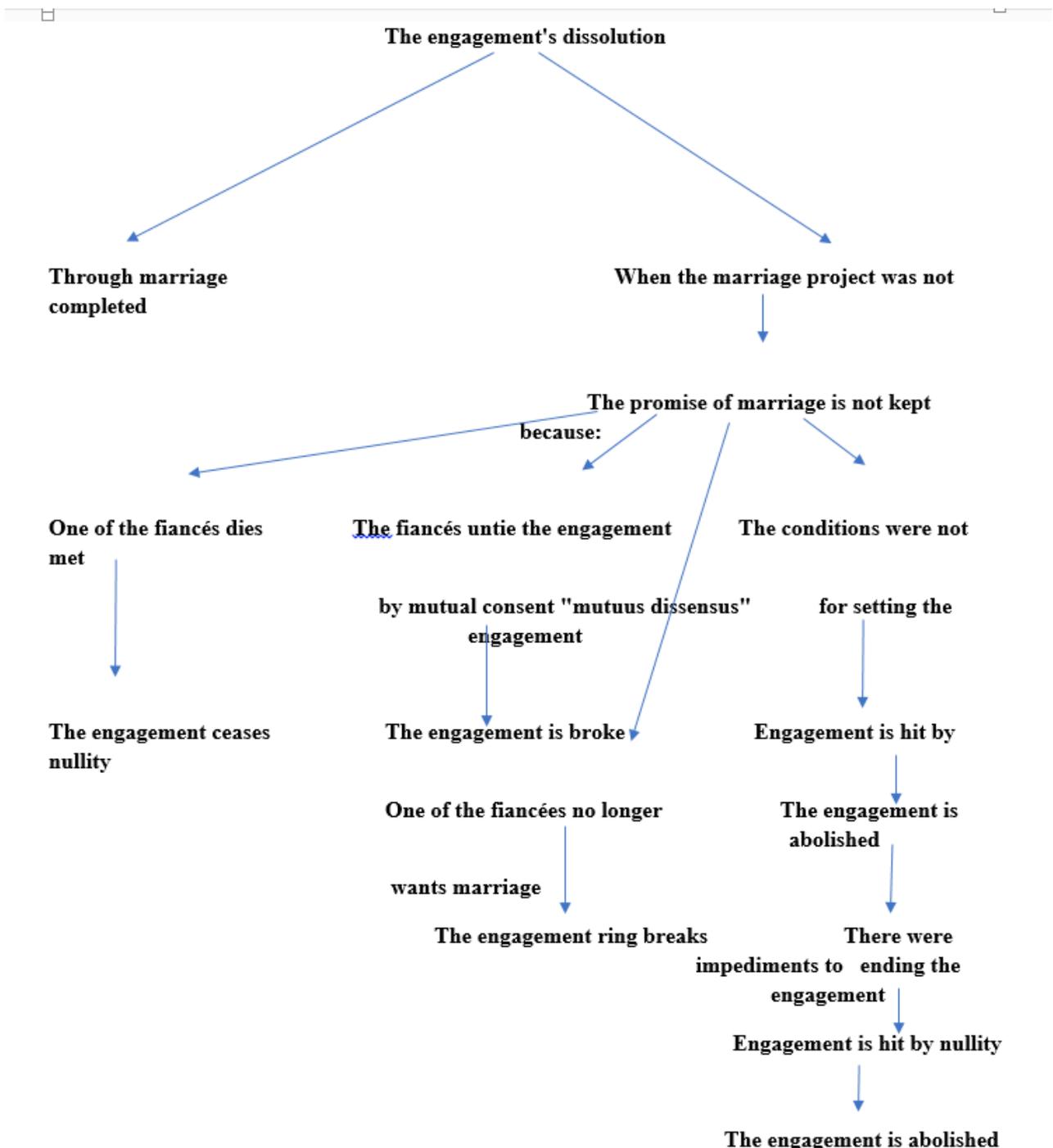


Figure 2. The engagement's dissolution

Conclusions

Therefore, engagement is a term that grows with the custom of every state and which, essentially, carries the desire of two people to be monogamous and consensual. Of course, there are cases where these conditions are forgotten, for other reasons, but we believe that over time they will fade, and that the relationship between two fiancées will have, in essence, a pure feeling.

Moreover, beyond the required conditions when talking about engagement regulation, it should be pointed out that this engagement institution has lost its significance over time, but we can not say that they have lost of all significance. Practically, this event is often the beginning of marriage (Macarovschi 2016, 9).

Finally, we consider this institution as a necessary ritual for any couple in which both partners wish to base their relationship in a just way, as the disciples learned from the masters the mysteries of the job they were to embrace. Moreover, this institution tends to believe that it cannot find by analogy a correspondent in the juridical world that has a solemnity so burdened by symbolism and custom. In addition, we tend to believe not only the implicit legal side, but also the mystical foundation of this approach. We also believe that this institution will have a long time to come from here, and with every writing in this sense, the real foundation of it can be built in an honest way.

“Love engages the cosmos with intimacy.” (Vasile Ghica 2018)

References

- Emese, F. 1997. *Dreptul familiei (Family law)*. Bucharest: Lumina Lex Publishing House.
- Ghica, V. 2018. *Citapedia*. Accessed October 20, 2018. <http://subiecte.citatepedia.ro/despre.php?s=logodn%E3>.
- Macarovschi, L. 2008. *Dreptul familiei (Family law)*, 2nd ed. Bucharest: Universul Juridic Publishing House.
- Motica, R. 2015. *Dreptul civil al familiei (Civil Family Law)*. Bucharest: Universul Juridic Publishing House.
- Nițescu, R. 2010. *Cum a apărut tradiția inelului de logodnă*, Accessed October 20. <http://www.ziare.com/magazin/inedit/cum-a-aparut-traditia-inelului-de-logodna-1053697>.
- Șerb, D. n. d. *Scurtă istorie a inelului de la vena amoris la familia Borgia*, <https://www.historia.ro/sectiune/general/articol/scurta-istorie-a-inelului-de-la-vena-amoris-la-otravurile-familiei-borgia>.

Assessment of Marital Satisfaction and Happiness in Men and Women who are Married at Early Age and Old Age

Elham Amirnovin¹, Azizeh Ghaffarian²

¹Payame Noor University of Tabriz, Tabriz, Iran

²Azad University of Tabriz, Tabriz, Iran, Aziz.ghaffarian@gmail.com

ABSTRACT: This research examines the marital satisfaction and happiness in men and women who are married at early age and who are married at late age. The research method is survey and the sample size is 240 married persons. In women, marriage under the age of 20 was considered early marriage and marriage of over 30 was late marriage. Also in men, marriage under the age of 25 was considered early marriage and marriage over 30 was late marriage. The instruments was Enrich marital satisfaction and Oxford happiness questionnaires. The results show that there is significant different between gender and marital satisfaction and happiness and also there is significant different between marital age and marital satisfaction and happiness. Also results show that women who are married at early age are less satisfied with marital satisfaction and women who are married at old age are more satisfied with marital satisfaction. On the other side, men who are married at early age are more satisfied with marital satisfaction and men who are married at old age are less satisfied with marital satisfaction.

KEYWORDS: age of marriage, gender, happiness, marital satisfaction

Introduction

Happiness as one of the most important psychological needs of human, because of the major effect on the formation of human personality, always occupied the mind of human. With the increasing importance of happiness in mental health and well-being, as well as its effect on strengthening human psychological power, to counteract the complexities and problems of today's world, the attention of scholars, researchers and even the general public has changed towards it (Omidian 2008, 106). Researchers show that happiness, regardless of how to get it, can improve physical health. People who are happy, are feeling more secure, are more likely to decide, have more cooperative spirit and feel more comfortable with those who live with them (Mahdavi 2012, 97). Studies express that there are many factors affect happiness which in line with factors affecting happiness, psychologists and economists have introduced different theories:

A. Economic theory. In this theory, it is believed that living conditions, especially income growth, have a lasting effect on happiness. Economists prefer to focus on perceived behaviors instead of focusing on mental states that are abstract. Hence, they raise the issue of utility and believe that person can increase his level of happiness by increasing income. Although some researchers suggest that high-income people are relatively happier but many research and studies in psychology show that money and happiness are not always associated with each other. Generally when basic needs are met, income does not have much effect on happiness (Alipour and Noorbala 2007, 224).

B. Psychological theory. The most common happiness theory is the "fixed point theory". This theory states that each person has a certain amount of happiness due to the genetic and personality factors. Different life events may temporarily increase or decrease the level of happiness but due to the effect of compatibility or pleasure, happiness will return to its original value over time (Alipour and Noorbala 2007, 224). Proponents of this theory believe that the role of life events in joy is negligible. In this theory, three factors are considered as factors affecting happiness that they are:

1. Fixed point: the greatest share of happiness in genetic factors is called fixed point. In other words, the fix level of joy that stems from parents (Ayzeng 2011, 42).
2. Living condition: 10 % of total amount of happiness is allocated to itself. This part includes national, geographic, cultural-regional factors and demographic factors such as age, gender and ethnicity. This dimension of happiness encompass history of personal life and events such as accident, childhood injuries. Also living conditions include variables like social status, job security, income, health, etc..

3. Conscious activities: Sheldon (2008, 102) defines this factor as follows: this level includes a wide range of activities that people do or are thinking of doing. There are many behaviors and activities that individuals spend time and energy on doing which is called conscious activities. This dimension that play 40 % role in happiness, is divided into 3 domains:
- Behavioral activities: such as regular exercise, love others, spend time to presence in the community.
 - Cognitive activities: includes attention to blessings, thinking about positive affairs in life.
 - Voluntary activities: like meaningful efforts in life, trying to achieve personal goals (Vatankhah 2013).

Considering that happiness can be related to issues such as social and family relationships, person's status as a partner and etc. So, it can also have a great influence on happiness in common life. Marital satisfaction is one of the most important concepts of common life and also one of the broadest concepts for determining the amount of happiness and stability of relationship (Rouhani and Manavipour 2010, 116).

Marital satisfaction is a condition that during it, husband and wife feel happy and satisfied from getting married to each other and being together. This satisfaction is the result of marital consent. Actually marital satisfaction present a general assessment of the current status of the relationship (Khanmohammadi and Partovi 2016).

There are some effective factors on marital satisfaction that includes effective communication methods in solving marital conflicts, mutual respect, relationships before marriage, marriage age, couples age interval, duration of shared life, educational and family resemblance, job – social stability, the number of children in the family and the combination of above factors (Vaziri 2015, 91).

In the case of marital satisfaction, researchers in this field have different theories. Each of these theories looks at marriage and common life in separate dimensions. The most important theory is "Elis's rational–emotional theory" (Sahabi, Khani and Khani 2013, 90).

This theory believes that marital disorder does not directly relate to the actions of the other partner or to the behavior of the spouse but it is more because of the opinion and beliefs that the couple have in this behavior. Therefore, this theory focuses on individuals. That means, instead of considering only the interactions or the only system in which the couple are intended, this approach considers persons as the main thing in disorder. The turbulent feelings and behaviors that exist in the relationship are only due to the wrong behavior of either partner or both. In other words, this theory continuously pays attention to the feelings and actions of the couple, but specially deal with the thinking of each of them (Sahabi, Khani and Khani 2013, 91).

Because happiness and marital satisfaction have an important impact on family and health, its role on people's lives is high. Therefore, this article attempts to investigate the amount of happiness and marital satisfaction among those who are married at early age and old age.

General purpose of research: Assessment of marital satisfaction and happiness in men and women who are married at early age and old age.

Minor goals of research:

- Assessing marital satisfaction in women and men
- Assessing marital satisfaction in persons who are married at early age with persons who are married at old age.
- Assessing happiness in women and men.
- Assessing happiness in persons who are married at early age with persons who are married at old age.

Background research:

- Xie, Zhan and Gong (2018) in their research express that proactive personality is positively associated with marital satisfaction through increased work—family facilitation and decreased work—family conflicts for men. However, the effect of proactive personality on marital satisfaction is complex and overall negative for women.

- Mohammadi and Makundi' research (2016) shows that there is a positive and significant relationship between marital satisfaction and quality of life in married students.
- Based on Khanmohammadi and Partovi's research (2017), results show that there is a significant relationship between marital satisfaction and traditional and modern marriage.
- Zandipour and Momenijavid's research (2012) shows that there is a significant relationship between marital satisfaction and job satisfaction in employees of wastewater company.
- Bulgan and Ciftci (2017) in their research, express that marital satisfaction and self-efficacy accounted for 45.9% of variance in psychological well-being and 25.8% of variance in life satisfaction scores.
- In McNulty, Wenner, Fisher and Terri's research (2016) is expressed that higher levels of marital satisfaction at one wave of assessment predicted more positive changes in sexual satisfaction from that assessment to the next; and higher levels of sexual satisfaction at one wave of assessment predicted more positive changes in marital satisfaction from that assessment to the next.

Hypotheses:

1. Marital satisfaction is different between women and men.
2. Marital satisfaction is different between early married persons and late married persons.
3. Women who are married at old age are more satisfied with marital satisfaction.
4. Men who are married at early age are more satisfied with marital satisfaction.

Variables:

- Independent variables: gender, age
- Dependent variables: happiness, marital satisfaction

Definition of variables:

- Theoretical definition of happiness: In Veenhoven's view, happiness refers to the individual's judgement of the degree or desirability of the quality of life in his life. In other words, happiness means how much your person loves his life (Veenhoven 1996, 16).
- Operational definition of happiness: The purpose of happiness in this study is the score that subjects receive from the Oxford Happiness questionnaire.
- Theoretical definition of marital satisfaction: Marital satisfaction is a condition that during it husband and wife feel happy and satisfied from getting married to each other and being together (Jafari 2008, 120).
- Operational definition: The purpose of marital satisfaction in this study is the score that subjects receive from the Enrich Marital satisfaction questionnaire.

Statistical population:

The statistical population in this study was married women and men in Tabriz city.

Measurement tool:

Measurement tools in this study was the Oxford Happiness questionnaire (Cronbach's alpha: 0.92) and Enrich Marital satisfaction questionnaire (Cronbach's alpha: 0.92).

Research method:

The questionnaires were distributed randomly in Tabriz to be filled in by people willing to cooperate.

Research findings and examining hypotheses:

In order to test the first hypothesis as seen in table 1, an independent t-test was used considering the equality of variances, the significance level of t-test for this hypothesis was higher than level of 0.05 and there was not a significant difference between male and female.

Table 1. T-Test results

		Levene's Test for Equality of Variances		t-test for Equality of Means		
		F	Sig.	t	df	Sig. (2-tailed)
Marital satisfaction in Men and women	Equal variances assumed	4.463	.036	.474	148	.624

In the second hypothesis as seen in table 2, an independent t-test was used and considering the equality of variances, the significance level of t-test for this hypothesis was higher than level of 0.05 and there was not a significant difference between early married persons and late married persons.

Table 2. T-Test results

		Levene's Test for Equality of Variances		t-test for Equality of Means		
		F	Sig.	t	df	Sig. (2-tailed)
Marital satisfaction in Men and women	Equal variances assumed	4.378	.038	.458	136	.652

In the third hypothesis as seen in table 3, an independent t-test was used and considering the equality of variances, the significance level of t-test for this hypothesis was higher than level of 0.05 and there was a significant difference between men women.

Table 3. T-Test results

		Levene's Test for Equality of Variances		t-test for Equality of Means		
		F	Sig.	t	df	Sig. (2-tailed)
Marital satisfaction in Men and women	Equal variances assumed	4.405	.491	.375	134	.072

In the fourth hypothesis as seen in table 4, an independent t-test was used and considering the equality of variances, the significance level of the t-test for this hypothesis was higher than level of 0.05 and there was a significant difference between early married persons and late married persons.

Table 4. T-Test results

		Levene's Test for Equality of Variances		t-test for Equality of Means		
		F	Sig.	t	df	Sig. (2-tailed)
Marital satisfaction in Men and women	Equal variances assumed	4.420	.518	.412	148	.083

Conclusion

According to the results, it can be concluded that the level of the marital satisfaction and the amount of happiness among men and women and early married persons and late married persons is different. Also results show that women who are married at early age are less satisfied with marital satisfaction and women who are married at old age are more satisfied with marital satisfaction. On the other side, men who are married at early age are more satisfied with marital satisfaction and men who are married at old age are less satisfied with marital satisfaction.

References

- Alipour, E. and A. Noorbala. 2007. "Happiness and immune function." *Journal of Psychology* 3: 219-233.
- Ayzen, M. 2011. *Always be happy*. Trans. Zahra Chalungar. Tehran: Nasle no andish Publications.
- Bulgan, G. and A. Ciftci. 2017. "Psychological adaptation, marital satisfaction and academic self-efficacy of international students." *Journal of International Students* 7 (3): 687-702.
- Eysenck, M. 2011. *Always be happy*. Tehran: Nasle no andish Publications.
- Jafari, A. 2008. "Effectiveness of premarital communication skills training on marital satisfaction after marriage." *Journal of Behaviors of Science* 6: 116-131.
- Khanmohammadi and F. L. Partovi. 2017. "Study of marital satisfaction among couples with traditional and modern marriage styles." *Sociological studies* 34: 109-126
- Mahdavi, M. 2012. Measuring the rate and factors affecting the joy of students at Qom University. Number 4: 89-108.
- Mcnulty, J., K. Wenner, C. A., Fisher, and D. Terri. 2016. "Longitudinal associations among relationship satisfaction, sexual satisfaction and frequency of sex in early marriage." *Journal of Archives of Sexual Behavior* 45(1): 85-97.
- Mohammadi, S. and Makundi, B. 2016. Relationship between marital satisfaction and quality of life of married students. *Journal of Humanity Sciences*. 3: 87-110.
- Omidian, M. 2008. "A survey on general health and happiness in Yazd University students." *Journal of Psychology* 1: 101-116.
- Rouhani, A. and D. Manavipour. 2010. Relationship between religious beliefs and happiness and marital satisfaction in Isfahan University. *Journal of Knowledge and Research in Psychology* 36:107-130.
- Sahabi, Jalil, Khani S. and Khani A. 2013. Marriage patterns and their relationship with marital satisfaction in married students in Sanandaj University. *Journal of Sociological Studies of Youth*. 12: 77-112.
- Sheldon W. 2008. *Developmental psychology*. Trans. Nuraldin Rahmaniyan. Publisher: Agah, Tehran.
- Vatankhah, M. 2013. "The effect of teaching quality of life skills on happiness and vitality of the elderly in Ahvaz city." University of Ahvaz.
- Vaziri, M. 2015. "Predict marital satisfaction of couples on their basic needs." *Journal of Psychology* 12: 82-100.
- Veenhoven, R. 1996. "Developments in satisfaction research." *Social Indicator Research* 37(1): 1-46.
- Xie, J., Z. E. Zhan and Y. Gong. 2018. "Relationship between proactive personality and marital satisfaction: A spillover-crossover perspective." Retrieve from Elsevier.com.
- Zandipour, T. and M. Momenjavid. 2012. "Studying of relationship between marital satisfaction and job satisfaction in employees of wastewater company in Tehran." *Journal of Job and Organizational of Counseling* 7: 113-129.

Creating Criminal Responsibility within Criminal Groups

Camil Tănăsescu

*"Dimitrie Cantemir" Christian University of Bucharest, Faculty of Juridical and Administrative Sciences, Romania,
camiltanasescu@gmail.com*

ABSTRACT: In the collective aggression, the group's supervision and leadership activity is coordinated by a single person, whom all other individuals focus on, due to the domination, prestige and influence of the person on the collectivity. The intellectual factor of the leader lies in the way of conceiving the model of leading society and dominating the social movements. The volitional factor indicates the energetic-dynamic dimension of the leader's personality, as well as the support of the intellectual element through which the meditative approach is conceived as a non-retroviral movement. The psychic identity of the leader has a unique structure, because the component elements determine the consciousness of personal identity. The behavior of the criminal leader is dynamic, his thinking and affectivity mobilizing the personality system. The criminal leader imposes on the group its own needs. In terms of association, the conduct of the members of the criminal group is different, so there are common elements of the subjective aspects specific to the offenses, an agreement of will, interests, respectively coinciding. However, committing a crime by a member of the criminal group does not automatically entail the criminal liability of all members of the criminal, aggressive group.

KEYWORDS: collective aggression, criminal liability, criminal personality, necessities, the leader of the criminal group, the volitional factor

Introduction

The human being is an entity formed by morpho-physiological and psychosocial structures, the determinants of which impose the acts and phenomena that characterize individual or group behavior. The ability of the individual to respond to external stimuli is determined by the adaptive power of the anatomic-functional apparatus (consisting of the sensory organs and the cells of the cerebral cortex), the excitement of the analyzers being transmitted to the central nervous system.

Acceptance, acceptance by the conscience of dissociation from some acts, activities, at a time or in a significant moment of individual existence, generates a novel behavioral state, imposed by some abilities and attributes, with orientations opposite to those known, defining the multiple personality (Demoque 1923, 54).

The personality of the leader

Personality is formed by reporting affirmation, within certain limits, or annihilation of responses caused by the action of the environment, so that the individual is able to detach himself from instincts, emotional motions and integrate into the system of rules and norms imposed by social existence (Tanasescu 2014a, 174).

Human conduct, subjectively speaking, is the support of the way of thinking (Daneş and Papadopol 1960, 154), deciding and executing the objective criminal act, at the basis of its actual realization, implying the adoption of an individual attitude of the offender against the deed and its dangerous result.

As far as association is concerned, the conduct of the members of the criminal group is different, so there are common elements of the subjective sides specific to the offenses (Deleanu and Mărgineanu 1981, 213), an agreement of will, interests, respectively what needs to coincide. However, committing a crime by a member of the criminal group (Dongoroz and collaborators 1970, 312) does not automatically entail the criminal liability of all members of the intricate, aggressive group.

A fundamental characteristic of the subjective side is that although the objective act of the offense (the objective side) was committed intentionally (the criminal manifesting its criminal decision) because of the lack of knowledge of the existence of circumstances (Bulai 1997, 131) that

impedes the socially dangerous result, the subjective act may still exist, although the offense does not exist (the putative deed).

The thinking of any individual has only one evolutionary consciousness that forces his behavior and evaluates the attitudes of the other individuals.

Interaction between individuals, group actions causes the propagation of conflicts by committing acts of social destabilization, even if their meaning and role are not directly perceived in the conduct of the participants (Dogaru 1986, 99).

The leader - the stimulating cell of the criminal group

In some circumstances, the origin of social conflict arises in the thought or activity of a personality or a leader, the interaction between it and the multitude of individuals of minimal or absolute value (Antoniou 1968, 87). The consensus of individuals participating, either as members of groups or as mere aggressors, will be a more or less unitary set of behaviors, aiming at correcting mistakes, acquiring rights, or building a model of collective force through which would counter the measures of an authority. A leader is the person who leads a group, a movement, with the greatest influence on the other individuals. Being endowed with special attributes, the leader exercises an administrative, political, and economic dominance over a category of individuals who obey and illustrate it (Tanasescu 2014b, 133). The leader's force as well as the affectionate appeal enjoyed by the crowd can not be explained rationally, which makes it credible that his mission is able to defend collectivity.

Interaction between individuals explains the possibility of recognizing the superior value of a person by the members of a group or of a community. The behavioral model imposed or accepted by society (Padovani 1990, 154) was adopted over time by the consent of the majority of individuals, being perceived by the leader and founding himself in his conduct and partly in the conduct of others.

The social position of the leader indicates that he is a person you can rely on, representing the interests of others, the recognition of his value belonging to the majority and not the unanimity of the group. Adept of individual sacrifice, to affirm the rights and duties of a community, the leader acquires the quality of the central person. The domination of the crowd involves inventing the need to attract individuals, to obtain alliances in order to overcome the intended events.

His ability to understand and perceive is accentuated and specializes in several social domains, so that he claims to have perceived the phenomenon, and will propose the right measures. Considering himself compelled to act in order to solve the interests of the group, the leader initiates actions of influence, his manifestations having a dominating character, but also his willingness at the disposal of all.

The will as a power to desire a result and to pursue its realization (Volition represents the psychic process that manifests itself through conscious actions directed towards the purposes pursued by the individual.) The act of will depends on the inner psychic life which is exteriorized in an appreciated concrete activity or Every act-induction is generated by neurophysiological and psychological processes (affective processes) and is coordinated by cognitive-cognitive processes (conscious processes) that define the activity of the individual as licit or illicit (Jasper 1986, 165). The conscious production of a certain result as a result The act described by the criminal norm contains the defining action elements accompanied by the psychological processes appropriate to the concrete action model) manifest externally through the conscious orientation in the exertion of some acts, actions, deeds for realizing the intent either voluntarily or voluntarily, as opposed to mere behavior that does not have a conscious actional orientation. Voluntary actions are determined by a certain motivation and are directed towards concrete goals based on a multitude of movements that are consciously led (Merle and Vitu 1967, 199).

The activity of the individual involves the participation of the effector organs (Mantovani 1988, 200), the organs of the movement both in realizing the perception and its representation, but also in the production of the action result. The realization of the individual and group behavior in the general way implies the production of persistent actions, of the action control to ensure the adaptation to the real conditions of existence.

The will of the individual will analyze and integrate processes and mental states in the volunteer activity assessed by reference to previous experience, by unifying emotional energies and by suppressing trends contrary to the intended purpose. In the decisional act are also the personality traits regarding the action temperament, the desire to carry out the act, the fear of failure. The intensity of will is found in the meaning given to the action and in the effort of accepting the main reason and in the decision to achieve the purpose of the action.

Voluntary acts are aware of the individual being accompanied by vigilance and strong emotions (Padovani 1965, 166) in the execution of his act or are consciously determined by unconscious motivations. At certain moments of action, the individual also proceeds to verify the outcome of the product in order to arrive at conclusions about how to achieve future facts at a high degree of appreciation by adopting methods and using specific means by forming new skills that will characterize the capacity of his or her voluntary effort.

By performing the various activities, the voluntary effort acquires certain qualities (Petricu and Voiculescu 1967, 188): independence (which is found in the permanent tendency to adopt decisions according to their own skill, resulting from the verification of the action circumstances, from the concrete appreciation of the consequences and from accepting the personal responsibility); the power (expressed by the intensity of the volunteer effort used in the production of the voluntary act, finding itself in the strain with which it is intended to produce a certain result); perseverance (there is a voluntary effort so as to remove the potential weakness of the will and against any adversity to pursue, even for a long time, the pursued goal).

Continuing the voluntary effort, even if it proves impossible to achieve the actional goal, explains the intervention of the stubbornness of the individual (the defect of the will) resulting from the lack of flexibility in thinking and action and prejudices; the promptness of the decision means rapidity in deliberation and the adoption of the most appropriate solution.

Conclusions

In conclusion, the aged process requires a period of psycho-physical training identified at the moment of awareness of the necessity of committing, training and finishing the violent act. The facts, whose process is more complicated, require a substantial psycho-actinal investment. When the grouping or the crowd led will appreciate that the ideas of the leader do not go beyond the character of a contradiction, the inevitable conflict will impose the subjection of the crowd through the dictatorship or the denial of activity and its isolation by the group. The leader distorts the reality of the event in order to have the motive to reproduce the association of the previous acts in the environment, according to the interests of the criminal group.

References

- Antoniou G. 1968. *Causality Report in Criminal Law*. Bucharest: Scientific Publishing House.
- Bulai C. 1997. *Criminal Law Handbook. General*. Bucharest: All Publishing House.
- Danes St., Papadopol V. 1960. *Judicial Individualization of Punishments*. Bucharest: Scientific Publishing House.
- Deleanu I., Margineanu V. 1981. *Presumptions in Law*. Cluj: Dacia Publishing House.
- Demoque R. 1923. *Traite des obligations en general*, Paris.
- Dogaru I. 1986. *Legal Voices of Will*. Bucharest :Scientific Publishing and Encyclopedic.
- Dongoroz V. and collaborators (Kahane S., Oancea I., Fodor I., Iliescu N., Bulai C., Stanoiu R., Rosca V.). 1970. *Theoretical explanations of the Romanian Criminal Code, General Part*, vol. II. Bucharest: Romanian Academy Press.
- Jasper K. 1986. *Philosophical texts*. Bucharest: Political Publishing House.
- Mantovani F. 1988. *Diritto penale, the general part*. Padova: CEDAM.
- Merle R., Vitu A. 1967. *Traite de droit criminal*. Paris: Cujas.
- Padovani J. 1965. *Psychology of Intelligence*. Bucharest :Scientific Publishing House.
- Padovani T. 1990. *Diritto penale*, Milano: Giuffre editore.
- Petricu I., Voiculescu I.C. 1967. *Anatomy and Physiology of Man*. Bucharest: Medical Publishing House.
- Tanasescu Gabriel 2014a. *Analytical Criminology*, Craiova: Sitech Publishing House.
- Tanasescu Gabriel. 2014b. *Criminal Law. General Part*, Vol. I. Craiova: Sitech Publishing House.

The Legal Regime of the Right to Private Property in Romania

Ciprian Raul Romițan

Romanian-American University, Law School, Bucharest, Romania, ciprian.romitan@rvsa.ro

ABSTRACT: In Romania, the right of the titleholder to possess, use and dispose of an asset in an exclusive, absolute and perpetual manner is guaranteed and protected equally by the law, regardless of the titleholder. In this regard, both the Constitution of Romania and the Civil Code and numerous legislative acts adopted after the December 1989 Revolution regulate private property. Also, given that the right to property is one of the fundamental human rights, in addition to the internal legal regulations, one must also take into account the international treaties and conventions ratified by Romania, such as the European Convention on Human Rights and Fundamental Freedoms and its additional Protocol no. 1 which states that “*no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*”. The study presents an analysis of how the Romanian law regulates one of the most important and ample *real rights*, namely the right to private property which is also a *full right* because the owner has full powers over his asset.

KEYWORDS: absolute right, disposal, possession, real right, right to private property, right to property, titleholder, use

Introduction

The change of the political regime of December 30th 1947 and the installation of the communist regime have brought about significant changes in Romania with regards to the legal framework regulating property. One of the key communist concepts was to “eliminate man’s exploitation by man” and, by way of consequence, they proceeded to the transfer of all production means from private property to public property, as, in the new political regime’s opinion, they represented the people’s assets. Subsequently, the first Communist Constitution of 1948 fostered the nationalization of the production means, the expropriation of landlord properties and the collectivization of farming properties (Berceanu 2003, 458).

After the removal of the communist regime by the Revolution of December 1989 and the adoption, in 1991, of the first Democratic Constitution, the rational private property regulations were reinstated. These are the regulations that this paper focuses on (The Constitution was adopted in the meeting of the Constituent Assembly of November 21, 1991, it was published with the Official Gazette of Romania, Part I no. 233 of November 21, 1991, and it came into force following its approval pursuant to the national referendum of 8 December 1991).

Hence, art. 41 and art. 135 of the Constitution adopted in 1991 stipulated two forms of property, i.e. private and public property and they also consecrated the equal protection of the private property, regardless of the titleholder. Moreover, it was mentioned that the property title, as well as the debt held against the state are guaranteed and that the content and limitations of these titles were established under the law (Constantinescu, Deleanu, Iorgovan, Muraru, Vasilescu and Vida, 1992, 295 *et seq.*). Subsequently, the Law reviewing the Constitution of Romania no. 429/2003 amended the two aforementioned articles, which, following the renumbering performed upon the republication of the Constitution, became art. 44 and, respectively, art. 136 of the Constitution (The Law Reviewing the Constitution of Romania no. 429/2003 it was passed pursuant to the national referendum of 18-19 October 2003 and it came into force on 29 October 2003, when it was published with the Official Gazette of Romania, Part I, no. 758 of 29 October 2003 The Decision of the Constitutional Court no. 3 of 22 October 2003 in confirmation of the result of the national referendum of 18-19 October 2003 on the Law reviewing the Constitution of Romania).

Definition and Subject of the Private Property Right

According to art. 555(1) of the Civil Code, *the private property is the “the right of the titleholder to possess, use and dispose of an asset in an exclusive, absolute and perpetual manner, within the limits stipulated under the law.”*

Starting from the Civil Code definition, the recent Romanian doctrine (Boroi, Anghelescu and Nazat 2013, 5; Bîrsan 2017, 52) defines the private property right as “the subjective title over certain assets, other than the ones that constitute the public domain, pursuant to which the titleholder exerts the possession, use and disposal, at its own discretion and in order to serve its own interest, within the limits stipulated under the law.”

According to the provisions in art. 553(1) of the Civil Code, “all private use or interest assets belonging to natural persons, private or public law legal entities, including the assets constituting the private domain of the state and of the administrative-territorial units” are subjected to the private property title. The interpretation of the text above leads to the conclusion that the private property title may have as a subject any movable or fixed asset, except for those that, through their nature, represent the exclusive subject of the public property.

In Romania, according to art. 859(1) of the Civil Code “Public interest subsoil resources, the air space, national interest waters with energetic potential that can be capitalized, beaches, the inland sea, the natural resources of the economic area and of the continental shelf, as well as other assets stipulated under the organic law represent the exclusive subject of the public property. (2) The other assets belonging to the state or to the administrative-territorial units are, as applicable, part of the public or private domain thereof, but only if acquired by one of the means stipulated under the law.”

With regards to the subject of the private property law, it should be highlighted that, due to their importance as well as to some other general interests, certain private property assets are subjected to a special legal regime. For instance, weapons and ammunition, explosives’ intoxicant products, materials and mixtures, medication, toxic products and materials, documents that are part of the national archives, national heritage assets, and so on.

The Romanian Civil Code Regulates vacant inheritance, i.e. inheritance with no successors, whether by law or testament. In this regard, according to art. 553(2) of the Civil Code, “vacant inheritances are acknowledged through a succession vacancy certificate and they become part of the private domain of the commune, town or city, as applicable, without being entered with the real estate register.” At the same time, the law also regulates the situation of the real estate properties subjected to the property title waiver according to art. 562(2) of the Civil Code. Thus, according to the final part of art. 553(2) of the Civil Code, the respective real estate properties “are acquired, without being entered with the real estate register of the commune, town or city, as applicable, and they become part of the private domain thereof, pursuant to a local council decision.”

Pursuant to the interpretation of art. 553(3) of the Civil Code, it may be noticed that the state holds the special vocation to also acquire “vacant inheritances located abroad.” With regards to vacant inheritance assets, please note that they belong to the private property of the state or of the administrative-territorial unit.

Titleholders of the right of private property (Subjects)

According to the provisions in art. 44(2) thesis I of the Constitution of Romania “*the private property is equally guaranteed and protected under the law, regardless of the titleholder*”. Hence, any law subject may be a titleholder.

In other words, also considering the provisions in art. 553(1) of the Civil Code, private property titleholders may be:

- natural persons;
- private or public law legal entities;
- the state;
- its administrative-territorial units.

For instance, from amongst the *private law legal entities* who are holders of the private property title, we mention: *legal personality companies* that can be state-owned, privately-owned or mixed (state and private) capital; *farming companies* holding private legal personality; *cooperatives*; *associations and foundations* who are private law non-profit legal entities; *trade unions* who should be independent from public authorities, political parties and owners' associations; *acknowledged religious cults* and their places of worship (Urs and Ispas 2015, 42-45; Florea 2011, 47-48).

From amongst the *public law legal entities* who are holders of the private property title, we mention: *state bodies, state institutions, central public administration bodies; county public administration bodies and county interest public institutions; local public administration bodies and local interest public institutions; political parties* (Urs and Ispas 2015, 45-47).

Content and Legal Features of the Private Property Title

The key elements of the property title, regarded as one of the most important and complete main real rights, follow both from the underpinning attributes, and from the manner in which these attributes are exerted (Boroi, Anghelescu and Nazat 2013, 14-20; Bîrsan 2017, 43-47; Stoica 2017, 101-104). The property title is the only subjective right granting the titleholder its three attributes, i.e.: possession, use and disposal, also known in the doctrine as the “*classical trilogy*” (Ungureanu, Munteanu 2008, 166). With regards to the legal features of the private property right, art. 555(1) of the Civil Code states that the property title is *absolute, exclusive and perpetual*. Hence, the legal features of the private property title are: *its absolute nature; its exclusive nature and its perpetual nature*.

Means of Acquiring the Private Property Titles

If in the 1864 Civil Code (published with the Official Gazette no 271 of 4 December 1864, no. 7 (suppl.) of 12 January 1865, no 8 (suppl.) of 13 January 1865, no 8 (suppl.) of 13 January 1865, no. 8 (suppl.) of 14 January 1865, no 11 (suppl.) of 16 January 1865, no 13 (suppl.) of 19 January 1865), *the listing of the means to acquire the property title was imprecise and incomplete* (Bîrsan 2013, 353), *being often criticized for the conflict it generated to the rules and principles of law* (Vișoiu 2011, 9), in the Civil code in force, art. 557 with the marginal title “*Acquiring the Property Title*” orders, under paragraph (1), in a more rigorous and clearer systematization, that “*The ownership title may be acquired according to the law, by convention, legal or testamentary inheritance, accession, usucaption, as an effect of the good-faith possession in the case of movable assets and of the fruit thereof, through occupation, Traditio, as well as by court order, if it involves property transfer as such*”. Moreover, according to the law, the ownership title may also be acquired by to the effect of an administrative act, and the law may further regulate other means of acquiring the ownership title paragraph (3).

At the same time, according to art. 557(4) of the Civil Code, except for certain situations stipulated under the law, in the case of fixed assets, the ownership title is acquired by registration with the real estate register, in compliance with the provisions in art.888 of the Civil Code.

Art. 888 of the Civil Code stipulates that the entry of the acquisition of an ownership title with the real estate publicity register is carried out “*on the basis of the authenticated notary document, of the final court order, of the heir certificate or on the basis of any other document issued by the administrative bodies, if so stipulated under the law.*”

Private Property Title Limitations

The exerting of the property right is susceptible to certain limitations (restrictions), which, as also stipulated in the dedicated doctrine (Boroi, Anghelescu and Nazat 2013, 23) “*are but the expression of the combination of the titleholder's individual interest with the general interest.*”

The general principles concerning the property title exerting limitations are included in the provisions of art. 556 of the Civil Code. In this respect, paragraph (1) of the mentioned article it is stipulated that “*The ownership title may be exerted within the material limitations of its subject. These are the corporeal limitations of the product representing the subject of the ownership title, with the restrictions stipulated under the law.*” Moreover, paragraph (2) of the same article

stipulates that *exerting the attributes of the ownership title may be limited under the law*, while paragraph (3) orders that the exerting of the ownership title can also be limited *by the titleholder's will*, with the exceptions stipulated under the law. In other words, the limitations may be the result of *the legislator's will*, of the *judge's will* or of *the titleholder's will*. It should be mentioned that regardless of the source of these limitations in exerting the private property right, we can by no means talk about depriving the titleholder of their right.

Pursuant to the above, it follows that the property title limitations can be *materials and legal*.

The material limitations of the property right are determined by the corporeality of the asset, be it movable or material, subject of the ownership title. For instance, art. 559(1) of the Civil Code stipulates that the ownership title over the land extends both above and underneath it, provided that the legal limitations are observed. The titleholder is entitled to develop, above and underneath the ground, all the desired constructions, crops and works, excluding the exceptions stipulated under the law, and is entitled to draw all the benefit they might produce from them. The titleholder is, however, bound to observe, according to the terms and limitations stipulated under the law, the rights of third parties over the subsoil ore resources, springs and underground waters, underground plant and other such [paragraph (2)].

The civil code consecrates an entire chapter (Chapter III) to the *legal limitations* of the private property title, Book III (*On Assets*). Thus, these limitations may be: *legal limitations*, determined by the law (art.602-625), *conventional limitations* established by mutual agreement between the parties (art. 626-629) and *legal limitations*, i.e. established by a court order (art. 630).

According to art. 602(1) of the Civil Code, *“the law may restrict the exerting of the ownership title to the public or private interest.”* In other words, some limitations in exerting the ownership title are established by (civil or administrative) legal provisions justified by either a public or a private interest. Hence, the legal limitations may be of *public and private interest*.

Conclusions

To conclude, we mention that in Romania, private property title is protected and guaranteed under the Constitution, the regulations in the laws in the field; the court orders passed in application of the laws to reinstate the private property title, as well as by the international treaties and covenants ratified in Romania, such as, for instance, the European Convention on Human Rights and Fundamental Freedoms (ratified by Romania by Law no 30 of 18 May 1994 ratifying the Convention on Human Rights and Fundamental Freedoms and the additional protocols to this covenant, published with the Official Gazette of Romania no 135 of 31 May 1994) and the First additional protocol to this covenant, signed in Paris on 20 March 1952 (Published with the Official Gazette no 135 of 31 May 1994) which, in art. 1, stipulates that *“no one can be deprived of their property other than for public service purposes, according to the provisions under the law and the general international law principles”*.

Moreover, it should be mentioned that in Romania Romanian or foreign natural or legal entities and, as well as the stateless, may acquire the ownership title over constructions without any restrictions. With regards to lands located in Romania, as also analyzed in the doctrine (Drăgușin and Bârlog 2007, 2, 9-29; Popa 1998, 7, 32-36) foreign citizens, the stateless and foreign legal entities may acquire the private property title over the same under certain conditions stipulated in art. 44(2) of the Constitution, in the Law no. 312/2005 on the foreign citizens', stateless persons' and foreign legal entities' acquiring the private property title over the lands (published with the Official Gazette no. 1008 of 14 November 2005) and in Annex no. 7 to Romania's Treaty of Accession to the EU (ratified by Romania by Law no. 157/2005, published with the Official Gazette no. 465 of 1 June 2005).

References

- Berceanu, Barbu. 2003. *The constitutional history of Romania, in an international context*. Bucharest: Rosetti Printing House.
- Bîrsan, Corneliu. 2013. *Civil law. The main real rights in the regulation of the new Civil Code*. Bucharest: Hamangiu Printing House.

- Bîrsan, Corneliu. 2017. *Civil law. The main real rights in the regulation of the new Civil Code*, 3rd Rev. Bucharest: Rosetti Printing House.
- Boroi, Gabriel; Anghelescu, Carla Alexandra and Nazat, Bogdan. *Civil law course. Real main rights*, 2nd Rev. Bucharest: Hamangiu Printing House.
- Constantinescu, Mihai; Deleanu, Ioan; Iorgovan, Antonie; Muraru, Ioan; Vasilescu, Florin Bucur; Vida, Ioan. 1992. *The Romanian Constitution commented and annotated*. Bucharest: R.A. "Monitorul Oficial".
- Drăgușin, Claudiu and Bârlog, Dragoș. 2007. "Acquisition of land ownership by foreign citizens, stateless persons and foreign legal persons after Romania's accession to the European Union". In *Low*, (6): 9-29.
- Florea, Bujorel. 2011. *Civil law. The main real rights*, București: Universul Juridic Printing House.
- Popa, Ioan. 1998. "The legal nature of the real right of foreign citizens and stateless persons on land related to their property construction". In *Low* (7): 32-36.
- Stoica, Valeriu. 2017. *Civil law. The main real rights*, 3rd Rev. Bucharest: C.H. Beck Printing House.
- Ungureanu, Ovidiu and Munteanu, Cornelia. 2008. *Treaty of civil law, The goods. The main real rights*. Bucharest: Hamangiu Printing House.
- Urs, Iosif Robi and Ispas, Petruța Elena. 2015. *Civil law. The theory of rights*, 2nd Rev. Bucharest: Hamangiu Printing House.
- Vișoiu, Claudia. 2011. *The Procedure of adverse possession. Regulated by the 1864 Civil Code, Decree Law no. 115/1938 and New Civil Code*. Bucharest: Rosetti Printing House.

Public Policy of Gender Equality in Albania in the Contexts of New Institutionalism

Eglantina Gjermeni¹, Alkida Lushaj²

¹*Eglantina Gjermeni, Parliament of Albania, Tirana, Albania, egjermeni@hotmail.com*

²*Alkida Lushaj, OSCE Presence in Albania, Parliament of Albania, Tirana, Albania, kida.lushaj@hotmail.com*

ABSTRACT: The core of this paper is to analyze the public policy of gender equality in Albania, particularly on policy areas of political participation, in the context of new institutional approaches. Having done a research, this article attempts to explain the effects of mechanism as gender quota to the level of women's participation in politics and decision-making in Albania. At the same time, examines the challenges of gender quota implementation in Albania. In this paper, it is understood that the interpretation of “the gender inequality problem” determines the equality policies applied on this issue and the structure of formal institutions in that policy. That is, how the gender equality policy has been formed and applied as a public policy in Albania. Besides, equality policies and formal institutional structure on that issue is being formed depending on how “the problem of gender inequality” is perceived by policy-maker actors. In this paper, using the concept of gender as a process analysis, we find evidence that the implementation of gender quotas increased the number of women's participation in politics and decision-making and brought in a more diverse group of women. We also find that women in Albania still continue to face inequality and discrimination, and there is still a lot to be done, to enjoy their rights *de facto* and to have effective protection against gender discrimination.

KEYWORDS: Gender Equality, Gender Quota, Public Policy, New Institutionalism

Introduction

Gender equality policies have gained importance, especially in recent decades. Grass-roots movements have been a considerable element of this policy establishment process since the 1980s. Due to the recent developments regarding international human rights, the gender equality policies in Albania are also undergoing a transformation phase.

In recent years, at a global level, there has been a noticeable increase in women's participation in public life. However, women's participation in decision-making remains low. Worldwide, women have managed to be part of parliaments at 24 percent (IPU 2018), while in 22 countries they have managed to exceed 30 percent of parliamentary participation. Increasing the number of women in decision-making is an important step towards achieving a society of equal opportunities towards a more democratic and inclusive society.

Ensuring women participation at all decision-making levels could lead to more gender sensitive policies and reforms, which will ensure a better complementarity of the needs of women and men in society. Providing equal opportunities between men and women is an issue of democracy and human rights as well. It is an issue of representation, which guarantees that both man and women are equally represented and that their needs and interests are equally addressed through legislation and policy making. To address gender inequalities in decision making are used several mechanisms, and one of them is gender quota. The gender quota system is one of the strategies applied in some countries including Albania, in order to increase the participation of women in decision-making and politics.

The gender quota system as a tool towards gender equality

Many international documents such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979), European Convention on Human Rights (ECGR 1996), UN Security Council Resolution 1325 (UN, S/Res/1325 2000) and Sustainable Development Goals (SDGs 2018) pay particular attention to the gender balance in decision making, considering it as a condition for better governance and a more democratic society.

Albania has ratified a number of conventions, treaties and protocols relating to the protection of human rights, such as the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights (ICCPR 1966), the International

Covenant on Economic, Social and Cultural Rights (ICESCR 1966) and the European Convention on Human Rights (EVHR 2010).

