

# RAIS CONFERENCE PROCEEDINGS

The 13th International RAIS Conference  
on Social Sciences and Humanities

JUNE 10-11, 2019

EDITOR IOAN-GHEORGHE ROTARU

This publication presents the proceedings of the *13th International RAIS Conference on Social Sciences and Humanities* held at Johns Hopkins University, in Montgomery County Campus, Rockville, MD, on June 10-11, 2019. The Conference was organized by Research Association for Interdisciplinary Studies.

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# Preface

The *13th International RAIS Conference on Social Sciences and Humanities* held at Johns Hopkins University, in Montgomery County Campus, Rockville, MD, on June 10-11, 2019, was organized by The Research Association for Interdisciplinary Studies (RAIS).

The RAIS Committee received 114 submissions. The papers were reviewed by at least two independent reviewers under a double-blind peer review process. Out of the received submissions, 44 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 Argentina, Australia, Bangladesh, Brazil, China, Colombia, Cyprus, Czech Republic, Egypt, France, Georgia, India, Italy, Kazakhstan, Romania, Saudi Arabia, South Africa, South Korea, Thailand, Turkey, UK, 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.

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# TABLE OF CONTENTS

Artificial Intelligence Market Disruption <i>Julia M. Puaschunder</i>	1
Homelessness and Housing Market Condition in the United States <i>Praopan Pratoomchat</i>	9
Optimal Structure of Pension System and Its Influence on the Social Policy of State Budget <i>Marina Tabatadze</i>	18
Social Media and its Role in the Success of “100 Millions' Health” Campaign in Egypt <i>May Mahfouz</i>	27
Factors Influencing Student Satisfaction in Higher Education. The Case of a Georgian State University <i>Nino Tandilashvili</i>	39
Mid-Level Management Style in Healthcare <i>Jamion Lewis, Kruti Lehenbauer</i>	55
Perception of Residents, Community Participation and Support for Tourism Development in the Old Town Muang Songkhla, Thailand <i>Wilawan Jansri</i>	64
Bancassurance: Challenges and Opportunities in Republic of Serbia <i>Ivana Marinović Matović</i>	72
The Future of the European Union <i>Titus Corlataan</i>	78
Notes on Work Super-Exploitation: A Study on the Topicality of the “Tendency of the Rate of Profit to Fall” <i>Vitorio Felipe Santos Valenzuela Toro, Jesus Ranieri</i>	84
Evolution of Academic Freedom in the US Higher Education System as Part of Constitutional Principles <i>Ekaterine Bakaradze, Mindia Ugrekheldze</i>	92
The Equity and Inclusion in Higher Education: A Proposed Model for Open Data <i>Carla Hamida, Amanda Landi, Ziyi Liu</i>	100
The Legal Status Regarding the Romanian Tax Executor <i>Alice Cristina Maria Zdanovschi</i>	107
Mental Temporal Accounting <i>Julia M. Puaschunder</i>	114
Transparency, Accountability and Participation through Social Audit: Case of MGNREGA in Sikkim, India <i>Feba Varghese, N C Narayanan, S B Agnihotri, Girija Godbole</i>	125
Corporate Financing in Romania <i>Sebastian Bodu</i>	137
What Makes a State Swing? <i>Jonathan L. Clayton</i>	149

The Impact of Internal Communication in Organizational Management <i>Maria Daniela Pipaş, Camelia Lucia Bakri</i>	162
Political Economy of Connectivity: China's Belt and Road Initiative <i>Tolga Demiryol</i>	168
The Legal Extent of Malpractice in Romania. A Glance <i>Crina-Maria Hristodorof</i>	181
New Concerns in International Business: The Application of Sanitary and Phytosanitary Policies <i>Maria Esther Kim</i>	185
The Ambassador Program: A Framework for Recruiting and Engaging Flexible Volunteers <i>Ike Obi, Alexis Jimson-Miller, Michaela Hahn, Darik Hall</i>	195
Aggressions Committed with White Weapons and Injuries Caused <i>Ovidiu Andrei Hamburda</i>	204
What's in a Name? The Semantics of Migration and Its Policy Implications <i>Nguh Nwei Asanga Fon</i>	209
Fight against Crime - Criminological Perspective <i>Tiberiu Viorel Popescu</i>	213
Historical Unemployment Rate and External Trade in Boyaca 2004-2016 <i>John Jairo Martínez Álvarez</i>	219
Some Aspects of Forensic Identification <i>Lucia Cerasela Balan</i>	224
Hinduism and Women Religious Beliefs and Practices <i>Hari Priya Pathak</i>	228
Women, Law, Court and Justice in India (1970 to 2016) <i>Harneet Kaur</i>	236
Dynamics in Nigerian Land Administration System and the Inevitability of Decentralization <i>Madumere Nelson</i>	245
Advertising and Its Subtle Role of Conflict Resolution. A Semiotic Analysis of Two Ads <i>Anemikaye Goodluck Matthew</i>	251
Interdisciplinary Studies Between Law and Education. Mafia's Children: Removal and Cultural Contamination Against Indoctrination, Violence, and Oppression <i>Rossella Marzullo</i>	260
An Examination of Cryptocurrency from Inception to Future State <i>Mitch Kramer</i>	268
Natural Disaster Mitigation at Ben Taub Hospital <i>Jamion Lewis, Ryan Lunsford</i>	275
Mediation as an Alternative Solution to the Felony of Battery and Other Violences <i>Popescu Ștefan Gabriel</i>	285
Meditative Cognitive Therapies: A Literature Review <i>Rebecca Bhik-Ghanie</i>	294
Scurvy and Flu in 1900: The Truth Lost in Evidence <i>Tereza Kopecka</i>	302
Pranayama Yoga: Measuring Brainwaves via EEG <i>Rebecca Bhik-Ghanie</i>	311

Adoption System in Some States in the EU and America <i>Silvia Timofti</i>	317
Criminological Analysis of the Antisocial Personality of the Terrorist <i>Gabriel Tănăsescu</i>	321
Some Aspects of Criminal Participation <i>Silviu-Ștefan Petriman</i>	326
Preventive Measures in the Criminal Procedural System in Romania <i>Alexandru Peicea</i>	331
Law and Religion. The mystical link <i>Oana Horhogeia</i>	336
Emilio Uranga and the Communal Role of Melancholy in Postcolonial Korean Culture <i>Carmen Huxley</i>	340
Authentic - False. Correlation between Graphics and Physico-Chemical Painting Techniques Expertise in Artwork Analysis <i>Georgiana Mardare (Bălușescu), Nicoleta-Elena Hegheș</i>	345

# Artificial Intelligence Market Disruption

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**ABSTRACT:** The introduction of Artificial Intelligence (AI) in our contemporary society imposes historically unique challenges for humankind. The emerging autonomy of AI holds unique potentials of eternal life of robots, AI and algorithms alongside unprecedented economic superiority, data storage and computational advantages. Yet to this day, it remains unclear what impact AI taking over the workforce will have on economic growth.

**KEYWORDS:** AI, AI-GDP Index, AI market entry, Artificial Intelligence, capital, economic growth, endogenous growth, exogenous growth, Global Connectivity Index, GDP, Gross Domestic Product, labor, law and economics, society, State of the Mobile Internet Connectivity, workforce

## Introduction

The contemporary trend of slowbalisation is described, as the slowing down of conventional globalization of goods, services and Foreign Direct Investments (FDI) flows; yet at the same time, we still see human migration and air travel as well as data transfer continuing to rise. These market trends of conventional globalization slowing and rising AI-related industries are proposed as first market disruption in the wake of the large-scale entrance of AI into our contemporary economy. Growth in the artificial age is then proposed to be measured based on two AI entrance proxies of *Global Connectivity Index* and *The State of the Mobile Internet Connectivity 2018 Index*, which is found to be highly significantly positively correlated with the total inflow of migrants and FDI inflow – serving as evidence that the still globalizing rising industries in the age of slowbalisation are connected to AI. Both indices are positively correlated with GDP output in cross-sectional studies over the world. In order to clarify if the found effect is a sign of industrialization, time series of worldwide data reveal that internet connectivity around the world is associated with lower economic growth from around 2000 on until 2017. A regression plotting Internet Connectivity and GDP per capita as independent variables to explain the dependent variable GDP growth outlines that the effect for AI is a significant determinant of negative GDP growth prospects for the years from 2000 until 2017. A panel regression plotting GDP per capita and internet connectivity from the year 2000 to explain economic growth consolidates the finding that AI-internet connectivity is a significant determinant of negative growth over time for 161 countries of the world. Internet connectivity is associated with economic growth decline whereas GDP per capita has no significant relation with GDP growth. To cross-validate both findings hold for two different global connectivity measurements. The paper then discusses a theoretical argument of dividing labor components into fluid, hence more flexible (e.g., AI), and more clay, hence more inflexible (e.g., human labor), components. The paper ends on a call for revising growth theories and integrating AI components into growth theory. AI entrance into economic markets is modeled into the standard neoclassical growth theory by creating a novel index for representing growth in the artificial age comprised of GDP per capita and AI entrance measured by the proxy of Internet Access percent per country. Maps reveal the parts of the world that feature high GDP per capita and AI-connectivity. The discussion closes with a future outlook on the law and economics of AI entrance into our contemporary economies and society in order to aid a successful and humane introduction of AI into our world.

## Research Question

Already now, about 28 percent of the workforce in modern economies are estimated to be based on AI or AI-supported (Fraad-Wolff, in speech). First market disruptions of AI entering economies are currently speculated to cause a trend of slowbalisation – as a counter-trend to globalization. Globalization sprang

from America's sponsorship of a new world order in 1945, which allowed cross-border flows of goods and capital to recover after years of war and chaos (Centeno, Creager, Elga, Felton, Katz, Massey & Shapiro 2013; Centeno, & Tham 2012). During the golden age of globalization from 1990-2010 the world became flat: Immigration increased from 2.9 to 3.3 percent of the world's population and global trade grew from 39 percent of GDP in 1990 to 58 percent last year (*The Economist*, January 26, 2019). Asia became part of the globalized upon China's entry into the WTO in 2001, which created a model of offshoring manufacturing to countries based on cost efficiency variances, primarily labor costs (Profita 2019). The Washington Consensus embraced the world and promised to bring prosperity to everyone around the globe (Rodrik 2006). Open markets and free trade were praised to lift billions of people out of poverty in Asia, Latin America and Africa via economic growth (Held & McGrew 2007).

With the collapse of the Soviet Union in 1989 and the end of the Cold War in 1991, the world became even more interconnected and global market economies integrated around the world. Trade and investment increased, while barriers to migration and cultural exchange lowered (Mohamed, 2016). The European Union but also free trade agreements, such as the North American Free Trade Agreement (NAFTA), which the governments of the United States, Canada, and Mexico signed in 1992, removed barriers to the free flow of people, goods, and services, thereby facilitating greater trade, investment, and migration across borders in an unprecedented way (Profita 2019; Ptaschunder 2018b; World Bank Group Migration and Development Brief 26, 2016).

During the last 17 years, China increased its GDP from \$1.2 trillion to \$11 trillion, a sign of historically unprecedented growth for a country of this size (Profita 2019). A similar phenomenon occurred in India, Vietnam and other countries. Globalization also supported the growth of large multinational companies that offshored production processes and consumers to access an endless number of products at competitive prices from around the globe. Commerce soared as the cost of shifting goods in ships and planes fell, phone calls got cheaper, tariffs were cut and finance liberalized. Business went gangbusters as firms set up around the world, investors roamed and consumers shopped in supermarkets with goods from around the globe (Profita 2019). As never before in history, traveling had become available to the general populace at affordable prices. The number of refugees reached all-time highs. If not moving oneself, free data services provided on the 'window to the world' internet, allowed everyone to consume the globe anytime anywhere.

Yet, globalization also brought about negative consequences and unforeseen shadows of the invisible hand. Until the 1990s, studies report no connection between GDP and happiness – yet from the 1990s on there is a negative correlation found between GDP and happiness (Kirchler 2011). This trend is attributed to the internet and access to information about other places on earth's living conditions creating emotionally-hurtful comparisons in desolate places, also fueling migration trends, which has never been higher as now.

## Theory

When America took a protectionist turn in its 2016 Presidential election they were, once again, first in sensing and acting on a contemporary detected, most novel worldwide trend: We currently live in the age of slowbalisation. Protectionism, trade wars, emerging economies' slowdown and the decrease in goods and services trade as well as a slump in transnational investments are all signs of the global trend of globalization have come to a halt. United Kingdom followed shortly after the US presidential with voting for Brexit. Globalization has slowed in our current times of 'slowbalisation,' a term coined in 2015 by Adjiedj Bakas, who sensed first that globalization has given way to a new era of sluggishness.

Globalization has slowed in the past decade after the 2008 global recession. Trade has fallen from 61 percent of world GDP in 2008 to 58 percent now (*The Economist*, January 26, 2019). If these figures exclude emerging markets (of which China is one), it has been flat at about 60 percent (*The Economist*, January 26, 2019). The capacity of supply chains that ship half-finished goods across borders has shrunk. Intermediate imports rose fast in the 20 years to 2008, but since then have dropped from 19 percent of world GDP to 17 percent (*The Economist*, January 26, 2019). The march of multinational firms has halted as the global corporate share of global profits of all listed firms has dropped from 33 percent in 2008 to 31 percent (*The Economist*, January 26, 2019). Long-term cross-

border investment by all firms, known as Foreign Direct Investment (FDI), has tumbled from 3.5 percent of world GDP in 2007 to 1.3 percent in 2018 (*The Economist*, January 26, 2019). As cross-border trade and companies have stagnated relative to the economy, so too has the intensity of financial links. Cross-border bank loans have collapsed from 60 percent of GDP in 2006 to about 36 percent (*The Economist*, January 26, 2019). Excluding rickety European banks, they have been flat at 17 percent. Gross capital flows have fallen from a peak of 7 percent in early 2007 to 1.5 percent (*The Economist*, January 26, 2019). Since 2008 the share of economies converging from emerging economies to catch up with the rich world in terms of output per person using purchasing-power parity has fallen from 88 percent to 50 percent (*The Economist*, January 26, 2019). So in fact, almost all conventional measures of global trade and market integration have fallen. Tariffs have reached highest levels in the last 40 years and additional costs of trade have begun to be passed onto consumers (Profita, 2019). In the second half of 2018, the largest US companies lost about 6 billion – or 3 percent – in profits due to tariffs (Profita, 2019; *The Economist*, January 26, 2016). US and Chinese investments in Europe have fallen dramatically, for instance, China's investment by 73 percent in 2018 (*The Economist*, January 26, 2019). The global value of foreign investment by multinationals decreased by 20 percent in the same year (*The Economist*, January 26, 2019). As the service sector appears to continue to expand, relocation for the sake of consumption has stagnated or declined as it is harder to relocate services (Buera & Kaboski 2012; Echevarria 1997). Based on the last decade, *The Economist* (January 26, 2019) predicts a decline in exports from 28 to 23 percent of GDP over the next ten years, which would resemble a similar drop between 1929 and 1946.

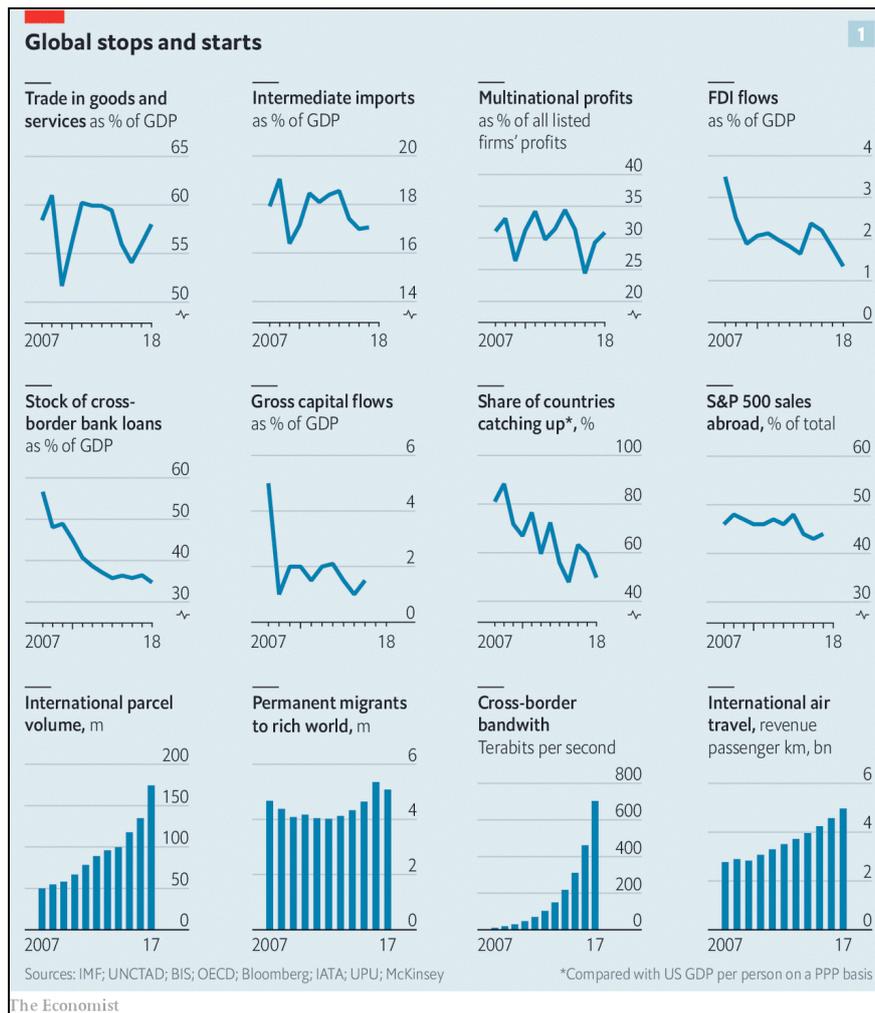
Slowbalisation speaks to the fact that since the 2008 World Financial Recession, Asia's growth rates are slowing, cross-border investments, trade, bank loans and supply chains have been shrinking or stagnating relative to world GDP (*The Economist*, January 26, 2019). While one of the main benefits of globalization was that between 1990 and 2010 most emerging countries were able to close some of the gap with developed ones, a slowdown in globalization likely leads to a reversal in underdeveloped parts of the world catching up (*The Economist*, January 26, 2019). In addition to projected major political risks and the decline in socio-economic development, with the absence of a global cooperation, it will be more difficult to tackle and solve major coordination challenges such as climate change and climate refugees, immigration and tax evasion (Baldwin 2017; Profita 2019). This predicament is crucial if we seem to trade off environmental degradation with international development opportunities – the two most pressing obstacles for contemporary humankind (World Bank 2015 Development Report 2015).

Politically, where we seemed to have spent decades after two world wars to break down walls and pacify Europe in a Union, we are now back to building barriers faster than before (Profita 2019). Since 2009, the number of new free trade agreements between countries has plummeted and restrictions on trade have proliferated on duties, anti-dumping measures and on Non-Tariff Barriers to trade (NTBs). Bloomberg (O'Brien 2018) reports that the DHL monitor tracking shows that global trade is continuing to lose a little steam amid an escalating tariff battle between the world's biggest economies (Profita 2019). Media and news but also big data trends appear to have open gates to the world as never before while shrinking the number of local newspapers and media outlets (Hagey, Alpert & Serkez 2019). Corporate greed and politics of fear are partially argued as socio-political trends around slowbalisation (Profita 2019). International remedies are called upon to ensure upholding the benefits of globalization in our commonly-shared fragile world to ensure continuous economic prosperity, societal advancement and humane dignity for all (Banerjee & Moll 2010).

Yet, this is not the end of the story, as some globalization features still show rising integration. Technological advances, including mobile phones and especially the internet, have contributed to globalization by connecting people all over the globe. Innovation spurs companies to substitute labor while technology shocks drive economic growth, especially when technologies progressively reduce the physical work component (World Bank Report, 2008). While goods are not shipped around the globe in extensive global value chains, the consumers themselves have become yet more global. The World Wide Web links billions of people and devices, providing innumerable opportunities for the exchange of goods, services, cultural products, knowledge, and ideas. The internet connectivity and

volume of data crossing borders has risen by 64 times, according to McKinsey, people appear to enjoy experiences abroad and consume data. Building dreams and hope based on information shared online, migration to the rich world has risen over the past decade. International parcels and flights are growing fast, almost exponentially. As exhibited in Graph 1 derived from the Economist, traditional globalization features have slowed while international parcel volume, data transfer and international air travel as well as migration to the developed world continues on a globalization course. At the same time, air travel is highest ever, indicating that while goods do not travel around the globe anymore and emerging economies seem to become more versatile in producing on their own for their own needs, human do for experiences and service consumption to an extent and degree as never before in history.

Graph 1: Global stops and starts derived from the Economist



Source: Economist (<https://www.economist.com/briefing/2019/01/24/globalisation-has-faltered>)

This trend of polarization between ongoing polarization of globalization on data and people versus slowbalisation of traditional goods and services as well as finance is argued as first sign of AI entering economic production and changing goods and service trade. Technological and political factors could indicate a market disruption that has already begun and currently echoes in globalization versus slobwbalisation occurring parallel to each other. The currently described trend of slobwbalisation could just be a forerunner of the AI revolution market disruption about to take place that will create a world very different to the one we know.

With the ringing in AI revolution, technological development is bringing production and manufacturing closer to the end user. Fourth Industrial Revolution, robots are expected to become more efficient and affordable. With that, conventional globalization practices – such as offshoring manufacturing to cheap labor cost countries – will most likely decline. Reshoring will bring back

production to where goods and services are actually and finally consumed. The most obvious example is energy and a prospective attempt to decentralize renewable energy generation. Your solar panel becomes more productive if energy need not be stored but simply can be shared with your neighbor when not needed it.

Currently reshoring appears to occur, in which domestic technology-enhanced production is favored over outsourcing to desolate low-skilled, low-income territories. AI holds the potential to replicate human existence but live eternally. 24/7 working robots that can live eternally are expected to become the driver of industrialized economies and replace the majority of human workforce (Lucas 2004). 3D-printing techniques and nanotechnology that allow production to start at the molecular or even atomic level are fostering reshoring as relocating production sights from global value chain sights that were spread out during the golden years of globalization to where goods and services are consumed today. Reshoring of global production closer to where consumers are appears favorable in light of climate change and carbon emissions; yet shunning low skilled labor in developing parts of the world from production for globally operating multinationals may revert international development (Banerjee & Duflo 2005; Greenwood & Jovanovic 1990; Moll 2014; Mookherjee & Napel 2007; Mookherjee & Ray 2003). So while companies around the globe featured an offshoring trend during the golden age of globalization, contemporary reshoring and glocalization occurs (<https://en.wikipedia.org/wiki/Glocalization>). Slowbalisation appears to strengthen regional trade blocs, especially in Europe and Asia (Profita 2019; The Economist, January 26, 2019).

Corporations appear to be focusing their production back to where they serve their customers and consumers have recently gained substantial interest in more local products. There is a projected impact of robotic development on international trade. Robots are expected to be more accurate and work 24/7, while being less demanding than human workers. Millions of employees in the East may lose their jobs over the next few decades, substituted by robots in the West. In addition, advances in 3D printers may soon make it possible to substitute large factories with much smaller ones, closer to the consumer, where the manufacturing process is simplified thanks to the reproduction of models (Aghion et al. 2017). New materials could be manufactured near the consumer, in order to substitute natural materials that need to be transported from distant mines and deposits (Tybout 2000). Trade links within regional blocs may increase and blocks become more homogenous, both in Europe and Asia.

High-end production has discovered the luxury of opening consumers' eyes for the entire production and ensuring that corporate social responsibility is lived throughout the value change. Moreover, when companies bring production back into their countries for AI, unskilled workers lose out in the domestic markets while leaving behind markets that flourished due to outsourcing companies (Birdsall 2017). Reshoring mean that former outsourced tasks are simply performed by AI in high skilled interconnected countries, with whom low skilled workers in the developing world now will have to compete. The transition to the *new globalization* has caused the workers in developed markets to lose bargaining power as they now operate in the production phases that are most vulnerable to delocalization and automation, while the Western world will face competition with AI in wage-stagnating economies (Baldwin 2017; Barseghyan & DiCecio 2011; Profita 2019). A trend which will – for instance – pit a 5G automated device pit against a low skilled worker in a desolate place on earth with not even internet access, which allows learning and productivity gains (Lucas & Moll 2014). Slowbalisation and reshoring are thereby expected to widen the gap between the rich and the poor. AI entering our economies may lead to a trend of reshoring and thereby shunning away international low-cost production sights from global production. The global gap between AI automated hubs and non-automated places on earth will therefore likely increase in the years to come. So while reshoring offers opportunities of more sustainable production in light of climate change, when we consider the environmental impacts of shipping goods around the globe until they reach the end user; in the end, it also bears the risk of restricting global economic development.

## Results

In order to clarify if the currently detected slowbalisation trend is the first sign of a market disruption related to AI entering markets, the empirical investigation features Study 1 to (1) show that the currently detected polarization of globalization and slowbalisation trends is AI-market introduction driven. Study 1 validates the slowbalisation trend with particular focus on proving evidence for still ongoing globalization being connected to AI-led growth.

In order to consolidate the observation that there is a slowbalisation trend in conventional globalization parameters while globalization continues in the AI domain, a correlation study will be staged. As a proxy for AI entering economic markets, internet connectivity, as measured by the *Global Connectivity Index* (2018) will be related to GDP pillars of agriculture, industry and service sectors as derived from the World Bank dataset on GDP of the year 2017 and a cross-validation check be performed with the *State of the Mobile Internet Connectivity 2018 Index* (GSMA 2018). This measure should aid in understanding what GDP sectors AI is attributed to. Further, the different components of the slowbalisation trend will be related to one another in a correlation study in order to see whether slowbalisation is a sign of AI entering markets and growth theory not being able to truly capture AI productivity. A trend of globalization still continuing in AI-featuring industries and countries will be highlighted by relating AI-integration with globalization hallmarks of capital and labor movements.

## Discussion

In today's economy, robots and algorithms are taking over human decision-making tasks and entering the workforce. Most recently, big data has evolved to become a source of major assets and governments around the world are endeavoring to tax wealth creation from information transfer. This trend currently challenges conventional economic theory to capture growth based on purely capital and labor components. Algorithms, machine learning and big data gains but also the shared economy do not seem to be represented accurately in conventional growth theory components of capital and labor (Alvarez, Buera & Lucas 2007).

Future research endeavors may therefore address inequality drawing on the future vision that central rational AI-hubs will outperform underdeveloped remote areas of the world even more in the digital age. Slowbalisation is projected to draw back outsourcing efforts and divide AI hubs from areas that are less connected. Following research should be concerned with the unprecedentedly high divide between skilled and unskilled labor and the diversion between AI hubs and non-AI territories. In the last four decades, the price of skilled labor has soared dramatically relatively to that of unskilled labor despite a major uprise in the relative supply of skills. The notion of skill-bias in growth theories has introduced the theoretical possibility that technological progress benefits only a sub-group of workers, placing technical change at the center of the income distribution debate (Goldberg & Pavcnik 2007).

Organizational changes have lead to AI technologies reducing costs of communication, monitoring and supervision within the firm, which trigger a shift towards a new organizational design. The change towards AI induces an organizational shift towards skill-biased meritocracy. Endogenous technical progress leads to economic growth, but also generates wage inequality between low- and high skilled workers (Duarte & Restuccia 2006; Murphy, Riddell & Romer 1998; Parente & Prescott 1993). Faster technical change increases the return to ability and increases wage inequality between, and also within, groups of high-skilled and unskilled workers (Galor & Moav 2000). Future studies should integrate some of the contemporary inequality measurements such as the Palma ratio, financial development and wealth transfers in contemporary growth theories and measurement (Jacoby, 2008; Milanovic 2013; Piketty 2014). Wage inequality is only one way to assess inequality, but in order to get a richer picture of inequality derived from AI, future research may also consider inequality in wealth, health, status and within-group inequalities (Restuccia & Urrutia 2001). Understanding the links between growth and inequality should also be placed in the different contexts of political, social and historical environments in order to derive inference about a successful introduction of AI into

today's workforce and society. Finally, more research is recommended to model and maximize the novel production function including AI and information share – especially in light of G5 and the internet of things leading to a further connection and benefits from technology. All these novel developments may lead to a potential polarization between more efficient AI hubs and low skill low labor cost areas that may be shunned from economic growth due to a predicted reshoring trend coupled with AI economic dominance and unprecedented technology gains (Aghion & Bolton 1997; Matsuyama 2008, 2011; Restuccia & Rogerson 2017; Ventura, 1997).

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# Homelessness and Housing Market Condition in the United States

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**ABSTRACT:** The study estimated the relationship between the homelessness rates, the housing market factors, and the socio-economic factors in the country level, regional level, and the state level in the United States from 2007 to 2016. The results show that the housing price index, personal expenditure on housing utilities, rental vacancy rate, poverty rate, number of job loss and income inequality are significant determinants of the homelessness in the country level. For the regional level, the West had the highest homelessness rate intercept while the South West is the region with the lowest intercept. Housing price, the expenditure on housing utilities and poverty rate are the factors determining the homelessness rate in the regional level. When the study adds the fixed effects of fifty states to the model, the result shows that rental vacancy rate, number of job loss and the income inequality are three factors that can explain the change in homeless population number in the state level. To slow down the growing homelessness in the country level, the economic policy should be focusing at poverty reduction, helping people who suffered from job loss, and changing the tax policy to increase income equality. For the housing market, the government may consider the policy to support the expansion of low-cost housing units in term of both fiscal and monetary policies.

**KEYWORDS:** Homeless, Housing, Economic Policy

## Introduction

Homelessness in the U.S. increased for the first time after 2010 by 0.7% in 2017 and increased slightly again by 0.3% in 2018. The largest increases were among children and young adults. The number was considered to be driven by more people living on the streets in the West Coast Cities (Associated Press 2018). Rents in the U.S. have increased beyond affordability for the extremely poor families especially in the big cities such as Los Angeles, Seattle, and San Diego. On a single night in the United State, there are an estimated 552,830 people experiencing homelessness (National Alliance to End Homelessness, 2018). Most of them were staying in emergency shelters, transitional housing program, or safe havens, and approximately 34% of them were in unsheltered locations such as streets or abandoned buildings. Figure 1 shows total number of people experiencing homelessness by type. Most of them are individuals. The rest are people with children, chronically homeless individuals, veterans, and youth. The majority of homeless people are white (79%) and African American (40%).

Some states in the U.S. were able to reduce number of homelessness rates while others are getting a lot worse. The highest homelessness rate was in Hawaii in 2016. There were 56 homeless individuals per 10,000. The lowest homelessness rate was in Mississippi in 2007 and 2016. In 2017, thirty states and Washington, D.C. reported decreases in overall homelessness, while 20 states reported increases. California reported the largest increase in the number of homeless following by New York (National Alliance to End Homelessness 2018).

Table 1. Top 5 Highest and Lowest % Changes in Homelessness Rate (%) in the U.S. by State

State	% change	State	% change
MI	-67.1%	SD	85.1%
NJ	-48.6%	WY	59.6%
KY	-47.4%	DC	57.0%
WV	-42.4%	ND	45.1%
TX	-41.9%	NY	37.9%

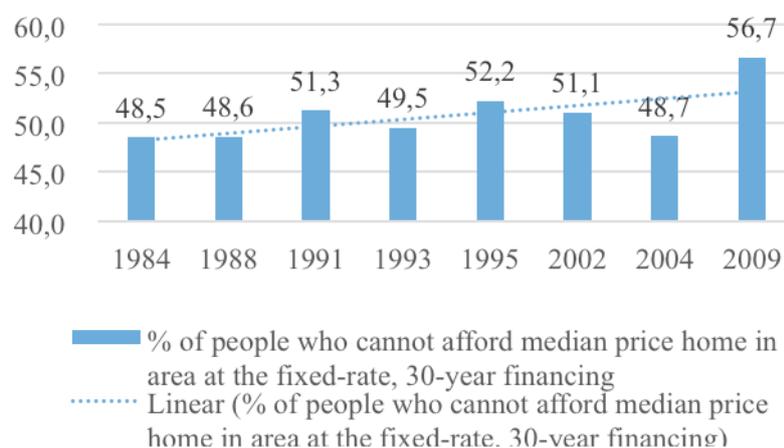
*Source: U.S. Department of Housing and Urban Development (2018)*

According to Table 1, Michigan had the highest decreasing rate in total homelessness at -67.1% while South Dakota had experienced the highest homelessness rates during 2007-2016 at 85.1%, followed by Wyoming, Washington DC, North Dakota, New York, Hawaii, Massachusetts, Idaho and Mississippi.

Economic hardship and housing affordability are among important reasons of homelessness. Financial crisis in 2007-2009 led to a surge in foreclosures and unemployment rates in both rural and urban areas. After the crisis, the housing market started to recover. Although the housing price index after the crisis dropped to the lowest at 118.99 in 2012, it has increased after that until now. The Federal Housing Finance Agency reported that the annual house price index in 2017 was at 151.78, growing 5.67% and had surpassed the level before the crisis in 2007. At the same time, the median gross rent increased from 2012-2016 according to the American Community Survey five-year estimate. Figure 2 shows that the rate of change in the house price index is climbing up to the level of the housing bubble before the economic crisis in 2007-2009. The median sale prices of the new houses in the U.S. after 2000 went up to a peak in 2007, then dropped during the financial crisis in 2008-2009. It started to pick up again in 2010.

Not everyone in the U.S. can afford to buy a house. The U.S. Census Bureau provides the rental vacancy rates which can be used to measure the percentage of all available rental units in a rental property, such as hotel or apartment complex, that are vacant or unoccupied. High vacancy rate indicates that a property is not renting well. The rental vacancy rate of the United States during 1989-2017 was peaked during the financial crisis. It had been dropping after the crisis until 2016. In 2017, however, it started to increase again for the first time to from 6.9 in 2016 to 7.2% in 2017. As shown in Figure 1, 48.5% of individuals who could not afford to buy a median-price home in 1984. It had increased to 56.7% in 2009.

Figure 1. Affordability Status of Families and Unrelated Individuals for a Median-Priced Home, United States, 1984, 1988, 1991, 1993, 1995, 2002, 2004, and 2009



Source: U.S. Census Bureau, *Survey of Income and Program Participation, Wave 4, 2008*

Using the housing price index and rental vacancy rate, there is a possibility that the housing market now started to build up the bubble again. Too high housing prices and rents combined with the economic hardship and less supporting welfare from the government can lead to more homeless population on the streets. The objective of this study is to investigate the determinants of the U.S. homelessness across all states after the 2008 financial crisis using panel data. The study uses the factors in the housing market such as housing price, rental rates, housing stocks, rental stocks, and the housing affordability as the independent variables to determine the homelessness. This study provides a more comprehensive panel analysis of the homeless during the financial crisis (2007-2009) and after the crisis. The housing price index (2000 as the base year) is used to represent the change of prices in the overall housing market. The personal consumption expenditure on housing is used for the rental expenditures of a typical consumer in the U.S. The availability or supply of the housing units in each state is represented by the estimated number of housing units. The variable from the market for rentals is also included in the form of the rental

vacancy rate. The author also incorporates the socio-economic factor of each state into the model. The technique used in the study is the panel least square method. There are three levels of the study: National, regional, and state levels.

The study's results confirm the main hypothesis that the variation of the homelessness rates in the U.S. from 2007 to 2016 can be explained by the variations of the housing price index, the rental expenditure, and the rental vacancy rate. The economic factors which are represented by the poverty rate, the numbers of job loss and inequality are also able to statistically explain the number of homeless people in the overall United States. For the regional level, housing price and the rental expenditure are two factors from the housing market that can explain the number of homeless population. The South East of the U.S. has the lowest average of homelessness intercept while the West has the highest homelessness intercept. For the state level, the rental vacancy rate and the number of housing units are the housing market factors that plays in the state level homelessness. Number of job loss and the inequality index are also significant determinants in this level.

### **Literature Review**

The modern homelessness first rose in the early 1980s (O'Flaherty, 2002). Homeless individuals are present in small towns and rural areas as well as cities. Homelessness by definition of the U.S. department of Housing and Urban Development (2018) includes;

- People who are living in a place not meant for human habitation, in emergency shelter, in transitional housing or are exiting an institution where they temporarily resided
- People who are fleeing or attempting to flee domestic violence, have no other residence, and lack the resource or support network to obtain other permanent housing
- People who are losing their primary nighttime residence
- Families with children or unaccompanied youth are unstably house and continue in that state.

Although the house quality in the U.S. has been improved over time for the low income families, they are paying much larger share of their income for it (Malpezzi and Green, 1996). The result from Malpezzi and Green (1996) was confirmed by the result of Weicher's (1991), which showed that the number of families paying more than half of their income for rent increased from 24% to 36% from 1974 and 1987. There are some literature focused at the improving quality and argue that the market has either corrected or is in the process of correcting the affordability of the housing. Lowry (1960) found that subsidized units will inevitably crowd-out low cost market rental units. The rent burden problem could represent an income problem more than a housing market problem.

There are two different types of empirical cross-section studies on the issue of the contemporary homelessness. The first group of the literature found that the housing market has a large influence on the homelessness, while the population composition usually does not. The first group of the literature look at homeless as the difference between the number of available homes and the number of household seeking housing. They suggest that some policy changes, deregulation, and interventions in the housing market can help reduce the homelessness. The second group which normally uses the individual observations found that the effects for housing market conditions of the cities are limited while the individual factors are usually significant (O'Flaherty, 2002). The second group of the literature focus more on the individual factors such as illness, addictions, or incarceration histories. They support the policies to reduce the homeless by focusing at the drug abuses, mental healthcare and the poverty reduction.

The factors that have been used very often in the literature of homelessness and housing are the conditions in the housing market and housing affordability, economic condition such as poverty rate and unemployment, demographic composition such as percentage of single-person household (lack the protection offered by second wage earners), safety net, climate, and the state of mental illness in the area. Housing price inflation throughout the market has made the transition to home ownership more difficult and thus have increased competition for rental units, pushing the heavier burden on the poor household. Elliott and Krivo (1991) showed the empirical evaluation of the influences of several structural conditions on rate of homelessness in U.S. metropolitan areas. One of their significant

factors determining the rate of homelessness is the availability of low-cost housing. They estimated the relationship between the percent of total 1984 population that was homeless and four groups of independent variables; lack of low income housing, poverty, economic conditions, mental healthcare and demographics. Their results showed that the homelessness rate is negatively correlated with the amount of low-rent housing and both measures of mental health expenditure. Green (1993) showed that there are a mismatch between incomes and rents in many parts of the country, implying that few vacant units were available at the low end of the market. Stojanovic et al. (1999) surveyed the housing patterns of homeless families after shelter exit in New York City and found that nearly half of persons who left shelter without a subsidized apartments returned to the shelter. Their study supports that the government subsidized housing is an effective policy to alleviate the homeless problem. Lee, Price-Sparatlen, and Kanan (2003) studied the determinants of homelessness in metropolitan areas using 1990 census single night data for 335 metropolitan areas. They found that the median rent level and the percentage of single-person household have a dominant effect on homelessness rates. Honig and Filer (1993) assessed the causes of homelessness using various factors using cross-sectional data of the metropolitan areas in the United States in 1984. They found that an increase in one standard deviation in rents at the tenth percentile resulted in a predicted increased in homelessness of 78 persons per 100,000 population, or about 42% of the mean level of homelessness across the metropolitan areas. The other factors that significantly determined the homelessness is the growth in the private sector employment. Higher maximum Aid to Families with Dependent Children (AFDC) benefits were associated with lower rates of homelessness. Treatment of the mentally ill appeared to have had an impact on the incident of homelessness (Honig and Filer, 1993). Their findings indicate that homelessness has multiple causes, rooted in the housing markets, labor markets, and public policies regarding the treatment of the mentally ill and the low-income population.