Ensuring gender equality it is not only an international commitment and obligation just because Albania has ratified these international documents, but it is also a national obligation because of Albanian legal framework. In this framework, Albania's constitution has provided some guarantees to stop discrimination on the basis of gender. Also, Law No 9970, dated 24.07.2008 "On Gender Equality in Society" (Law No 9970 2008), as well as Law No 10 221, dated 04.02.2010 "On Protection from Discrimination" (Law No 10 221 2010) have established a network of institutions for protection against discrimination in general and gender discrimination in particular.

It is important to underline the fact that special measures taken in the context of increasing women's participation in representative bodies and in decision-making as a whole do not pose a positive discrimination but are attempts to establish equality of opportunity and real or substantial representation between men and women (Gjermeni 2005. 4).

Achieving equal participation of women and men in political and public decision-making leads to better and more efficient decision-making and contributes to life quality improvement (Aleanca Gjimore per Zhvillim 2006, 8). Increasing women's participation in decision-making contributes to positive transformative processes for societies because women account for half of the population in Albania, such as changes in laws, policies, services, institutions, and social norms.

To achieve gender equality in politics and decision making are used several mechanisms. One of the mechanisms being used the most is the establishment of a quota system in the electoral system. In Albania, the Law "On Gender Equality in Society" (2008) (Law No 9970 2008), which first established the gender quota as a legal obligation to guarantee the participation of over 30% of each gender in the legislative, executive and judicial bodies and other public institutions. Also, it is one of the most important laws in this area, which complements the legal framework in the field of gender equality.

This law aims to regulate gender equality fundamental issues in public life, for equal protection and treatment of women and men, for having equal opportunities and possibilities to exercise their rights and also for their participation and support in the development of all areas of social life.

According to Article 15 of the Law on Gender Equality (Law No 9970 2008, 6), equal representation in all legislative, executive and judicial bodies and other public institutions is achieved when:

- a) providing representation over 30 percent for each gender, including in their governing bodies;
- b) ensuring equal respect for each gender of the competition procedures and criteria when appointing these bodies;
- c) ensuring inclusion of over 30 percent of each gender on the list of candidates for elections in local representative bodies;
- d) ensuring inclusion of not less than 30 percent of each gender on the list of candidates submitted by the political parties on the proportional system for the elections of the Parliament of the Republic of Albania;
- e) ensuring the inclusion of over 30 percent of each gender in the central and local election management bodies.

Related to the law, national quotas is the electoral quota for the legislature, the Assembly, according to which none of the genders (man or women) can be represented by less than 30%.

This measure will be guaranteed by inclusion in the lists of political party candidates for the proportional system, and not less than 30 percent of each gender (Anastasi, Mandro, Shkurti, and Bozo 2012, 94).

While the quota for local election is the obligation to achieve a representation of each gender over 30 percent. This will be accomplished through the legal obligation according to which in the list of candidates for elections in local representative bodies, the involvement of over 30 percent of each gender should be ensured. Such obligation being also sanctioned in the Electoral Code stating that for each electoral area at least 30 percent, of lists with several names, shall belong to each gender (Electoral Code 2016, 81).

Regarding quota for the electoral bodies, the law on gender equality has considered the legal obligation to guarantee the quota in the electoral bodies, and in all the commissions administering the elections (Anastasi, Mandro, Shkurti, and Bozo 2012, 97).

In Albania, the gender quota serves as a mechanism that has not only increased the responsibility of political parties to involve more women and girls in the elected bodies, but also provides space for the implementation of the national legal framework on gender equality and conventions ratified by Albanian state. Implementation of gender equality law has led to improved gender balance at all gender equality levels, especially in parliament. This is also obvious from percentage in participation statistics in some legislatures.

According to the data released by INSTAT (2017, 107), during the period 1920-1945, the Parliament of Albania was composed only by men. The first women participating in the Parliament were elected in the 1945 legislation. The degree of women's participation in the Parliament of Albania has been virtually constant throughout the 1997, 2001 and 2005 legislatures not exceeding 10 per cent.

During 2001-2005, the largest men's participation in the parliament was 94 per cent. Significant improvement of women's participation in the Parliament of Albania was made possible only after the inclusion of the 30 per cent quota, provided in the electoral code amendments in 2008.

In parliamentary elections in 2009, women's participation in parliament increased by more than twofold, from 7 per cent to 16 per cent. The rising tendency is also noted in the 2013 parliamentary elections, reaching 18 per cent, to 23 per cent in 2015 and to 29, 29 per cent or 41 women deputies from 140 in 2017. As we see from the table number 1, the highest level of women's representation in the Parliament of Albania, since 1992 when the first pluralistic elections were held, is in 2017. This is a great achievement for all the society ensuring more democracy and good governance in Albania.

Table 1. Composition of parliament since 1920 (INSTAT 2017, 110)

Year	Number		In %	
	Men	Women	Men	Women
1920	37	0	100	0
1921	78	0	100	0
1925	75	0	100	0
1928	57	0	100	0
1945	76	6	93	7
1950	104	17	86	14
1958	171	17	91	9
1970	192	72	73	27
1974	167	83	67	33
1982	174	76	70	30
1990	169	81	68	32
1991	199	51	80	20
1997	144	11	93	7
2001	131	9	94	6
2005	130	10	93	7
2009	117	23	84	16
2013	115	25	82	18
2014	111	29	79	21
2015	108	32	77	23
2016	107	33	76	24
2017	101	41	72	29,29

Women's increased participation in the Albanian Parliament, has mainly come as a result of the inclusion of 30% quota in the amendments of electoral code in 2008, as well as by lobbying efforts of women's organizations, civil society, international organizations and women parliamentarians to introduce and implement gender quotas, and due to the greatest awareness of the importance of women's political representation.

According to Law "On Gender Equality in Society", political parties are considered as key subjects to guarantee gender balance in the central and local representative bodies. Pursuant to Law "On Gender Equality in Society", political parties violating the provisions of Article 15 (Anastasi, Mandro, Shkurti, and Bozo 2012, 96), pay a fine of up to one-tenth of the state's fund for financing the election campaign until the correction of the violation.

Political parties shall, as key subjects to guarantee gender equality, be emancipated and democratized to involve more women in decision making, to support and provide them the necessary space to reveal their potential.

Challenges of gender quota implementation in Albania

Despite legislation improvements, women in Albania continue to face inequality and discrimination only because they are women and there is still a lot to be done, to enjoy their rights *de facto* and to have effective protection against gender discrimination. Thus women, regarding representation in public and political life, continue to be underrepresented under the 30% quota provided by the law. Due to the fact that the implementation of gender quota is considered as the beginning of a long-term process of eliminating gender inequalities, in Albania it remains a major challenge for Albanian women, political parties, institutions and civil society.

Establishing gender quotas should not be just a step towards achieving gender equality. At the same time, political parties should pay special attention to the development and implementation of party programs that include gender perspectives in all their aspects, and make gender equality an essential policy goal that they promote. They should also endeavor to undertake initiatives that encourage and nurture women, provide full and equal support to women's logistics and financial affairs.

Unfortunately, women's unequal access to financial resources limits their engagement and leverage in many political activities. Women's exclusion from certain circles of power and moneyed networks, in addition to their own actual economic status - which is documented to be inferior to men - affects their nomination and recruitment as candidates (USAID, NDI Women's Network Equality in Decision-Making 2018. 7).

Political parties in Albania as main subjects that guarantee gender balance do not yet have the right awareness and vision regarding the importance of this issue. Political parties that guarantee gender balance should be emancipated and democratized to involve more women in decision-making and to create more space to show the potentials they have.

It is important that women and girls bring their own experiences and approaches to the decision-making processes in the field of their gender role as the main guardian of the family and as a pillar of community development. This involves greater attention to the interests and needs of the family, children and people in need; a greater focus on the decision-making process in the face of a hierarchical and authoritarian decision-making; as well as a tendency to engage with all the actors involved in decision-making (Aleanca Gjinore per Zhvillim 2009, 18).

Also the sanctions foreseen for the political parties, for not enforcing the quota obligation, often in Albania have been weak. Based on the Slovenian legislation model, it would be fairly correct that the lists that do not comply with the quotation projections are declared ineffective (Anastasi, Mandro, Shkurti, and Bozo 2012, 96).

Conclusions

Increasing women's participation in public life is a key element for the development and democratization of a country. Inclusion of women in all aspects of political life is important not only

because women account for half of the population in Albania but because achieving balanced participation of women and men in political and public decision making is a necessary condition for the better functioning of a democratic society. The exclusion of women from power worsens public life and promotes the development of an unfair society, which curbs the development of a country in all three aspects: political, economic and social.

Gender quota is considered as a way to continue to gender balance at decision making in all the levels. We have argued that as a result of the inclusion of 30% of the gender quota, women's participation in parliament increased to 29, 29 per cent in 2017 that is the highest level of women's representation in the Parliament of Albania since 1992 when the first pluralistic elections were held. But despite legislation improvements, women in Albania continue to face inequality and discrimination. Implementation of gender equality law should bring gender balance improvement to all levels or aspects of policy making, and not just in parliament.

To provide the opportunity to women to become influential actors in decision making and to achieve gender equality in Albania, it is important that parties should report regularly on the representation of women at different levels within party structures, including women/men membership and to strengthen the sanctions in the electoral code by providing rejection of political parties lists in case when gender quota, for the Albanian Parliament elections, is not applied.

Also of great importance is the awareness of Albanian society and political parties regarding the acceptance and support of women leaders, especially by promoting positive models. Political parties should be emancipated and democratized to involve more women in decision-making and to create more space to show the potentials they have.

Civil society and oversight organizations should lobby the respective state institutions, media and international organizations for the respect of all articles of the electoral code that protect the representation of women.

It is also important to note that achieving gender equality in politics will become a reality when the gender perspective will be included in every aspect of policy making; when needs assessment, drafting of laws, programs and policies, budgeting and the impact assessment of all these political processes would ensure equal consideration and equal addressing of needs, interests and ideas of men and women.

References

- Aleanca Gjinore për Zhvillim. 2009. *GATA 8*. Tiranë: Mediaprint. No. 8. IV.
- Aleanca Gjinore për Zhvillim. 2006. *Përfaqësimi dhe cilësia e demokracisë në Shqipëri - një perspektivë gjinore* (Representation and the quality of democracy in Albania - a gender perspective). Tiranë: Pegi.
- Anastasi, A., Mandro, A., Shkurti, E., and Bozo, A. 2012. *Barazia Gjinore dhe Mosdiskriminimi* (Gender Equality and Non-Discrimination). Tiranë: Pegi.
- European Convention on Human Rights - Ratified by the Law nr. 8137 / 31.7.1996.
- European Convention on Human Rights. 2010. Protocol No. 14. (CETS NO.194). 1 June.
- Kodi Zgjedhor i Republikës së Shqipërisë (Electoral Code of Republic of Albania). 2016. Ndryshuar me ligjin nr.74/2012, datë 19.7.2012 dhe ligjin nr. 31/2015, datë 2.4.2015). Tiranë, 81.
- Kushtetuta e Republikës së Shqipërisë (Constitution of the Republic of Albania). 1998.
- General Assembly of UN. 1966. International Covenant on Civil and Political Rights. Resolution 2200A (XXI). 16 December.
- International Covenant on Economic, Social and Cultural Rights. General Assembly resolution 2200A (XXI) of 16 December 1966. 27.
- INSTAT. 2017. "Women & Men in Albania." *Instituti i Statistikave*. 16.
- IPU. 2018. "Women in National Parliaments." World average table situation as of 1 September 2018, <http://archive.ipu.org/wmn-e/world.htm>.
- Law No 9970, dated 24.07.2008. "On Gender Equality in Society."
- Law No 10 221, dated 04.02.2010. "On Protection from Discrimination."
- Republika e Shqipërisë. Kuvendi <http://www.parlament.al/RaporteStatistika?statusId=3>.
- Sustainable Development Goals. 2018. "Goal 5. Achieve gender equality and empower all women and girls." New York: United Nations, <https://sustainabledevelopment.un.org/>.
- United Nations Development Programme (UNDP) in Albania, Government of Sweden. 2017. *Gender Quotas and Women's Substantive Representation in the Local Councils of Albania*. Tirana, January.
- United Nations. 2000. 1325 Resolution (S/Res/1325). New York. <http://www.womenwarpeace.org/toolbox/1325.pdf>.

- United Nations, 2010. "Convention on the Elimination of All Forms of Discrimination against Women." 46 Session, CEDAW/CALB/CO/3, 30 July. 2.
- UN Women. UNFPA and INSTAT. 2014. Gender Perspectives in Albania. October. 14-19.
- UN Albania. UN Women. Albanian Institute for Social Innovation. Pjesemarrja e grave ne politike dhe vendimmarrje ne Shqiperi. Vezhgim mbi perceptimet e publikut 2012-2013 (Participation of women in politics and decision-making in Albania. Survey on public perceptions 2012-2013).
- USAID. NDI. Women's Network Equality in Decision-Making. 2018. *Women, Money and Politics - A Study of Women Candidates' Access to Political Finance during the 2017 Parliamentary Electoral Campaign in Albania*. Tirane. 7.

Professional versus Social Media: News Credibility and Impact

Hadiza Wada

Kaduna State University, Kaduna, Nigeria, Hadiza.wada@kasu.edu.ng

ABSTRACT: This study's relevance lies in its goal of ascertaining the degree to which people rely on unprofessionally processed information in (1) making vital decisions or (2) acting on unsubstantiated information served via social media. In addition, it measures the audiences' ability to differentiate information emanating from professional, versus social media. Professional media, in this case, refers to the traditional broadcast and print media who have been in the business of professionally processing and authenticating news and information for their respective audiences. While social media, on the other hand, represent the various platforms provided primarily for social exchange of information. Relevant to this study is the social media's ability to reach multitudes of people with unprocessed and uncertified information that can go viral, reaching millions of people. The theoretical framework is Uses and Gratification Theory, UGT, and the methodology is random survey.

KEYWORDS: Social media, traditional media, news credibility, fake news

Introduction

Professional media, sometimes referred to as traditional media has gradually become just a part of the general media world. Multimedia content provision is now the norm while social media practically invaded the media domain, providing information and media content to anyone willing to read, listen or watch. Soon traditional media establishments including conglomerates began to lose their audiences to internet users, while most joined the trend by operating blogs and incorporating social media in their live interactive programs. Scholars have studied various aspects of such relationships including its effect on programming content, delivery method and quality of what is served to the audience ultimately (Girard 2003). Some see positive impact (Pavlik 2001) when radio is converged with social media for interactivity during broadcasts, while others add that social media has consistently outscored traditional media in breaking news (Bosch 2010). Bosch further added that social media has changed ways in which news are generated and accessed. In Africa (Pavlik 2001) see only the rising impact of the internet and social media, just as the tools that provide consumers with such services continue to improve and multiply in number.

Statement of the Problem

The prevalence of social media usage, and its circulation of unverified but at times critical information is a major concern, most especially when the issue circulated borders on political stability, security, health and other matters of life and death. Scholarly articles have been written on uses of social media in recent years for social marketing and mobilization (Brown, Guskin, and Mitchell 2012), especially after the Arab Spring or mass demonstrations the world saw in several countries of the Middle East and North Africa, from Tunisia to Egypt's Tahrir Square between 2010 to 2012.

Then there is the challenge among users in discerning which piece of information is credible and which is not. Most users do not have ways of assessing the credibility of information (Edogor, Jonah, and Ojo 2015). More often than not, the source of the information is not indicated for the user, especially in the case of information shared repeatedly via a chain of networks through social media. The potential for intentional misuse of social media to spread misinformation, rumors and even fake news is also a concern. Fake news (Askew 2018) is defined as 'deliberate misinformation spread through traditional or online media,' with the word fabricated featuring in most definitions. Among the questions this study attempts to answer, therefore, is the audiences' rating of social media contents and how reliable they think it is as far as being a source of news and information. Do they think what

they get via social media is reliable? Would they act or react to messages on social media? Have they actually acted on any information they have previously received from social media?

Theoretical framework

Uses and Gratification theory has contributed a lot to our understanding of how media contributes its quota in the lives of those that use it, i.e. its audience. Research categorized under this theory has continued to enrich our understanding of the choice and utilization of media content by the general audience. In 1969 Jay Blumler and Denis McQuail studied the United Kingdom 1964 election and categorized people's motives for watching certain political programs on television (Blumler & McQuail 1969). These audience motivations formed the foundation for their research in 1972 and led to active audience theories, better known later as Uses and Gratification Theory, UGT. The theory stresses the basic premise that audiences are not passive consumers of media content. The selectivity aspect as a branch of active listeners theory helps us analyze what audiences seek from the media, and for what reason they seek it; selective exposure. How they choose (select) content, including their psychological processing of that choice probed under selective perception, and what they seek to process and retain mentally, selective retention. And finally how they store such information mentally and use it in their lives whenever the opportunity for application arises.

Related Literature

General Impact of New Media on Professional Media

With the onset of online information and the resultant proliferation of news sources far beyond the traditional media, many studies were conducted to find out how the new media impact traditional media. A number of studies (Gauntlett 2011) foresee the culture of passive audiences or 'sit back and be told' fast diminishing, as audience involvement became the norm. Others, however (Hendy 2013) admit that the abundance of social tools for creating media content by unprofessional (amateurs) is posing serious threats to traditional media's existence and influence. Others (Bruns 2008) see new media as a positive means of contributing to the discourse, as a shift from industrial production of content towards a more collaborative engagement of communities of participants positively impacts traditional media production value chain. New media tends to extend the reach of traditional media to specialized audiences (Uzorhuku 2018), seeing the high involvement of the younger generation in conventional media activities is via social media, citing a study that shows otherwise more than 60% of younger Americans are moving away from traditional delivery systems altogether.

Another scholar (Zhang 2012) see the prevalent use of new media posing a threat to conventional media, while (Ogedi 2009) pointed at the challenges of authenticating information incorporated (allowed) into conventional media programming from social media without compromising professional standards. Apart from operating blogs, it has been reported (EBU 2011) that 60% of European public radio have Facebook accounts and 53% have twitter.

Social Media and Credibility

Social media has pervaded the life of a great majority of people across nations. From initially being accessed on desktop computers to laptops only, increased portability in the means of accessing and sharing information after it was introduced into smartphone and other mobile devices, made social media an everyday tool for not only socializing, but accessing and sharing information far and wide. As far as a means of accessing news, a study (Wakefield 2016) confirmed that 51% of people rely on social media as a news source. Other scholars (Kang 2009) have developed a 14 item credibility measurement criteria for blogs. In another study (Tandoc 2018), it was discovered that while 'participants rated news from a news organization as more credible than those shared on Facebook that occurs only when motivation is high. Tandoc concluded that 'there is no significant differences in credibility rating when motivation is low.' A relevant finding (Askew 2018) from a study in 2018 shows how respondents admit to sharing information whose credibility they could not ascertain. Askew discovered that 'most people who shared what was happening on social media never stopped

to check the facts.’ In an interesting study (Hovland & Weiss 1951) experimenting on recall ability of respondents over perceptions of credibility, the authors found that ‘at time of exposure, subjects discounted material from ‘untrustworthy’ sources. In time, however, the subjects tended to dissociate the content from the source with the result that the original skepticism faded and the untrustworthy material was accepted.’ And it added that ‘lies, in fact, seemed to be remembered better than truths.’

A study about social media and news credibility conducted in Nigeria (Edogor et al. 2015) indicated that 68% of respondents believe ‘social media information is credible, while only 29% do not hold that belief. As to social mobilization through social media, a review of mobilized crowds by some scholars from Harvard University (Rogers et al 2017) explored how insights from behavioral science research can be used to develop interventions that mobilize a large number of people to perform behaviors that are costly and practically meaningless when performed by any one person. They underscored the centrality of social dimensions to human motivations to help others, exploring the interplay between social concerns and social mobilization, adding that most people have powerful psychological needs to belong, to be well regarded by others, and to see themselves as positive contributors to relevant social groups. Rogers et al posit “Such needs make most people especially responsive to social mobilization interventions that are particularly personal, entail social accountability, harness positive social norms, are identity relevant, and leverage social networks. This review has described how interventions designed to mobilize people to perform other-benefiting behaviors can create those conditions and has reviewed many new field applications of these ideas.”

Results and Discussions

A random survey of 350 respondents was conducted via the use of questionnaires. The aim was to find out the degree to which people rely on unprofessionally processed information in (1) making vital decisions or (2) acting on unsubstantiated information served via social media. In addition it measured the audiences’ ability to differentiate information emanating from professional, versus social media.

The data was categorized variously in ways that indicate significant information based on the studies focus. For example, it was discovered that while a higher percentage of younger people among the respondents (20-35 years) rely on social media as the only source of news than their older counterparts who supplement social media information with other news sources, the measurement for the perception of news credibility does not show much difference between ages.

There were three age ranges used, 20-35 (42% of respondents), 36-50 (35% of respondents), and 50 and above (23% of respondents). The frequency of usage of social media varies significantly by age range also with 60% of 20-35 admitting frequent use (several times a day) and 23% as occasional daily users. The more mature users 36-50 years have 44% of its respondents at the several times a day level and 31% occasionally.

Among younger users 20-35 years 38% say social media is their only daily source of news, while the rest say in addition to social media they listen and/or watch other sources of news. The significant difference comes with those 50years and above who also use social media occasionally (23% of respondents of that age) including for information. For that group, the main source of news, however, remain conventional media. A significant number of the age group visit blog sites, in addition to social media for other sources of news.

On issues of perception of credibility, all three age groups admit that they hardly check the source of information retrieved from social media, and cannot ascertain credibility. They also admit that they ‘sometimes’ doubt the credibility of news from social media. But all three age groups participate in sharing (forwarding) information that they admit not being able to vouch for its credibility. For 68% of them, sharing unsubstantiated news is the limit. When it comes to using or acting on the information more than 30% of the respondents admit to using health advice from social media (mostly WhatsApp groups), to forwarding and further spreading critical news and information that impacts security, political stability, etc.

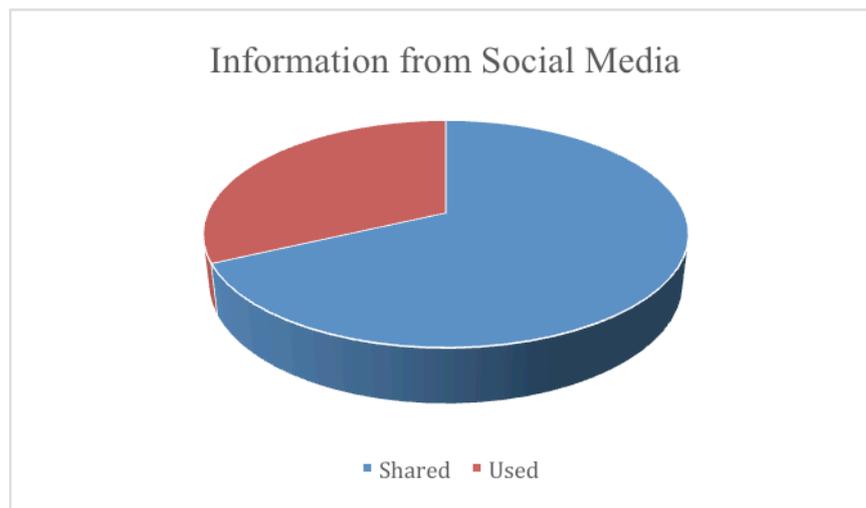


Chart 1. Those who shared versus those who actually used/acted on social media information

On the issue of measuring the audiences' ability to differentiate information emanating from professional, versus social media. A significant percentage of the respondents do know what professional media are, while some say they even try to see whether the information comes from sources they could trust. However, whether it is the inability to discern the sources, or sheer lack of motivation to check, users are willing to use and share such information even when they cannot ascertain its credibility.

The issues regarding social media use in comparison to professional media are many, some of which are enumerated on table 1, below.

Table 1. Traditional versus Social Media News

No.	Traditional	Social
1.	Original source of information is identified with quotation marks in written reports, sound bites, and pictures (television) for proof of source.	Source of information often not readily available/stated.
2.	Media entity responsible for news items identify with their new products.	Original source, owner or writer not always disclosed.
3.	Information is professionally processed using journalistic standards.	Most peddlers of 'news' or information via social media are amateurs, not professional journalists.
4.	News may be professionally discussed by relevant professionals (Doctors, Engineers, Lawyers, etc.) to assist the public in forming credible opinion.	The circle that discusses the information are not necessarily professionals.

By Author (original), 2018

The effectiveness of social media in social mobilization and marketing (Rogers et al. 2017) has already been established by many studies and demonstrated in history (Eltantawy & Weist 2011) mainly by the Arab Spring. In the mass revolts, the world witnessed people spontaneously mobilized for protest through the messages they shared amongst themselves on social media platforms. With that in mind, the implications for attaching credibility to non credible news should be of concern to any nation. Misleading health information can cause disease and death, misleading social information can cause upheavals and chaos; misleading economic information can cause misjudgments in investment decisions, buying, spending etc.,

In addition to bits and pieces of news and information professionally processed, then provided to the public by the traditional media, they also engage in what is generally categorized in programming as current affairs. In short, the professional media does not just inform the public about what is happening around them, they usually provide a forum of credentialed members of the community for discussing important events as they occur.

Conclusion

This study exhibits the various habits of social media users regarding the uses and gratification they receive from social media, most especially those related to news and information. It indicates the shift from conventional to social media for the younger aged Nigerians. Also, a significant number of younger Nigerians tend to source their news from social media only, while the older generation supplement those sources with other sources of news they choose. It, however, confirmed the fears of this author that most users of social media may not necessarily take the time to confirm the credibility or authenticity of a news item before they use, share or act on it. With Nigerian statistical categorization by its census board including in many other countries indicating a larger youth population, the trend where youths rely solely of social media as news and information source should be of great concern.

References

- Askew, Lauren. 2018. "Can We Trust Social Media as a News Source?" *Miappi*, March 1, 2018.
- Blumler, Jay and Dennis McQuail. 1969. *Television in Politics: Its Use and Influence*. University of Chicago Press.
- Bosch, Tanja. 2013. "Social Media and Community Radio Journalism in South Africa." *Digital Journalism*, Vol. 2, 2014, Pp 29-43.
- Brown, Guskin, and Amy Mitchel. 2012. "The Role of Social Media in the Arab Uprisings." *Journalism and Media*, November 12, 2012.
- Bruns, Axel. 2008. *The Future is User-led: The Path towards Widespread Producers*. New York: Peter Lang Publishing, Inc.
- EBU. 2011. *Public Radio and New Media Platforms*. Geneva: EBU Press.
- Edogor, I.O., Jonah A., and Ojo, I. 2015. Nigerian User's Evaluation of Credibility of Social Media Sites, *New Media and Mass Communication*, Vol 40, 2015, pp 140-150.
- Eltantawy, Nahed and Julie Weist. 2011. Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory. *International Journal of Communication*, Vol 5.
- Gauntlett, David. 2011. *Marketing is Connectivity*. Cambridge: Polity Press.
- Girard, Bruce. 2003. *The One to Watch: Radio, New ICTS, and Interactivity*. Rome: Food and Agricultural Organization of the United Nations.
- Hendy, David. 2013. *Public Service Broadcasting*. New York: Palgrave-McMillan.
- Hovland, and Walter Weiss. 1951. The Influence of Source Credibility on Communication Effectiveness. *Public Opinion Quarterly* 15(4): 635–650.
- Kang, Minjeog. 2010. Measuring Social Media Credibility: A Study on a Measure of Blog Credibility. *Public Relations Institute*.
- Ogedi, Nyekwere. 2009. Influence of New Media Technology on Broadcasting: A study of television stations in Port Harcourt metropolis. Unpublished Master's Thesis, University of Nigeria, Nsukka.
- Pavlik, John. 2001. *Journalism and New Media*. New York: Columbia University Press.
- Tandoc, Edson. 2018. "Tell Me Who Your Source Is: Perceptions of News Credibility on Social Media." *Journalism Practice*, January 12, 2018.
- Rogers, Todd, Noah Goldstein and Craig Fox. 2017. Social Mobilization, *Annual Review of Psychology*, Vol 13, 44.
- Uzorhuku, Chioma. 2018. Online Newspaper and the Future of Print Media in Nigeria, Unpublished Master's Thesis, Bayero University, Nigeria.
- Wakefield, Jane. 2016. "Social Media Outstrips TV as News Source for Young People." *BBC*, June 12, 2016.
- Zhang, Sheng. 2012. The Convergence of Conventional Media and New Technology in the Cases of New York Times and National Broadcasting Company (NBC), Unpublished Master's Thesis, Southeast Missouri State University, Carbondale.

Criminal Aspects of Drug Trafficking

Tiberiu Viorel Popescu

*“Acad. Andrei Rădulescu” Institute of Legal Research of the Romanian Academy, Bucharest, Romania,
tpopescu2005@yahoo.com*

ABSTRACT: A very specific aspect of drug trafficking, but which circumscribes most of the serious forms of crime, is not to provide a doctrinal and legislative definition of an operational definition. A quantitative analysis followed by another qualitative one may at best reflect criminological aspects related to the visible side of this type of crime. This study aims to analyze aspects such as routes, links and connections of drug trafficking with terrorism in the context of globalization and taking into account the diverse typology of this type of crime. Routes provide clues about the drug route from the producer to the consumer as well as the changes generated by the intensification of UN controls. The networks reflect the diverse typology of this type of crime, which has direct implications in identifying the criminological factors that potentiate trafficking. Connections between drug trafficking and terrorism have been established in the Middle East and Colombia, these being significant criminogenic areas where it is possible to identify the direct involvement of terrorist groups in drug trafficking. Addressing one of the most profitable forms of crime, such as drug trafficking, is always a challenge.

KEYWORDS: Criminology, drugs, drug trafficking, high crime, organized crime

Introduction

Psychoactive substances were used in the medical field or serve scientific research. Everything related to the production thereof, i.e. plant cultivation, chemical extraction and medical route, were subject to strict supervision (Buzatu 2015, 5). On the other hand, the illicit production of psychoactive substances is a distinct phenomenon, difficult to control, with an important negative impact at the medical, social or economic level.

Drug trafficking expresses in a juridical - criminal context the situation in which an individual or a group of individuals commit(s) acts of non - observance of the legal regime of movement of substances with psychoactive effects under legal control. The criminal phenomenon is maintained both by the defalcation of psychoactive substances from the legal circuit, and, above all, by the development of a real illegal drug production industry, an industry whose costs are significantly lower as compared to the colossal profit ensured by the valorization of illicit products on the black market.

All the actions by which the two ways of illicit drug trafficking are committed are crimes that fall under the dome of the “umbrella concept” - drug trafficking. The analysis of this kind of criminality can be done through the legal instruments in the matter at the world (*Single Convention on Narcotic Drugs* of 1961, as the same has been amended by the Protocol of 1972, art. 1), European (*Framework Decision 2004/757/JAI* of 25 October 2004) of the Council laying down the minimum provisions on the constituent elements of criminal offenses and penalties applicable to illicit drug trafficking, art. 2) or national (Law no 143/2000 on Combating Trafficking and Illicit Drug Use, art. 2-10) level, which have proposed multiple definitions.

In international law, drug trafficking was defined in the *Single Convention on Narcotic Drugs* of 1961, as the same has been amended by the 1972 Protocol. This document mentions, under art. 1: “*The term illicit trafficking means culture or any trafficking in narcotic drugs, which have purposes contrary to those provided for in this Convention,*” and under art. 19 litter (a) “*quantities of narcotic drugs that will be consumed for medical and scientific purposes*”.

The definition of drug trafficking is also found in the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1988, which, under art. 1, letter m) stipulates that “*The expression “illicit trafficking” means the offenses referred to in paragraphs 1 and 2 of art. 3 of this Convention.*” According to art. 3 (1) of the Convention, the signatory countries must, as a matter of national law, give the character of criminal offenses to the some acts intentionally perpetrated with respect to the narcotic drugs and psychotropic substances, i.e. to those acts committed in violation of

the provisions of the 1961 Convention. The Convention stipulates under art. 3 point 2) the possession and the cultivation of the drug for own consumption to be classified as drug trafficking.

The foregoing legal instruments do not provide an in fact definition of drug trafficking, but enlist drug-related operations that are forbidden.

In the European Union, the *Framework Decision 2004/757/JAI of 25 October 2004 of the Council laying down the minimum provisions on the constituent elements of criminal offenses and penalties applicable to illicit drug trafficking* refers, under art. 2, to the intentional acts punishable when they are done without right.

There are included among these facts: drugs producing, manufacturing, extracting, preparing, offering, marketing, distributing, selling, delivering under any circumstances, brokering, dispatching, dispatching in transit regime, transporting, importing or exporting; cultivation of opium poppy, coca or cannabis bush; possession or acquisition of drugs for the purpose of carrying out one of the above-mentioned activities; producing, transporting or distributing precursors, knowing that they are to be used for the illicit manufacture or fabrication of drugs.

Those facts are not included in the scope of the Framework Decision if they are committed exclusively for the personal consumption of their authors as defined by national law.

The fight against the illicit drugs traffic and consumption used to be and still is a really complex social national and international preoccupation. Its evolution, its effects and the ways meant to solve all these aspects are the main concerns of all the institutions of the states as well as of the public opinion, because this is an utterly serious and dangerous phenomenon with negative effects for the sanity of the population and for the economic and social stability, as well for the favorable evolution of the states' democratic institutions (Buzatu 2012, 20).

At the national level, at present, art. 2 para. (1) of the Law no 143/2000 includes in the trafficking in drugs the “*cultivation, production, manufacture, experimentation, extraction, preparation, transformation, offering, offering for sale, selling, distributing, delivering with any title, sending, transporting, purchasing, buying, holding or other operations on the circulation of risk drugs, without right*”, the listing of the facts not being limitative. Art. 2-10 of the Law also sanctions other operations regarding drug circulation (risk and high-risk drugs) that lead to the facts involving simple possession of the drug without right to be associated with drug trafficking.

As can be seen from the foregoing aspects, neither Romanian law expressly defines drug trafficking, but lists drug-related operations that are prohibited, as well as the sanctions provided for the said operations.

However, we underline the similarity with the definitions of illicit drug trafficking offered by the 1988 Convention, namely the fact that by *drug-related operations done without right*, those drug-related actions must be understood, which are contrary to the purposes set out in art. 19 of the 1961 Convention.

Routes and connections

Routes. The evaluation of transport routes of the main drugs captures their rapid changes (generated by the official controls) or the methodology of the marketing and concealing of the drugs in the context of globalization and of the new technologies. Drug trafficking routes provide benchmarks regarding the crime areas, crime migration, type of drug trafficked, or regarding the control policies and allow the identification of source countries, transit countries and countries of destination of drugs. Regarding heroin trafficking routes used by trafficking networks, the situation remained stable. The routes used are Afghanistan - Pakistan - Iran - Turkey - Greece - the former Yugoslav states and Western European states. This is the traditional Balkan route, with destination in *Romania*, England and the Netherlands. Romania is part of the northern arm of the Balkan route, alongside Bulgaria and Hungary.

Cocaine comes from Colombia, Bolivia, Peru and Venezuela, and it generally follows the route Spain - France - Austria - Hungary to *Romania* or South America - West and Central Africa - *Romania* - to Central and Western Europe (European Report on Drugs, 2016).

UN checks undertaken on classical drug trafficking routes have led to a change in the drug routes. As a result, new routes have emerged, such as West Africa, providing cocaine trafficking from South America to Europe, or the Caucasus that ensured the opium traffic from Asia to Western Europe.

Connections. Drug trafficking implies a succession of means, stages or actors organized according to the model of division of labor, aimed at obtaining financial profits from the use of drugs on the illicit market. Such a succession of means, steps, or stages that intervene until the desired result is attained forms a connection.

The activity of drug traffickers is structured around connections or networks that act according to the variety and rapidity of the means of communication, the legal regulations of a State or group of States, which may be harsher or more tolerant, depending on the systems and socio-economic practices in the various countries or regions, and last but not least depending on the effectiveness of border controls or of the criminal investigation bodies (Popescu 2018).

In principle the composition of the connection is unchanged, and it is made up of actors and the relationships that unite them. It is practically the essential infrastructure for drug trafficking (Pigeon 2010). The establishment of networks has evolved over time. If initially they formed part of a pyramid scheme, at present the decentralization of drug cartels has generated a new era. Decentralization is a consequence of the intensifying of the control of drugs and a form of counteracting the vulnerability before the competent authorities.

The safety and success of any connection is ensured to a large extent by the way in which it is organized. The traffic is currently organized on short connections, which are less vulnerable to official controls. Analysis of the available data regarding the clandestine traffic offers interesting benchmarks regarding the actors and their operating mode.

The actors involved in drug trafficking have been the subject of study in various specialty works. One such study conducted by a renowned sociologist and criminologist (Kokoreff 2004, 9-32), to the opinion of whom we adhere, noted that some publicized cases concerning the professional forms of manifestation of the large international drug traffic, analyze most of the time actors and political activities or emblematic figures of the traffic and less scientific or statistical data about the phenomenon. At the level of the large international traffic, the research studies reflected a diverse typology, and according to Kokoreff's study, the actors of the large traffic were divided into consumers, growers, producers, porters, suppliers, distributors, large customers, specialists and leaders of the drug traffickers.

Traffickers are professional criminals with a hard core of their personality, who can easily overcome the risk, and diverse typology has direct implications in the process of identifying the criminogenic factors. Analysis of the objective (macro-and micro-social) factors and of the subjective factors that favor drug trafficking, reveals that they are as different as the diversity of typologies. The factors that may influence the "*drug barons*", may not be similar to the factors favoring the entry into drug trafficking. Analysis of demographic and socio-economic indicators at the national level of the persons sued at law in the year 2012, for drug trafficking, reflects the fact that the profile outlined in previous years is maintained. The trafficker is generally a male person (89.83%), aged 21-54 years (90.54%), coming from urban environment (86.83%), with an average training level (58.8%) and without occupation (70.47%). The same profile has remained true until this day.

Crowded places and vulnerable people continues to be the preferred clientele of traffickers. The main targets of traffickers remained the educational units, recreational spaces, people engaged in commercial sex and prisons.

Drug trafficking and terrorism

The notion of *terrorism* comes from the Latin "terror" which means terror, fright, horror, caused intentionally. Terrorism is a complex concept, and the definitions formulated by, political, governmental and security anti-terrorism institutions have failed to be widely accepted.

Many institutions have provided over 100 definitions of terrorism. They may constitute themselves as true statistics, based on which the criteria can be rather synthesized, through which the

phenomenon is possible to be identified, such as force and violence, politics, threat, terror, psychological effects, anticipating the reactions, etc. (Canadian Centre for Intelligence and Security Studies 2006).

Although there is no universal definition of terrorism, the Security Council of the United Nations, the regional organizations and the Governments of the Member States have designated numerous armed groups as “terrorist” groups, and the Security Council imposed sanctions over 80 groups and over 380 people linked to the Taliban, Al-Qaida and Islamic State from Iraq and from the Levant (ISIL), on the grounds that they are involved in terrorist activities or are supporting such activities. Talibans, Al-Qaida, ISIL and the affiliated company, Boko Haram were responsible for 74% of all deaths caused by terrorist, insurgent and non-state armed groups in 2015 (World Drug Report 2017).

From Latin America to the Middle East, the financing of armed violence was, in some cases, for long linked to the illicit drug trade. According to some estimates, about half of the proceeds of Afghanistan Taliban come from involvement in narcotics (opiate in their majority) (World Drug Report 2017, 34).

The same source also mentions that the FARC would have been largely based on trade in cocaine over the past two decades. It is estimated that between one-quarter and one-half of the total revenues come from such illicit drug activities.

Terrorist armed groups

The most comprehensive evidence linking terrorist groups on which the Security Council imposed sanctions in connection with the drug trade refers to the Taliban, who have imposed the entities involved in the production, manufacture and trafficking drugs (World Drug Report 2017, 35).

Some evidence suggests that Al-Qaeda in the Islamic Maghreb, which operates mainly in North Africa and the West, has been involved in trafficking in cannabis and cocaine, or at least in protecting the traffickers (World Drug Report 2017, 35), although the overall revenues of the group in the sector of drugs seem to have been quite modest.

Individual commanders of the Movement for Uniqueness and Jihad in West Africa, which have been separated from Al-Qaida, currently appear to be directly involved in drug trafficking in the Islamic Maghreb. World report on Drugs 2017 mentions the Boko Hara Group. Active mainly in Nigeria and neighboring countries, the Boko Haram Group has helped drug traffickers in heroin and cocaine smuggling in the sub-region.

The 2017 world report on drugs, mentions that insurgent groups and rebel armies operating in Eastern Burma, particularly in Shan State, were involved in the trade of heroin during the last six decades and in the manufacture of and trafficking in methamphetamine over the past two decades.

The most important evidence linking such groups to the drugs trafficking comes from Colombia, where the said groups began to play a direct role in the drug trade in the years 1980 and gained importance in the years 1990. They have ensured the safety of crops of coca and imposed the introduction of precursor chemicals. In particular, FARC has played an important role in various aspects of the taxation of production and the selling of the coca paste and later became involved in the cocaine trade with neighboring countries (World Drug Report 2017, 37).

In Peru, a Colombia neighboring country, Bright Path (Sendero Luminoso) group had used the profits from cocaine processing factories in order to finance its activities over the course of four decades. The Group was particularly active in 1990 (World Drug Report 2017, 37).

In other parts of the world, evidence supporting links between terrorist, insurgent and non-state armed groups and illicit drugs are less rigorous.

It is also noticed that the acts, means and goals that characterize terrorism differ from the acts, means and goals pursued by drug traffickers.

On the one hand, acts of terrorism can be committed by a single author. In the context of globalization, there are important changes in the “new terrorist’s” profile (Stănoiu 2012, 20), who often takes the tactic of the *lonely wolf*. On the other hand, drug traffickers are organized into groups of more than one member, and they involve a particular organization and hierarchy.

The means by which terrorists act is at sight, extremely violent, often directed at public figures, at reference targets or at social symbols, so that to maximize panic among citizens. In contrast, the means used by drug traffickers are characterized by “discretion”, and the absence of advertising is the essence of ensuring the success of their activity.

The primary purpose of terrorist acts is to generate the state of terror and chaos in society, and then, by claiming the attacks, the authors to create an identity that could give them at some point the possibility to rise certain claims in political or ideological plan.

The way terrorists organize themselves differs from the organization of drug traffickers. Terrorist groups often have an ephemeral character when drug trafficking involves an organization that is characterized by stability.

The publicity that terrorists want, the purposes they pursue are often opposed to the way in which drug traffickers work.

From these points, real and potential connections can be noticed between terrorism and drug traffickers (Stănoiu 2012, 20).

The global fight against terrorism has greatly diminished the financial support needed by the terrorist groups, which fact has led them to resort to criminal activities in proportion to the needs and available means.

Small scale operations are less costly and do not require financial profits from criminal activities. On the contrary, the more important terrorist groups, who currently plan terrorist activities, need a high and constant profit, which can sometimes be secured from the activities of drug traffickers.

Drug traffickers are focused on gaining profits, and, contrary to terrorist groups, they avoid getting the attention of the media, the public, or governments, looking for the best “business environment” where they to operate in a discreet way. On the other hand, terrorists want to occupy a legitimate place on the political scene or even to dominate it, publicly claiming every attempt.

Loyalty is another sensitive aspect, with different intensity: this decreases within groups of drug traffickers, whereas the members are united in order to obtain profits, while within terrorist groups the loyalty is sharper, their members having deeper ties, mostly of a religious or political nature.

Despite these general characteristics, a connection between the two phenomena can exist within certain limits and under certain circumstances. Weak States with poor governance, lacking firmness or with a provisional government, which has low expectations on the part of society, economy and politics, may represent a collaborative environment between terrorism and the large drug trafficking (Stănoiu 2012, 20).

Drugs and terror attacks

Approximately 170,000 persons have lost their lives in terrorist attacks between 2000 and 2015, of which 30,000 in 2015, according to the global database on terrorism, the world's largest collection of open source information about acts of terrorism worldwide. The database has information about 163 countries. It uses the umbrella term “terrorism” to cover the attacks of terrorist, non-State armed groups, rebels and insurgents.

Afghanistan, an area where almost 13% of all deaths caused by terrorism worldwide were reported between 2000 and 2015, provides a great insight into the potential link between drug production and terrorism. The Taliban was responsible for 73% of the total deaths related to terrorism in Afghanistan between 2000 and 2015 and 84% of such deaths in 2015. It was followed by ISIL, which accounted for 4% of the total in 2015 (World Drug Report 2017, 37).

The rise in violence after 2010 is also linked to a number of other factors, including the withdrawal of the North Atlantic Treaty Organization (NATO) forces and the subsequent abolition of provincial reconstruction teams, the emergence of destabilizing groups opposing the peace process and the expansion of the illicit economy in new areas such as the illegal exploitation of natural resources, which has led to the emergence of new terrorist groups.

Conclusions

Drug trafficking lacks an operational definition in doctrinal and legislative terms, and the lack of clear regulation is most likely to favor groups of traffickers.

The phenomenon is non-transparent, and the black figure of very high crime is primarily due to the relationship between the trafficker and the consumer. The offenders' ability is reflected in the changes in the routes and the connections, which are organized in the context of globalization and the technical-scientific revolution. The criminal process in passing to the act makes traffic a dynamic, complex, diffuse and occult phenomenon.

The links with terrorism identified in the Middle East and Colombia reflect the fact that drug trafficking has become one of the most lucrative forms of transnational organized crime. The headquarters of matter in criminology is the great crime, and in international criminal law, the seat of the matter is the international crime.

Policies to prevent and control drug trafficking need to be adapted to new realities, which have some particularities. In the case of this type of crime: the change of traffic routes and the methodology of placing drugs on the market, namely the use of express mail and internet sales, to eliminate vulnerability to the authorities reflects a permanent change and transformation of traffic that adapts itself to the new conditions.

Drug trafficking remains a subject of open debate, and future research directions for assessing the implications of this phenomenon on society requires the said directions to include certain medical, socio-economic aspects, traffic trends at the world level and, last but not least, new technical and scientific advancements that provide both the discovery of many psychoactive substances and new methods of selling drugs on the market, increasingly faster and harder to detect.

References

- Buzatu, Nicoleta-Elena. 2012. *International Traffic of Narcotics*, CKS E-Book 2012. Bucharest: Pro Universitaria Publishing House.
- Buzatu, Nicoleta-Elena. 2015. *Fenomenul consumului de substanțe noi cu proprietăți psihoactive ("etnobotanice"). Aspect penale, criminologice, criminalistice și medicale*. Bucharest: Universul Juridic Publishing House.
- Canadian Centre for Intelligence and Security Studies. 2006. *Tendances en terrorisme - Le terrorisme et la criminalité: Liens réels et potentiels*, vol. 5, ITACCIEM.
- European Report on Drugs. 2016. [http://www.ana.gov.ro/rapoarte%20europene/Raport European 2016. pdf](http://www.ana.gov.ro/rapoarte%20europene/Raport%20European%202016.pdf), accessed on 17.05.2018.
- Figueria, Daurius. 2012. *Cocaine Trafficking in the Caribbean and West Africa in the Era of the Mexican Cartels* (iUniverse, Bloomington, Indiana, November 2012). In World Drug Report 2017, Part V.
- Framework Decision 2004/757/JAI of 25 October 2004 of the Council laying down the minimum provisions on the constituent elements of criminal offenses and penalties applicable to illicit drug trafficking, Art. 2.
- Institute for Economics and Peace, Global Terrorism Index 2016. Available at <http://visionofhumanity.org/?s=%22Global+Terrorism+Index+2016%22>. In World Drug Report 2017, Part V.
- Kokoreff, M. 2004. *Trafics de drogues et criminalité organisée: une relation complexe*, Criminologie, vol. 37, no 2, PUM, available at URL: <http://id.erudit.org/iderudit/010703ar>.
- Law no 143/2000 on Combating Trafficking and Illicit Drug Use, art. 2-10, published in O.G. no 362 of August 3, 2000, republished in O.G. no 163 of March 6, 2014
- National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Global Terrorism Database* (June 2016), available at www.start.umd.edu/gtd; World Drug Report 2017, Part V.
- Pigeon, Jonathan. 2010. *Un portrait du trafic de drogues fait par les membres de gang de rue à Montréal*, PUM, Université de Montreal, Montreal.
- Popescu, Tibriu Viorel. 2018. *Drug Trafficking - Criminological Perspective*, Doctoral Thesis, Romanian Academy - Institute of Legal Research "Acad. Andrei Rădulescu".
- Security Council, "Letter dated 18 August 2015 from the Chair of the Security Council Committee established pursuant to resolution 1988 (2011) addressed to the President of the Security Council" (August 26, 2015). In World Drug Report 2017, Part V, p. 35
- Seventh Report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2255 (2015) concerning the Taliban and other associated individual and entities constituting a threat to the peace, stability and security of Afghanistan, S/2016/842, para. 15. In World Drug Report 2017, Part V.
- Single Convention on Narcotic Drugs* of 1954, as the same has been amended by the Protocol of 1972, art. 1.

- Snyder, Richard and Duran-Martinez, Angelica. 2009. "Does illegality breed violence? Drug trafficking and state-sponsored protection rackets". *Crime, Law and Social Change*, vol. 52, No 3 (Springer, 2009), in World Drug Report 2017, Part V.
- Stănoiu, Rodica Mihaela. 2012. *The Society of Global Risk and Great Crime in The Large Crime in the Context of Globalization*. Bucharest. Universul Juridic Publishing House.
- Thoumi, Francisco. 2017. *Debates y Paradigmas de las Políticas de Drogas en el Mundo y los Desafíos para Colombia* (Bogotá, Academia Colombiana de Ciencias, 2015). In World Drug Report 2017 , Part V.
- Von Dun, Mirella. 2009. *Cocaleros – Violence, Drugs and Social Mobilization in the Post-Conflict Upper Huallaga Valley, Peru* (Amsterdam).
- World Drug Report 2017. United Nations publication, Sales No. E.17.XI.6). Available at https://www.unodc.org/wdr2017/field/Booklet_1_EXSUM.pdf.

Selling Out: The Financialization of Contemporary Art

Hannah Rose Emmert

The New School, Undergraduate Department of Economics, hannah.emmert@newschool.edu

ABSTRACT: This project came out of a behavioral economics class I took in 2016. Behavioral economics is the synthesis of human psychology and the more formulaic aspects of economics. I used this discipline as a lens for looking at how the financial services industry exploited the contemporary art market with its lack of regulation and transparency. My aim is to show the various ways this drastic financialization has happened by discussing the various heuristics used to value art and the financial instruments that financialized contemporary art mimics. Furthermore, I have found evidence that art is being used as collateral for important assets such as pension funds. The fact that art is volatile and unregulated makes art an unreliable investment and certainly not stable enough to base pension fund values on. This is the beginning of future research that I plan to conduct in an attempt to predict the eminent collapse of these contemporary art financial instruments. I hope to present this paper outline to book publishers to elaborate my findings into a book for industry professionals.

KEYWORDS: art market, art investments, financialization, art indexes, art trade, art auction valuation, art as capital, art as collateral, contemporary art, art-loans, heuristics, scarcity, confidence, herd mentality, bounded rationality

1. Introduction

Andy Warhol once said, “Business Art is the step that comes after Art.” To many artist’s chagrin, he was correct. Since the early 2000s the contemporary art market has become increasingly financialized. With paintings such as “Interchange” (de Kooning) & “Number 17A” (Pollock) selling for a combined \$500 million in 2015 to the billionaire Ken Griffin, founder of Chicago-based hedge fund firm, there is little to deny the fact that art has entered the realm of immense commodification. At the time, these paintings were the 1st and 2nd most expensive 20th century paintings ever sold. Everyday we hear news about a new record high in art sales.

In 2014, art market sales reached a record \$68 billion, double the level of 2009 according to the European Fine Art Foundation. For comparison, that is equivalent to about one quarter of the global fashion and apparel market. Furthermore, prices for contemporary and post-war art rose 19% in 2014 (The Economist 2015). Due to this growth there has been a distinct shift in the contemporary art market from buying art for pleasure to buying art for financial investment. According to Deloitte, a consultancy firm that has recently branched out into the art world, three-quarters of art purchases are at least partly for investment. 20th & 21st century art has undergone drastic commodification, corporatization & financialization (Taylor 2012). A “whole new profession” has been inspired by the frequency of these large acquisitions. There are now “consultants who pick out paintings for their clients based not on aesthetics but on potential returns” (Economist 2015).

Contemporary art trends have gone the way of ideas over the expertise of a medium. The mastery of a craft is no longer a requirement of art (Roberts 2008). “Investors turn their attention to the market and its dynamics, neglecting goods and commodities” (Esposito 2011). Artist Jeff Koons is known for satirizing the art market through his work. His most well known piece is “The Balloon Dog” which is the most expensive work by a living artist ever to sell. It sold in 2013 for \$58.4 million.

2. What is contemporary art?

While the definition of contemporary art is somewhat fluid. For the purposes of this paper and any future research, contemporary art is any artwork created in the 20th and 21st centuries. This paper is not considering design as art (such as furniture). This is because “design” has an ulterior purpose. For example, in the case of a Hans Wagner chair, although it could be considered art, its primary purpose is to be sat upon.

3. The Players

There are three main players when one observes the contemporary art making and selling process; the artist, the auction house or gallery, and the consumer. In this section I will examine the producers and the financial intermediaries in the commercial exchange.

The art making process begins with the artist. Until recently, this has been a male dominated industry that has evolved from making art for the sake of craft to making art for the sake of money. Artists that primarily make art for monetary purposes are called “production artists”. It is fairly typical that they are not involved in the production process. Other than project ideation, these artists usually become celebrities in their own right. Damien Hirst & Jeff Koons are examples of production artists. These artists work out of places called “factory studios”. Often they hire student interns who work without pay.

Once the artists have produced the artworks, the auction houses and galleries take over. They are the commercial intermediaries that connect collectors to artists. In many ways they hold sole responsibility for driving values up to unprecedented levels. The duopoly of New York auction houses, Christie’s and Sotheby’s, is comparable to the New York Stock Exchange. The auction houses provide a space for collectors to offer their collections for sale in a highly competitive environment.

On the other hand there are the galleries. The first gallery innovator in the realm of financialized art was Larry Gagosian. He strategically built sixteen galleries in every major financial center of the world.

4. Valuation

Before examining the specific valuation techniques that caused art prices to skyrocket, we must first define the behavioural economics context in which I examined the art market.

Heuristics are mental shortcuts that humans use to simplify decision making. They are used to substitute a difficult question with a simpler question (Kahneman 2003). These tactics can be used for benign outcome or to lure buyers in a certain direction. Consumers are “nudged” into doing and believing things that they otherwise would not have considered. Heuristics have the capability to “occasionally send us off course” (Tversky and Kahneman 1973). I find this to be true in the realm of financialized art. Below I will enumerate the heuristics that are involved in determining the value of art.

Anchoring & Focalism is a heuristic in which the seller uses a specific target value as a reference point (the “anchor”) and subsequently make adjustments in the negotiation process. Auction houses such as Sotheby’s and Christie’s often set very high “estimates” of the works they are selling in order to stir speculation.

The representative heuristic describes the fact that the more one sees certain information, the more likely it seems it will happen. Although this information may be misrepresented in its frequency, people ignore reason and continue to think in stereotypical terms. Art typically appreciates with time, thus collectors assume a positive outcome & low risk when evaluating an investment. Now that art is financialized, can we trust that assumption? Simply because the past has shown that growth and time are positively correlated in terms of art, investors should not ignore that the market is actively changing.

Herd Behavior is the tendency of individuals to mimic the actions of a larger group. Just as a herd of cattle moves in a group towards water and food, traders do this in the stock market and subsequently, art collectors do this in the art market. Stock market bubbles start with frenzied buying en masse and end with vast selling. Investors join the crowd rushing to get in or out of the market. Herd Behavior has caused the surge in art prices since the early 2000s. Herd behavior facilitates growth when value is largely based on the speculation of future prices. This is a problem because as confidence in an artist goes up or down; the value of their art can fluctuate drastically. Often confidence is affected by unwelcome news coming out about an artist’s personal behaviour, therefore tarnishing their image as an artist. If we look toward artists such as Picasso or Gauguin or Caravaggio, the value of their art has tumbled in recent months now that we are reckoning with the fact that these male artists didn’t treat their female models very kindly. Even the recent sexual harassment allegations

against Chuck Close forced The National Gallery to postpone his retrospective, which is something that traditionally drives the value of one's art up immensely (AP 2018). The effect of this exhibition closing before it even opened can only be a chilling one.

Consumers reach conclusions based on the “framework” in which a situation is presented; one's environment shapes one's choices. This is called framing.

Galleries presenting artwork in a conspicuously opulent way may entice a certain economic class of buyers to spend. When an environment of exclusivity is achieved in both galleries and auction houses, the clientele will reflect that.

Beyond the upscale framework that fine art is often presented in, auctioneers use tactics such as “chandelier bidding” to drive prices up. This is simply when an auctioneer points to the chandelier in the room between bids and pretends someone has raised the bid higher. This drums up excitement and competition among active bidders causing them to purchase the work for a manipulated higher price.

Scarcity assigns value based on how easily something could be lost, especially to competitors. Auctions create a competitive environment in which investors may buy out of zeal rather than rationale. Additionally, artworks are mostly one of a kind. The very nature of art as a creation makes it such that scarcity is a relevant heuristic. There are only so many works by a particular artist and therefore the unavailability of these works can be used to drive competition and higher prices to obtain the work. Scarcity disrupts the basic tenets of supply & demand so that an equilibrium price is never achieved. In a normal market situation, there's an amount of products eventually supplied to satisfy an amount of demand for the product. Where those two factors meet determines the ideal price and quantity, called “equilibrium”. In the case of art, there's only one unique product (a quality of one) that is demanded by only a small number of super rich consumers which can cause prices to skyrocket beyond the true material or rational value.

5. Art's Use as a Financial Instrument

There has been “a pattern of accumulation in which profits accrue primarily through financial channels rather than through trade and commodity production” in the general economy, that is reflected in the art market (Krippner 2005). It seems that art is being collected to assemble financial assets.

Investors manage their art collections in the same way they manage their financial portfolios (Taylor 2012). Bundling into what are called “lots” is a common way to avoid inherent risk when investing in financialized art. Collectors will purchase a group of artworks for a single price knowing that if one artist falls out of favor and their price plummets, they still have the value of the others in the lot. This is similar to how financial advisors typically advise investors to buy a broad range of diverse stocks to minimize risk.

In this context, art is no longer a consumer good, but rather a financial asset purchased for speculative purposes. The value of a particular work is determined by its price performance within a time frame relative to other works of art held by an art fund (Taylor 2012). The praxis of buying into risky financial instruments to make a profit from short term market fluctuations is also observable in the art market. The practice of “flipping” is now somewhat commonplace (Kazakina 2014). Investors purchase artwork by undiscovered artists for low prices then resell the artists works as a series in order to boost their value and make a profit. The quick reselling of multiple works by one artist at a significant profit causes speculation as to what the future growth in value will be.

Value is “generated through a circulation of artworks in the fashion of derivatives” (Ivanova 2016). The process of buying and selling certain works repeatedly drives up value to the point where the value is no longer related to the artwork's original materiality or aesthetic contribution. The art market's financialization “exhibit(s) similarities with those of financial derivatives (i.e., contract-based financial instruments that derive their value from an underlying asset)” (Ivanova 2016). Deloitte is making the art derivatives market a reality by creating art-based derivative products as Contracts of Future Sales that are “standardized derivative contract[s] based on specific artworks scheduled to be auctioned at top auction houses” (Deloitte 2016). These instruments were approved by the UK Financial Conduct Authority in Feb 2016, but their report admits a “lack of transparency” (Ivanova

2016). This lack of transparency may be because private sales are under-regulated and out of the public eye.

Bundling securitizes artwork much the same as how Collateralized Mortgage Obligations securitizes mortgages (Taylor 2012). Like mortgages, works of art are bundled and sold as shares of a hedge fund (Taylor 2012). In addition, instead of owning a whole work of art, investors can own an undivided interest in a group of artwork or a very highly valued single piece of work. In early 2018, 25,000 individuals purchased 40,000 \$50 shares of Picasso's *Musketeer Bust* (1968) in the hopes that the artwork's value would rise (AD 2018). This is reminiscent of tranching mortgages. Another example of this is Damien Hirst's "For the Love of God" which was sold to an anonymous investment group in 2007 for \$100 million. The sculpture is made from an 18th century human skull and 8,601 diamonds. Hirst is known for making art specifically for financial markets. It is conceivable that art investors could sell their shares, creating secondary and tertiary markets that could fail.

For many financial managers, art serves as a diversifier for investments. Artworks have been exemplified for their opacity and illiquidity for many years, but that cannot be true when art is turned into a financial instrument and sold for its financial value and not its aesthetic value. Art has tangibility which differs from the abstract financial instruments that are commonplace for investors (Economist 2015). Often called "the secret industry", because there is no transparency of information, we don't know much about the industry. This makes the art market an efficient form of discreet investing. There is little to no regulation on the market, so insider trading is commonplace. This gives an unfair advantage to those in the know, directly competing with the concept of an open market.

Art-secured lending has emerged out of the public eye. Deloitte, which now offers "private wealth art-related services," claims that "69 percent of wealth managers said their institutions now offered services linked to art-secured lending." These artworks could then be used as collateral on loans. 53% of art buyers borrow against their collection to fund the purchase of more art. Buying art has become a discreet and mostly unregulated way of leveraged investing. These investment acquisitions can be made in a form of "private purchases."

One of the more alarming uses of art as collateral is in the realm of pension funds. There is evidence that organizations are using art as collateral in the realm of pension funds. The first instance of this was in 1989 when The New York Times got wind of a \$65.6 million sale of artworks by the British Rail Pension Fund. At the time it was the only large pension fund to enter the art market to supplement already acquired conventional investments as a hedge against extremely high inflation in Britain (Trucco 1989). More recently in 2014 Detroit floated the idea of mortgaging the city's collection of art to exit bankruptcy and fund a major pension gap.

6. Financialization transparency bubble

The contemporary art market is highly unregulated, not transparent in its pricing strategies and has experienced continued exponential growth. Over the last 20 years we've observed exponential growth in the market. I worry that this situation is in fact a bubble and a crash is imminent. These sales are the typical warning signs of a bubble that are often ignored because in the short term, people are making money. It's difficult to admit that you are going to eventually lose out when you are currently reaping major returns. I see many parallels to the housing market pre-2007. On the surface it seems that a drastic depreciation in art prices would only affect the super rich, who are the primary investors in contemporary art. With so many firms investing in volatile art as collateral, the issue grows larger than just affecting the super rich. If the value of a corporate collection of art works were to suddenly fall, the effect on retired workers pensions is large in scale, yet somewhat unknown in magnitude because it has yet to happen.

I attended the Tribeca Film Festival in 2017 to see a documentary called "Blurred Lines: Inside The Art World". During the directors Q & A I pushed their buttons and asked "when is the bubble going to burst?" and the whole room broke out in laughter. This is the exact same reaction one would have elicited if one questioned the liquidity of the housing market pre-2008.

7. Solutions and further research

While there is no single magic bullet to solve issues surrounding art and its financialization, there are small individual actions and large institutional changes that can aid. Below I will enumerate some solutions that I believe can have an impact on the future outlook of the contemporary art market.

Art is largely unregulated. It is not considered part of the investment market as a financial instrument and therefore is not regulated as such. The whole point of having regulation in the financial realm is to protect consumers by creating an open market with transparency of information. I urge you to ask your employer if art is being used as collateral to fund retirement benefits. Having this information can help inform a wiser decision in terms of which type of retirement fund you choose to invest in. Art is unregulated and volatile, two attributes you do not want associated with the financial health of your retirement.

Another piece of knowledge that you should know as a “consumer” of art, is that a significant amount of 21st century art in large museums is “business art”. For example, if you are at MOMA or the Contemporary Wing at The Met, you may be looking at business art that’s being stored by collectors in public spaces to avoid paying capital gains taxes. An awareness of this gives context to the largely white, male artists that are granted display space in large museums.

Finally, forget Art Basel or the Venice Biennial and go to local art festivals and open studios. Invest in local artists. Spending money on art in these spaces is a form of democratizing the art purchasing process. If every person, even of meager means, decided to spend a few dollars on local artists, the cumulative effect would be substantial. I truly believe that the future of art is not necessarily in high priced urban spaces as they have been in the past. The internet brings a sense of interconnectivity to smaller urban communities which are more affordable for low income artists to live and work. Also the internet is a powerful marketplace for artists. In order for these communities to flourish, governmental bodies must invest in cultural assets. Strengthening the market for art in a decentralized way contributes to economic development in significantly.

If the art market was more open and the purchasing process more democratized, I believe we would be celebrating art created by a more diverse range of artists of different cultures, genders and sexualities. Furthermore, cultural capital would be spread more evenly among a range of cities around the United States, instead of only being concentrated in large urban metropolises like New York City and Los Angeles. Art could be the catalyst that begins the unravelling of our current capitalistic paradigm, where wealth is concentrated among only certain locations and individuals. The financialization of art directly competes with the notion that art contributes to both economic and social well being. Further research needs to be done to determine the true impact that the financialization of art has had on material history. Art and money have never been entirely exclusive, but at what point do we recognize that the contemporary art market has created a generation of sellouts?

Some chapter topics I’d like to include in future versions: the history of art and money, art forgery and its effect on price, how the arts can thrive in smaller urban communities and satellite cities, how the arts affects a community’s economic health

References

- Deloitte. 2016. *Art & Finance Report 2016*. Available at: <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-en-artandfinancereport-21042016.pdf>. Accessed 20 Apr. 2017.
- Ivanova, Victoria. 2016. "Contemporary art and Financialization: Two Approaches." *Finance & Society* 2(2):127-37.
- Kahneman, Daniel. 2003. "Maps of Bounded Rationality: Psychology for Behavioral Economics." *The American Economic Review*. 93 (5): 1449-1475. DOI: 10.1257/00028280322655392.
- Kazakina, Katya. 2015. "Sotheby's Boosts Art-Loan Financing With \$1 Billion Line." *Bloomberg*. Bloomberg.com. 23 June 2015.
- Krippner, Greta R. 2005. "The Financialization of the American Economy." *Socio-Economic Review* 3(2):173-208.
- Roberts, John. 2007. *The Intangibilities of Form: Skill and Deskilling in Art after the Readymade*. London: Verso.
- Taylor, Mark C. 2012. *Religion, Culture, and Public Life: Refiguring the Spiritual: Beuys, Barney, Turrell, Goldsworthy*. New York: Columbia University Press.
- The Economist. 2015. "A Study in Red and Black." *The Economist Newspaper*, 04 Apr. 2015. Web. 20 Apr. 2017.

- Trucco, Terry and Special To the New York Times. 1989. "British Pension Fund Sells \$65.6 Million in Artworks." *The New York Times*, 5 Apr. 1989. Available at www.nytimes.com/1989/04/05/arts/british-pension-fund-sells-65.6-million-in-artworks.html.
- Tversky, Amos, and Daniel Kahneman. 1973. "Availability: A Heuristic for Judging Frequency and Probability." *Cognitive Psychology* 5(2): 207-232.

Gender Equity as a means of Promoting National Development: A Sociological Reflection

Titilade Muyibat Ajayi, Dr.

Osun State College of Technology, Esa Oke. Osun State. Nigeria, titilade.muyibat@gmail.com

ABSTRACT: The development of a nation entails the contributions of both men and women. However, all over the world, there are imbalances of power between men and women thus placing some obnoxious socio-cultural and political factors encouraging men's superiority over women. For example, job opportunities, recruitment strategies and political conditions have so much stereotyped the nature of women jobs and participation in nation building. This paper, therefore, looks at the sociological analysis of issues concerning women in wages, employment and politics as it is being affected by sex differential since women have been so adversely affected. The paper highlights the undesirable factors culminating to sex segregation and the aftermath effects. It also sets out to justify the need to give equal opportunity to both men and women in order to promote national development. The paper concludes that national development is a multidimensional process which can be accelerated by making efforts to bridge the socio-cultural and political gaps between the males and females in a healthy society.

KEYWORDS: Gender equity, Sex segregation, National development

Introduction

Historically, women have been discriminated against except in a few developed countries where women are partially recognized. Women are grossly under-represented in most areas of public life. Though in the developed countries of the world few females in comparison to their male counterparts have been elected or appointed as heads of state or government, the story is quite different in Africa except in the case of Ellen Johnson Sirleaf who was elected the 24th President of Liberia between 2006 and 2018. She was the first and only female president in Africa to date. In other African countries, no other woman has ever become president or state governor. Even the post of deputy governor characteristically allotted for women account for less than five percent in few countries like Nigeria, Ghana, and Sierra-Leone.

In the same vein, women are poorly represented when it comes to managerial and executive positions in many ramifications of life. According to United Nations report of 19th-30th August 1974 World Conference on population, women constituted more than half of world population it means that more than half of the world is marginalized in terms of contribution to national development. No wonder, so much poverty still prevails all over the world. The imbalanced representation and gender inequality negate national development hence there is a need for serious efforts to bridge the gender inequality gap. As homemakers, women are the custodian of social, cultural and fundamental values and desired positive changes are best achieved through their participatory efforts. In fact, it could be asserted without fear of contradiction that full community development is not possible without the understanding, cooperation and effective participation of women. No nation could make a meaningful headway socially, politically, culturally or economically without the female sector empowerment.

This paper is an attempt to provide a sociological analysis of factors of gender segregation and its aftermath effects, need for equal opportunity for both male and female genders in a given nation by bridging the gender inequality gap and thereby creating a healthy society for accelerated national development and growth.

Factors and Effects of Sex

SEGREGATION. It should be noted that gender as a concept and usage over the years by planners, educators, policy makers, and government has been appreciably misconstrued. At the mention of 'gender' many immediately suppose that reference is being made to women and their affairs or vice versa. The term gender is not synonymous with women, nor is it shorthand for classification into

women and men. As against the archaic impression, gender is a system of roles and relationship between women and men that are not determined by nature. For instance, Awopegba (2004) defines gender as a concept, a condition, a category, an adjective and a component which refers to a socially learned behavior and expectation associated with males and females. It is no gainsaying that men and women are biologically different, but all cultures in different societies interpret and elaborate these inherent biological differences into a set of social expectations about what behaviors and activities are appropriate for them, and what rights, resources and even power they possess. Hence, due to discrimination on gender basis which remains pervasive in many aspects of life worldwide, gender construction is flexible and differs from place to place. Sherry B. Ortner (1974) also attempts to provide a general explanation for the universal devaluation of women. She claims that it is not biological factor as such that ascribes women to their status in society but the way in which every culture defines and evaluates them. The inequality between women's and men's positions results from perceptions and is perpetuated by complex combination of factors. Such factors include not only material variables but also a range of ideological determinants among which gender is particularly important.

First and foremost, monopoly of power by men is a major factor that accounts for gender inequality or sex segregation in a given society. According to Fox (1996), men by nature monopolize positions of power and opportunities in the society. Fox stressed that gender roles are culturally rather than biologically determined. Evidences from a number of different societies show that there are no tasks apart from child bearing which are performed exclusively by females. Biological characteristics do not bar women from any particular occupation. Even the mother role is a cultural construction. Women over the years have been made to accept male superiority and supremacy through the process of socialization.

Another factor is social placement which is usually social and physical environmental influence that depends on societal perception. The perceptions differ in different societies. Oakley (1987) saw placement as the determinants of gender roles. According to her, not only is the division of labour by sex not universal but there is no reason why it should be claimed that some are exclusive female roles and that biological characteristics bar women from particular jobs. In traditional Aloresa society, due to their order of social placement, women were largely responsible for the cultivation and collection of vegetables hence, economically productive than their men. Oakley further notes that a large body of research shows that the employment of the mother has no detrimental effects on the child's development. She stresses that working mothers can enjoy their children more than full time in some cases due to the joy derived from job satisfaction. Whichever way it is viewed, gender inequality is an impediment to national development and growth.

Problem of low female education when compared with males affects the volume of female in some employments. Education prepares an individual for employment and leadership roles and managerial responsibilities. In fact, the higher the level of education, the better for management positions leadership roles.

It is very saddening to note that the pattern of female empowerment is vertically distorted. Only small proportions of women occupy top jobs in management and administration. Even in occupations where women are well represented and which offer a career structure, they tend to be confined to junior levels. For example, women teachers are concentrated in primary and middle schools or colleges while smaller proportions are found in graduate colleges. Despite a series of conferences over the years to improve a lot of women on education, female access to high quality education is still a major concern. For instance, there have been many conferences and summits on women and girl-child education among which are the following:

1. Conference and summit on women in Nairobi (1985)
2. Conference and summit on girl -child in New York (1990)
3. Janeiro(1992) on women rights and in
4. Vienna (1993)
5. Conference in Cairo (1995).

All the above had the objectives of achieving equality, development and peace. To ensure the full employment of woman and good education for the girl-child, efforts should be made to:

- a. take all necessary measures to eliminate all forms of discrimination against women and the girl-child
- b. remove obstacles to gender equality with advancements and empowerment of women
- c. encourage men to participate fully in all actions toward equality
- d. promote women's economic independence

It was pointed out that of all resolutions made at the 1995 Beijing World Women Conference, the one that most elicit our support and commendation above others for the attainment of parity with the men folk, is promotion of people-oriented, sustainable development including sustained economic growth through the provision of life-long education, literacy and training for the girl-child.

Challenges of personal life and stigmatization affect woman climbing up. For example, in many counties, there is the belief that no reasonable and responsible woman will ever dabble into politics. The women are at the disadvantage of attending political meetings where vital decisions are being taken. Some political parties hold sensitive meetings in the night which makes it difficult for the women folk to participate talk less of being short listed for any appointment. It is saddening to realize that this happens deliberately in order to edge the women out. Even the few women who manage to climb up the ladder are being frustrated by men under them who hate taking instructions from women.

Furthermore, the traditional roles of women strengthen gender inequality. For many years women were made to believe that their rightful place was in the home as housewives producers and minders of children. They were to stay at home and inculcate in their children the virtues of life while their husbands carried out tasks such as politics and governance thereby rendering the female child second class element. With this most women give in to their so-called subordinate status in the society and this eventually affects their contributions to national development and growth.

The employment discrimination act which most countries put up to protect working women have not been adequately functioning. Although few working women are covered by employment discrimination act, majority of them are not so lucky because many employers comply in only principle. Women working for some companies have not been enjoying the same protection because the face of gender discrimination has been evolving from the phrase like: 'men only need apply' type of case to those involving more covert discriminatory behaviors which the courts have also had to evolve the types of claims allowed under such discrimination acts. In today's society we have expression like 'you just weren't right for the job, we have found someone more qualified' or 'you didn't have the managerial skills we were looking for'. In all of these, the discrimination is hidden behind the expression. Due to covert intention, it is difficult to prove discrimination and most of the evidences are in the hands of the employers. Courts have created what is termed a 'prima facie' case or a list of required evidences that raise an inference of discrimination and allows a lawsuit to proceed without direct evidence of intentional illegal behaviors. Women's contribution to the economy has led to their marginalization in the nation's planning process. This neglect was partly due to the assumption that women will benefit via the 'trickle down' effect from their husbands.

Now, going by various definitions of national development, gender equality and women empowerment is imperative. Todaro (2014) says "development is a multidimensional process involving changes in structure, attitude and in situation as well as the acceleration of economic growth, reduction inequality and the eradication of absolute poverty". In order to accelerate development, efforts must be made to put in place among many things: bridging the socio-cultural, educational and political differences between the males and females in a healthy society. Ajayi (2005) saw economic development as the process whereby a country's real per capita gross national product or income increases over a sustained period of time by every sector, women inclusive. Whatever affects women will have great impact on the society and all individuals. There have been records of credible contributions of women in the emancipation of a nation and democratization, which are of immense importance to national development. For instance, Ellen Johnson Sirleaf was saddled with leadership not in her country alone but also on all Economic community of West Africa States (ECOWAS) with fifteen member countries. Angela Macon of Germany is also another woman of

international influence while Margret Thatcher of Great Britain can never be forgotten in the history of the world at large. Women have been found to be performing in many high positions where they are elected or appointed to act.

The table below of females appointed or elected as heads of government or executive presidents is a clear picture of female marginalization.

Table 1. Females Appointed or Elected As Presidents/Heads of Government

S.N	Country	Year	Name
1	Ukraine	1917 - 1918	Eveheniya Bob-danivina Bosh
2	Toka	1940 - 1944	Khertek Anchimag
3	China	1968 - 1972	Song Qingling
4	Israel	1969 - 1974	Golda Meir
5	Argentina	1974 - 1976	Maria Estella
6	Bolivia	1979 - 1980	Lidia Aguilera Tejada
7	Iceland	1980 - 1996	Vigdís Finnbogadóttir
8	Malta	1982 -1987	Agatha Barbara
9	France	1982 - 1985	Lucett Chevry
10	Philippines	1986 - 1992	Maria Corazon
11	Nicaragua	1990 - 1997	Violeta Barrios
12	Ireland	1990 - 1997	Mary Robinson
13	Republic of Spaska	1996 - 1998	Bilgana Plavsic
14	Ireland	1997 - 2011	Mary McAleese
15	South Korea	2013 - 2017	Park Geunhyne
16	Malawi	2012- 2014	Joyce Banda
17	Kosovo	2014 - 2016	Atifete Jahaga
18	Brazil	2011 - 2016	Dilma Rouseff
19	Costa Rica	2010 - 2014	Laura Chunchilla
20	Chile	2006 - 2010	Michelle Jeria
21	Liberia	2006-2018	Ellen Johnson Sirleaf
22	The Philippines	2000-2010	Gloria Macapagal Arroyo
23	Finland	2000-2012	Targa-Halonen
24	Moscow	1999-2004	Rodriguez Panama

Source: <https://en.m.wikipedia.org>list>. On Net

Table 1 depicts few women Heads of States or Government who were opportune to participate actively in the politics of their respective countries. The scope of this paper does not give room for enumeration of their contributions. However, history of national development would not be complete without reference to them. These were great women of influence who have performed resiliently excellently. Hence, if given opportunity, more women will perform more than expectation.

Conclusion

Contrary to the belief that women are inferior to men, women have been found to be equally productive in the society if given the opportunity but, unfortunately, women are unrecognized due to the ideas and definitions exerted by different societal culture. This paper has succinctly established that every culture has her own ideas and definitions of what is an appropriate behavior for men and women based on the history and values of that culture. Some argue that gender roles are formed from social pressure and prejudices. This is not because women have not been working but because their works have been more or less invisible. Unfortunately, in spite of women's increasing employment and contributions they still have a long way to go before their status can be at par with that of men. All over the world, there is a voice against the cycle of pains, low education of girl-child, humiliation and under representation of women. Now more than ever, there is a need for global attention to the plight of the females. In fact, any society that fails to annex the energy, flexibility and creativity of women will be disadvantaged. Overall, it can be conveniently concluded that discrimination against

women remains a hindrance to economic prosperity and national development of today's societies as it has been from ages.

Recommendations

A number of recommendations follow from this discourse and seven of them are hereby highlighted for possible consideration in promoting gender equity as a means of fostering national development:

1. Both men and women should be seen as partners in the process of democratization, national development and growth. Some women are better managers if not for intimidation by men and other social factors. In order to facilitate national development and growth, men should be supportive rather than being intimidating.
2. Women should be prepared for senior and managerial responsibilities. Too often than not, women find out that they are channeled into staff positions that provide little or no access and visibility to corporate decision making. In order to prevent or stop this inequality, the societal systems should give women access to the core areas of economic and political developmental experiences.
3. Government at all levels must take the lead in the quest to make equal opportunity a reality for women.
4. Government and organizations should strengthen and enforce anti-discrimination laws by expanding efforts to end systematic discrimination.
5. Equal participation in public life by men and women should be promoted through sustainable re-orientation and education for the girl-child to ensure women emancipation and effective contributions toward national development and growth.
6. There should be provisions for economic and cultural conditions in order to facilitate favourable equal participation by women in all areas of economic activities.
7. Women should be empowered in all areas of life so that that they can contribute immensely to national development and growth.

References

- Ajayi T. M. 2005. "Gender Equity in Education: Means of Promoting National Development in Nigeria." *Journal of Current Studies in Education*, Vol. 1 pp 175-178.
- Ajayi T. M. 2008. "Effects of Sex Power Differential on Recruitment of female into Wage Employment." *Journal of Arts and Social Sciences (JASS)* Vol 1, pp 100-110.
- Akinmadu, T. 1995. *Obstacles to Women career Development: Sexual Harrassment in Employment in Nigeria*. Civil Liberties Organization. Macmillan. Lagos, Nigeria.
- Awopegba, P.O. 2004. *The catalytic role of women in national development and management in Nigeria's Ibadan Centre for Local Government and Rural Development Studies*.
- Boron and Newman 1989. *Organizational Barriers to Gender Equity: Sex Segregation of Jobs and Opportunity*. New York, Aldine.
- Fox H. L. 1996. *Family, State and Social Policy*. Macmillan, Baingstoke.
- List of elected or appointed females Heads of State or Government . <http://en.m.wikipedia.org>list>
- Oke. L. 2005. "Education Millennium Development Goals and the challenges of Gender Equity in the 21st Century in Nigeria." *International Journal of Gender and Health Studies*, Vol. 1&2 pp. 169- 183: The Development Universal consortia.
- Qakley, Ann. 1987. *Sex, Gender and Society*. England: Tower Publishing Company Ltd.
- Todaro, M. P. 2014. *Guide for Economic Development*. Longman, New York.
- Oter B. S. 1974. "Is Female to as Nature to Culture?" in M.Z Rosaldo and Lamphere (eds) *Women, Culture and Society*. New York: University Press.
- United Nations 1995. *Fourth World Conference on Woman, Beijing, China* (Report No. E.6 X1v. 13) Retrieved. <http://www.un.org.womenwatch/daw/beijing/platf>.
- World Bank. 2005. *Morocco Gender Sector notes for Annual Meetings*. <http://www.microenterpriseworks.org>.

Prevention and Combating Corruption in the States of the World. Republic of China

Alexandru Peicea

Bucharest Bar Association, The Police Academy Alexandru Ioan Cuza, Bucharest, Romania alexandru.peicea@gmail.com

ABSTRACT: In China, one of the world's largest powers, anti-corruption legislation is well defined. In this sense, a number of normative acts contain provisions regarding the fight against this harmful phenomenon, capable of shaking the economy and the rule of law at world level. Provisions related to the prevention and combating of corruption in the People's Republic of China are also found in other secondary legislation, judicial practice and the Code of Criminal Procedure of that state. In order to repress corruption, the Supreme Court of China and the Prosecutor General's Office in China have published a series of prior recommendations on the prevention, detection and sanctioning of these reprehensible acts committed by civil servants or by senior officials high. Also, such collaborations have also been carried out to prevent and combat corruption in the private sector. In order to meet this goal, China has ratified the provisions of several conventions on corruption. This paper aims to highlight the legislative framework on preventing and combating corruption in the People's Republic of China and the steps taken or to be taken by Beijing leaders for this purpose. Also, in the present paper will be listed the main normative acts related to the prevention and fight against corruption, existing at present in this state.

KEYWORDS: bribery, corruption, fight, measures, prevention

Introduction

Since ancient times, corruption has been one of the most harmful antisocial behaviors conveyed by man, alongside economic and trafficking and illicit drug use crimes. Corruption represents, in fact, the use of power in bad faith, a power that benefits a certain person who occupies a public position. It is widely known that the phenomenon of corruption affects the standard of living of the citizens of the world, democracy, the rule of law and the entire world economy, their trust in civil servants, politicians and justice.

In order to prevent and combat this extremely damaging phenomenon for mankind, world leaders and leaders of various inter-state structures, such as the European Union, adopt action plans and strategies in various fields that are able to reduce to the maximum the effects of corruption. In this sense, in many countries around the world, anticorruption strategies and normative acts have been adopted that align at international standard the legislation in the field of public procurement, the financing of political parties, conflict of interest regulation, the establishment of specialized structures of the prosecutor's office, the reduction of bureaucracy, a transparent process of obtaining certificates, authorizations or endorsements, the wealth declaration of high officials.

The notion of bribery in the sense of criminal law in People's Republic of China. Legislative provisions forbidding the commission of corruption offenses

The Chinese Criminal Law defines bribery as the illegal and immoral behavior of public servants or high dignitaries of the state who violate their work duties in order to obtain for themselves or for another undue advantage such as, deleting some debts, providing services, offering trips, or even receiving money in cash.

Under the Unfair Competition Law of China (1993), a law that has been amended several times, bribe can be offered as cash, movable and immovable assets, consulting or sponsorship contracts, commissions, or excursions abroad. However, it is important to note that not every gift or benefit is a bribe, but the nature and value of the benefit, the moment at which that gift was offered and the purpose for which it was offered, must be analyzed. Exceptionally, the Chinese criminal law does not consider it to be illegal to obtain potential benefits in the sense of commercial advertising, but totally forbids corruption by promoting and offering price reductions. In the latter case, the Chinese Criminal Code or other special laws do not contain provisions to remove the criminal liability of the authors of

these reprehensible acts. Receiving or accepting a bribe represents a serious violation of the provisions of the Chinese Criminal Code and the Unfair Competition Law.

The acts of corruption committed by individuals operating in the private system are forbidden by the Chinese criminal law stating that it is a criminal offense, "the act of a person exercising a position which does not involve the exercise of the state authority to receive or accept money or other benefits in order to create benefits or legitimate benefits for themselves or others". Moreover, the Chinese Criminal Code establishes in Art. 164 that it is a criminal offense, "the act of a person exercising a position which does not involve the exercise of the state authority to receive or accept money or other benefits for the purpose of creating advantages or benefits for other persons."

Criminal liability is not removed when a person, civil servant or natural or legal person under private law receives, accepts or requests a bribe by intermediary. Moreover, even the intermediary is to be condemned for doing so because it is considered a criminal offense the act of a person who facilitates the receipt of a bribe or mediates it.

When identifying the punishment established for the person who committed the act of corruption, it is necessary to consider whether that person sought to obtain illegal benefits or whether he/she requested the remittance of such benefits to violate the rules protected by the criminal legal norm. However, even if the criminal law drastically sanctions the acts of corruption by civil servants and dignitaries, they can be prescribed. Article 87 of the Chinese Criminal Code provides for the following deadlines for corruption offenses:

- 5 years for acts for which the criminal law provides punishment by imprisonment for a maximum of 5 years;
- 10 years for acts for which the criminal law provides punishment by imprisonment between 5 and 10 years;
- 15 years, for the acts for which the criminal law provides punishment by imprisonment from 10 to 15 years;
- 20 years for acts for which the criminal law provides punishment by imprisonment for life or capital punishment.

Aspects on how to investigate serious corruption acts in the People's Republic of China. Condemnation of high-ranking dignitaries

The first aspect concerns the non-public mode of investigation, retention, and the whole conglomerate of actions against serious corruption. Completely opposite compared to what we see in Romania or Europe, in China, all these actions are made without rumor, without being brought to the knowledge of the general public, as the targeted persons will be detained, judged and condemned without the knowledge of the Chinese people.

The country's population finds out about these corruption cases only after those officials or dignitaries of the state have been convicted or even at an early stage of the criminal trial, when they have already recognized their guilt.

Another aspect specific to the way in which the investigation processes on corruption acts are conducted is the fact that when the offender and the deed he/she has committed are publicly announced, a clear and concrete assessment of the damage is also announced.

The ruling in that file contains provisions relating to the coverage of the damage in that case. Although many corruption acts committed by civil servants in China are reported annually, the population is only presented with those serious facts with major social impact and demonstrating the high social danger of the act committed precisely by the capacity of the person who committed that crime. Chinese President Xi Jinping supported, since the moment when he took over the state leadership, the fight against the phenomenon of corruption, and many politicians with important positions in the state have been sentenced to imprisonment sentences for committing deeds through which they have embezzled public funds (Ziare.com. 2016).

The institution responsible for recording major corruption cases in China is the Central Committee for Disciplinary Investigation. The largest corruption cases investigated by Chinese prosecutors in recent years have led to the condemnation of important state decision-makers, members

of the Chinese Communist Party. These include General Xu Caihou, the former vice president of the Central Military Commission, who was expelled from the party for taking the bribe in return for giving military promotions. Another political leader condemned as a result of the intensification of the fight against corruption in China is Bo Xilai, an important Communist Party dignitary who was sentenced to life imprisonment in a corruption scandal caused by the killing of a British businessman and his wife.

The punishments applicable to persons committing corruption offenses, their discovery and sanction

In the People's Republic of China, committing a corruption offense is considered a very serious deed, with the sanctioning regime being very hard. Punishments that may be imposed on a person committing a corruption offense are provided both in the Criminal Code and in the Unfair Competition Law and can be:

- For corruption offenses committed by civil servants, dignitaries or state institutions, life imprisonment or death penalty, seizure of the entire wealth or seizure of assets acquired by committing that offense of corruption;
- For offenses of corruption committed by persons other than those listed under letter (a), the sentence will be imprisonment for more than 10 years or life imprisonment;
- The fine from 10,000 to 200,000 yuan.

The discovery and sanctioning of the serious crimes of corruption provided for in the Criminal Code are the responsibility of the Prosecutor's Office and the Public Security Bureaus, and the discovery and sanctioning of the corruption offenses provided by the Law on unfair competition is the responsibility of some local services called SAIC. The Chinese Criminal Code regulates the corruption offenses that can be committed by civil servants and senior state officials, and the Law on unfair competition provides for corruption offenses that can be committed in the private sector.

In the case when investigations carried out by SAIC for the investigation of a corruption offense set out in the Law on unfair competition reveal the commission of an offense provided for in the Criminal Code, this entity will decline jurisdiction and send the case files to the competent prosecutor's office. Both the General Prosecutor's Office and its subordinate prosecution offices apply the procedural rules existing in the Chinese Criminal Procedure Code as well as the rules of judicial impact provided by other special laws.

Conclusions

From my point of view, the prevention and fight against corruption in the People's Republic of China should be treated more carefully in the sense that more emphasis should be placed on the prevention of this phenomenon than on the repression. Why? First, because corruption prevention involves fewer costs for the state. If this harsh line of repression of corruption offenses were to be maintained, Chinese citizens could not get involved in the fight against corruption because at this moment Beijing leaders emphasized the condemnation of those who did these acts, and not on public awareness of the effects of corruption. I believe that the drastic punishment of these crimes will not reduce their number, the fear that those who commit such acts feel makes the perpetrators aware of the danger they are exposed to, and they act with much more care.

I also believe that it is necessary to amend the legislation regarding the financing of political parties and the wealth declaration of civil servants and dignitaries. Better supervision of these incomes would lead to a much faster and more effective discovery of serious corruption.

In my opinion, the capital penalty for committing corruption offenses should be abolished because, first and foremost, it violates the right to life of every human being provided in many international conventions and, moreover, there is the possibility of convictions that might then prove to be true legal errors.

References

The Criminal Code and the Criminal Procedure Code of the People's Republic of China. 2015. Bucharest: Universul Juridic Publishing House.

The Chinese Criminal Code, came into force on July 1st, 1979.

Chambers Global Anti-Bribery and Anti-Corruption Guide, 1st Edition, January 2018, Edited by Webb D. Winston & Strawn LLP.

The Law on unfair competition in the People's Republic of China, adopted by the Third Session of the Standing Committee of the Eighth National People's Congress On September 2nd, 1993, Available at <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=6359>

Ziare.com. 2016. China's fight against corruption: Hundreds of thousands of officials, sanctioned, available at <http://www.ziare.com/international/china/lupta-chinei-impotriva-coruptiei-sute-de-mii-de-oficiali-sanctionati-1411897>.

A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices

Raheem Young

Argosy University, Chicago Campus, USA young.raheem1212@gmail.com

ABSTRACT: This study explored patients' perceptions of nurses and physicians' emotional intelligence (EI) and their patient quality of care practices. By understanding EI and the role it plays in nurses and physicians interactions with patients, specialized training, and other initiatives can be developed to help improve the quality of patient care provided. This was a quantitative comparison study and used a survey questionnaires developed from the TEIQUE-SF and HCAHPS surveys to gage patients' perceptions. The instrument used to analyze patient perceptions consisted of five patient descriptive categories. Of the five descriptive categories presented, only three were used. These three patient characteristic categories were used to determine if patients viewed their nurses and doctors' EI differently. The study found patients saw their physicians as being more emotionally intelligent than their nurses. The group with the greatest variance when answering the survey was the 75 and older group. This group rated their nurses at a 3.05, but perceived their physicians to have a 3.23 EI rating. Patients in the 45 to 54 and 65 to 74 groups perceived their nurses to be more emotionally intelligent. Even though participants perceived their physicians as being more emotionally intelligent than their nurses, no significant difference existed between nurses and physicians' EI when all groups were tested using a .05 level of significance.

KEYWORDS: emotional intelligence, patients, nurses and doctors

Introduction

Emotional intelligence (EI) is a concept that has been discussed for more than 25 years. The framework for EI was presented in 1990 by Peter Salovey and John Mayer (McCleskey 2014). The earliest definition for emotional intelligence described EI as a set of skills hypothesized to contribute to the accurate appraisal and expression of emotions in oneself and in others, the effective regulation of emotion in self and others, and the use of feelings to motivate, plan, and achieve in one's life (Salovey & Mayer 1990). Since Mayer and Salovey presented the framework for EI, it has been a much debated and talked about concept. McCleskey (2014) stated emotional intelligence has been a controversial and highly criticized topic since it was established by Mayer and Salovey, but since EI's creation a number of industries and professionals have benefited from the continued study and application of this model.