### Data and Variables

This study uses the combination of variables from both the housing market condition and the socio-economic factors to estimate the determinants of the homelessness in the U.S. The descriptive statistics of the variables used in this study is shown in Table 2. On average (2007-2016), the homeless rate (total number per 10,000 population in the U.S. is 17. Average housing price index is 139 (base year is 2000). The average of rental vacancy rate or % of units ready for rent is 9%. U.S residents pay around \$6,145 per year on average for rents. In terms of socio-economic factors, the poverty rate on average in the U.S. in the past ten years is around 13% with the income inequality GINI index at 0.45.

Table 2. Descriptive Statistics of the Dependent and Independent Variables

Variables	Description	Mean	Standard Deviation
<b>Homelessness Rate</b>	Point-In-Time number of homeless people/10,000 population in each state, including sheltered and unsheltered people experiencing homelessness on a single night. <i>Source of data:</i> U.S. Department of Housing and Urban Development Homelessness Data Exchange: <a href="http://www.hudhdx.info/">http://www.hudhdx.info/</a>	16.92587	9.346585
<b>Housing Market Factors</b>			
Housing Price Index (2000 base)	Indexes are all-transactions indexes calibrated using appraisal values and sales prices for mortgages bought or guaranteed by Fannie Mae and Freddie Mac. The values reflect the base year being used (annual appreciations are the same). The index value is calculated using a base of 100 in 2000. <i>Source of data:</i>	139.3426	23.53159

Variables	Description	Mean	Standard Deviation
	<a href="https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index-Datasets.aspx#mpo">https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index-Datasets.aspx#mpo</a>		
Rental Vacancy Rate	% of the rental inventory which is vacant for rent. <b>Source of data:</b> U.S. Census Bureau: <a href="https://www.census.gov/housing/hvs/data/ann16ind.html">https://www.census.gov/housing/hvs/data/ann16ind.html</a>	8.945778	2.847621
Rents	Annual per capita expenditure on housing and household utilities per is used to represent the rental rates in each state over time. <b>Source of data:</b> Bureau of Economic Analysis: <a href="http://www.bea.gov">www.bea.gov</a>	6145.828	2715242
Supply of Housing Units	Annual estimates of housing units for the United States by state <b>Source of data:</b> U.S. Census Bureau, Population Division <a href="https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk">https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk</a>	2,644,576	2715242
<b>Economic Conditions</b>			
Poverty Rate	% of people who have money income lower than the threshold that vary by family size of total population of each state. <b>Source of data:</b> U.S. Census Bureau: <a href="https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html">https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html</a>	13.32500	3.354200
Number of Job Loss	Number of job loss from the private firms in each state <b>Source of data:</b> U.S. Census Bureau QWI Explorer application	108,946.1	115804.1
GINI Index of Income Inequality	The GINI coefficient is a measure of inequality of a distribution. 0 corresponds to perfect income equality and 1 corresponds to perfect income inequality. <b>Source if data:</b> U.S. Census Bureau, 2016 American Community Survey	0.457301	0.020135

After conducting the descriptive statistics, Washington DC shows an exceptional high homelessness rate. The outlier test has been conducted and the author decided to eliminate Washington DC out of the dataset.

Table 3. shows the cross-correlation among variables in the model. The homelessness rate in each state has a fairly strong positive correlations with housing price index with 2000 base (HPI) and the per capita consumption expenditure of housing which represent the rental rates. The housing price index has a strong positive correlation with the per capita consumption expenditure on housing and negative correlation with the rest of the variables. The rental vacancy rate has positive correlation with poverty and weak positive correlation with the number of job loss. Table 3. Also shows that here is no multicollinearity problem among the independent variables.

Table 3. Cross-Correlation among Variables

	Homelessness Rates	HPI	Rental Vacancy Rates	Poverty	Job loss	Personal consumption Expenditure on Housing
Homelessness Rates	1.000000					
HPI	0.429477	1.000000				
Rental Vacancy Rates	-0.057308	-0.255420	1.000000			
Poverty	0.139636	-0.244095	0.402249	1.000000		
Job loss	-0.018061	-0.041294	0.087397	0.126755	1.000000	
Personal consumption Expenditure on Housing	0.305296	0.476808	-0.437944	-0.398762	0.167688	1.000000

### Model and Estimation Results

The study use the ordinary least squares method (OLS) to estimate the national level, and OLS with fixed effects to estimate the regional and state models. Equation (1) shows the main model that the study uses.

$$\begin{aligned}
 Homelessness_{it} = & \beta_0 + \beta_1 \log HPI_{it} + \beta_2 \log PCE_{it} + \beta_3 RentalVacancy_{it} \\
 & + \beta_4 \log HousingUnits_{it} + \beta_5 PovertyRate_{it} + \beta_6 \log JobLoss_{it} + \beta_7 GINI_{it} \\
 & (+\beta_{State} State) \text{ or } (+\beta_{Region} Region)
 \end{aligned}
 \tag{1}$$

Where  $i = 2007 - 2016$  and  $j = 1-51$  (States in the U.S.)

The estimation results are shown in Table 4. For the overall U.S., all independent variables except the housing units can explain the variation in the homelessness rate by 35.29%. The statistically significant coefficients for each variables have the expected signs. When the housing price index increases by 1% the homelessness is expected to increase by 0.58%. When the personal expenditure on housing changes by 1%, the homelessness rates will also change in the same direction by 1.16%. The job loss and poverty rate have a statistically positive relationship with the homelessness. If the country experiences higher poverty rate and more job loss, the homelessness tends to rise. When the country has higher income equality (the GINI coefficient approaching 1), there tends to be less homeless individuals.

Table 4. Estimation Results

Independent Variables	Overall U.S.	Regional Level	State Level
Constant	-8.465799**	-7.519781**	-24.88214**
S.E.	(1.150486)	(1.306422)	(12.07203)
log(Housing Price Index 2000 base)	0.583536**	0.503547**	-0.140685
S.E.	(0.139173)	(0.141450)	(0.123536)
log(personal consumption expenditure on housing)	1.160588**	0.801444**	-0.306102
S.E.	(0.117610)	(0.133299)	(0.297289)
Rental vacancy rate (%)	-0.015958**	0.003875	0.024860**
S.E.	(0.007482)	(0.007398)	(0.005706)
log (estimated housing units)	-0.174772	0.069976	2.004461**
S.E.	(0.118437)	(0.112587)	(0.975600)
Poverty rate (%)	0.061563**	0.034102**	-0.000555
S.E.	(0.008029)	(0.008630)	(0.006444)

Independent Variables	Overall U.S.	Regional Level	State Level
log(Number of Job loss) S.E.	0.283129** (0.113843)	0.023627 (0.109119)	0.294473** (0.097900)
GINI Coefficient S.E.	-6.783112** (1.326157)	-1.244973 (1.417727)	-2.766544* (1.555311)
Northeast S.E.	-	-0.455895** (0.058640)	-
Southwest S.E.	-	-0.508854** (0.084433)	-
Southeast S.E.	-	-0.512681** (0.077576)	-
Midwest S.E.	-	-0.499524** (0.062332)	-
R <sup>2</sup>	0.352902	0.46645	0.890549

\*statistically significant at 10% confidence level, \*\*statistically significant at 5% confidence level

### *Homeless in the Regional Level*

In the regional level of estimation, the study includes four dummy variables to represent five different regions in the U.S. The model presented regions include Northeast, Midwest, Southeast, Southwest, and the West (as reference region). The study found that the signs of every statistically significant coefficients stay the same as in the overall U.S. estimation. There are five different regions in the U.S. and the estimation results show that the characters of each region can explain the variation in the homelessness rates. The characteristics of each region may include the average temperature, number of big cities and metropolitan areas. The estimated result shows that housing price index, personal consumption expenditure on housing, poverty rate are statistically significant determinants of the homelessness rates in the regional level. Number of housing units, number of job loss and the rental vacancy rate cannot explain the homelessness in the regional level. The southeast region has the lowest intercept term which implies that the region's fitted line has started at the lower homelessness rates than the rest of the country. The West's fitted line starts at the higher homelessness rates compared the rest of the country.

### *Homeless in the State Level*

For the estimation in the state level, the study uses the fixed effect panel least squares method to include the dummy variables for all states into the model and dropped the dummy variables for the regions. There are four variables that are statistically significant in the state level model: rental vacancy rates, housing units, number of job loss, and the GINI coefficients. When the rental vacancy rates, estimated housing units and poverty rates increase, the homelessness rate tends to rise. When the state has more equality in the income, the homelessness will fall. Interestingly, the housing price index and the personal expenditure of housing coefficients are no longer statistically significant. The result indicates that the housing price index might be captured in the fixed effects by state level. Table 5. shows the fixed effects from the state level estimation. Alaska and Vermont have the highest intercept term of the homelessness rates among 50 states. The lowest intercepts of homeless rates are in Texas and California.

Table 5. Cross-sectional (state) effects

State	Effect	State	Effect
AK	4.335692	MT	2.927426
AL	-1.027602	NC	-2.416318
AR	0.133093	ND	3.495812
AZ	-1.101793	NE	1.831797
CA	-3.850730	NH	2.147352
CO	-0.158997	NJ	-1.607256
CT	0.283968	NM	1.393615
DE	2.844434	NV	1.488106
FL	-3.325620	NY	-2.507238

State	Effect	State	Effect
GA	-1.889198	OH	-2.997291
HI	3.885837	OK	-0.316113
IA	-0.011875	OR	1.134319
ID	1.783822	PA	-3.007625
IL	-2.945991	RI	2.857862
IN	-1.803170	SC	-0.961411
KS	-0.026899	SD	2.918574
KY	-0.481644	TN	-1.202371
LA	-0.439385	TX	-4.291191
MA	-0.335070	UT	0.801615
MD	-0.666465	VA	-1.957180
ME	2.232125	VT	4.153130
MI	-2.423677	WA	-0.447389
MN	-0.841756	WI	-1.420180
MO	-1.337567	WV	1.146786
MS	-0.201572	WY	4.056288

## Conclusion

Homelessness in the U.S. can reflect an overall decline in the nation's standard of living, the distortion of the housing market and the effectiveness of the government policies. The higher cost of living along with the unemployment brings economic hardship to the extremely poor individuals or families to the homelessness. This study confirms that housing market and housing affordability are important factors. The variation in the housing price, expenditure on rents, and the availability of the housing units can explain the homelessness rates across all states in the U.S. The other factors included in the models are socio-economic factors such as the poverty rate, number of job loss, and income inequality. In the state level, the availability of housing units, the rental vacancy rates, the number of job loss, and income inequality can explain the change in the homelessness rates. The housing price index, the expenditure on rents, poverty rates can determine the homeless rates in the national and the regional levels but not the state level. Table 6. shows the determinants of the homelessness in each level.

Table 6. Summary of the Estimation Results

National Level (without fixed effects)	Housing Price Index (+) Personal Consumption Expenditure on Housing (+) Rental Vacancy Rate (-) Poverty (+) Number of Job Loss (+)
Regional Level	Housing Price Index (+) Personal Consumption Expenditure on Housing (+) Poverty (+)
State Level	Rental Vacancy Rate (-) Housing Units (+) Number of Job Loss (+)

## Policy Recommendation

The estimation results confirms that both housing market conditions and socio-economic factors are the main determinants of homelessness in the U.S. To alleviate the problem the Federal government should monitor closely on the housing market conditions in term of prices, availability, affordability, and the rents. The state government should focus at supporting the efficiency in the rental markets, providing the public training programs to increase the skills for unemployed workers, and alleviating the income

inequality. Subsidized housing can be an effective way to help individuals and families when they exit the shelter. There is also a limitation of the homelessness definition that prohibit the homeless shelters to help them. For example, people who are couch surfing or living off their cars are not considered homeless by the definition of U.S. Department of Housing and Urban Development. When these people are seeking help from the homeless shelter in the area, they will not be qualified to stay in the shelter. This fact is observed by the author's interview with the CEO of the homeless shelters in Duluth-Superior area. The immediate policy that the government can do is changing the definition of the homeless to be accurately reflected all people experiencing homeless problem.

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# Optimal Structure of Pension System and Its Influence on the Social Policy of State Budget

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**ABSTRACT:** The world is witnessing an important increase in number of elderly people. This process is accompanied by the increase of the proportion of working and retired population, which has significant economic, social and political implications. To answer these challenges, the governments across the world engaged in comprehensive reforms of social policies, out of which the reform of pension system is the most important. The presented research aims to determine the main directions of pension reforms undertaken by different countries. More precisely, the objective is to identify the trends characterizing reforms in developing countries and compare them to the tendencies observed in the reforms of developing economies. Therefore, the aim of research is to get generalized results, which will contribute greatly to the existing scientific literature and will be useful in the process of perfecting and improving the current pension reform. To do so, the paper studies reforms together with the existing scientific literature and public reports issued by international organizations. The results of the study suggest that the most common pension system across the globe implies introduction of the accumulated pension model (Defined Contribution Plan) instead of solidarity pension scheme (Defined Benefit Plan). This is a radical change impacting country's economy, social and cultural norms and legislation. The reason behind the reform was the limitation of the existing model, but also the demographic trend of aging the population.

**KEYWORDS:** Pension reforms, retirement, public policy, state budget, Defined Contribution Plan

## Introduction

Changing demographic situation is one of the common problems across the globe, reaching out for both, developed and developing economies. The number of the world's older persons is supposed to increase by 56% in next ten years. The increase in number of elderly people will be accompanied by the increase of the proportion of working and retired population, which will have significant economic, social and political implications. To answer these challenges, the governments across the world engaged in comprehensive reforms of social policies, out of which the reform of pension system is the most important (Lee & Mason, 2010). The objective behind these reforms is to prolong the labour force participation in older persons' incomes and improve the financial sustainability of pension systems by introducing more merit and personal input-based schemes.

The Georgian government undertook important reforms in this direction since 2017, defining the existing system old-fashioned, unjust and unsustainable. The proposed modification implies the change of the Defined Benefit Plan (DB) into the Defined Contribution Plan (DC). In other words, solidarity elements of the pension fund will be replaced by the mandatory contribution from the working class. Despite the general consensus in the society and number of researches pointing out that the current pension system cannot be sustainable in a long term, the new draft law received important criticisms from different social groups.

The introduction of the accumulated system reduces the state's social expenditures and contributes to the equal distribution of monetary resources, but it is also considered to be delicate to calculate and manage. Number of governments in developing economies consulted scientific researches while elaborating new pension policies. As the topic is particularly new in Georgia, there is no scientific research in this direction. The aim of the present research paper is to fill in the gap in scientific literature with an empirical illustration of pension reform in post-soviet economies. More precisely, the aim is to conduct an important empirical study in Georgia, in order to elaborate a theory on an optimal pension scheme in developing economies.

Pension reform is a highly sensitive issue and determines the socio-economic and political will of a nation. The particularity of this type of research is that number of stakeholders have a key role: government private sector organizations, the population. This shows its high social

responsibility. This makes the research particularly vulnerable and implies number of risks (Bovenberg & Nijman 2017). The major hazard of the research is the difficulty to reach out for all these stakeholders. Due to the scale of the research topic, it is particularly difficult to cover the whole spectrum of the data that needs to be studied. Each stakeholder oversees the pension reform from his point of view and thus, gives additional challenge to the research team to thoroughly reflect the social reality. The challenge is also to make sure that the research outcomes correspond to the country's strategic direction and priorities ("Georgia 2020").

First, we will review the global trends of pension reform across the globe. Particular attention will be paid to the European experience, as, since the Association Agreement with the EU, Georgia follows closer the European guidelines in socio-economic regulations. Secondly, we will review the Georgian reform and give some recommendations on its optimal implementation.

### **Global trends of pension reforms**

According to the World Population Prospects by the United Nations the number of older persons (those aged 60 years or over) has increased considerably in recent years in most countries and this growth is projected to even accelerate in the coming decades (United Nations 2015). Between 2015 and 2030, the number of people in the world aged 60 years or over is supposed to grow by 56%, from 901 million to 1.4 billion, and by 2050, the global population of older persons is projected to more than double its size in 2015, reaching nearly 2.1 billion.

Growth in the numbers and proportions of older people can be expected to have far-reaching economic, social and political implications (Kingsley 2015). This trend leads governments across the globe to consider number of reforms: economic, social... Important efforts are paid to increasing the statutory ages at retirement in order to prolong the labour force participation of older persons' incomes and improve the financial sustainability of pension systems by introducing more merit and personal input-based schemes (Bijak et al. 2007).

The issue of transformation of the pension system is critical in modern world, giving double objectives to governments. On the one hand, new pensions systems should balance the distribution of revenue and, on the other hand, it must provide a decent old age retirement to the population. Inefficiency of the state pension funds, their unsustainability and the ever-increasing deficits show that a full-scale social security of the retired population is not possible only through a solidarity model of pension system. Thus, governments across the world started reforming their pension systems since few decades.

States and economists are facing a challenge to elaborate a pension structure which will allow both, solve the misbalance between the revenue sharing and, at the same time, satisfy the need of all stakeholders (Arnberg & Barslund 2012; Kochskaemper 2015). To do so, it is vital to identify the needs and interests of each stakeholder and transform the pension system accordingly. Plus, this transformation should be done in accordance with the state's general fiscal policy (Tabatadze 2016a).

Great part of the world has reformed its pension system. Most of European Union states use their own model (Blanchet, Bozio & Rabaté, 2016). We can list specific models created in Belgium, France or Malta. Some states do not have specific models but their pension schemes were elaborated according to the particular socio-economic systems of the country, i.e. Finland, Germany. The table 1 shows 44 modelling instruments applied by administrations of 26 Member States.

Table 1: Pension modelling instruments applied by governments of EU States

<b>UE State</b>	<b>Pension model</b>
<b>Austria</b>	Austrian Applied Projection Models; Austrian Microsimulation Model
<b>Belgium</b>	MALTESE; MEP; MIDAS_BE; MIMOSIS
<b>Bulgaria</b>	ILO PENS (BG)
<b>Cyprus</b>	Cyprus ILO PENS (CY)
<b>Czech Republic</b>	Czech Pension Model
<b>Denmark</b>	Danish Pension Model; LAW
<b>Estonia</b>	Estonian Long-Term Pension Budget Model
<b>Finland</b>	Finnish Centre for Pensions models
<b>France</b>	DESTINIE; PRISME
<b>Germany</b>	AVID; German Pension Model
<b>Greece</b>	Greek Pension Model
<b>Hunbce</b>	Hungary Hungarian Pension Models; NYIKA
<b>Ireland</b>	Irish Pension Model
<b>Italy</b>	Italy CAPP_DYN; CeRP models; RGS
<b>Latvia</b>	Latvia Latvian Pension Model
<b>Lithuania</b>	PRISM
<b>Luxemburg</b>	Luxemburg LuxMod; REDIS; SOBOLUX
<b>Malta</b>	PROST (MT)
<b>Netherlands</b>	Netherlands GAMMA; MICROS; SADNAP
<b>Poland</b>	FUS07
<b>Portugal</b>	ModPensPor
<b>Slovakia</b>	PROST (SK), MAJA
<b>Slovenia</b>	SIOLG 1.0
<b>Spain</b>	Spain Spanish Pension Model
<b>Sweden</b>	MiMESIS, SESIM
<b>United Kingdom</b>	PENSIM2

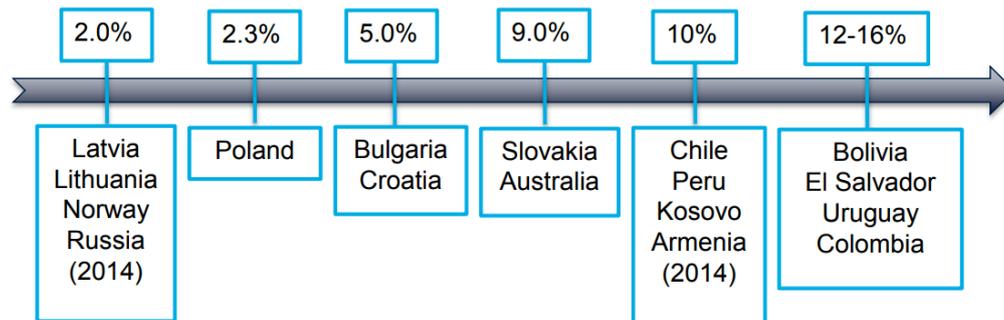
It is common for states to use another country's pension scheme as a model for adapting it for their own needs. We can list, for example, Portugal, where ModpensPor, a cohort-based standard simulation model has been adapted by the Cabinet for Strategy and Planning (GEP) of the Portuguese Ministry of Labour and Social Solidarity from Spain's Modpens model (developed by Fundación de Estudios de Economía Aplicada) with the help of an external contractor in 1996.

Despite differences per country, the general idea behind the world reforms is to replace solidarity schemes with an accumulated pension model. Great Britain, Sweden, Germany and Italy have partially privatised their pension funds; France has profoundly renovated its Pay-as-you-go scheme; Hungary and Poland opted for hybrid schemes where traditional pensions systems are to be replaced by mandatory saving systems (Tabatadze 2016b). Reforms focused partly on reducing spending and on ensuring poverty prevention through generous indexation of minimum benefits. Some of them opted by default or by choice for flat, universal benefits, sometimes complemented by savings pillar. General emphasis for all of them is tightly linking contributions to benefits. Most common pension system of recent reforms is accumulated pension scheme (Cipriani 2018). There is no universal model of this system, giving each state a choice to adapt it to its national characteristics (Devolder & Valeriola 2018). It is advised that while reforming its pension system,

state should take into account the national characteristics (demographics, social-economic, historic, cultural and legislative) and the experience of foreign countries. It is important to consider the local legislation in accordance with international standards. That is why reforming a pension system is particularly difficult and rigorous process which requires inclusion of the population (Anderson & Pratt 2016).

The second pillar of the new pension models vary per country. The figure 1 demonstrates that countries which recently reformed their pension systems opted for different percentage for the second pillar, going from 2 to 16 percent.

Figure 1. Second pillar volume across countries



In terms of the approaches of administrations to pension modelling, countries from the EU can be grouped in two categories: countries using microsimulation models and countries using standard models. The table 2 proposes this differentiation.

Table 2: Classification of administrations according to modelling pensions

<b>Exclusive use of standard models</b>		
	Imported models customised to special needs	Bulgaria, Cyprus, Latvia, Lithuania, Malta, Portugal, Slovakia (MoF)
	Own developments	
	No steps toward microsimulation	Estonia, Greece, Ireland, Poland, Slovakia (MoLSAF) Slovenia
	Steps toward microsimulation	Czech Republic, Spain, Hungary, Austria
<b>Utilisation of microsimulation models</b>		
	Microsimulation models as complements	
	Modelling work contracted out	Germany, Italy
	Modelling work by administration	Belgium, Denmark, Luxemburg, Netherlands, Finland
	Microsimulation as primary modelling tool	
	France, Sweden, United Kingdom	

### Georgian case of pension scheme modernization

Georgia is currently undergoing important reforms of pension system. In last decades Georgia has been through multiple rounds of pension reforms. The first important was the introduction of a flat rate pension in 1995. Another important reform of the pension system commenced in 2004. Until 2004, state pensions were financed by the State United Social Insurance Fund (SUSIF) based on social contributions of employer and employee. From 2004, social programs became financed from the general budget revenues. From 2008 to 2012, the pension amount included a long-service bonus distributed on top of the flat rate pension – for those with 25 years or more of working life, the bonus was GEL 10 per month. At the end of August 2012, pensioners stopped receiving long-service bonuses and instead received the combined amount as a flat rate pension benefit.

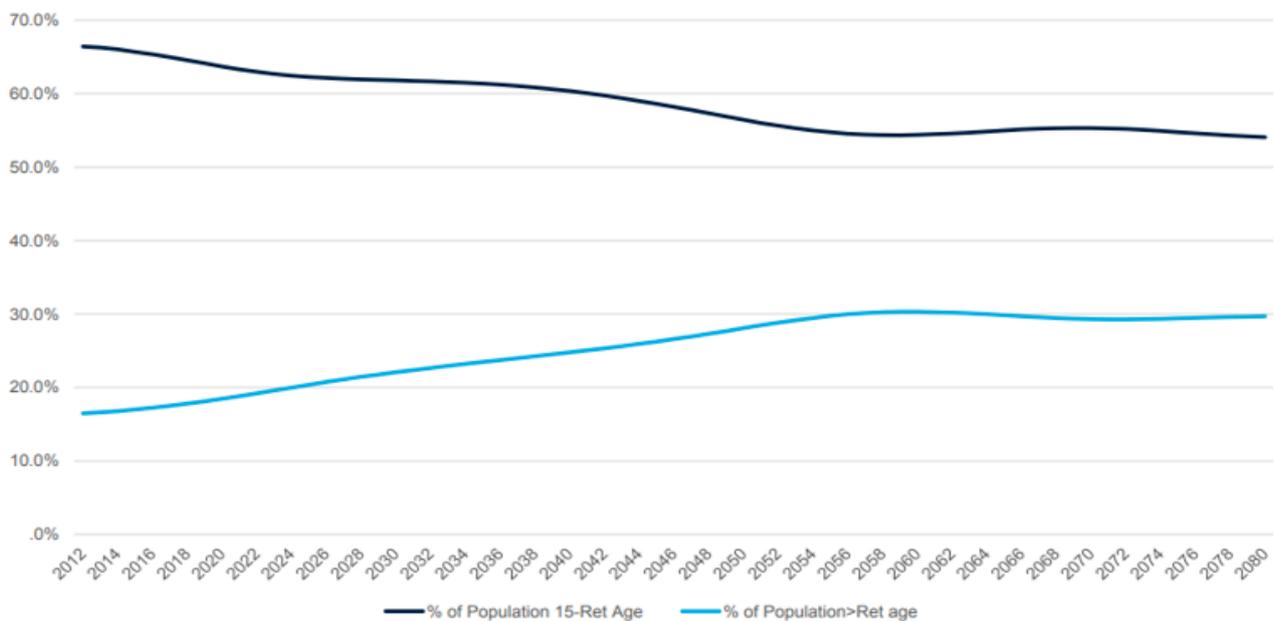
In October 2017, the government announced its plan for a new reform. The Ministry of Economy and Sustainable Development of Georgia (“MOESD”) created a Pension Reform Unit (“PRU”) with ultimate goal to design a pension reform strategy, which proposed mechanism for

increasing the social pension (indexation) and the creation of a complementary pension system component – the contributory private pension model and prepare the relevant draft law on contributory pension model.

Georgia’s current pension system is limited to a public basic universal flat-rate pension for everyone living in Georgia at the moment of reaching the retirement age. The retirement age is 65 years for men and 60 years for women. The system consists of two, unbalanced parts: on the one hand there is a state pension fund, which is the major source of pension and is part of state expenditure; and a private pension system which only covers unimportantly little part of the market and does not have the necessary legislative bases for further development. The government spends 4,3% of GDP on the financing of pensions.

Georgia’s demographic situation coincides with the global trend and shows declining working age population and increasing elderly people. There is also a projection that the overall population is also expected to decline from 4,5 million to 3,8 million by 2080 as illustrated in the figure 2.

Figure 2. Projected population change in Georgia



Source: World Bank Group, 2016, working paper series

The state’s expenditure on social services is constantly increasing. The part of spending on pension increased by 71 % in last decade. The number of retired populations is to be doubled (OCED 2015c). State budget fund only includes the income tax of the part of the population, employed in format sector (Schwan & Sail, 2013). Self-employed, grantees, employees of international organisations and many others, do not contribute. In 2015 1,8 million people were officially employed (or were actively looking for employment) out of 2 million working age population. However only 753 000 were employed for more than 6 months, resulting in an important social charge for the state budget. According to recent estimations, the state budget won’t be able to cope with the demand in only one decade (Tkemaladze 2016b).

The current pension system is also criticized for being unfair as the pension is paid out to everyone, regardless their employment record, residence in Georgia during their active lives and paid taxes and other incomes or financial resources. Another criticism claims that the existing system constitutes an incentive to informal work due to its low rate (Tabatadze, et al., 2008). Last, the current system does not give the possibility of early retirement (for some professions).

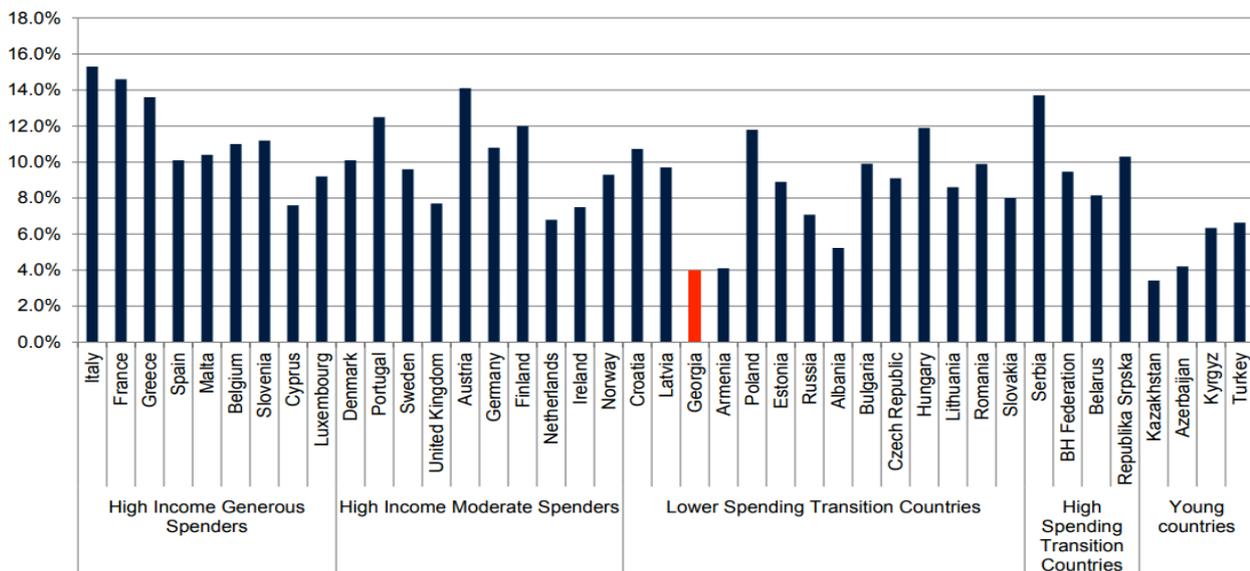
To answer these challenges, the Georgian government initiated a new law in October 2017 which was promulgated in July 2018. The new law proposes a hybrid semi-mandatory pension savings (“Defined Contribution – DC”) scheme. Georgia’s libertarian ideology minimizes and even

belittles the concept of social responsibility, advocating instead a system based on personal responsibility. The proposed scheme is mandatory for employees under 40 years of age from the July the 1<sup>st</sup> 2018 and onwards. Workers over 40 years of age would be auto-enrolled but would the option to opt-out during only 5 months after enrolment. Self-employed could join the scheme on a voluntary basis.

Some criticisms were announced in regards with the new reform. Some fear that “hundreds of thousands of Georgian citizens will remain without a decent pension in the future”, qualifying the government’s proposal as a possible threat of massive old-age poverty among the population (Hutsebaut 2017). Others think that the new law does not define the regulation and control mechanism on the legal entities included in the pension system (Tkemaladze 2016a). There is actually no clear definition of legal statuses of different institutions which can manage the pension funds. Nothing is said about their structure and governance forms either. Neither is there any mentioning of an eventual 3rd pillar pension (occupational or personal DC scheme).

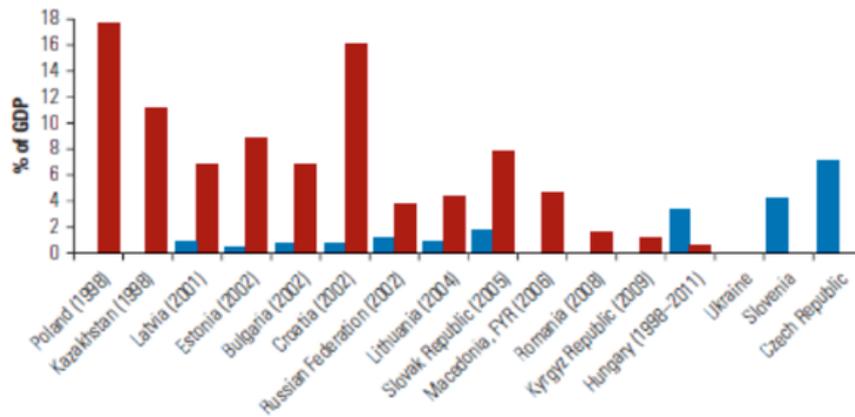
Another criticism demonstrated that the introduction of Pay As You Go Systems, as a part of generous spending, is unaffordable for lower spending transition economies. The figure 3 shows the position of Georgia in comparison with other EU states per income and spending on pension.

Figure 3. European Union counties pension spending per income level



The reform can also be criticised as purely voluntary systems usually have relatively low coverage, rarely exceeds 15-20%. The coverage mostly reaches better off, formally employed people and demonstrates a poor segmentation. Even this scenario requires generous tax benefits, because, as witnessed in other countries, it almost never works without benefits (World Bank 2016). See figure 4 for some examples.

Figure 4: Voluntary and mandatory pension savings as a percentage of GDP in some countries



Source: *The Inverting Pyramid, The World Bank, 2014*

Retirement reform represents an instrument of the social benefit program, which helps the pensioners in need but cannot necessarily guarantee and provide the living minimum. Based on that, it is essential to take actions for the retirement system to become an effective mechanism. For these actions to be successful, the Georgian government as well as governments of similar states can consider following recommendations

### Recommendations

Recommendations can be made to the content of the law as well as the way it was implemented. One of the main issues of this reform was the mis or lack of communication between the reformers and the population. The users were not given the full information about the essence of the reform which arouse number of misinterpretations, followed by a negative attitude towards the reform. This is very sensitive topic for Georgia. During the collapse of the Soviet Union people, who had some savings at the bank and other financial institutions, lost all of their money overnight. Even if this was over 30 years ago, the level of trust to government has not been improved since then. That is why, a clear and conscience communication is even more important for the case of Georgia. We would recommend the reformers to communicate with all social classes and all stakeholders with tailored messages.

Lack of communication is directly linked with the issue of transparency. As of today, the pension fund created with the reform is not definitely structured, which increases the doubt among the population. People are afraid that an unstructured organisation cannot perform well. This is particularly important as people started contributing to the retirement fund, while the fund has no responsible assigned yet. Lack of hierarchical superior is considered as a lack of responsible person if something goes wrong. The relations between the fund and the responsible governmental organisation should be more transparent as well. One concern the population expressed is what happens, or who will be responsible, if the fund goes bankrupt.

One more recommendation at the impelmentation level can be the use of RIA methodology in order to minisie the rists. Association Agreement with the European Union proposes Georgia analyse their reforms using RIA tool. However, the pension has not opted for this possibility. Control has to be done yearly or quarterly and should include all stakeholders from the government.

As for the contents of the reform, the government should pay particular attention and encourage voluntary participation of self-employed and hired employees who remain outside the pension reform. Private companies should be given proper support and stimulus to increase their awareness level so that they become important players in the pension market.

To encourage the involvement in the accumulating retirement scheme, the government can work on the taxation benefits (these benefits should also consider the cases involving engagement of the private retirement system). The fairness of the optional retirement system is proven by the fact that relying on the research of “Dependency of the population regarding the retirement system”,

65% of the population supports the optional retirement scheme. Encouragement can also be brought in the way of special financial stimulation, and informing the population regarding the offered scheme.

One of the ways to achieve the declared goals of the Government and to increase participation in the new pension system is to revise the age limit (40 years) for the obligatory participation. The proposed initiative cannot provide the so-called "Dignified Pension" because only 25% of the working population is employed, 34% are self-employed and 41% are unemployed or they are not included in working population. It should be taken into consideration that 58.4% of the employed people are over 40 years old and are not obliged to involve in the pension scheme. As a result, it turns out that compulsory accumulation pension system will cover only 10.5% of the working population. There is no possibility of taking a "decent pension" with low wages. The average salary for employed people is 1000 GEL per month.

To improve the retirement rate, the differentiated deposit rates should be negotiated and at the same time, the future (predicted) economic growth of the country should be included. To avoid the temporary shocks on the labor market, it is important to deeply analyze and study the specifics of the deposit rates.

The state budget is added to a significant burden (1-2% taxation in the pension scheme). In the background, the current retirement pension costs are kept in the budget and in the 20-30 years only with a low pace increase (retaining a monthly to the best international practice, the reduction of fiscal risks by pension of 180 pounds), considering today's social background and the political context we find it impossible according accumulating pension system has led to a slowdown in social pensions, which has not been declared by the government.

The proposed pension system promotes social inequality in the state population. In the future, employed and high-income citizens will more or less contribute to pensions than unemployed and low-income populations. In other equal terms, social inequality in the retirement age will increase.

For developing countries like Georgia, it is essential that a large portion of the pension fund's resources be placed in local assets in order to develop the local capital market. However this should be done with economic instruments as not legislative. The government should be prohibited by law to coercive interference with the pension fund for various political purposes. The safe and efficient management of the contributions of participants in the new pension system is essential to the existence of a strong mechanism against the crisis and other negative external factors.

## **Conclusion**

Reforming a pension system is a long, difficult and problematic issue, with significant social and political implications. It aims at rational distribution opportunities, optimization of budget expenditures, and balancing the country's social policy development strategy. It is important to properly plan the stages of the preparation of the reform, evaluate all factors and define the indicators. The fact that there are no international standards and regulations on pension system, makes it complicated to observe and benchmark the foreign experience in a standardized, uniform way.

Inefficiency of pension system causes improper material welfare for older people and uneven distribution of income in different age groups. This creates an uncertain economic environment and significantly increases social discontent. The ineffective pension system, alongside with social and economic fluctuations, has a major threat to political instability. Thus, the pension problem becomes political issue and the popularization of its study indicates the government's right priorities and the dominance of socially oriented development. The more socially oriented government is, the more importance it has to improve the pension system in the country's development strategy. It is, in some sense, a measure of democratic relations in the country. This approach puts the pension issue in the center of the interests of international structures, government and NGOs. A wide range of discussions is held at international forums and scientific meetings.

The aim of the presented research was to formulate a pension fund for Georgia in such a way that it reduces the financial burden of the state, and, at the same time, achieve the correct distribution of revenue and accumulation of material resources required for elderly people. Special

attention was paid to the creation of a model of calculation of the optimal retirement age and gender structure of a pension fund for developing economies.

The generalizable results of this research can enrich the economic literature. However, the research outcomes also provide practical recommendations to the legislative and executive government of the country on pension reform policy and implementation process. Last, the Georgian example can be helpful for other developing economies planning to undergo the similar reforms.