Of all the industries and professionals who have benefited from the continued study of this concept, the healthcare industry in particular has gained a lot through the continued study of EI. McQueen (2004) stated that EI plays an important role in forming successful human relationships. Much of nurses and physicians responsibilities and duties revolve around establishing and maintaining relationships. Nurses and physicians work in highly stressful fast pace environments and it is important for them to be able to cope with stress and continue to interact with patients, their patients' families, and other healthcare providers positively. McQueen (2004) stated that EI seems to be a relevant concept in the healthcare industry, where it is considered important for healthcare professionals to understand patients' perspective, handle work related stresses, and engage in relationships that facilitate successful healthcare management.

Evans and Allen (2002) stated the ability to manage your own emotions while interpreting other's emotions is a useful skill in any caring environment; yet EI training is often overlooked. Evans and Allen incorporating EI training into nurses and physicians' curriculum would give them a greater understanding of themselves and the way they relate to others. It was stipulated by Evans and Allen that EI training would enable more effective interactions between physicians and patients and equip nurses and physicians with the skills to deal with highly charged emotional situations. Weng (2008) stated trust and professional respect between nurses and physicians play a critical role in reinforcing the patient-physician relationship to affect improvements in the provision of patient centered care. The

purpose of the present study was to develop an efficient training system and curriculum to better educate nurses and physicians on EI in order to improve patient perceptions of quality of care practices. By determining which group, nurses or physicians patients perceive to be more emotional intelligent, specialized training curriculum can be developed to strengthen certain areas of nurse-physician EI and help both groups better relate to patients and each other.

Research Questions and Hypotheses

To complete the present study, four research questions (RQs) were developed and null and alternate hypotheses were developed to test the RQs.

Research Questions

The following research questions (RQs) were used to explore the relationship between patients' perceptions of physicians and nurses emotional intelligence and quality of patient care:

RQ 1: Are there significant differences between patients' perceptions of the nurses and physicians emotional intelligence?

RQ 2: Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider?

RQ 3: Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on their age?

RQ4: Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on income?

Null Hypotheses

H₀ 1: There is no significant difference between patients' perceptions of nurses and physicians emotional intelligence.

H₀ 2: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider.

H₀ 3: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on patients' age.

H₀ 4: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on income.

Alternate Hypotheses

H_A 1: There is a significant difference between patients' perceptions of nurses and physicians emotional intelligence.

H_A 2: There is significant difference between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider.

H_A 3: There is a significant difference between patient perceptions of nurses and physicians emotional intelligence, based on patients' age.

H_A 4: There is a significant difference between patient perceptions of nurses and physicians emotional intelligence, based on income.

Results

Research question one asked, "Are there significant differences between patients' perceptions of the nurses and physicians emotional intelligence?" The results that address RQ 1 focus on the overall patients' perception of their nurses and physicians emotional intelligence. This question provides an opportunity to explore if there are significant differences in how patients view their nurses and physicians level of emotional intelligence.

H₀ 1: There is no significant difference between patients' perceptions of nurses and physicians emotional intelligence.

H_A 1: There is a significant difference between patients' perceptions of nurses and physicians emotional intelligence.

The following *t*-Test compares patients' perceptions of doctors and nurses EI and identify if there is a significant difference in the way patients perceive them. The *t*-Test revealed there was no significant difference in the way patients' perceived nurses and doctors' EI at 95% confidence

interval. Evaluated against a level of significance of $\alpha = 0.05$, the p value (0.18) was greater. Therefore, null hypothesis one there is no significant different between patients' perceptions of nurses and physicians EI failed to be rejected. Alternative hypothesis one, there is a significant difference between patients' perceptions of nurses and physicians EI was rejected.

Table 1. Findings of Overall Patients' Perception of Emotional Intelligence

Table 10: Overall Patients' Perception of Emotional Intelligence

	Doctors	Nurses
Mean	3.090769231	3.065384615
Variance	0.003657692	0.000610256
Observations	13	13
Hypothesized Mean Difference	0	
df	16	
t Stat	1.400982361	
P(T<=t) one-tail	0.090158081	
t Critical one-tail	1.745883676	
P(T<=t) two-tail	0.180316163	
t Critical two-tail	2.119905299	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices" by Raheem Young, Copyright 2017

Research Question Two

Research question two asked, "Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider?" The results that address research question two analyze patients' perception of nurses and physicians EI, based on whether they had an existing relationship with the healthcare provider or if they were new patients. This question provides an opportunity to explore if there are significant differences in how patients view their nurses and physicians level of EI, based on their relationship to them.

H_0 2: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider.

H_A 2: There is significant difference between patient perceptions of nurses and physicians emotional intelligence, based on their relationship/familiarity with the healthcare provider.

The next t-Test compares patients' perceptions of doctors and nurses emotional intelligence and identify if there is a significant difference in the way patients perceive them, based on relationship and familiarity. The t-Test revealed there was no significant difference in the way patients' perceived nurses and doctors' EI based on relationship and familiarity at 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the p value (0.58) was greater. Therefore, null hypothesis two, "there is no significant different between patients' perceptions of nurses and physicians EI, based on relationship and familiarity", failed to be rejected. Alternative hypothesis two, "there is a significant difference between patients' perceptions of nurses and physicians' EI, based on patient's relationships" was rejected.

Table 2. Finding of Patients' Relationships with Healthcare Providers

Table 11: Patients' Relationships With Healthcare Providers

	Doctors	Nurses
Mean	3.058922856	3.06
Variance	3.93379E-06	0
Observations	2	2
Hypothesized Mean Difference	0	
df	1	
t Stat	-0.768038264	
P(T<=t) one-tail	0.291524213	
t Critical one-tail	6.313751515	
P(T<=t) two-tail	0.583048427	
t Critical two-tail	12.70620474	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices" by Raheem Young, Copyright 2017

Research Question Three

Research question three asked, “Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on their age?” The results that address RQ 3 analyze patients’ perception of nurses and physicians’ EI, based on patients’ age. This question provides an opportunity to explore if there are significant differences in how patients viewed their nurses and physicians level of EI, based on age.

H_0 3: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on patients’ age.

H_A 3: There is a significant difference between patient perceptions of nurses and physicians emotional intelligence, based on patients’ age.

The following tables consist of *t*-Test that compare patients’ perceptions of doctors and nurses’ emotional intelligence and identify if there were significant differences in the ways patients perceive them, based on their age group.

Table 3. Findings of Between 18 and 24 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 18-24 Age Group		
	Doctors	Nurses
Mean	3.175	3.14047619
Variance	0.012882653	0.014292013
Observations	10	10
Hypothesized Mean Difference	0	
df	18	
t Stat	0.662272319	
P(T<=t) one-tail	0.258093635	
t Critical one-tail	1.734063607	
P(T<=t) two-tail	0.51618727	
t Critical two-tail	2.10092204	

Source: Adapted from “A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians’ Emotional Intelligence and Quality of Care Practices,” by Raheem Young, Copyright 2017

As seen in Table 7, this *t*-Test revealed there was no significant difference in the way patients in the 18 to 24 age group perceived their nurses and doctors’ emotional intelligence based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.51) was greater.

Table 4. Findings of Between 25 and 34 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 25-34 Age Group		
	Doctors	Nurses
Mean	3.106538992	3.069079471
Variance	0.060668072	0.025794085
Observations	46	46
Hypothesized Mean Difference	0	
df	77	
t Stat	0.864028574	
P(T<=t) one-tail	0.195127896	
t Critical one-tail	1.664884537	
P(T<=t) two-tail	0.390255791	
t Critical two-tail	1.991254395	

Source: Adapted from “A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians’ Emotional Intelligence and Quality of Care Practices,” by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 25 to 34 age group perceived their nurses and doctors’ EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.39) was greater.

Table 5. Findings of Between 35 and 44 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 35 to 44 Age Group		
	Doctors	Nurses
Mean	3.049051017	3.053962462
Variance	0.038385778	0.025973996
Observations	109	109
Hypothesized Mean Difference	0	
df	208	
t Stat	-0.202122781	
P(T<=t) one-tail	0.420009145	
t Critical one-tail	1.652212376	
P(T<=t) two-tail	0.84001829	
t Critical two-tail	1.971434659	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 35 to 44 age group perceived their nurses and doctors' EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.84) was greater.

Table 6. Findings of Between 45 and 54 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 45 to 54 Age Group		
	Doctors	Nurses
Mean	3.019871513	3.060857764
Variance	0.033166469	0.029586965
Observations	110	109
Hypothesized Mean Difference	0	
df	217	
t Stat	-1.712294804	
P(T<=t) one-tail	0.044135442	
t Critical one-tail	1.651905861	
P(T<=t) two-tail	0.088270883	
t Critical two-tail	1.970956301	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 45 to 54 age group perceived their nurses and doctors' EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = .05$, the *p* value (0.08) was slightly greater.

Table 7. Findings of Between 55 and 64 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 55 to 64 Age Group		
	Doctors	Nurses
Mean	3.079831728	3.047560519
Variance	0.017609301	0.052437676
Observations	103	103
Hypothesized Mean Difference	0	
df	164	
t Stat	1.237482767	
P(T<=t) one-tail	0.108838371	
t Critical one-tail	1.654197929	
P(T<=t) two-tail	0.217676742	
t Critical two-tail	1.974534576	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 55 to 64 age group perceived their nurses and doctors' EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.21) was greater.

Table 8. Findings of Between 65 and 74 Age Group

t-Test: Two-Sample Assuming Unequal Variances for 65 to 74 Age Group		
	Doctors	Nurses
Mean	3.04526749	3.05689874
Variance	0.028437987	0.018850358
Observations	27	27
Hypothesized Mean Difference	0	
df	50	
t Stat	-0.277927302	
P(T<=t) one-tail	0.391107108	
t Critical one-tail	1.675905025	
P(T<=t) two-tail	0.782214216	
t Critical two-tail	2.008559112	

Source: Adapted from “A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians’ Emotional Intelligence and Quality of Care Practices,” by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 65 to 74 age group perceived their nurses and doctors’ EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.78) was greater.

Table 9. Findings of Above 75 Age Group

t-Test: Two-Sample Assuming Equal Variances for Above 75 Age Group		
	Variable 1	Variable 2
Mean	3.232142857	3
Variance	0.077168367	0.001133787
Observations	2	2
Pooled Variance	0.039151077	
Hypothesized Mean Difference	0	
df	2	
t Stat	1.173230833	
P(T<=t) one-tail	0.180756556	
t Critical one-tail	2.91998558	
P(T<=t) two-tail	0.361513113	
t Critical two-tail	4.30265273	

Source: Adapted from “A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians’ Emotional Intelligence and Quality of Care Practices,” by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients in the 75 and up age group perceived their nurses and doctors’ EI based on a 95% confidence interval. Evaluated against a level of significance of $\alpha = .05$, the *p* value (0.36) was greater. There were no significant differences found in any of the participants’ age groups in the present study. The 45 to 54 age group recorded the closest *p* value (0.08), but it was still greater than the 0.05 level of significance. Since no age groups showed a significant difference in the way they perceived their nurses and physicians EI, null hypothesis three there is no significant different between patients’ perceptions of nurses and physicians EI, based on patients’ age failed to be rejected. Alternative hypothesis three, there is a significant difference between patients’ perceptions of nurses and physicians EI was rejected.

Research Question Four

Research question four asked, “Are there significant differences between patient perceptions of nurses and physicians emotional intelligence, based on income?” The results that address RQ 4 address patients’ perception of nurses and physicians EI, based on patients’ annual income. This question provides an opportunity to explore if there are significant differences in how patients view their nurses and physicians level of EI, based on income.

H_0 4: There is no significant difference between patient perceptions of nurses and physicians emotional intelligence, based on income.

H_A 4: There is a significant difference between patient perceptions of nurses and physicians emotional intelligence, based on income.

The following tables were used to identify if there were significant differences in the way patients perceived their physicians and nurses' EI, based on their level of income.

Table 10. Findings of Below \$25,000 Income Group

t-Test: Two-Sample Assuming Unequal Variances for Income Level Below \$25,000		
	Doctors	Nurses
Mean	3.148555149	3.068154762
Variance	0.099468203	0.033288112
Observations	20	20
Hypothesized Mean Difference	0	
df	30	
t Stat	0.986837264	
P(T<=t) one-tail	0.165807574	
t Critical one-tail	1.697260887	
P(T<=t) two-tail	0.331615147	
t Critical two-tail	2.042272456	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The following *t*-Test revealed there was no significant difference in the way patients with an income below \$25,000' perceived their nurses and physicians' EI based on patients' income at 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.33) was greater.

Table 11. Findings of \$26,000 to \$55,000 Income Group

t-Test: Two-Sample Assuming Unequal Variances for Income Level \$26,000-\$55,000		
	Doctors	Nurses
Mean	3.035714286	2.928571429
Variance	3.068393913	3.078955848
Observations	89	89
Hypothesized Mean Difference	0	
df	176	
t Stat	-0.447900589	
P(T<=t) one-tail	0.32738789	
t Critical one-tail	1.653557435	
P(T<=t) two-tail	0.65477578	
t Critical two-tail	1.973534388	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The following *t*-Test revealed there was no significant difference in the way patients with an income between \$26,000 and \$55,000 perceived their nurses and physicians' EI based on patients' income at 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.65) was greater.

Table 12. Findings of \$56,000 to \$100,000 Income Group

t-Test: Two-Sample Assuming Unequal Variances for Income Level \$56,000-\$100,000		
	Doctors	Nurses
Mean	3.047166934	3.046126626
Variance	0.030413255	0.022300234
Observations	194	194
Hypothesized Mean Difference	0	
df	377	
t Stat	0.063110557	
P(T<=t) one-tail	0.474855957	
t Critical one-tail	1.648905466	
P(T<=t) two-tail	0.949711915	
t Critical two-tail	1.966276388	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

The *t*-Test revealed there was no significant difference in the way patients with an income between \$56,000 and \$100,000 perceived their nurses and physicians' EI based on patients' income at 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.94) was greater.

Table 13. Findings of Above \$100,000 Income Group

t-Test: Two-Sample Assuming Unequal Variances for Income Level Above \$100,000		
	Doctors	Nurses
Mean	3.056984528	3.06259379
Variance	0.035079924	0.060660283
Observations	102	102
Hypothesized Mean Difference	0	
df	189	
t Stat	-0.183087472	
P(T<=t) one-tail	0.42746282	
t Critical one-tail	1.652955802	
P(T<=t) two-tail	0.85492564	
t Critical two-tail	1.972595079	

Source: Adapted from "A Quantitative Comparison Study on Patient Perceptions of Their Nurses and Physicians' Emotional Intelligence and Quality of Care Practices," by Raheem Young, Copyright 2017

This *t*-Test revealed there was no significant difference in the way patients with an income above \$100,000 perceived their nurses and physicians' EI based on patients' income at 95% confidence interval. Evaluated against a level of significance of $\alpha = 0.05$, the *p* value (0.85) was greater. There were no significant differences found in any of the participant income groups. Since no patient income groups showed a significant difference in the way they perceived their nurses and physicians' EI, null hypothesis four there is no significant different between patients' perceptions of nurses and physicians EI, based on patients' incomes failed to be rejected. Alternative hypothesis four, there is a significant difference between patients' perceptions of nurses and physicians EI was rejected.

Discussion

The results of the present are beneficial to the healthcare industry on multiple levels. Understanding EI and its role in providing quality patient experiences can help improve health outcomes and quality care practices. Implementation of the EI training can help healthcare providers, like nurses and physicians better interact with patients, their families, and each other. A greater understanding of EI could also help nurses and physician cope with stress, improve job satisfaction, and help mitigate the feeling of "burnout." The present study may influence healthcare providers to be more cognizant of their attitudes and the words they use when interaction with patients and others.

The results of the present study have several implications for social change. Many of the groups surveyed viewed their physicians to be more emotionally intelligent than their nurses, but there was not a big enough margin in their perceptions of the two groups to exhibit a significant difference. Based the findings, patients' believed their nurses and physicians EI was on the same level or similar to one another. This is neither good nor bad, it simply suggests there is an opportunity for healthcare organizations to implement EI training and room for both nurses and physician to improve.

Another implication for social change is to look how facilities accommodate patients and their families. Findings from the present study suggest patients perceived their overall care and treatments by the hospital or healthcare facilities was low and in most cases were much lower to those of the physicians and nurses' EI. Cleary and McNeil (1988) stated the characteristics of healthcare providers and organizations resulting in personal care are associated with higher levels of satisfaction. Further, studies have shown more personal care could result in better communication and more patient involvement. The present study found patients usually perceive their medical experiences in a holistic manner. If hospitals and other healthcare facilities implemented EI curriculum and training for physicians and nurses, their improved EI would influence the way patients perceived their overall experience at the facility.

The last implication for social change is to explore how EI influences the people on a universal level and not just in the healthcare area. Looking back at the present study, one has to take into account the EI level of the participants because their EI plays a role in the way they perceived their nurses and physicians level of EI and their overall treatment while receiving care. Shooshtarian et al. (2013) studied workers in Fars Province Industries in Iran. These workers were given the MSEIS 1 Emotional Intelligence surveys and results found the EI levels of Fars Province workers positively correlated to job satisfaction and job performance. It was found that people view their experiences holistically. Through further implementation of EI training, individuals may become more satisfied and their ability to interact with others might increase.

Recommendations for Research

A recommendation for future research is to investigate the two patient demographic categories represented in the questionnaire that were not discussed in the data analysis further. The two patient demographic categories were patients' marital status and patients' ethnicity and racial background. Future research can be developed to examine these patient categories and determine if these factors affect how patients perceive their nurses and physicians EI and quality of care practices. Investigating if there is a significant difference in the way male and female patients perceive their physicians and nurses' EI would be also a recommendation for future research. Another recommendation for future research is to explore a similar study to the present one, reducing the five year hospitalized and medical attention period to one or two years. Patients that were hospitalized or received medical attention three to five years ago may not remember their interactions with nurses and physicians as well as someone that interacted with a healthcare provider one or two years ago. If patients were able to vividly remember their experiences after years pass, their experiences could have been extremely negative or traumatic. Negative or traumatic memories could affect how participants answered survey questions.

The next recommendation for future study is to examine people's perceptions of nurses and their contributions to the field of healthcare. Participants in the patient age and patient income categories perceived their physicians to be more emotionally intelligent than their nurses. It was assumed that participants would view nurse to be more emotionally intelligent before the research was conducted, due to the amount of interactions and time spent with patients. The results of the present were intriguing and led to the development of further questions that may be examined in future studies. Did participants associate nurses with pain or discomfort? Future studies should be developed to further examine why participants perceived their physicians to be more emotionally intelligent and to see if patients associate pain and discomfort to their nurses more than to their physicians. An interesting study surrounding the topic of EI in healthcare is to examine how healthcare providers, like nurses and physicians perceive the EI levels of their patients. It is possible that patients' EI could affect nurses and physicians willingness to care for them. It is important for everyone in society to exhibit a level of EI and it would be interesting to see how nurses and physicians view their patients. Continuing to explore these relationships, but from different viewpoints would be an interesting study.

Conclusion

The present study explored if there are significant difference between patients' perceptions of their nurses and physicians' EI and their patient quality of care practices. Through building on the knowledge of this topic and identifying the role EI plays in nurses and physicians' interactions, specific EI initiatives can be developed to help improve the quality of patient/provider interactions. The present study was a quantitative comparison and utilized a survey questionnaire to gauge patients' perceptions of their healthcare providers' EI and their overall view of the hospital or medical facility they received care. Six hundred thirteen participants began the survey, while 407 completed it entirely, giving the present study a sample size of $N = 407$. The data gathered were analyzed using Microsoft Excel 2013.

The present study found patients perceive their physicians to be slightly more emotionally intelligent than their nurses, but no significant difference existed between nurses and physicians' EI when tested using a 0.05 level of significance. The concept of EI has been around for more than two decades, but organizations are just beginning to utilize it in order to improve workplace relationships

in various areas of healthcare and academia. Studies have shown there are many benefits to having EI curriculum introduced in the classroom and workplace. Emotionally intelligent individuals are more likely to understand their own as well as others emotion, handle stress better, and positively interact with colleagues. Within the field of healthcare especially, EI training would benefit all facets of the industry.

References

- Cleary, P., & McNeil, B. 1988. Patient satisfaction as an indicator of quality care, inquiry. *The Challenge of Quality*, 25(1): 25-36. Retrieved from http://www.jstor.org/stable/29771928?seq=1#page_scan_tab_contents.
- Evans, D., & Allen, H. 2002. "Emotional intelligence: its role in training." *Nursing Times* 98(27): 41-42. Retrieved from: <http://europepmc.org/abstract/med/12123168>.
- McCleskey, J. 2014. "Emotional intelligence and leadership: A review of the progress, controversy, and criticism." *International Journal of Organizational Analysis*, 22(1): 76-93. Retrieved from http://www.academia.edu/8951874/Emotional_Intelligence_and_Leadership_Progress_Controversy_and_Criticism
- McQueen, A. 2004. "Emotional intelligence in nursing work." *Journal of Advanced Nursing*, 47(1): 101-108. Retrieved from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2648.2004.03069.x/abstract?userIsAuthenticated=false&deniedAccessCustomisedMessage=>
- Salovey, P., & Mayer, J. 1990. "Imagination, cognition, and personality." *Emotional Intelligence* 9(3): 185-211, Retrieved from <http://journals.sagepub.com/doi/pdf/10.2190/DUGG-P24E-52WK-6CDG>.
- Shoostarian, Z., Ameli, F., & Amini-Lari, M. 2013. "The Effects of Labor's Emotional Intelligence on Their Job Satisfaction, Job Performance and Commitment." *Iranian Journal of Management Studies*, Article 2, Volume 6, Issue 1-Series #6, winter 2013, Page 27-43 doi:10.22059/ijms.2013.30123.
- Weng, H. C. 2008. "Does the physician's emotional intelligence matter? Impacts of the physician's emotional intelligence on the trust, patient-physician relationship, and satisfaction." *Health Care Management Review* 33(4): 280-288 doi:10.1097/01.HCM.0000318765.52148.b3.

The Principle of Legality

Daniel Grădinaru

*“Dimitrie Cantemir” Christian University, Faculty of Juridical and Administrative Sciences, Bucharest, Romania,
danielg73@yahoo.com*

ABSTRACT: The principle of legality, in criminal law, means that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). It also embodies, that the criminal law must not be extensively interpreted to an accused's detriment, for instance by analogy. According to that principle, an offence must be clearly defined in the law. The concept of law comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability. The requirements are satisfied where the individual can now from the wording of the relevant provision and, if need be, with the assistance of courts' interpretation of it, what acts and omissions will make him criminally liable. The principle of legality also includes the rule which prohibit the retrospective application of the criminal law to an accused's disadvantage. That principle is enshrined in the constitutions of many countries as well as in the most important international convention that protects human rights.

KEYWORDS: accessibility, criminal law, foreseeability, legality, retrospective application

General aspects

The idea of legality in criminal law appeared in the 17th century, being promoted by the illuminism representatives as Beccaria, Voltaire, Rousseau, Diderot, and was enshrined for the first time in the Prussian Penal Code. It also was mentioned by the Independence Declaration of United States (US 1776) and Declaration of the Rights of Man and Citizen, France (1789).

After de second world war, many states agreed to adopt The Charter of the United Nations, in witch is enshrined as a purpose to achieve international co-operation in order to solve problems of an economic, social, cultural, or humanitarian character, and to promote and encourage respect for human rights and for fundamental freedoms for all. Three years later, the Universal Declaration of Human Rights (1948) was proclaimed by the United Nations General Assembly, Paris 10 December 1948. According to article 11, "No one shall be held guilty of any penal offence on account of any or omission which did not constitute a penal offence, under national or international law, at the time when it was committed, Nor shall a heavier penalty be imposed that the one that was applicable at the time the penal offence was committed."

Later, the United Nations adopted the International Covenant on Civil and Political Rights (1966) which provides in the Article 15 "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, offender shall benefit thereby".

Beside the worldwide international treaties, regional conventions on human rights protection were adopted. One of the most important international treaty in this area was the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). This was the first convention to give effect to most of the rights enshrined in the Universal Declaration of Human Rights and make them binding. In this Convention, is stated in the Article 7 "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

Regional conventions on human rights protection with similar provision were adopted in American or African Continents. For instance, in American Convention on Human Rights (OAS 1969), Article 9 states: "Freedom from Ex Post Facto Laws" it is stated that No one shall be convicted of any act or omission that did not constitute a criminal offence, under the applicable law, at the time

it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. If subsequent to the commission of the offence the provisions provide for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

In African (BANJUL) Charter on Human Rights and Peoples' Rights (OAU 1981), Article 7 paragraph 2, provides, "No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender".

The components of the Principle of Legality

The principle of legality in criminal law was seen as a guarantee of freedoms and rights of the citizens and it supposed to maintain the rule of law.

This principle comprises several rules. First of all, is that the criminal offences and the penalties must be provided by law, as an act adopted by the Parliament, and could not be provided by the inferior acts, as those adopted by the Government, Ministers and other national institutions (*nullum crimen sine lege; nulla poena sine lege*). The second rule is that the criminal law must be very well determined, which means that it must be worded in clear and specific terms, and also must be foreseeable (*nullum crimen sine lege certa*).

Also, the principle of legality includes that the criminal law, which provides an act or an omission as a criminal offence, must be adopted and brought into force before committing the crime (*nullum crimen sine lege praevia*).

1. Nullum crimen sine lege; nulla poena sine lege

This rule means that only the law can define a crime and describe a penalty, and, mainly, is viewed as an act adopted by the legislator of any state. Anyway, the concept of "law" refers to written as well as unwritten law and implies qualitative requirements, especially those of accessibility and foreseeability. The accessibility requires that any person must have the possibility to be informed about the existing criminal laws, that includes the obligation of the state to make it public in any way.

2. Nullum crimen sine lege certa; nullum crimen sine lege stricta

According to this principle an offence must be clearly defined in the law and this must be foreseeable for any person. The requirement is satisfied where a person can know the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what act or omission will make him criminally liable. But a consequence of the principle that laws must be of general application is that the wording of the statutes is not always precise.

One of the standard techniques of regulation by rules is to use general categorisations as opposed to exhaustive lists. The need to avoid the excessive rigidity and to keep pace with changing realities means that many laws use inevitably the terms which, to a greater or lesser extent, are vague. In this case, the interpretation and application of such acts depends on practice.

The Inter-American Court of Human Rights stated in its jurisprudence that the principle of legality according to which "no one shall be convicted of any act or omission that did not constitute a criminal offence at the time it was committed" (Article 9 of the American Convention) constitutes a central element of criminal prosecution in a democratic society. The classification of an act as illegal and the establishment of its effects must pre-exist the action of the person who is considered the wrongdoer because, otherwise, the individual would be unable to adapt their actions to a legal order in force and certain that expresses social condemnation and the consequences of this (Case Baena Ricardo et al. v. Panama).

The classification of offences requires a clear definition of the criminalized act that establishes its elements and allows it to be distinguished from acts that are not penalized or illegal acts that may be punished by non-criminal measures (Case Castillo Petruzzi et. al v. Peru). The sphere of application of each offence must previously be delimited as clearly and precisely as possible (Case Fermin Ramirez v. Guatemala), in an explicit and precise manner.

When defining offences of a terrorist nature, the principle of legality requires that a necessary distinction be made between such offences and ordinary offences so that every individual and also the criminal judge have sufficient legal elements to know whether an action is penalized under one or the other offence. This is especially important with regard to terrorist offences because they merit harsher prison sentences, and ancillary penalties and disqualifications with major effects on the exercise of other fundamental rights are usually established – as in Law No. 18,314. In addition, the investigation of terrorist offences has procedural consequences that, in the case of Chile, may include the restriction of certain rights during the investigation and prosecution stages.

Having to solve a case (Case *Norin Catriman et al. v. Chile*), the Court considered that the presumption that the intent exists when certain objective elements exist (including “the fact of committing an offence with explosive or incendiary devices”) violates the principle of legality established in Article 9 of this Convention (American Convention on Human Rights, “Pact of San Jose, Costa Rica”).

The notion of foreseeability depends to a considerable degree on the content of the text on issue, the field it is designed to cover and the number and status of those to whom it is addressed.

A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may imply. This is the situation of the person carrying out on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity implies.

Having to analyse this requirement in a case, the European Court of the Human Rights, stated, that: “From, at latest, 1957 onwards the Court of Cassation has always either confirmed the decision of the courts below classifying a pharmaceutical-type product as medicinal or quashed decision by a lower court finding that such a product fell outside the notion of medicinal product. Thus, well before the events in the present case, the court of Cassation had adopted a clear position on this matter, which with the passing time became even more firmly established”.

In this case, the European Court concluded that with the benefit of appropriate legal advice, the applicant, who was, moreover, the manager of a supermarket, should have appreciated at the material time that, in view of the line of case-law stemming from the Court of Cassation and from some of the lower courts, he ran a real risk of prosecution for unlawful sale of medicinal product.

Finally, the European Court stated that there was no breach of Article 7 (Case *Cantoni v. France*). On the other hand, clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation of changing circumstances. Indeed, in any country the progressive development of the criminal law through judicial law-making is a well consolidated and necessary part of legal tradition.

This principle cannot be understood as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen.

Having to solve a case, the European Court of Human Rights, stated: “The essentially debating character of rape is so manifest that the result of the decisions of the Court of Appeal and House of Lords – that the applicant could be convicted of attempted rape, irrespective of his relationship with the victim – cannot be said to be at variance with the object and purpose of Article 7 of the Convention (European Convention of Human Rights), namely to ensure that no one should be subjected to arbitrary prosecution, conviction or punishment. What is more, the abandonment of the unacceptable idea of a husband being immune against prosecution of rape of his wife was in conformity not only with a civilized concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom.

Having reached to this conclusion, the Court does not find it necessary to enquire into whether the facts in the applicant’ case were covered by the exceptions to the immunity rule already made by

the English courts before 12 November 1989. In short, the Court found that the national courts' decisions that the applicant could not invoke immunity to escape conviction and sentence for attempted rape his wife did not give rise to a violation of his rights under Article 7 para. 1 of the Convention" (Case C.R. v. The United Kingdom).

In other case, the European Court recalled that Article 7 of the Convention requires offences to be "clearly defined in law". That condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.

In this case the Court noted that: "It is true that, in the context of audiovisual communication, the words - *fixed prior to being communicated to the public* – may seem to indicate that a publishing director cannot be convicted of an offence under section 93-3 of the 1982 Act unless the offending statement has been recorded before being broadcast. Thus construed, section 93-3 cannot form the basis for the successful prosecution of a publishing director where the *statement* had been broadcast live. The Court notes moreover that the Government have not supplied any evidence that before the applicants' trial the domestic courts had applied section 93-3 in circumstances similar to those of the present case". (The applicants complained that the criminal law had been extensively applied in that when finding that "the content of the offending statement [had been] fixed prior to being communicated to the public" despite the fact that all the news bulletins and flashes concerned had been broadcast live, the domestic courts had based their finding of the second and third applicants' criminal responsibility on an interpretation by analogy of section 93-3 of the Audiovisual Communication Act (Law no 82-652 of 29 July 1982 – "the 1982 Act"). They relied on Article 7 § 1 of the Convention).

In the reasoning of its decision, the European Court noted that "the presumption of the publishing director's responsibility established by section 93-3 of the 1982 Act is the corollary of the latter's duty to check the content of the statement put out through the medium for which he works. The reason, therefore, why the publishing director's responsibility is engaged only where the content of the offending *statement* has been *fixed* prior to being broadcast is that he is deemed on account of that *prior fixing* to have been placed to apprise himself of its content and check it before it is broadcast.

Moreover, it is clear – and parties did not disagree on this point – that there has been *prior fixing* where the offending *statement* has been recorded with a view to its being broadcast, and that, conversely, there has been no *prior fixing* where such a statement has been broadcast live. In the Court's opinion, the facts of the present case fall halfway between recording and live broadcasting. On the one hand, the offending statement was not recorded; on the other, in view of the way France Info operated, it was intended to be repeated live-to-air at regular intervals. As there had been no *prior fixing*, the criminal courts absolved the publishing director of all responsibility in respect of the first of the bulletins broadcast on France Info; on the other hand, they held that that first broadcast had constituted a *prior fixing* of the statement's content as regards subsequent broadcasts. They therefore ruled that from the second broadcast onwards the publishing director could be considered to have been placed in to check its content beforehand. The Court considers that, in the particular context of the way France info operated, that interpretation of the concept *prior fixing* was consistent with the essence of the offence concerned and *reasonably foreseeable*." Therefore, the European Court concluded there had been no violation of article 7 of the Convention (Case Radio France and Others v. France Judgment).

3. *Nullum crimen sine lege praevia*

This rule states that no one can be convicted for an act or omission that did not constitute an offence at the time it was committed. The fundament of this rule is that a criminal law must prevent committing the criminal offence, before fighting against them. According to this principle it is prohibited to apply retrospectively the criminal law to an accused's disadvantage.

Following this principle, enshrined in Article 7 of the European Convention of Human Rights, in a case, the European Court concluded that there was a violation of this article in which the criminal act was a continuing offence. In this case, the European Court found that: "The applicant was convicted under Article 148-1 & 7 of the Criminal Code, as worded since 13 January 1995, of tax offences which were committed in the period from 1993 to 1996.

It observes that the application of the criminal law of 13 January 1995 to subsequent acts is not at issue in the instant case. The question to be determined is whether the extension of the law to acts committed prior to that date infringed the guarantee set forth in Article 7 of the Convention. The Court also, notes that, according to the text of Article 148-1 of the Criminal Code before its amendment in 1995, a person could be held criminally liable for tax evasion only *if an administrative penalty had been imposed on him or her a similar offence*. The condition was thus an element of the offence of the tax evasion without which a criminal conviction could not follow.

It further observes that a considerable number of acts of which the applicant was convicted took place exclusively within the period prior to January 1995. The sentence imposed on the applicant – a suspended term of three years and six months' imprisonment – took into account acts committed both before and after January 1995.

In these circumstances, the court finds that the domestic courts applied the 1995 amendment to the law retrospectively to behaviour which did not previously constitute a criminal offence" (Case Veeber v. Estonia). According to the principle *nullum crimen sine lege praevia*, as we already mentioned, no one can be subjected to a criminal penalty heavier than the one provided at the time when the offence was committed. On this matter, the European Court decided that there was a violation of Article 7, in a case in which the defendant faced much more severe treatment than those provided by law at the time that was committed. There is an exception from this rule, when the retrospective application of criminal law is permitted, in case of law that contain favourable provisions (*mitior lex*).

In this matter, the European Court of Human Rights, stated that "the offences of which the applicant was accused fell within the scope of the formal Article 332 and 333 of the Criminal Code, which satisfied the requirements of foreseeability and accessibility. There was a consistent case-law from the Court of Cassation, which was published and therefore accessible, on the notions of violence and abuse of authority. As regards the notion of violence, the new provisions in the Articles 332 and 333 of the criminal Code merely confirmed this case-law.

The court notes that the acts of which the applicant was accused also fell within the scope of the new legislation. On the basis of the principle that the more lenient law should apply both as regards the definition of the offence and the sanctions imposed, the national courts applied the new Article 333 of the Criminal Code for the imposition of sanctions as that provision downgraded the offence of which Mr. G. was accused from serious offence (crime) to less serious offence (delit). Its application, admittedly retrospective, therefore operated in the applicant's favour" (Case G. v. France). The Court concluded, in the case above mentioned, that there had been no violation of Article 7 para. 1 of the European Convention of Human Rights.

On this area, the African Court on Human and Peoples' Rights stated in a case: "It is therefore evident that the application of the 2012 Penal code and Law No. 84/2013 on the Applicant was in general favourable and is congruent with the exception to the rule of non-retroactivity, that new criminal laws may be applied to acts committed before their commission when these laws provide lighter punishment. The fact that the punishment imposed on the Applicant by the High Court was higher than the penalty that was initially imposed by the High court was not because of the retrospective application of the new laws. As the record before this Court reveals, this was rather because the Supreme Court had rejected the mitigating circumstances considered by the High Court, and convicted the Applicant for an offence for which she had been acquitted by the High Court. This in itself is not a violation of the principle of non-retroactivity of criminal law" (Case Ingabire Victoire Umuhoza v. Rwanda).

Conclusions

The principle of legality is considered a guarantee against the arbitrary application of the criminal law, and is also viewed as an essential element of the rule of law. This is why this principle occupies a prominent place in any international convention on human rights, as we have already mentioned.

For instance, in the European system of human rights protection, this principle is considered to belong to the hard core of the European Convention on Human Rights. An argument of this is that the Article 15 of the Convention – Derogation in time of emergency – provides: In time of the war or other emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. But, no derogation from Article 7, *inter alia*, shall be made under this provision.

Finally, is to mention that the Constitutional Acts and Criminal Codes of any modern state have enshrined the principle of legality, as one of the most important in their legal system, and a guarantee against the violation of human rights. Following that, there are provisions in the domestic law that could sanction any violation of this principle, and after exhausted all internal appeal, any person who was a victim of a violation like this could log an application before de international courts.

References

- American Convention on Human Rights, "Pact of San Jose, Costa Rica", Available at www.cidh.oas.org
- Case Baena Ricardo et al. v. Panama, Available at www.corteidh.or.cr
- Case C.R. v. The United Kingdom, Available at www.hudoc.echr.coe.int
- Case Cantoni v. France, Available at www.hudoc.echr.coe.int
- Case Castillo Petruzzi et. al v. Peru, Available at www.corteidh.or.cr
- Case Fermin Ramirez v. Guatemala, Available at www.corteidh.or.cr
- Case G. v. France, Available at www.hudoc.echr.coe.int
- Case Ingabire Victoire Umuhoza v. Rwanda, Available at www.african-court.org
- Case Norin Catrیمان et al. v. Chile, Available at www.corteidh.or.cr
- Case Radio France and Others v. France Judgment, Available at www.hudoc.echr.coe.int
- Case Veeber v. Estonia, Available at www.hudoc.echr.coe.int
- Convention for the Protection of human Rights and Fundamental Freedoms. 1950. (opened for signature in Rome on 4 November 1950 and came into force in 1953), www.echr.coe.int.
- Declaration of the Rights of Man and Citizen (France 1789). Available at <https://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen>.
- Independence Declaration of United States (4 Julie 1776). Available at <https://www.archives.gov/founding-docs/declaration-transcript>.
- Organization of African Unity (OAU). 1981. African Charter on Human and Peoples' Rights ("Banjul Charter"), (adopted 27 June 1981, entered into force 21 October 1986, www.achpr.org).
- Organization of American States (OAS) 1969. *American Convention on Human Rights*, "Pact of San Jose, Costa Rica", 22 November 1969, www.cidh.oas.org.
- UN General Assembly, *International Covenant on Civil and Political Rights*. 1996. (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, www.ohchr.org).
- UN General Assembly, *Universal Declaration of Human Rights* 1948. United Nations General Assembly, Paris 10 December 1948. Available at <http://www.un.org/en/universal-declaration-human-rights/>.

Genome Editing The New Eugenics?

Marisa Almeida Araújo

*Assistant at Lusíada University – North (Porto), Law School, Porto, Portugal
Researcher at CEJEA, almeidaaraujo@por.ulusiada.pt*

ABSTRACT: The human genome editing techniques, which surpasses preimplantation genetic diagnoses at this time, has posed a number of ethical, philosophical, social and legal issues over the years that are far from resolution or any consensus. The challenge, nowadays, is the option between the refusal to use them or, by the contrary, making them available, in particular, to the prospective parents of ART, who are a wide range of *consumers* of these techniques. The possibility of DNA editing, and the immense solutions of CRISPR technology reprogramming the heritable genome brings us the debate of a modern form of eugenics. For parents and the programmatic choices they make, with DNA editing to their will and repudiating the genetic inheritance of their children, with impact on their personal integrity and identity, bringing human dignity, and human nature itself, to the epicentre of the debate and a new form of *generational* responsibility and, in a social context, a form of *genetic aristocracy*. The latest Nuffield Council on Bioethics report, "Genome Editing and Human Reproduction: Social and Ethical Issues," published in July 2018, further inflamed the debate. Seeming to accept, albeit cautiously, that the issue may be ethically acceptable in some circumstances, namely the guaranty of the welfare of the person and that it does not result in any disadvantage, discrimination or social cleavage. The timeliness and importance of the subject require us to focus our analysis considering the ethical and legal issues raised by the topic.

KEYWORDS: CRISPR technology, Genome Editing, Eugenics; Bioethics, ART, Human Dignity

Introduction

On April 14, 2003, the International Consortium of the Human Genome Project (HGP) announced the decoding of 99.99% of genome – “the book of life” was finally opened and bioengineering, as had enormous evolution.

On September 20, 2017 was published an article by British scientists from the Human Embryo and Stem Cell Laboratory at The Francis Crick Institute – who had been authorised to research on human embryos – about the genome editing, having concluded that, in addition to the purely scientific issue" (...) *CRISPR–Cas9 mediated genome editing is a powerful method for investigating gene function in the context of human development*" (Fogarty et al. 2017).

They would not come to that conclusion by *simply* studying mouse embryos, heating up the debate on the need of using human biological material.

The development of CRISPR, Clustered Regulatory-Interspaced Short Palindromic Repeats, (in 2012, which makes genetic modification faster, cheaper and easier, compared with previous techniques) is an important tool in genome editing (in genome editing refers to the CRISPR/Cas system used to edit DNA at specific locations in the genome), being a technology constantly evolving. In April 2018 was published an information stating that an improved version had been published, allowing the simultaneous editing of multiple genes (Sadhu, Bloom, Day, Siegel, & Kosuri 2018) and, already in August 2018, Chinese scientists announced, successfully and with a new approach – compared with the 2016 method of CRISPR-Cas9 – the genome editing in human cells achieved genetic correction in heterozygous human embryos (Zeng et al. 2018).

Although scientific advances make this debate urgent and even if slower than the speed of science it is, undeniable, imperative. Bioengineering is placing human as, not only the creator – being seduced by discovery and daring to be in control of something which before was in the hands of destiny or faith (or God, if you wish), at the time called *the threshold of biological modernity* (Foucault, 1988, first published 1976) – but also its subject, in which the human being is still being defined by (*bio*) *policies* strategies.

Many are the implications of CRISPR, being undeniable and legit our desire to *heal* our children of eventual illnesses they may have, or even to programme them to achieve certain characteristics or skills. The truth is these ethical issues about the human being, his qualities and human essence, about

the acceptance of imperfection and tolerance of the difference, and about the society, in which one way or the other we are going to become (Fukuyama 2002; Sandel 2007), are still to be answered and paths to be unfold.

It is admittedly tempting the possibility of the scientist to be able to act on the genes level, in an exercise of human being programming. As recognised by the President's Commission for the Study of Ethical Problems in Medicine, Biomedical and Behavioral Research, that in 1982 (p. 10) stated that “*genes are perhaps the most tangible correlates of who a person is as an individual and as a member of a family, race, and species.*”

Genes are, in fact, a true legacy for future generations and the *heritage of humanity* as stated in art. 1.º of Universal Declaration on the Human Genome and Human Rights of UNESCO symbolically referring to the human genome.

This *playing God* has its consequences, and these new techniques reveal, in the words of the French philosopher Michel Foucault (1988, first published 1976), (new) forms of power, o *bio power*.

1. Good in Birth: The Eugenic Debate

Eugenes is in the epicentre of the debate mainly because of its historical connection. Many historical events, of poor memories, such as the atrocities of the World War II, and the well-known experiments in human beings in Nazi concentration camps with the intention of defining the Aryan race, justified this intention by promoting the *purification of the specie* removing the impure that ended in the genocide of nearly 10 million human beings.

Above all, by the remarkable advances in genetic engineering, we are undeniably entering a new era of eugenics, aiming the cure and/or improve features, either to enhance the existing genetic code, or to introduce new genetic material to change human multigene characteristics.

On one hand, the diagnosis of *in vitro* diseases is a form of genetic investigation and the separation of unaffected embryos to transfer to the womb (Oliva Teles, 2011, 988). The early identification of hereditary diseases, such as Tay-Sachs and cystic fibrosis, that is proved lethal, are the most expressive advantages of technology. (Thinking about all the issues that this matter raises and its permeability, one should simply consider the questions related to wrongful life e wrongful birth, regarding the medical liability for breach of *legis artis* in the identification of pathology that may have caused, in case of being identified, the end of a pregnancy, which results in the birth of disabled child, and consequently the right of the parents to be compensated, even questioning if the child has the right to be also compensated for his life (Almeida Araújo 2016)).

Social tolerance to these techniques is increasing, as well as the range of options and diseases that is able to identify. We are beyond that. In addition, it is exactly from here, especially on the appeal to the possibility of creating (more) perfect human beings (humanly acceptable despite the natural imperfections of the human being) in the field of genetic engineering.

If PGD gives parents the possibility to avoid certain diseases, the path to select embryos with the *right genes*, human cloning, as well *baby design*, the technology acting on the manipulation of germ-line and the inherent heritage genetics, is open.

Does genetic engineering bring us the question of eugenics? For us the answer is yes. It is not the one with historic connotation, brought by the Nazi experiments, as stated by Coutts & MacCarrick (1995, 164),

“(...) beginning with the 1933 Law for the Prevention of Congenitally III Progeny, 350,000 schizophrenic and other mentally ill persons were involuntarily sterilized, and marriage or sexual contact between Jews and other Germans was banned. Several hundred black children and 30,000 German Gypsies were sterilized. By 1945, when the allies liberated those remaining in Nazi concentration camps, six million Jews, 750,000 Gypsies, and 70,000 German psychiatric patients had been killed by the Nazis. As a result of the German experience, eugenic thought dropped to its nadir, and to the present day, the term "eugenics" invokes a sense of horror in some people.”

If it is (will) not be a *Nazi eugenics*, the truth is that we are faced with a new *eugenics*, with difficult consequences to draw and where the boundaries between treatment and improvement, positive and negative eugenics, good and bad, or simply better, with several shades of grey are to be considered.

Right from 1982, with Recommendation 934 of Parliamentary Assembly of the Council of Europe, is referred that is within the right to life and human dignity, the right to inherit the genetic patrimony that has not been artificially changed.

The paradigm of consent presents itself with a new point of view. Considering these new paradigms, we can take it a bit further as the *procreative altruism* (Douglas & Devolder 2013), where, along with individual interests, other altruistic considerations should manifest at the time of selection for the others' well-being.

Or, in another Conception, the *procreative beneficence*, where,

“couples (or single reproducers) should select the child, of the possible children they could have, who is expected to have the best life, or at least as good a life as the others, based on the relevant, available information” (Savulescu 2001, 414).

Nevertheless, and regardless of autonomy and consent, another question arises and should be considered: the tolerance for difference, inclusion and solidarity, accepting unconditionally the difference in an empathic and civilized society (MacKellar & Bechtel 2014, 193). Infirmity may become a problem, since it could be resolved at first, can have serious repercussions as it seen.

An even more extreme situation when dealing with the matter of *enhancement* where, without pathology at first, the issue related to technology consumption is debated, that *offer* us children as we selfishly wish and desire, even with ground, the best features we can endow.

The scientific opportunity and the right to choose can be a truly form of justice (Buchanan, Brock, Daniels, & Wilker 2000), considering the consequences of those with disabilities who do not have the opportunities, that, at least in abstract, arise.

If so, it should be considered that, in this field, the local asymmetries will be immeasurable. Not to mention, of course, the developed and underdeveloped countries, where is a huge cleavage to the access to those technologies depend not only on the local investment, but also on the social and health policies that are promoted. Establishing a work to promote the distribution of local and global genetic therapy, as referred by Hildebrandt and Marron (2018) in their article about Justice in CRISPR/Cas9.

The *pressure*, humanly justifiable, of having a child without any illness that ultimately is discussed on a moral obligation level, the truth is, we have, on the other hand, a political and economic environment arising.

We should not disregard the investment in technology – where the *bio value* represents a strong component of economic interests – as well as charges and cost-effective of *producing* citizens without disabilities. That can lead to *well-being* policies with the scope of removing offspring pathologies, but also to guarantee social sustainability policies by comparing the healthy with the sick, in a *eugenics budget* idea.

We do not neglect that, in addition to the local investment that each country decides or can do about this matter, the State effort that led to the creation of the Human Genome Project Consortium and, therefore, the recognised interest that this matter raises on different levels, and may lead to media *pressure* with consequences in terms of public opinion, much needed on the legitimation process.

Since the technological progress has a connection not only in the private sphere, with participants but in society itself (Habermas 2015 (First Published 1968)), not being a dimension of *mere* personal attitude or *simple* reproductive freedom but also in the political dimension on the understanding of society, whose permeability to speech and clarification promote the biopolitics and legitimate it.

In the words of Habermas (2015, first Published 1968, 121)“ *the translation process between science and politics ultimately refers to the public opinion.*”

2. Genetic Responsibility (And Liability)

These biotechnological processes raise a certain commodification of human beings, particularly in the *creation* of men according to another's motivation, leading to a certain human being, with

characteristics chosen *à la carte* and, therefore, influencing future generations, which implies a huge responsibility.

If science gives us options, especially on a PGD level, the theory of a new responsibility is emphasised: the genetics responsibility, in a (new way of) generational solidarity exercise.

Removing destiny (or God, if you wish) from the genetic inheritance, we take the responsibility of the genetic programming our children into our own hands. Causing the loss of chance, or a new non-dear opportunity that we may have given cause.

The well-born will (would) be the result of improvement of the human species, no longer born of genetic randomness, but instead of an *enhancement* process where is possible to change each inherited patrimony avoiding genetic disorders, on one side, and on the other skilfully creating a new and improved human being when compared to his genetic luck.

This *duty* to act, or not, especially on the tracking and prevention of hereditary diseases can be argued, as stated by Daar (2017, 191), in theorising the *duty* of ensuring our children, on the current scientific knowledge, the maximum health and/or preventing future illnesses

The bioethicist Harris (2009) comes to a true *moral obligation* of the enhancement of genetic inheritance that biotechnology allows. As stated by Savulescu (2001, 425), in his *procreative beneficence*, assumes the choice of non-disease genes with an impact on well-being is morally required. Assuming that our choice must be guided with the scope to reduce disabilities, giving the parents the opportunity to select whatever presents with better perspectives of well-being (Savulescu & Kahane 2009, 290).

This view leads to other and new questions. On the downside, will be the (moral) censorship and the parents' responsibility to choose, if not considered right. (Sparrow 2007).

There is no easy path. Taking the genetic destiny into our hands, the responsibility of doing or not doing, or the extent to which you do, becomes ours and we shall render account to our children, individually, and the society we leave them.

The emergence of values that will result from this debate will be the way to follow on the crossroad we are facing today and the subsequent obligation to legislate accordingly. Not excluding that, at the moment, changing ways is as fast as the knowledge-based society allows and economic interests may dictate, especially creating an eventual false belief of necessity regarding the access to these technologies thereby encouraging their acceptability (The *power* of marketing should not be desconsidered in the creation of consumer needs convictions).

Yet, from the decision on keeping the genetic randomness or choosing programmatically, the eventual consequences of excluding opportunities and skills from that decision may arise the eventual responsibility of parents on the loss or genetic alteration (Christiansen 2017).

As the reproductive autonomy and the right to genetic heritage are in conflict, the truth is we have a question of delimitation of that autonomy, since with these new techniques and respective medical intervention, *reprogenetics* (Green 2007), gains ground and with different limits from nature and human reproduction (Kimbrell 1997) making an even less tight border between the conflicting interests and practical conformation of both.

It is understood that genetic engineering and the promised *well-being*, puts on us, as individuals and while members of a society, the consequences of *bad genes* and its existence, as well as choices, or the lack of them, that we do (or may do) on behalf of our children and (bio)society that we built upon those choices, also making a biological citizenship (Rose & Novas 2003).

From this genetic engineering, which is being provided today, our children will demand responsibility from their genetic programmers As referred by Habermas (2008, first Published 2003, 13-14) the producer should be responsible for their consequences, possibly unwanted, that exist according to the organic choice made for your life and life history.

Beyond that, we are at the absolute threshold of human creation, irreversible and unrepeatable, and constitutes an appropriation of identity, especially genetic, and the historicity within, of others. As Habermas (2008, first Published 2003, 14) states, the appropriation of historicity of each makes it handle irreversibly “*for this poor soul there are only two alternatives, fatalism and resentment.*”

3. Human Dignity And Genetic Aristocracy

The human being as the first and last reference of the State is the primary element of the society. (In the Portuguese Constitution, the principle of human dignity appeared for the first time with the revision of 1951 Constitution of 1933).

Human dignity won the projection that we find today with the end of the World War II, particularly in International texts such as the Universal Declaration of Human Rights, adopted in 1948 by the United Nations, and is now clear and concise, referring Nietzsche, Sloterdijk (2000, 41) postulates, at the time of conflict between those “*who create the human being to be small and those who create him to be great, amongst humanists and super-humanists, human beings’ friends and friends of superman.*”

We are in this historical moment where technology acts on human beings. We are in this debate regarding the human nature itself.

Far from being perfect, the human species, especially the next generation, has a strong attraction to provide it – in addition to avoid hereditary diseases – with improved characteristics, in the possibility of having *posthumans* as called by Buchanan (2011). If so, we are on the threshold of altering the human nature itself and human dignity becoming measurable, and create qualitative differentiation. In Silver’s vision (2007, first Published 1997) of making our children the *GenRich* distinguishing them from *Naturals*.

Genetic engineering and intervention on the human genome level, and its endless options, brings the human being to the epicentre of the debate, since it is about this, or the human embryo, which acts on and raises a new dispute about the status of human embryo (Canotilho & Moreira 2007, 449), with greater acuity in scientific research.

In this theme, and amongst different situations, we can identify problems of genetic modification, on a germ-line (in addition, the human cloning) level, and the alteration of inherited genetic heritage, raises a problem about the exploitation of human beings, on a Kantian view, in which becomes not an end in himself but an object on the hands of others (Beyleveld & Brownsword 2001). According to his selfish will, and thus predetermining the manipulated without being able to do anything or have the free choice to do it. The discussion between what is a patient and a consumer is opened, which for us lies in the distinction between a human being and a thing. A border that is required by the human dignity, establishing man as an end and not just a mere object.

Genetic engineering had the gift to blur the line of distinction. Suffice to think in all situations of genetic mutation on a *non-patient* (i.e. without a pathology), for example in terms of characteristics such as beauty or intelligence. At this point it is undeniable that already exists a series of social mobility regarding this theme of *choosing* aesthetics features or physical or intellectual skills, not to mention the options of gender. Raising Singer (2009, reprinted 2013, 277), in his article Parental Choice and Human Improvement, first draws attention to advertisements in American newspapers of the most prestigious universities offering large sums for students to donate sperm or eggs, conferring to prospective parents, who reach for any ART technique using the donation of gametes or embryos, the possibility of having a child with the donor’s characteristics. I.e. given the attendance in a prestigious university, most likely the students are to be intelligent and physically gifted and thus transmitting these characteristics to their offspring, enhancing the possibility of *having a child with pedigree*.

Although it establishes, with a degree of certainty, this distinction if we are willing to become consumers (Nuffield Council report de 2018–vd. infra point 4—where for the heritable genome editing does not refer specifically to patients) of this biotechnology, which is admittedly alluring.

Whatever the option, the time is of (re)positioning the human being. This existential hype is for Kaufmann (2015, 40) the third source of philosophy, placing it at the time of *distress*, the philosophy of existence when human being is confronted with extreme situations, when his own existence is questioned, as referred by this same author quoting Ernest Bloch (2015 40), *distress* encourages thinking. Therefore, this is a moment of *distress*, the shift from human nature to *post-human* nature (Buchanan 2011).

Regarding the ethic matter of admissibility of altering the genetic heritage, artificially, with the scope of improving an individual, changing his historical background, and thus his identity to a limit of behaviour and *moral enhancement* is the boundary between the threshold of humans and things.

4. Some Ethical Analysis

In 2016, The Danish Council on Ethics, in its report (2016) on the technology advancement CRISPR recommended that safety interventions should be ensured regarding genetic modification for the elimination of possible diseases in gamete or zygote.

None the less, some board members (Danish Council on Ethics, 2016, 11) identify, with great relevance, not only the risks to be considered but also other questions, especially ethics. The first argument lies in the lack of therapeutic urgency, important side effects, during not only the investigation period, but also those who may manifest later, after birth (what alone would involve research on human species to be able to identify them) and which being an intervention in the genome may appear in the following generations. The subject of human nature is given great prominence, since the intervention, especially in the unborn, without their consent alters its genome and subsequent generations. In addition to these arguments, the options, both in terms of gamete donation, as well as the perception of normality and tolerance are raised with great acuity.

In a different perspective, other board members (Danish Council on Ethics 2016, 13) weight the risks/benefits of genetic manipulation solely to eliminate serious illnesses (admitting that are still grey areas that should be considered) under penalty of the controlling effect that the manipulated may feel as well as a certain standardisation of characteristics.

On the year, the Nuffield Council on Bioethics (2016), regarding the use in human reproduction, especially in genetic alteration of embryos, showed concern in the study of ethical issues, recognising the controversy, what would be necessary to demonstrate the safety and effectiveness of techniques, being necessary a debate before these possibilities turn into an effective choice, as its public debate, affects the technology development, allowing the distinguishing between what is acceptable and unacceptable, reducing ambiguous areas.

Already in 2018, the Nuffield Council on Bioethics (2018) report, "Genome Editing and Human Reproduction: Social and Ethical Issues," inflamed the debate setting out a series of principles that leads us to a way of legitimise, not considering neither unethical nor morally unacceptable, the procedures for the heritable genome editing, in some cases, with the assumption principle of "welfare of the future person" (Nuffield Council on Bioethics 2018, 75). In addition, and cumulatively, to evaluate other conflicting interests and interests of others, society and humanity. In any case, the report sets out a series of principles to consider, recommending an extended public debate on this matter. In any moment, the report is limited to therapeutic uses. It is therefore crossed the risk that until now was red light.

Conclusions

Genetic engineering, especially the mutation of characteristics, is at risk of assuming as a form of *deliberate quality control* (Habermas 2008, first Published 2003, 30) creating life according to the preferences and wishes of third parties towards the object of creation, which will live with them through the *composition of the their genome*.

The power of today in tomorrow's generation in the determinism of their life projects, collides with the freedom of children and their self-determination, with no way to reverse the process, creating an instrumental link between both, figuratively in a conception between creator and creature and, in this case, to fulfil expectations, waiting, sooner or later, to project and constitute a characteristic or quality that will manifest.

In genome editing there is an effective *enhancement* of people's characteristics, imposing a change in spontaneity of self-perception, therefore any eventual limitation of the autonomy of life, actions and consequences, may place, either by determinism, or by sharing actions put into practice by the manipulator given the fact that they may be conditioned by selected genetic characteristics. Contrary to what happens in the negative eugenics, there is no reason to suppose that there is consent in artificial mutation which leads to a unrepeatable way of life with no way of turning back.

If so, on one hand we have the possibility to improve each person's characteristics to better adapt the organism to environmental conditions, ensuring a better and improved quality of life, enhancing the opportunities that may reasonably aspire.

The boundary is dubious and the choices are not easy, considering the endless options that science present us, the distinction between a patient and a consumer is not easy but, for us, is the essential distinction between reproductive autonomy and the right to genetic inheritance, between *creating* a human being and *creating* a thing.

In any case, and no matter the option we make, the responsibility we take from destiny (or God, as you may wish) becomes ours.

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References

- Almeida Araújo, M. 2016. "To be or not to be? The Wrongful Life Claims." *Lusíada Law Review* 16: 91-133.
- Beyleveld, D., & Brownsword, R. 2001. *Human Dignity in Bioethics and Biolaw*. New York: Oxford University Press.
- Buchanan, A. 2011. *Better than Human: The Promise and Perils of Biomedical Enhancement*. UK: Oxford University Press.
- Buchanan, A. 2011. *Beyond Humanity?* UK: Oxford University Press.
- Buchanan, A., Brock, D. W., Daniels, N., & Wikler, D. 2000. *From Chance to Choice: Genetics & Justice*. UK: Cambridge University Press.
- Canotilho, J. J., & Moreira, V. 2007. *Constituição da República Portuguesa Anotada (artigos 1.º a 107.º)* (4.ª Edição Revista ed., Vol. I). Coimbra: Coimbra Editora.
- Christiansen, K. 2017, November 14. Genome editing: Are we opening a back door to eugenics? *ScienceNordic*. Retrieved September 14, 2018, from <http://sciencenordic.com/genome-editing-are-we-opening-back-door-eugenics>
- Coutts, M. C., & MacCarrick, P. M. 1995, Junho. Eugenics. (T.J. Press, Ed.) *Bioethics Research Library at Georgetown University* 5 (2): 163-178.
- Daar, J. 2017. *The New Eugenics: Selective Breeding in an Era of Reproductive Technologies*. USA: Yale University Press.
- Danish Council on Ethics. 2016. *Statement from the Danish Council on Ethics on genetic modification of future humans: in response to advances in the CRISPR technology*. Denmark. Retrieved September 7, 2018, from <http://www.etiskraad.dk/~media/Etisk-Raad/en/Publications/Statement-on-genetic-modification-of-future-humans-2016.pdf>.
- Douglas, T., & Devolder, K. 2013. "Procreative Altruism: Beyond Individualism in Reproductive Selection." *Journal of Medicine and Philosophy*, 400-419. Doi:10.1093/jmp/jht022.
- Fogarty, N. M., McCarthy, A., Snijders, K. E., Powell, B. E., Kubikova, N., Blakeley, P., ... Niakan, K. K. 2017, September 20. Genome editing reveals a role for OCT4 in human embryogenesis. *Nature*, 550: 67-73. Doi:<http://dx.doi.org/10.1038/nature24033>.
- Foucault, M. 1988 (First published 1976). *História da Sexualidade: a vontade de saber* (13.ª ed., Vol. I). (M. T. Costa, & J. A. Albuquerque, Trans.) Rio de Janeiro: Edições Graal.
- Fukuyama, F. 2002. *Our Posthuman Future. Consequences of the biotechnology revolution*. New York, NY: Picador.
- Green, R. M. 2007. *Babies by Design: The Ethics of Genetic Choice*. USA: Yale University Press.
- Habermas, J. 2008 (First Published 2003). *The Future of Human Nature*. Cambridge, UK: Polity Press.
- Habermas, J. 2015 (First Published 1968). *Técnica e Ciência como «Ideologia»*. Lisboa: Edições 70.
- Harris, J. 2009. "Enhancing Evolution: The Ethical Case for Making Better Better People." *Human Reproduction & Genetic Ethic*, 15:1. Doi:10.1558/hrge.v15i1.41
- Hildebrandt, C. C., & Marron, J. 2018, September. "Justice in CRISPR/Cas9: Research and Clinical Applications." *AMA J Ethics*, 20 (9): 826-833. Doi: 10.1001/amajethics.2018.826.
- Kaufmann, A. 2015. "Filosofia do Direito, teoria do direito, dogmática jurídica." In A. Kaufmann, & W. Hassemer, *Introdução à Filosofia do Direito e à Teoria do Direito Contemporâneas* (M. Keel, M. Seca de Oliveira, & A. M. Hespanha, Trans., 3.ª Edição ed., 21-53. Lisboa, Portugal: Fundação Calouste Gulbenkian.
- Kimbrell, A. 1997. *The Human Body Shop: The Cloning, Engineering, and Marketing of Life* (2.ª ed.). Washington, D.C.: Gateway.
- MacKellar, C., & Bechtel, C. 2014. *The Ethics of the New Eugenics*. New York: Berghen Books.
- Nuffield Council on Bioethics. 2016, september 30. *Genome Editing: An Ethical Review*. Retrieved July 16, 2018, from <http://nuffieldbioethics.org/project/genome-editing/ethical-review-published-september-2016>

- Nuffield Council on Bioethics. 2018, July 17. "Genome editing and human reproduction: social and ethical issues." Retrieved July 31, 2018, from <http://nuffieldbioethics.org/project/genome-editing>.
- Oliva Teles, N. 2011. "Diagnóstico Genético Pré-Implantação. Aspectos Técnicos e Considerações Éticas." *Acta Médica Portuguesa* 24: 987-996.
- President's Commission for the Study of Ethical Problems in Medicine, Biomedical and Behavioral Research. 1982, November. *Slicing Life: The Social and Ethical Issue of Genetic Engineering with Human Beings*. Retrieved March 6, 2017, from <http://bioethics.georgetown.edu/documents/pccmr/splicinglife.pdf>.
- Rose, N., & Novas, C. 2003. "Biological Citizenship. Blackwell." Retrieved September 12, 2018, from <file:///C:/Users/gab5/Downloads/RoseandNovasBiologicalCitizenship2002.pdf>.
- Sadhu, M. J., Bloom, J. S., Day, L., Siegel, J. J., & Kosuri, S. 2018, April 9. "Highly parallel genome variant engineering with CRISPR–Cas9." *Nature Genetics* 50: 510-514. Retrieved September 12, 2018, from <https://www.nature.com/articles/s41588-018-0087-y>
- Sandel, M. J. 2007. *The Case against Perfection: Ethics in the Age of Genetic Engineering*. USA: Harvard University Press.
- Savulescu, J. 2001. "Procreative Beneficence: Why we should Select the Best Children." *Bioethics* 15: 5/6: 413-426.
- Savulescu, J., & Kahane, G. 2009. "The Moral Obligation to Create Children with the Best Chance of the Best Life." *Bioethics* 23:5: 274-290.
- Silver, M. L. 2007 (First Published 1997). *Remaking Eden: How Genetic Engineering and Cloning will Transform The American Family*. USA: Ecco.
- Singer, P. 2009 (Reprinted 2013). "Parental Choice and Human Improvement." In J. Savulescu, & N. Bostrom, *Human Enhancement* (pp. 277-289). UK: Oxford University Press.
- Sloterdijk, P. 2000. *Regras para o parque humano. Uma resposta à carta de Heidegger sobre o humanismo*. São Paulo, Brasil: Estação Liberdade.
- Sparrow, R. 2007. "Procreative Beneficence, Obligation, and Eugenics." *Genomics, Society and Policy* 3 (3): 43-59. Retrieved September 17, 2018, from <https://pdfs.semanticscholar.org/50c5/f528dff06f5b542e8e6f7102a15bb10a7d22.pdf>.
- Zeng, Y., Li, J., Li, G., Huang, S., Yu, W., Zhang, Y., ... Huang, X. 2018. "Correction of the Marfan Syndrome Pathogenic FBN1 Mutation by Base Editing in Human Cells and Heterozygous Embryos." *Molecular Therapy* 26:(1).

Hope and Violence in Dystopia

Lima Bhuiyan

Nova Southeastern University, Tampa FL, nlimab06@gmail.com

ABSTRACT: The fact that America has been plunged into a period of dystopia cannot be argued. The nation not only meets the dictionary definition of dystopia itself, but we are daily watching an Orwellian present, which includes censorship, “alternative facts,” blows to education, muzzling of scientists and constant incitement of fear. Typically, dystopian fiction offers an escape that is so farfetched; it is not a real threat to daily life. In these stories humanity always steps up to help one another and anyone can make a difference; this is what makes these stories both hopeful, and relatable. But how does this translate into real life? In the days since the election of President Trump, we have seen this hope spill into the streets in the form of resistance. This paper will argue that while we might live in a dystopian present, there is a newfound surge of hope we have seldom seen in this nation that comes in the form of protest and violence. With each march, hashtag and moment of defiance, an ally speaks for the downtrodden and as history has proved, sometimes violence is the direly needed catalyst for change. Even in the face of dystopia, like reflecting the novels we have all come to know, the average person can and in certain cases, has a duty to fight for a hopeful future.

KEYWORDS: Dystopia, President Trump, *The Hunger Games*, protest

Introduction

Fiction has often warned of a far-fetched dystopian world; popular examples include improbabilities such as reproduction based on a caste system (*The Handmaid’s Tale*), books and education as banned (*Fahrenheit 451*) and even the concept of children battling in deadly arenas for the amusement of the few and privileged (*The Hunger Games*). These novels almost scold us from the future, detailing political consequences often not within the realm of the protagonist’s control. “Reader, turn back. Do what you must today to steer the world away from this eventuality now!” they shout. Yet, what would be the result if the warnings of such fictional books were not heeded? Within the first few months of filling the White House vacancy, President Trump’s initial acts as President included: a global gag order barring any American funding from going to NGOs which might provide abortion services or reproductive education, appointment of a Secretary of Education with no education experience, and spending much time engaging in questionable social media practices on Twitter. Additionally, American citizens have been detained and questioned about their religion, many fear round-up style deportations and environmental concerns such as global warming or the expansion of the North Dakota pipeline, continues to be ignored.

The architecture of a created dystopic world varies from novel to novel, but they all inflict similar feelings within the reader. In particular, these works of fiction seem to reinforce the idea of oppression by the rulers or government. That we currently live in the world fiction once warned us about cannot be denied. The Webster dictionary definition of dystopia states, “an imaginary place where people lead dehumanized and often fearful lives” (Dystopia 2017). It is a simple explanation but since the election and rise of Donald Trump rhetoric, many US residents have witnessed a type of dehumanizing fear, unlike any election before. There has been an increase of racial tensions not seen since the Civil Rights movement, constant threat of trade wars with international allies and anti-media or “fake” news hysteria; dystopia is no longer imaginary for the American populace but the period in which we now live. However, dystopia can also exist as a period for the populace effected. Essentially, a certain peoples can experience dystopia till change knocks everything askew. For example, 1800s US slavery was heinous and unbeatable dystopic way of life for the slaves but utopic for wealthy owners. Both groups lived in slavery as a system, till the metaphorical deck was suddenly re-shuffled with the Emancipation proclamation and that dystopic period had changed for both parties. Typically, dystopian fiction offers an escape that is so farfetched; it is not a real threat to daily life. Often in stories such as *Hunger Games*, *When She Woke*, and *The Uglies*, humanity always steps up to help one another and anyone can make a difference; this is what makes these stories both hopeful, and relatable. But how does this translate into real life? In the days since the election of President Trump,

we have seen this hope spill into the streets in the form of protest, social media awareness and even violence. This paper will argue that while many Americans might live in a period of dystopian present, there is a newfound surge of hope we have seldom seen in this nation that comes in the form of violent and non-violent resistance. With each march, hashtag and moment of defiance, an ally speaks for the downtrodden and as history has proved, sometimes violence is the direly needed catalyst for change. Even in the face of dystopia, as reflected in the novels we have all come to know, the average person can and in certain cases, has a duty to fight for a hopeful future.

Dystopia Now

On November 8th, 2016 the day after the US election, the Atlantic's (2016) front page was plastered with a jarring headline: "Deportations to Begin." In font much larger than the typical newsprint, the story went on to expand on President Trump's promise to deport illegals so fast, one's head would spin. The article also outlines a looming trade war as worldwide stock markets plunge and the extension of curfews across major cities. For the average US citizen, these are a world-shaking headlines. Mass round-up style deportations? Economic collapse? Curfews? This article outlined clear violations of civil liberty and outlined a martial-law way of living, opposed to the American values of equality and democracy, as if they were the normal news of the day. Was this reality? Fortunately, it was not, yet. The "dispatch from the future" type warning was a follow up of, former speech writer for President Obama, Jon Lovett's (2018) article outlining a post-Trump world. The Atlantic headline would seek, in a fairly jarring way, to make clear how terrifying a certain future, on a generally trusted medium could be. The article may have been alarmist, creating a colorful vision of a post-Trump America but the article was based on a then candidate Trump's own promises; how far-fetched was it really? Initially a part of the election, satirical critique of our media environment is an author's prerogative. However, candidate Trump is now President Trump and Lovett's piece – which traces Trump's tenure as the 45th president – is starting to look like plausible, if unintentional, prophesying.

While the Atlantic article is easy to dismiss as election year propaganda, a collection of news headlines within the first year of the Trump administration state: "Trump Signs Executive Order to Increase ICE deportation officers," "Trump Orders Mexican Border Wall to Be Build and Plans to Block Syrian Refugees," "White House Proposes Steep budget Cut to Leading Climate Science Agency," "Trump Bars Refugees and Citizens of 7 Muslim Countries." No longer propaganda, this is now the American reality and despite living in one of the safest times in human history, we are living in an age of fear. According to Glassner (1999), author of *The Culture of Fear*, "we are living in the most fearmongering time in human history. And the main reason for this is that there's a lot of power and money available to individuals and organizations who can perpetuate these fears." The 2016 election year held a mirror up to the American face and what we saw was a culture choked by fear; then candidate Trump was able to ride this fear into the White House by claiming he alone could save us from the rapists, the Muslims, gays, etc. Left in its wake is America in a dystopic period, full of distrust of each other. According to the Pew Research Center, anti-Muslim hate crimes has increased by 67%, over seventy bomb threats to Jewish community centers in 2017 alone, 2018 saw a mass shooting in a synagogue of worshipers primarily over 55 years old in age and there increasing displays of White Supremacy across the nation (Kishi 2016). Americans are full of fear, insecurity, angst and face uncertain odds, living in a dystopic period worthy of any classic "warning" novel.

Upon establishing that minority populations in the current Trumpian presidency live in a dystopic period of dehumanization, dystopic fiction can be referred to as a roadmap for what the future holds in upcoming elections and generation. The overall theme of nearly all dystopic fiction is either resistance leading to change, or termination of the protagonist and acceptance of the status quo. For example, in *The Hunger Games* trilogy, by Suzanne Collins (2008, 2009, 2010) a young girl is looped into an elitist government's sadistic game of pitting children aged twelve and above, into an area to battle to the death. The reason for the games as stated by the government, is to serve as a constant reminder of the price of resistance. Unwilling to play, the female volunteer from District 12 displays a resistance seldom televised on mandatory viewing. Across the trilogy, constant acts of resistance incite several, mostly of poorer income, Districts, to also rebel, threatening the very

structure and existence of the existing government. She becomes a living symbol of resistance. Only by becoming this, does the idea and will for resistance continue. *The Hunger Games* is only one of many books, to offer the idea of resistance to battle the existing order, holding dystopia in place. In *Fahrenheit 451* by Bradbury (2003), we are presented with a future in which firemen start fires to burn books. The practice is started to prevent offending anyone or causing anyone to think critically, and escalates till the world no longer has to think, enjoy nature or humanity at all. Every routine is the same and only the firemen handle the dangerous notion of destroying that which may induce thought. When a fireman becomes curious about books and starts to read some, he seeks to upset the world order by bringing books back. He is hunted and chased by government agencies to near death. He is only safe when taken in by a group of renegade intellectuals called, “the Book People.” The fireman’s act of resistance ultimately results in fighter jets bombing to city to ashes but the resistance, with their worldwide network of readers and philosophers, remain to attempt to rebuild civilization.

The point these books and countless others prove is that when faced with dystopia, there will always be resistance to oppose it and to preserve or better, the existing way of life. Each day the Trump presidency and with it, the stripping of basic human rights continues, a resistance across social media, marchers and protestors will continue and expand till it reaches a crescendo, demanding change.

The Resistance

For many minorities, every day headlines can feel like a personal attack. It is quite possible we are living in the throes of a full fascist insurgency. An argument can be made that economic and ecological collapse are looming and the consequences of these events will only accelerate the state’s backside into fascism as the ruling classes seek to consolidate power. And yet, all is not lost. The rise of President Trump has also given rise to a period of government resistance, seldom seen in this generation. They have taken the form of marches, person-person interaction, an explosion on social media, and any medium in-between. Calls for civility have been rendered meaningless and no political party has any plan to effectively combat or address the will of President Trump or those who follow his rhetoric. The only solution thus far, has been to challenge the world order.

Protest, even when violent, slow or lengthy, has been the only way to enforce the will of the people and America is a nation rich in the act of objection. Famous acts of protest include the Boston Tea Party, The Suffrage Movement, The Civil Rights Movement, protests of the Vietnam War, the Occupy Movement of 2010, the Women’s March in 2016 and many more in-between (Cromwell 2016). It is clear, American citizens are no stranger to standing up for their beliefs. In each of these periods, much like protagonists from the books we know, a person or peoples arose to fight the perceived oppressor. Similar to dystopic fictions, each of these movements had a similar protagonist who became a figure for change. In the Boston Tea Party, and subsequent Revolutionary War, General George Washington became the face of the moment, as Katniss is the symbolic Mockingjay in *The Hunger Game* series. The Suffrage Movement saw Susan B. Anthony, the Civil Rights Movement had Dr. Martin Luther King, etc. In these moments, whether colonial British subjects, women or blacks, each party saw themselves in a bleak world where they were barely regarded as a person. In other words, their lives were in a period of dystopia. Only through resistance and protest, did these periods end to result in new nations, new voters and even faster ends to wars.

In the current era, protest has taken many forms, but none more powerful than social media. Not only is there ease and accessibility, but additionally, the need for the charismatic Mockingjay figure, no longer exists. This face has been replaced by powerful hashtags. Facebook and Twitter posts, for example with #metoo have not only raised awareness of widespread sexual assault, they have ended careers of powerful Hollywood actors and executives. Since the presidential election of Donald Trump, there have been marches for women, science, the Dreamers, refugees, immigrants and often, gun control. In all these events, multitudes of voices—including those of celebrities, authors, scientists, etc.—have represented each cause. Washington’s Top News states, “Decades ago, it could take weeks of planning, newspaper ads, phone trees and a rousing speaker to organize a successful protest. Now a Facebook post or a series of tweets can fill the streets, jam a state capitol or block an

expressway” (Cohen 2018). This is a newfound power, born of a generation raised on the Internet and well versed in social media as a method of organization. So the question becomes, why does protest matter in this instance?

It is clear based on the above that there are portions of the populace, since the election of President Trump, who are under attack in some way. Whether it is a travel ban, stripping of rights or general increase of the threat of violence, the President himself often defames these minorities through his own Twitter account. If protest and social media is power and portions of the population are thrust into dystopic periods, fiction assures a counter peoples will rise to resist and provide the oppressed population hope for a better tomorrow. And thus, it has. Protest alone has accomplished the following, early in the Trump presidency: House Republicans have abandoned a plan to gut the Congressional Ethics Office, the VA was granted an exemption from President Trump’s hiring freeze, 500,000 green card holders were granted exemption from Trump’s immigration orders, the Department of Defense has secured permission to grant exemptions to the ban for Iraqis who work with the US military, and House Republican plan for a massive sell-off of public lands has been canceled (Yglesias 2017). These are remarkable gains but the bleak reality is President Trump’s hard-lined and ill-informed policies will continue to harm both individuals and the standing of the US in the world. However, as we can see, when the cries become loud enough, we the people can force those in power to bow.

Conclusions

Many living with and among us today, live in an era of fear, anxiety and dehumanization. This is a harsh truth that must be recognized as a society. For example, if a parent is unsure if a child will end up in a cage without release in sight, it is their period of dystopia. These periods can be cyclical in nature but for those experiencing it, the feeling of oppression is ever present. This must end. While we see the power of protest and social media harnessed to combat and defend the downtrodden, the fact government has come this far and executive power has become this unrestrained forces a long questioning of our future.

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References

- Associated Press. 2017, October 23. “EPA muzzles climate scientists”. *New York Post*. Retrieved from <https://nypost.com/2017/10/23/epa-muzzles-climate-scientists/>.
- Bradbury, Ray. 2003. *Fahrenheit 451* (50th anniversary ed.). New York, NY: Ballantine Books.
- Cohen, S. 2018, June 22. *Social Media Is the New Heart of Political Protests*. Retrieved from <https://www.usnews.com/news/best-states/illinois/articles/2018-06-22/todays-protests-many-voices-social-media-not-1-leader>.
- Collins, S. 2018. *The Hunger Games*. NY, NY: Scholastic.
- Cromwell, M. 2016. “7 times in U.S. history when people protested and things changed.” *Up Worthy*, December 08, 2016. Retrieved March 12, 2017, from <http://www.upworthy.com/7-times-in-us-history-when-people-protested-and-things-changed>.
- Dystopia. 2017. In Merriam Webster Online, Retrieved March 12, 2017, from <https://www.merriam-webster.com/dictionary/dystopia>.
- Gilbert, S. 2016, November 08. *Donald Trump’s Dystopias*. Retrieved March 12, 2017, from <https://www.theatlantic.com/entertainment/archive/2016/11/donald-trumps-dystopias/506975/>.
- Glassner, Barry. 1999. *The Culture of Fear*. New York, NY: Basic Books.
- Jaffe, S. 2016, November 15. Why Anti-Trump Protests Matter. Retrieved March 12, 2017, from <http://www.rollingstone.com/culture/why-anti-trump-protests-matter-w450561>.
- Kishi, K. 2016, November 21. Anti-Muslim assaults reach 9/11-era levels, FBI data show. Retrieved from <http://www.pewresearch.org/fact-tank/2016/11/21/anti-muslim-assaults-reach-911-era-levels-fbi-data-show/>.
- Lovett, J. 2015, August 18. Looking Backward on the Presidency of Donald Trump. Retrieved March 12, 2017, from <https://www.theatlantic.com/politics/archive/2015/08/the-election-of-donald-trump/401579/>.
- Miller, L. 2015, July 14. Fresh Hell. Retrieved March 12, 2017, from <http://www.newyorker.com/magazine/2010/06/14/fresh-hell-2>.

- Politifact. 2017. *Updated-Trump-O-Meter: Triple ICE enforcement*. Retrieved March 12, 2017, from <http://www.politifact.com/truth-o-meter/promises/trumpometer/promise/1440/triple-ice-enforcement/>.
- Reeves, J. 2016, November 10. *Many minorities frightened of what a Trump presidency means for them*. Retrieved from <https://www.pbs.org/newshour/politics/many-minorities-frightened-trump-presidency-means>.
- Strauss, N. 2016, October 06. *Why We're Living in the Age of Fear*. Retrieved March 12, 2017, from <http://www.rollingstone.com/politics/features/why-were-living-in-the-age-of-fear-w443554>
- The Atlantic. 2016. *Deportations to Begin*. <https://www.theatlantic.com/entertainment/archive/2016/11/donald-trumps-dystopias/506975/>.
- Union of Concerned Scientists. 2017. *Trump Administration Moves to Muzzle Scientists, Block Research*. 2017, January 24. Retrieved March 12, 2017, from <http://www.ucsusa.org/news/press-release/EPA-USDA-scientific-integrity#.WMXTlhIrdV>.
- Yglesias, M. 2017, February 06. *The big lesson of Trump's first 2 weeks: resistance works*. <http://www.vox.com/policy-and-politics/2017/2/6/14473482/resistance-works-anti-trump-protests>.

The Polysemy of the Lexeme "Stone"

Mirela Beatris Munteanu

"Timotheus" Theological Institute, Bucharest, Romania, beatris_munteanu@yahoo.com

ABSTRACT: The terms from the sphere of lexeme *piatra* (*stone*) are developing metaphorical meanings. The images based on the term *piatra* (*stone*) are spreading their semantics on different dimensions, from the usual meaning to a plastic representation viewed vertically. To fulfill the proposed purpose, we will stop at a research minicorpus composed on the basis of some phraseology dictionaries, as well as of a series of verses which belong to the biblical text. At the same time, we will emphasize the produced pragmasemantic effect, to force the interlocutor to pay attention in the sight of decoding the messages which contain the lexeme *piatra* (*stone*).

KEYWORDS: stone, semantics, lexical families, polysemy

Introduction

The word *piatra* (*stone*) comes from Latin *petra*, but because the Latin language has come into contact with the native people's languages, borrowed terms have emerged as synonymous which got specialized meanings, instead the Latin term has kept the general sense [„the relationship between the two terms, the Latin and the Traco-Dacian, underwent changes as the new term widened its meaning in the language, in other words, as the distribution of the two synonyms changed in the vocabulary as a whole” (Sala 2005, 29)]. In the Bible, the corresponding terms are Heb. *'eben*, Gr. *lithos* and *akrogoniaios* "corner stone".

The word *piatra* (*stone*) at the Biblical text level is used in various stylistic combinations, which we will classify according to the *Language Sciences Dictionary* (LSD 2005, 213) according to the linguistic level at which it stands, emphasizing the stylistic values of the lexeme.

1. The denotative meanings of the term

As it appears in various contexts, I have noticed that the *piatra* (*stone*) lexeme can have different symbols, because it belongs to both the htonian (terrestrial) space, here referring to the natural stone (*piatra*) (rock, mountain) and the uranian, celestial space, meaning hail. The man-made stone (*piatra*) (columns, menhireles, etc.) transforms the stone (*piatra*) into litomorphic embodiments of gods and mythical ancestors, thus Litolatry appeared which is worshipping the sacred stones - it is one of the archaic religion's form spread across all continents. The Persian God Mitra was born from a rock. The black stone brought by the Romans from Phrygia during the Punic wars represented the Great Goddess-Mother (Cybele). In general, the meteoric stones, also called "rain stones", are symbols of fertility. The mito-symbolic link between stone and birth, sustained in fairy tales and legends through various heroes and heroine transformations into stones (Evseev 2001, 139). The lexeme denotative meaning is given by the translation from the Orthodox Bible as *grindina* (*hail*) (Gr. *χάλαζαι*, Lat. *grindines*), the metaphoric sense being 'horrified, terrified'. The fall of the stone (*piatra*) is hyperbolically amplified by the evocation of the thunder and the fire that killed the unbelievers.

Moses stretched out his rod to heaven; and the Lord sent thunder and *stone* (*piatra*), and fire fell upon the earth. The Lord made the *stone* (*piatra*) fall over the land of Egypt (Exodus 9: 23). Then Moses stretched out his hand to heaven, and the Lord released thunder, *hail* (*grindina*) and fire on the earth; and the Lord rained *hail* (*grindina*) over the land of Egypt.

On the same note, stone and wood were the materials from which the idols were made [The etymon of the word idol is the Greek word *eidolon* which ment "some imagination, material or imaginative", ending in the form of a picture, depicting a divinity to which a cult is brought (sacrifice, libation, incense) as if it were itself that deity. - "Worshipers to the golden / fat bull" (Exodul 32: 1-35; Isaia 40,:19-20; 44: 9-20; Jeremia 10: 1-5). Today, the phrase also designates those who worship money. - "They have eyes, but do not see; they have ears, but do not hear" (Psalm 115: 5-6) - it is used with reference to fanatical followers of ideas, beliefs (Douglas 2015. s.v.)], the term used in Greek for *stone* (*piatra*) is also found in the expresison *piatră fără folos* (*useless stone*) (< Gr. *λίθος αχρηστος*,

Lat. *lapis inutilis*), used to put in antithesis the craftsmanship of the maker of an idol (named *chipped face* in Biblical terms) with its uselessness (referring to the material and to the helplessness of idols to do them), thus pointing out the absurdity of the idolatrous act [the absurdity of idolatric act is suggested by adjectives substantiated with a strong pejorative connotation *goods, power / inanimate, feeble, dead, helpless, incapable*. It insists on the noun vigor (εὐδράνεια, *hapax* in Greek, not translated in VET.LAT.) And the neutral substantive adjective *which has no vigor*. (Bădăliță et al. 2004, 268)].

Instead, you have set yourself up against the Lord of heaven. You had the goblets from his temple brought to you, and you and your nobles, your wives and your concubines drank wine from them. You praised the gods of silver and gold, of bronze, iron, wood and **stone (piatra)**, which cannot see or hear or understand. But you did not honor the God who holds in his hand your life and all your ways! (Daniel 5:23)

This practice was found on some rituals, and if the one who was involved did not die he was exonerated of the supposed demonism (Vulcănescu 1979, 205).

In this context, the expression *piatra de var (limestone)* is used only in Isaiah chapter 27: 9 as an illustration of what should be done to the altar of idols, if the people want to be restored to their rights. They should be destroyed as if they were made of gypsum or limestone (*piatra de var*).

On the other hand, as we find written in the Old Testament on the priest's garment, on the breastplate's shoulder (Douglas et al. 2015, 125) were two precious stones, and on the breastplate were twelve stones arranged in four rows (*tetrastih*) on which the deeds of the two tribes were written (Gr. Δόξαι, Lat. *Magnalia*). [In Heb. *hosen*, a term that is translated as 'breastplate' (Exod 28: 4, 15-30), 39: 8-21, cf. LXX, *peristhion*, Exod 28: 4), is however obscure from the etymological point of view. In general, it now recognizes the relationship that the word had with a family of Arabic words that have the meaning of "beauty" and no other word allegedly related inspires confidence. Most of the commentators tend to translate as "sack". Made of the same material as the ephod (Exodus 28:15), the breastplate was a square sack (v. 16), with gold rings on the four corners (v. 26) The bottom rings were fastened with blue ropes with the rings that were above the ephod girdle (v.28). On the breastplate there were placed 12 precious stones, each bearing the name of a tribe of Israel (v. 17-21) and two gold chains were fastened to the ephod's shoulders on the upper part and to the two rings of the breastplate at the bottom (vv. 9-12, 22-25). So symbolically, on the one hand the nation, in the eyes of God, depended on the person and the work of a great priest, and on the other hand, the priest continually presented the people before God as a responsibility he fulfilled out of love (v. 29), and to the same extent, containing the prophecies *Urim and Tumim (verse 30) - where we also have the name of "the breastplate of judgment" (v. 15; cf the usual expression of LXX, (*logion tesriseos, "oracles of judgment"*) - *the breastplate symbolized the role of the priest as herald of the will God has for man* (cf. *Maleahi 2:6-7*.)] The Treaty of Saint Epiphanius (310-403), Bishop of Cyprus, written in the 4th century AD. is a unique work in the form of a letter addressed to Diodorus, bishop of Tira, in which the names and symbolism of the 12 stones on the priest's breastplate are explained. Rich in information extracted from Greek-Roman lapidaries, the work was translated into Armenian, Georgian, Latin. The first Breastplate, described in Exodus, is recognized as Aaron's Breastplate, dating from the Babylonian slavery. The Second Breastplate, also called the Second Temple's Breastplate, was built after the liberation from bondage, with stones whose names were translated correctly only in 1611, in the German version of Luther's Bible. Philon considered that the two precious stones on the shoulders of the breastplate symbolized the moon and the sun, on each being written the six zodiac signs, and the 12 stones on the breastplate were the 12 zodiac signs (Bădăliță et al. 2004, 282).

2. Connotative meanings of the term

The word *piatra (stone)* is also used in Biblical text in a figurative sense in various stylistic combinations, which we will classify according to the typology of style figures with text application.

2.1. Sound figures or metaplasms (based on modifications made on a phonetic level) occur in close connection with the affective state of the speaker: **proper** (alliteration, assonance, paronymosis,

rhyme and inner rhyme), and as **phonetic accidents** - metathesis, syncope, syneresis, apheresis, apocopa.

Alliteration is a figure of speech which consists in "repetition of some consonants (or syllables), usually from the root of words, with euphonic, imitative (onomatopoeic) or expressive (symbolic) effect; the effect is also due to the affective accent that repeated sounds carry". (Dragomirescu 1995, 67)

Then a woman threw a grinder (piatra de râșniță) on Abimelec's head and smashed his head.
(Judges 9:53)

In this context, the sound complex includes the vibration **r**, suggesting death, building a hyperbolic sound-dynamic image, the noise being reproduced by joining the consonants, **ț, ș, t** and **s**.

Assonance consists of "the repetition of the accentuated vowel in two or more words, especially in verse." (Dragomirescu 1995, 104)

2.2. Building figures (syntactic) or **metatax** - structures specifically made at syntactic level: **proper** (syntactic parallelism, enumeration, climax, anticlimax, repetition, anaphora, epiphora, anadiplosis, epanadiplosis, chiasm, chorus), **syntactic constructs** (asindet, polysindet, tmeza, ellipse, zeugma, silepsa, anacoluth, dislocation, hyperbat, hipalaga, inversion), **syntactic-lexical figures**, syntactic figures with semantic implications: (polyptotone, parigmenon, antanaclase).

Repetition's role is to emphasize "insensitivity, lack of mercy", the first millstone (piatra de moara) was fixed, unable to be moved.

His heart is hard as a stone (piatra), hard like the millstone (piatra de moara) standing underneath. (Job 41: 24)

2.3. Figures of thought (logic) or metalogisms - are not simple associations of terms, but they have a broad meaning over the wider structure of the text: antiphrase, antithesis, hyperbola, litota, irony, paradox, parable, reticence, allegory, euphemism, pleonasm etc.

Tautology *And Jesus answered and said to him, "Do you see these great buildings? Not one stone (piatra) shall be left upon another, that shall not be thrown down"* (Marc.13: 2)

The rhetoric encoded the main types of repetition: **anaphora** (at the beginning of a verse or a syntactic unit), **epiphora** (at the end of a verse or a syntactic unit), **epanadiplosis** (at the beginning and at the end of a verse or syntactic unit), and the repetition of a word or a group of words at the end of a metric or syntactic unit at the beginning of the next unit is called **anadiplosis** (Gr. *anadiplosis*", Lat. *reduplicatio* "reduplication"): "Who does well, well finds"; "Only the river is eternal: the river is a demiurge".

So there was hail (piatra), and fire mingled with the hail (piatra), the hail (piatra) was so very heavy that there was no hail (piatra) like it in all the land of Egypt since it became a nation (Exodus 9: 24). The text is circularly linked by anadiplosis epanadiplosis and anadiplosis.