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# **Social Media and its Role in the Success of “100 Millions' Health” Campaign in Egypt**

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**ABSTRACT:** This research addresses the influence of social media with its ever-evolving techniques that serve social campaigns focusing on people as the central theme of its concern. Developers of social media techniques are always looking for and making the necessary changes through intensive and successive campaigns across various social media channels, to reach its full impact on users taking into consideration important marketing elements, such as culture and timing of said campaigns among other elements. Social media is a great way to communicate with the public. It contributes to building trust, elevates the spirits of society, enhances tolerance by considering emotions of individuals and it reinforces the feeling of belonging. It could positively affect the behavior and moral levels of humans. All that while working in an integrated framework of analysis that is run by governments, international institutions, civil society organizations and private sectors. These institutions factor in the public needs to better deliver their messages, there is no doubt that these types of social media campaigns are becoming a great deal of interest in different societies at different levels. As Egypt is aligning itself in recognizing the importance of evolution in social media and ultimately aim to change the negative reality and transform society to better reality; I will address in this study the role of social media in the success of “100 Millions' Health” campaign that took place in Egypt. This campaign was able to gain great amount of popularity through social media networks and contributed to the convergence of Egyptian public opinion about its objectives.

**KEYWORDS:** Social Media, Value, Healthcare

## **Introduction**

The continuous research development over the past decades has helped the social media and the rapid developments in the field of communication and information in the promotion of ideas through technology that contributed to reaching the minds of the masses that are different and diverse. It has also documented the link between the use of social media and the increasingly popular Internet in multiple campaigns, including health campaigns, the subject of our study.

Marketing through social network is not just a trend, but it is a way to reach more people each month with more than 2 billion active users on Facebook, one billion on Instagram, and 365 million on Twitter all over the world (Baker 2019). This reflects the importance and value of marketing through social communication in the success of the health campaign currently underway by Egypt, entitled "100 Million's Health, and efforts to achieve it, as this campaign is in favor of the advancement of the health system in Egypt.

## **First topic: Methodological Framework**

The problem of the study was identified through:

- The increasing number of people infected with C virus, and the spread of common diseases such as cardiovascular disease, diabetes, cancer and chronic lung diseases (Saleh 2013), in conjunction with the increasing interest of the government to improve the health of the Egyptian citizen.
- Lack of a healthy culture, which is a major barrier to improve health in Egyptian society, shows the importance of covering health campaigns in all its different aspects by reviewing their facts and informing them in order to influence the public and raise its awareness.

**First: Problem of the Study**

Due to the growing interest in health campaigns that have been discussed recently, for many reasons, including the spread of pandemics and other intractable diseases that affect both the individual and the community, the health issue has become a major issue. In the context of the health challenges faced by the Egyptian government and its efforts to improve the health status of the Egyptians, with the development and expansion of social networks and the spread and interactivity with the public; with the emergence of the term social marketing, in the beginning of the seventies of the last century, and the promotion of positive ideas and values.

The problem of the study was identified to describe the nature of the relationship between social networks like Facebook, Twitter, YouTube, Instagram, Google+ and smart phones. Therefore, these methods were the most capable of addressing and influencing public opinion, as well as social campaigns such as the "100 Million' Health" campaign, the subject of our study, which urges the Egyptian citizen to participate.

**Importance of the study**

The importance of the study as follows:

***Scientific importance***

- a) Highlight the health campaigns, their value and importance, and knowing the extent of the public's desire for these campaigns and obstacles in this regard.
- b) Clarify the level of contribution of the electronic media in keeping up with events and dissemination of information on ongoing campaigns and follow-up.
- c) Make use of online communities through multi-network social networks to promote community issues and national campaigns, and to provide information on current events in the health field immediately and effectively through electronic media, in order to raise the level of health awareness of citizens.

***Applied importance***

- a) The results of this research can help to gauge the extent to which the public relies on the information provided in the social networks and their impact on the formation of public opinion and the formation of its interests.
- b) This study provides practical indicators for the development of the use of electronic media campaigns, in view of the rapid growth of the Internet and its applications.
- c) Identify a methodology to study health, value and importance, and effectively integrate them into the design of health campaigns for community service.
- d) Benefit from the results of this study in overcoming the problems facing the application process of health campaigns.

***Objectives of the study***

The study aims to achieve the following objectives:

- 1) Evaluation of planning methods for health campaigns, the subject of the study, and the role of social media in these campaigns.
- 2) Recognize the importance of electronic media in promoting public awareness and understanding of health issues through the interactive means.
- 3) Monitor the pros that can be achieved by using websites in the social campaigns for the Egyptian public and identifying the obstacles facing the Egyptian public in dealing with websites.

***Questions of the study***

The research raised a number of questions as follows:

- 1) Main research question: What are the steps to set up a successful marketing campaign on Twitter, Facebook, YouTube, Instagram, Google+ and others?

This question is a key aspect of this study and attempts to explore the steps of preparing a successful marketing campaign as follows (Parvanta et al. 2011):

### **First: Planning**

Campaign leaders have to determine whether there is sufficient evidence to indicate that a health problem is conclusively within a given population. If confirmed, it is necessary to determine whether interventions have occurred in the past, whether they have been successful, and then to determine whether these strategies can be improved or adapted in the current intervention.

In our current campaign entitled "100 Millions' Health", health problems were discovered before the campaign began, as the campaign sought to:

- Complete the Egyptian government's efforts to combat the C virus through the campaign of "100 Millions' Health", commissioned by the Egyptian President for the Egyptian Ministry of Health and Population to eliminate the waiting lists of 900,000 patients.

As well as the detection and elimination of C virus and NCDs (diseases of the liver, heart and blood pressure) for more than 50 million Egyptian citizens. The previous strategies were improved in the previous campaign, with the aim of making the campaign a success as follows:

- The Ministry of Health has launched a website ([www.stophecv.org](http://www.stophecv.org)), which includes a window to search for the nearest survey center according to your residence, by selecting the province, then the section or center, and then showing the closest detection points to your area.
- The campaign has been promoted on Facebook, Twitter, YouTube, Instagram, Google+, smartphones, as well as all printed and electronic Egyptian newspapers and periodicals, radio, TV programs and blogs.
- Hold intensive training courses in all health departments and hospitals in the Arab Republic of Egypt.
- Form fixed and mobile teams, as well as mobile work teams to pass on homes to serve people with special needs and sick conditions.
- Training of 12,000 data entry to work in "100 Million's Health" campaign nationwide.
- The Ministry of Health has provided a database for all citizens over the age of 18 years at the level of the Republic, for the purpose of detection, and will be renewed at the end of the campaign.
- A meeting was held with the director of laboratories and laboratory technicians at all survey points, explaining the role assigned to them and ensuring their readiness to work with the initiative, with a policy to provide and receive the requirements of the campaign and the method of collection and preparation of samples for examination.
- Training of the untrained data entry on how to operate computers, tablets and the program of the initiative.

### **Second: Development**

The campaign development phase helps to rearrange coherent priorities in light of what has been implemented, taking into account the desired behavioral changes or situations that leaders hope to influence among the target population. The development stage also includes an understanding of the existence of a harmful behavior or attitude, which is very important to reverse, in order to achieve the goals of the campaign.

In this context, the following measures have been taken to ensure that the entire population aged 18 is exposed and communicate with the public as follows:

- Coordination with the civil society to mobilize the citizens and inform them of the whereabouts of the teams.
- Coordination with the directorates of education, social solidarity, youth, sports, endowments, representatives of churches, the Ministry of the Interior, the heads of cities, centers and local units to ensure public participation in the initiative.
- Hold several meetings with hospital directors, health departments and officials of the information centers of the health departments and entrusting them with supervision and follow

up of the required equipment, coordination and liaison with the supervisory team at the Directorate.

- Take difficult decisions to face the obstacles and challenges of the implementation of the health campaign to ensure access to quality health services to the target audience.

### **Third: Evaluation**

Evaluate whether the campaign has already succeeded in behavior change, which is an important part of any intervention initiative, noting that the funding and support provided depends on the effectiveness of the campaign. The success of the "100 Millions' Health" campaign, in terms of positive behavior change, was reflected in the high participation rate as well as the following points:

- Take advantage of the growing impact of social research by sharing campaign content socially.
- Make use of online communities via multi social media, like Facebook, Twitter, and Google+ posts, reflecting the interest of campaign organizers and the public.
- Since the first day, WHO has been supporting this initiative at all stages. Currently, there is an integrated team of WHO experts working as an external monitor to control performance within the screening, diagnosis and treatment centers to provide necessary support to the Ministry of Health to address any negatives arising during the survey. WHO, in close collaboration with all local and international partners, continues to support the efforts of the Egyptian Government to eradicate viral hepatitis, in addition to supporting the prevention of non-communicable diseases and strengthening the frameworks of health systems in Egypt, including basic health care.

### **In addition to the following positive feedback:**

- The representative of the World Health Organization (WHO) praised the Arab Republic of Egypt for the national campaign to eliminate the virus C is a health precedent recorded by history on the achievements of health in Egypt and an example of how to integrate the confrontation and targeting diseases that represent public health problems and huge in the country.
- The World Bank Representative said, "We are pleased to cooperate with the Ministry of Health in Egypt in this initiative, and the positive results achieved in its first phase." He pointed out that the Bank is one of the campaign financiers and that he looks forward to transferring the Egyptian experience in this campaign and application in other countries for their impressive results.
- The World Bank delegation also praised the Egyptian experience at the beginning of December. Ernest Masia, Director of Health and Nutrition at the World Bank, said that he looked forward to transfer the Egyptian experience of this campaign and applying it in other countries. He called on the Minister of Health to present this experience to the WHO Annual Conference in Geneva.

### **Subsequent questions of the main question:**

#### **1- What are the most successful sectors in social marketing?**

The health sector is considered one of the most important areas of social marketing campaigns to promote health development, as it represents a vital sector that affects people as a result of the spread of epidemics and other diseases. It also contributes to the rephrasing of medical information and emptying it from direct instructional tone to suit the target group. In addition, it contributes to change behavior and make a significant change in the health culture to the public in order to improve the health status of the individual and society as a whole.

#### **2- What are the motivations of the public to participate positively in "100 Millions' Health" campaign?**

Social media campaigns are a coordinated marketing effort to enhance information, facilitate audience interaction and motivate positive engagement by following, commenting, or liking. The campaign was promoted on Twitter, Facebook, YouTube, Instagram, Google+, as well as in all printed and electronic Egyptian newspapers, periodicals, radio, television programs, blogs and

smartphones. About 50 million SMS messages were sent to promote the campaign and places to conduct the survey. The site also featured the campaign's most important questions and answers to give a sense of visibility to all campaign targets.

In this regard, the slogan of the most intelligent campaign (100 Millions' Health) (Figure 1) should also be mentioned. It is one of the factors that motivate the public to participate, as it was accurate and simple of expression. The slogan establishes a link between the regulator, the Egyptian Ministry of Health and Population, through the contact number. The goal of the campaign is to eliminate the C virus and to detect non-communicable diseases. The photo attracts millions of followers of social media who respond more than 200% of the content if only words (Volpe 2014), as well as active participation and effort by planners throughout the campaign to eliminate any obstacles or challenges facing the campaign.

Successful social media campaigns are linked to a social marketing message that aims to spread positive and valuable principles in society and promote good behaviors for individuals at risk. In this digital era, health communication and social marketing are finding new and more innovative ways to promote lasting behavioral changes that lead to better health. This is what has been achieved during the campaign, which has spurred the public to participate positively in "100 Millions' Health" campaign.



Figure 1. 100 Millions' Health campaign

## 1. What are the pros and cons achieved by using websites and must be observed or avoided in campaigns?

### The pros of using social media in the campaign:

- The new generation of young people and technology-savvy audiences are more open to interaction with social channels, so this may be useful.
- The ability to connect with the Circle of Friends and interact through social networks, facilitating the exchange of views and comments on the evolution of the campaign.
- Take advantage of the growing impact of social research by sharing campaign content socially.
- Using existing online forums across multiple social media.
- Contribute to increased access and efficiency of basic public health services, such as surveillance, research and communications.

### The cons of using social media in the campaign:

- The Internet, specifically the applications of instant communication and social media, helps spread misleading information, falsehood and rumors quickly.
- Because of the large amount of information freely available on the Internet, the theft and misuse of this information is likely.

### **Methodological procedures for the study**

**Type of study:** This study belongs to the descriptive studies that are interested in studying social media sites and their role in social campaigns. They seek to describe a phenomenon, monitor, analyze it and interpret its consequences' (Suleiman 2009).

### **Study Approach**

**Study Population:** All governorates of the Arab Republic of Egypt.

### **Study limits**

**Human boundaries:** Egyptians residing in the Arab Republic of Egypt are over 18 years of age from both sexes.

**Spatial boundaries:** All governorates of the Egyptian region.

**Time boundaries:** October 2018 and until April 2019 distributed in three stages.

### **Theoretical Framework of the study:**

#### **Theory of Dependence on Media**

The theory of dependence on the media was chosen to rationalize the subject of the study. The theory suggests that public reliance on the media increases the importance of the media to the public in the context of three-way interactions between the media, the public, and the social system.

Researcher Sandra J. Ball Rokeach (Grant, Ball-Rokeach, and Guthrie 1991) made the first beginnings of this theory when she presented in 1974 a research paper entitled "The Concept of Information", which calls for a shift from the mainstream concept of the media as a means of persuasion to view it as an information system. In this research, the media's ability to create, shape and manipulate information was published and disseminated not only to the local audience but also to the global audience.

Studies on the theory of dependence on the media focused on the relationship between the public and the media, and the impact of this relationship on interpersonal relationships, as well as on the nature of the decisions taken by the individual based on his reliance on these means (means of communication).

#### **The process of relying on the media is influenced by several factors, which are determined as follows (Loges 1994):**

- The nature of society and its objectives as a result of relying on different media.
- The nature of society and the availability of sources of information in this society.
- The nature and diversity of the media and their ability to provide information to the public.
- The nature of the time or circumstances experienced by individuals or society.
- The nature of the information provided by the media and the extent to which it satisfies the needs of the individual or society.

The reasons for the individual's dependence on the media are influenced by his previous experience with this mean, where the public relies on the means that he feels provide him with the information he wants (Hollander 1997). The dependence of the individual on the media is influenced by the individual's use of the media. The power of the media according to the theory of dependence depends on the sources of information through which the individual achieves his or her main objectives. These objectives can widen and increase as society becomes more complex (Culbertson and Stempel 1996).

#### **The theory of dependence on the media is based on a set of assumptions (Baran and Davis 2006, 227):**

- A triangular relationship between the public, the media and the community. This relationship directly determines many of the influences that the media can have on people and society.

- The greater the degree of centralization of information raised by any media, the greater the public's reliance on that media.
- The degree of public reliance on media varies depending on their differences in goals, interests, and individual needs.

The process of individual dependence on the various media is more complex than mere exposure to this method. In many cases, exposure to this method happens by chance or because there is a communication habit that the individual always follows, without being considered a basic source of information (Baran and Davis. 2006, 320-322).

The basic hypothesis of the theory is that the process of interaction and mass communication involves a complex and reciprocal relationship between a large number of interacting variables that can be identified simply in three terms (Media, Audience, and Community). This relationship identifies many of the influences that the media can have on people (the public) and society (Khalil 2008).

### **Application of the theory of dependence on the current study**

The idea of dependence, here, is based on the Egyptian public's reliance on the media to acquire information and concepts about national campaigns, especially the "100 Millions' Health" campaign conducted by the Egyptian government for all members of Egyptian society in all Egyptian governorates. The theory is based on the existence of a relationship between the means of social media and the understanding of the members of the community of the importance of the campaign and its usefulness. Thus, the main idea of the theory is that the more the public in Egyptian society relies on the media to gain and understand information, the more important the media will be to individuals.

Information enables the media to achieve its role, which is provided by the theory of dependence. The public exposure to campaigns in social media as sources to rely on them in the completion of information, and establish the subject of the message, which means social media and its role in the success of the campaign "100 Millions' Health" in Egypt. This theory also contributes to the connection between the theory and the purpose of the thesis.

### ***Previous studies***

#### **Social media and health campaigns:**

1- Strongin, Dana. 2010. " **Health Promotion Strategies Among Practitioners in Three Settings: the Role of Directionality and Balance**" (Strongin 2010).

The study addresses the issue of health care, related costs and insurance in light of the growing cost of health care. Still, the health of the US population is not always good compared to people living in other countries such as Canada and the United Kingdom.

Results:

First, the possibility of creating ways, rather than relying on funding, to implement two-way strategies.

Second, health campaigns and promotion of health behaviors to prevent disease lead to early detection and treatment of chronic diseases.

Thirdly, engaging in partnerships is an important way to create more effective campaigns that ultimately lead to healthier societies.

2- Monroe, Brittney. 2016. "**Targeting Effectiveness in Digital Healthcare Advertising**" (Monroe 2016).

The study was conducted with a group of digital media users to gain a better understanding of how individuals seek out information about online health care, where ad messages are displayed to a digital media user to effectively advertise online on digital health care.

Results:

1- Many health campaigns target individuals by targeting the audience and ads.

2- Using audience targeting and reaching them is an important way to tell marketers who your target audience is.

- 3- The importance of access to information by applying the use of the Internet and digital media, in the field of health care research.

### **Comment on previous studies**

This presentation is as much as possible for previous studies. It is consistent with our current study of using health campaigns through social media to motivate the public to participate in campaigns and to gain a healthy culture. The study of Dana Strongin (2010) focused on the issue of health care and the creation of other means of financing due to its high cost. While the Monroe Brittney (2016) study took advantage of the Internet and digital media to determine the targeted audience for health campaigns for effective advertising.

### **Elements of taking advantage of previous studies are as follows:**

- Formulation of the research problem and research questions.
- Formulation of objectives, importance and hypotheses. Selection of methodology and research tools.
- Making use of the results of previous studies and linking them to the current study, enriching and enhancing their importance.

Keywords: Social Media, Value, Healthcare.

**Social Media:** forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos) (Merriam-Webster 2019)

- **Value:** Johan Larsen: If done correctly, connected care will improve public health and quality of life, which is the real value. We shouldn't forget that healthcare is about people and not just technology, dollars and cents (Eramo 2018).
- **Healthcare:** The prevention, treatment, and management of illness and the preservation of mental and physical well-being through the services offered by the medical and allied health professions (American Heritage®2016).

### **Applied side of the research**

This paper examines the effectiveness of the marketing of social media for the latest health campaign conducted by the Arab Republic of Egypt and launched by Egyptian President Abdel Fattah Al-Sisi to ensure the health of citizens. The Egyptian government launched this campaign under the title of "Prevention is better than cure" entitled "100 Millions' Health" to detect and eliminate the C virus and the detection of non-communicable diseases (liver diseases, heart and pressure) to more than 50 million Egyptian citizens and try to treat diseases in the early stages. In addition to eliminating the waiting lists of patients of the virus of C 900 thousand citizens, as well as to improve the health culture of the Egyptian citizen through social interaction through social media. Health campaigns increasingly need social media to support, promote and disseminate information and data to improve both personal and community health practices.

### **About the campaign**

**Campaign slogan:** "100 Millions' Health".

**Start date:** October 1, 2018.

**Expiry:** April 30, 2019.

**Vision:** Egypt is free of C virus, and mortality from non-communicable diseases is reduced.

### **Mission:**

- Early detection of infection with hepatitis C virus.
- Early detection of diabetes, high blood pressure and obesity.
- Provide monitoring and evaluation service through treatment centers and drainage units deployed in all Egyptian governorates to reduce the burden of disease and preventable deaths due to non-communicable diseases.

**Organization:** Ministry of Health and Population of the Arab Republic of Egypt.

**Campaign website:** www.stophecv.eg

**Direct campaign line:** 15335

**Total target audience:** 50 million citizens from the age of 18 years and older of both sexes.

**Campaign scope:** All governorates of the Arab Republic of Egypt.

**Stages of the campaign:** three stages as follows:

**First phase:** from October 1, 2018 until November 30, 2018

It consists of nine governorates: Fayoum, Assiut, Beheira, Damietta, Qalioubia, Port Said, Alexandria, South Sinai and Matrouh.

**Second phase:** from December 1, 2018 to February 28, 2019

It includes 11 governorates: Beni Suef, Sohag, Aswan, Luxor, Kafr El Sheikh, Menoufia, Cairo, Ismailia, Suez, North Sinai, and Red Sea.

**Third phase:** from March 1, 2019 to April 30, 2019

It includes seven governorates: New Valley, Giza, Gharbia, Dakahlia, Sharqiya, Minya and Qena.

**The media aspect of the campaign:** The campaign was promoted to target and motivate the public to participate positively in the following social media: Facebook, Twitter, YouTube, Instagram, Google+ and smartphones. In addition, 50 million text messages were sent, as well as published in all printed and electronic Egyptian newspapers, periodicals, radio, television programs and blogs. A popular song was also launched.

**Category of portlets used in campaign media.** Campaign adopted on the following pillars:

- The health pillar: which dealt with clarifying the correct scientific and health facts, and spreading the health culture in order to improve both personal health practices and motivation for community participation.
- The economic pillar: to clarify the material benefits that will accrue to the public as a result of maintaining the health of the individual the pillar of society, so as to benefit the individual and the society as a whole in the field of production and work.
- Behavioral pillar: encourage behavioral changes, by explaining negative behaviors and their adverse effects and attention to positive behaviors.
- Religious pillar: focuses on the religious aspects associated with human health and the absence of negatives that harm health.

The campaign also adopted the following appeals:

Emotional appeal: emotional and rational stimuli were used together, both to address the individual's mind and spirit to achieve the desired goal of the campaign.

## Results

I will review only the first and second phases due to time constraints as the third phase ends on April 30 and the deadline for submitting the research is May 6, and I will review the results of the third phase when the research is presented at the conference.

The results of the first and second phases were published under the title "The target category of citizens" (Al-Masry Al-youm 2019) (also published on Facebook, Messenger, Twitter, Google +)

### Target group of citizens:

C virus testing: Citizens older than 18 years of age, who have never been treated.

Non- communicable diseases: Citizens over 18 years of age.

### Results of the first phase:

The first phase began from October to November 2018,

- The first phase included 9 governorates as follows:
- South Sinai, Matrouh, Port Said, Alexandria, Beheira, Damietta, Qalyubia, Fayoum, Assiut.
- The total number of citizens examined in the first stage is 13 million.
- The percentage of infection was 4%, Fayoum was the highest of 6%, followed by Damietta by 5%, Alexandria was the lowest of 2%, and the rest of the governorates were: Matrouh governorate 2%, Port Said 3% South Sinai 3% Assiut 3% - Beheira 4% - Qaliubia 4%.

- Average prevalence of diabetic patients: The percentage of high blood sugar exceeded 200 mg / dl 4%. The rest of the governorates were as follows: Port Said highest by 6%, followed by Alexandria 5%, Qalubia lowest percentage by 3%, Assiut 3% South Sinai 4%, Beheira 4%, Matrouh 5% and Damietta 5%.
- High blood pressure: the average was high blood pressure 90/140 ml Hg 21% distributed as follows:  
Port Said was the top by 30%, followed by Alexandria with 27%, followed by Damietta 24%, followed by South Sinai 21%, Matrouh 21%, Beheira 19%, Al Qalioubia 16%, Fayoum 16% and Assiut 16%.

### **The result of second phase:**

- The second phase started from 1 December 2018 until 28 February 2019.
  - The second phase included 11 governorates as follows:
  - Beni Suef - Sohag - Aswan - Luxor - Kafr El Sheikh - Menoufia - Cairo - Ismailia - Suez - North Sinai - Red Sea.
  - **The total number of citizens examined in the second phase is about 17 million patients.**
- C virus infection:** The infection rate was 4%, Menoufia and Beni Suef were the highest 8%, followed by Kafr El-Sheikh by 5%, and Ismailia by 4%, and Sohag by 4% and Suez 4%, and Aswan 3%, Cairo 3%, and North Sinai by 3%, Luxor by 2% and the Red Sea 2%.

**Average prevalence of diabetes:** The rate of high blood glucose randomized to 200 mg / dl 6%, other governorates came as follows: Suez the highest rate of diabetes by 7%, followed by Aswan with 6%, Cairo 6%, Luxor 6%, Kafr El Sheikh 6%, North Sinai 5%, Menoufia 5%, Ismailia 5%, Sohag 5%, Red Sea 5% and Beni Suef 4%.

- **High blood pressure:** The average blood pressure was 90/140 mlHg 20% and the rest of the governorates were as follows:  
Cairo was the highest by 27%, followed by Suez by 25%, followed by Menoufia, Kafr El Sheikh 22%, Aswan 21%, Red Sea 20%, Ismailia 19%, North Sinai 19%, Luxor 17%, Sohag 17% and Beni Suef 16%.

### **Results of the Third Phase:**

- The third phase started from 1 March 2019 until 30 April 2019.
- The third phase includes seven governorates as follows:  
New Valley - Giza - Gharbia - Dakahlia - Sharkia - Minia - Qena.

### **Discussions**

Due to the development of social media during the past decades, which contributed to the success of the health campaign conducted by Egypt entitled "100 Millions' Health", to eliminate the C virus, diabetes, high blood pressure and obesity. This campaign provided campaign coordinators with all the facts, information and ideas to help community members benefit from health care, which is key to improving health. Where people are supported by modern ideas and new ways to lead life towards health well-being, through various social networks that include different changes of knowledge, attitudes and behavioral intentions of the masses.

It has eliminated Westernization and stimulated public participation, but the most important fact is the development of plans, action strategies and problem solving that result in implementation, which helped to make decisions about the mechanisms of action that policy development groups can implement.

Social media is one of the important elements in the success of the "100 Millions' Health" campaign conducted by Egypt. The campaign coordinators provided all the facts, information and ideas from various social networks, including the various changes of knowledge, attitudes and behavioral intentions of the masses. It has eliminated the behavior of Westernization and stimulated the masses to participate, but the most important fact is the development of action plans and strategies and the solution of problems that arise when applied, which helped to make decisions on how to act and which policy development groups can implement.

Previous studies have been positive and confirmed for our current study using social media in health campaigns, Dana Strongin (2010) and Brittney Monroe (2016). Strongin took care of health care and its importance as in our study. The Monroe study matched our study in content. Because the campaign targeted all citizens infected with the C virus, treat them free of charge and reassure them just as the Minister of Health and Population said that the year 2020 would see the country rid of the virus completely.

The average infection of C virus was 4% to 6% in the first and second stages. In addition to the early detection of diabetes patients where the average prevalence of diabetes patients 4% in the first stage and 6% in the second stage, and the average blood pressure of 90/140 ml is 21% in the first phase and 20% in the second stage. The patients were followed up and provided treatment to those surveyed in hospitals or health centers, as well as visits, communications and text messages. In addition to the formation of mobile teams to pass on homes to serve people with special needs for sick cases to ensure that they take the rest of the steps to evaluate and free treatment for those who prove the infection. Finally, the study proved the possibility of applying the use of social media successfully in the field of health campaigns.

All this is aimed at protecting and treating society members of the damage and diseases that can be exposed to it. It is not only the development of strategies to mitigate the potential negative effects, but the achievement of the objectives of the campaign in full, without which to continue to increase the numbers of patients and delayed treatment, giving way to surrender to disease and loss of hope in treatment and the establishment of a healthy society.

## Conclusions

The problem of the study is the early detection of C virus, as well as the early detection of diabetes, high blood pressure, and obesity for unregulated older than 18-year-olds through a "100 Millions' Health" campaign, which was the result of high mortality rates of these diseases. As Egypt ranks first in the global C virus infection (Mou'ns 2013; Ezz Al-Arab 2014; The International Bank 2018). The campaign was based on the first social communication means that made a difference in raising citizens' awareness of health culture, which reflected their behavior and was characterized by positive participation. The campaign aims to rid the Arab Republic of Egypt of the virus completely in 2020, as stated by the Minister of Health and Population, and to treat other diseases.

I cannot identify any reason for the failure to participate in the campaign where participation is one of the elements of its success, only referred to the exclusion of children and adolescents under the age of 18 by the coordinators of the campaign, to ensure the quality of the campaign. Nevertheless, I emphasize its success in targeting the masses and motivate them to participate in health awareness, and follow-up treatment with patients, and so our dreams of health of our society changed to reality.

Because of the success of the campaign, the state began to conduct other campaigns on our children in schools for the treatment of diseases of anemia and obesity and stunted cooperation between the ministries of health and education, which was conducted during the month of February. The treatment of infected children and another eye health awareness campaign initiated by the Ministry of Health began in conjunction with the international community's celebration of International Day of Sight (Al-Masry Al-youm 2018).

Not only that, but also the results obtained have made a valuable contribution to the preparation of similar campaigns in other countries as noted in the positive reactions of the Director of Health and Nutrition at the World Bank, Ernest Massia. He said that he looked forward to the transfer of the Egyptian experience of this campaign and its application in other countries. In addition to benefiting from all the strategies and mechanisms and plans for success.

This success and the rapid spread of awareness of the health culture of citizens as we have already mentioned, as a result of the use of social media, which indicates the importance of using these modern means to promote such campaigns, which achieved contact with the largest target audience throughout the Republic.

## Recommendations

- 1) The interest of government institutions and non-profit organizations in developing their content through the electronic media, which helps to raise awareness of issues of community development in general and health issues in particular.
- 2) Use influential young people with social networking pages and activists who are popular with young people in disseminating campaign messages, as well as reviewing comments received from the public and disseminating responses received by campaigners.
- 3) Pay attention to social and cultural factors that affect health at different levels, including individual behavior and physiology, family, community, environment, social networks, living and working conditions.
- 4) Make use of digital media when planning social campaigns.
- 5) It is possible to use partnerships with non-profit organizations if possible because they have more resources available such as time and money, which contributes to pushing the campaign to a higher and more effective level.
- 6) Pay attention to health campaigns and encourage early detection to avoid chronic diseases

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# Factors Influencing Student Satisfaction in Higher Education. The Case of a Georgian State University

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**ABSTRACT:** With the increasing importance, higher education is considered as a major asset for any nation's socio-economic and technological development. The quality of education offered by the higher education institutions directly impacts country's performance. That is why, number of scientific researches and public reports and debates agrees on the importance of the quality management in higher education. There is also an important debate on a link between the service quality and students' satisfaction. On the one hand, there is a logical dependence of the degree of satisfaction to the perceived quality. On the other hand, number of studies have also identified a link between students' satisfaction and their loyalty. This study looks at the determinants of student satisfaction in Georgian Higher Education Institutions. With the objective to detect the main components of service quality influencing students' satisfaction, the article uses HEDPERF as a measuring instrument of higher education service quality. Data is collected from 793 students of one of the largest universities of the country. An exploratory factor analysis six factors for the further examination. After scale development, a multiple regression analysis is used to test the research hypothesis. The results of the study show that the administrative factors are the most sensitive and have a positive influence on the students' satisfaction. Also, there is a positive relation between academic programs and student's satisfaction. The disproportionate attitude is observed between the importance of academic factors and satisfaction.

**KEYWORDS:** service quality, customer perception, student satisfaction, HEDPERF, higher education

## Introduction

Higher education, being one of the major assets for the development of any nation in the 21<sup>st</sup> century, has turned into an important topic of scientific research. On the one hand, number of studies have demonstrated a positive impact of the investment in higher education on country's economic development (Coleman 2005). On the other hand, authors observe an increase of competition among higher education institutions (HEI). The competition is due to some complementary factors: globalization, increased number of HEI, modified funding schemes and global and national university rankings and league tables. These trends have pushed universities to fight for their competitive advantages on the global market (Quinn, Lemay, Larsen and Johnson 2009, 146), putting students' recruitment and retention in the top concerns of most university plans. In some countries student recruitment and retention are imposed by government targets as poor retention rates have adverse funding consequences for institutions, like this is the case in the UK, for example Thus recruitment, student satisfaction and retention are closely linked and student satisfaction has become an extremely important issue for universities and their management.

As a result of these recent evolutions in higher education, the quality of education has become a concern at governmental levels. Number of national associations/organisations have been established with the unique aim to enhance the quality of services provided by local higher education institutions and thus, improve countries' competitive advantages. The European Association for Quality Assurance in Higher Education (ENQA), was established in 2000 in order to represent quality assurance and accreditation organisations from the European Higher Education Area and internationally. The aim of the organisation is to improve the quality of higher education among the Bologna Process countries by elaboration of set of standards, procedures and guidelines for higher education institutions of these countries. In the USA, there are some similar organisations out which the Council for Higher education Accreditation (CHEA) is the most important. CHEA groups over 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations.

Previous studies have shown that universities should try to maximise students' satisfaction with their experience whilst they are at university and minimise dissatisfaction in order to retain students as well as to improve the institutions' performance across a number of league tables, so improve the external recruitment and internal retention rates (Blackmore et al. 2006; Douglas et al. 2006). Previous research has also demonstrated the need to study the topic within a national context due to cultural and socio-economic differences per country resulting in different factors influencing students' satisfaction and/or causing students' dissatisfaction.

The aim of the present research is to identify the factors that influence student satisfaction in a multidisciplinary HEI in Georgian higher education context. To do so a case study approach was privileged. Quantitative data was collected using HEdPERF framework. Most of previous studies have used SERVQUAL framework to assess students' satisfaction. However, some authors have found it "challenging" to use this universal instrument to take into account the diverse nature of higher education field. HEdPERF framework was introduced as a superior instrument in terms of unidimensionality, reliability, and validity, which explained variance within the higher education setting better in comparison to SERVPERF framework (Abdullah 2005).

The results of this research can help university management to improve the quality of academic and other services by providing a guidance framework that would allow focusing resources and efforts towards those areas that will improve most student satisfaction and reduce their dissatisfaction. The article consists of three main parts. It starts with the review of a theoretical framework within which this study positions. It continues with methodological part explaining the research method using in this study and finishes with the discussion of the main findings.

### **Literature review**

Quality of education, student satisfaction and loyalty has been largely discussed and promoted in scientific literature, national debates as well as in strategies of higher education institutions since last couple of decades (Gruber et al. 2010; Temizer and Turkyilmaz 2012). These debates argue that there is a positive correlation between quality of education and students' satisfaction on the one hand, and the satisfaction and student loyalty on the other hand. In the scientific literature, these concepts are studied within the framework of customer satisfaction of service quality, i.e. a combination of emotional and cognitive reactions concerning a particular focus which takes place at a particular period of time (Giese and Cote 2000, 16).

Broadly speaking, customer satisfaction can be viewed from two basic constructs: satisfaction as meeting customers' expectations they had prior to purchase or after the use of products and services; and satisfaction as customers' relative perception of the performance of those products or services after using them. A customer's expectations about a product tells how he/she anticipates product's performance. In this logic, satisfaction is a state that a human being experiences when he receives the product of his expectation (Hasan et al. 2008). Authors suggest that there are different types of expectations when forming opinions about a product's anticipated performance. Day proposed four types of expectations customers have about a product: expectation about the costs, the product nature, the efforts in obtaining benefits and social value of the product (Day 1977).

On the other hand, a perceived product performance is considered as an important construct of evaluating customer satisfaction, due to its ability to make comparisons with expectations. In this sense, satisfaction is the perceived benefit minus the expected benefit of the product. When this equation is positive, we can talk about a satisfaction state (Grönroos 1984; Lewis and Booms 1983; Smith and Houston 1982). The relationship between quality and satisfaction is not straightforward. Some early researchers argued that customer satisfaction is a precursor of service quality (Bitner 1990; Parasuraman et al. 1988) while others claimed that it is service quality that leads to customer satisfaction (Hoisington and Naumann 2003; Douglas et al. 2016).

Applied to the context of higher education, the debate on the relationship between the quality of service and satisfaction of customers is even more sensitive than in other industries. There is an important debate on who is the customer of higher education institution. For some, a customer of higher education is a student receiving the education (Hill 1995, 18). For others, academic staff,

employers, and public sector should also be considered as customers of higher education (Kanji et al. 1999) as they also (if not exclusively in some countries) pay for the service received by the students. The concept of student as a customer is not new. However, as the relation between supplier-customer is not as clear in higher education as in other sectors (Douglas et al. 2006) there is a diverse opinion on the nature of customer in this field.

Another debate around the student satisfaction concept is the viability to actually judge the quality of education. Some argue that a student is not capable of objectively judge the quality of education he receives as he is still under the process of forming skills and knowledge. Putting these important topics aside in this research, the article continues with the assumption that knowing the factors that influence students' satisfaction can help higher education institutions improve their services (El-Hilali, Al-Jaber, Hussein 2014, 426) and/or create competitive advantages on the global marketplace. This topic is particularly important in a context of limited resources and strategic choices that HEI face (Abdullah 2005; Douglas et al. 2006).

The HEI management needs to make very delicate distinction between whether their objective of HEI should be to deliver satisfied customers, who will then develop a perception of high service quality, or that they should aim for high service quality as a way of increasing customer satisfaction. Higher education service quality is a product of number of various services that students encounter within the HEI. Hill stated that such services are provided by administrators, teaching staff and managers as well as other HE employees (Hill 1995).

As demonstrated by number of studies, it is more expensive to attract new customers than to maintain the existing ones (Gemme 1997, 19-21). Researchers perceive customer loyalty to be influenced by satisfaction, even if the structure of the relationship does not appear to be symmetric and linear (Mittal et al. 1998). As explained by Kotler and Armstrong, a long-term relationship with a customer is based on satisfying his upmost values and that is why it is particularly difficult to achieve. However, having loyal customer also benefits businesses financially in short- and long-term perspectives (Kotler and Armstrong 2015, 13). The same can be said about the cost of attracting new students and the benefits they can generate. DeShields, Kara, and Kaynak (2005, 128-139) illustrated that loyal students benefit universities not only with the tuition fees they pay, but also thanks to the reputation and the power of word of mouth promotion. Another advantage is that a satisfied student is loyal to his institution not only during but also after his studies and assist their alma mater in different ways (Gibson 2010).

Douglas et al. (2006, 251-267) consider that the loyalty of a student can be reviled in different scenarios: decision to continue studies in the same institution; frequent usage of different services of the institution and recommending the institution to others. Thus, studying the satisfaction elements as well as those dissatisfying students is important step to assess the quality perception of university services. It can guarantee higher loyalty to HEI. The key question to start this study is thus, what are the factors that improve students' satisfaction. The next part of the literature review will investigate further this question.

### ***Factors influencing student satisfaction***

Previous studies have identified two sets of factors impacting the satisfaction level of students: factors that positively impact satisfaction and factors that dissatisfy students. The satisfier factors, on its turn, can be grouped within purely academic elements and elements that are linked with other services provided by higher education institutions. Some argue that these two sets of satisfier factors are linked and should be studied together. A recent study by Herdlein and Zurner (2015) showed that students who are more involved in extra curriculum activities, such as sport event, organisational activities, social gathering, etc. are more satisfied compared to those who do not participate in any extra curriculum activities. According to Akil, 80% of students in Europe express the importance of these activities and often is the decision point when considering a future institution for their education. European students also express higher satisfaction when they are confronted to a multinational learning environment (cited by Herdlein and Zurner 2015).

Studies in European universities found that student satisfaction was largely influenced by the possibility given by higher education institutions to prepare them for a concrete profession, as well as their social, emotional and physical preparation (Herdlein and Zurner 2015). Some students consider that the possibility to meet new friends and develop network for future is essential function of a HEI (Cook and Rushton 2008). This social mission of modern university is also highlighted by other studies according to which, university campus should be planned in such a way to allow students live and study together and share knowledge and experience (Ping 1999, 16).

Student satisfaction seem to vary per discipline and student profiles (Coates 2008). For example, a study by Coates showed that the satisfaction level is relatively low among international students, also students who are aged 22 to 30 and students who study management, commerce and information technologies. The same study also showed that relatively higher satisfaction could be explained by good relation of students with academic and administrative staff and with other students (Coates 2008). A study by Marzo-Navarro et al. (2005, 53-65) also identified some demographic characteristics which explain the different level of satisfaction in the higher education field: age, gender, ethnic origin and level of education. Other studies showed that the satisfaction level may vary per disciplinary background, religion and learning style in addition to some of the previously listed factors (Berg et al. 2010; Limon 2001).

One of the findings of previous studies suggest a positive relation between satisfaction and academic performance (Rode et al. 2005). Some studies have shown that students with high performance (good grades) demonstrate more satisfaction than those with poorer academic results (Lo 2010). Studies have shown that students' academic performance largely depend on the learning environment they work in, such as small size classes, problem solving exercises (Johnson, Johnson & Smith 2007, 15-29). Positive environment motivates students to exceed their performance and makes them satisfied (Ocker and Yaverbaum 2001, 427-448).

There are number of factors that influence students' dissatisfaction instead of satisfaction. These factors are sometimes coming from outside the HEI, such as health issues, financial difficulties and family related problems (Thompson & Prieto 2013). Others are directly linked with the institutions, like the perceived lack of quality of education, high tuition fees, disappointing learning environment and university reputation, inflexible schedule, bad location of intuition, etc. (Melinget al. 2012). Some studies showed that the level of dissatisfaction also depends on the little possibility of employment after the graduation (Gbadosami & De Jager 2010) and lack of engagement in academic and non-academic projects of their institutions (Garcia-Aracil 2009).

Previous studies have suggested that cultural and socio-economic differences may result in different perception and expectation of education quality. A study realized by LeBlanc and Nguyen 1997) in Canada showed that students' satisfaction depends on tuition fee and possibility of personal development in addition to the quality of service they receive. A study in Pakistan showed four priority services for the satisfaction in Pakistani higher education system: qualification level of academic staff, proposed curriculum, learning environment and classroom atmosphere (Zaheer and Rehman 2010). Somewhat different results were founded in a study realised in Iran. Students' satisfaction in Tehrani universities seems to be impacted by factors such as the effectiveness of academic consultation, the services provided at the campus, student life, respect to ethnical diversity, security and possibilities to have financial support (Khosravi, Poushaneh, Roozegar and Sohrabifardd 2013).

### ***HEdPERF tool of service quality evaluation in higher education field***

The difficulty to evaluate the quality of service in general has been largely discussed in scientific literature (Brady and Cronin 2001). There has been number of tools and models created with this purpose since the 1980s, like Service (perceived) quality model (Gronroos 1984); SERVQUAL (Parasuraman et al. 1988); SERVPERF (Cronin & Taylor 1992); Three-component service quality model (Rust and Oliver 1994, 1-19); Multi-level model (Dabholkar et al. 1996, 3-16) and Hierarchical model (Brady and Cronin 2001, 34-49).

These models are based on either qualitative, quantitative or mixed variables and apply to different industries. Each of these tools were created with an objective to more accurately judge the quality than the previous one (Othman & Owen 2001). SERVPERF, for example, was elaborated as an improvement of commonly used SERVQUAL as SERVPERF manages to identify more differences in the total result of a service quality evaluation (Cronin & Taylor 1994, 129) and prioritizes the perception over expectation (Boulding et al. 1993, 7-27). It has also been argued that an objective and in-depth evaluation of different service fields, requires models created exclusively for particular fields (Vazirova 2016). With this aim, number of industry-based tools have been created. The table 1 lists these tools in a chronological order.

Table 1. Service quality evaluation models for different industries

<b>Model</b>	<b>Author</b>	<b>Industry of application</b>
SERVPERF	Cronin & Taylor 1992	Hotel, clubs, tourism agencies
DINESERV	Stevens, Knutson & Patton 1995	Restauration
LONGSERV	Knutson, et.al. 1990	Hotels
SERVERVAL	Petrick 2002	Airlines
SYSTRA-SQ	Aldalaigan & Buttle 2002	Banking
SITEQUAL	Yoo & Donthu 2001	E-commerce
E-SQUAL	Parasuraman et.al. 2005	E-commerce
HEdPERF	Abdullah 2006	Higher education
SELEB	Toncar et.al. 2006	Education services

Researchers use either generic tools, like SERQUAL to evaluate higher education services, or apply specific models, like HEdPERF. The later was originally created in 2003 and shaped as it is now in 2006. The main aim of the tool is to propose industry-based evaluation to the top management of higher education institutions. The instrument was empirically tested for unidimensionality, reliability and validity using both exploratory and confirmatory factor analysis. Later studies confirmed that HEdPERF results were more accurate than those of SERVPERF, for example, when it evaluated higher education institutions (Randheer 2015, 35). The model views student perceptions of service quality as a six-factor structure consisting of 41 variables covering academic and administrative aspects of higher education. The variables are grouped into six main dimensions:

1. Non-academic aspects – all elements that are essential for the processes of education and are linked with the duties of non-academic staff of higher education institutions;
2. Academic aspects – the competences of academic staff, their duties and responsibilities;
3. Reputation – the image of the institution;
4. Access – approachability, ease of contact, availability and convenience of higher education institution;
5. Programme aspects - importance of offering wide range and reputable academic programmes with flexible structures and syllabus.
6. Understanding - understanding students' specific need in terms of counselling and health services (Abdullah 2006, 575).

As we have seen above, students perceive the quality of higher education service as a collection of different services (Douglas et al. 2006; Herdlein and Zurner 2015). HEdPERF tool allows to identify the variety of elements that can lead to higher satisfaction of students. The review of literature has shown

the importance of considering students' experience in a higher education institution as a key issue for institutional strategy as satisfied students lead to higher financial and reputational benefits to HEI and allows them to more successfully position in an increasingly competitive marketplace. Thus the objective of the present research is to identify the elements that lead to students' satisfaction in a multidisciplinary higher education institution and provide recommendations to the management of HEI regarding the direction to allocate their resources and efforts.

### **Research methodology**

The choice of Ilia State University as the case of our research was determined by its specific nature. With 14 602 student, Ilia State University is one of the biggest higher education institutions in the Caucasus region. University was created 15 years ago after a merger of four half-century-old universities. Today university consists of four faculties: Faculty of Business, Technology and Education (45% of total students), Faculty of Arts and Science (37%), Faculty of Natural sciences and Medicine (8%) and the School of Law (10%), delivering education at bachelor, master and PhD levels. These faculties have diverse history and traditions. Their unification under the same roof went relatively smoothly but did not end up in close relations. Students experience common institutional structure but have different disciplinary practices. Thus, with the selecting a multidisciplinary institution, we hoped to observe, different perception of quality and satisfaction degree as well as the factors influencing satisfaction.

As our research emphasizes exploring commonalities in the study population, measurement and variables play an important role. A quantitative research approach was thus privileged in this study, using HEDPERF framework (Abdullah 2006). In order to 1) refine the research hypothesis and 2) get in-depth understanding of the research case, three focus groups were held with Ilia State University students and alumni. Each focus group lasted one hour and a half. Ten participants of each group (students and alumni) were rigorously selected: representing all three levels of education and all four faculties of the institution).

The focus group meetings revealed some interesting aspects concerning the perception of quality of services received by students. On the positive side, the interviewees mentioned five elements: orientation of the university towards modern teaching trends; intraorganizational platform for lecturer-student interaction; professionalism of academic staff; possibilities to do exchange programmes; and large choice of study programs. On the other hand, the interviewees mentioned also five negative points, like lack of student spaces (computer lab, after-school activities, etc.); curriculum of study programs; less flexible study timelines; technical issues with the intranet during the online selection of courses; and lack of employment possibilities. Results of the focus groups and the review of literature allowed pose the following hypothesis for this research:

Hypothesis 1: Positive reputation of study programmes increases students' satisfaction;

Hypothesis 2: There is a different satisfaction level in different disciplines;

Hypothesis 3: There is a difference satisfaction level per age group;

Hypothesis 4: Students with no experience of other higher education institutions are more satisfied than those with experience;

Hypothesis 5: Perceived quality of academic aspects explains the satisfaction level;

Hypothesis 6: Non-academic services are as important as academic aspects for students' satisfaction;

Hypothesis 7: Satisfied students are more loyal to HEI;

Hypothesis 8: Environment and location of university explains students' satisfaction.

The survey was realized in 2018 during a one-month period. We selected a period when students were not busy with exams or any major curriculum activities. To guarantee the equal and independent representation for each element of the study population, we opted for random sampling method (Kumar 2014). We used disproportionate stratified sampling in order to assure the representation of all disciplinary fields from the university without taking into consideration the size of each stratum (Kumar 2014).

Our study population consists of 14602 students at bachelor, master and PhD level. We received 793 questionnaires out of which 783 were retained for analysis, making 95% confidence limits of the normal distribution (mean difference  $\pm$  1.96 SD) and 3% margin error. Absolute majority of the study population is feminine (up to 80%). 296 respondents (37.8%) are under 20 years old. 409 represent the age group of 21-25 making the majority of the study population (51.9%). Only 61 students are 26-30 years old (7.8%) and 15 students between 31 and 35 (1.9%). Five students are over 36 years old (0.6%). 53,1% of respondents are employed and (7.8%) are self-employed against 40.1% unemployed population. The table 2 presents the student repartition per study level.

Table 2. Representation of study population per study level

	Year 1	Year 2	Year 3	Year 4	Total
Bachelor	143	155	121	187	606
Master	75	95	-	-	170
Doctorate	3	1	2	1	7
Total	221	251	123	188	783

The survey was distributed online to the entire student population with the help of university administration. 39 variables were retained out of 41 for this study. The survey data was analysed with STATA tool using factor analysis and regression.

### Data Analysis and main findings

Looking for grouping variables into conceptually similar and significant clusters, a first component analysis was performed using Promax rotation and Kaiser normalization. The Promax method was privileged as the research aimed to identify a link between the independent variables. This step showed a positive correlation between HEDPERF variables and thus there was no need to additionally run Varimax method. For more reliability the choice was made to select only the factors with Eigenvalue higher or equal to 1 (Kumar 2014). Thus, the orthogonal analysis of 39 variables gave 3 main factors for further analysis as demonstrated in the table 3.

Table 3. Factor analysis of the

Factor	Eigenvalue	Difference	Proportion	Cumulative
<b>Factor1</b>	<b>17.59888</b>	<b>14.95723</b>	<b>0.6855</b>	<b>0.6855</b>
<b>Factor2</b>	<b>2.64165</b>	<b>0.69414</b>	<b>0.1029</b>	<b>0.7885</b>
<b>Factor3</b>	<b>1.94751</b>	<b>1.05687</b>	<b>0.0759</b>	<b>0.8643</b>
Factor4	0.89064	0.26984	0.0347	0.899
Factor5	0.6208	0.08331	0.0242	0.9232
Factor6	0.53749	0.06024	0.0209	0.9441
Factor7	0.47725	0.09341	0.0186	0.9627
Factor8	0.38384	0.05102	0.015	0.9777
Factor9	0.33282	0.09237	0.013	0.9906
Factor10	0.24044	0.05568	0.0094	1
Factor11	0.18476	0.02216	0.0072	1.0072
Factor12	0.1626	0.01871	0.0063	1.0135
Factor13	0.1439	0.01279	0.0056	1.0191
Factor14	0.1311	0.01253	0.0051	1.0242
Factor15	0.11857	0.01765	0.0046	1.0289
Factor16	0.10092	0.01934	0.0039	1.0328
Factor17	0.08158	0.02098	0.0032	1.036
Factor18	0.0606	0.01302	0.0024	1.0383

Factor19	0.04758	0.01262	0.0019	1.0402
Factor20	0.03496	0.00704	0.0014	1.0416
Factor21	0.02792	0.0117	0.0011	1.0426
Factor22	0.01622	0.01128	0.0006	1.0433
Factor23	0.00494	0.00809	0.0002	1.0435
Factor24	-0.00315	0.00478	-0.0001	1.0433
Factor25	-0.00794	0.01137	-0.0003	1.043
Factor26	-0.01931	0.00634	-0.0008	1.0423
Factor27	-0.02564	0.00982	-0.001	1.0413
Factor28	-0.03546	0.00859	-0.0014	1.0399
Factor29	-0.04405	0.00652	-0.0017	1.0382
Factor30	-0.05056	0.00438	-0.002	1.0362
Factor31	-0.05494	0.00937	-0.0021	1.0341
Factor32	-0.06432	0.01635	-0.0025	1.0316
Factor33	-0.08067	0.00936	-0.0031	1.0284
Factor34	-0.09003	0.00642	-0.0035	1.0249
Factor35	-0.09645	0.01259	-0.0038	1.0212
Factor36	-0.10904	0.01549	-0.0042	1.0169
Factor37	-0.12454	0.02147	-0.0049	1.0121
Factor38	-0.14601	0.01761	-0.0057	1.0064
Factor39	-0.16362	.	-0.0064	1

The three factors represent 13,37%, 11,96% and 11,74% of the whole dispersion, making up to 37,07%. The table 4 and the diagram 1 show the squared loading matrix which confirm our choice of the three first factors over the others, as after the factor 3, each successive factor is accounting for smaller and smaller amounts of the total variance (Pallant 2001, 154).

Table 4. Loading matrix

Factor	Variance	Proportion
<b>Factor1</b>	<b>13.37097</b>	<b>0.5209</b>
<b>Factor2</b>	<b>11.96104</b>	<b>0.4659</b>
<b>Factor3</b>	<b>11.73969</b>	<b>0.4573</b>
Factor4	9.90575	0.3859
Factor5	9.1015	0.3545
Factor6	6.38973	0.2489
Factor7	5.71445	0.2226
Factor8	5.30128	0.2065
Factor9	4.12552	0.1607
Factor10	2.43289	0.0948

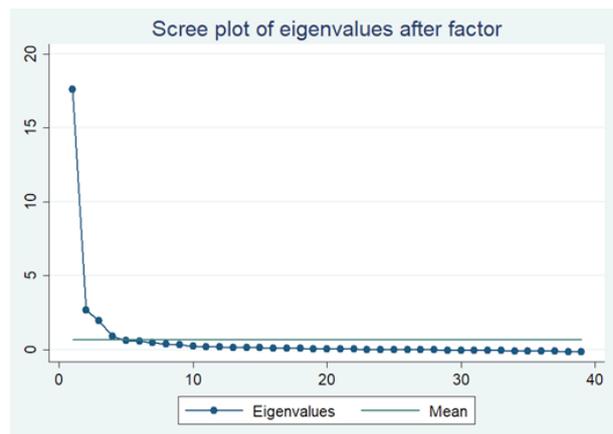


Diagram 1. Scree plot 1

At the second step of our analysis, we identified the variables which constitute these three factors. As explained by Cohen, Manion and Morrison, it is important that each factor contains at least three variables (Cohen, Manion and Morrison 2007). The table 5 shows that, in accordance to the Promax rotation and Kaiser normalization tests, the first three factors consists of the highest number of variables. The factor 1 regroups variables B9 to B22 and concerns administrative services of the university. The second factor regroups variables B23 to B27 and B29 and concerns the curriculums and competitiveness of study programmes, as well as student employability issues. The third factor contains first eight variables and concerns the academic aspects. The factors were named accordingly: Factor 1 - Administrative aspects, Factor 2 - Study programmes and Factor 3 Academic staff.

Table 5. Factor analysis of 39 variables

Variable	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6	Factor 7	Factor 8	Factor 9	Factor 10	Uniqueness
var1			<b>0.317</b>				0.5601				0.3814
var2			<b>0.8278</b>								0.3042
var3			<b>0.8129</b>								0.2553
var4			<b>0.7904</b>								0.2627
var5			<b>0.7755</b>								0.293
var6			<b>0.7074</b>								0.3299
var7			<b>0.6728</b>								0.3968
var8			<b>0.5556</b>								0.442
var9	<b>0.6383</b>									0.4293	0.1762
var10	<b>0.6415</b>									0.4861	0.1276
var11	<b>0.8077</b>										0.3397
var12	<b>0.8221</b>										0.3632
var13	<b>0.72</b>										0.3639
var14	<b>0.7602</b>										0.3491
var15	<b>0.744</b>										0.2409
var16	<b>0.3964</b>										0.5795
var17	<b>0.7354</b>										0.2136
var18	<b>0.5837</b>								0.3782		0.3033
var19	<b>0.5095</b>								0.4391		0.3359
var20	<b>0.4132</b>								0.4261		0.4204
var21	<b>0.5094</b>										0.5219
var22	<b>0.6756</b>										0.2974
var23		<b>0.7851</b>									0.2747
var24		<b>0.8067</b>									0.385
var25		<b>0.7408</b>									0.3407
var26		<b>0.8967</b>									0.1947
var27		<b>0.6273</b>									0.3119
var28							0.5789				0.2692
var29		<b>0.4672</b>									0.6514
var30								0.4448			0.3823
var31								0.5173			0.4766
var32						0.4352					0.5125
var33						0.8319					0.2423
var34				0.6085							0.2383
var35				0.5745							0.2402
var36				0.4364							0.4218
var37					0.3264						0.4415
var38					0.8018						0.2734
var39					0.5645						0.3741

The factor analysis revealed that when it comes to administrative aspects, the most important issues for students are 1) effective and quick response from administration to their complaints (B11) and 2) the readiness of administrative staff to assist students (B12). Less important components seem to be 1) comfortable working hours of administrative staff (B16) and 2) confidentiality respect from the administrative staff (B20).

The quality of study programmes is assessed mainly by 1) large choice of study programmes and specializations (B24) and 2) the reputation of the offered programmes (B26). Less important for students while evaluating the quality of study programmes was the simplicity of employment after graduation (B29). As for the quality of academic staff, students judge it vital that 1) academic staff care about them and show respect (B2) as well as 2) their readiness to assist students (B3). Surprisingly, the less important aspect to evaluate the quality of academic aspects was the in-depth knowledge of the topic and the capacity to answer students' questions (B1).

### ***Correlation analysis***

Multiple regression was used in this study to determine the overall effect of different service dimensions on the service quality level, and to assess the relative importance of the individual dimensions. The regression model considered the service quality level as a dependent variable and the service quality scores for the individual dimensions as the independent variables. As commonly acknowledged, correlation is valid only with 0,5 or higher significance level in social studies (Kumar 2014). In accordance with the first two steps of our research, the same three factors showed the highest correlation level as demonstrated in the table 6. This step allowed us to investigate the main question of the research: the correlation between the quality university services perceived by the students, and the degree of their satisfaction.

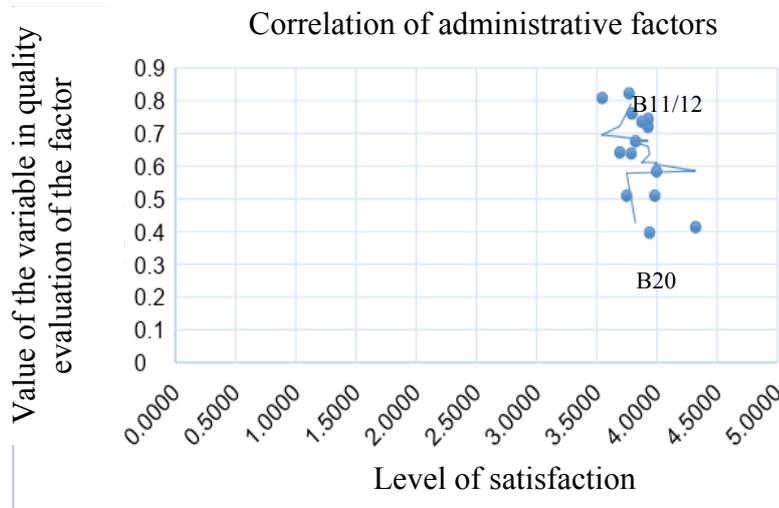
Table 6. Correlation analysis of the top ten factors

<b>Factors</b>	<b>Factor 1</b>	<b>Factor2</b>	<b>Factor 3</b>	Factor4	Factor5	Factor6	Factor7	Factor8	Factor9	Factor10
<b>Factor1</b>	<b>1</b>									
<b>Factor2</b>	<b>0.5122</b>	<b>1</b>								
<b>Factor3</b>	<b>0.5724</b>	<b>0.5409</b>	<b>1</b>							
Factor4	0.545	0.6007	0.4851	1						
Factor5	0.4753	0.5835	0.4848	0.5866	1					
Factor6	0.3835	0.5194	0.3301	0.4939	0.4149	1				
Factor7	0.3381	0.507	0.4769	0.2775	0.4017	0.2396	1			
Factor8	0.3035	0.4839	0.3345	0.434	0.5052	0.4286	0.2302	1		
Factor9	0.2924	0.3251	0.2926	0.3653	0.3523	0.3095	0.1929	0.2177	1	
Factor10	0.2676	0.09659	0.2962	0.1786	0.2547	0.217	0.1651	0.08864	0.2084	1

The research fully confirmed hypothesis 5, 6 7 and 8 and partially confirmed hypothesis 1 and 3. Hypothesis 2 and 4 were not confirmed within this study. The correlation analysis confirmed that purely academic factors (H5) are as important as non-academic one like the quality of administrative staff (H5) and reputation of study programmes (H1). However, other elements, like study environment and extra-curriculum activities and spaces (H8) also showed as a major element in overall quality perception.

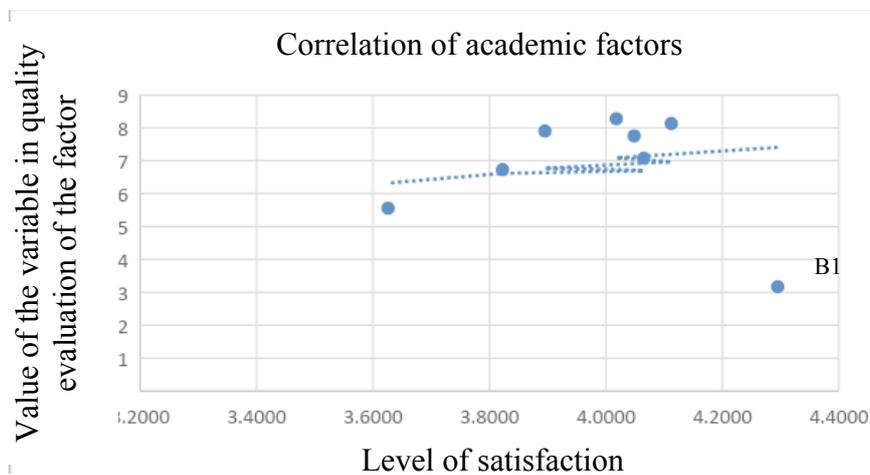
The research showed that administrative factors, more precisely the quality of administrative staff, is the most important factor while evaluating the overall university quality. Factor B11 “effective and quick response to students’ complaints” plays the major role in evaluation of the administrative staff quality. However, the students seem to be the least satisfied with this component. Similarly, factor B12 “readiness of administrative staff to assist students” is second major element composing the quality of administrative staff. However, our study showed that students are not absolutely satisfied with this component. An opposite correlation was observed regarding the factor B20. Students are particularly satisfied with the “confidentiality respect from the administrative staff” but for them this is not the key element to judge the quality of university administration.

Figure 1. Correlation between the perceived quality of administrative aspects and the level of satisfaction



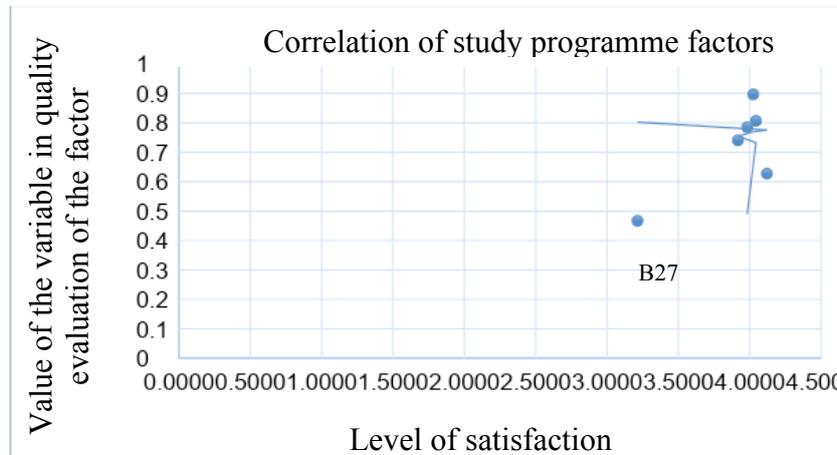
An opposite result was observed at the level of academic factors. Even if the studied population is particularly satisfied with the factor B1 “in-depth knowledge of the topic and the capacity to answer students’ questions”, for them this element is not essential while evaluating the quality of university services. This result coincides with the literature review where we observe the increase of importance of non-academic factors vis-à-vis academic considerations.

Figure 2. Correlation between the perceived quality of academic staff and the level of satisfaction



As for the academic programme factor, we observe a positive correlation between the perception of quality and the level of satisfaction. Similarly, a positive relation is observed between the “dissatisfaction” in terms of “simplicity of employment after graduation” (B29) and little importance of this variable in overall value of factor evaluation. Only separate variable in the factor 2 is the B27 “the reputation of study programmes”. For the respondents, the university programmes have good reputation in the society, but it is not important aspect for them to judge the quality of study programmes.

Figure 3. Correlation between the perceived quality of study programmes and the level of satisfaction



This research did not confirmed hypothesis 2 and 4. There was insignificant difference of overall satisfaction between different faculties and student experience. (See annex 1 for more information). The hypothesis 4 that an experience in other HEI will alter the judgment of students on the quality of current institution showed very little difference in favour of first-time students in comparison with students with experiences

Table 7. Difference of satisfaction between experienced and first-time students

Have you ever studied in other HEI then Ilia State?	Satisfaction level	Number of respondents
No	3.9795	614
Yes	3.8337	169

As for the hypothesis 3, the study showed some differences in terms of satisfaction level of different age group student, the youngest study population being the most satisfied. (See annex 1 for more information).

The hypothesis 7 on a positive correlation between satisfaction and loyalty is confirmed with this study. Students who are particularly satisfied (overall satisfaction higher than 3,8) are ready to continue studies at Ilia State University in future. This result shows the high expectations from students already observed at focus group meetings. Only those who judge that the quality of services proposed by the university as very good (>4.0000) are loyal to the institution. Receiving “good” services (3.000) is not enough to be loyal to their alma mater.

Table 8. Satisfaction and loyalty correlation analysis

In case of future studies, I will study again at Ilia State University	Satisfaction level	Number of respondents
1. Strongly disagree	3.1334	44
2. Disagree	3.3908	50
3. I am not sure yet	3.5440	134
4. Agree	3.8843	221
5. Strongly agree	4.3457	334

The present study shows that average satisfaction level is not enough to guarantee students’ loyalty in today’ very competitive education market. This result correspondents to foreign experiences. Previous

research by Blackmore et al. (2006) found that even whilst satisfaction ratings overall were at an acceptable level, a significant number of respondents claimed that they would not recommend their institution to others. That is why, it is particularly important for the HEI management to dig in the elements constituting students' satisfaction.

This study showed that academic elements, such as the quality of academic staff and the courses are very important component of HEI service quality. However, the quality of academic staff is even more important as it is administrative staff with whom students deal at daily basis for variety of services. Study programme reputation is another important element.

However, the respondents of this study distinguish clearly that the reputation itself can not guarantee the quality but mostly results in existing quality. For them study environment and existence of free spaces for their academic and non-academic activities is very important.

## Conclusion

This paper outlines the findings of a study involving bachelor, master and doctorate level students within one Georgian university. The study showed that higher education service quality is a combination of different elements out of which the quality of administrative staff is the most important, followed closely by the quality of academic staff. The reputation of study programmes and available spaces for students' life are other essential elements.

Even if the overall satisfaction seems quite high in this study, respondents are not necessarily ready to recommend their institution or to remain loyal to it, unless they are particularly satisfied with the service quality. This observation corresponds to the findings of previous studies showing the importance of customer-orientation in increasingly competitive field of higher education. From management point of view there are obvious areas of interest where deploying resources and efforts should be targeted. These are termed as the critical areas, i.e. those that are influencing loyalty behaviours.

Evaluating service quality level and understanding how various dimensions impact overall service quality would enable HEI to efficiently design the service delivery process. In addition, knowing the strengths and weaknesses of the dimensions which influence the satisfaction level of students can result in better allocation of resources so as to provide a better service to students.

There are a number of limitations with this study. First, as the study population was selected randomly in order to guarantee an objective representation of each element, an uneven representation was observed for some variables. An absolute majority of respondents are female (86%). Similarly, students who have no experience of studying in more than one HEI represent big majority (78% of the population). However, taking into account the national culture of the studied country and also the little differences observed in literature in this regard, allows to conclude that the differences would not be significant.

Future steps of this research can be undertaken in order to compare the results of this study to an international counter party. It will be interesting to observe similar trends over cultural and socio-demographic varieties.

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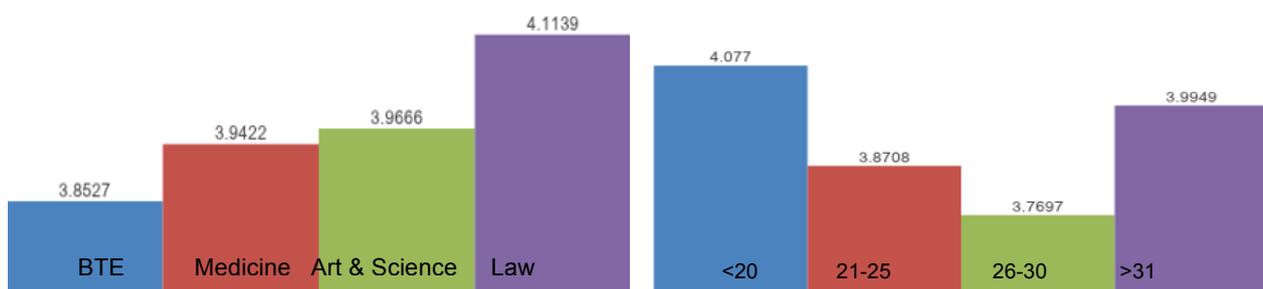
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**Annexes**

**Annex 1. Confirmatory factor analysis  
Satisfaction level per discipline and age groups.**



**Annex 2. Open question results from the survey**

Positive elements with chronological order (from the most cited till the least):	Negative elements with chronological order (from the most cited till the least):
1. Free environment	1. Lack of student spaces for individual and teamwork, and for sports

2. Flexible online platform ARGUS	2. Discrepancy between the study programmes and the market demand
3. Modern infrastructure and well-equipped classrooms	3. Lack of practice-oriented courses
4. Well-equipped and modernized library	4. Oversized study groups
5. Qualified and practitioner academic staff	5. Little difference between master and bachelor degree programmes
6. Employment and work placement possibilities	6. Issues with evaluation system
7. High quality public classes	7. Technical difficulties during class selection
8. Diversity of student activities (extra curriculum)	8. Lack of computer rooms and limited working hours
9. Non mandatory class attendance	9. Slow internet
10. Possibility to retake missed classes and exams	10. Lack of security systems

# Mid-Level Management Style in Healthcare

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**ABSTRACT:** The purpose of this paper is to recommend a quantitative model based on the outcomes from a comprehensive literature review of multiple studies to identify the most effective leadership style among mid-level managers in a healthcare setting. This literature review includes theories of leadership and discusses the usual leadership methods associated with mid-level managers. This study addresses the effectiveness of transactional, transformational, and passive leadership styles of middle level managers in healthcare organizations. The proposed quantitative non-experimental correlational study would examine the statistical relationships between the independent variables of three leadership styles (transformational, transactional, and passive leadership) and the dependent variable of leadership effectiveness among mid-level managers in the healthcare industry. This literature analysis proposes how to clearly define the variables transformational leadership, transactional leadership, passive leadership, and leader effectiveness which would eventually make it possible to quantify and measure them.

**KEYWORDS:** Middle Management, Leadership, Healthcare, Quantitative Model

## Introduction

The Healthcare Industry in the United States is continuing to present challenges in terms of both quality and efficiency (Pelote & Route 2007). According to Lantz & Maryland (2008), the healthcare industry has created over \$1 trillion in avoidable costs due to inefficiencies. Aitken (2013) discussed that considerable research on healthcare system inefficiencies in the U.S. has been accomplished based on the urgency of cost containment and that the results have yielded a wide range of significant values. According to IMS Institute for Healthcare Informatics estimates, healthcare costs caused by improper and unnecessary use of medicines exceeded \$200 billion in 2012 which accounted for 8% of the national healthcare spending that year (Aitken 2013). Healthcare leaders have the ability to influence subordinates to engage in prime performance to mitigate inefficiency when faced with challenges. Chilgren (2008) stated that healthcare mid-level managers are one of the best instruments for success in terms of quality in healthcare organizations, as they can directly impact change and develop quality processes toward patient expectations by clearly identify outcomes and empower employees to achieve those goals (Chilgren 2008). Managers can expect a considerable return on investment with a successful quality program, along with satisfied patients and staff and improved clinical outcomes (Chilgren 2008). Leadership impacts communication, the effectiveness of the work environment, and the organization ability to accomplish goals. Strong leadership is needed in the healthcare environment, and the absence of it is a paramount issue (Lantz & Maryland 2008).

This paper will examine the relationships between the leadership style and its effectiveness among middle management in the healthcare environment by conducting an extensive literature review of existing studies. This qualitative study will address the problem of the shortfall in leadership competencies among healthcare mid-level managers that have resulted in inefficiencies and subpar quality healthcare (North 2008). Mid-level managers in healthcare organizations must be prepared to appropriately handle challenges related to leadership competencies, as appropriate leadership is vital to a healthcare systems survival (Spinelli 2006). McAlearney (2008) states that driving efficiency in all aspects of a healthcare organization is critical to reducing expenses and decreasing spending. Effective management in a healthcare organization that influences others to perform efficiently is in an imperative aspect in the changing environment of the healthcare industry (Wurster 2009).

The goal of this paper is to seek out literature that examines the relationships between the independent variables of three leadership styles (transformational, transactional, and passive leadership) and the dependent variable of leadership effectiveness among mid-level managers, with specific focus on the healthcare industry. We predict that the results from this literature analysis would be applicable to any

healthcare organization. To this effect, we focused primarily on literature that addressed one or more of the following research questions:

1. What is the relationship between the Transformational leadership style and leader effectiveness among middle managers within an organization?
2. What is the relationship between Transactional leadership style and leader effectiveness among middle managers within an organization?
3. What is the relationship between Passive leadership style and leader effectiveness among middle managers within an organization?
4. What are the primary competencies for effective healthcare managers?
5. Which leadership style has been found to have the most significant impact on leader effectiveness and efficiencies?

## Literature Review

The literature review for this study provides an examination of the multiple approaches to leadership styles and their outcomes of leadership in healthcare organizations. This literature review includes theories of leadership and findings present potential leadership methods associated with mid-level managers. This qualitative study proposal addresses mid-level managers effectiveness in regard of transactional, transformation, and passive leadership styles in middle level management in healthcare organizations.

### *A. Mid-level Leadership*

The healthcare system has been theorized as a product of personal health services and this requires managers to assure safety, efficiency, and qualities of service to meet the needs of the patient (Shortell & Kalunzy 2006). Furthermore, these realities present a complex and challenging management environment (Shortell & Kalunzy 2006). The need for mid-level managers is increasing in today's healthcare environment as mid-level managers function as the conduit of influence between upper management and the front-line employees and are vital for implementing and sustaining quality practices to meet healthcare complexities (Chilgren 2008). Middle managers are defined as staff with a supervisory capacity other than senior leaders and are noted as department managers, program managers, nurse managers, administrative directors, and frontline supervisors (Engle et al. 2017).

Engle et al (2017) did a substantial study on the role of middle managers in hospital settings. The purpose of the study conducted by Engle et al (2017) was to increase the understanding of the influence of middle managers in organizations by analyzing qualitative data from 17 Veterans Affairs Medical Centers with high and low potential to change organizational practices. Engle et al (2017) examined 98 consultations with employees ranging from senior leaders to frontline staff members to identify themes within an a priori framework that reflect middle manager undertakings. Middle managers are known to play key roles in hospital settings because they bridge gaps between senior leaders and frontline staff, but little research has focused on middle managers roles in implementing new practices. Middle managers play important roles in health care organizations by facilitating the implementation of innovative and quality improvement initiatives and current literature has confirmed that individual and organizational factors influence quality improvement effectiveness (Engle et al. 2017). This emphasis has been on senior leaders but lacks focus on the influence of middle managers on organizational change efforts. Therefore, there is a need for further research to measure or estimate middle level management effectiveness in healthcare settings (Engle et al. 2017). Middle managers can facilitate or enhance innovation implementation processes, implement change, and improve organizational performance. Middle managers are situated between senior leaders and frontline staff of an organization and can either bridge or widen information gaps that may influence innovation implementation in positive or negative ways (Engle et al. 2017).

Engle et al. (2017) further expand and theorize the role of middle or mid-level managers in a healthcare organization expressed by their commitment to innovation implementation in the following four different ways: (a) mid-level managers diffuse information to give employees the necessary information in regard to innovation implementation, (b) mid-level managers synthesize information to provide appropriate examples to support employees understanding in how innovations are implemented in

the workplace, (c) mid-level managers serve as mediators between strategy and day-to-day undertakings to give staff the tools required to implement innovations, and (d) mid-level managers sell innovation implementation execution processes to encourage staff members to use it consistently and effectively (Engle et al. 2017).

The Organizational Transformation Model developed by Lukas et al (2007) can be used as a basis for further examining the behaviors of middle managers and their contributions to facilitating transformations within an organization. The Organizational Transformation Model demonstrates that improvement in health care organizations was more impactful when middle managers were committed to quality and actively involved in the redesign process being fully aligned around the importance of quality improvement (Lukas et al. 2007).

Middle managers play a key role in overcoming the challenges of innovation implementation as has been offered by many studies in the field (Shortell & Kalunzy 2006; Chilgren 2008; Engle, et al. 2017). A study conducted by Birken et al (2015) focused on how middle managers oversee the implementation of an innovation project to reduce health disparities. They found that middle managers improved the effectiveness of Chronic Care Model implementation in their healthcare organization (Birken, et al. 2015). It is theorized that middle managers can exploit their unique position that falls between upper and lower levels in the healthcare organization by engaging in ambidextrous learning that is critical to implementing and sustaining fundamental change (March 1991). This organizational learning perspective offers an innovative way of framing the role of mid-level managers through explorative and exploitative activities that additionally reflects the necessary organizational framework in which they manage (Floyd & Wooldridge 1997). The theories of both implementation and change management support the importance of leadership at all levels (Floyd & Wooldridge 1997). In a follow up article, Wooldridge, Schmid & Floyd (2008) proposed that leadership at the middle level of management consists of those individuals who have supervisory or managerial roles that are neither front-line staff nor senior leadership team members and therefore can facilitate radical organizational change more efficiently.

The increasing knowledge about the vital role that middle management plays in strategic change in all sectors, but particularly the healthcare sector, should result in a higher value placed on middle managers in these industries. However, it appears that there is a very limited understanding of what contributions middle managers make towards strategy and organizational change because despite these consistent results, the middle management is often not involved to the extent it should be when strategic changes occur (Gutberg & Berta 2017). Significant literature and theories of leadership focus upon the role of senior leadership while ignoring or minimizing the role of the middle management. Gutberg & Berta (2017) found that the potential for middle managers to contribute to strategic organizational activities, a relatively recent consideration in the healthcare industry could substantially change the landscape of the industry by improving efficiencies and reducing costs. Literature demonstrates that middle managers have the ability to facilitate communication throughout and within an organization (Birken, Lee & Weiner 2012). Middle managers not only leverage but exploit their access to knowledge and networks and serve as a conduit to transfer information regarding the implementation strategy down to the lower levels of the organization, while simultaneously translating the strategy or vision into executable processes and steps to be adopted by front-line employees (Birken, Lee & Weiner 2012). Middle managers accomplish this by directing the flow of information both upward and downward by communicating from the front-line staff back up to the senior leadership level.