2.4. Semantic figures (sometimes called tropes) or **metasemes**

2.4.1. Realized by mutations to the sense level - **metonymic series**: metonymy, synecdocha

Metonymy is a figure of speech which mechanism is ordered in the representation report "one name used for another: the cause for effect (the name of the cause for the name ...), the effect for the cause, the substance for content, the content for the substance, the sign for the meaningful work, the abstract name for the concrete name, the antecedent for the consistent, the consistent for the antecedent, etc. The term comes from Fr. *meto-rtymie*, Lat., Gr. *metonymia*, "re-naming, replacing a name with another". (Fontanier 1968, 48)

Like one who binds **a stone (piatra)** in a sling. Is he who gives honor to a fool. (Proverbs 26: 8)

Metonymy remains a semiotic process, perhaps even the substitutive phenomenon in the field of signs. Metaphor is a semantic process, perhaps even the genetic phenomenon by excellence in the speech instance plane. (Ricoeur 1984, 310)

Metonymy implies a meaningful transfer of sense by contiguity, the synecdocha being a particular case of metonymy. (Fontanier 1977, 176)

The semantic analysis of *the metonymic series* reveals the existence of common seams in the semantic structure of the two terms, so that the substitution of the stone in the sling by glorifying a

madman is possible because the seams coincide when referring to the rapidity with which a thing passes.

A: / sling /: (+ substance) - (+ natural body) - (+ solid) - (+ wood) - (+ white weapon);

B: / stone /: (+ substance) - (+ earth body) - (- organic) - (+ solid)

This image illustrates the aspiration for magnification, compromised in the case of the madman, configuring an universe insensitive to inner feelings.

2.4.2. Made through mutations in the sense level - metaphorical series: metaphor, comparison, personification, antonomasia, epithet, oximoron, symbol.

2.4.2.1. Metaphor is a "movement and extension of the meaning of words". "When the metaphor is placed within the sentence, it is no longer a deviant name, but a substantive statement". It goes beyond the semiotic sense, acquiring the semantic one. (Ricoeur 1975, 45)

The term comes from Gr. *metaphor* "transport, transfer" = the Greek verb *forein* "to carry, lead" and the *meta-* particle "change, pass beyond".

I will give them an undivided heart and put a new spirit in them; I will remove from them their heart of stone (piatra) and give them a heart of flesh." (Ezekiel 11: 19) the expression *heart of stone* (*inima de piatră*) is equivalent to *hardened heart*, which shows a special attribute of the heart.

For the *metaphorical series* the similarity of the two terms is not necessary, the metaphor is not a figure free of contextual, syntagmatic realization. Thus, the *heart of stone* expression comprises the insoles:

A: / heart /: (+ substance) - (+ organ) - (+ human) - (+ life);

B: / stone /: (+ substance) - (+ aspect of physical reality) - (-human) - (+ hardness) - (-life).

It is noted that by combining the two terms *heart* and *stone* the context (called by the μ Group semic intersection) designates the meaning of the expression "steadfast; dumbfounded" but also "insensitive, insensible".

2.4.2.2. Comparison

Fear and dread will fall on them; By the greatness of Your arm; They will be as still as a stone; Till Your people pass over, O Lord; Till the people pass over; Whom You have purchased (Exod.15: 16).

The comparison is introduced by *as* and its synonyms: *how, like, just like, such, alike, similar to, as, the same with, just like that*, etc. Academician Ion Coteanu (Coteanu, 1973, 129) considers that "in fact, the comparison has three terms: the third is the common acquisition of objects, beings or similar actions between them." The third term translates the common factor for compared and comparable, that is the notion approaching these elements, being an action or a state when it comes to verb comparison.

In the expression *as still as a stone (piatra)*, we identify some dimensions that, in objective reality, do not have clearly defined values.

The expressiveness of a comparison is also given by the different character of the domains from which the two terms come (concrete-concrete, concrete-abstract, abstract-concrete, abstract-abstract), in the given context we find an association between human and vegetal in order to revealing new and surprising similar features (mutenia - stone).

2.4.2.3. Epithet

The Lord said to Moses, "Pharaoh has a hard heart: he will not let the people go." (Exodus 7:14)

The **hard heart** expression is the meaning of Gr. Καρδία σκληρά with the meaning of "heavy heart", refers to Pharaoh's inability to accept that God is the one who controls everything (the antinomy of the expression being *a listening heart*). The meaning of the *heart* notion is 'mind, reason' (Gr. Καρδία), the heart being the seat of both the passions, the intelligence and the free will of man, so we can say that the source of the hardness is expressed by the lexicalization of the noun *stone (piatra)* that appears as an epithet of "stubborn, proud, wretched man." Pharaoh is insensitive to Israel's desire to be released.

The adjective *hard (impietrit)* is formed by conversion from the participle of the verb *to harden*. The participle has a durable sense, without expressing time ("a kind of general present, generalization"). Pană Dindelegan 2007, 165 considers the participle is characterized by attracting it

to other parts of speech. However, the passage is not a complete one, it retaining traits linked both to the verbal nature and to the class to which it is oriented. It has an intermediate status ranging between the verb and the adjective, sometimes between the verb and the noun or verb and the adverb, but it does not remain an authentic verb but no other type of word.

In this context, we meet one of the two values of the verb: the reflexively transitive aspect 'to become or become insensitive' here referring to God's action that hardens Pharaoh's heart. The intransitive aspect refers to the sense of 'losing the ability to act (due to strong emotions), to harden, to be strong (referring to will)', found in the context in which Pharaoh *hardened his heart* (*But when Pharaoh saw that there was relief, he hardened his heart and did not listen to Moses and Aaron, as the Lord had said* - Exodus 8:15). At the morpho-syntactic level, the verbal form defines the inner struggles of the being.

In the New Testament we find two occurrences of the expression in the Gospel of Mark:

- *for they had not understood the wonder of the bread, for their heart was hardened.* (Mark 6:52)
- *Jesus understood this and said, "Why do you think you have no bread? Do you still not get it and still do not understand? Do you have your heart hardened?"* (Mark 8:17)

Barclay (1992, 54): asserted that, in this context, "the word *hardened* (*impietrare*) (Gr. *pepōrōmenē*) describes here the blind insensibility, which does not teach any lesson. Sometimes we say that things leave no "impression" on a person. There were Greek thinkers who believed that things literally left an "impression" on the mind. It was as if words, images and ideas were printed on the matter of the mind, soft as wax, and literally left a "footprint". But clearly, if the mind becomes hardened, no print can be printed on its surface. Here the word describes the inability to assimilate the teaching. It describes the man who is enveloped by his little world so much that he can not touch anything from a "different world," the man whose mind is locked up from all ideas, except those which belong to him, the man who is insensitive to the lessons that the events give him".

Referring to the *hardened heart* as the headquarters of interiority, we can extrapolate by saying that *stone* (*piatra*) can be the word, the language symbolizing the outside man who has the decisional capacity. Thus, we can speak of a redoubling from the perspective of human attributes, either of the heart or of the tongue (Rotaru 2014, 5).

3. Other phrases

Unlike free jointing of words, the phraseological ones already exist in the language, are consecrated in use and are perceived as distinct units, precisely because it realized "to a greater or lesser extent, the structure of the elements that make them" (Hristea 1984a, 134). In relation to the free syntactic groups: *sharp stone*, *large stone*, *small stone*, etc., the lexical connection "test stone" (Isaiah, 8.14) in the sense of "probation".

Sharpening stone / top stone

In the Book of Judges chapter 9: 4 *So they gave him seventy pieces of silver from the temple of Baal-berith. Abimelech used it to hire worthless and reckless men, and they followed him*, we meet the expression "worthless men" in the sense of 'naked men (without meaning and without reputation) and reckless.'

Grindstone

Then a woman threw a grinder at Abimelec's head and smashed his head. (Judges 9:53)

Grindstone is used in the literal sense of "spinning stone", referring to the upper half of the mossy stone, which was spinning during the grind, unlike the lower stone, which remained motionless. The stone above was weighing between 2-4 kilograms.

No one shall take a mill or an upper millstone in pledge, for that would be taking a life in pledge. (Deuteronomy 24: 6)

It is believed that getting *the two grindstones as collateral* is equivalent to *crushing, ruining* someone's life.

The grinder or hand mill was made up of two stones of different hardness: a soft one, called *catillus* (a mobile stone that was centered on a wooden deck or a metal rod), and a hard, fixed - *meta* (had a hole in its center for the central shaft) [DEX: RASNITA, rasnite, s. f. 1. The rudimentary

machine for grinding salt, corn, etc., consisting of two superimposed stones, one of which is rotated by a handle. ◇ Expr. Getting from the mill to the cave = getting out of a good situation in a bad one; to escape. One's mouth runs as a mill = to speak a great deal; to speak continuously; to not shut up. ♦ Primitive mill moved by traction animals. 2. Kitchen appliance that grinds coffee beans, pepper, etc. - From Bg. *rasnica* (DEX 98)].

The stumbling stone signifies an obstacle, a weight you are struggling with, or a test where you can fail. In Romans 11: 9 (Gr. *Skandalon* translates the Hebrew word *miksol*, but also *moqes*; "trap", "lace"), it meant the stick that closed a trap.

The Stone of the Serpent ("The Stone of Zohelet", AV) ('*eben hazzohélet'*) A stone near En-Roguel, in the SE of Jerusalem, the place where Adonia sacrificed animals (1 Kings 1: 9). It is not known precisely what *zohélet* means, but it is usually associated with *zahal*, "to retreat, to crawl backwards". Starting from this association, some translate the phrase with "stone of slip" and connect with a steep and slippery rocky slope called *zahweileh* by the Arabs, or with a certain place around, near Siloam. The translation "serpent stone" can be explained by a possible identification of the *En-Roguel spring with the Jackal Fountain (Nehemiah 2:13) (Douglas et al. 2015, s.v.)

The testing stone (Gr. *λίθος δοκιμασίας*), expression is based on the use of a tough black stone to test the value of jewelry. The figurative meaning is used when it comes to overcoming a very difficult test. The unwise man sees wisdom as a burden, as an attempt that is difficult to overcome.

Conclusions

Further research is to complement this material from cultural semantic interdisciplinary and phraseological perspectives.

Our goal was to try to understand the significance of the term *stone* (*piatra*) in different contexts of Scripture, the Biblical terminology being encircled by more or less widespread elements, some even synonyms. The metaphor, the comparison, and the other figures of speech started from all walks of life, show us once again the beauty of the context and the imagination of the person who disambiguates the sign. For now, we signal a concordance between the Biblical text we analyze from the point of view of the expressivity and the Latin correspondent of the lexeme *stone* (*piatra*).

References

- DEX 1998. "Dicționarul explicativ al limbii române (The Explanatory Dictionary of the Romanian Language)." Bucharest: Academia Română, Institutul de Lingvistică „Jorgu Iordan”.
- LSD 2005. "Language Sciences Dictionary." By Angela Bidu-Vrâncănu, Angela, Cristina Călărășu, Liliana Ionescu-Ruxăndoiu. Bucharest: Nemira&Co Press.
- Barclay, William. 1992. "Analiză semantică a unor termeni din Noul Testament (Semantic analysis of some terms in the New Testament)." Trad. Doris Laurențiu. Wheaton, Illinois, U. S. A: Societatea Misionară Română.
- Bădiliță, Cristian et al. 2004. *Septuaginta I, (Geneza, Exodul, Leviticul, Numerii, Deuteronomul)*. Bucharest: Polirom Press.
- Cornilescu, Dumitru. 2017. *Biblia (Bible)*. Bucharest: Editura Stephanus.
- Coteanu, Ion, 1973. *Stilistica funcțională a limbii române (The Functional Stylistics of Romanian Language)*. Bucharest: Romanian Academy Press.
- Douglas, D. 2015. "Dicționarul Biblic (The Bible Dictionary)." Bucharest: Cartea Creștină.
- Dragomirescu, GH.N. 1995. "Dicționarul Figurilor de stil (The dictionary of Figures of Speech)." Bucharest: Scientific Press.
- Eyseev, Ivan. 2001. "Dicționar de simboluri și arhetipuri culturale (Dictionary of Cultural Symbols and Archetypes)." Bucharest: Amarcord Press.
- Fontanier, Pierre. 1968 and 1977. *Les figures du discours*. Paris: Flammarion.
- Hristea, Th., Hristea. 1984a. *Sinteze de limba română (Synthesis of Romanian language)*. 3rd Edition. Bucharest: Albatros Press.
- Pană Dindelegan, Gabriela. 2007. "Studii lingvistice: omagiu profesoarei Gabriela Pană Dindelegan, la aniversare (Linguistic Studies: Homage to Professor Gabriela Pană Dindelegan at the anniversary)." University of Bucharest Publishing House.
- Ricoeur, Paul. 1975. *La métaphore vive*. Paris: Edition du Seuil.
- Ricoeur, Paul. 1984. *Time and Narrative*. University of Chicago Press.

- Rotaru, Ioan-Gheorghe. 2014. "Graiul te dă de gol (Your language gives you away)." In *Argeșul ortodox (Orthodox Argeș)*, Săptămânal teologic, bisericesc și de atitudine al Arhiepiscopiei Argeșului și Muscelului, Curtea de Argeș, anul XII, nr. 610, p. 5.
- Sala, Marius. 2005. *Aventurile unor cuvinte românești (The adventures of some Romanian words)*. Bucharest: Univers Enciclopedic.
- Șăineanu, L. 1967. Încercare asupra semasiologiei limbii române. Studii istorice despre tranzițiunea sensurilor (Historical Studies on the Transition of Meaning). Bucharest: Tipografia Română.
- Vulcănescu, Romulus. 1979. "Dicționar de etnologie (Dictionary of Ethnology)." Bucharest: Albatros Press.
- Weinreich, Uriel. 1964. *Languages in Contact*. With a preface by André Martinet, Third Printing, Hague-Paris-Mouton, Mouton & CO.

The Beneficences that Happened to Indian Society from the Teachings and Thoughts of Nivedita

Baishaki Das Saha¹, Debarati Mukherjee²

¹Assistant Professor, Department of Philosophy, Women's College, Kolkata, India
baisakhi.dassaha@gmail.com

²M.A., Department of Philosophy, Jadavpur University, Kolkata, India
debarati.bristi.mukherjee@gmail.com

ABSTRACT: With the evolution of society the concept of well-being keeps on changing with initial emphasis on socio-cultural empowerment of human being. Any civilization reaches its highest excellence with the help of organized integrated human being. In the context of continuous changes of social structure - education, culture and creation has the prior role to fulfill this duty as, with the help of this three, human being can manifest its thought and work. Manifestation of thought and work are very much required for a civilization to sustain. The existence of human-being and society is closely interdependent and values have a very important role in this. In this new era of continuous changes, unification of culture and civilization, gives us a new path where by combining the old culture (ancient and medieval) with the new culture (modern) can take our society to its highest excellence. In 19th century when culturally rich Hindu civilization was in endangered situation, to protect the society Bhogini Nivedita started advocacy of real education and the rich Indian culture. The effects of her acts are still flowing in this 21st century. The purpose of this paper is to raise the important issues of 'well-being' of human and how it is going to play a role in making the future society – by the inspiration of sister Nivedita. The two main pillars of the Indian culture, that is 'self-sacrifice' and 'service for others' have an effect on education. Education and progress of women are the key powers of a nation. These two powers are the prime tools for socialization and organizing a society. It acts as a catalyst in realizing nationalism which can transmigrate into internationalism.

KEYWORDS: Empowerment, human being, Nationalism

Introduction

“There is no chance of the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on one wing.”

- Swami Vivekananda

The world human civilization have experienced three periods – Ancient, Medieval and Modern. Each of these periods is unique in their characteristics. In these periods, with every changes many problem arises and only human being found the solutions of these problems. Every society faces social problems. Society without problem is a utopian concept. Still, human being secures their existence and progress in this society by the help of interaction between themselves. Whatever problems we are facing today, maybe we will not consider it as a problem in the coming future. Social problems which create obstacles in our life are basically the result of the deviation from social norms.

The best natural way to dissolve these obstacles, is the presentation of real education in front of the world. Only real education can help a person to develop his own self. As a result as he wants to stay in a good state; he also wants others to stay in the same state of life. This self-realization of human being can bring effective solutions to every problem in society we are facing today or we can face tomorrow. At the same time this will help to grow a society by holding its ancient culture and merging it with the extract of new one. Culture is the holistic deed of a person for his biological, social and spiritual need. Knowledge, belief, art, ethics, law, custom these all are part of the culture. Culture replaces civilization and an exalted civilization only can elevated every human being to its highest state.

After staying under Vedic culture for more than 100 years, it has been seen a new trait to indulgence Hinduism from very starting of AD. Today technological enhancement and economic

globalization make global citizen very close. As a result Indian society and psychology gets affected by western life style, eating habits, dress, mentality of competition, materialistic view, education etc. Even Indian spiritualism spread everywhere which evolve to a universal spiritualism. In this crucial time Sri Ramakrishna, Sri Ma Sarada and Swami Vivekananda incarnated to spread the main essence of Hinduism to the whole world.

The first renaissance in Bengal happened at the period of Hussein Shahi at sixteenth century. Second time it happened at nineteenth century, on the basis of the conflict between Indian-Western education and culture. That time Indian society was inverted with religious and social superstitions. Swami Vivekananda called Margaret Elizabeth Noble to be here in India and help people for their betterment and to upheaval Indian women. The reason behind this invocation lies in her keenness in literature, culture, art, science and her attitude which have the potential to evoke a nation to its highest strength, the mentality of immolation herself for the betterment of the people of India.

Teachings and Thoughts of Nivedita

On the month of January 1898 Nivedita printed her footprints in her dreamland – India for the first time. Leaving her nation-religion-culture-family-environment she started a new journey with Indian thought-culture-environment. Initially, she has seen India through Swamiji's eyes. Later when she got to know the land of diversity and its culture through her own eyes she devoted herself totally for the upliftment of its people. She understands the importance of education for the wellbeing of everyone. Only education, culture and civilization can uplift a person to his extent. Nivedita with education takes her first step towards fulfilling her dream. First, she starts giving education to women of the nearby locality and for that she establishes a school in 17no Bagbazar bospara lane.

She has given her all experience to elevate every woman, their thought and sole through education. One of her direct student - Saralabala Sarkar state that, Nivedita has uses such processes to educate her students, that if there was a girl who was a slow learner, even she also understand and remember her teachings very well. She teaches them a play 'jor ki bijor'[in Bengali] and it was the first step to learn addition and subtraction. Small little girls learn counting with the help of the seeds of some easily available fruit. This method of learning with easily available things and learning through play was her unique thought. In this way, she combines Indian culture and things with western processes and it develops a more easy and accessible education. In her school, girls used to learn history-geography, as well as Ramayana-Mahabharata. Moreover, mathematics-understanding maps- life science-dance-singing-painting-sculpture-physical education these also were a part of learning in her school. She has tried not only to give knowledge but also vocational education, which helps a person to develop himself from every aspect of life and make him independent. Nivedita from one aspect devotes herself to teach her students' western language and science, from another aspect she tries to develop nationalism within them. As a sign of that she place banana tree and mangalghat (a specific pot Indian uses as a symbol of blessings) to celebrate the release of freedom fighter in front of her school.

For building students character, Nivedita takes inspiration of sanctitude from Sita and Sabitri (two holy women of India scriptures), at the same time she takes inspiration of firmness from Gandhari (Mother of Kauravas in Mahabharata). Ideally, she wants to uphold the life of the Indian women. Only the life style of Indian women which includes dedicated, strict religious austerities, tolerance, kindness and this can build the character of a woman in such a way that every woman can hold the nation.

Her realistic perspective of life gives her a stage to work with poor women. This gives a platform to the poor women to be empowered and economical independent. This independence makes women elevated from every aspect of life. Nirjhrion Sarkar has given an amazing picture of this scenario. Many poor women come to her school to learn sewing and different hand crafts. Other than that they make pickles and globule to earn money. These concepts were in them after Nivedita evokes their mentality and try to develop them from every aspect of life. This kind of activity of Sister Nivedita makes her one of the main leaders of that time and onwards.

Conclusion

Nivedita identifies the two main pillars of Indian education - that is sacrifice and love. Self-sacrifice is the origin of love and love can maximize sacrifice. For the all-around improvement of kids, Nivedita gives importance on playing and love for nature. Nivedita also follows that, social security and malnutrition are the main barrier for the betterment of women, especially for them who stays in villages. She was simultaneously concerned about both mental and physical betterment of women. Today people are more concerned about women and aged people. This awareness of general people supports that, Nivedita's thinking related to women was appropriate and beyond any time limit. Nivedita did not want to build a single human being, she wants to build a nation and healthy a society.

For that, she set aside religion and caste. Swami Vivekananda wants everyone to flourish through their own nature and culture. Unity in diversity was his main focus and it brings his concept of Universal Religion to Practical Religion. Nivedita tries to fulfill Swamiji's dream to the extreme.

Till the last moment of her life, Nivedita tries to develop the mentality of masses and especially tries for the betterment of women. At the last moment of her life she said, "The boat is sinking, but I shall see the sun." Today her words are getting fulfilled; we are trying to elevate our life-our nation as she wanted. This is a tribute from our side to this great human.

Bibliography

- Atmaprana, Pravrajika. (Ed.). 1967. *The Complete Works of Sister Nivedita*. Vol-II. Kolkata: Ramakrishna Sarada Mission Sister Nivedita Girl's School, Kolkata.
- Atmaprana, Pravrajika. (Ed.). 2012. *The Complete Works of Sister Nivedita*. Vol- V. Kolkata. Advaita Asharma.
- Basu, Sankari Prasad. (Ed.). 1882. *Letters of Sister Nivedita*. Vol- I. Calcutta. Nababharat Publishers.
- Basu, Sankari Prasad. 1394. *Nivedita Lokmata*. 2nd Edition. Kolkata. Ananda Publishers. [In Bengal]
- Bhowmik, Dr. Amit. 2017. *Social Problems*. Kolkata. Rita Publication.
- Chaitannyananda, Swami. (Ed.). 2017. *Bharot Chetonay Bhogini Nivedita*. Kolkata. Udbodhon Karyaloy. [In Bengal]
- Debendrananda, Swami. 2011. *Sri Ramakrishna Vivekanander Nivedita*. Kolkata. Udbodhon Karyaloy. [In Bengal]
- Gisbert, Pascual. 1969. *Fundamentals of Sociology*. New Delhi. Orient Longmans.
- Maclver, R. M., Page and C. H. *Society: An Introductory Analysis*. 1949. New York. Holt, Rinehart and Winston.
- Memorial, Mayavati. (Ed.). 1990. *The Complete Works of Swami Vivekananda*. Vol- III. Kolkata. Advaita Asharama.
- Mataji, Amalaprana. (Ed.). 2016. *Bharat Chetana. Dekhineswer, Kolkata. Sri Sarada Math*. [In Bengal]
- Nivedita, Sister. 2013. *The Master As I Saw Him*. Kolkata. Udbodhon Office.
- Nivedita, Sister. 1918. *The Web of Indian Life*. London, New York. Longmans, Green and Co.
- Sanyal, Durgachandra. 1908. *Bangalar Samajik Itihas*. Kolkata. Model Publishing House. [In Bengal]

The Role of Culture and Communication in the Socialization Process

Samuiel Bâlc

Theological Baptist Institute Bucharest, Romania, samybalc@gmail.com

ABSTRACT: Given that people's behavioral patterns are so diverse, there is an unconscious tendency on the part of many to reject such behaviors. To avoid such situations, we need to know the importance of the social dimension of communication that is based on two fundamental factors: One factor is that each person is born in a particular culture with its perspective, its way of thinking and action. The second factor is that each person is born in a particular society, a community that has certain expectations of its members, certain modes of interaction, etc. Consequently, in order to understand the behavioral patterns of a community and to integrate within the community, particular attention must be paid to both culture and communication. At the same time, it must be established that socialization requires understanding and acceptance of changes that need to be made, recognizing that this requires time. Those who share a common culture are a society, a community. Each generation of a particular society receives the culture of society, the community of the previous generation, enriches it, and transmits it to the next generation. Therefore, one can say that a culture is not static but constantly changing. Thus, to communicate effectively and to integrate into a society, communities must have an adequate knowledge of culture.

KEYWORDS: Culture, communication, socialization, behavioral patterns, society

Introduction: Culture and Communication

One of the most commonly used statements about communication is this, "Communication is fundamental to the human being." Interestingly, one of the reasons why many relationships are destroyed is also linked to communication. As Burke (1962, 547) said, "Our problem is Babel." Sir Maurice Mawby also argued that "Man is not a solitary being, he cannot live alone, so he has to learn how to live with other people" (Mawby 1972, 26).

"The language condition in human life seems to be of major importance," said Kraemer (1956, 66), because when the power of the Holy Spirit reigns, in other words, when the divine-human dialogue is restored, confusion caused by different languages disappears and perfect communication is restored".

The communication was perceived by Aristotle, Cicero or Quintilian as an art, their theory being called rhetoric and their oratory practice. [For ancient people, from places like Athens, Rome or Alexandria, rhetoric was the highest intellectual achievement because it involved both excellent learning and persuasive talents. For the common man, today, it probably means more than a bombastic speech. Oratory is the art of composing and speaking speeches; the art of speaking in public, eloquence, DEX, 2nd Edition, Encyclopedic Universe, Bucharest, 1998, p. 725]. Aristotle defined rhetoric as "an art of discovering in every case the means of persuasion available" (Thys & Ingram 1954, 19-24). [The persuasive was successful when he determined his audience to pursue beliefs and righteous actions, which of course were not very easy to define].

Regarding the communication process for integrating an individual within a community, De Fleur (1970, 76) makes the following confession:

The process of communication is fundamental to all our psychological and social processes. Without repeatedly engaging in communication with our closest friends, none of us can develop our mental processes and social nature that distinguish us from other forms of life. Without the language systems and other important communication tools, we could not carry out thousands of organized activities in groups and live our lives in interdependence. However, despite the invaluable importance of the communication process for every human, group, society, we have

less knowledge about it than about the life cycle of a bat or about the chemical composition of sediments at the bottom of the oceans.

Such an observation should concern those who ignore or minimize the role that culture and communication have in the socialization process. Keep in mind that both culture and communication give you the opportunity to have great experiences in integrating into a community. Burke (1962, 579) interprets the experiences of communication as dramas, the analytical tool of his dramatic approach consisting of five elements: act, scene, intermediary (agent), activity and purpose. Shannon & Weaver (1949) built a communication model containing elements such as a sender, recipient, channel, code, encoder, sound decoder, and feedback.

It is therefore important to note that the message is not independent. Many misunderstandings could be avoided if it were understood that, first, the messages are in the human being (transmitters and receivers) and only then they turn into codes - that is, words, images or actions. Effective communication in its own nature, as Kraft (1983, 107) calls it, "receptor-oriented."

A particularly important element at the heart of the communication process is the symbol. It is known that one of the unique abilities of the human being is the ability to sense the elements of a code, which otherwise would have no meaning. In this respect, the Spanish philosopher, Arranguren (1967, 23-26) draws attention to this feature of coded systems when he identifies any means of transmission as a sign that has no meaning isolated. This feature is perceived as being unique to the symbols that are so compared to the signs.

Nida (1960, 65) claims that "signs indicate the essence of a particular thing, event, or condition in a given context. Symbols can be understood instead of the immediate context or the stimuli." For the socialization process to take place effectively, it is important to take into account every element involved in intercultural communication. From the perspective of Hesselgrave (1991, 46):

Human communication is only partially effective even in the most ideal circumstances. Why? Because the shared encoded and decoded element is not complete. Differences in culture, personality, experiences, interest, long-term and short memory hitting coding and decoding processes. The result is that the receivers rarely decode exactly the same message that has been encoded by the transmitters. Thus, although we are discussing things such as discovering the author's intention and reverting the impact of the message on the public to whom it was addressed - and in common language we often say understand or see - it must be noticed that effective communication is not easy and communication shortcomings are not easy to avoid.

It must therefore be noticed that the communication process is not limited to factors previously thought. There are a lot of factors that can affect communication. Starting from Eldridge's (1950, 363) understanding of communication, namely "transfer of meaning through symbols" the question arises: Where can the meaning be found? To this question Kraft (1983, 110-115) presents three options:

- First of all, there are those who believe that meaning can be found in the outside world. The meaning is "there" and is waiting to be perceived and understood by people.
- Secondly, there are those who claim that meaning exists in the signs and symbols we communicate with. Kraft calls this theory the 'theory of freight wagon.'
- Thirdly, there are those who claim that the sense of meaning depends on people. The meanings do not exist in the outside world, nor in the symbols we use to describe the world. They are attached or even created in the minds of people who receive messages. As such, the meaning must be sought in people.

Note that without God, man's existence becomes meaningless. Without God, understanding things or messages is impossible and leads to a lack of consistency. After all, "Our basic goal in communication," said Berlo (1960, 12), "is to become agents to" affect "others, the environment and ourselves. Becoming determinants, let us express our opinion about how things are. In short, we communicate to influence - to

influence having an objective.” The more effective communication is, the faster the socialization process will take.

It is important to note that the extraordinary development of the society, the special resources available do not end the problems in the communication process. As Parks (1966, 167) said:

Different things can be transported across cultural boundaries, but their interpretation will depend on the context that those who interpret them will attribute. And this context will depend more on the experience of the past and the temperament of the present people, of those to whom the words are addressed, than of the kindness of those who speak them.

The distance between the progress of society and the communicative abilities of man is probably one of the most challenging aspects of modern civilization. Intercultural communication is as complex as the sum of human differences. Kluckhohn (1949) claimed that: "Culture is a way to think, to feel, to believe.

It is the group of knowledge of a group preserved for the future, (Kluckhohn 1949, 23) "while for Luzbetak (1963, 60-61): "Culture is the design of life. It is a plan through which society adapts to the physical, social and ideological environment. [...] Cultures are nothing more than different answers to the same human problems. Also, Barney (1973, 48-55) highlights that: "Every generation of a particular society receives the culture of society from the previous generation, modifies it, and transmits it to the next generation. So a culture is not static but constantly changing". All of these things, however, have a special role to play in the socialization process

When talking about integration within an ecclesial community, one cannot ignore the relationship that exists between Christ and culture. Richard H. Niebuhr has classified five perspectives on the relationship between Christ and culture developed by various theologians:

1. **Christ vs. Culture** - ex. Christ is the only authority, the demands of culture must be rejected.
2. **Christ of culture** - ex. the Christian system is no different from the culture in its own way, but only in quality, the best of the culture should be selected to conform to Christ.
3. **Christ above culture** - ex. receiving grace improves and complements culture.
4. **Christ and culture in paradox** - ex. both are authorities that have to listen, and the believer, therefore lives in this tension.
5. **Christ as Transformer of Culture** - ex. culture reflects the fallen state of mankind, in Christ humanity is redeemed, and culture can be renewed to glorify God and promote His purposes. (Niebuhr 1956)

An ecclesial community cannot therefore effectively communicate by ignoring the culture because the process of communication cannot be separated from culture. McGavran (1974, 67) points out that "every culture is reasonable in the specific circumstances in which it has developed." According to Kraft's (1979, 49) statement: "An observer should be careful in evaluating a culture, first of all in terms of its own values, goals, and interests before venturing to compare it with another culture (either positive or negative). Evaluation should therefore only be made when enough effort has been made to understand the culture of the receiver from its point of view and not on the basis of personal cultural assumptions.

In the process of socialization, the contextualization of the transmitted messages also has a very important role. Speaking about contextualizing a message, Kato (1975, 12-17) wrote: "We understand that the term means creating relevant concepts and ideas in a particular situation."

Also, Nicholls (1975, 647) defines the contextualization as: "The translation of the unchangeable content of the Gospel of the Kingdom in a verbally understood form to the peoples of a certain culture, and within in particular existential situations." Peters (1977, 169) highlights that: "Properly applied contextualization means discovering the legitimate implication of the Gospel in a particular situation. This goes beyond the application. I can apply or not what I am reading without being injured. Involvement is required by a correct exegesis of the text." Contextualization can therefore be perceived as

an attempt to communicate a message in a way that is understandable to recipients in the cultural context in which they live, thus contributing to socialization.

According to Geisler (1978, 241-257), it should be noted that: "No one sees the world exactly as it is. Everyone sees it through the "smoky glasses" of his own perspective." Therefore, in order to convince others it is important to identify with them. Regarding this, Burke (1962, 579) said, "Convince a man only when you speak his tongue, through speech, gestures, tone, order, image, attitude, ideas, identifying your own ways with his ways." Ignoring these aspects only makes it difficult or even block the socialization process.

Eugene Nida attempted in this sense to correlate the degree of identification with the levels of communication as follows:

1. "The first level of communication is where the message has no significant effect on the behavior and the substance of the message is valid by itself. For example, if someone says two and two make four, he is not worried that the transmitter should identify psychologically with the receiver.
2. In the second level of communication, there is a message that, although it does not have a permanent effect on someone's system of values, affects their behavior immediately. For example, if a man says a flood has begun due to the breakdown of the dam, the receptors want to make sure that the transmitter identifies himself with the message he is transmitting - that is, if he also prepares to leave the city for that reason.
3. In the third level of communication, the message concerns not only a large segment of the person's behavior but also its entire value system. If, for example, someone insists that another should abandon his lifestyle, settle in a place, marry, [...] besides identifying with his own message, he must show an identification with the receiver because the receiver must be convinced that the broadcaster understands his provenance and respects his ideas even if he does not agree with them.
4. There is also a deeper level of communication, one in which the message was so effectively communicated that the receiver feels the same urge to communicate that the transmitter feels too. The handset then becomes the transmitter for later communication of the message. [...] At this last stage of communication, identification is complete" (Nida 1960, 164-166).

When this level of communication is reached, it can be said that the socialization process has been achieved. Kraft highlights seven "activities" of the receiver that need to be retained to make the socialization process work in an efficient way:

- 1. Interpretation.** Receptors interpret everything that is said or done as "parts" of the message.
- 2. Construction of the meanings.** The meaning is built by receptors based on the interpretations given to them by words and other communication symbols
- 3. Assign or withdraw the permission of the communicator to enter their communications space.** This is done in view of the religious messages, the credibility of the missionary, and the acceptance of the language used.
- 4. Evaluation.** The receptors consistently assess every aspect of a communication event.
- 5. Maintaining balance.** A person's relationship with his or her group of reference will often be an important factor when considering conversion and change.
- 6. Support feedback.** This receiver activity is always of special importance to the emitter and should be the subject of a special study in intercultural situations.
- 7. Decision making.** Due to the fact that he has engaged in the above activities, the receiver must ultimately decide on the message (Kraft 1983, 97-105).

All those involved in transmitting messages that wish to have an impact on others must therefore take these things into account. It is known that the way people see reality can be determined by their

perspective on the world. [...] What people see is what part exists and what we are, said Abbey (1960, 54), while Redfield (1952, 30-36) defines the world perspective as follows:

"The Perspective on the World" deals in particular with everything that is defined by culture, the way in which a man in a particular society sees himself in relation to the rest. They represent the properties of the different existence and at the same time related to the self. In short, man's idea of the universe. It is the organization of the ideas that answer a man with the questions: "Where am I? Where do I go? What are my links to these things?"

Kearney (1984, 41) wrote, "*People's perspective on the world is their way of looking at reality. It consists of basic assumptions and images that provide a more or less coherent way of thinking.*" Hiebert (1985, 45) describes the worldview as "*the basic assumptions about the reality behind the beliefs and the behavior of a culture.*" The outlook on the world can be simply summarized as follows: the way we see ourselves about the rest and the way we see the rest in relation to us, influencing the socialization process.

Speaking about the role of culture and communication in the socialization process, Reyburn (1958, 343) points out that: "True communication takes place between two people when each of them understands the assumptions which is beyond the words or phrases of the other." On the other hand, talking about non-verbal behavior, which in turn plays a particularly important role in the socialization process, Ramsey (1979, 106-117) makes a few important remarks, namely,

Verbal and non-verbal behaviors intertwine. It does not matter just what we say. What we do is just as important. They all connect to the same communication event. [...] All forms of non-verbal behavior have at least communication potential. [...] Two levels of communication must be distinguished - the informational level of the content and the informational level of the relationship. The first is related to facts, events, feelings and ideas. This kind of information is usually given verbally. The latter is related to the relationship between the transmitter and the receiver and is usually non-verbal. To understand the meaning of each must be understood in the context of the other. [...] Non-verbal communication seems to have a potentially immeasurable potential. [...] Non-verbal communication is much more important than is generally believed.

That is why it is important that socialization takes into account non-verbal communication. Mr. R. Birdwhistell argues that in a normal conversation between two people less than 35% of the communication is verbal and more than 65% is non-verbal communication (Knapp 1972, 12). Monroe (1939, 21) defines gestures as *any movement from any part of the body used to make a thought or excitement or to emphasize oral expression*. Rahskopf (1965, 213-217) points out that although the bodily actions may have a limited denotative meaning, they have a generous connotation. So they give a new meaning to the interaction, making it smoother, more complete. Culture should therefore be studied much more carefully from the point of view of communication, given that: "If communication is effective, then the understanding grows together with the corroborated action" (Hall & Foote Whyte 1960, 5-12) and socialization can be made much easier.

In *The Silent Language*, Hall (1959, 91) said: "If a person really wants to help introduce the cultural change, they should find out what is happening at an informal level and show what informal adaptations seem to be the most successful in day-to-day activities. To bring them to the level of awareness." In this way, an individual can easily integrate into society, or a community.

Referring to the process of cultural and socialization, Bohannan (1963, 16) argued that these two processes intertwine and work together with the individual to form their personality,

Importantly, culture, society and personality are not empirically separable from each other. In order to have social relationships, we must have culture as a means by which to express them, and we need to have personalities to handle culture and to play a role in social relations. Whatever we start with, the other two are necessary dimensions. A separation can only be done analytically.

Conclusion

Socialization cannot therefore be achieved without culture and communication. An effective communication approach would be to familiarize yourself with how members of the "target culture" think. Without such understanding, socialization would be impossible. The communicator should therefore clearly define what his objectives are and take into account the cultural context in which he is. At the same time, it must be kept in mind that effective communication requires a high degree of identification. Lack of identification with the other prevents integration into a community.

To avoid any bias, it is especially important to know both: the importance that culture and communication have in the socialization process and the benefits that they can bring when properly understood and used. For example, it is known that women and men have not only different ways of acting but also different ways of interacting. At the same time, it must be known that the way people in different cultures think about decision-making and how they make decisions is totally different.

Different factors, which may seem unrelated, can thus be gathered in a special cultural significance. It cannot communicate efficiently without any concern for the culture of those who are spoken, because the communication process cannot be separated from the culture.

A paradox of communication, which can be remarked from all these observations, is the following: The attempt to change culture has led to changing people, while changing people has led to a change of culture. The more communication follows the patterns of the existing social structure, the more effective it will be in terms of socialization.

References

- Abbey, M. R. 1960. *Man Media and the Message*. New York: Friendship.
- Aranguren, J. L. 1967. *Human Communication*. New York: McGraw-Hill.
- Barney, L. G. 1973. „*The Supracultural and the Cultural: Implications for Frontier Missions*” in *The Gospel and Frontier Peoples*. Pasadena: William Carey.
- Berlo, D. 1960. *The Process of Communication: An Introduction to Theory and Practice*. New York: Holt, Rinehart and Winston.
- Bohannan, P. 1963. *Social Anthropology*. New York: Rinehart and Winston.
- Burke, K. 1962. *A Grammar of Motives and a Rhetoric of Motives*. Cleveland: World Meridian.
- DeFleur, M. L. 1970. *Theories of Mass Communication*. New York: David Mc Kay.
- Eldridge, S. 1950. *Fundamentals of Sociology*. New York: Thomas Y. Ceowell.
- Geisler, N. 1978. „*Some Philosophical Perspectives on Missionary Dialogue*”, in *Theology and Mission*, edited by David Hesselgrave. Grand Rapids: Baker.
- Hall, E. T. 1959. *The Silent Language*. Greenwich, Conn.: Fawcett.
- Hall, E.T. and Foote Whyte, W. 1960. „Intercultural Communication: A Guide to Men of Action”. *Human Organization* 19, Spring.
- Hesselgrave, D. J. 1991. *Communicating Christ. Cross-Culturally, second edition, An Introduction to Missionary Communication*. Michigan: Zondervan Publishing House, Academic and Professional Books, Grand Rapids.
- Hiebert, P. G. 1985. *Anthropological Insights for Missionaries*. Grand Rapids: Baker.
- Kato, B. H. 1975. „*The Gospel, Cultural Context, and Religious Syncretism*”, in J. D. Douglas, ed., *Let the Earth Hear His Voice*. Minneapolis: World Wide Publications.
- Kearney, M. 1984. *World View, Novato*. California: Chandler and Sharp.
- Kluckhohn, C. 1949. *Mirror for Man*. New York: Whittlesey.
- Knapp, M. L. 1972. *Nonverbal Communication in Human Interaction*. New York: Rinehart and Winston.
- Kraemer, H. 1956. *Communication of the Christian Faith*. Philadelphia: Westminster Press.
- Kraft, C. H. 1979. *Christianity in Culture: A Study in Dynamic Biblical Theologizing in Cross-Cultural Perspective*. New York: Orbis.
- Kraft, C. H. 1983. *Communication Theory for Christian Witness*. Nashville: Abingdon.
- Luzbetak, L. J. 1963. *The Church and Cultures*. Techny, III: Divine Word.
- Mawby, S. M. 1972. Australia and Asia. *The Asia Magazine*.
- McGavran, D. 1974. *The Clash Between Christianity and Cultures*. Washington DC: Canon.
- Monroe, A. H. 1939. *Principles and Types of Speech*. New York: Scott Foresman.

- Nicholls, B. J. 1975. „*Theologica Education and Evangelization*”, în *Douglas, Let the Earth Hear His Voice*. Minneapolis: World Wide.
- Nida, E. A. 1960. *Message and Mission: The Communication of the Christian Faith*. New York: Harper & Row.
- Niebuhr, R. H. 1956. *Christ and Culture*. New York: Harper & Row, Harper Torchbooks.
- Parks, R. 1966. „*Reflections on Communication and Culture*” in *Reader in Public Opinion and Communication*. New York: Free Press.
- Peters, G. W. 1977. „*Issues Confronting Evangelical Missions*”, în *Wade T. Coggins și E. L. Frizen, eds., Evangelical Missions Tomorrow*. Pasadena: William Carey.
- Rahskopf, H. G. 1965. *Basic Speech Improvement*. New York: Harper & Row.
- Ramsey, S. J. 1979. „*Nonverbal Behavior: An Intercultural Perspective*,” in *Molefi Kete Asante, Eileen Newmark, and Cecil A. Blake, eds. Handbook of Intercultural Communication*. Beverly Hills: Sage Publications.
- Redfield, R. 1952. „*The Primitive World View*”, în *Proceedings of the American Philosophical Society* 96.
- Reyburn, W. D. 1958. „*Don't Learn That Language!*” *Practical Anthropology* 5, iulie-august.
- Shannon C. & Weaver W. 1949. *The Mathematical Theory of Communication*. Urbana: University of Illinois Press.
- Thys R. & Ingram B. 1954. *Rhetoric and the Poetics of Aristotle*. New York: Malen Library

How Dangerous is Space Debris?

Ye Joo Park

Ye Joo Park, Shattuck St. Mary's School, Faribault, US, yejoop@gmail.com

ABSTRACT: Space junk is a problem that requires expert intervention. Last year, the European Space Agency reported that scientists altered the path of an important satellite to prevent a collision with an unknown orbiting object. Space junk - known as orbital debris to scientists who specialize in space matters - travels at speeds of more than 17,500 mph. According to the US National Aeronautic Space Administration, space junk colliding with a satellite or an astronaut-occupied space craft could be catastrophic. The destruction of a working satellite owned by a foreign nation worth millions of dollars might cause national defense or diplomatic problems. Attempts to remove space junk are challenging because there is no clear pattern of how debris is orbiting around our planet - with zero gravity, scientists cannot keep track of each piece of space junk. Furthermore, it is very costly to clean up space. This paper will explain how much orbital debris is in space, how it got there and whether trends are improving or deteriorating. In addition, this research paper will evaluate what solutions can be practically implemented by the international community to reduce space junk and minimize the risks to property and people.

KEYWORDS: Space Junk, Destruction, Space Debris, Satellite Collision, Orbital Debris Remediation, ISS

Introduction

Orbital debris is NASA's preferred terminology for space junk, which it defines as "all man-made objects in orbit about the Earth which no longer serve a useful purpose" (NASA 2018). Space is vast but getting more crowded every year. According to the Index of Objects Launched into Outer Space maintained by the United Nations Office for Outer Space Affairs (UNOOSA 2014), there are 4,635 satellites currently orbiting the planet. Of these 2,600 are no longer functioning, which is an increase of 8.91% compared to 2016. The ratio of non-functioning satellites to functioning is 1.27. How many new man-made orbiting vehicles are sent to space each year? In 2017, UNOOSA (2014) recorded launches of 357 objects.

Where does Space Junk come from?

Orbital debris originates from mission-related operations, accidents (which includes human error such as losing equipment on missions) or intentional creation (Hall 2014, 2). Some examples of mission-related space junk are abandoned spacecraft, capsules and parts that were intentionally released during the separation of spacecraft and protective shields/incidental hardware typically discarded into orbit as well (NASA 2018).

Accidents - there have been multiple incidents over the last 30 years which caused explosions between spacecraft due to orbital collisions. The NASA Scientific and Technical Information (STI) Program Office has kept track of every satellite breakup since 1962 and the list of satellites and space payloads that have fragmented in the last 56 years runs 14 pages - however, impacts from just 11 missions out of 4500 launches account for 32% of all rocket body fragmentations (Johnson 2008).

The best-known explosions and collisions involving spacecraft were the intentional destruction of a weather satellite by China in 2007 and the accidental smash-up between an active American Iridium satellite and a retired Russian Cosmos satellite which occurred on February 10, 2009. The incident, which occurred at an altitude of 770 km (470 miles) above Earth, created over 1600 orbital debris fragments (Wang 2010, 1).

"Nothing to this extent" has ever happened before, said Nicholas L. Johnson, chief scientist for orbital debris at the National Aeronautics and Space Administration (Broad 2009).

The weather satellite incident occurred when China conducted an anti-satellite test by intentionally blowing up its own Fengyun-1C weather satellite on January 11, 2007 by using military weapons (David 2007). Space aeronautics experts said the satellite's destruction was the most prolific and severe fragmentation in the course of five decades of space operations. The resulting collision littered Earth's orbit with hundreds of pieces of shrapnel (David 2007). By the end of the year

however, the reaction about China's test was more pointed and strongly worded, as authorities in space, military and diplomacy wondered if the world power intended on expanding aggressive weapons systems into space. The successful destruction raised international concerns about creating more space debris if other nations followed suit. Longer-term, the test raised questions about China's capability and intention to attack U.S. satellites (Kan 2007, 1).