A recent study by Birken, et al. (2016) found that middle managers ranked the highest in diffusing and synthesizing information and stated that future studies are required to assess the relationship between hypothesized roles and the effectiveness with which innovations are implemented in practice. It was also noted that middle managers have received increased attention in recent healthcare innovation implementation research and this emerging literature suggests that middle managers influence innovation implementation by bridging informational gaps between top managers and frontline employees that might otherwise impede innovation implementation in healthcare settings (Birken, et al, 2016).

### B. Leadership Styles

The role of middle managers in terms of the strategic benefits has been discussed in the first part of this section. However, now we need to try to understand what style of leadership is the most effective at the mid-management level. The Full Range Leadership Model encompasses transformational, transactional, and passive styles and is regarded as the leading model for describing leadership styles (Nash, Davies & Moore, 2017). The Full Range Leadership Model is comprised of three different leadership styles: transformational, transaction, and passive as shown in Figure 1.

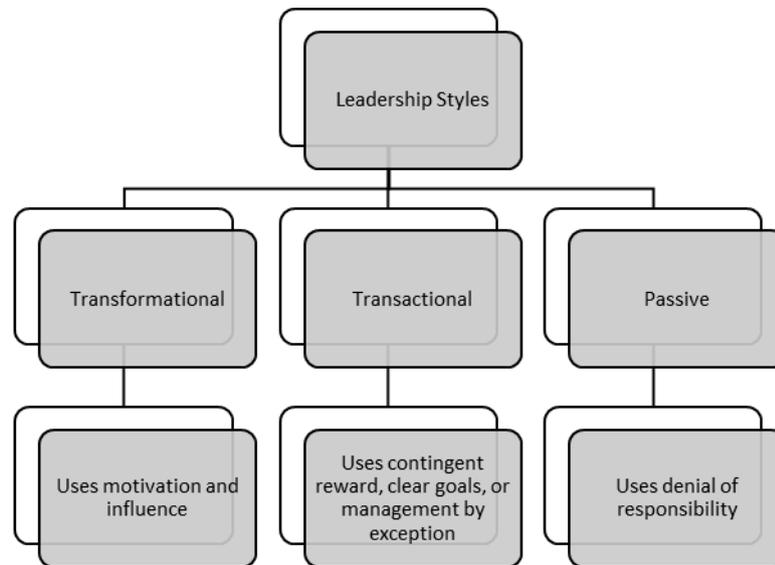


Figure 1. Types of Leadership Styles based on Full Range Leadership Model

Tice (2007) explores the impact of leadership styles and traits that influence styles associated with middle managers in healthcare, but further research is needed to identify which leadership style is most effective for mid-level managers in healthcare settings. Research shows that middle managers should be flexible and adaptable when it comes to managing their behavior and actions (Northouse 2007). This is an important consideration in regard of leadership style as Bass (2008) states the requirements for effective leadership differs based upon the specific role of the leader and the functions they perform within the organization. Ultimately, the performance of healthcare organizations is impacted by the extent to which middle managers have a positive effect on employee performance (Olivo 2007).

Hana & Kirhaug (2014) confirmed that leadership in rural general practice healthcare settings can be identified in terms of change, task, and relation styles and that change style is perceived most by staff. Leadership in general practice healthcare settings may differ from leadership in traditional organizations and that task style may also include some interpersonal aspects (Hana & Kirhaug, 2014). Support staff in healthcare represent stability and hence influence culture, which makes it essential to identify whether they are influencing change due to their innate leadership style or the actual need for leadership among employees in this industry (Hana & Kirkhaug 2014).

The Full Range Leadership Model suggests that a specific set of leadership components is necessary for effective leadership these component parameters include a large portion of transformational leadership execution, larger levels of transactional leadership usage, and a minimum level of passive or laissez-faire leadership (Saravo, Netzel & Kiesewetter 2017). In research fields that are typically concerned with leadership studies, the Full Range Leadership Model is the most comprehensive and most researched leadership model and aims to describe the full range of leadership behaviors. This includes aspects from the suggested desired active leadership perspective that is called transformation leadership to the undesired passive leadership perspective that is called laissez-faire leadership (Saravo, Netzel & Kiesewetter 2017).

#### 1) Transformational Leadership

Bass (2008) defines a transformational leader as an individual who motivates his or her followers to exceed their previous expectations. Leaders with an appealing vision for their team employ transformational leadership and this refers to those leaders that intellectually stimulate staff in a way that is demanding and appreciative of the individual needs of the staff members (Saravo, Netzel & Kiesewetter, 2017). Spinelli (2006) noted that leader effectiveness, particularly in the hospital administrative environment, was one of the first areas where research on transformational leadership styles was performed. Transformational leadership consists of managers who act as role models and are able to prepare and verbalize an inspiring vision for the workplace's future (Saravo, Netzel & Kiesewetter, 2017). Transformational leaders encourage employees to be creative and innovative, empower subordinates to autonomously make their own decisions, and employ coaching to ensure that subordinates are able to develop their capabilities (Saravo, Netzel & Kiesewetter 2017). Research provided by multiple meta-analyses and reviews have showcased the positive effects of transformational leadership in regard of workplace productivity, employee effectiveness and job satisfaction, and overall organizational performance (Saravo, Netzel & Kiesewetter 2017). Within healthcare organizations, Transformational leadership has been found to be associated with better patient outcomes and has been identified as specifically efficient for change processes (Saravo, Netzel & Kiesewetter 2017). Transformational leadership motivates workers through inspiring them to rise above their personal interest for the good of the organization and its goals (Aberese-Ako, et al, 2018) because it inspires creativity, flexibility, and appeals to the inner motivation of employees (Hartviksen, et al. 2018). Thus, transformational leadership is suitable for transforming individuals and the entire organization, which requires learning to facilitate adoption, transformation of organizational culture, and progress (Aberese-Ako, et al. 2018). It is important to note that while transformational leadership might be enough to facilitate change, it may not always be sufficient to adapt employees to change in the most efficient manner (Saravo, Netzel & Kiesewetter 2017).

## 2) *Transactional Leadership*

Aberese-Ako, et al. (2018) defines transactional leadership as leadership style that ensures that workers operate in accordance to the rules and regulations of the organization, punishes those who do not work hard, and rewards those who are hard working. The transactional leadership style is a form of carrot-stick approach to leadership and includes leaders who would wait until things go wrong, and then they come in to punish, and lastly correct and teach (Aberese-Ako, et al. 2018). As specified by the Full Range Leadership Model, transactional leadership is a rather active leadership style, and due to the different natures of its sub-constructs has been associated with mixed results (Saravo, Netzel & Kiesewetter, 2017). Transactional leaders are known to apply influence on subordinates by exchanging benefits for exceptional performance and provide incentives to the staff when they have achieved defined goals (Saravo, Netzel & Kiesewetter 2017). Transactional leadership relates to external motivation, contingent reinforcement, guidelines, command, and control (Hartviksen, et al, 2018). Due to these sub-constructs, contingent reward has been noted to be effective, whereas the management by exception sub-construct is typically not considered to be an effective leadership style (Saravo, Netzel & Kiesewetter 2017). From research posited from organizational change, the transactional leadership sub-construct of contingent reward is vital for the effective management of change processes; noted particularly in regard to managers being specific, providing feedback, and evaluating the change process (Saravo, Netzel & Kiesewetter 2017).

It has been noted that transactional leadership is more feasible to organizations in modern times by getting their staff to perform tasks for a fee and has proven to be effective for change and efficiency compared to other leadership styles (Aberese-Ako, et al, 2018). However, through quantitative analysis, a research study revealed that sickness rates of 5.7% that were slightly higher than the 5.2% average national sickness rate in The Netherlands in 2010 were associated with a general pattern of low employee satisfaction and transactional leadership style (Elshout, Scherp & van der Feltz-Cornelis 2013). This association, in contrast to transformational leadership style, was described best by: (1) communication between the manager and employees; (2) the application of sickness protocols by the managers; and (3) leadership style of the manager (Elshout, Scherp & van der Feltz-Cornelis 2013).

Aarons (2006) stated that transactional leadership is based more on “exchanges” between the leader and follower, in which followers are rewarded for meeting specific goals and that transactional leadership is more practical in nature because of its emphasis on meeting specific targets or objectives.

The transactional leadership has been noted to motivate workers through an exchange process involving extrinsic rewards, rules, and compliance (Aberese-Ako, et al. 2018). It has been discovered that the subordinates of transactional leaders, in contrast to those who have transformational leaders, are not necessarily expected to think innovatively and may be monitored on the basis of predetermined criteria (Aarons 2006). Hartviksen, et al. (2018) confirmed that transactional leadership style currently dominates in the healthcare industry, and this is an important consideration when calculating the current avoidable costs associated with the industry. Healthcare management has been traditionally characterized by strategic planning and implementing concrete tasks in a transactional leadership structure that is based on hierarchical and linear leadership styles (Hartviksen, et al. 2018).

Basran, et al (2019) suggests that transactional leadership at its simplest seems like an antisocial leadership style and uses basically a threat and self-focused competitive orientation to challenge employees to compete for resources and to find status and social position in the world. Transactional leaders often utilize the language of threat to generate support or subdue dissent and are insensitive to the harm they may cause, and history shows they are often power-orientated and have very destructive impacts on the organizations they lead (Basran, et al. 2019).

### 3) *Passive Leadership*

Unlike the transformational and transactional leadership styles, the passive leadership style is found in a leader that does not take charge of their leadership role and is the least active form of leadership (Saravo, Netzel & Kiesewetter 2017). Laissez-faire or the passive leadership style is viewed as leadership that does not make decisions to guide, correct or inspire subordinates to do their work and chooses not to apply the rules and allows workers to do whatever they choose, even when they do not work in the interest of the organization (Aberese-Ako, et al. 2018). The laissez-faire leadership style involves a leader who does not make decisions and research shows that this results in rarely observed changes and has a negative impact on the culture in healthcare organizations (Sfantou, et al. 2017). Barling & Frone (2017) conducted a quantitative study that found that passive leadership is directly related to a poor work environment and is directly and/or indirectly related to several types of employee harm, higher levels of psychological work fatigue, poorer mental health and overall work attitude. Dóci, Stouten & Hofmans (2015), stated in accordance with the Full Range of Leadership Model that the passive end of the leadership spectrum lies the lack of leadership and that Laissez faire, a form of passive leadership style, is characterized by the avoidance, even in dire circumstances, of taking leadership responsibilities, decisions, and actions.

### *C. Ideal Style of Leadership in the Healthcare Industry*

The literature analysis shows that among all the styles of leadership, the transformational leadership style is best when utilized for attaining employee satisfaction and there is strong difference in leadership styles when comparing the worst and best performing organizations in terms of employee satisfaction and absenteeism. Elshout, Scherp & van der Feltz-Cornelis (2013) found that the worst departments in healthcare organizations tend to have a manager that employs a transactional style of leadership whereas the best departments tend to have managers that employed a transformational style of leadership. Multiple studies have shown that leadership is necessary for improved performance and innovation implementation in a healthcare organization (Engle, et al. 2017). Additional research is needed to evaluate how mid-level managers influence implementation effectiveness as they facilitate or enhance innovation implementation procedures and improve healthcare organizational performance (Engle, et al. 2017). Mid-level managers are positioned between senior leaders and frontline staff of an organization and this enables them to bridge or create information gaps that may influence innovation implementation (Engle, et al. 2017). Therefore, additional research is needed to expand the understanding of how differences in the actions of mid-level managers based on their leadership style influence improvement efforts in healthcare organizations.

### **Proposed Quantitative Model and Methodology**

The quantitative analysis of the shortfall in leadership competencies of healthcare mid-level managers resulting in inefficient and poor-quality health care (North 2008) can be conducted using the outcomes from the literature. This quantitative non-experimental correlational study would examine the statistical relationships between the independent variables of three leadership styles (transformational, transactional,

and passive leadership) and the dependent variable of leadership effectiveness among mid-level managers in the healthcare industry. The analysis would use the concepts of clearly defined independent variables transformational leadership, transactional leadership, passive leadership, and leader effectiveness by quantifying them. A correlational design combined with multiple linear regression analysis can be used for estimating the relationships between the categorical dependent variable leadership effectiveness and each of the independent variables (transformational leadership, transactional leadership, and passive leadership) to examine the relationships to leadership effectiveness.

The target population for this research study would be mid-level managers in the healthcare industry from three groups: nursing managers, ancillary clinical managers, and other healthcare management staff. The participants can be drawn from any healthcare organization. Data for this study can be collected by distributing the Multifactor Leadership Questionnaire (Bass 2008), which is readily available. The Multifactor Leadership Questionnaire is a tool developed to measure leadership styles and effectiveness to assess a manager's ability to interpret and understand their leadership impact (Bass 2008). The Multifactor Leadership Questionnaire will be used to collect data on the three primary independent variables: transformational leadership, transactional leadership, and passive leadership as well as the dependent variable, leader effectiveness.

#### A. Survey Variables

a. Leader effectiveness – for this dependent variable, the Multifactor Leadership Questionnaire includes about nine items where each item is rated on a Likert scale ranging from 0 (not at all) to 4 (frequently, if not always). These nine items will be added together to provide an overall score ranging between 0 and 36, with higher scores representing a higher level of effectiveness of the individual as a leader.

b. Transformational leadership – the Multifactor Leadership Questionnaire includes about 20 items where each item is rated on a Likert scale ranging from 0 (not at all) to 4 (frequently, if not always). These 20 items can be added together to provide an overall score ranging between 0 and 80, with higher scores representing a tendency toward the use of transformational leadership methods.

c. Transactional leadership – the Multifactor Leadership Questionnaire includes about 12 items where each item is rated on a Likert scale ranging from 0 (not at all) to 4 (frequently, if not always). These 12 items will be added together to provide an overall score ranging between 0 and 48, with higher scores representing a tendency toward the use of transactional leadership methods.

d. Passive leadership – the Multifactor Leadership Questionnaire includes about 4 items where each item is rated on a Likert scale ranging from 0 (not at all) to 4 (frequently, if not always). These 4 items will be added together to provide an overall score ranging between 0 and 16, with higher scores representing a tendency toward the use of passive leadership methods.

e. Demographic variables – gender, age, highest educational attainment, and number of years of experience in the current role of the participants will function as control variables in the survey. All efforts should be made to exclude any personally identifiable information in order to protect participants in the study.

#### B. Model

The proposed quantitative analysis aims to identify whether the style of leadership that is primarily followed by an individual has an impact on his/her effectiveness as a leader. This can be mathematically presented as follows:

$$LE = f(\text{Transform}, \text{Transact}, \text{Passive}, \text{gender}, \text{age}, \text{education}, \text{experience}) \quad (1)$$

One would expect that an individual demonstrates multiple facets of the various leadership styles. However, there is likely to be one style that dominates over the other two for each individual. This type of model, if estimated using a regression analysis approach can help identify not only if the dominant style impacts the effectiveness of the leader but also can help identify how much more (or less) effective a leader can be by increasing or reducing the reliance on the other types of styles based upon the items they answered in the questionnaire. This can have long standing implications on helping individuals become

more effective leaders in the context of their own strengths and weaknesses by recognizing the potential for improvement. Thus, while the survey itself would be anonymous, an individual who sees the results of this analysis can easily identify which questions pertaining to which leadership style can help them improve their own scores, in the context of their own specific roles in their workplace.

### C. Data collection Method

According to Cohen (1988), the level of desired power in social sciences is 0.80; therefore, this type of data collection would require at least 77 participants based on the statistical power analysis. A researcher exploring this type of modeling would need to send invitations for participation in the survey to at least 200 healthcare mid-level managers to ensure an excellent rate of response. The survey will be open for a 7-week period for completion and each participant will complete the Multifactor Leadership Questionnaire. Instructions will be provided in an electronic format to all participants review with the initial solicitation for participants. The data collected from SurveyMonkey can be imported into a statistical software for analysis. Basic descriptive and inferential statistical analysis can be performed on all the variables with particular attention paid to the Leader Effectiveness scale (the dependent variable). Since this type of data collection would require prior IRB approval, it would be done at a later stage (beyond the scope of the current paper).

### Conclusion and Future Scope

The aim of this study was to explore how mid-level managers impact healthcare organizations by looking at their leadership style through the lenses of different leadership conceptual frameworks and methodologies. Based upon the literature analysis, we propose a potential quantitative model that can allow mid-level managers as well as the industry in general to identify which leadership styles would result in the highest levels of effectiveness in their firm. This type of quantitative project can contribute to implementation science as well by examining implementation leadership and has the potential to make significant contributions towards the research and practice of leadership skills and styles. While this paper is the first step in conveying the model, it incorporates an understanding of various leadership styles that can increase the success rate for mid-level managers in the healthcare industry by reducing avoidable costs and improving the efficiency of workers in healthcare by providing them with the power to change the structure for the better.

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# Perception of Residents, Community Participation and Support for Tourism Development in the Old Town Muang Songkhla, Thailand

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**ABSTRACT:** It is well known that community participation is the foundation for sustainable tourism development. The research focuses on the effects of perceptions among residents on community participation and explores the impacts of community participation on Support for Tourism Development in the Old Town Muang Songkhla, Thailand. The study employed a systematic random sampling method using a questionnaire to accessed resident perceptions of the Old Town Muang Songkhla, Thailand. The Partial Least Squares Structural Equation Modelling (PLS-SEM) techniques were applied to analyze the data. The results from 222 surveys revealed that community participation is influenced by both positive perceptions and negative perception of the residents. Moreover, the finding supports the effect of community participation on Support for Tourism Development. It is a clear statement that the role of the residence is important to support tourism development and maintain its strong growth. This research provokes reflections on community participation theory and management practices in the Thailand context.

**KEYWORDS:** perception of residents, community participation, support for tourism development

## Introduction

In the past, Thailand has realized the importance of tourism development to help drive the country's economy. Such development relies on the advantages of the abundance of tourism resources and the diversity of cultures, including Thai being an important selling point in promoting the tourism market for a long time. In order for Thailand to have a clear development direction in line with potential and new development opportunities that will occur (Thai Ministry of Tourism and Sports, 2017). The 2<sup>nd</sup> National Tourism Development Plan (the Year 2017-2021) emphasizes the distribution of tourism development in local communities and growth based on Thai (Thai Ministry of Tourism and Sports, 2017). In the development strategy, all parties in the tourism network, including government, private and community, are encouraged to participate in management based on sustainable development in terms of identity, lifestyle, culture, tradition, and environment at the level of the area (Thai Ministry of Tourism and Sports, 2017).

At the same time, the development strategy No.3 in the development of tourism personnel and supports the participation of people in tourism development mentioned the promotion of people to participate in tourism management and benefit from tourism. By encouraging people to have knowledge and understanding of tourism and tourism management services, allowing people and communities to participate in the development of basic products and services and local culture. Driving such a development plan into practice requires cooperation from all sectors. In order to make the tourism development plan of the country to be participatory and effective (Thai Ministry of Tourism and Sports, 2017).

The community is an agency in the area of tourism that is living in the tourism area and directly affected by tourism development. Therefore, agencies involved in tourism development should encourage people and communities to participate in the development of national tourism in the appropriate context. Especially in accordance with the local way of life of the community participation in the community and the public sector network will help to increase the identity and Thai identity for tourism and to distribute income from tourism to the public truly.

The participation of communities and people is an important goal of tourism development because people are the owners of the community area with love and cherish the living space. Therefore, relevant agencies must ensure that community members are informed about the development process, opportunities to participate, and the positive and negative effects that will affect

their life (Ming Ming Su & Wall, 2014). However, with different objectives, roles and powers in different tourism development, different stakeholders may have different forms of participation and may conflict with each other.

This research selected the study area as the Old Town, Songkhla province, Thailand, with its rich cultural and natural heritage resources. The government is encouraging the Old Town of Songkhla to be a cultural heritage and pushing the Old Town of Songkhla is a world heritage city in the near future. Therefore, the community must develop themselves to be the center of linkage between agencies related to tourism, both in government, private sector to participate in the maintenance and management of natural resources and the environment to be complete in parallel with the growth of tourist attractions. Therefore, researchers are interested in studying community participation for tourism support in order to use the information for improvement and development for the benefit of the community throughout. In addition, the information will be useful to those involved in tourism development management as a way to further develop tourism.

## Literature Review

### *Residents' perceptions and community participation*

Successful tourism planning based on the support and participation of local people. Understanding residents' perceptions and the response are fundamental to the successful and sustainable development of tourism (Sharpley Richard, 2014). Recognition of the impact of tourism on the community is an indicator of the country's tourism development support and the possibility of developing and managing sustainable development (Jaafar, Noor, & Rasoolimanesh, 2015; Nicholas Lorraine Nadia, Thapa Brijesh, & Ko Yong Jae, 2009). Supporting the development of tourist sites of the community depends on the awareness of the positive and negative effects of tourism (Telfer & Sharpley, 2008). Recognition of positive impacts, encouraging communities to support tourism development, while the perception of negative effects will keep them away from tourism development (Sharpley Richard, 2014). The awareness of the positive and negative effects of tourism development has an impact on community participation in supporting tourism and the sustainability of tourism development (Nicholas Lorraine Nadia et al., 2009). Therefore, it is important to understand how the community recognizes tourism in order to determine what they need to do in order to receive community support for strategic initiatives related to tourism (Harrill Rich, 2004). Accordingly, the first two research hypotheses are:

*H1 Residents' positive perceptions impact on community participation.*

*H2 Residents' negative perceptions impact on community participation.*

### *Community participation and support for tourism management*

Participation in the tourism development process can help encourage people in the area to be aware of the benefits and costs arising from tourism, which will influence the cooperation to support tourism. Local community participation helps residents play a role in controlling the activities that occur in that community, which may affect their livelihoods from tourism activities (Thongma, Leelapattana & Hung, 2011). Participation in the decision-making process is beneficial to the local community and encourages people in the community to respect their style of living and their original values (Lindberg & Johnson, 1997). Several studies indicate that community participation is an important part of sustainable tourism development (Bonimy Madlyn M, 2008; Jamal Tazim B. & Donald, 1995; Nicholas Lorraine Nadia et al., 2009). In the study of Bonimy Madlyn M (2008) stated that one way to get support from the local community for tourism is to allow the community to participate in the decision-making process. Therefore, this study assumes that community participation has a positive effect on tourism development support.

*H3 Community participation positively impacts on support for tourism development.*

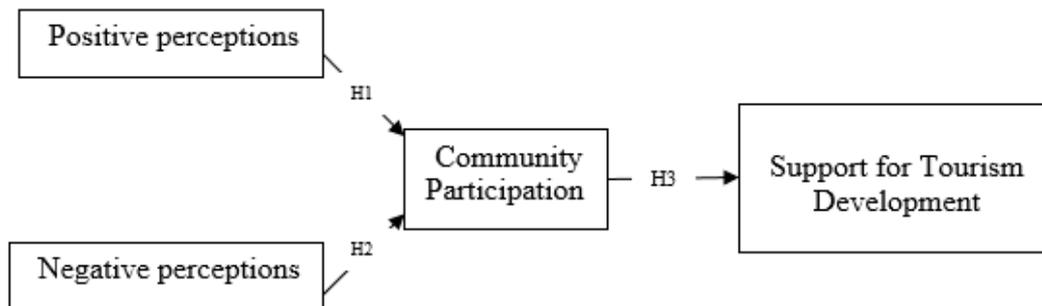


Figure 1. Conceptual Model

## Methodology

### *Study site*

Songkhla Old Town or Nang Ngam Road located in the Songkhla Municipality area, Bo Yang Sub district, Mueang Songkhla District, Songkhla province. Songkhla Old Town is a historical town with many Chinese. The buildings span an era of around 100 years and reflect various styles. Some buildings have the old British-colonial five-foot-way while some do not. The mix of different styles makes Songkhla Old Town a little different from others in the region, and well worth a visit for the tourists.

### *Samples and data collection procedure*

A self-administered questionnaire was applied in this research. The research approached the resident at the Songkhla Old Town, Muang Songkhla, Thailand. The required sample size for this research relied on the number of the studied variables and statistical technique being used (i.e., factor analysis) (Hair Joseph F, Black William C, Babin Barry J, & Anderson Rolph E, 2010), the minimum requirement for sample size is to have at least five participants per variable/ item. Since we were not able to obtain the list of the total population in the suggested area, thereby a non-probability systematic random sampling approach is employed whereby only residents at the Old Town Songkhla. Partial Least Squares Structural Equation Modeling (PLS-SEM) was applied for current research. The total number of completed questionnaires was 222 that are enough for hypothesis testing with a population of more than one million. Would generally be seen as adequate for PLS-SEM (Reinartz Werner, Haenlein Michael, & Henseler Jorg, 2009). The measurement model related to three main variables namely residents' perceptions (positive perceptions, negative perception), community participation, and support for tourism development were tested for reliability and validity. To test the hypotheses, the structural model was employed.

### *Measuring instrument*

The questionnaire consists of four main sections. The first section included two sub-constructs underlying residents' perception namely positive perceptions (Gursoy Dogan, Jurowski Claudia, & Uysal Muzaffer, 2002; Nunkoo & Ramkissoon, 2011) and negative perception (Gursoy Dogan et al., 2002; Nunkoo & Ramkissoon, 2011). The second part included four sub-constructs underlying community participation as the second-order construct. The sub-constructs namely decision making, implementation, benefits, and evaluation (Cohen John M & Uphoff Norman, 1977). The third part is support for tourism development construct (Rasoolimanesh S. Mostafa & Jaafar Mastura, 2017; Wang Yasong & Pfister Robert E, 2008). The last section gathers demographic information on the

respondents such as gender, age, race, education level, and etc. Respondents rated all measures on a five-point Likert-scale, where possible answers ranged from strongly disagree (1) to strongly agree (5). Support for tourism development which measures on a seven-point Likert-type scale, where possible answers ranged from strongly disagree (1) to strongly agree (7)

Table 1. Profile of residents

Profile		Frequency	Percentage
Gender	Male	91	41.00
	Female	131	59.00
Age	Less than 20 years	10	4.50
	20-35 years	62	27.90
	36-50 years	83	37.40
	More than 50 Years	67	30.20
Occupation	Government employee	43	19.40
	Private company	16	7.20
	Own business	91	41.00
	Student	18	8.10
	Farmer	1	0.50
	Freelance	30	13.50
	Housewife	18	8.10
	Others	5	2.30
Level of Education	Primary school	22	9.90
	Secondary school	81	36.50
	Bachelor degree	103	46.40
	Above bachelor degree	8	3.60
	Other	8	3.60
Level of Income	Less than 10,000 Baht	57	25.70
	10,000-20,000 Baht	88	39.60
	20,001-30,000 Baht	48	21.60
	More than 30,000 Baht	29	13.10
Period of Stay in Old Town area	Less than 1 year	11	5.00
	1-5 years	23	10.40
	6-10 years	36	16.20
	More than 10 years	152	68.50

### ***The sample profile***

The majority of the residents were female (59%), whereas male accounted for 41% of the respondents. Thirty percent of the respondents belonged to the 36-50 age groups, other groups are more than 50 (30%) and 20-35 (24.7%). Forty percent of the residents have their own business. Majority of them hold a bachelor degree (46.40%). Eighty-eight respondents were in the income groups between 10,000-20,000 Baht accounting for 39.60%. Most of the respondents live in the Old Town for more than 10 years (68.50%).

## Results and Discussion

### *Measurement Model Assessment*

Current research analyzed the data using partial least squares (PLS). To test reliability and validity, PLS algorithms were employed, where appreciate, to test the results of the measure that were determined by groups of variables. This study includes three exogenous variables and one endogenous variable, which all are reflective measurement. Reflective measurement model assessment in the PLS is required composite reliability (CR) to evaluate internal consistency among the indicator for each construct, loading, and average extracted variance (AVE) to assess convergent validity. It also involves cross-loading and Fornell-Larcker criterion to evaluate discriminant validity among constructs of the research model of the study (Mathwick Charla, Malhotra Naresh, & Rigdon Edward, 2001; Sweeney Jillian C & Soutar Geoffrey N, 2001).

Table 2. Results of factor loading and reliability analysis.

Construct	Item	Factor Loading	**AVE	*CR
Positive Perceptions	PP1	0.79	0.74	0.92
	PP2	0.88		
	PP3	0.91		
	PP4	0.85		
Negative Perceptions	NP3	0.90	0.73	0.73
	NP4	0.81		
Community Participation	Decision	0.91	0.81	0.94
	Benefit	0.88		
	Practice	0.90		
	Evaluation	0.90		
Support for tourism development	SUP1	0.94	0.88	0.88
	SUP2	0.96		
	SUP3	0.94		
	SUP4	0.90		

Note: \*CR = composite reliability; \*\*AVE = average variance extracted

Table 1 shows the loading, composite reliability (CR), and average variance extracted (AVE). The results show that 14 of the items had the main loading of above 0.708 and AVE was more than 0.5. This result confirms internal consistency among the items for all constructs. Convergent validity assessment builds on the AVE values as the evaluation criterion. The results show that all constructs have AVE above 0.50 (Chin Wynne W, 2010; Hair Joseph F, Hult Tomas, Ringle Christian M, & Sarstedt Maeko, 2017), which mean AVE, were satisfactory in terms of convergent validity. Therefore, internal consistency and convergent validity of all measurement models are confirmed.

Table 2. Results of descriptive statistic and correlation

Construct	Mean	S.D.	CP	NP	PP	SUP
Community Participation (CP)	2.39	0.89	<b>0.90</b>			
Negative Perceptions (NP)	2.69	0.92	0.47	<b>0.85</b>		
Positive Perceptions (PP)	3.86	0.82	0.45	0.07	<b>0.86</b>	
Support for Tourism Development (SUP)	5.69	1.51	0.43	0.07	0.58	<b>0.94</b>

To test the discriminant validity, the diagonal elements were computed using the square root of AVE. The results of the correlation analysis showed the significant ( $p < 0.01$ ) in each correlation and all of the diagonal elements were larger than their corresponding correlation coefficients. Therefore, the discriminant validity of this study was acceptable (Fornell Clases & Larcker David F, 1981). Thus,

this study did not suffer any multicollinearity problem. All the scales met the requirements for testing the structural model. The detail shows in table 2.

### Structural Model Assessment

#### *Finding and Discussion*

The structural model analysis was employed to test the hypotheses. The results of the structural models are provided in Table 3. According to Table 3, from three hypotheses drawn on the relationship between positive perceptions, negative perceptions and community participation, and community participation and support for tourism management all of the hypotheses had found to be significant. Positive perceptions had a positive significant impact on community participation ( $\beta = 0.42$ ,  $p = 0.01$ ). It shows that the residents with a positive perception of tourism tend to be involved in tourism development (supporting H1). Then, this study found that negative perceptions had a positive significant impact on community participation ( $\beta = 0.44$ ,  $p = 0.01$ ) (supporting H2). Lastly, the study also found that community participation is positively significant related to support for tourism development ( $\beta = 0.43$ ,  $p = 0.01$ ). Thus, the result supports H3.

Table 3. Hypothesis testing

Hypothesis	Relationship	Beta	SE	t value	Decision
H1	PP > CP	0.42	0.05	8.62***	Support
H2	NP > CP	0.44	0.05	8.09***	Support
H3	CP > SUP	0.43	0.05	9.30***	Support

Note: \* $p < 0.1$ , \*\* $p < 0.05$ , \*\*\* $p < 0.01$

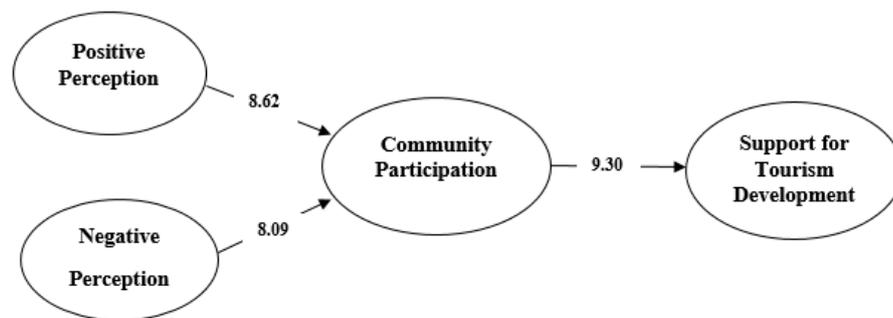


Figure 2. A Structural Equation Model Test

The determinant of support for tourism development in Old Town, Songkhla was investigated from the residents' perceptions (positive and negative) and community participation. For the direct relationship between residents' perceptions and community participation, the results of this study show that both positive and negative perception is an influence on community participation. The finding reveals that positive perception has a significant and positive effect on communication participation. The results are consistent with the previous study by Eshliki Sajad Alipour and Kaboudi Mahdi (2012), who posited that positive perception of the residents is increasing community participation. Meanwhile, the effect of negative perception on community participation is significant

and positive. This finding is not in line with most of the prior studies in an urban area. The study found that residents' negative perception still tends to participate and support tourism development. These residents are aware of the negative impact of the community on tourism but willing to support and participate in tourism activities. Which may be speculated that the residents who continue to support tourism due to perceived positive effects rather than negative impacts in their community. Second, this study found that community participation had a positive significant impact on support for tourism development which is in line with Kepe Thembela, Saruchera Munyaradzi, and Whande Webster (2004) who mentioned that community participation is an important factor that will benefit the community from tourism development.

## **Conclusions**

This section provides a conclusion based on the major results of the study. The study is aimed to further enhance the understanding of the impact of residents' perception (positive and negative) on community participation, and community participation on support for tourism development in the Old Town Songkhla, Thailand. The findings hold both theoretical and practical implication. In terms of theoretical contribution, this study conceptualized the model of residents' perceptions, community participation, and support for tourism development among Thai residents to grasp a deeper understanding of the factors that influence residents to support for tourism development in Thailand. For practical contribution, this study provides interesting suggestions for tourism. First, residents' positive perception of the impacts of tourism is the most important predictor of community participation in tourism development. Residents who have a positive perception of the impacts of tourism highly tend to participate in tourism management. The positive impacts of tourism in their perception include create more jobs, attract more investment, improved standards of living and so on. Meanwhile, residents perceive the negative impacts of tourism cause lower participation from any future involvement in tourism development. The community has a view on negative impacts of tourism both economically and socially, such as an increase the cost of living, a rise in the price of property, goods, and other products, increase the rate of crime, pollution, noise, and etc. Thus, it is necessary to provide effective communication between tourism agencies (planners) and community in order to gain community participant and support for tourism development. Second, the results show that community participation effects support for tourism development. Thus, the outcomes of this study have important implications for tourism agencies to ensure that community members are informed of the development process, the chance to participate in all activities and positive and negative impacts to their lives in order to gain support from society (Timothy Dallen & Tosun Cevat, 2003). Then, they will better participate in community activities as well as support tourism and community development (Bramwell Bill & Lane Bernard, 1999). Overall, these findings are favorable for tourism-related stakeholders in developing future tourism plans for the area in that residents' appear to be more willing to support tourism development.

However, some limitation in this study should not be overlooked. The first limitation of this study is that the sample of participants might be an accurate reflection of Thai residents in Songkhla Old Town, it is not representative of the general residents in Thailand. Second, this study can be further expanded the factors affected community participation by use of additional variables with respect to institutional arrangements and different stage of tourism development.

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# **Bancassurance: Challenges and Opportunities in Republic of Serbia**

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**ABSTRACT:** Bancassurance is not just a sale of insurance products at bank counters, but a complex cooperation involving both partners in the project realization, with the goal of satisfying their own interests as well as clients' interests. In the Republic of Serbia, banks began to deal with insurance activities in 2007. Since then, the sale of insurance products through banks has been constantly growing. The paper will present the current bancassurance models in the Republic of Serbia: integral distribution; expert distribution and combined distribution. The paper will present the comprehensive condition of bancassurance in the Republic of Serbia, above all the legal framework of the bancassurance concept; activities necessary for the successful implementation of bancassurance; market participants; competition among banking products and insurance products; the current level of cooperation between banks and insurance companies. Participants in the insurance market established by the Republic of Serbia, such as the National Mortgage Insurance Corporation, the Serbian Export Credit and Insurance Agency and the Deposit Insurance Agency, will be presented in paper, with an overview of the advantages and disadvantages of state insurance regulations. By gathering facts and data based on available literature and public databases, the current state of the insurance market and the possibilities for further development of bancassurance in the Republic of Serbia will be determined. The choice of a bancassurance model is essential for the successful functioning of the overall concept and its long-term sustainability in a dynamic business environment. The paper points to the fact that by designing an adequate bancassurance model, there may be a significant development of the Serbian financial services market.

**KEYWORDS:** Bancassurance, Insurance, Banking, Financial services, Republic of Serbia

## **Introduction**

In the financial services sector, there are major changes that are aimed at increasing profits and fighting for a share of the world market. One of the changes is related to linking banks and insurance organizations. The process of integrated market performance of banks and insurance companies is known as Bancassurance. Bancassurance covers a wide range of detailed contractual relationships between banks and insurance companies.

The effectiveness of the bancassurance concept depends on the determination of the participants to develop this sales channel, identifying their individual strengths and weaknesses in order to develop an effective joint market appearance, as well as the continuing presence of both partners (Bergendahl 1995). World experience in the bancassurance development points to the fact that it took several years from the introduction of this concept until it became a profitable channel for the sale of insurance products. Bancassurance, as a channel for the distribution of insurance products, will gain more and more importance in the next period, with an unknown future form of appearance.

## **Current bancassurance models in the Republic of Serbia**

The 2005 Law on Banks (Official Gazette RS, 2005) explicitly allowed banks in the Republic of Serbia to deal with insurance activities. According to the 2005 Law on Banks, a commercial bank may appear in a triple role: (a) as an insurance agent - a bancassurance, (b) an insured person, and (c) an insurance user. However, banks entered the insurance sector at the end of 2006 or early 2007 when there were only five banks in the network of insurance services. Their number has been growing from year to year, so there are 18 banks in the Republic of Serbia, licensed to carry out insurance advocacy activities (NBS, Insurance sector in Serbia 2018).

In the Republic of Serbia there are solid capacities to conduct sales of insurance through bancassurance, although the achieved premium has not been satisfactory, which is justified by the

lack of adequate demand. The history of the bancassurance development shows that at the very beginning of the institutionalization of this channel of insurance sales with banks, the prevailing attitude was that bancassurance is a low-profit job, that users have no significant interest in various types of insurance offered, that insurance companies are oriented towards their sales network. Because of this, the banks did not show any increased interest in the development of bancassurance.

There are several motives for the bancassurance development (Krstić, et al. 2011), such as better positioning in the market in relation to competition, in the conditions of constant innovations, interest to provide the client with a complete package of financial services in one place, increasing customer loyalty by mid- or long-term bonding based on the purchase of life insurance in the bank; better utilization of capacities and increase of productivity of permanently employed staff, increase in profit from intermediary fees, better quality of loans by insuring collateral against different risks during the term of the loan by banks. Intensified bancassurance development in Serbian commercial banks is still expected.

The bancassurance concept as the distribution of specially designed products of life and non-life insurance, adjusted for sales through the banking network in the Republic of Serbia, is realized in two phases (Munich Re 2001). The first phase is characterized by a combination of sales of banking and insurance products or the sale of simpler insurance products (travel health insurance, casco insurance, supplementary health insurance, household insurance, etc.), although the best results are achieved through the integration of banking and insurance products. The specificity of the second phase is the direct sale of insurance products by banking officers, independent of banking products (Colaert 2015). Namely, it is logical that after getting to know and practicing the sale of simple insurance products in a bank, alone or in a package with banking products, most of the insurers start selling more complex insurance products that are sold independently of banking products (life insurance, supplementary insurance against the occurrence of an accident, the serious illnesses and coverage of treatment costs, voluntary pension insurance, income insurance, etc.).

If we compare the bancassurance of the Republic of Serbia and European countries, the most important difference is the fact that non-life insurance products are better sold through banks in relation to life insurance products. In cooperation with banks, insurance companies have access to a large number of clients and the possibility of offering them different types of simple non-life insurance products such as casco insurance, home insurance, travel health insurance, whose sales are mostly related to the sale of payment cards. The middle class of the population in the Republic of Serbia has been significantly reduced as a result of war events, bad privatizations and other transitional events, so the insurance comes down to the compulsory insurance policy. In addition, in the past period, banks have used higher demand for loans and, in cooperation with insurance companies, they have begun to conclude policies for securing the collection of loans in the event of certain risks (insurance of credit products in the event of death due to accident, illness, work loss). In this respect, in banks, the sale of insurance is mainly reduced to the sale of packages of bank products with included insurance, which does not require a large sales effort of employees.

In the Republic of Serbia, life insurance products through bancassurance are less sold as stand-alone products due to numerous factors such as low living standards and citizens' distrust of long-term savings. The only product in the field of life insurance that is freely sold through this channel is "Credit Life", in banks in which it is obligated to insure housing loan. With an average of 14 Eur per capita allocated to life insurance in 2012, the Republic of Serbia is at the bottom of the surrounding countries (GSI Master 2015). Learned by the experience of foreign companies, it is assumed that citizens would be more interested if they would get explanation in simple terms regarding the most important characteristics of life insurance and all the benefits that such a type of savings provides. Such explanations can be largely presented by banking officials, bearing in mind that citizens have greater confidence in them, in relation to traditional insurance agents.

Non-life insurance consists of 18 different subgroups, each with several types of insurance (European Commission 2017). In the Republic of Serbia, banks in cooperation with insurance companies, in the package with basic retail banking products (current accounts, payment cards, loans) offer the following non-life insurance products (Božović, et al. 2014):

- Insurance assistance on the road in the country and abroad
- Travel health insurance
- Household insurance
- Car insurance
- Voluntary supplementary health insurance - in case of severe illnesses and surgical interventions
- Accident insurance for household members - in case of death due to an accident or illness, as well as permanent disability injuries
- Insurance of credit card users from consequences of an accident
- Credit insurance - ensuring the regular repayment of loans in use in certain cases
- Insurance against financial losses of payment card users

According to the NBS data in the Republic of Serbia, the share of non-life insurance premium in the total insurance premium is dominant. In Serbian commercial banks, mostly sold non-life insurance is credit insurance (NBS, Insurance sector in Serbia 2018).

From the moment of the institutionalization of bancassurance in the Republic of Serbia, the nominal premium insurance realized by this channel has grown (Table 1). As presented in Table 1, the share of insurance premiums generated by bancassurance in the total premium amounted to 1.16% in 2010, and to 3.40% in 2015.

Table 1. Share of insurance premiums generated by bancassurance in the total premium in 000 RSD (2010-2015)

<b>Insurance premium</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Life insurance premium</b>	9.352.714	9.992.706	11.855.400	14.065.458	16.714.878	19.364.297
<b>Non-life insurance premium</b>	47.168.218	47.321.292	49.608.308	49.976.051	55.768.774	61.561.497
<b>Total premium</b>	56.520.932	57.313.998	61.463.708	64.041.509	72.483.652	80.925.794
<b>Insurance premiums generated by bancassurance</b>	658.194	1.019.106	1.318.448	2.076.589	2.415.124	2.753.659
<b>Share in the total premium</b>	1,16%	1,78%	2,15%	3,24%	3,33%	3,40%

Source: NBS, Supervisory Board of Financial Institutions, Sector for Supervision of the Performance of Insurance Activities, [https://www.nbs.rs/internet/cirilica/60/60\\_2/index.html](https://www.nbs.rs/internet/cirilica/60/60_2/index.html)

The bulk of the bancassurance premium in 2015 was realized by selling life insurance. In the total premium achieved through the sale of life insurance, the premium realized through bancassurance participated with 14.22%, while in the premium of life insurance realized through the agent participated with 41.51% (NBS, Supervisory Board of Financial Institutions, 2016). The premium of bancassurance in selling non-life insurance products is far less. In the framework of non-life insurance, the largest premium was secured by the sale of insurance policies from the consequences of the accident, insurance of loan collection and travel assistance.

Insurance claims by state agencies in the Republic of Serbia represent a form of direct state participation in the insurance sector (Njegomir & Maksimović, 2009). The argument in support of the thesis on the justification of the establishment of state agencies in the field of insurance claims is the assistance to exporters in conquering new markets, as they are specialized institutions that have more detailed information about foreign markets and potential partners. For this purpose, the Agency for Insurance and Financing of Exports of the Republic of Serbia (AOFI), as the official export credit agency of the Republic of Serbia, was established by a special Law, for the purpose of stimulating and improving the export and development of economic relations with foreign countries (<https://www.aofi.rs/en/>). The activities of AOFI are the insurance and financing of exports for Serbian export-oriented companies.

The insurance of housing loans in the Republic of Serbia through a state agency established for this purpose has largely contributed to the increase in the credit activity of commercial banks in connection with the housing loans (having in mind the reduction of collection risk). Given that at the time of the emergence of housing loans in the banking market of the Republic of Serbia there were no interest of insurance companies to enter into this type of arrangement with commercial banks, the National Mortgage Insurance Corporation (NKOSK) emerged as the only option of that kind which significantly contributed increasing the housing credit activity of banks (<http://www.nkosk.rs/en>). NKOSK was established in 2004 on the basis of the Law on the National Mortgage Insurance Corporation (Official Gazette RS, 2004). The Republic of Serbia participates in the insurance field also through the Deposit Insurance Agency (DIA), which performs mandatory deposit insurance activities, in accordance with the Deposit Insurance Act (<http://www.aod.rs/en-index.html#!>). The secured amount of the deposit is up to 50,000 Eur in RSD equivalent at the official middle exchange rate of the National Bank of Serbia, valid on the day when the decision of the competent court on the bankruptcy or liquidation procedure in the bank.

Considering that the insurance market is slowly opening up in the Republic of Serbia for other participants, in addition to the state agencies that have had an absolute primacy until now, the possibility for a significant development of the bancassurance is created. In the coming years, banks will not be able to do business positively if they do not include the sale of insurance in their offer. Bancassurance as a sales channel can, in due course, become the dominant channel for life insurance policies, what is the practice in many EU countries, such as Italy and France, but it is necessary for the management of the bank to know and recognize it (Krstić, et al., 2011). Banking that enables direct communication with clients, insight into their financial situation and financial advising, put the banks in an ideal position to present and sell more complex products to their customers.

### **Possibilities for further development of bancassurance in the Republic of Serbia**

The preconditions for the further development of bancassurance in the Republic of Serbia are numerous. The most significant are long-term partnership between the bank and the insurance company; and understanding the importance of the bancassurance project by the management of the bank and the insurance company. In that sense, it is necessary to joint efforts, define and implement activities aimed at continuous implementation of the bancassurance in the existing banking system, in order to create a self-sustainable and highly profitable business that will benefit all the participants in the project. In the process of cooperation, different sales strategy models should be developed by defining the type of cooperation, distribution channels, offers, methods of advertising, defining a system of cross-selling banking products and insurance products. The preconditions (Krstić, et al. 2011) for the further development of bancassurance would be creation of specialized products of bancassurance, fully adapted to distribution through a bank network and adapted to the needs of bank clients; the existence of IT support at all stages of the implementation of the bancassurance; access from every computer in the bank network; a system of continuous and interactive training for developing sales and communication skills of bank employees in order to qualify for efficient sales of insurance products as stand-alone products; the rewarding of bank employees and encouraging competitive spirit of the bancassurance sales force.

In most European countries, bancassurance has proven to be the most productive channel for the sale of life insurance, primarily because of compatibility with traditional bank deposit products (Buric, at al. 2015). In order to ensure a significant increase in the life insurance premiums, and therefore total revenues from fees and commissions, it is necessary (Schlag 2003) to transfer a households' deposits into life insurance premiums, to increase of life insurance premiums, to increase the bank provision for representation in the life insurance sale.

Intensified development and application of bancassurance in Serbian banks is still expected. This is reinforced by the fact that banks intention is to significantly increase fee and commission income in order to reduce the dependence on interest margins, as well as the tendency to increase the productivity of permanently employed staff, bearing in mind the large share of salary costs in

bank operating expenditures. One of the reasons why the sale of insurance through banks is of importance is a higher degree of trust in a banking advisor than in an insurance agent (Nissim 2010). The success of bancassurance requires changing the working culture of employees both in banks and insurance companies, as well as applying a more flexible employee reward system. Insurance sales is generally difficult, especially in the Republic of Serbia, faced with low living standard and an insufficient culture of insurance. Insurance companies sell an intangible product whose usefulness can not be measured immediately, but its positive features can be felt in the future. Bearing in mind the many difficulties encountered by insurance sales, there are a significant number of insurance agents who quickly give up the further work. Special attention should be paid to the improvement of sales skills, especially the communication skills of bank employees, which should be adjusted to the specifics of insurance sales. In addition to the above, the limiting factors that need to be addressed in the coming period are (Ostojić 2014): the lack of top-level education and continuous training of bank employees; lack of a culture of selling insurance products within the bank; poor knowledge of managers, initially negative attitude of employees towards insurance; insufficient product promotion as a result of inadequate marketing strategy; the lack of personalized services in a time appropriate to the client; lack of time since busy customers do not have time to listen and discuss buying insurance; reduced number of customers due to the increasing use of electronic banking.

The success of bancassurance requires changing the way of thinking and organizational culture of employees in both banks and insurance companies. However, encouraging is the fact that banks have established long-term relationships with their clients and deepening these relationships over time. This fact can help banks to provide their customers with additional products and services beyond classic banking ones, with no major resistance. The current level of bancassurance development in the Republic of Serbia, is dependant on insufficiently attractive rewarding system for the bank employees who are in charge of implementation of this sales channel. In contemporary banking, a number of clients migrated to banking digital channels, using the Internet, social networks and electronic banking products. In addition, a large number of clients still need to come to the bank to settle a specific request or simply do a payment transaction. In that sense, the branch offices are still the most important communication channels. The largest number of contacts with clients is realized by the cashiers in the branch office. Therefore, the biggest opportunity for a client entering the bank to purchase one of the insurance products is created at the cash desk. In most banks, cashiers can not sell insurance products since they are not licensed, but they can direct the client towards a licensed advisor. Therefore, it is important to set up a clearly defined and stimulating reward system that equally motivates all employees in the bank involved in the sale of insurance products.

Banks, as agents in the sale of insurance, due to the great potential that they provide as a distribution channel, should try to increase contracted fees, especially in the part of life insurance sales, where their biggest contribution is expected. In most Serbian commercial banks that have concluded agreements with certain insurance companies, employees are not sufficiently stimulated for the same level of sales as employees in other sales channels (employees in insurance companies, brokerage companies). In this way, the amount of fee from insurance companies, together with a higher volume of sales on the basis of the deposit transfer into life insurance, will enable monetary rewards to all employees in banks participating in insurance sales. This will further contribute to the increased number of life insurance policies, and thus to the higher income of both banks and insurance companies.

## **Conclusion**

Bancassurance represents the sale of products and services by banks and insurance companies by the same source or using the same client base. Bancassurance has become a key distribution channel in many global insurance markets over the last two decades. Despite the significant number of commercial banks that are insurance agents of the leading insurance companies in the Republic of Serbia, despite the good conditions regarding the large number of licensed banking employees as insurance agents, a wide

network of branches, and a large client base; the bancassurance in the Republic of Serbia is at the initial level of development, based on the share of insurance premiums sold through banks in the total sold premiums.

The dominant opinion in the Serbian commercial banks was that interest margins were still high and that bancassurance was a low-profitable business, which led the banks' management to show no greater interest in the development of this sales channel. Banks were selling packages of banking products with included insurance, but not insurance alone. However, in order to increase the profitability, the Serbian commercial banks will increasingly be opting for the development of non-interest bearing products and services in order to increase revenues from fees and commissions and reduce the dependence on interest income. Through the bancassurance concept, the needs of a contemporary, increasingly demanding potential client can be fully met, easing the fast business rhythm with the possibility of integrated purchasing of various financial services.

Intensified development and application of bancassurance in Serbian commercial banks is still expected. The basis for the further development is the desire of banks to significantly increase fee and commission income in order to reduce the dependence on interest margins and all the risks they bear, as well as the tendency to increase the productivity of permanently employed staff, bearing in mind the large share of salary costs in bank operating expenditures.

Bancassurance can become a driver of development of the financial sector in the Republic of Serbia, since through this sales channel, and continuous cooperation and adaptation of both partners, they can improve the existing services and introduce new ones in line with market requirements.

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# The Future of the European Union

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**ABSTRACT:** The European project known as European Union has brought during the years lasting peace, democracy and respect for fundamental human rights and liberties, prosperity and welfare for its member states and peoples. The current challenges and transformations of EU redefine the project and different scenarios were proposed from this perspective by the European Commission and a number of political European leaders. This is why the future of the European Union became one of the main topics under the Romanian EU Presidency of the Council in the first semester of 2019. Each of the main 4 priorities of the Romanian Presidency of the Council reflects important dimensions of the integrated vision related to the profile, role and weight of the future European Union. The Inter-parliamentary conference organized in Bucharest in the beginning of April 2019 brought therefore a substantial contribution to this vision through the Declaration adopted by the members of the EU national parliaments on this occasion.

**KEYWORDS:** European Union, Romania, future, global role, cohesion, democracy, growth, security, enlargement

## 1. Introduction

The European project known as European Union (EU) has brought during the years lasting peace, democracy and respect for fundamental human rights and liberties, prosperity and welfare for its member states and peoples. A number of current political, economic, security and values crises EU has to face generated the need for reaction and political solutions establishing as a strategic goal a future strengthened and global role of the European Union.

The current challenges and transformation processes of EU actually redefine the project and different scenarios were already proposed from this perspective by the European Commission and a number of political European leaders. This implies the need for a comprehensive dialogue and public consultation, for accommodating different visions, perspectives, ideologies or types of interests, political or civil society expertise or assessments and so on. Definitely, a complex and complicated process, that needs to be kept within an integrated, transparent and democratic pattern of consultations.

## 2. The current European process for defining the future of EU

The new EU Treaty of Lisbon from 2007 already at that time signaled the inability of a "united Europe" to decide, for instance, on the establishment of a genuine common foreign and security policy, a common defense policy, the appointment of a real EU Foreign Minister and so on... (Corlatean 2016, 11). Later, on June 28, 2016 the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission, Federica Mogherini presented the EU Global Strategy on foreign and security policy to EU leaders during the EU summit in Brussels (European External Action Service 2016). The strategy, under the title Shared Vision, Common Action: A Stronger Europe (European Commission 2016a), offers a strategic vision for the EU's global role. It was considered that in these challenging times, both for Europe and globally, the strategy needs to highlight common ground and to present a common way forward (European External Action Service 2016). The essence of this strategic document was expressed at that time by the EU High Representative in the following formulas: "The purpose, even existence, of our Union is being questioned. Yet, our citizens and the world need a strong European Union like never before. In challenging times, a strong Union is one that thinks strategically, shares a vision and acts together. This is even more true after the British referendum. We will indeed have to rethink the way our Union works, but we perfectly know what to work for. We know what our principles, our interests and our priorities are. This is no time for

uncertainty: our Union needs a Strategy. We need a shared vision, and common action" (European Commission 2016, 04, Foreword by Federica Mogherini).

On 01 March 2017 the President of the European Commission, Jean- Claude Juncker, launched a White paper setting out possible paths for the future of Europe (European Commission 2017). According to this document, "we face...many challenges, from globalization, to the impact of new technologies on society and jobs, to security concerns and the rise of populism, and we must ensure we are not overwhelmed but rather that we seize the opportunities that these trends present" (Ibidem). This is why the White paper offers five scenarios for the Union's evolution, depending on the choices the Union will make. The Foreword of the document, signed by President Juncker, underlines the essence of the European Commission's vision: "This White Paper is the European Commission's contribution to this new chapter of the European project. We want to launch a process in which Europe determines its own path. We want to map out the challenges and opportunities ahead of us and present how we can collectively choose to respond" (European Commission 2017). These five scenarios (European Commission 2016b) are the following:

- **Carrying On:**
  - The EU27 focuses on delivering its positive reform agenda
- **Nothing but the Single Market:**
  - The EU27 is gradually re-centered on the single market
- **Those Who Want More Do More:**
  - The EU27 allows willing Member States to do more together in specific areas
- **Doing Less More Efficiently:**
  - The EU27 focuses on delivering more and faster in selected policy areas, while doing less elsewhere
- **Doing Much More Together:**
  - Member States decide to do much more together across all policy areas.

Currently these five scenarios, but also some other supplementary hypothesis are subject to public political or civic debates, before a political decision will be taken. One of the key elements is represented, for instance, by the strong interest of a number of EU member states, including Central Eastern European countries, of course also Romania, to maintain the cohesion and a unique European project, while avoiding a future double speeds Europe. That means without new dividing lines within the part of the Continent which defines today the European Union.

This is why the future of the European Union became one of the main topics under the **Romanian EU Presidency of the Council** in the first semester of 2019.

Each of the main **4 priorities of the Romanian Presidency of the Council** (Romania2019.eu) reflects important dimensions of the integrated vision related to the profile, role and weight of the future European Union:

- **Europe of convergence;** *the Romanian Presidency of the Council of the European Union will aim to bring a contribution to ensuring convergence and cohesion in Europe, in order to achieve sustainable and equal development opportunities for all citizens and Member States, through increasing competitiveness and reducing development gaps, promoting connectivity and digitalization, stimulating entrepreneurship and consolidating the European industrial policy;*
- **A safer Europe;** *the Romanian Presidency of the Council of the European Union will aim at consolidating a safer Europe through increased cohesion among EU Member States in dealing with the new security challenges that threaten the safety of citizens and through supporting the cooperation initiatives in the field. For example, in the field of combating terrorism and radicalization, ensuring a comprehensive approach towards migration, consolidating the Schengen area or enhancing cybersecurity;*
- **Europe, a stronger global actor;** *During its mandate as Presidency of the Council of the European Union, Romania will support further consolidating the global role of the EU through promoting the enlargement policy, the European action in its neighborhood, further implementing the Global Strategy, ensuring the necessary resources for the EU, and implementing all of the EU's global commitments;*

- **Europe of common values;** the *Romanian Presidency of the Council of the European Union aims at stimulating the solidarity and cohesion of the EU through promoting policies on combating discrimination, ensuring equal chances and equal treatment between men and women, as well as through increasing the involvement of the citizens, in particular the youth, in the European debates.* Combating racism, intolerance, xenophobia, populism, antisemitism and discouraging hate speech, respect for fundamental human rights and human dignity, solidarity and social justice are set out among the main objectives established within this priority (Ibidem).

### 3. European parliamentary Declaration on the Future of EU

The parliamentary dimension of the Romanian EU Presidency of the Council included a number of important parliamentary conferences organized in the first semester of 2019 on topics like European affairs, foreign affairs and security and defense common policy, common agriculture policy and cohesion and last but not least the Future of EU.

The Inter-parliamentary conference organized in Bucharest on 1-2 of April 2019 brought therefore a substantial contribution to this debate for a coherent vision on the Future of EU. The conference was attended by political representatives of the EU national parliaments, the European Parliament and its political groups, the European Commission, parliamentary and governmental representatives of candidate, aspirant or associated countries from the Balkans or EU Eastern Partnership, from the Council of Europe or United States of America. This prestigious European event, entitled “Towards a stronger, more cohesive, inclusive and relevant European Union on the global stage,” was meant to offer a European parliamentary contribution, but also food for thought for the informal European Council scheduled on May 9 2019 in Sibiu (Romania) on the same topic through a Declaration adopted in advance by the EU national parliaments (Declaration of the Inter-parliamentary Conference 2019).

The conference was structured in 4 panels plus a final session of Conclusions and for the adoption of the Declaration. The narratives of the panels were briefly as follows:

- Session I: *Policies of the future. Debates with representatives of European political parties* (Session I: *Policies of the future*; (Declaration of the Inter-parliamentary Conference 2019).

The European political groups from the European Parliament were called upon to present their vision of the major European challenges, like the reform of the European Monetary System, cohesion, enlargement, asylum policy reform, security and migration.

- Session II: *The society of the future. Citizens and values in the era of the fourth industrial Revolution* (Session II: *The society of the future*; Ibidem).

The following items were submitted to the debate: issues of the labour market from the standpoint of European legislation and policies; new labour market – new social public themes; skills and education in the Age of New Digital Revolution; human rights and ethical issues in the Age of Digital Revolution; investments in development of new skills, education and training (Ibidem).

- Session III: *The economy of the future. Is there a need for a reform of the economic model?* (Session III: *The economy of the future*; Ibidem).

The main items raised were: economy of the future and the Fourth Industrial Revolution; *sine die* postponement of the economic paradigm after the 2008 crises; the Economic and Monetary Union in the trap of the dominating economic model. (Ibidem)

- Session IV: *European Neighborhood: Balkans. Eastern Partnership/ Euro- Atlantic relations* (Session IV: *European Neighborhood: Balkans*; Ibidem)

The key issues were proposed as follows: Eastern Partnership and the possibility of acknowledging a European perspective for those partners having European vocation and proving progress in the fulfillment of the criteria, mainly for the Republic of Moldova, Georgia and Ukraine; a credible enlargement perspective for and enhanced EU engagement with the countries from the Balkans; EU- US relations, having in mind that the transatlantic partnership was based all the time on solid political, cultural, economic and historic ties, underpinned by common interests and values. (Ibidem)

Finally, the conference adopted the text of the *Declaration on the future of European Union* (Declaration of the Inter-parliamentary Conference 2019, p. 1) a positive result, difficult to be foreseen before this event, having in mind the differences between the political European families on some of the fundamental topics, but also the European electoral campaign, ready to start at that time and the delicate issue of Brexit.

Essentially, the document refers to the European Union as a “model on the international arena”, because of its historical contribution to the “lasting peace, prosperity and welfare for its members throughout decades”, but also for guaranteeing “freedom, democracy, human rights, gender equality and the rule of law as fundamental values” of EU (Ibidem).

In the same time, the members of national parliaments from the member states acknowledge the fact that “the European Union is now facing new challenges- increasing disparities within and between member states, structural limitations, economic and social changes generated by the fourth industrial revolution, climate change, conflicts in the neighbourhood of EU, migration pressure, the rise of competing new global powers and attempts to weaken the influence of the United Nations in defending peace and preventing global conflicts” (Ibidem), but also the result of the Brexit referendum. This is why “the need to intensify the reflection over the current situation, its roots and the necessary reforms” generate the need for concrete political solutions for overcoming these challenges, and even more, for reaching the common goals of achieving “a safe and secure Europe, a prosperous and sustainable Europe, a social Europe, a stronger Europe on the global scene” (Ibidem).

One important statement was made by this Declaration: “A stronger democratic legitimacy and consistent political will” will be needed in order to “take forward the reforms and to promote ambitious solutions for building on the success of European Union, most notably the Single Market and its four freedoms, and to address the current shortages” (Ibidem). This is why the success of this vision relies on the support of the European citizens and requests first of all the need to regain their trust. From this perspective, the Bucharest Declaration is making reference to serious challenges like public manipulation, populist threats and fake news campaigns, including in the context of European elections.

It is important to underline some of the key lines of the position adopted by the EU national parliaments:

- the European leaders have the duty to listen and to respond to the expectations and concerns of the citizens and to engage in a permanent dialogue with the national parliaments. This is the way for strengthening democratic legitimacy of the EU (Ibidem, p. 2);
- the Bucharest conference expressed support for the main objective of the Romanian Presidency of the EU Council - promoting cohesion as a common European value (The program of the Romanian presidency of the Council of the EU: 1 January-30 June 2019), emphasizing the need to apply this principle in political, economic, social and territorial terms. “Closing the gap between European member states and regions is the best manner to prevent the already growing euro-scepticism” (Declaration of the Inter-parliamentary Conference 2019, p. 1).
- the future of EU can be built only based on a solid economic foundation; financing growth and development, enhancing competitiveness, these are driving forces of a prosperous Union;
- the enlargement policy is one of the successful common policies. A credible accession perspective, not only for the Balkan countries, that are already the beneficiary of a rather clear road map, but also for those states from the EU associated countries’ package (Republic of Moldova, Georgia and Ukraine) it’s important to be acknowledge at the EU political level;
- the proper management of the aspects related to EU security, borders or migration remain a first line priority;
- a key target for redefining the European Union is a new social contract with the European citizens, based on a new ambitious and inclusive EU agenda. (Ibidem)

#### 4. Conclusions

Important elements for a refreshed political vision on the future of the European Union were launched starting with 2016. The above mentioned European parliamentary contribution was followed by the informal European Council organized also under the Romanian Presidency of the EU Council on 9 May 2019 in Sibiu. The Summit adopted the Sibiu Declaration (European Council 2019a, *The Sibiu Declaration*) and hosted a debate of the Heads of states or governments on the EU's next strategic agenda for 2019 to 2024 (European Council 2019b, *Informal meeting of heads of state or government, Sibiu*). They exchanged views on the challenges and priorities for the EU for the years to come. The discussions in Sibiu were divided into two parts, the first focusing on the external dimensions and the second on the internal dimensions.

Donald Tusk, President of the European Council, announced publicly on this occasion an important step forward for the renewed EU project: “We will see the results of this discussion in June (2019), when – as the European Council – we will adopt the EU's priorities for the next five years, also known as the Strategic Agenda.” (Ibidem)

The strategic agenda will be used to plan the work of the European Council, and will provide the basis for the work programs of the other EU institutions. The current agenda (European Council 2019c, *Leader's Agenda, Strategic Agenda 2019-2024 – outline*) was agreed in June 2014 by the European Council. It focuses on five priority areas:

- jobs, growth and competitiveness
- empowering and protecting citizens
- energy and climate policies
- freedom, security and justice
- the EU as a strong global actor

In this context, it is worth to mention a few but important commitments out of those 10 assumed by the European leaders in Sibiu:

- “We will defend **one Europe** - from East to West, from North to South”;
- “We will stay **united, through thick and thin**. We will show each other solidarity in times of need and we will always stand together. We can and we will speak with one voice”;
- “We will continue to **protect our way of life, democracy and the rule of law**”;
- “We will always uphold the principle of **fairness**, whether it be in the labor market, in welfare, in the economy or in the digital transformation. We will further reduce disparities between us and we will always help the most vulnerable in Europe, putting people before politics”;
- “**We will protect our citizens** and keep them safe by investing in our soft and hard power and by working with our international partners”;
- “**Europe will be a responsible global leader.**”

As a general conclusion, despite the huge complexity and sensitivity of the topic, the debates and already some important results show the attachment of the European actors, civil society and its political representation, for redefining in a positive manner the European project. Definitely there were and will continue to be important challenges, like populism, euro-scepticism, extremism and so on. But the historic value of the United Europe will for sure prevail and we can be sure that concrete political solutions will be found and properly implemented for guaranteeing a solid, cohesive, democratic and prosperous Future of the European Union. And, why not, an important global role for the Union.

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# Notes on Work Super-Exploitation: A Study on the Topicality of the “Tendency of the Rate of Profit to Fall”

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**ABSTRACT:** It is intended, into the scope of this work, to analyze the Marxian categories presented in the *Capital*, Volume III; and analyze the case of the mass dismissals occurred in the USIMINAS steel mill in Cubatão (SP) between 2015 and 2017 based on them. Marx argues that the price of the merchandise falls as the productivity grows (Tendency of the rate of profit to fall). This happens because only the living labor is able to add value to the merchandise. The fall in the rates of profit of the capitalists happens because, as the variable capital in the productive process diminishes, less value is created in the productive process; therefore, the unitary value of the merchandise falls. Marx presents some anti-cyclical measures that defer, for a while, this tendency of the rate of profit to fall. Among the six anti-cyclical measures presented by Marx, attention will be given to the two first: I) Elevation of the degree of exploitation of the work force: as the work hours are augmented and the rhythm of work intensified, the capitalist appropriates greater rates of surplus work and surplus value. II) Compression of salaries under their value. In the case studied, USIMINAS (Cubatão) has not offered a real salary increase since 2010. After the company has applied afore mentioned measures between 2015 and 2017, it has presented significant growth in its profit rates.

**KEYWORDS:** Tendency of the rate of profit to fall, countermeasures, work super-exploitation, value

## The tendency and its countermeasures

Marx develops his exposition on the Tendency of the rate of profit to fall in ‘the *Capital*’, Volume III, Section III. The author argues that the price of the commodity falls as the productivity grows. This happens because only the ‘living work’ (performed by humans) is able to add value to the commodity. The capitalist’s profit is due to the global surplus value accomplished: if there less work is put into the commodity, the constant capital (Kc) to variable capital (Kv) ratio increases, and thus the surplus value per unit commodity to be accomplished is smaller. That is, if the price of the unitary commodity falls, therefore the capitalists’ rates of profit fall. In other words, as a consequence from the productive forces’ development, there is a smaller amount of living work in each commodity, and thus both its value and price are lessened. As for the wear of the fixed capital, raw material and such (Kc), it only increases.

The growing development of the productive forces changes the organic composition of the capital: there is a constant elevation of the constant capital in relation to the variable capital, and that takes to the decay in the rates of profit. The decaying rate of profit happens because, as the material volume grows, the “amount value of the constant capital” also grows (Marx 1984, 163), that is, its production costs grow. The “steadfast growth of the absolute mass of surplus value or the appropriated profit” (Marx 1984, 171) is related to the increment in the volume of the business gains, which are crescent (as the productivity increases and the price of the commodity goes down). However, the expenses with the constant capital also grow; consequently, the rates of profit fall.

Marx presents some countermeasures which break, for a while, this tendency to fall of the profit rates. Among the six measures appointed by the author, this text sticks with the first two, which are following:

### *1) Increase in the degree of exploitation of the work force*

As the work journey is extended and labour itself is intensified, capitalists take possession of a greater rate of surplus work and surplus value. That is, without changing the relationship between “(...) the work force employed and the constant capital it puts into movement” (Marx 1984, 177), the extension

of the work journey is able to two increase the amount of surplus work itself. At the same time, in a certain way, it reduces the amount of living work in the production.

Marx ironically classifies the relative surplus-value as the “the properly said secret of the tendency of the rate of profit to fall” (Marx 1984, 178) and shortly exemplifies that it happens due to the decreasing employment of living work (variable capital) and increasing employment of constant capital (mechanized production). Another factor that temporarily inhibits the fall of the profit rates are the recurring innovations and inventions due to the constant capital. This happens because the surplus value extracted remains, for a short while, above the general level.

The increase in the surplus value rates is only possible with the reduction of the work force employed and the enlargement of the production mechanization; it that is true, the rates of profit will certainly fall. However, as the work journey increases, so does the absolute rate of surplus work. And with more living labour in the production, the only thing able to generate value and surplus value, the rates of profit tend to break their fall. The surplus value generated by all the variable capital is equal to the profit generated by it. If the degree of exploitation of the working force grows, so does the total amount of surplus value and its rate.

Even if the individual merchandise contains less living labor (work aimed), the relation between work paid and non-paid may change; i.e., the non-paid work may increase in relation to paid work even when there is less work aimed in the merchandise and thus, the capitalist raises their rates of extraction of surplus-value, absolute and relative.

In 2013, USIMINAS laid off more than 6,000 workers, increased its working hours and increased production. The workers who stayed, had to do the work of four men each. In addition, between the periods of May 2014 and April 2015, there was a 4.48% increase in the production of crude steel, flat and pig iron (Sindicato dos Metalúrgicos e Sierúrgicos da Baixada Santista. Boletim N° 361).

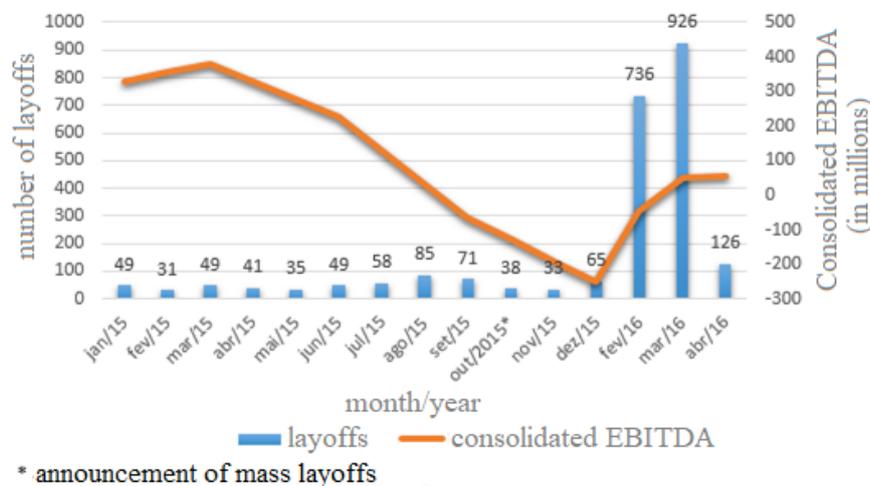


Figure 1: Relation between consolidated profits and layoffs in the year 2015 and the first quarter of 2016 (Sindicato dos Metalúrgicos da Baixada Santista 2017)

Throughout the year 2015, the company sacked 604 workers in total. Between February and April 2016 alone there were 1778 layoffs, almost three times as many as in 2015; totalizing 2,392 layoffs over a period of 16 months, as shown in Figure 1. In October 2015, the Cubatão unit operated with 4338 workers, after the period of mass layoffs, the company began operating with 1713 employees Santana (2017). That is, between 2015 and 2017, 60.6% of workers were dismissed. All these measures adopted by the company characterize the application of anti-cyclical measure I.

**2) Reduction of the wage below its value**

One of the calculations used by the capitalists to determine the price of their commodities is based on how much the labor force needs to reproduce itself, that is, the least salary the worker needs to

survive, known as minimum wage. In Brazil, historically the work force has always been remunerated below its value. At present, according to the Department of Statistics and Socioeconomic Studies (DIEESE), the minimum wage required to live in Brazil is at the level of R\$ 4,000.00 while the nominal minimum wage is R \$ 954.00; that is, less than  $\frac{1}{4}$  of the value needed for the reproduction of the Brazilian labor force. In European social democracies, since the postwar period, the rule was to pay the necessary minimum wage or even more, as was the case in the Scandinavian countries. However, since the beginning of the current economic crisis, wages have been falling steadily in both social democratic countries and around the world. In Marx's words, the compression of the wage below its value "is one of the most significant causes of contention of the tendency to fall in the rate of profit" (Marx 1984, 179). The Usiminas Steel Mill in Cubatão (SP) does not offer a real increase in the salaries of its workers since 2010. In 2016, there was not even the inflationary replacement. In Cubatão, the wage gap is 31% if we consider the readjustment of the minimum wage since 2002. Some dismissed workers were rehired at 60% lower salaries. The salary of a kiln operator, for example, is around R \$ 5,800.00; the few operators rehired after the layoffs receive today about R \$ 1,800.00. In the case of engineers, it was not different; those who received about R\$ 15 thousand monthly were dismissed and replaced by professional hired for only R\$ 6 thousand monthly. This characterizes that the company adopts Anti-cyclic measure II to raise its rates of profit, reducing the real salary of the workers.

### **The Contemporary Debate on the Tendency of the Profit Rate to Fall**

Cassio Arruda Boechat in his postdoctoral project, "The contemporary debate about the existence of a crisis theory in the work of Karl Marx," seeks to understand whether the development of the productive forces leads to a decrease in the profits of capitalists in general. In order to do this, he seeks in several contemporary Marxist writers arguments that defend the tendency of rate of profit to fall examined by Marx and those who advocate in favor of the predominance of anti-cyclic measures. The author seeks differences and similarities between the arguments presented by the two groups.

Boechat begins its analysis by the title "Tendency of the Rate of Profit to Fall". He argues that the fact of being a trend already eliminates any "mechanistic" criticism. i.e., the contradictory idea that an increase in the organic composition of capital, expressed by an increase in the rate of constant capital ( $K_c$ ) over variable capital ( $K_v$ ), may or may not incur in the fall of the profit rate. Boechat's argument makes explicit that capital narrows its source of surplus value by diminishing variable capital because constant capital does not, in itself, produce surplus value. Moreover, because of the "equalization of the rate of profit", the larger capitals end up requiring a greater part of the average profit, precisely because they are bigger shareholders. In the eyes of individual capital, the increase in the organic composition of capital proves to be beneficial in the market dispute "(...) with other capitals by larger masses of profit, although the same competition tends to equate the profit rates, reducing them (Boechat 2016, 6). According to Boechat, concentration and centralization of capital operates in the direction of balancing profit rates, lowering the rates of more profitable areas and raising those of less attractive areas, excluding capital markets of very low profitability.

According to Boechat, several authors defend the predominance of counter-measures in the face of the Law of the Trend Fall of the Profit Rate. Roman Rosdolsky notes in his work, *Genesis and Structure of Karl Marx's Capital*, that Marx concludes section III of his book III with a theory of the overthrow of capitalism, which he said was obstructed by Social-Democratic revisionism after the First World War. Paul Sweezy, in his book *Theory of Capitalist Development*, argues that it is not credible to say that the organic composition of capital grows more than the rate of surplus value. Therefore the Law of the Falling Trend of Profit Rate is not very persuasive. In the same line of thought, Okishio's theorem (1961) reiterates the imprecision of the Marxian theory of Law of the Tendencial Fall of the Profit Rate (LTFPR) and argues that the substitution of variable capital by constant capital does not cause a fall in the rate of profit. Moishe Postone argues that as the global productivity of capitalism lowers, the rate of profit is also low. Economist Luiz Carlos Bresser-

Pereira argues that the new technologies that save constant capital in the productive process prove that countermeasure measures invalidate the Law of the Trend Fall of the Profit Rate.

The British Marxist David Harvey, according to Boechat, joins both the perspective that alleges the invalidity of the Law of the Trend Fall of Profit Rate and that which indicates the effectiveness of counter-tendencies. For Harvey, the introduction of new technologies into the production process aims to save labor and the means of production. However, he points out, such measures of capital as the third counter-measure reaffirm the consistency and predominance of counter-tendencies.

Cássio Boechat reports that Andrew Kliman organizes a resounding criticism of Okishio's theorem. The American economist criticizes the fact that theorem is anchored in common sense and advocates a directly proportional relationship between increased productivity and increased profit. But the economists Guglielmo Carchedi and Michael Roberts criticize Kliman himself when they argue "that LQTTL [LTFPR] would not be a prediction of the dynamics of crises, but a long-term explanation" (Boechat 2016, 12).