A third source of orbital debris resulted from human error, such as when astronauts accidentally lost control of tools while working outside of their spacecraft. In 1965, during America's first Extravehicular Activity (EVA), a thermal glove floated out of the Gemini IV capsule (Hall 2014, 3). Then a year later, American Mike Collins accidentally let go of a Hasselblad camera while working outside the Gemini X capsule. As he was he was entering the capsule, a micrometeoroid and orbital debris experiment he had retrieved from the spacecraft's exterior also floated away. In 2008, a grease gun leaked inside the tool bag while Heidemarie Stefanyshyn-Piper was working outside the International Space Station. When she was trying to clean up the spill, the tools in her bag slipped away. The bag had various other tools which remained in orbit for eight months but burned up when they entered the atmosphere (Hall 2014, 3).

Before spacecraft collisions created $\frac{1}{3}$ of all space junk, the principal source of orbital debris was from the explosions resulting from the old launch vehicle upper stages (fuel tanks), which were left in orbit with active energy sources, e.g., residual propellants and high-pressure fluids inside the tanks. Explosions in the disconnected stages typically occurred between a few months and a few years after the launch into space (Hall 2014, 4) and were caused by the sun's strong heat increasing pressure inside the propellant tanks long enough to cause explosions. Just as machine parts on Earth can become more fragile by high temperature fluctuations between heat and cold, the fuel tanks weaken due to temperature extremes in space much greater than Earth's. This weakens the wall separating the hypergolic propellants, allowing them to mix and then to ignite (NASA 2018).

The ejected upper stage explosion problem can be avoided by running the rocket engines long enough to deplete the fuel or by venting excess fuel into space. Many mission operators have begun using those procedures to empty the launch upper stages of explosive materials (European Space Agency 2005).

The Mission of the International Space Station and Orbital Debris

Despite not getting the same amount of news media as it garnered 20 years ago, the International Space Station (ISS) is still fully operational, currently on Mission 56 with 6 astronauts from the US, Russia and Germany. The six astronauts have been performing tasks from a long mission list that have many purposes - testing equipment, training, scientific experiments and fulfilling commercial projects paid for by governments and private companies. In October, 2018, two spacewalks were on the agenda for the ISS crew.

One question frequently asked by amateurs and professionals alike, "Does space debris pose a risk to the ISS itself and to astronauts?" The answer is No, because NASA scientists track the largest pieces of the 500,000 space debris fragments that exist - if the odds of an orbiting piece of junk hitting an astronaut are greater than 10,000:1, NASA actually moves the ISS or the astronauts out of the way (NASA 2013). The probability is higher for objects smaller-than-baseball size which currently cannot be tracked with available sensors. However, space junk projected to orbit close to the ISS, causing the astronauts to move the vehicle occurs infrequently, about once a year on average (NASA 2018).

USSPACECOM - part of the US Air Force -is the group tasked with the responsibility for preventing collisions with space junk. The monitoring activity is conducted by SPACECOM staff at 25 radar and optical sensors located around the world. Most debris (about 84 percent) is out approximately 800 kilometers - roughly twice the normal altitude of the space shuttle which orbits at about 300 kilometers (Tozer 2012). Only a small amount of space junk exists where the ISS orbits. (Tozer 2012).

Ironically, the American astronaut who spent a year in space, Mark Kelly, wrote in his 2017 autobiography that he was almost hit by orbital space debris. "At the time, you think, if we get hit, we

will be vaporized,” he said. “There’s no two ways about it; it would be like a nuclear explosion. But it’s not something worth dwelling on” (O’Callaghan 2017).

Other factors to consider concerning collisions in Space

While it’s true that there are thousands of space objects directly above Earth in an 800-kilometer band, space is so vast that it’s helpful to pause for a moment and reflect... in the area directly above the entire continental U.S., there are typically only three or four items orbiting above 3.1 million square miles. Therefore, the likelihood of collisions between satellites, spacecraft and orbiting objects is very small (NASA 2018).

In fact, in 2013 it was reported that the probability of a collision between an orbiting asset and space debris larger than 1 cm (0.4in.) will be once every 1.5-2 years, according to the Head of the Russian Hall/ History of Space Debris 8 Figure 5 [NASA] Space Agency. This compares with a 2010 estimate giving the likelihood of once every 5 years (Sorokin 2013).

The Feasibility of Practically Reducing Space Debris

Reducing orbital debris is incredibly difficult. Therefore, the most important action that space experts and policy makers currently recommend is to prevent the unnecessary creation of additional orbital debris. This can be done through prudent vehicle design and operations ((UNOOSA 2014).

The International Academy of Astronautics or IAA is a significant, global organization of scientists and space experts from many countries who meet regularly to discuss the importance of space debris as a policy issue. The subject-matter experts of the IAA published their fifth update Situation Report on Space Debris in August 2017 (Bonnal and McKnight 2017). In the executive summary, the IAA reported that if an orbiting satellite impacts with small bits of debris - even as small as 5 mm - the result will be grave, e.g. the collision would likely disrupt or terminate a satellite’s operations (Bonnal and McKnight 2017, 5).

The serious warnings expressed in this conclusion are offset by the positive findings of the IAA that there has been a reduction of the space debris created from the two extraordinary satellite destruction events (2007 and 2009) cited earlier in this paper. According to the IAF report, a large amount of debris from the satellite explosions were frictionally burned when reaching the Earth’s atmosphere after gradually sinking due to the scientific principle of atmospheric drag (in the science of Physics), which is a deterioration in the strength of an orbit because of an object hitting gas molecules in space. Small bits of space junk sink as the orbit gets weaker... then they burn. This is a positive trend “for keeping the short-term collision hazard under control at the lower altitudes (i.e., less than 650 km)” (Bonnal and McKnight 2017, 7).

The final message contained in the report’s Executive Summary is sobering. The IAA believes that a catastrophic event may occur which was first forecasted by a scientist named Kessler, who postulated that it’s possible that an accumulated domino effect may occur if orbital debris collide and explode in chain reaction one after the other. The Academy states it’s not scientifically clear what exact circumstances will cause this catastrophe to occur or how fast the domino effect will happen. (Bonnal and McKnight 2017, 7).

The IAA report reins in the enthusiasm that debris mitigation alone can prevent the onset of the possible cascading breakup events (Page 8). This does not mean that debris mitigation guidelines and practices should be revoked, if anything, this implies that debris mitigation efforts should be consistently implemented in compliance with existing guidelines. This has spurred the community to study how Active Debris Removal (ADR) can be engineered and executed to reduce the mass of debris in orbit that might be involved in future catastrophic collisions. Related analyses have examined other ways to reduce the probability of massive derelicts from colliding on orbit by nudging them out of harm’s way before they can collide. Unfortunately, these debris remediation options have technical, operational, and policy challenges that are amplified by the ambiguity in collision dynamics in the short-term (i.e., hours to days) and long-term (i.e., years to decades) periods.

A promising orbital debris retrieval experiment

An advancement in active debris removal happened this year. Scientists from the University of Surrey, UK devised the first experiment designed to capture orbital debris using a sophisticated net and harpoon. The experiment was developed by Surrey Satellite Technology (SSTL), which is part of the RemoveDebris consortium together with the University of Surrey, the aerospace company Airbus and other European companies. The experiment involved deploying a sophisticated cabinet with multiple compartments - called the CubeSat but it looks more like a refrigerator - engineered with sensors, cameras, robots and other advanced instrumentation. It was sent to space in April, 2018 on a Space X rocket launched from Cape Canaveral, Florida and the destination was the International Space Station (ISS). On September 16, 2018, two astronauts on the ISS positioned the cube into space by utilizing a robotic arm. A target was released from the cube and the giant harpoon-style net was projected from a capsule and snagged the target in the net. The entire experiment was captured on video and can be viewed on the Space.com website (Pultarova 2018).

The leaders of the European RemoveDebris mission declared the experiment a success. "It went very well," said RemoveDebris mission principal investigator Guglielmo Aglietti, director of the Surrey Space Centre at the University of Surrey. "The net deployed nicely, and so did the structure attach to the CubeSat. We are now downloading the data, which will take a few weeks, since we only can do that when we have contact with the satellite. But so far, everything looks great" (Pultarova 2018).

Ingo Retat, who fashioned the net in cooperation with the aerospace company Airbus, worked with teams of scientists on the net technology for 6 years, experimenting with many different iterations before they had sufficient confidence to test the net in space (Pultarova 2018).

References

- Bonnal, C And D.S. McKnight (Eds). 2017. *IAA Situation Report on Space Debris – 2016*. Paris, France: International Academy of Astronautics (IAA). <http://www.iaaweb.org/iaa/Scientific%20Activity/sg514finalreport.pdf>.
- Broad, William J. 2009. "Debris Spews Into Space After Satellites Collide." *New York Times*, 11 Feb 2009. <https://www.nytimes.com/2009/02/12/science/space/12satellite.html>.
- David, Leonard. 2007. "China's Anti-Satellite Test: Worrisome Debris Cloud Circles Earth." *Space.com*, 2 February 2007. <https://www.space.com/3415-china-anti-satellite-test-worrisome-debris-cloud-circles-earth.html>.
- European Space Agency. 2005. "Space Debris Mitigation: The Case For A Code Of Conduct." *Science Daily*, April 25, 2005.
- Garcia, Mark. *NASA ISS Expedition 56 Blog*, posted on August 8, 2018.
- Hall, Loretta. 2014. "The History of Space Debris." *Space Management Traffic Conference*, November 6, 2014.
- International Academy of Astronautics (IAA). 2005. Position Paper on Space Debris Mitigation, Implementing Zero Debris Creation Zones.
- Johnson, N. 2008, *History of On-Orbit Satellite Fragmentations*, 14th Edition, NASA, TM–2008–214779.
- Kan, Shirley, 2007. "China's Anti-Satellite Weapon Test." Congressional Research Service, April 23, 2007.
- Marks, Paul, 2007. "News review 2007: China shoots down a satellite." *NewScientist*. 18 December 2007.
- NASA. 2018. "Orbital Debris Program Office." *Astromaterials Research and Exploratory Science*, FAQs,
- NASA. 2013. "Space Debris and Human Spacecraft." Space Station Mission Pages, Sept. 26, 2013, https://www.nasa.gov/mission_pages/station/news/orbital_debris.html.
- O'Callaghan, Jonathan, 2017. "Astronaut Scott Kelly Reveals Some Pretty Disturbing Things About His Time In Space." *IFL Science Newsletter*, October 2017.
- Pultarova, Tereza. 2018. "Watch a Satellite Net a CubeSat in Awesome Space Junk Cleanup Test." *Space.com*. Sept. 20 2018.
- Sorokin, Nikita. 2013. "Earth Will Drown in Garbage." *Voice of Russia*, March 19, 2013, http://www.spacemart.com/reports/Earth_will_drown_in_garbage_999.html.
- Tozer, Jessica L. 2012. "The Military Mission in Space." *Armed with Space, The Official US Defense Department Science Blog*, May 17, 2012
- United Nations Office of Outer Space Affairs (UNOOSA). 2014. Outer Non-functional Space Objects Index. <http://www.unoosa.org/>.
- Wang, Ting, 2010. "Analysis of Debris from the Collision of the Cosmos 2251 and the Iridium 33 Satellites." *Science & Global Security*, The Routledge Taylor and Francis Group.

Weapon-Carrying among High School Students: A Predictive Model Using Machine Learning

Yiran Fan

The Linsly School, Wheeling, WV, USA, doris.fan.620@gmail.com

ABSTRACT: This study is aimed at 1) identifying the predictors for weapon-carrying on school properties; 2) build a predictive model for parents, educators, and pediatricians for early intervention. Youth Risk Behavior Surveillance System (YRBSS) 2017 data were used for this study. Logistic regression model is used to calculate the predicted risk. Logistic regression is a part of a category of statistical models called generalized linear models, and it allows one to predict a discrete outcome from a set of variables that may be continuous, discrete, dichotomous, or a combination of these. Typically, the dependent variable is dichotomous and the independent variables are either categorical or continuous. The data is run through R program. The outcome variable is weapon-carrying based Q13 (During the past 30 days, on how many days did you carry a weapon such as a gun, knife, or club on school property?) The result identified several important predictors for carrying weapon on school properties, such as gender, alcohol use, and smoking age. This provided important information for the educators and parents for early intervention and alleviating the negative effects of weapon-carrying among teenagers.

Introduction

The massive school shooting happened at the beginning of 2018 caused teachers and parents' panic, urging them to pay more attention to the serious issue of weapon-carrying among high school students. Students felt unsafe though the schools maximized their efforts on demonstrating emergency lockdowns. In April, thousands of students participated in a walkout against school shooting, and protests in major cities followed as the gun control policy became an even more controversial topic. In some critics' view, gun control is the optimum and the only way the public could calm themselves down. However, some students claimed that "that's not the real issue here. The real issue is the people who are doing it" (Yee 2018). Indeed, it was astonishing to see 23 school shootings in the first half of 2018; but it was more anxious to face the fact that many of the suspects are teenagers, who formerly attended the school but had animosities toward it, or even to the society. To address this issue, it is better to make early intervention than to blame the policies and wait for others to dispose of the lives of children.

In fact, people have been analyzing the characteristics of the population who are likely to carry a weapon in school among teenagers. According to Child Trends, a nonprofit organization studies the development of children of all ages, 16.8 more percent male students carry weapons than female students in 2015. Considering ethnicity, more percentage of Hispanic and black students carry weapons on school properties. However, there is no indication of the reason in detail. There were studies identify the risk factors, such as the victim of extreme violence and involvement in drug or property crimes, that might explain the reasons behind those statistics (Kingery 1999). Yet, the studies were conducted in the late twentieth century and early twenty-first century. Unforeseen developments have made changes more rapid in recent years, and the trends for weapon-carrying are varying: percent of black and Hispanic students who carry weapons has continued to decline after reaching its peak in 1997, and that of white students has remained steady (Child Trend n.d.). The current situation is not as same as 1999 anymore. In 2018, there are more hypotheses concerning the reasons of weapon-carrying as specialists look into teenagers' mental health. For example, adolescent depression happens more often these years. The number of teenagers who reported an MDE (a period of at least two weeks of low mood that is present in most situations) in the previous 12 months increased 37 percent from 2004 to 2015 (Schrobsdorff 2016). Thus, a proper model built on the most current data could help to analyze the causes behind this issue and alleviate the negative effects of weapon-carrying among teenagers.

This study is aimed at 1) identifying the predictors for weapon-carrying on school properties; 2) build a predictive model for parents, educators, and pediatricians for early intervention.

Data and Method

Data:

Youth Risk Behavior Surveillance System (YRBSS) 2017 data were used for this study.

The YRBSS was developed in 1990 to monitor priority health risk behaviors that contribute markedly to the leading causes of death, disability, and social problems among youth and adults in the United States. These behaviors, often established during childhood and early adolescence, include

Behaviors that contribute to unintentional injuries and violence.

Sexual behaviors related to unintended pregnancy and sexually transmitted infections, including HIV infection.

Alcohol and other drug use.

Tobacco use.

Unhealthy dietary behaviors.

Inadequate physical activity.

In addition, the YRBSS monitors the prevalence of obesity and asthma and other priority health-related behaviors plus sexual identity and sex of sexual contacts. From 1991 through 2017, the YRBSS has collected data from more than 3.8 million high school students in more than 1,100 separate surveys.

Method:

Logistic regression model is used to calculate the predicted risk in this study. Logistic regression is a part of a category of statistical models called generalized linear models, and it allows one to predict a discrete outcome from a set of variables that may be continuous, discrete, dichotomous, or a combination of these. Typically, the dependent variable is dichotomous and the independent variables are either categorical or continuous.

Variable:

The outcome variable is weapon-carrying based Q13 (During the past 30 days, on how many days did you carry a weapon such as a gun, knife, or club on school property?). Students who answered all questions as '0 days' were identified as no involvement of weapon, and the remaining were identified some involvement of weapon-carrying.

Results

About 2.8%% of 7008 students carried weapon on school property.

The logistic regression is run in the R program. The significant factors are listed in the table.

Table 1. Logistic Regression Output

	Estimate	Std. Error	z value	Pr(> z)	
(Intercept)	-9.37535	1.75770	-5.334	9.61e-08	***
Q1	0.12952	0.13947	0.929	0.35308	
factor(Q2)2	0.97665	0.23687	4.123	3.74e-05	***
factor(Q3)2	0.14689	0.30484	0.482	0.62991	
factor(Q3)3	0.51590	0.36776	1.403	0.16067	
factor(Q3)4	0.07103	0.46949	0.151	0.87975	
factor(Q3)5	-12.11497	354.97985	-0.034	0.97277	
factor(Q4)2	0.02310	0.21877	0.106	0.91592	
factor(Race)2	-0.84379	0.70699	-1.193	0.23267	
factor(Race)3	-0.51127	0.44958	-1.137	0.25545	
factor(Race)4	0.53702	0.59353	0.905	0.36557	

factor(Race)5	0.20784	0.39582	0.525	0.59951	
Q6	1.77125	1.04570	1.694	0.09029	.
factor(Q31)2	0.54454	0.37754	1.442	0.14921	
factor(Q31)3	0.88055	0.35579	2.475	0.01333	*
factor(Q31)4	0.61666	0.30101	2.049	0.04050	*
factor(Q31)5	0.57814	0.26122	2.213	0.02688	*
factor(Q31)6	0.55206	0.24466	2.256	0.02404	*
factor(Q31)7	-0.50232	0.62024	-0.810	0.41802	
factor(Q41)2	1.45688	0.33935	4.293	1.76e-05	***
factor(Q41)3	1.42178	0.34639	4.105	4.05e-05	***
factor(Q41)4	1.08056	0.33390	3.236	0.00121	**
factor(Q41)5	1.20209	0.27685	4.342	1.41e-05	***
factor(Q41)6	0.69639	0.27707	2.513	0.01196	*
factor(Q41)7	0.47804	0.46009	1.039	0.29880	
factor(Q47)2	1.24638	0.49783	2.504	0.01229	*
factor(Q47)3	-0.01022	0.49227	-0.021	0.98344	
factor(Q47)4	0.56245	0.30263	1.859	0.06309	.
factor(Q47)5	-0.41185	0.26326	-1.564	0.11772	
factor(Q47)6	-0.06984	0.23244	-0.300	0.76380	
factor(Q47)7	0.11994	0.42187	0.284	0.77617	
factor(Q60)2	0.78031	0.65551	1.190	0.23389	
factor(Q60)3	1.61850	0.68568	2.360	0.01825	*
factor(Q60)4	1.46586	0.63143	2.321	0.02026	*
factor(Q60)5	1.03143	0.64433	1.601	0.10943	
factor(Q60)6	1.07412	0.62640	1.715	0.08639	.
factor(Q60)7	1.73568	0.63316	2.741	0.00612	**
factor(Q60)8	1.71941	0.69141	2.487	0.01289	*
factor(Q61)2	-0.70611	0.39731	-1.777	0.07553	.
factor(Q61)3	-0.35833	0.37880	-0.946	0.34416	
factor(Q61)4	-0.26278	0.37626	-0.698	0.48493	
factor(Q61)5	-0.50508	0.42964	-1.176	0.23977	
factor(Q61)6	-0.53923	0.54529	-0.989	0.32272	
factor(Q61)7	NA	NA	NA	NA	
factor(Q62)2	-0.48141	0.65334	-0.737	0.46121	
factor(Q62)3	-0.54960	0.62291	-0.882	0.37761	
factor(Q62)4	-0.22185	0.64189	-0.346	0.72963	
factor(Q62)5	-0.42958	0.69667	-0.617	0.53749	
factor(Q62)6	0.25154	0.80182	0.314	0.75375	
factor(Q62)7	0.20336	0.99236	0.205	0.83763	
factor(Q62)8	NA	NA	NA	NA	
factor(Q64)2	-0.18753	0.19971	-0.939	0.34774	
factor(Q64)3	NA	NA	NA	NA	

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

The most significant factors are factor(Q2)2 (male sex), factor(Q41)2 (drinking alcohol 1-2 days in past 30 days), factor(Q41)3 (drinking alcohol 3-5 days in past 30 days), and factor (Q41)5 (drinking alcohol 6-9 days in past 30 days). In addition, Q60 (How old were you when you had sexual intercourse for the first time?), Q31 (How old were you when you first tried cigarette smoking, even one or two puffs?), Q47 (How old were you when you tried marijuana for the first time?), and Q61 (During your life, with how many people have you had sexual intercourse?) all have some significance concerning weapon-carrying students.

According to the logistic regression, the male is more likely to carry weapon on school properties than female. Students who tried cigarette smoking before are more likely to carry a weapon in the past 30 days in school. The more often a student drink, the more likely for him or her to carry weapon on school properties. Marijuana use at an early age is another positive predictor, so does sexual intercourse experience. Race, on the other hand, does not identify as a significant factor in this case.

Conclusions

In this study, the result identified several important predictors for carrying weapon on school properties, such as gender, alcohol use and smoking age. This provided important information for the educators and parents for early intervention and alleviating the negative effects of weapon-carrying among teenagers. Based on the most recent data, we built a predictive model using logistic regression to provide a tool for early identification of students at higher risk to carry weapon in schools, especially high schools. Moreover, future studies could use outside data and test the performance of the outputs from the model in this study. This study also provides a reference for future experiments and studies.

References

- Centers for Disease Control and Prevention. (2018, June 14). *Adolescent and School Health*. Retrieved from <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>.
- Child Trend. (n.d.). *High School Students Carrying Weapons*. Retrieved September 2, 2018, from <https://www.childtrends.org/indicators/high-school-students-carrying-weapons>.
- Kingery, P. M., Coggeshall, M. B., & Alford, A. A. 1999. "Weapon carrying by youth: Risk factors and prevention." *Education and Urban Society* 31(3): 309-333.
- Schrobsdorff, S. (2016, November 16). *Teen Depression on the Rise Says New Pediatrics Study*. Retrieved September 2, 2018, from <http://time.com/4572593/increase-depression-teens-teenage-mental-health/>.
- Stepman, J. (2018, April 21). To reduce mass shootings, we must treat the mentally ill first | Opinion. Retrieved September 2, 2018, from <https://www.newsweek.com/mass-shootings-gun-rights-gun-laws-guns-mentally-ill-opinion-892001>.
- Yee, V., & Blinder, A. (2018, March 14). National School Walkout: Thousands Protest Against Gun Violence Across the U.S. Retrieved September 2, 2018, from <https://www.nytimes.com/2018/03/14/us/school-walkout.html>.

Does Star Endorsement Work in China? A Case Study of Star Endorsed Basketball Sneakers

Zhiyuan (Carter) Ye

Georgetown Preparatory School, Bethesda, MD, USA, zye@gprep.org

ABSTRACT: This research was conducted to investigate to what extent the fan-based economy is effective in China. Basketball sneakers, one of the commodities that are most frequently endorsed by celebrities in the field, was used as the center of the study. The research used a survey and received 547 valid responses using the online survey website wjx.cn. The behavior of the consumers was analyzed based on how long he or she plays or practices basketball each week. Based on the survey results, we concluded that factors such as brand preference, time dedicated to basketball, and people's weekly or monthly spending amount indeed have impacts on the tendency of buying celebrity endorsed sneakers.

KEYWORDS: star endorsement, fan-based economy, basketball sneakers, idol marketing

JEL classification codes: D, H, M, R

Introduction

Basketball is one of the most popular sport around the world, and basketball sneakers are seen not only on basketball courts but also on the streets as casual wear. Some claim that they improve athletes' performance in competitions, while others take it mostly as a fashion statement. Started from Michael Jordan and his famous signature shoes, "Air Jordan," endorsing big shoe brands has become a major component of the stars' income. LeBron James, one of the greatest basketball players who has won 4 NBA MVP awards, 3 NBA champions and 3 finals MVPs, has signed a 90 million deal with Nike for 10 years, then prolonged it to a 600 million lifetime contract. There's no doubt that the star endorsed shoes are selling well on markets.

Recently, basketball has been gradually becoming the most popular sports in China and other countries in East and Southeast Asia, such as Philippines and Taiwan, especially among teens. The Chinese market has been valued by famous basketball players and organizations and NBA stars such as Steph Curry, James Harden, and Kevin Durant, for example, visit China every year to advertise their shoes and other affiliated products. While there, they interact with fans and play in commercial games. Other all-star players such as Klay Thompson, Kevin Garnett, and Dwayne Wade, have signed shoe contracts with Chinese sports companies such as Anta, Xtep and LiNing. They do have a lot for Chinese fans, but is star endorsement that effective? Is there a true correlation between the popularity of a player and the sale of their products?

This study used surveys to explore how effective star-endorsement is when it comes to a consumer's decision on buying basketball sneakers in China. There were three specific questions focused by this study.

- 1) How important is star endorsement compared to quality and look in influencing a consumer's purchasing decision?
- 2) Is the star endorsement more effective among younger consumers?
- 3) Does it have to do with the consumers' monthly spending amount?

Literature Review

There have been several researches conducted on how celebrity endorsement influences the decision making of the customers. Walker, L. Langmeyer, and D. Langmeyer (1992) studied celebrity endorsement and its relationship with the quality of the product and concluded that the accordance of celebrity's field and that of the product he or she endorses weighs heavily on the success of the advertisement. That could have impacted how sports companies picked their star partners. For example, I have never seen something like Taylor Swift endorsing basketball sneakers.

Kim and Na (2007) found that the congruence between the consumer's familiarity of the concept and the product will have a proportional influence on the effect of the celebrity's

endorsement. My survey captured this idea and explored how frequent basketball players differ from infrequent ones in their purchasing behavior. Questions were also designed to gather information on their motivation behind their purchases. Kim and Na's study targeted the college students, who are mostly not financially independent consumers, and I avoided this defect in my research.

Dom et al. (2016) found that attractiveness, expertise, and trustworthiness are keys to the success of an endorsement, and people admire and desire products from the developed countries or countries that have expertise in this industry. Therefore, since the basketball level and sneaker technology of the United States no doubt supersedes other nations, and the NBA superstars will definitely be more influencing on shoe endorsement than the Chinese sneaker brands endorsed basketball players.

Methodology

A survey of 10 questions was used to gather data on consumers' motivation and preferences when buying basketball sneakers. The first four questions are on general background, serving to get an insight of the responder's capability of making purchase decisions independently and how dedicated he or she is toward basketball. A balance of conciseness and efficiency was maintained when age and spending info were designed to be multiple-choice questions with ranges as choices. For example, the respondents were required to choose from different age groups, marked by real life events, such as graduating from high school, from college, from graduate school, and above. The third question, "how much time do you play basketball each week?" intends to tell whether the consumer bought the shoes mainly to play ball or just for casual wear. With different purpose wearing them, consumers would take factors such as price, appearance, quality, celebrity endorsement, and protection to feet into account with different degrees.

The second part is directly relevant to the perceived preference of their shoes, including which brand and what attributes matter most to which group of consumers. Responders were required to estimate to what extent they pay attention to each of the factors when weighing their purchasing options. These factors included price, quality, endurance, performance, advertisement, and most critical to this research, the star that endorsed the shoe. Then the question about their preference on Chinese versus foreign brand was asked in order to see if any potential bias existed.

The last four questions asked the number of endorsed and regular sneakers they possess, which kind they would wear to play basketball, whether people were really willing to use their favorite star's shoes on the court with the risk of attrition, and the price of the sneakers the respondent most recently purchased.

Results and Analysis

I received 547 valid responses (449 male respondents and 98 female) and there are 46 invalid responses since these people own neither star endorsed sneakers nor regular basketball sneakers. To my surprise, consumers do not actually place superstar endorsement as the main driving factor when making purchase decision, as the average rating of "endorsed by a star" is only 4.56, whereas appearance, performance, quality, comfort and all have ratings higher than 7.28 (Table 1). However, after close examination, I found factors such as brand preference, time dedicated to basketball, and people's weekly or monthly spending amount indeed have impacts on the tendency of buying celebrity endorsed sneakers.

A. Brand Preference leans toward Foreign brands

Regardless of playing time, a general trend was also found in the survey. First, Chinese consumers have a strong preference on shoes from foreign brands, such as Nike and Adidas. Among the 547 samples, 415 preferred foreign sneaker brands and only 132 samples have no preference or prefer Chinese shoe brands (Figure 1), which may be one underlying reason of fans buying more signature shoes than regular shoes, since most star endorsed shoes are sold from Nike and Adidas. Second, fans generally valued comfort and protection of the sneakers more than anything else, as comfort earning an 8.84 out of 10 rating (Table 1). Third, fans preferred regular shoes when they are actually playing on the court, but they actually own more endorsed sneakers (figures 3 & 4).

Table1. The factors considered by consumers when purchasing sneakers

Factors Considered	Factor Score (out of 10)
Comfort and protection to feet and ankles	8.84
Quality, endurance	8.34
Performance	7.55
Appearance	7.28
Price	6.51
Evaluation by experts	5.27
Endorsement by stars	4.56
Advertisement	3.24

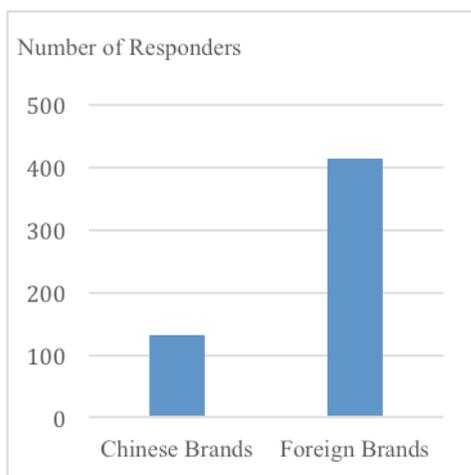


Figure 1. The factors considered by consumers when purchasing sneakers

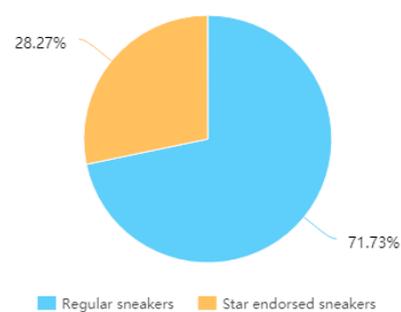


Figure 2. Type of sneakers worn when playing basketball

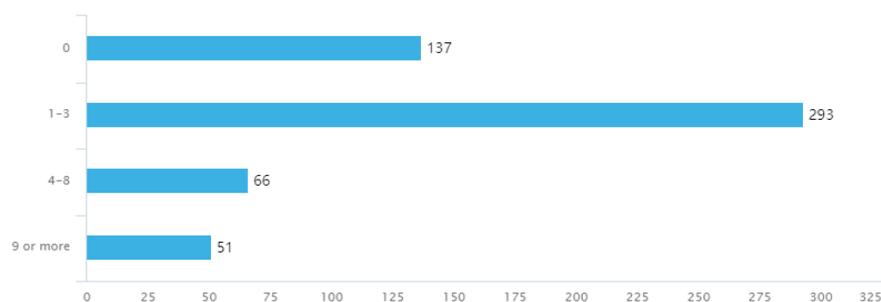


Figure 3. Number of star endorsement shoes owned by responders

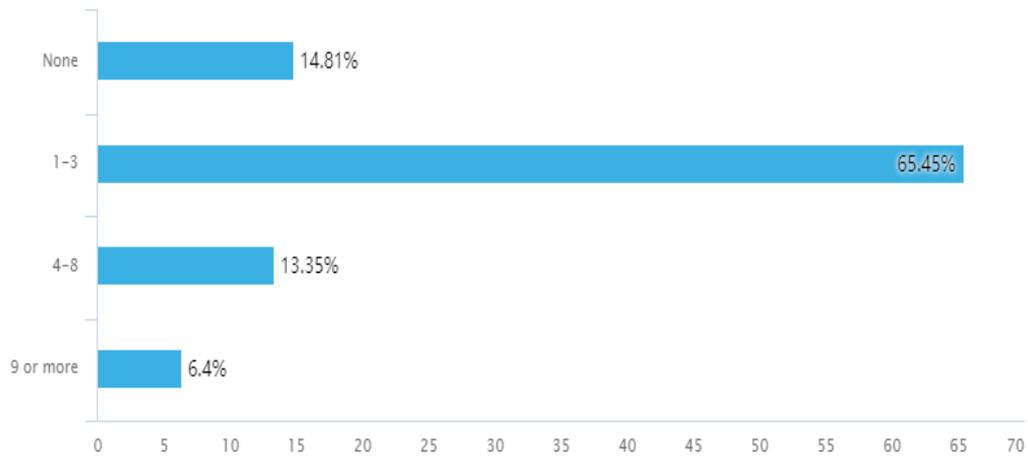


Figure 4. Number of regular (non-star endorsed) shoes owned by responders

B. More Serious Players Wore Endorsed Shoes When Playing

The sample in this range are usually semi-pro or pro basketball players. The result showed that the more time a consumer spend to play basketball each week, the more likely he will be to purchase celebrity endorsed shoes, and wear them on basketball courts (table 2). In particular, the players who play basketball over 12 hours each week tend to favor celebrity endorsed shoes, and as the their monthly expense increases, the more likely they are going to buy signature shoes. Quite interestingly, the people in this group that has low monthly expense tend to focus on quality and endurance rather than superstar effect when they choose which type of sneaker to purchase (graph 5), but more than often they are buying star endorsed sneakers. This phenomenon is intriguing because it indicates that the star-endorsed shoes tend to have better quality and utility than the regular shoes, which makes sense because it is likely that for the big shoe brands, putting their best technology on the bestselling shoes is plausible. Or the star endorsed sneakers engender a psychological effect that star endorsed means high-quality.

Table 2. Type of shoes to wear on the court for consumers who plays more hours

Type of Sneakers Worn at Play	# of Responders
Regular sneakers	3
Star endorsed sneakers	13

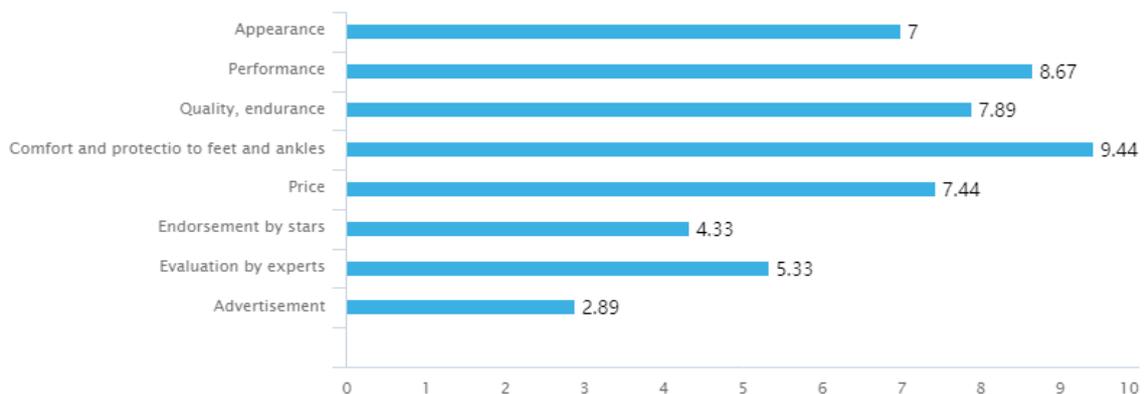


Figure 5. The rate of factor considered by serious players

C. Amateur Players Wore Endorsed Sneakers for “Showing Off”

This range is the typical Chinese amateur basketball players. They do not spend much on basketball sneakers, as most of them spend less than 3000 on shoes (table 3). For this group of people, star endorsement seems to bipolarize. 48 of 166 rated this factor 9-10, whereas 42 of 166 rates this factor below 2 (figure 6). It is understandable that some of the ballers like to show off on courts by wearing their idols’ shoes, whereas some of the fans values utility, evinced by their relative high demanding for the shoes to be comfortable and less demanding on the appearance of the sneaker (figure 7).

Table 3. The weekly spending level of consumers that play between 3 and 12 hours each week

¥ 3000 (\$440) or below	63	37.95%
¥ 3000-8000 (\$440-1170)	79	47.59%
¥ 8000-15000 (\$1171-2196)	16	9.64%
¥ 15000 (\$2196) or above	8	4.82%

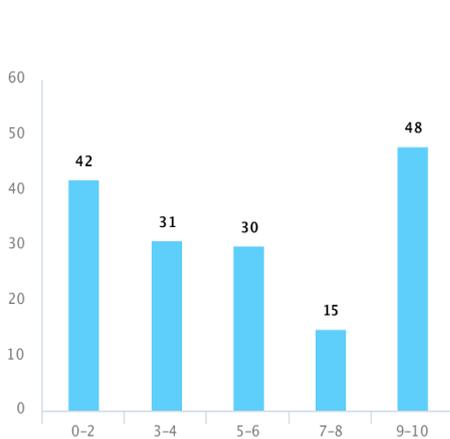


Figure 6. # of serious players who focus on endorsement by stars when purchasing

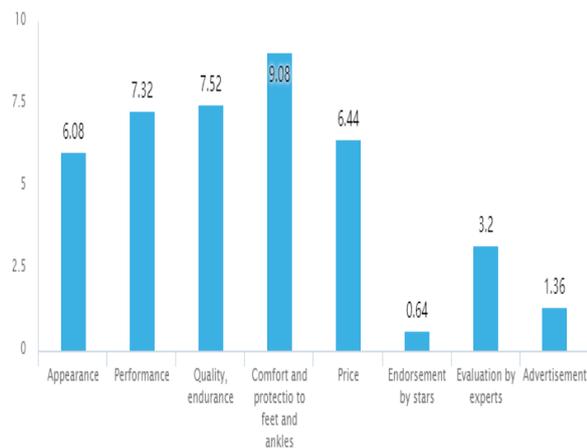


Figure 7. Factors considered by serious players when purchasing

D. Fans Prefer Appearance over Performance

These survey takers do not play basketball that much, so they will not tend to judge sneakers by their performance on courts, and the trend is obvious: they like to buy shoes with good appearance, as 301 out of 361 put a rate of 5 or above on appearance, giving it an average rate of 7.21. Moreover, some of these survey takers may not be that familiar with professional basketball stars, therefore they do not value star endorsement as a big factor, only giving it a rate of 4.09 (table 4), and 85.9% of them own less than 3 pairs of star endorsed shoes (figure 8).

Table 4. Factors influencing the fans

Factors	Score
Comfort and protection to feet and ankles	8.78
Quality, endurance	8.32
Appearance	7.21
Performance	7.18
Price	6.55
Evaluation by experts	5.06
Endorsement by stars	4.09
Advertisement	3.1

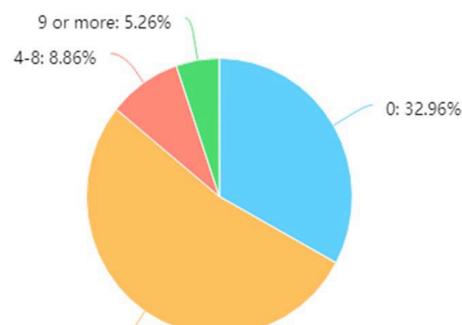


Figure 8. Star endorsed shoes owned by fans

Conclusion

This study suggests that star endorsement has marketing potential in China, but responsiveness really differ by the fan's affiliation with the sport. The more easily influence by stars, vice versa. The more serious players wear for performance, while the lesser player fans use them as a fashion statement. It would make more sense for companies to tailor their messages by different target groups.

Limitation

The questionnaire was sent and answered online, which may incur self-selection bias because of voluntary responses. However, the potential bias can be ignored because the number of responses was high and the purposed target was hit, who are mostly fans and players. Moreover, some of the questions were designed to be multiple choice questions, with choices being ranges, in order for the survey to be concise and easy to take, but a precise number was not able to be obtained, such as monthly spending, hours spend each week playing basketball, and number of sneakers of each type, for a closer analysis.

On the other hand, the data collected were mostly from the most prosperous cities in China, and the majority of the samples have better economic situation than that of the average Chinese citizens, so the result can only be applied to consumers living in big cities. That may influence the conclusion drawn on preference of Chinese and foreign brand. In addition, the Chinese market and economy is unique in different ways, such as influence by culture and ideology, so the conclusion drawn by this research will be hard to apply to other countries and economic systems, but it surely has some indications on the sports fan-based economy, such as the preference on foreign commodities on sports gears.

Further Research

Further research can be conducted with face-to-face interview to acquire a direct and profound understanding on the psychological effect behind each type of consumer, and can go into areas with less advantaged economic situation. The questionnaire can also be sent in other countries and regions to distinguish the different consuming pattern of different areas in the world.

References

- Walker, Mary, Lynn Langmeyer, and Daniel Langmeyer. 1992. "Celebrity endorsers: do you get what you pay for?" *Journal of Consumer Marketing* 9(2): 69-76.
- Dom, Syed Mazlan Syed Mat et al. 2016. "Determinants of the effectiveness of celebrity endorsement in advertisement." *The Journal of Developing Areas* 50(5): 525-535.
- Kim, Yeung-Jo, and June-Hee Na. 2007. "Effects of celebrity athlete endorsement on attitude towards the product: the role of credibility, attractiveness and the concept of congruence." *International Journal of Sports Marketing and Sponsorship* 8(4): 23-33.

Effects of Writing in a Class Blog on EFL Students' Attitude towards Writing

Zohur Ahmed

East West University, Dhaka, Bangladesh, zohurs@gmail.com

ABSTRACT: The present study attempts to explore if writing in a class blog can improve EFL students' writing attitude. Data has been collected from a group of English language learners enrolled in an undergraduate level academic writing course at a university in Bangladesh. An experimental research design has been adopted by the teacher researcher. It is expected that the findings of the study will provide policy makers, course coordinators and writing instructors with an improved understanding of and practical considerations for an effective integration of class blogs in English writing instruction at tertiary level in Bangladesh.

KEYWORDS: attitude, blog, improvement, writing

Introduction

The term 'attitude' is used by teachers quite often in schools. It is quite common to find teachers who would often blame a student's 'bad or 'negative' attitude that interferes with his/her learning and eventually impedes satisfactory learning outcomes. Coaches and trainers from sports and physical education contend that in addition to physical strength and necessary efforts a successful player must show a 'winning attitude'. It is widely believed (Harmer 2008; Calkins 1986) that teachers' effort in forming an improved student attitude towards reading and writing is helpful to students in becoming better readers and writers. Indeed, there have been a considerable amount of discussions involving the role of attitude and motivation in learning language skills (Gardner & Lambert 1972; Gardner 2010).

Suggestions have been made regarding learner attitude and its influence on making a better ground for learning in English classrooms (Weaver 1996; Camp 1992; Rosenblatt 1995) in a number of research studies in the field of constructivist learning, self-evaluation, and students' responses to reading literature. For example, before assigning students a topic to write, writing instructors take into consideration learners' attitude towards the topic, the reader, the writing task, and the criteria for assessing writing. Topics for which learners are identified with a negative predisposition are generally avoided. Therefore, writing assignment and practices should be designed in such a way so that teachers' can extend support to students in improving and, if possible, changing their negative attitude.

Attempts to explore potential sources of negative attitude towards writing is worthwhile for at least two reasons: (1) teachers may discover that students negative attitude towards writing is a result of their fear and anxiety about the red ink and discouraging comments and grades or scores, (2) learners in general English composition courses, and academic writing classes in ESL courses, in particular, may simply fail to see usefulness of writing a particular composition and may think writing essays in composition courses are waste of time. Recognizing such potential sources of resistance and indifference to writing is the firsts step for teachers for a better understanding of what additional supports and writing practices need to be provided to students. For an anxious learner writer, a personal journal writing task without any comments from teachers on grammar and accuracy might help. A one-to-one conference for the first draft is often found to be useful in removing negative attitudes and anxiety faced by novice learner writers.

L2 writing through Computer Mediated Communication (CMC)

Teaching L2 composition in higher education in the CMC driven modern world must take into consideration learners' need to use the emerging writing tools (Ware, Kern & Warschauer 2016). In a CMC environment, learners writing practices are no longer a solitary act. In fact, an increasing number of technology driven writing tools provide 21st century learners with more scopes for writing

practices that are accomplished through learners collaboration and sharing. Writing on online platforms such as blogs and wikis has made it possible for learner writers to share and evaluate each others' texts. Today's L2 learners are apprenticed into new literacy practices themselves through their active engagement in online communication. In fact, a great deal of writing is accomplished outside the formal environment of the classrooms and in the informal networked space of facebook, twitter, texting, wikis and blogs (Yancey 2014).

CMC technologies have significantly impacted techniques of writing, creation of genres, formation of authors' identity, forms of the final written products, and writers' engagement with readers (Hyland 2016). For example, while engaged in making and negotiating meaning in an online environment, L2 writers are increasingly supplementing and complementing L2 resources with other semiotic resources such as visual, aural, gestural, and spatial.

More than offering L2 learners with multiple options and resources for L2 composition, CMC technologies have immensely influenced the psychological dimension of writing and reading practices. Writing researchers have held that a wider audience and readership in online writing may act as a potential stimulus, particularly for unwilling writers, to be motivated in investing more time and effort in order to communicate globally and more effectively. It has also been held very widely among writing researchers that innovations in educational technology have advanced in such a rapid pace that our current understanding of online writing production and their impact on the process of writing is still very limited. Therefore, it is not surprising that we have not been able to fully exploit the services and the affordances offered by CMC technologies for the writing development of the L2 learners. L2 writing pedagogy must address writing practices that go beyond print-based writing and accommodate use of multimodalities in online composition. Such pedagogical practices need to encourage learner writers to use CMC tools to collaborate and scaffold each other's learning. The present study is a humble attempt to understand and explore the nature of pedagogical practices needed in improving writing skills for the CMC driven real world.

Usefulness of blogs in writing instruction

Blogs promote real communication as when blog writers know their writing will be read by their peers and other internet users, they modify, edit, plan, adjust their writing to achieve specific goals, in a given context with a target group of readers. Therefore, integration of blogs in writing instruction is compatible to the principles of communicative language teaching.

A blog as a writing platform is interactive in nature and like other Web 2.0 tools they are social and community-based. The commenting feature of blog makes it an ideal tool to promote interaction of ideas between students to students, students to teachers, and students to other readers. Its ubiquitous nature makes it possible to comment and interact at any time from any place.

Learner writers play active roles as writers and readers. Learners' engagement through commenting, the social dimension of the blog in the community of the classmates, and the interactive features are conducive to features of constructivist approach to teaching. The social construction of knowledge that constructivism postulates matches well with learning experiences which are socially constructed.

The commenting features of blog allow peer writers to provide feedback and function as scaffolding to initial concepts and ideas for writing. These opportunities trigger the Zone of Proximal Development. Moreover, when learners write in blogs, the ownership of learning is bestowed upon learners as they publish their thoughts and understanding – the “authentic artifacts” (Ferdig & Trammell 2004).

Literature review

Among the various CMC tools, Blog has been widely used in foreign language teaching particularly in teaching reading and writing in Japan, Korea, Chinese Taiwan and Hong Kong (Zhang 2010). As blogs provide a platform for the development of reading and writing skills, for the acquisition of a wider vocabulary, they may be a useful resource in language learning. However, there is hardly any

empirical study reporting use of blogs in teaching writing to Bangladeshi tertiary level learners. The following section reviews extant literature in the area of blog application in writing instruction.

In a 16 week comparative experiment involving two groups of EFL college students, Lin, Li, Hung and Huang (2014) found writing journals in blogs helped the bloggers to achieve a greater improvement in their writing than the regular pen-and-paper peer group. Moreover, blog writers in this study experienced more ease in writing than those writing in traditional pen-and-paper platform. The researchers concluded suggesting that the blogging approach effectively improved students' writing skills and attitude towards writing.

Zhou (2015) conducted a study with eighty-one sophomores of non-English majors who were taught EFL writing in an 18 week long teaching experiment in-class and out-of-class by means of blog. Using pre-test, post-test, questionnaire and interview data, the researcher finds a 'significant improvement' in students' writing ability because of blog-assisted writing practices. Moreover, participants in the study are reported to have adopted a positive attitude towards the blog-assisted writing model and actively solved constraints of traditional EFL writing teaching.

In a study with advanced level MA students of TEFL in Iran, Hashemian and Heidari (2013) used Gardener's Attitude/Motivation Test Battery Questionnaire and a writing proficiency test. Using an experimental design, the study finds no relationship between negative attitude and success in L2 writing, between instrumental motivation and writing success. However, learners with integrative motivation were found to yield more success in L2 academic writing than those with instrumental motivation. Learners who had positive attitude operated better in L2 writing than those who had a negative attitude.

Usefulness of blogs in higher education has been reported by Neira-Pinerio (2015). In her two "innovative experience" with blogs in higher education she claims to have found enhanced communication skills in a digital environment, improvement in students' literary competence, increased motivation for participation, independent learning and shared knowledge all linked with the creation of literature blog.

The study

The creation and application of the blog was a direct response towards integrating ICT in higher education. The National Education Policy of Bangladesh 2010, National ICT Policy 2009, and the seventh five year plan (FY 2016-FY 2020) have placed a greater emphasis on the use of computer, multimedia and IT in education. The key features of ICT policy 2009 in the area of education and research are to:

1. Assess skills of ICT professionals and meet gaps with targeted trainings.
2. Encourage closer collaboration between academia and industry.
3. Extend the reach of ICT literacy throughout the country by incorporating ICT courses in secondary education and technical and vocational education.
4. Enhance the quality and reach of education at all levels with a special focus on Mathematics, Science and English.
5. Ensure ICT literacy for all in public service
6. Boost use of ICT tools in all levels of education.
7. Ensure that all universities provide global standard ICT education.

(Policy document by Ministry of Science and Technology, Government of Bangladesh 2009)

The present study attempted to answer the following questions:

1. Can writing in a class blog change learners writing attitude?
2. How do students perceive writing on a class blog?

Two questionnaires were designed to get data involving students writing attitude and perceptions towards blog writing. The writing attitude questionnaire was administered in the very first

class. The same questionnaire was administered at the end of the course. The blog writing questionnaire was also administered at the end of the composition course.

The objectives of the course ENG 102: Improving Composition and Communications Skills are considered during the planning and preparation of the blog writing activities. A process approach to teaching writing, where a lot of attention is paid to the different stages of writing, is supported and enhanced when blog is used in writing instruction (Ward 2004; Arslan & Sahin-Kizil 2010).

Following the process writing theory, blog-assisted writing instruction was divided into four teaching phases: preparation phase, drafting phase, modification phase and final draft phase. The blog writing activities were designed and administered during a whole semester. Students were given credits for writing on the class blog, 10% marks was assigned for the blogging activities.

1. Since blogs were new to the learner writers, a whole class (90 minutes) was spent to explain how to create a blog, how to write, edit and publish a post, and how to comment on others' blog posts.
2. Students were required to submit at least one post a week.
3. Since students in a pilot study conducted before this study did not write constructive comments and usually eulogized each other, a guideline for commenting was provided.

Results and Discussions

In answering the first question, *Can writing in a class blog change learners writing attitude?* I assigned 4 points for the option *very happy*, 3 for *somewhat happy*, 2 for *somewhat upset* and 1 for *very upset*. The value of one item (Q. no 14) was reverse coded as it was negatively worded. This was done to ensure that the highest value indicates positive writing attitude. After extracting the mean value of the scores for each student for the pretest and post-test questionnaire, I plotted them on a bar graph. The result of the procedure is shown below:

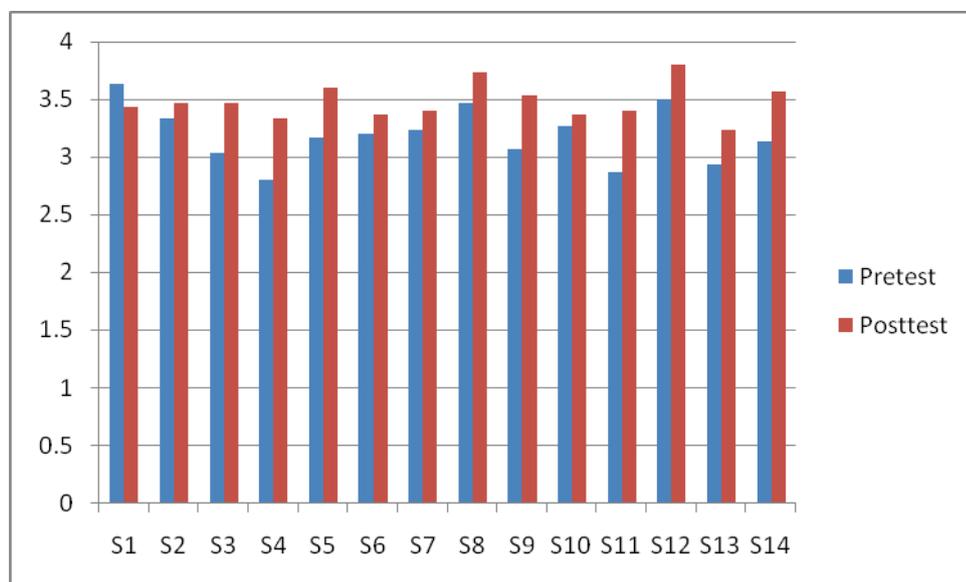


Figure 1. Mean scores of the pretest and posttest writing attitude questionnaire (student wise)

As the bar graph shows except for S1 all learners' writing attitude positively changed at the end of the course. That is, about 93% of learners in this study improved their writing attitude. S1's writing attitude changed negatively. This particular learner had no computer familiarity and did not like writing at all. He often wrote only the minimum required and did not complete the homework assignments.

A paired t-test was performed to answer the second research question. There was a significant difference in the scores of pre-test ($M=3.19$, $SD= .24$) and post-test ($M= 3.48$, $SD= .16$); $t(26)= -3.77$, $p= .0008$ (Fig 2.). These results suggest that there is a significant difference in terms of the attitude gain. Therefore, it can be concluded that learners' attitude towards writing positively changed after the course.

	<i>Pre-test</i>	<i>Post-test</i>
Mean	3.188095238	3.478571429
Variance	0.058736264	0.024206349
Observations	14	14
Pooled Variance	0.041471306	
Hypothesized Mean Difference	0	
Df	26	
t Stat	-3.773859276	
P(T<=t) one-tail	0.00042042	
t Critical one-tail	1.705617901	
P(T<=t) two-tail	0.000840839	
t Critical two-tail	2.055529418	

Figure 2. t-test scores of the writing attitude questionnaire (assuming equal variances)

Item wise mean scores plotted on the bar graph shows the following:

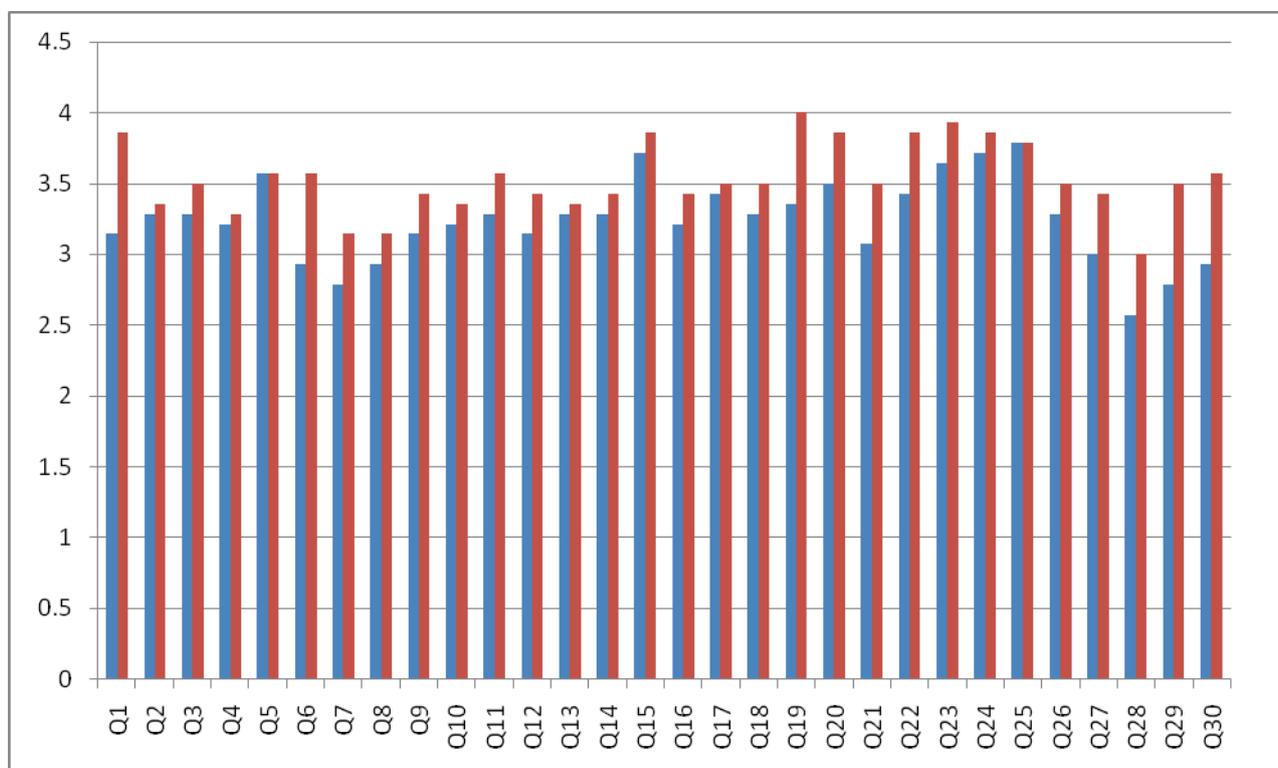


Figure 3. Mean scores of the pretest and posttest writing attitude questionnaire (item wise)

Except for item no 5 and 25 for which the mean scores remained the same, the mean scores of writing attitude for all other items changed positively. No negative attitude change was found in this analysis. In the post-test questionnaire, item no 19 scored the highest-a full score of four. The second highest

item is item no 23 scoring 3.92. The third highest items are item no 2, 16, 20, and 24 scoring about 3.86. In terms of attitude change, item no 1 and 29 registered the highest positive changes in students writing attitude. Item no 6, 19, and 30 gained the second highest attitudinal change.

To answer the second research question, *How do students perceive writing on a class blog?* I analyzed the blog questionnaire using frequency count for each response provided by the learners. The result of the analysis is discussed below:

In general, learners enjoyed reading the blog posts of the peers. About 93% (13) respondents reported they enjoyed reading the blog very much and 7% (1) reported they somewhat enjoyed. Nobody opted for the other options indicating a higher acceptance of the class blog. Moreover, students have not only consumed others reading passively, but about 64% (9) also enjoyed responding to the blog entries very much and 36% (5) reported they somewhat enjoyed. Nobody opted for the other options. The joyful experience of reading has led learners to believe that their reading comprehension has improved because of reading blog posts. About 64 % (9) reported their reading comprehension improved very much and 36 % (5) reported their reading comprehension somewhat improved after reading the blog entries.

All students liked it when they got comments on the content ideas of their writing as well as when their grammar and spelling mistakes were pointed out. This active engagement with blog writing also resulted in students taking ownership of their writing and caring more for their writing, almost 93% (13) students reported to have cared more for their writing on the blog.

The increasing acceptance of blog reading and the subsequent writing practices it triggered is due to the reported ease of writing on the blogs. About 71.5% (10) found it very much easy to use the blog for writing and 28.5% (4) opted it was somewhat easy. Nobody opted for the other options.

In general, learners perceived blog writing as helpful tool to improve their writing. About 78.5 % (11) reported blog writing helped them very much in writing better whereas 21.5% (3) reported it somewhat helped them writing better. An almost equal number of students believed blog writing increased their interests in writing and the blog project increased their interest in learning English. However, although majority of students (57%) reported that they were interested in exploring blogs outside of the class, a small number of students reported negatively. These students were perhaps more oriented towards short-term immediate goals.

Perhaps because all written posts were published online students generally deterred from copying others' work. The students' questionnaire data and the posts written by students reveal that they have not copied other writers' works. However, students widely varied while reporting whether they referred to other blog posts during writing on the blog. Almost half of the students reported that they did refer to others' writing while the remaining students reported they did not. As a result, less than half the students reported that they have waited for other peers to respond before they responded to a blog task. This is an indication that some learners need assurance and they care more for the quality of their writing.

Students not only read comments on their writing, but they also read comments on their peers writing too. An overwhelming majority of students (93%) reported that they read comments on others' posting on the blog.

Students' opinions regarding the linguistic components of writing such as vocabulary development were overall positive. Majority of the students (86%) reported they looked up words in online dictionaries while writing on the blog. Google search engine was used by 78.5% of students for looking up unknown words.

Conclusion

Students in this study did not have any prior experience with writing on blogs. However, integration of blogs in the writing instruction for a period of 14 weeks has improved the learners' attitude towards writing. The findings of the study confirm findings in previous studies conducted elsewhere. Learners had a genuine urge to check what their peers had to say about their posts. This often led students to spend more time online for reading the comments of their peers. As students had to comment following a feedback sheet, they had to read more closely. Again, some students waited as a

cautionary measure for writing a comment that they wrote after reading others' comments. Therefore, a need to read others' opinion before forming one's own opinion was promoted through the blog writing project.

Writing on the blogs has been found to have several advantages over conventional language learning tasks such as written assignments, posters, oral presentations, quizzes. First, reading and writing blogs extended the time spent on learning and transcend the physical constraints of traditional classroom learning. Students could read, write, comment any time from any place. Second, the blog writing activities offered more opportunities for increased interaction between learners outside the classroom. Finally, blog presented the possibility for real communication with internet users outside the classroom community of the students.

References

- Arslan, R. Ş., and Şahin-Kızıllı, A. 2010. "How can the Use of Blog Software Facilitate the Writing Process of English Language Learners?" *Computer Assisted Language Learning* 23: 183–197.
- Calkins, L. M. 1986. *The Art of Teaching Writing*. Portsmouth: Heinemann Educational Books Inc.
- Camp, R. 1992. "Portfolio Reflections in Middle and Secondary School Classrooms." In *Portfolios in the Writing Classrooms*, edited by Kathleen Blake Yancey, 61-79. Urbana, IL: NCTE.
- Churchill, D. 2011. "Web 2.0 in Education: A Study of the Explorative Use of Blogs with a Postgraduate Class." *Innovations in Education and Teaching International* 48: 149–158. Doi:10.1080/14703297.2011.564009.
- Ferdig, R. E., and Trammell, K. D. 2004. "Content Delivery in the 'Blogsphere'." *T.H.E. Journal* 31: 1–6.
- Gardner, R.C. 2010. *Motivation and Second Language Acquisition: The Socio-Educational Model*. New York: Peter Lang Publishing.
- Gardner, R.C and Lambert, W.E. 1972. *Attitude and Motivation in Second Language Learning*. Rowley: Newbury House Publishers.
- Hashemian, M , Heidari, A. 2013. "The Relationship between L2 Learners' Motivation/Attitude and Success in L2 Writing." *Procedia - Social and Behavioural Sciences* 70: 476-489.
- Harmer, J. 2008. *How to Teach English*. Harlow: Pearson Education Limited.
- Hyland, K. 2016. *Teaching and Researching Writing*. New York: Routledge.
- Information Communication Technology Division, Government of Bangladesh. 2016. Accessed January 12, 2016, <http://digitalcontent.ictd.gov.bd/index.php/site/about>.
- Lin, M.H., Li, J., Hung, P. Y. and Huang, H. 2014. "Blogging a Journal: Changing Students' Writing Skills and Perceptions." *ELT Journal* 68: 422-431.
- Neira-Pinerio, M.D.R. 2015. "Reading and Writing about Literature on the Internet. Two Innovative Experiences with Blogs in Higher Education." *Innovations in Education and Teaching International* 52: 546-557.
- Rosenblatt, L. M. 1995. "What the Students Bring to Literature." *Literature as Exploration*, 74-104. New York: MLA.
- Ware, P., Kern, R., & Warschauer, M. 2016. "The Development of Digital Literacies". In *Handbook of Second and Foreign Language Writing*, edited by R. M. Manchón, and P. K. Matsuda, 307–328. Boston, MA: De Gruyter.
- Ward, J. M. 2004. "Blog Assisted Language Learning (BALL): Push Button Publishing for the Pupils." *TEFL Web Journal* 3: 1–16.
- Weaver, C. 1996. *Teaching Grammar in Context*. Portsmouth, NH: Heinemann.
- Yancey, K. B. 2004. "Made Not Only in Words: Composition in a New Key." *College Composition and Communication* 56: 297–328.
- Zhang, Z. 2005. "Application of Blog in College English." *Journal of Hunan University* 3: 45-47.
- Zhou, H. 2015. "An Empirical Study of Blog-assisted EFL Process Writing: Evidence from Chinese Non-English majors." *Journal of Language Teaching and Research* 6: 189-195.

The Principle of Non-Refoulement and the Obligations of the United Nations in Ensuring the Accountability of States toward Refugee Protection: Lessons from Nigeria and Cameroon

Eric Che Muma

Justus Liebig University Giessen, meeteric2@yahoo.com

ABSTRACT: Since the outbreak of the Second World War, humanity has witnessed several challenges in the maintenance of global peace and justice and in the protection of refugees and asylum seekers, thus resulting from the outbreak of conflicts and threats posed by terrorist groups. These conflicts are classified into national and international conflicts. The impact of conflicts and inter-tribal wars between states or nations has witnessed a new form of migration from the twentieth century commonly referred to as refugee migration. This paper aims to analyse the principle of non-refoulement under the 1951 Refugee Convention and the obligations of the United Nations in ensuring the accountability of state parties toward the protection of refugees or displaced persons within their respective territories, with lessons from Nigeria and Cameroon. The paper argues that state parties to the said treaty are bound to protect everyone who is subject within their respective jurisdictions particularly, refugees and displaced persons. Effective protection is a necessary measure for ensuring that states follow the affirmative legal obligations undertaken after the ratification of the Refugee Convention. It is also an important approach for evaluating the credibility of the United Nations in accomplishing its objective toward peace, justice, and the protection of refugees or displaced persons.

KEYWORDS: Refugee, non-refoulement, United Nations, obligations, accountability

1. Introduction

The twenty-first century has witnessed an increase in the rate of migration or movement of people from one country to another around the globe. The soaring rate of migration, particularly in developing states, is a result of international and national conflicts, terrorist attacks, poverty and hunger, unemployment, diseases, and civil upheavals (Kelley 2007, 402; Jacques 2012, 197–199). However, the aftermath of the Second World War (WWII) has also witnessed a new form of migration in the international scene, namely, refugee migration. The movement of persons can either be voluntary or coerced and can occur within a person's own country or across international frontiers. From a human rights perspective, persons displaced within their own country (i.e., internally displaced persons [IDPs]) and refugees are groups that require special protection and care because they have been deprived of the security that is normally enjoyed by people who can remain in their homes. As noted by the United Nations High Commissioner for Refugees (UNHCR Global Trends Report 2017), it is estimated that an unprecedented 68.5million people around the world are forcefully displaced from their homes. This is a result of persecutions, conflicts, and generalised violence. Among these people are 40 million internally displaced people, 25.4 million refugees with more than half under the age of 18, and 3.1 million asylum seekers (UNHCR Global Trends Report 2017). A total of 57% of worldwide refugees come from South Sudan (2.4million), Afghanistan (2.6million), Syria (6.3million), Myanmar (1.2million), and Somalia (186,400), and 28 % of the worlds displaced people are in developing countries (UNHCR Global Trends Report 2017). According to the Commission, a total of 250, 85 Cameroonians have been registered as refugees in Akwa Ibom, Benue, Cross River and Taraba in Nigeria [It should be noted that this is the most recent statistic obtained from the UNHCR office in Nigeria on the number of Cameroonian refugees in Nigeria from October 2017 to August 15, 2018].

Although displacement can have two phases, this article will focus on a specific group that is commonly referred to as refugees. The word refugee has been defined by the 1951 UN Convention Relating to the Status of Refugees (Art. 1(2)) as a person who is outside their country of nationality and is unable to return owing to the fear of persecution because of race, political opinion, creed, nationality, or membership to a particular social group. Although this definition is important, it does not suit the

current period because of changes in world events; a more comprehensive meaning was proposed by the African Union Convention on the basis of the specific aspects of refugee's problems in Africa (OAU Convention Art.1). The current paper aims to assess the extent to which the principle of non-refoulement under the 1951 Refugee Convention is being enforced with regard to the protection of refugees and the accountability of states toward internationally displaced persons who have been forced to flee abroad and to seek protection against persecution. This paper will reference a specific case study in Nigeria and Cameroon and will evaluate the extent to which state parties are meeting their affirmative legal obligations established after the ratification of the convention [Cameroon ratified the 1951 Refugee Convention on October 23, 1961 whereas Nigeria ratified it on October 23, 1967. Both states are also signatories to the 1969 OAU Convention Governing Specific Aspect of Refugees Problems in Africa].

The position of the United Nations in ensuring the accountability of states that have breached the principle of non-refoulement will also be an interesting issue worth assessing. The paper also suggests that the United Nations can make a significant contribution in ensuring the accountability of states that failed to provide adequate protection to refugees in violation of the principle of non-refoulement.

2. Causes of Refugee Crisis

Since time immemorial, humanity has moved from one state to another either as refugees or IDPs for various reasons. According to the Global Trend Report on Forced Displacement, it is estimated that 31 people are newly displaced every minute of the year (Kelley 2007, 402). The high proportions of those who migrate are obviously for reasons of political, social, economic, and environmental calamity. Although the focus of this paper is not mainly to analyse the reasons why people flee, it is important to emphasise that political and economic motives play essential roles in influencing the rate of refugee migration, particularly in developing states. The quest for better living conditions and the lack of employment opportunities has become a major issue for concern. Meanwhile, in most part of Africa, civil wars or conflicts are often seen as the only way to effect change in the African continent [See the case of Francophone Africa particularly the refusal of the incumbent DR Congo President Joseph Kabila to step down from office when his mandate came to an end on December 20, 2016, and the outbreak of the Anglophone Crisis in Cameroon, which resulted in cross-border and internal migration. Although the present situation in Gabon is relatively calm, the Country cannot be left out as a good example].

This is because most political leaders who have been in power for a long time have decided not to relinquish power until eternity. For instance, from October 2017 to October 2018, thousands of Cameroonians were displaced because of fighting in the North-West and South-West Regions of Cameroon and dozens have been subjected to arbitrary detention. As a result of conflicts between the armed group Boko Haram and the Cameroonian military, approximately 240,000 people in the Far North Region fled from their homes between 2014 and the end of 2017 (Amnesty International Report 2017/2018, 112).

This present situation portrays the big picture of the plight of refugees across the continent. Political detainees, dissidents, and other individuals who oppose or challenge their governments in other countries are also forced to take refuge in neighboring countries. Similarly, violence in the Kasai Region of DR Congo since 2016 has left thousands dead with at least 1 million internally displaced and has caused more than 35,000 people to flee for neighbouring Angola (Amnesty International Report 2017/2018, 144-147). This has led to a deteriorating situation in human rights, particularly that of those who have been displaced. To ensure that those displaced as refugees should be given proper protection, the receiving or contracting states must ensure that the principle of non-refoulement and the obligations articulated by the 1951 Convention must be respected in line with other human rights treaties.

3 Legal Framework for Refugee Protection

Cognizant of the causes and the devastating effects faced by refugees, humanity thought that it was wise to paint a new picture in the history of human rights and fundamental freedoms. This began with the adoption of an international legal framework or instruments that can be used to protect refugees and

asylum seekers. Today, the UN human rights laws and monitoring mechanisms have made significant contributions to refugee protection. Although these mechanisms may not necessarily serve as a reliable framework for protection as domestic systems, recent developments in international law have contributed immensely on specific cases and broad based advocacies on behalf of refugees.

The UN human rights system or mechanism has provided a legal panacea for failure in domestic procedures concerning refugee protection (Gorlick 2000, 119). The system of refugee protection is established by international law and is overseen by the UNHCR. Although the UNHCR is accorded special status as the guardian of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, it is not limited in the exercise of its protective functions to the application of the substantive provisions of these two treaties. This organ oversees the protection of refugees on the basis of a strong legal framework under international law.

3.1. Global Legal Framework

The main principal treaty that governs the Status of Refugees and asylum seekers under international law is the 1951 Convention and Protocol Relating to the Status of Refugees. The 1951 Convention is a post-WWII instrument that was limited in scope to persons fleeing events in European states occurring before 1951. This limitation seems to have been erased by the 1967 Protocol, which provided universal coverage. Today, approximately two-thirds of the world's countries are state parties to the convention and its protocol (UN Convention Relating to the Status of Refugees, 1951 and the 1969 Protocol). It is a rights-based instrument underpinned by a number of principles, such as equality, non-discrimination, penalisation, and non-refoulement. However, international instruments today remain the principal body of international law in the protection of refugees. The definition and a number of rights provisions contained in these instruments have been widely incorporated into domestic laws. The direct line of descent from the UN Charter and the Universal Declaration of Human Rights (UDHR) is stated in the preamble to the 1951 Refugee Convention (Recital 1 of the Preamble) concerning human rights focus. The convention affirms the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. International refugee law instruments also codify a number of specific rights that states are obliged to provide to refugees.

Considering the rapid developments in human rights laws, which may complement the interpretation of refugee instruments, the Refugee Convention is a living document that is very relevant in providing a normative framework to address contemporary refugee problems. In addition to the 1951 Convention and its Optional Protocol, which serves as a principal treaty that deals with refugee protection, other instruments have emerged and added momentum to the protection of refugees with equal standards. For instance, the UDHR (Art.1 UDHR 1948), the International Covenant on Civil and Political Rights (Arts. 2, 12 and 13 of the ICCPR, 1966), the UN Convention on the Rights of the Child (Art. 22 of the UNCRC, 1969) and the UN Convention Against Torture (Art 1 CAT 1984). These instruments enforced refugee protection on the basis of the examination of periodic and states party reports by a human rights treaty body or a committee established under the authority of a particular treaty and comprises independent experts.

3.2. Regional Framework

Regional instruments also play an instrumental role in ensuring that refugees or asylum seekers are given adequate protection regarding their status at the national level. Unlike the 1951 Refugee Convention, the OAU Convention Governing Specific Aspects of Refugees Problems in Africa provide an elaborate definition to the concept of a refugee. According to the convention, “a refugee refers to every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”(Art. 1 OAU Convention, 1969). Similar to the OAU Convention, the African Charter on Human and People's Rights (Art. 12), the African Charter on the Rights and Welfare of the Child (Art. 13), the European

Convention on Human Rights (Art. 3 of ECHR 1950), the European Social Charter, the American Convention on Human Rights (ACHR Art.22 (8)), and the 1984 Cartagena Declaration have also laid strong emphases toward refugee protection and impose unconditional obligations on all state parties. International law provides what can commonly be referred to as guidelines and mechanisms within which refugees and asylum seekers may seek redress for protection at any point in time.

4. Non-Refoulement and State Obligations toward Refugee Protection

4.1 The Principle of Non-Refoulement

Non-refoulement is a core principle under international law that governs the Status of Refugees under the 1951 Refugee Convention (Art. 33(1)). The term non-refoulement originates from the French word *refouler*, which means to drive back or repel. It is a fundamental principle of international law that forbids a country from returning asylum seekers to a country in which they would be in likely danger of persecution. According to Trevisanut, non-refoulement is all about being admitted to the state community, although in a minimalist form of non-removal (Trevisanut 2008, 209). Unlike political asylum, which applies to people who can prove a well-grounded fear of persecution, on the basis of certain categories of persons, non-refoulement refers to the generic repatriation of people, including refugees into war zones and other disaster locales. It is now considered a principle of customary international law because it applies even to states that are not parties to the convention and its protocol. It has also been described by Goodwin-Gill (2014, 42) as an integral part of human rights protection, implicit in the subject matter of many such rights, and a rule of customary international law. Several arguments have been raised by scholars on the exact scope of the principle of non-refoulement in the protection of refugees under international law (Lauterpacht & Bethlehem 2001, 115-117; Molnar 2016, 57; Lambert 2005, 39; UNHCR 2007, para.6). Unlike the 1951 Refugee Convention, the scope of protection against refoulement is wider under Article 3 of the European Convention on Human Rights.

However, the question of who is protected by the prohibition on refoulement has been answered by the Refugee Convention. According to Article 33 of the convention, the principle applies only to refugees who are already in a contracting or receiving state and who have been accorded a refugee status or recognised as a refugee. Article 33(1) further states that “no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, nationality, membership of a particular social group or political opinion.” To further add momentum to the principle of non-refoulement, the convention states that a receiving or contracting states shall not forcibly expel, extradite, or deport a refugee lawfully in their territory except on grounds of national security or public order (Arts. 32(1) & 31). Although it indicates that receiving or hosting states cannot expel refugees within their respective jurisdictions, it further places limitations on this same clause by emphasising that the expulsion of refugees is subjects to conditions pursuant to a decision that can only be determined by a court of law (Art.32(2)).

Articles 33(2) and 32(1) of the Convention require all contradicting state parties without reservation or discretion not to expel refugees from their country of origin, except for reasons based on national security or public order. It is the duty of state parties to ensure that they realised their treaty obligations undertaken after the ratification of the said convention. To guarantee the effective protection of refugees and the enforcement of the principle of non-refoulement, the UN, through its monitoring mechanisms, must ensure that state parties are meeting their affirmative legal obligations and that those in violations of the said principle must be held accountable. Whether state parties are meeting up to their respective obligations is an issue worth assessing.

4.2. States Obligations toward Refugee Protection

The ratification of international instruments imposes obligations on state parties to ensure that everyone subjects within their respective jurisdictions are given equal protection particularly, refugees who are in need of special care and protection. As stated by Trevisanut (2008, 208), the obligation of non- refoulement is the core element that guarantees protection to refugees and asylum seekers. The

question of whether states have the duty to protect refugees seems to have been answered unequivocally by the Refugee Convention and other human rights treaties. The 1951 Convention has been widely ratified by 145 states and outlines the rights of the displaced and the legal obligations of states to provide protection to refugees. In line with other human rights treaties, the 1951 Convention (Art.3) and the 1969 OAU Convention Governing Refugees(Art.4) require state parties to provide protection to all refugees or asylum seekers without any discrimination to race, religion or country of origin (Art. 2(1) ICCPR; Art. 3 ECHR; Art. 7 UDHR; Art.2(2) ICESCR).

Article 9 of the Refugee Convention states that “nothing shall prevent a contracting state, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential in the case of a particular person, pending a determination by the contracting state that the person is, in fact, a refugee and that such measure is necessary in his case in the interests of national security.” By interpretation, the word “shall” couched in the Refugee Convention implies a mandatory and an unconditional duty or obligation that must be executed by all member states within their respective jurisdictions during the process of enforcement or implementation. Although this convention can also be interpreted as a human rights treaty, I hesitate to lay emphasis on this argument because states obligations under the convention should not be subject to limitations from any member state. However, despite the wide-reaching ratification of treaties by states, refugees and asylum seekers still face numerous challenges and violations in exercising their rights. This is as a result of the non-respect of the principle of non-refoulement and the lack of effective protection accorded to refugees in specific states. A common example can be seen in developing states particular in Nigeria, Cameroon, and Kenya.

5. Enforceability of the Principle in the Case of Nigeria and Cameroon

Nigeria and Cameroon share a common boundary at the Bakassi Peninsular and has similar historical backgrounds. Both states affirm their obligations toward the protection of refugees after the ratification of the 1951 Refugee Convention and its Optional Protocol and the OAU Convention Governing Specific Aspects of Refugees Problems in Africa. In addition to these conventions, Nigeria and Cameroon are also signatories to several international human rights treaties that govern the rights of refugees and asylum seekers. These treaties have imposed positive obligations on these two states to accord protection to refugees within their respective jurisdictions. As a result of the ongoing Anglophone crisis in Cameroon, which started in October 2016, several Cameroonians from the English speaking regions of Cameroon (North West and South West) were forced to take refuge in Nigeria for safety. [For purpose of clarity, the Anglophone crisis which has resulted in a national conflict today between Anglophone Cameroonians (commonly referred to as Ambazonians) and the Government of Cameroon, started in October 2016 till present date. This was a consequence of a strike action between Lawyers and teachers based on the need to protect the English common law system and the dominant use of the French language in English Schools. Anglophone Cameroon otherwise known as English speaking Cameroonians make up 20% of the total population as opposed to 80% of their French-speaking counterpart. Per International law, English speaking Cameroonians constitute a minority group that requires special care and protection from the government without any discrimination]. Many of whom stand for a federal system of governance or a separate state from French Cameroon and represent the interest of the minority group (Art. 2 of the UN Declaration on the rights of persons belonging to National or Ethnic, Religious and Linguistic Minorities).

However, in January 2018 some Anglophone frontline leaders, who are commonly known as ‘Ambazonians’ were arrested, detained and subsequently extradited to Cameroon by the Nigerian Government. These Ambazonian leaders who had been in Nigeria for several months or years with refugee status were forcibly returned to Cameroon their country of nationality, by the receiving state despite fear of being persecuted. Among them was the leader of the Ambazonian movement, namely, *Sisiku Ayuk Tabe and 9 Others* [This case study does not intend to defend or support the activities or acts performed by the Anglophone fighters or the Ambazonian leaders within Cameroon soil but to evaluate the process that led to their extradition from Nigeria in relation to the principle of non-refoulement and the obligations of the two states under the 1951 Refugee

Convention to ensure that refugees within their respective jurisdictions are accorded adequate protection and enjoy equal rights just like ordinary citizens]. Ayuk Tabe and nine others were abducted from the Nera Hotel in Abuja, Nigeria without a warrant in the course of a meeting with other frontline leaders. Few weeks after they were arrested, the leaders were handed over to the Cameroonian authorities and were subsequently extradited or deported to Cameroon, where they have been kept incommunicado without trial and access to justice for over ten months contrary to section 19(2)(3) of Law No. 2005 of the Cameroon Criminal Procedure Code which states that within forty eight(48) hours of the detention of a person arrested on a warrant, he shall be interrogated by the Examining Magistrate of which his case shall be determined. The word detention is defined as the confinement of an asylum seeker by a member state within a particular place where the applicant is deprived of his or her freedom of movement (Hailbronner 2007, 160). The Ambazonian leaders, who were legally residing in Nigeria and were granted refugee status by the UNHCR, were returned to Cameroon without any justification from the government of Nigeria owing to well-founded fear of persecution. There is no doubt that Nigeria and Cameroon from the time of arrest and deportation have no extradition treaty that can be used to justify the deportation of the said refugees or Ambazonian frontline leaders to Cameroon.

According to Article 33 of the 1951 Refugee Convention, no contracting state shall expel or return a refugee in any manner where his life or freedom would be threatened on the basis of his political opinion. Furthermore, Articles 31 and 32 of the convention further states that a state shall not expel or imposed penalties on refugees on account of illegal entry or residence if they are coming from a territory where their life or freedom is being threatened. Although the convention limits the rights of refugees on the basis of national security or public order, it is evident that the forceful extradition or return of *Ayuk Tabe and 9 Others* was not based on any motive of national security because they did not pose a threat to Nigeria—their country of residence at the time. Neither had they committed any criminal offence at the time of residence in Nigeria that would have been a motive for justification by the Nigerian authorities.

In the locus classicus of *Chahal v The United Kingdom* (Application No.22414/93(1996), para.76), the ECtHR emphasised that the threat posed by an individual to the national security of a contracting state is a factor that must be considered when overseeing the issue of ill treatment if a refugee is deported to his country of nationality. This is because there are varying degrees of risk of ill treatment. The greater the risk of ill treatment, the less weight should be accorded to the threat to national security. When a substantial doubt exists regarding the risk of ill treatment, the threat to national security could weigh heavily in the balance to be struck between protecting the rights of the individual and the general interests of the community. This was not the case here because there was no substantial doubt that the extradition of the Ambazonian leaders to Cameroon could lead to a risk of ill treatment. Ayuk Tabe and 9 Others did not constitute a serious threat to the security of the Federal Republic of Nigeria; therefore, their deportation was not justified. Unless or otherwise a prediction that may happen in the future. Arguably, given the unlawful arrest and extradition of the Ambazonian frontline leaders, the Anglophone crisis seems to have taken a new dimension without any prospects for dialogue or peace between the government and the leaders of the separatist movement or freedom fighters. The lack of political willingness, the non-respect or disregard for international norms, and the failure of states in meeting their respective treaty obligations under international law have resulted in a continuous increase in the number of Cameroonian refugees into Nigeria and IDPs within the national territory.

According to the European Union Agency on fundamental rights, the responsibility of a state for breaches of non-refoulement can emerge in two ways: through independent state responsibility and through “derived responsibility” flowing from an internationally wrongful act committed by a third country (European Union Agency for Fundamental Rights 2016, 20). In addition to being responsible for their own breaches of non-refoulement, a state can also be held liable for assisting, directing, or coercing such violations by a third country. However, Article 2 of the Draft Articles on State Responsibility for International Wrongful Acts which was drawn up by the International Law Commission identifies two conditions for state responsibility to arise. The conduct must be

attributable to the state under international law and it must constitute a breach of an international obligation (Arts. 2, 4, 5 International Law Commission *Draft Articles* 2001). Considering that the Ambazonian leaders or refugees were under the responsibility or care of the Nigerian authorities or government and because the government of Cameroon aided Nigeria in the extradition of the said leaders to their country of nationality, both states had breached the principle of non-refoulement and their obligations under international law. Nigeria failed to exercise its responsibility to protect refugees as required by international law and its Constitution (Sections 34 and 35) by conniving with the government of Cameroon to breach the principle of non-refoulement under the 1951 Convention. As a matter of fact and without any fear of contradiction, both states must also be held liable for breaching their obligations under the Refugee Convention.

6. States Accountability and the Obligations of the United Nations

Several states that have subscribed to the international legal regime of refugee protection by acceding to international refugee instruments are currently undertaking radical changes through legislative and inter-state arrangements (Gorlick 2000, 2). These changes have resulted in restricted access to asylum and legal rights to refugees in the countries hosting them, particularly developing states (Kelley 2007, 404–405). These changes have gone as far as to limit the protection accorded to refugees, such as the access to refugee status determination, the right to movement, procedures of employment, and the right to adequate housing and healthcare services. This trend has been described by Gorlick (2000, 2) as a pull back from the legal foundation on which effective protection rests. As a general rule, all state parties to the 1951 Convention are accountable for the breach of obligations to ensure the effective protection of refugees and the principle of non-refoulement. As a global organisation that stands for peace, justice, equality, and non-discrimination, the UN has the mandate to ensure that state parties that do not fulfill their task of implementation are held accountable for any violation of its obligations and the principle of non-refoulement under the 1951 Convention. The involuntary extradition or return of *Ayuk Tabe and 9 Others* by the Nigerian government to Cameroon is a clear example of a violation of Article 33 of the Refugee Convention. Did the United Nations and the African Union intervene? They did not.

Since the reaction of the government of Nigeria, the United Nations and the African Union remain mute in the watchful eyes of the global community with mere recommendations and condemnation. Although the United Nations has a supervisory mechanism or committee that monitors the activities of state parties in this regard, it is regrettable that the committee lacks a legally binding enforceable mechanism to hold states accountable (Danish Refugee Council Report 2017, 8-9). One may be tempted to argue that the UN is gradually losing its strength as a global organisation or mechanism in ensuring peace, human rights and justice. This situation is happening because the organisation is a toothless bulldog that can only act by a mere recommendation or criticisms without legally enforceable sanctions. The failure of the United Nations to hold states accountable is one of the biggest challenges faced by the world body toward refugee protection. It is a problem partly caused by territorial or state sovereignty, which the organisation sees as an absolute right to be enjoyed by all state parties without effective control or intervention. As a matter of urgency, there is a need for the organisation to take effective action to ensure that effective legal accountability mechanisms are established and that state parties are meeting their respective obligations as articulated in the 1951 Convention and other human rights treaties. A promising future that might likely result in a third world war is underway if care is not taken to ensure that states are accountable for the non-respect of their obligations under national and international norms during the process of implementation.

7. Conclusion

This paper has attempted to untie the contentious debate behind the principle of non-refoulement, which is part of the obligations and accountability of states toward refugees protection under the 1951 Refugee Convention. This paper argues that the principle of non-refoulement is a cornerstone that governs refugee protection and has become part of customary international law. All states, regardless of their status of ratification, are obliged to effectively ensure that refugees or asylum seekers within their

respective jurisdictions are given adequate protection without discrimination. It is clear from the above analyses that some state parties particularly developing states, often exercise their powers with disregard to international norms and their obligations undertaken after the ratification of international instruments.

The paper suggests that the accountability of states toward refugee protection is a necessary measure for ensuring that states meet their affirmative legal obligations articulated in the 1951 Refugee Convention. This promising task can only become effective with the help of the United Nations and other regional bodies, such as the African Union and the European Union, to ensure that states fulfill their respective treaty obligations and that those who go against their obligations, must be held accountable. Although the responsibility for accountability cannot be placed entirely on international organisations, if each and every member state acts as a facilitator to one another and respect the principle of non-refoulement, the effective protection of refugees will be a promising task worth realising for the future. To accomplish this task, all state parties to the 1951 Refugee Convention and other human rights treaties must live up to the promises of ensuring that every refugee or asylum seeker is accorded equal and effective protection without discrimination, particularly in the receiving states. This is because there is no unity in diversity and diversity in unity when states see themselves as superior to international norms that are meant to protect refugees who are in danger of persecution when return to or in their countries of origin.

References

- ACHR American Convention on Human Rights (adopted on November 22, 1969, and entered into force July 18, 1978) OAST, No. 1144 UNTS 123.
- Amnesty International Report 2017 / 2018. "The State of the Worlds Human Rights" (Amnesty International) <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PD>, accessed 01 October 2018.
- Constitution of the Federal Republic of Nigeria, 1999.
- Danish Refugee Council Report. 2017. Whose Responsibility? Accountability for Refugee Protection and Solutions in a Whole-of-Society Approach: Danish Refugee Council.
- ECHR (European Convention on Human Rights), (adopted on November 4, 1950, and entered into force on September 3, 1953).
- European Union Agency for Fundamental Rights 2016. Scope of the Principle of Non-Refoulement in Contemporary Border Management: Evolving Areas of Law (Office of the European Union).
- Goodwin-Gill, Guy. 2014. "The International Law of Refugee Protection." In Elena Fiddian Q. et al. (eds) *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press: 36-47.
- Gorlick, Brian. 2000. "Human Rights and Refugees: Enhancing Protection through International Human Rights Law." *Nordic Journal of International Law* 69 (2):117.
- Hailbronner, Kay. 2007. "Detention of Asylum Seekers." *European Journal of Migration and Law* 9:159–172.
- International Covenant on Civil and Political Rights (ICCPR) adopted on December 16, 1966, and entered into force on march 23, 1976: 999 UNTS 17.
- International Law Commission. *Draft Articles on Responsibility of States for International Wrongful Acts with Commentaries*, Adopted 2001, available at: <http://www.refworld.org/docid/3ddb8f804.html>.
- Jacques, Melanie. 2012. *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*. Cambridge: Cambridge University Press.
- Kelley, Ninette. 2007. "International Refugee Protection Challenges and Opportunities." *International Journal of Refugee Law* 401-439.
- Lambert, Helene. 2005. "The European Convention on Human Rights and the Protection of Refugees: Limits and Opportunities." *Refugee Survey Quarterly* 24(2):39–55.
- Lauterpacht, Elihu, & Bethlehem, Daniel. 2001. "The Scope and Content of the Principle of Non-Refoulement." <http://www.unhcr.org/419c75ce4.pdf>, accessed 03 October 2018.
- Molnar, Tamas. 2016. "The Principle of Non-Refoulement under International Law: It's Inception and Evolution in a Nutshell." *COJOURN* 1(1): 51-61.
- OAU African Charter on Human and Peoples Rights, adopted on June 27, 1981, and entered into force on October 21, 1986, CAB/LEG/67/3rev.52II.L.M.58 (1982) available at: <http://www.refworld.org/docid/3ae6b3630.html>.
- OAU African Charter on the Rights and Welfare of the Child (adopted on July 1, 1990, and entered into force November 29, 1999) CAB/LEG/24.9/49 (1990), available at: <http://www.refworld.org/docid/3ae6b38c18.html>.
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), adopted on September 10, 1969, and entered into force on June 20, 1974. 1001 UNTS 45, available at: <http://www.refworld.org/docid/3ae6b36018.html>.
- Trevisanut, Soline. 2008. "The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection." In A. Von Bagdandy & R. Wolfrum (eds) *Max Planck Yearbook of United Nations Law*, Volume 12 (Koninklijke Brill N.V) 205-246.

- UN 1951 *Convention Relating to the Status of Refugees* as updated by the 1967 Protocol Relating to the Status of Refugees January 01, 1969: 606 UNTS 267.
- UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted on December 10, 1984, and entered into force on June 27, 1987) available at: <http://www.refworld.org/docid/3ae6b3a94.html>.
- UN *Convention on the Rights of the Child*, adopted on November 20, 1989, and entered into force, on September 02, 1990: 1577 UNTS 7, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.
- UN *Convention Relating to the Status of Refugees* (adopted on July 28, 1951, and entered into force on April 22, 1954) 189 UNTS 137 (Refugee Convention).
- UN *Declaration on the rights of persons belonging to National or Ethnic, Religious and Linguistic Minorities* (adopted by General Assembly Resolution 47/135 of 18 December 1992) available at: <http://www.refworld.org/docid/3ae6b38d0.html>.
- Universal Declaration of Human Rights (adopted on 10 December 1948) UNGA Res: 217 A (III).
- United Nations High Commission for Refugees (UNHCR). 2007. *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*.
- United Nations High Commission for Refugees (UNHCR). 2017. *Global Trends Report on Forced Displacement*. <http://www.unhcr.org/globaltrends2017/>, accessed 01 October 2018.

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