### **The law as a trend**

Jorge Grespan argues that the organic composition of capital increases as capital becomes more involved in the productive process in relation to abstract labor. That is, the less variable capital, the lower the value. In this, the unit value of each commodity falls and, consequently, the quantity of abstract labor falls. According to Grespan, Marx exposes that the rate of profit falls because labor becomes more productive and not vice versa. In this, the increase in labor exploitation, represented by the upward trend of the surplus value, occurs simultaneously with the trend fall in the rate of profit. Increasing labor productivity by replacing the labor force ( $K_v$ ) with state-of-the-art technology ( $K_c$ ) reduces the unit value of each commodity "(...) and consequently also the time required to reproduce the value of the labor force, raising the rate of surplus value" (Grespan 1996, 210). The author justifies that in order to understand what Marx calls "law" it is necessary to get rid of the notion of logical-formal thinking that there will be no contradiction between phenomena. Otherwise, the reader creates hope that the rate of profit falls continuously and unconditionally. In this same sense, the author ponders that for Marx the contradictory relation between the rise in the rate of surplus value and the fall in the rate of profit is what makes the law itself a "law." In other words, contradiction is what unites phenomena. Jorge Grespan states that the fall in the rate of profit, effected by certain causes, is regulated by these same causes. Capital, to slow down and even increase its rates of profit, may adopt certain measures, for example: the intensification of the exploitation of the labor force in the industrial sector, the cheapening of the elements of constant capital, among others. The author argues, citing Marx, that countermeasures do not invalidate the Law of the Falling Trend of Profit Rate, but rather make it operate as a trend. That is, even with counter-measures acting in the opposite direction, the "law" is only temporarily delayed. In the long run, profit rates fall again. In addition, Grespan argues that if there is greater productivity in the industry that produces the "elements" of constant capital compared to the sector that produces the workers' livelihoods "(...) organic composition does not rise so much" (Grespan 1996, 220). This is because, according to Marx, in order for capital to reduce the price of the labor force, the productive forces in the industrial sectors that produce the necessary goods for the worker must be more developed. In any case, Grespan argues that it does not make any difference, in the eyes of capital, to lower the prices of livelihoods or means of production. What matters to the capitalists is to intensify labor productivity to extract relative surplus value in ever greater proportions. Countermeasures, according to Grespan, reaffirm themselves in opposition to the fall in the rate of profit, which gives the "law" the peculiarity of being a "trend". In addition, Grespan states that even with the fall in the rate of profit, there is no end to the valorization of capital because one of the measures to return to its recovery is the reduction of the price of constant capital elements. For him, "(...) it is impossible to say that the fall in the rate of profit falls to a point where the continuity of the valuation process is not possible; that is, that capital reaches the insurmountable limit for the accumulation movement (Grespan 1996, 24). Therefore, it is wrong to say that the "crisis" is the final limit of the capitalist mode of production.

### **The organic composition of capital and the class struggle**

Guido Mantega, in his introduction, exposes that the Law of the Tendencial Fall of the Profit Rate, for one of the groups presented in the article, is essential for the understanding of the dynamics of capital. In this group, that is, the defenders of the validity and actuality of the law, are: Paul Mattick, David Yaffe and Mario Cogoy. Already advocates for an update of the law are: Paul Baran, Paul Sweezy, Joan Robinson, Josef Steindl, Geoffrey Hodgson. Mantega points out that the "reformulating" current is characterized by denying not only the Law of the Falling Rate of Profit, but also a part of the Marxist laws of accumulation (Mantega 1976, 29). The author argues that with the development of material productive forces, the volume of variable capital ( $K_v$ ) is decreasing in the production process. The volume of constant capital ( $K_c$ ) and consumption of inputs and raw materials are increasing. In other words, the increase of constant capital and the diminution of variable capital is called by Marx: an increase in the organic composition of capital. The technical composition of capital expresses labor productivity. The organic composition of capital grows the greater the social productivity of labor. Such productivity lowers the value of constant capital because with the increase of the rhythm of production the constant capital transfers its value faster to the produced goods. In other words, the increase in the organic composition of capital is the cause of the drop in profit rates (Mantega 1976, 30). Mantega believes that the increase in labor productivity, coupled with the reduction of the labor required, can, even with the growth of the organic composition of capital, raise profit rates. However, as much as the capitalists increase the rates of exploitation of absolute surplus value (obviously with the limit of 24 hours a day) and reduce the worker's production costs (such costs can not be less than zero), at some point rates of surplus value surpass these limits and thus, the rates of profit will fall again. The author shows that in the process of capital accumulation, the increase in the rate of surplus value raises the rates of profit. The reduction of the quantum of variable capital, in production, causes them to fall. Thus, "(...) the law of the fall of the rate of profit is not expressed in an absolute way because along with the causes that cause it, align forces align against its fall. For this reason, general law will manifest itself, most of the time as a simple tendency (Mantega 1976, 31). Guido Mantega argues that the second Anti-cyclical measure - "Compression of wages below its value" - can be applied in two ways. The first one, when work becomes more productive, it leads to unemployment and, consequently, the increase in the supply of the labor force in the market, which diminishes wages. The second occurs when workers are in a political situation in which the correlation of forces is disadvantageous. The author argues that "in the face of the counterbalancing forces, the tendency of the rate of profit to fall should manifest itself as a simple tendency, since these forces tend to prevent its emergence" (Mantega 1976, 32).

Mantega ponders that, paradoxically speaking, the increase in the organic composition of capital, which pressures downward profit rates, is the same as that which allows the growth of labor productivity, which raises the extraction of the surplus value and, consequently, raises the rates of profit. The rise in the average organic composition of capitalism stimulates the fall in average profit rates, but the investment of individual capitalists in state-of-the-art technology in production raises their individual rate of profit. This is because the capitalists in question are able to win the market and beat the competing companies because he is more productive; he has the possibility to sell his products below market prices but above the costs of his production. However, over time, competing companies also adopt the new technologies in their respective production processes and, with this, they are able to be competitive again in the market with the pioneer company and depending on investments in research and state-of-the-art ( $K_c$ ) companies may, at another time, take the lead in the market.

The author points out that the most preponderant factor for understanding the trend decline in the rate of profit is competition in the market among capitalists. Mantega shows that there is a tendency to equalize the rates of profit of different capitals because they withdraw from the fields of lower productivity. This is because the different productive sectors do not all work with the same organic composition of capital. That is, some sectors set in motion larger amounts of constant capital than others. In this, different masses of surplus value and, consequently, distinct profit rates are created among such productive inter-competitive branches. Thus, the less productive capitals are being phagocytosed by the more productive ones, and "(...) it is these constant migrations of

capital that produce the tendency to level the rate of profit" (Mantega 1976, 51). Guido Mantega argues that, in the struggle between individual capitals to win market, they reduce their production costs. For example, by implementing new technologies in the productive process, as these reduce the amount of socially necessary work in the confection of goods and, therefore, their unit value falls. The author understands that the monopoly phase of capitalism is characterized, among other points, by the constant technological progress. The objective is "to improve products in the face of competition, or even to seek higher profit rates" (Mantega 1976, 55). Moreover, at this stage, the development of the productive forces is increasingly guided by the function of monopolies to concentrate and centralize capital. The author argues that, in the monopolistic stage, another important cause of the tendency of the rate of profit to fall is the increasing spacing between production and realization of the value of commodities. In addition, capital spends part of its mass of surplus value with increasing commercial capital (unproductive labor) to realize the value of the commodities produced and thus obtain their profit rates. In other words, "commercial capital has become one of the factors that prevails in the reduction of the rate of profit" (Mantega 1976, 56).

Mantega ponders that in the upper phase of capitalism, the emergence of cartels and multinational corporations has the prime intention of raising the rates of profit of companies that have headquarters in imperialist countries. In underdeveloped countries, these enterprises can use smaller organic compositions and thereby increase the level of exploitation of the labor force, reduce the wages of these workers further, and at the same, time obtain raw materials and cheaper inputs for production. In addition to cheaper labor force and levels of subsistence well below of central capitalist countries; the underdeveloped countries commonly have authoritarian governments or even weak democracies that hinder and repress the political and trade union organization of workers and end up weakening their accumulation of forces in the class struggle against capital for improvements in working conditions and wages. The author argues that the class struggle is an important element for the development of the productive forces and, therefore, influences the rates of profit. In countries where the working class has a greater degree of political-syndical organization and, therefore, a greater bargaining power vis-a-vis capital, both wages and the organic composition of capital tend to be higher. In short, Guido Mantega shows that the incessant development of the material productive forces leads to an increase in the organic composition of capital, that is, more and more constant capital and less and less variable capital in the productive process. In this, since only living labor generates value, by increasing productivity, the quantity of socially necessary labor is lowered, and consequently the unit price of each individual commodity falls. Thus, the capitalist increases his mass of profit, that is, the amount of money raised with the increase of productivity. However, with the increase in productivity, consumption and wear and tear of constant capital, ie, inputs, machinery, facilities, etc., are also increased. Therefore, with increased production the mass of profit grows but the rate of profit falls.

### **Conclusion: The Theory and the Profit**

After massive layoffs between 2015 and 2017, and the intensification of production, USIMINAS presented considerable growth in its earnings before interest, taxes, depreciation and amortization (EBITDA), which corresponds to what Marx called "mass of profit".

In the quarterly presentation of Usiminas to its investors, available on its website, it is possible to appreciate that its profits grew considerably between the periods of 2014 and 2017. Its gross profit in 2014 was R\$ 1.037 billion and reached R\$ 1.635 billion in 2017. As for the net profit, it went from R\$ 208 million in 2014 to R \$ 315 million in 2017. This evolution is illustrated in Figure 2. In short, after the application of countermeasures I and II (mainly) the company managed to brake its falls in the profit rates and increase profit.

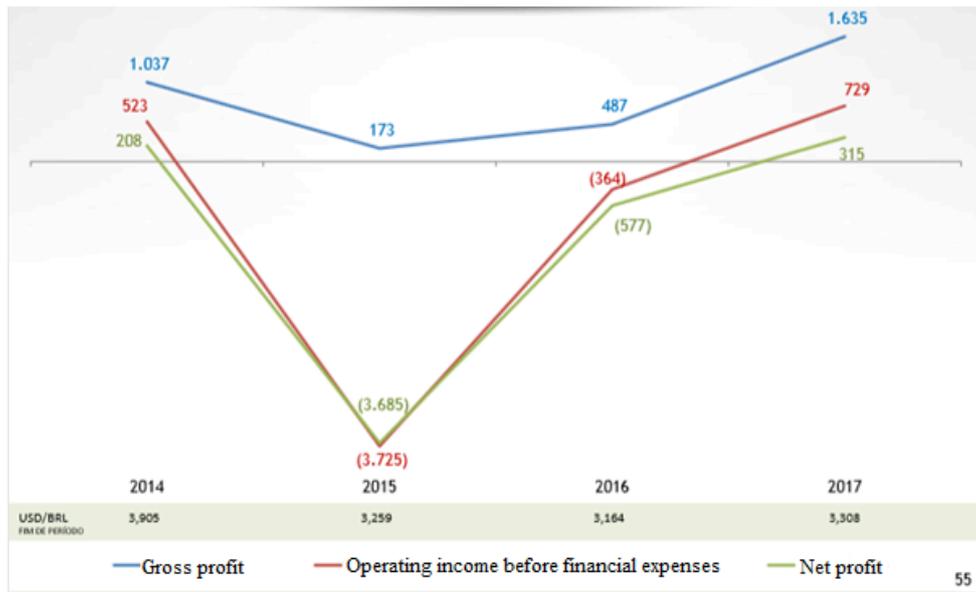


Figure 2: Consolidated gross, operating and net income for the period 2014 to 2017 - amounts in millions of R\$ (USIMINAS 2018a )

It is also possible to identify the successful application of anti-cyclic measure II by the company in Figure 3 (extracted from the aforementioned presentation). In Figure 3 (General and Administrative Expenses) it is possible to verify that, since the 3rd quarter of 2017, expenses have been falling in relation to the company's net income. Despite the increase between the 3rd and 4th quarters of 2017, the first quarter of 2018 registered the lowest rate of expenses, 3.2% of the net income, compared to the rate of expenses at the beginning of 2017, which was 4.0% of the net income.

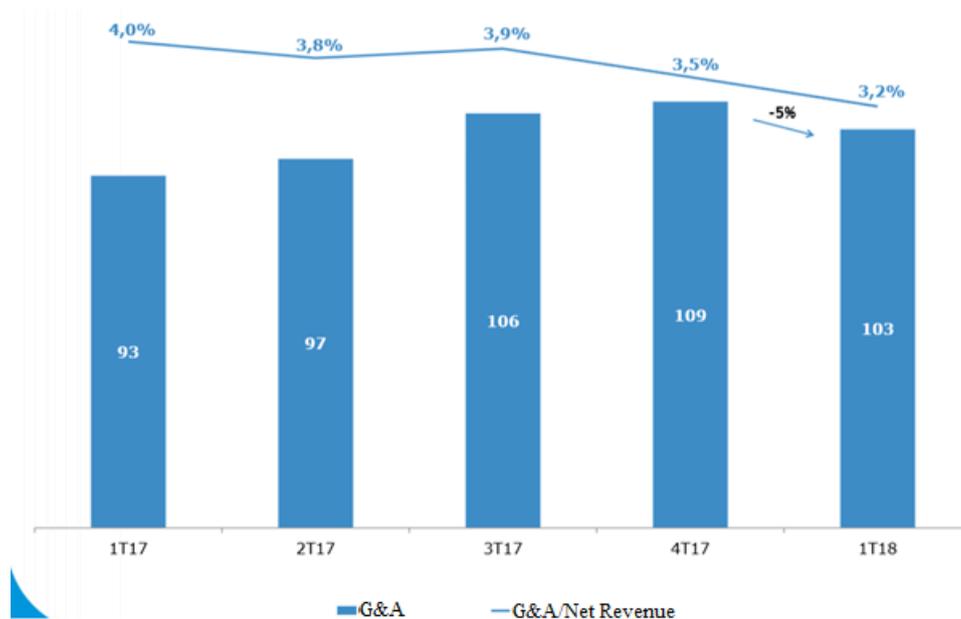


Figure 3: Consolidated General and Administrative Expenses in the year 2017 and the first quarter of 2018 - amounts in millions of R\$ (USIMINAS 2018b)

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# Evolution of Academic Freedom in the US Higher Education System as Part of Constitutional Principles

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**ABSTRACT:** The present paper aims at analyzing the development of academic freedom in the USA as a part of Constitutional principles. The main objective of this research is to identify legal approaches regarding academic freedom, reveal the positive and negative sides of its development. It is essential to study the professional and legal definition of the term to determine its international context, what the notion of academic freedom means for modern society. The research indicates that modern legal constitutional analysis of academic freedom is incomplete for the protection of the interests of academic society. Constitutionally guaranteed academic freedom is limited by state action doctrine, restriction of the principles of freedom of expression of the public figure and judicial decisions, which gives freedom only to the universities and leaves professors' interests without protection when their interests are contrary to the university's interests. Academic freedom guaranteed by the constitution may be incompatible with the concept that implies freely exchanging ideas in the marketplace of ideas, which are likely to be limited by universities. To completely understand and evaluate the importance and purpose of academic freedom, it is necessary to study those cases which led to the establishment of the American Association of University Professors - AAUP and the protection of academic freedom in American universities.

**KEYWORDS:** Academic Freedom, Freedom of Speech, US Constitution, Higher Education, HEI, First Amendment, Supreme Court

## Introduction

Academic Freedom is one of the most significant values of higher education in modern society. After the foundation of the American Association of University Professors (AAUP) in 1915, this statement has been the topic of harsh debates. Menand (1996) called academic freedom as “the key legitimating concept of the enterprise” of the university (Menand 1996, 187-198). Unlike the first half of the 20th century, the concept of academic freedom is universally admitted within the US higher education system though there is a huge difference between its core idea and practical application. Hence, today the disagreement about the importance and usage of academic freedom is more intense than ever.

The research aims to study the problem of academic freedom in the following aspects of US higher education: 1) to determine what was the precondition of the creation of academic freedom concept; 2) to analyze the US Supreme Court's practice and approaches towards the issue based on case studies; 3) to examine how the idea of academic freedom was protected in the past, how it is protected nowadays and in general, how the systemic changes affect the education system; 4) to study the stages of development of academic freedom from the beginning of the previous century and determine how much the enjoyment of academic freedom is protected.

Based on the study aims, the following research methods will be used:

1. Historic - to follow the stages of development of the institute and see the changes that are reflected in a positive or negative result at different stages; theories and definitions regarding academic freedom can be compared to how it worked in HEIs. Although academic freedom is restricted to only those cases which have reached the court, it is still a good basis to carry out further analysis beyond existing theories. It's essential to understand what freedom was meant for academic society, what it achieved and what factors exist in academic life. It should be conducted in the way to preserve American culture, based, created and maintained on the ideals of freedom”. To understand the essence of academic freedom, today, we must understand how its importance has grown in the previous century. The research aims at a better understanding of academic freedom by presenting existing theories regarding the issue and also the main current events in the history of higher education. The meaning and purpose of academic freedom will be analyzed, too;

2. Systemic – to identify the place of the issue within the legal system, an analysis will be conducted based on statements, policy documents and investigations of American Association of University Professors (AAUP) (AAUP's 1915 Declaration of Principles) since 1915 that identified how the notion of academic freedom developed. Acceptance of definitions made by the AAUP as HEIs official policies and incorporation of definitions in contracts concluded with professors has shown how it has become part of the culture of academic society;
3. Theoretical - the theory of academic freedom is mostly evaluated in various articles, monographs, academic editions on intellectual freedom, and legal opinions. The analysis also shows how the value was protected by its advocates, opponents, and how higher education has changed in the US.

The study source is the basic legal acts in the US, legal precedents, as well as papers of individual researchers, analytical materials and assessments, researches concerning academic freedom. The works of scientists involved in the field of education law, political science and pedagogy such as W. Finkin, L. Menand, B. Berg, T. Lawrence, W. Metzger, R. O'Neil, K. Sullivan, and others were analyzed.

### **Legal Foundation of Academic Freedom – Historical Review**

The US Supreme Court found about 50 years ago that the American “Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned” (*Keyishian v. Board of Regents*, 1967). Academic freedom is the subject of the special protection of the first amendment and it is proved by the various court decisions, such as ‘*Regents of the University of California v. Bakke*’ (*Regents of the University of California v. Bakke* 1977). Despite the fact, it is still under a question whether there is any link between the first amendment and academic freedom. The reason for the assumption is that the decisions made by the Supreme Court are very rare, where academic freedom is specifically defined and stated as the 'special subject of care and protection' of the first amendment. It is important to find out, based on the court decisions, whether this opinion is correct and also determine the specific value from the text of the first amendment, which may serve as the basis for the academic freedom doctrine. As it is known, academic freedom as a specific constitutional norm is based on the first amendment. More particularly, only the first amendment protects this value (Metzger 1988, 66). We cannot see any other provisions in the other articles or amendments of the US Constitution that may be applied to it.

In American universities, the term "academic freedom" is often referred to as “a warm and vaguely fuzzy privilege” or as a “moral ideal without conceptual certainty or accuracy” (Finkin, Post 2009, 6). And yet, what does this term mean and what does it imply? Academic freedom, as a professional definition of the norm, can be found in various documents, but first, let's discuss how it all started.

Before the beginning of the civil war, US HEIs were small, local colleges where the curriculum was classical, the educational mission was less likely to develop and the lecturers were mostly young men who were waiting for their promotion (Finkin, Post 2009, 4, 23). Private donations to institutions were quite small. For example, 50.000 dollars donated for the foundation of Harvard University, was considered as the highest amount. Amherst College was founded on the same amount of money collected from different sources (Hofstadter & Metzger 1955, 413). After the Civil War, the amount of money was changed and also the type of philanthropy that followed some undesirable consequences for the university autonomy and the intellectual freedom of professors.

Johns Hopkins University was founded in 1867 by a Baltimorean entrepreneur with a donation of 3.500,000 dollars, Leland Stanford Junior University - in 1891 with 24 million dollars left by the railway magnate; University of Chicago - in 1891 with amount of 34 million dollars donated by the oil tycoon John Rockefeller (Hofstadter & Metzger 1955, 413). Hence, it is not difficult to conclude that the donation amount was directly related to his/her involvement in the management of HEIs. In some way, they acted as entrepreneurs in the field of education. After the civil war, the donors started to look for universities they desired to govern and contributed an appropriate amount of money to be actively involved in decision-making processes on this social basis (Hofstadter & Metzger 1989, 32-33). Gradually, the position of trustees in the system of US colleges and universities has become more

business-oriented and this contributed to encouraging conflicts between professors and business interests.

If we look through cases of professors' dismissal in US colleges, one of the most prominent examples can be seen in the Henry Carter Adams case in 1887. He was a lecturer of Cornell University Economics, dismissed for making the Labor Party supporting speech by irritating several members of the Board of Trustees. Further notable cases are also noteworthy, such as dismissal of Edward W. Bemis, lecturer of Economics at the University of Chicago due to express his opinions on antimonopoly issues in 1895; In 1897, the termination of employment contracts for James Allen Smith, Professor of Political Science at Marietta College, due to teaching antimonopoly issues. Furthermore, in 1897, Benjamin Andrews, the President of Brown University, had to resign because the University's regents did not like his support for free silver cutting (Hofstadter & Metzger 1989, 421). The most notorious case was the dismissal of economics professor Edward Ross in 1900 due to the expression of opinions contrary to views of Stanford University founders and trustees.

Ross, the Protégé (Hofstadter & Metzger 1989, 16) of professor of economics at the University of Wisconsin - Richard Ellie, defended the leader of the Socialist Party from the Conservatives' critique and supported the free cutting of silver. At the same time, he criticized the situation in the railway when his source of income was the railway tycoon. Ross supported the prohibition of immigration of Chinese, who were cheap railway workers. This was too much for Jane Lathrop Stanford, who, together with the deceased husband, founded the university and by that time was already considered to be the sole trustee. For several years she has been asking the Stanford President David Star Jordan to dismiss Ross and finally, she sent him a letter with the following ending: "Professor Ross cannot be trusted and he should go" (Hofstadter & Metzger 1955, 442–43). And he left his job together with other seven professors of the Stanford who also left jobs to protest Ross's dismissal. One of them was philosopher Arthur O. Lovejoy ((Hofstadter & Metzger 1955, 442), who later founded the American Association of University Professors together with the Columbia University Philosopher - John Dewey (Finkin & Post 2009, 442-43).

At that time the university professor's employment status was no different from the business worker, whose dismissal was under the discretion of the company's head or board of directors (Finkin & Post 2009, 3-32). A clear example of aforementioned is the act of George Wharton Pepper, chairman of the Board of Trustees of the University of Pennsylvania, when he dismissed young professor of Wharton Business School Scott Nearing in 1915 for his progressive economic views (Finkin & Post 2009, 32, cited: Clark 1917). The New York Times newspaper approved this dismissal and confirmed that the trustees were not required to explain the reasons for dismissal (Finkin & Post 2009, 31, quoting Editorial, Academic Freedom, N.Y. Times, June 20, 191). It was also commonly accepted that the trustee would be able to dismiss the professor even if the latter opposed the founder of the university or one the programs (Finkin & Post 2009, 32).

As far as we can see, by 1915 the donors and the university administration became so powerful that the professor, offending the administration, politicians or other authorities, was subject to dismissal without any preliminary notice or judicial review. Such individuals, despite the duration and quality of their work at HEIs, could not retain the status of professor and respectively, academic freedom. From this period huge changes were initiated that made significant transformations in the US education system.

### **Association of University Professors and the 1915 Declaration**

In 1915, when the 'Times' magazine published an article on dismissal case of Professor Nearing, Columbia University economics Professor Edwin Seligman was working on the principles of academic freedom and academic tenure required for the establishment of the AAUP (AAUP, Policy Documents & Reports 1995, 108).

The AAUP was formed to protect the academic freedom of professors who were persecuted for ideological conflicts (mostly on economic theories). Since 1915, the AAUP studied the alleged violations of academic freedom of professors in university campuses throughout the country, gradually developing and defining the concept and significance of the term. Because of its investigative role and

political decisions made by AAUP, it was considered to be the only "most influential and important defender of professional tenure and academic freedom." (Lucas 2006, 206)

Without relying on legal precedents, due to the absence of principles linked with academic freedom, the AAUP has established its specific conception, what could be considered and generally, meant under academic freedom. This concept was based on the experience in the real world, from the investigated cases. Before the publication of the Declaration of Principles in December 1915, the AAUP investigated five early cases concerning this issue, which indicated how the authors of the declaration perceived academic freedom. All these cases were focused on the dismissal of professors without prior notice or observance of other procedures. The authors of the Declaration in response, a distinguished number of quasi-legal procedural protections for university academic personnel.

The Declaration text explains three elements of academic freedom (Revealing the influence that the German concept of academic freedom on the American norm, the Declaration refers to *Lehrfreiheit* (teaching freedom) and *Lernfreiheit* (learning freedom). This is also evident in the concept of academic freedom mentioned in the Declaration of 1915 in the United States): "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action" (O'Neil 2008, 18-20). The Declaration also notes that there are some universities "in which the relation of trustees to professors is still conceived to be analogous to that of a private employer to his employees." It also explains that the trustees can impose their personal opinions upon the teaching of the institutions or dismiss the faculty "to gratify their private negative attitude or resentments." Such behavior undermines the essential principles of modern universities, that should set as their main goals the promotion of inquiry and advance the sum of human knowledge, to develop experts for various branches of the public service.

Declaration confirms that the university should provide an unfringeable asylum from the dictatorship of public opinion: "it should be an intellectual experiment station, where new ideas may germinate and where their fruit... maybe allowed to ripen until finally... it may become part of accepted intellectual food of the nation or the world. Not less is it a distinctive duty of the university to be the conservator of all genuine elements of value in the past thought and life of mankind which are not in the fashion of the moment."

The Declaration states that according to the principles of academic freedom, the rights granted to the university professors are accompanied by certain obligations. Concerning the research this means "the liberty of the scholar within the university to set forth his conclusions, be they what they may, is conditioned by their being conclusions gained by a scholar's method and held in a scholar's spirit," patiently and sincerely. In terms of teaching, this means that the lecturer, "in giving instructions ..., while he is under no obligation to hide his own opinion ... if he is fit for his position, be a person of a fair and judicial mind; ... should cause ... students to become familiar with the best-published expressions of the great historic types of doctrine upon the questions at issue; and he should, above all, remember that his business is not to provide his students with ready-made conclusions, but to train them to think for themselves..."

According to the Declaration, "for reasons which have already been made evident, inadmissible that the power of determining when departures from the requirements of the scientific spirit and method have occurred, should be vested in bodies not composed of members of the academic profession" (O'Neil 2008, 3). Other bodies or structural units of the university do not have full competence in respect to these requirements and their action may be regarded as a means of achieving other objectives and not as an aspiration of maintaining academic integrity and professional standards. At the same time, granting this authority to only academic personnel implies the obligation to check professional standards. The Declaration of 1915 states: "the university must ensure to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or uncritical and intemperate partisanship." The Declaration uses the same principles alongside with research and teaching, for the so-called extramural utterance - for statements expressed outside the university, whether it is political or other statements, even though they may concern issues that are beyond the professor's academic specialty. It is also noted that "academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to

refrain from intemperate or sensational modes of expression.” However, as regards the speech in university, the Declaration states that such restrictions should be allowed to be admissible mainly through the public opinion of the profession or, if disciplinary action is appropriate, through the body of members of the academic profession.

The Declaration ends with an issue of great importance for academic freedom: “in short, it is not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion, and teaching, of the academic profession, that is asserted by this declaration of principles.” In the final part of the declaration, there are some practical recommendations. One of them implies the establishment of a suitable and appropriate judicial body at the time of the dismissal of the professor or disciplinary liability to enquire, whether the academic freedom was violated. Other recommendations include the protection of academic freedom regarding tenure, as well as the standards for the review of the issue and sending a relevant notice before the dismissal of the professor. In respect of tenure, the Declaration states that the goal of tenure is not the immunization of a member of the faculty towards the disciplinary proceeding against him during hearing proceedings before the faculty or faculty commission.

Although nowadays the values of academic freedom are an integral part of the academic sphere, the Declaration was firstly criticized by the New York Times and further by many other institutions, it was of a huge importance for its founding principles, the ones that made basis for the building of strong institute of academic freedom in the USA.

In conclusion, the Declaration ultimately distinguishes three basic elements of academic freedom: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action (Declaration of Principles, The American Association of University Professors, 1915).

### **1940, 1966 and 1994 Statements of the American Association of University Professors**

The interpretation of academic freedom is often based on the definition given in the “1940 Statement of Principles on Academic Freedom and Tenure” that was created by the jointly by the AAUP and the Association of American Colleges (AAC).

In 1940, the AAUP and American College Association, which is now known as the Association of American Colleges and Universities (AACU), agreed to elaborate a short version of the Declaration. Of course, the main purpose of academic freedom was maintained. The text of the document begins with the explanation of the university mission statement (1940 Statement of Principles on Academic Freedom and Tenure) and is noted that the existence of HEIs aims at common good and not the interests of individual teachers or university and the common good “depends upon the free search for truth and its free exposition.” Academic freedom is essential for these purposes and includes the following: 1) “full freedom in research and the publication of the results; 2) professors’ freedom in the classroom in discussing their subject and 3) freedom to speak to citizens without institutional censorship” (O’Neil 2008, 11). Provisions of the text state that “limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment” (O’Neil 2008, 14).

The 1940 statement refers to the issue of tenure and determines: “after the expiration of a probationary period, teachers ... should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except ... under extraordinary circumstances because of financial exigencies.” Tenure and its protection are to ensure “freedom of teaching and research ... and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability” (O’Neil 2008, 14).

The 1940 statement became the standard of academic freedom in the United States. More than two hundred educational institutions and several higher educational institutions have adopted and incorporated it into their charter or regulatory document.” (Finkin 2009, 48) In the 1940s, the AAUP was the main defender body for indemnification of damage to the academic personnel who disclosed their negative attitude towards the non-academic society, different opinions or results of research.

The AAUP's subsequent statements expanded the importance of academic freedom beyond the scope of research, teaching and extramural utterance also includes "statement made in the university." A first, AAUP's 'Statement on Government of Colleges and Universities' of 1966 declared that "the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process" (Statement on Government of Colleges and Universities). That was followed by the 1994 document 'Statement on the Relationship of Faculty Governance to Academic Freedom', which condemned punishment by the administration the members of the faculty who spoke about the violation of academic freedom (1994 Statement on the Relationship of Faculty Governance to Academic Freedom).

### **The Modern Constitutional Concepts of Academic Freedom**

It is important to evaluate how the term is defined professionally or legally to present to the wide society its international context, particularly, what academic freedom means in modern society. The current legislative constitutional analysis of academic freedom is insufficient for the protection of the interests of academic circles. In our opinion, academic freedom recognized and guaranteed by the Constitution is restricted by following: 1) The so-called "state action doctrine" (state action doctrine, available at <https://definitions.uslegal.com/s/state-action-doctrine/>); 2) Restriction of the principles of freedom of expression of the public servant and respectively, restriction of enjoyment by it; and 3) Judicial decisions, which gives freedom only to the universities and leaves professors' interests without protection when their interests are contrary to the university's interests. Thus, we may think that academic freedom, guaranteed by the constitution is incompatible with the view that implies the free exchange of ideas, (Polenberg 1999) and what is supposedly restricted by universities.

In this part of the article, a general conception of academic freedom is given that according to the general view, unites its idea in connection with the first amendment of the US Constitution. At the initial stage, this freedom was recognized at the institutional level by court decisions. Indeed, these decisions played a major role at the end of the McCarthy Era (Schrecker 1999). In this period the government was actively interfering in the university's decision-making process. Later, courts have used the principle of freedom of speech and applied it to the university professors' actions, that included in their auditorium, in the lecturing process expressing views that are not related to the teaching, choice of academic courses used by the educational institution, research, and joint management. While some courts did not apply protection of the right of academic freedom of professors in this part but considered the first amendment in general view. Consequently, there is uncertainty about whether the constitutional academic freedom offers professors the right beyond the first amendment, as envisaged for the general public. Some courts consider that academic freedom regardless of what it may mean exists only within the university and not for individual professors.

### **Connection Between the Values of Academic Freedom and First Amendment of the US Constitutions, Participation of Professors in Democratic Self-Governance**

The courts and the authors of the Constitution commentaries agree that constitutional protection of free speech serves at least one of the following values: "developing knowledge and 'truth' in the 'marketplace of ideas', promoting democracy and self-government, encouraging individual autonomy, self-expression and self-realization" (Sullivan & Feldman 2018). In terms of democracy, it is an important interest for the public to take the necessary information to fulfil its function in a democratic society. The second interest that emphasizes the protection of freedom of speech guaranteed by the first amendment is the right of all persons to be able to freely and in accordance with the equality principle express and share the opinion by which a person manages oneself. This form of expression was called by the court "a public discussion" (Cohen v. California 1971; Post 1990) on which Dworkin (Dworkin 1996, 200–01) commented that it is "constitutional for democracy and legitimizing the essential legal system" (Weinstein 2011, 491, 498).

Therefore, we can summarize the values of the first amendment, which protect academic freedom: 1) discovering knowledge and truth in the "marketplace of ideas"; 2) autonomy of professors, which

includes self-expression and self-realization; 3) providing necessary information for democratic self-government; 4) ensuring individual participation in democratic self-governance.

The aforementioned values - the autonomy of professors and ensuring individual participation in the democratic self-governance can be understood as values protected by the first amendment that mostly justify academic freedom. It is quite difficult to determine the boundaries within which the violation of the academic freedom protected by the Constitution serves for the protection of the interests of employees, including the autonomy-based interest and freedom of speech, to ensure a safe, efficient and fair working environment. However, someone may have a question: why a public person employed in the academic field has to have a higher level of constitutionally protected interest than a public person employed in another system such as in *Skinner v. Railway Labor Executives' Assn.* case of 1989, where a similar complaint was first made (*Skinner v. Railway Labor Executives' Assn.* 1989) by James Weinstein: "There is no justification for endowing university professors with special privileges to engage in democratic self-governance in the workplace or anywhere else for that matter. Indeed, doing so would violate the basic precept of formal equality underlying the individual right to democratic participation" (Weinstein 2013). Furthermore, a workplace, whether it is state or private, is not intended for public discourse or other forms of democratic self-government.

According to this view, academic freedom as a professional norm has never been a justification of individual autonomy or considered as an individual right to democratic participation. In contrast, the AAUP statement of 1940 says that HEIs "is conducted for common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition" (1940 Statement of Principles on Academic Freedom and Tenure). The statement also says that academic freedom is essentially fundamental for research purposes and the so-called "establishment of the truth and promotion of development." We believe that the purpose of the statement was not individually to extend the interests of the professors concerning the universities and set forth establishment the truth in the foreground, confirming that the first amendment justifies neither individual interest nor democratic governance. Moreover, it suggests that the main task of inquiring this issue is to find knowledge and truth as the predominant value of the first amendment in the "marketplace of ideas".

## Conclusion

The contribution to the development of Academic Freedom made by modern American universities is great. Among other measures, this is confirmed by the number of Nobel prizes that American professors have received. There can be no reasonable doubt that academic freedom is integral to the process of creating knowledge, on which depends the progress of society. However, equal protection by the courts and the constitutional norm remains to be the open question.

The paper aimed to offer the role of the Court to be as little as possible in this case. This is because academic freedom has never been considered as a true individual right, but to be a greater extent to encourage "common welfare". According to the Constitution, all three branches of the government should take care of the common good.

The only reason why academic freedom has such a small weight in the constitutional standpoint, as Robert Post has noted, is the knowledge that universities create is essential for democratic self-governance.

Any doctrinal rule or standard developed for the protection of academic freedom by the first amendment should be formed with a narrow structure to advance democratic competence. Until now, the main concern of this doctrine should be the prevention of the government from destroying universities as "independent units of professional knowledge". This suggests that significant barricades of the first amendment will then be raised when the government is trying to interfere with the institutional decision-making that hinders the process of transferring knowledge. However, the first amendment should be relatively less applied when it comes to the internal processes within the university and the role of the court should not be outlined in the matters related to the faculty.

As for the real threats of academic freedom that was caused in the McCarthy Era, the AAUP managed to pressure the courts to recognize academic freedom as a legal norm for a distant purpose that

the judges and not the professors protect and apply norms for academic life. Nowadays, legal protection of academic freedom should be the mission of not only the AAUP but of the whole education system and strict policy should be developed for apparent violations of academic freedom.

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# The Equity and Inclusion in Higher Education: A Proposed Model for Open Data

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**ABSTRACT:** Recently, governmental institutions and private industries in power have been pushed to be more transparent so that more people can have ownership of their data. Another type of institution with a large amount of power over data are educational institutions. Colleges and Universities around the globe store a significant amount of data on millions of students, such as financial aid, grades, dropout or graduation, successes after graduation. Each institution is rated with respect to these items and more, and potential students are making decisions to go to the school based on these ratings. Therefore, it is imperative for students, who invest their time and their money into the school of their choice, to know the truth. In 2017, the College Transparency Act and the Student Right to Know Before You Go Act were passed, which were created to push transparency for data in higher education. The openness of data in higher education will be beneficial to prospective students. The push for these two bills coincided with the bitcoin bubble. In the past three years, experts in economics, medicine, and supply chain management have been researching methods on how to implement blockchains to create optimal and decentralized data systems. In this paper, we propose a model for open data in higher education inspired by the Bitcoin, which uses blockchain. When used together with InterPlanetary File System, a peer-to-peer distributed file system, we can create a decentralized platform that increases accessibility of data and autonomy of prospective students.

**KEYWORDS:** open data, higher education, blockchain, IPFS, transparency

## Introduction

In today's society, data is currency. Many stepped into the market by collecting data, e.g. Google, Facebook, National Security Agency. Others, still, monetized *controlling* the access and use of the data, e.g. Facebook, government spending budgets. Open data is defined by the Open Data Institute as data that anyone can access, use, or share (Open Data Institute 2017). Across the globe, nonprofit organizations are pushing for empowering citizens with data. For example, the Open Data Charter was founded in 2015, and it is a collaboration of more than 70 governments, experts, and organizations whose sole goal is to make governmental data more available and accessible to citizens of the world. The Open Data Charter proposed six principles, and they are meant "for improved governance and citizen engagement" and "for inclusive development and innovation" (Open Data Charter 2015). While governments and private for-profit companies certainly play a role in the monitoring and controlling of data publication, education institutions make huge profits from their management of student data.

Transparency and accountability is imperative in higher education. Prospective students need accurate information with respect to financial aid, program success statistics, job- obtained-after-graduation data, demographic statistics, and other forms of cost such as living and food. Educational researchers, accreditation teams, and governments investing financial aid need granulated data on student success so that inclusivity of marginalized<sup>3</sup> groups can be improved (Koch 2018). However, transparency does not mean simply listing summarized data online. In fact, every college or university that receives federal aid from the United States is legally required to submit raw data regarding their demographics and financial aid reports annually (Schneider 2017). This information is available to the public, as it is on the The Integrated Postsecondary Education Data System (IPEDS) website. However, navigating through the website itself is a hassle, and large chunks of data must be downloaded in order to attain the raw data for each institution. We need for these institutions to publish simplified aggregate data in order to fully understand how much change has been made.

In Section 1 of this paper, we expand on why transparency and accessibility is required of higher education institutions. In Section 2, we discuss the major issue of privacy of student data with respect to making data more granular. In Section 3, we explain the current blockchain technology so that in section 4 we can propose our solution to the issue of privacy as a stumbling block to complete transparency of higher education data. Finally, in section 5 we conclude our paper and state paths for future work.

### **Section 1. Transparency in Higher Education**

In 2019, there is still a lack of representation of various people in higher education institutions. Organizational change is slow and it only happens effectively when all members involved in and affected by the change see the value in implementation of the change (Berg and Hanson 2018). Although there have been efforts to inspire this change, such as Affirmative Action which first appeared in the Supreme Court in the 1978 case *Regents of California v. Bakke* and scholarships for underrepresented people in higher education (West 1998), one reason for such little change in the last several decades is the still present sexism, racism, classism, and homophobia among the student body as well as the admissions process.

Another huge reason is the lack of access to data that tracks minority students, providing educational researchers the ability to determine weaknesses in a program and allowing curricular developers the chance to improve courses. In 2017, the STEM Research and Education Effectiveness and Transparency Act was passed. The purpose of the bill is to promote inclusion of marginalized groups, specifically women, in participation of research in STEM. Section 2 Article 2 of the bill emphasizes the need to continually collect “information on student outcomes using all available data, including dropout rates, enrollment in graduate programs, internships or apprenticeships, and employment” so the development of marginalized groups in STEM can be tracked (US House 2017). We often read that universities are becoming more inclusive on the news, e.g. (Association of American Colleges & Universities 2015), (Esters), and (Smith 2018). However, many people either do not have access, or have little access to, the actual data informing the demographics at universities. Moreover, the data available may not break demographics down into specific fields and undergraduate v. graduate programs. Universities such as Harvard and Cambridge publish annual reports on their demographics. Even after these universities publish annual reports, it is still inconvenient for readers to open each annual report to compare the progress between these higher education institutions.

Given the continued existence of institutional marginalization, there is a great need to create and implement new policies and solutions. We need to implement a more optimal allocation of resources that can provide real impact to young lives. Understanding the issues within the higher education system, and how these issues affect students, could be done in a systematic matter if all the information was collected on one network in an accessible manner.

### **Section 2. Transparency v. Privacy: Efforts to Protect Student Data**

Despite our need to publish accurate and granular data, we still need to protect the identities of the students represented in the data (ensure anonymity). While there is concern for the misuse of existing data in higher education, it does not mean that is a reason to abandon the idea of sharing. Rather, it means that we need to build systems and establish unambiguous policies in place to protect the data. In 2017, the College Transparency Act was introduced; the bill requires that the National Center for Education Statistics create a data system that analyzes financial costs and student enrollment patterns, customizes information for users accessing the data system, and have the ability to link with other federal data systems (US Senate 2017).

In addition to the College Transparency Act, in November 2017, the Student Right to Know Before You Go Act was introduced by Senators Marco Rubio, Mark Warner, and Ron Wyden (US House 2017). The purpose of this bill is to publish granular and uncomplicated data on higher education institutions in order for prospective students to create informed decisions when applying to colleges and universities, while maintaining privacy standards. The bill requires the data

platform use encryption technology that “includes the use of secure multi-party computation, which generates statistical data based on information provided by colleges and universities as well as loan and income information from government agencies like the IRS” in order to keep published information anonymous (Ortega 2017).

The push for more open data in higher education has not only come from congress. Private organizations such as Data Quality Campaign have been advocating the need to make student data more accessible since 2005. In 2014, the Data Quality Campaign and the Consortium for School Networking established the “Student Data Principles.” There are 10 principles that promote the openness of data in higher education and the use of data to create inclusion in the academic world.

The technological platforms being used for higher education data need to be advanced enough to meet the needs in the future. As seen with IPEDs, handling student data can be complex since different governmental organizations and schools have unique ways of collecting their data. Given that the data could also be misused, those holding the complete and raw data are responsible to ensure that identities remain anonymous. We need to establish a coherent system in which information can spread across the network and each party has the ability to access the appropriate information while being able to update the network systematically with complete information. Handling a large amount of information often leads to complications with storage. In the past, establishing such a network was a more difficult task. In the present, however, decentralized and transparent data systems have been created and implemented. One such data system we next discuss is blockchain technology.

### Section 3. The Model

#### Section 3.1. Blockchain

Blockchain was originally designed to store Bitcoin transactions (Zheng 2017). At the basic level, it is a list of blocks that contains certain information. Figure 1 illustrates a simple blockchain model.

1. Index: the index of the block
2. Timestamp: the time when the particular block was created
3. BPM: pulse rate, an example of the kind of data that can be stored in a block
4. Hash<sup>1</sup>: a unique hash of the block, which is calculated based on all the information stored in the block
5. PrevHash: the hash of the previous block to link the blocks together

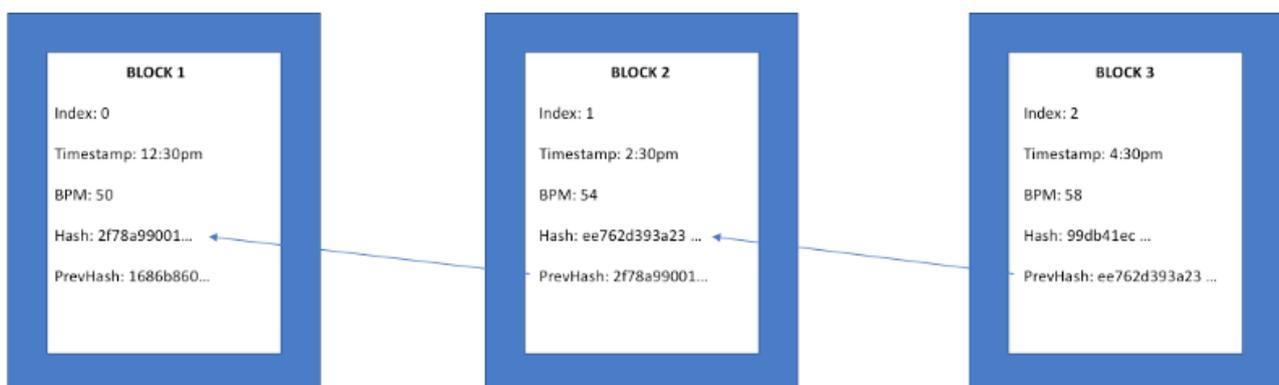


Figure 1. Simple Blockchain Model (Coral Health 2018)

<sup>1</sup> Hashes are calculated with a hash function such as SHA and RIPEMD. The function takes a input string, performs a series of operations, and output another string of fixed length, the hash. (Madeira 2019)

Blockchain has several important characteristics. First of all, blockchain is immutable, which means once a block is added to chain, it cannot be changed. If a block is tampered, its hash will be different from the PrevHash stored in the next block. Therefore, no one can secretly change the data stored on the chain. Moreover, it doesn't allow single point of authority, which means no single party in the network has complete control over the data stored on the blockchain. Before a new block is added to the chain, an algorithm checks that the block satisfies all agreed-upon features, and this also ensures that all parties on the network has the same chain (Zheng 2017). This makes blockchain a decentralized technology, and is extremely useful for increasing data transparency.

To store data with blockchain, there are two options: on-chain and off-chain. Since blockchain was originally designed to store bitcoin transactions, its protocols or big transaction fees limits that only a small amount of data can be stored on-chain, usually in range of kilobytes or less with one kilobytes equals to approximately 500 words (Marx 2018). Therefore, a reasonable solution is storing the hash of the data on-chain, while storing the actual files and the corresponding block hashes (TX-ID) off-chain as shown in Figure 2.

There are two common options for storing data off-chain. The first one is traditional database or cloud storage. However, there are several problems with this first option. Once the files are uploaded to cloud or inserted into database, they are once again controlled by one central point of authority, such as Google, Microsoft, Oracle and so on. Not only transparency could be lost, but also if the company decided to close down the storage service, data itself could be lost as well (Marx 2018). This leads to the second option - decentralized storage. In decentralized storage, data is distributed across many nodes on the network, and files are broken apart and stored on various nodes. So no single node has the entire file and breakdown with one node will not affect the others, so files are at a much lower chance of being lost permanently (Marx 2018). One such project is the InterPlanetary File System (IPFS).

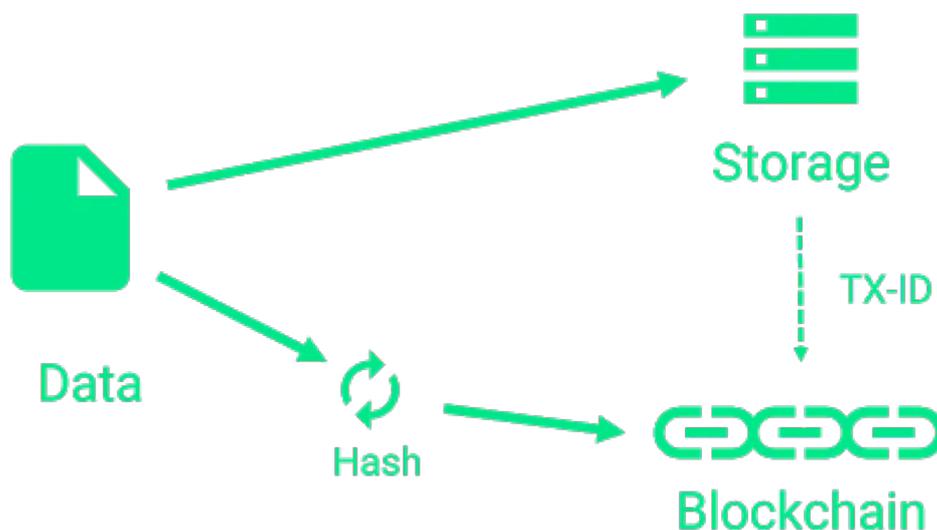


Figure 2. Storing data with Blockchain (Marx 2018)

### **Section 3.2 IPFS**

Just like the Hyper Text Transfer Protocol (HTTP) which the internet is based on today, IPFS is an internet protocol. However, unlike the location addressed HTTP where users get information from central servers according to the IP address, IPFS uses content addressing and a peer-to-peer (P2P) network in which users can share files directly with others in the network (Curran 2018). This is illustrated in Figure 3.

This gives IPFS several advantages. Since HTTP is location based addressing, if the server is down or the webpages are deleted, the files are not available anymore and useful information could be lost

(FortKnoxster 2017). Also HTTP is centralized, so access to data can be slow depending on where the server is, or even restricted, such as Google, Youtube, Facebook and so on are all blocked by the government of China (Carson 2015).

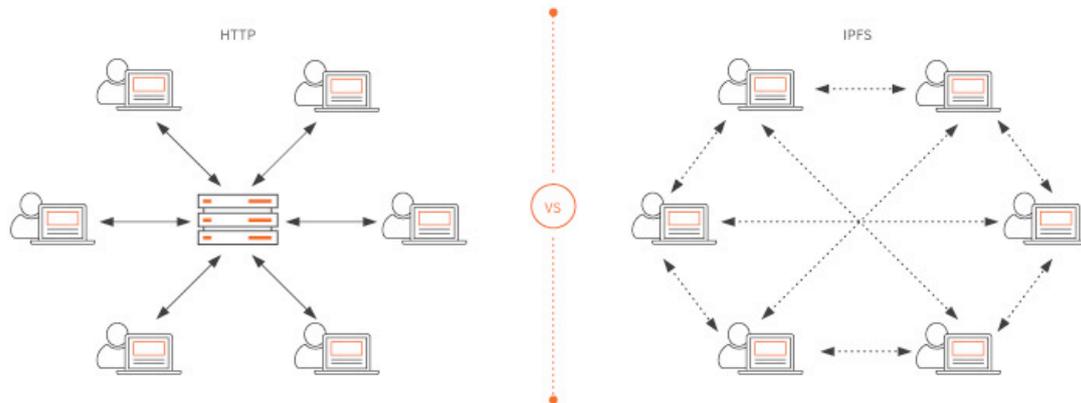


Figure 3. HTTP vs. IPFS (Curran 2018)

On the other hand, IPFS is content based addressing, meaning that the link of each file is composed of its unique hash, and every node in the network can choose to keep the files it is interested in. Each file is broken into multiple IPFS objects and linked together by an empty object as illustrated in Figure 4 (Fanzil 2019).

This makes sharing and downloading files much faster, since users not only can get data from the closest node which has a copy of it, but also can download parts of a file from different nodes at the same time instead of downloading the entire file from a single server (Curran 2018). Moreover, since IPFS is decentralized, all files on the network is publicly visible and cannot be blocked. Thus, transparency is preserved. A real life example happened in Turkey, 2017. Turkish authorities blocked access to Wikipedia throughout Turkey, but activists created a copy of Wikipedia on IPFS and made it available again (Dale 2017).

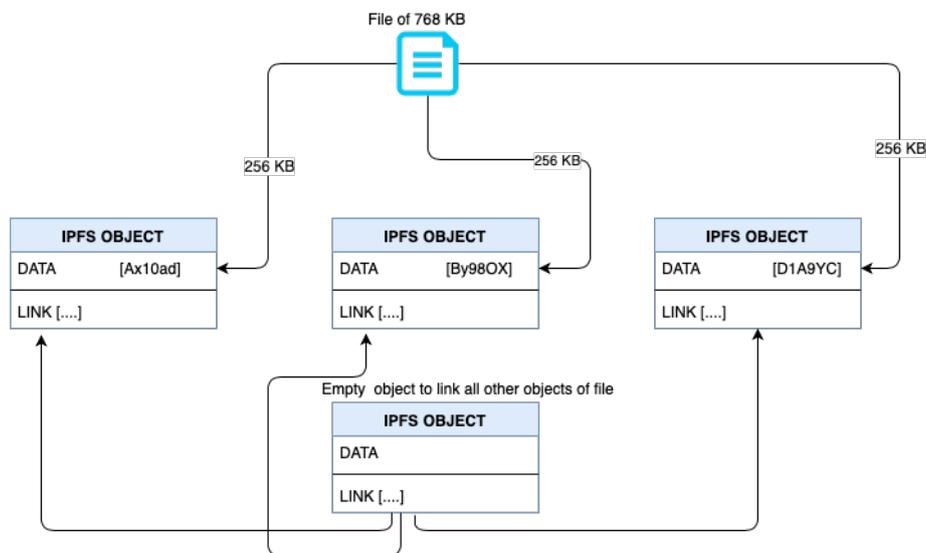


Figure 4. IPFS model (Fazil 2019)

**Section 4. Discussion of the Model and Open Data**

Our proposed model is to use blockchain together with IPFS to create a completely decentralized application that holds important college data. The issue with publishing data while worrying that

private information can get in the wrong hands can be absolved using the model we proposed. All the files will be stored on IPFS, and the immutable, permanent IPFS links will be placed into blockchain as shown in Figure 5 (FortKnoxster 2017).

Since IPFS tracks version history, using blockchains and IPFS can ensure that annual data will be preserved permanently on the network. In addition, every modification to the data will be visible to the public. Since the consensus algorithm will check the information to be added on the chain, sensitive information is highly unlikely to be published or accessed by parties outside of the network. Therefore, IPFS makes a good candidate for our purpose -- increase transparency of college data.

This model can benefit three parties involved in higher education: the students, universities/colleges, and the government.



Figure 5. Use of IPFS with Blockchain (Coral Health 2018)

Prospective students can see previous versions of the college annual data and discover differences, improvements or setbacks on the network. Thus, having access to more holistic information, these students can make well informed decisions about their future. Universities and the government will have access to organized and clearly presented data. This will make it easier for them to analyze trends, discover issues, and fix problems within higher education. Moreover, governments can determine which universities and colleges will be a positive investment for placing their government aid. An effective data system will lead to effective decision making, for all parties involved.

## Section 5. Conclusion

Federal organizations, in general, need to promote the existence and importance of the availability of data. There is no use in making data more accessible to the public without active citizen engagement, because only involvement can push for development. An ideal future next step is to implement this data network through a decentralized application built with blockchain and IPFS. When building this application, we can learn from research or existing implementations of blockchains or IPFS in different fields. Since the use of this decentralized data system is flexible, we strongly encourage governments to store other federal data on the network, which would increase comparability of data and minimize the time in finding problems.

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# The Legal Status Regarding the Romanian Tax Executor

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**ABSTRACT:** This article focuses on the legal provisions governing the institution of the Romanian tax executor and aims to identify its legal status, by presenting its role and tasks in the tax execution procedure, and at the same time presents comparative aspects between the tax executor and the court executor. So, the forced execution of fiscal obligations is a way of extinguishing them. Furthermore, according to the special provisions existing in the field of taxation, when the taxpayers have not fulfilled their fiscal obligations at the date when they became due, the right of the state to pass to forced execution of the fiscal obligations is born on this date. And due to the enforceability of the title of the tax claim, the forced execution procedure carried out by the tax authorities is not preceded by another judicial procedure. Moreover, the tax authorities fulfill the forced execution procedure through tax executors, thus, the importance of its legal status is more than relevant compared to the "common law" executor in the Romanian legal system, which is the court executor.

**KEYWORDS:** court executor, enforceable title, forced execution, tax executor, taxpayer

## Introduction

In Romania, in matters of forced execution, we encounter both common law provisions governing forced execution in the civil proceedings, regulated by the New Civil Procedure Code, republished (The new Code of Civil Procedure was adopted by Law no 134/2010 on the Code of Civil Procedure, published in the Official Gazette of Romania no 485/15.07.2010 and republished in the Official Gazette of Romania no 247/10.04.2015, regarding the evolution of this normative act), with subsequent modifications and completions, as well as special regulations, which concern this phase in other fields than the civil process (see, broadly Oprina 2007, 20; Zilberstein and Ciobanu 2001, 29-32, 72; Deleanu 2005, 426, 430-434; Leş 2005, 830; Oprina and Gârbuleţ 2013, 13 et seq), in particular, the special provisions of the Fiscal Procedure Code adopted by Law no 207/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented, which is the base of the forced execution which aims at the recovery of fiscal obligations.

*The special character of the Law no 207/2015* is conferred by the provisions of article 3 paragraph (2) of Code of Fiscal Procedure which stipulates that "where the present Code does not have the provisions, the provisions of the Civil Code and the Civil Procedure Code, republished, shall apply, in so far as they may be applicable to relations between public authorities and taxpayers". Therefore, the legal rules laid down in the Fiscal Procedure Code are derogations from the common law, represented by the New Civil Procedure Code, the principle *specialia generalibus derogant* being applicable.

And, furthermore, the provisions of paragraph (1) article 3 Code of Fiscal Procedure stipulates that the Code of Fiscal Procedure is the common law procedure for the administration of fiscal burdens due to the general budget. At the same time, the provisions of article 623 of the Civil Procedure Code enshrines the special legal regime of the provisions of the Code of Fiscal Procedure.

So, the forced execution of fiscal obligations is a way of extinguishing them. Furthermore, according to the special provisions existing in the field of taxation, when the taxpayers have not fulfilled their fiscal obligations at the date when they became due, the right of the state to pass to forced execution of the fiscal obligations is born on this date. And due to the enforceability of the title of the tax claim, the forced execution procedure carried out by the tax authorities is not preceded by another judicial procedure (Şaguna and Şova 2006, 59).

Thus, according to article 220 par. (1) Fiscal Procedure Code if the debtor does not voluntarily pay the tax obligations due, the competent fiscal body, for the extinction thereof, shall proceed to enforcement actions, according to the provisions of the Fiscal Procedure Code, unless

there is a request for restitution / reimbursement in process of settlement, and the amount of the requested obligation is equal to or greater than the tax debt owed by the taxpayer. And, article 226 par. (1) – (2) Fiscal Procedure Code provides that forced execution of fiscal obligations shall be performed on the basis of an enforceable title issued according to the provisions of this Code by the competent enforcement body or by a writ which, according to the law, constitutes an enforceable title.

Enforced execution can only be carried out with the concurrence of the executing body (this is an authority invested by the state with the power to impose on the wanted debtor or on third persons, who own the goods, the obligation to execute the provisions contained in the enforceable title, in this respect, Oprina 2007, 50), the executing body being an indispensable participant in forced execution (Ciobanu and Boroi 2003, 448 *apud* Oprina 2007, 50). However, in the field of forced execution, in addition to the court *executor*, which is the executing body with full competence (Oprina 2007, 71, furthermore, the principle of the full competence of *court executors* is provided by the provisions of article 1 of the Law no 188/2000 regarding the *court executors*, republished, in the Official Gazette of Romania no 738 / 20.10.2011), we will also meet another executing body, namely the tax executor, operating under a special normative act, namely, Law no 207/2015 on the Fiscal Procedure Code.

According to article 220 par. (2) of the Fiscal Procedure Code, the fiscal body that manages the fiscal obligations is empowered to carry out the precautionary measures and carry out the forced execution procedure. And par. (3) stipulates that “the budgetary receivables which, according to the law, are administered by the public authorities or institutions, including those of own incomes, can be executed by tax executors organized in specialized departments, being empowered to carry out the precautionary measures and carry out the forced execution procedure, according to the provisions of this Code”.

The organs presented in these two paragraphs are collectively referred to as “forced execution organs”, according to par. (4) Article 220. Furthermore, these enforcement bodies are also competent to execute budget claims resulting from contractual legal relationships (in this respect, par. (5) Article 220 corroborated with the provisions of the par. (3) Article 226 Fiscal Procedure Code, where the enforceable title may be a court order or other document).

Thus, from the economics of fiscal texts, *the persons within the enforcement bodies able to carry out the precautionary measures* (regarding the legal status of the precautionary measures, see the provisions of articles 213-214 Fiscal Procedure Code, subsequently corroborated by the provisions governing enforcement acts and their relationship with the precautionary measures. As well as the Order of the President of the National Agency for Fiscal Administration (O.P.N.A.F.A.) no 2.546 /2016 for approval of the Procedure for the application of the precautionary measures by the competent tax authorities and for the approval of the models, the use and the keeping of some forms, published in the Official Gazette of Romania no 703 of September 9, 2016) *and carry out the forced execution procedure are called tax executors who perform a function involving the exercise of the state authority during the exercise of their duties.*

## 1. The legal statute of tax executors

### 1.1. The legal definition

The fiscal provisions expressly regulate the institution of the “*tax executor*”, which is the person expressly empowered by special law to carry out the forced execution procedure of the fiscal obligations as a way of capitalizing on the receivables due to the general budget.

Thus, according to point 22 article 1 Fiscal Procedure Code, *the tax executor is the person within the executing body responsible for enforcing the enforcement.* And, first thesis of paragraph (1) article 223 establishes that forced execution is done by the competent enforcement body *through tax executors.*

According to the implementing rules (See O.P.N.A.F.A. no 1.099/2016 on the cards issued to the tax executors who carry out the precautionary measures and carry out the forced execution procedure in accordance with the provisions of Law no 207/2015 on the Fiscal Procedure Code,

published in the Official Gazette of Romania no 239/03.31.2016) in the matter, *the tax executors are persons employed within the enforcement body*, within the structures authorized to carry out the precautionary measures and execute the forced execution procedure, designated by their manager to carry out the precautionary measures and carry out the forced execution procedure.

Under article 223 par. (1) Second thesis Fiscal Procedure Code corroborated with Order of the President of the National Agency for Fiscal Administration (O.P.N.A.T.A.) no 1.099/2016, *the quality of the tax executor is attested by the service card*, namely - *the fiscal executor's card* - which the tax executor must present in the performance of his activity.

Corroborating the provisions that legally define the tax executor with the provisions of article 341 Fiscal Procedure Code, as well as with the provisions of article 2 and article 6 of the Law no 188/1999 on the Civil Servants' Statute, republished (published in the Official Gazette of Romania no 365/05.29.2007), *we find that the tax executors are civil servants* whose legal regime is regulated by Law no 188/1999.

Thus, according to par. (1) article 341 Fiscal Procedure Code, *in the exercise of their duties, civil servants* (regarding the concept of civil servant and public office, see Buzatu 2011, 1822; Buzatu 2012, 13; Păiușescu and Buzatu 2011, 96; Popescu 2012, 209; Tomescu 2015, 190; Tomescu 2016, 103; Vedinaș 2009, 465) *within the fiscal bodies are invested with the exercise of the public authority and are protected by the law*.

The civil servant is the legal person invested by appointment in a public position within the structure of an administrative public service, in order to fulfill its competence (Vedinaș 2009, 469).

In conclusion, we appreciate that *the tax executor is the holder of a specific public function, subject to the general statute, being a public execution officer, invested with the exercise of the state authority*.

## **1.2. The tax executor versus the court executor**

### **1.2.1. Rule**

The status of tax executors, who are civil servants operating within state bodies, is quite different from that of court *executors* (Oprina and Gârbuleț 2013, 1011).

This different legal status of the two categories of executors is based on the legal relations governing the two branches of law. Thus, the civil legal relationship is that social, patrimonial or non-patrimonial relationship governed by the civil law rule (Beleiu 1999, 76 apud Oprina and Gârbuleț 2013, 1012), while the tax legal relationship is that tax relationship that arises in the process of allocating part of the national income and redistributing some taxpayer's income, for the purpose of setting up state funds (Șaguna and Șova 2006, 3-4 apud Oprina and Gârbuleț 2013, 1012). Also, the difference in the legal status of the two categories of executors is also based on the difference in subjects in the two legal relationships. In the civil legal report, its subjects are natural persons and legal entities, which can be determined on the basis of civil relations that contain an absolute right or a relative right, while in the tax law report, the active subject is the state, represented centrally by the Ministry of Public Finance and the National Agency for Fiscal Administration (N.A.F.A.) and at local level the administrative-territorial units subordinated to N.A.F.A. and the passive subject is the taxpayer, as a rule, the natural or legal person (Oprina and Gârbuleț 2013, 1012).

Thus, as it was also noted in judicial practice (see, largely, civil decision no 188/2012 of the Argeș Tribunal, which we find also in the Romanian Magazine of forced execution no 1/2012), the execution of a fiscal obligation by the common law court executor is unlawful because “forced execution of the fiscal obligations is done by enforcement bodies organized at the level of county or local tax authorities through the tax executors, the procedural rules mentioned above having a public order character, in relation to the purpose pursued by the provisions of Fiscal Procedure Code, respectively good administration of state and/ or local budget debts. Fiscal forced execution is governed by special rules, not only in terms of competence but also of the procedural steps required, and observing in this respect that there are a number of rules that facilitate the enforcement of fiscal obligations. It is the case of the beginning of enforced enforcement, which, in

respect of the tax claims, does not require the intervention of the courts, and it is not necessary to approve the forced execution imposed by the norms of common law - art. 373<sup>1</sup> Civil Procedure Code”.

Moreover, according to article 623 Civil Procedure Code and art. 1 Law no 188/2000, “enforcement of any enforceable title, except those relating to revenues due to the general budget or the budget of the European Union and the budget of the European Atomic Energy Community, shall be performed only by the court *executor*, even if by special laws it is otherwise ordered”.

Consequently, *the rule in this matter is that the forced execution is done by the competent enforcement body through tax executors, so the execution of a tax claim by the common law court executor is unlawful.*

### 1.2.2. Exception

However, in the case of a *forced execution competition*, the new tax provisions expressly regulate exceptional situations when the tax executor will not perform the forced execution procedure, *but the court executor.*

Thus, the new fiscal texts, in par. (13) to (15) article 220 Fiscal Procedure Code (13), provide the following:

“(13) If the execution has been started on the same income or assets of the debtor, both for the execution of the enforcement titles regarding the tax receivables, as well as for the securities executed under the conditions laid down by other legal provisions, forced execution is connected and is carried out, according to the provisions of this Code, by the enforcement body provided by it. In this case the competence belongs to the fiscal body holding the higher tax receivable. In the event of a conflict between the forced execution tax authorities having as object the connection of the execution, the provisions of articles 41-43 (the provisions of articles 41-43 Fiscal Procedure Code regulates the conflict of jurisdiction between tax authorities).

(14) The provisions of paragraph (13) shall not apply in the following situations:

(a) if the value of the debtor's assets covers only the claims of other creditors holding collateral with a priority status over the tax (fiscal) creditor;

(b) if the forced execution initiated by the court executor is at an advanced stage and the recovery of the assets subject to forced execution ensures full recovery of the tax receivables (fiscal obligations).

(15) Where enforcement of a forced execution by a court executor and a fiscal executing body has been commenced on the same assets of the debtor at the request of the person concerned or of any of the executors, the competent court shall order the connection of the forced execution under the terms of this Article. The provisions of art. 654 par. (2) to (4) of the Code of Civil Procedure, republished, shall apply accordingly”.

We observe that the provisions of the Fiscal Procedure Code are complemented by the rules of common law laid down in the Civil Procedure Code, republished. Thus, in the light of the provisions of art. 654 Code of Civil Procedure par. (2) to (4) in conjunction with par. (13) to (15) article 220 Fiscal Procedure Code, if the court orders the connection of the execution, the court, through the closing, shall also rule on the execution costs incurred until the time of the connection. At the same time, the court will order the sending of the joined files to the designated executor according to the law, which may also be the court executor, to the detriment of the tax executor, *if two conditions are met cumulatively:*

1) *Forced execution by the court executor is in a more advanced stage*

2) *The recovery of assets subject to forced execution ensures full recovery of fiscal obligations.*

Once joined, the execution procedure will continue from the most advanced tracking act. And the discontinuation of any of the pursuing creditors after the connection will not be able to prevent the continuation of execution from the most enforceable act (in this regard, par. (3) to (4) article 654 Code of Civil Procedure).

## 2. The duties of the tax executor

### 2.1. The legal basis for fulfilling the duties of a tax executor

According to article 223 par. (2) Fiscal Procedure Code, *the tax executor is empowered before the debtor and third parties by the fiscal executor's card service (see article 5 O.P.N.A.F.A. no 1.099/2016) and the delegation issued by the enforcement body.*

The **service card** attests to the power of the tax executor in front of the debtor or of the third parties, which implies the exercise of the state authority, granted to him to carry out his duties according to the law (paragraph (1) article 3 O.P.N.A.F.A. no 1.099 /2016), a card that the tax executor must present in the exercise of his activity (second thesis of paragraph (1) article 223 Fiscal Procedure Code).

Thus, *the tax executor is empowered to carry out the precautionary measures and carry out the forced execution procedure.*

*The service card is valid only with the delegation issued by the enforcement body, the structure authorized to carry out the precautionary measures and execution of the forced execution procedure in special cases (see paragraph (2) article 3 O.P.N.A.F.A. no 1.099 /2016).*

### 2.2. Powers of the fiscal executor

According to article 223 par. (3) Fiscal Procedure Code corroborated with article 4 par. (1) O.P.N.A.F.A. no 1.099/ 2016, in the performance of its duties, on the basis of the service card and the delegation, the tax executor may:

a) Enter any business premises of the debtor, a legal person, or in other premises where he keeps his property for the purpose of identifying the assets or valuables that can be executed as forced, and to analyze the debtor's records for the purpose of identifying third parties owe or hold in custody income or property of the debtor;

b) To enter all the premises in which the debtor is in possession of the goods or values, the natural person, as well as to search all the places where he keeps his possessions;

c) To request and inspect any material or document that may constitute evidence in determining the debtor's property;

d) Apply the seals on the goods, drawing up a report in this respect;

e) To find contraventions and to apply sanctions according to the law.

Under par. (4) Article 223 Fiscal Procedure Code in conjunction with par. (2) O.P.N.A.F.A. no 1.099/2016, the tax executor may enter the premises which represent the residence or the residence of a natural person with his consent, and in case of refusal, the enforcement body requests the authorization of the competent court according to the provisions of the Civil Procedure Code, republished.

Access of the tax executor to the dwelling, business premises or any other room of the debtor, a natural or legal person, may take place between 06.00-20.00 on any working day. Execution can begin on the same day or the next day. In cases duly justified by the danger of the alienation of goods, access to the debtor's premises may take place at other times than those mentioned, as well as on non-working days, on the basis of the competent court authorization.

According to par. (3) to (4) article 651 Civil Procedure Code, the enforcement authority (under first thesis of par. (1) article 651 Civil Procedure Code, at the date of notification of the executing body, the court of enforcement shall be the court in whose jurisdiction it is located the domicile or the debtor's office, unless the law otherwise provides) shall settle applications for the enforcement of enforced execution, appeals against execution, as well as any other incidents occurring during enforced execution, except those provided by law in the jurisdiction of other courts or authorities. In all cases, the enforcement instance shall be pronounced by a writ of execution, which may be appealed only on appeal, within 10 days of communication, unless otherwise provided by law.

In the absence of the debtor, or if he refuses access to any of the premises, the tax executor may enter them in the presence of a police or gendarmerie representative or other public servant and

two major witnesses (see par. (6) Article 223 Fiscal Procedure Code corroborated with par. (4) Article 4 O.P.N.A.F.A. no 1.099/ 2016).

### **2.3.Liability of the tax executor**

Starting from the legal provisions (article 341 Fiscal Procedure Code corroborated with the provisions of Law no 188/1999 and the provisions of article IX of Government Emergency Ordinance no 46/2009 regarding the improvement of fiscal procedures and the reduction of tax evasion, approved with amendments and completions by Law no 324/2009, published in Official Gazette of Romania no No 347 from May 25, 2009), we find, *as a rule, that the breach by the civil servants of the duty of service entails the patrimonial, disciplinary or contravention liability, as the case may be, and only by way of exception, the civil or criminal liability.*

Thus, according to article 341 par. (2) Fiscal Procedure Code, the state and the administrative-territorial units are liable for the damages caused to the taxpayer by the civil servants within the fiscal bodies, in the exercise of their duties.

Article 76 of Law no 188/1999 provides that any person who considers himself or herself to be harmed by his or her right or legitimate interest may apply to the court, under the law, against the public authority or institution which issued the document or who refused to resolve the request concerning a subjective right or a legitimate interest. If the action is admitted and the guilt of the civil servant is established, the person concerned shall be obliged to pay the damages, jointly with the public authority or institution. However, the civil servant's legal liability cannot be enforced if he has complied with the legal provisions and administrative procedures applicable to the public authority or institution in which he operates.

Corroborating first thesis of par. (3) article 341 Fiscal Procedure Code with article 77 Law no 188/1999, we find that the violation by public officials - fiscal executors - of the duties corresponding to their public office and of the professional and civic norms stipulated by the law constitute a disciplinary offense and attract their disciplinary liability.

At the same time, according to article 83 par. (1) Law no 188/1999, civil servants shall be liable for contravention if they have committed a contravention during and in connection with the service duties (according to par. (2) Article 83 Law no 188/1999).

In light of the provisions of second thesis of par.(3) article 341 Fiscal Procedure Code, during the period of their activity, the persons who occupy or have held public dignity, senior civil servants, civil servants and contract staff of the Ministry of Public Finance and of the National Agency for Fiscal Administration, both at central and at level territorial jurisdiction shall not be liable for civil or criminal liability, as the case may be, only if the courts find the fulfillment or omission of their guilty, gross negligence or serious negligence, of any act or fact related to the exercise, under the law, of their attributions (see article IX par.(1) of Government Emergency Ordinance no 46/2009).

### **Conclusions**

According to the special provisions existing in the field of taxation, the forced execution of fiscal obligations is carried out, as a rule, by fiscal executors, and the procedure is not preceded by another judicial procedure. Furthermore, only in special cases, provided by law, the court executor can fulfill the fiscal obligation forced execution procedure. The fiscal executor is a civil servant that is liable for his actions and must always present his service card with which he is empowered to carry out the forced execution procedure and, also the precautionary measures.

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# Mental Temporal Accounting

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**ABSTRACT:** This paper introduces Mental Temporal Accounting – the behavioral economics application of mental accounting in the time domain. While most discounting studies are in the finance domain, social and environmental components have not gotten as much attention as appearing to require based on the novel perspectives this research grants. Theoretically we may also derive conclusions for contact theory and point at opening monetary gains focuses to social and environmental cues that may nudge people to perceive time differently and act on it accordingly. As mental accounting was successfully introduced to be extendable onto time, traditional mental accounting theory (Thaler 1999) should be revisited for attention to time discounting in the social and environmental spheres alongside the economic attention. Elucidating how contexts and experiencing critical life stages of parenthood influence temporal activity allocation choices promises to improve manifold decisions on education, health, asset management, career paths and common goods preservation throughout life for this generation and the following.

**KEYWORDS:** discounting, economic time, environmental time, mental temporal discounting, social time, time

## Introduction<sup>3</sup>

Time tacts life. While all human face the same natural constraints of 24-hours days, behavioral economics found individuals differing in discounting preference for immediate rewards over delayed gratification (Estle, Green, Myerson & Holt 2007; Kahn 2005; Rubinstein 2006; Samuelson 1937). Regarding monetary gains, individuals were also shown to hold mental accounts dependent on a reference point but also in regards as to how to allocate money to causes individuals care about.

But what if individuals also differ in mental temporal accounts, hence regarding how to spend their time? Decision makers may have natural mental temporal accounts for how to spend 24 hours a day, 720 hours a month, 8760 hours a year or 700800 hours an average life? Could it be that individuals have implicit mental accounts for how much time to spend on their own, how much time to be allocated towards working and how much time to just enjoy life in the open environment? If so, could individuals be susceptible to external cues that nudge them into certain mental timeframes that determine their mental time allocation preferences? Could this mental accounting also depend on reference points, such as the age of the individual and critical life events, such as becoming parents?

If individuals differ in time spent on their own and social time but also vary in their choices of time spent working and time in the natural environment, we could show that the classical mental accounting theory (Thaler 1999) actually describes similar processes as mental temporal accounting how to spend time but also dependent on the reference points of age and parenthood.

## Research Question

The following empirical studies will test if the behavioral economics idea of mental accounting in the finance domain and hyperbolic discounting deviations from standard neoclassical discounting functions can be extended to realistically describe how individuals decide in regards to the scarce resource time, which is introduced as mental temporal discounting.

Research question 1 will investigate the existence of certain mental temporal accounting categories, for instance such as economic, social and environmental time accounts. If so, research question 2 will capture a discounting variance based on economic, social and environmental contexts. Research question 3 will test whether there are age-dependent mental temporal accounts and if critical life events of parenthood changes time allocations as well as propose *Hypothesis 1* that *the elder one*

*gets, the more future-oriented and pro-social choices become*, which will be introduced as the age paradox in the discussion.

## **Method**

### *Study 1: Exploratory meta-analysis of American Time Use Survey*

A qualitative exploratory meta-analysis study content-analyzed time use mentioned on the American Time Use Survey of the Bureau of Labor Statistics (<https://www.bls.gov/tus/>). The American Time Use Survey of the Bureau of Labor Statistics classifies life activities into the following categories: (1) Personal care, including sleep; (2) Eating and drinking; (3) Household activities; (4) Purchasing goods and services; (5) Caring for and helping household members; (6) Caring for and helping nonhousehold members; (7) Working and work-related activities; (8) Educational activities; (9) Organizational, civic, and religious activities; (10) Leisure and sports; (11) Telephone calls, mail, and e-mail; (12) Other activities, not elsewhere classified.

While these categories grant insights into the general time-use categories, it remains unclear whether some of the categories are considered as social, economic or environmental activities. For instance, sports can be a social category but also be performed on one's own. Also, time bracket variant information is not retrieved. For instance, it is not clear whether individuals change their time allocations when considering different time spans.

The lack of information whether the activities are done by oneself or with others demands for an empirical investigation of time use to be categorized into social, economic and environmental time. Study 2 therefore targets at retrieving information on how much time individuals estimate to spend on social, economic and environmental tasks.

### *Study 2: Quantifying time use in the domains of social, economic and environmental time*

## **Design**

Since the American Time Use Survey of the Bureau of Labor Statistics does not indicate the time categories social, economic and environmental time; an exploratory study gave quantitative indications of the time use in those specific domains. Social time is defined as time spent with other people and engaging in social interaction, communication or activities with others. Economic time is defined as time spent using one's labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. Environmental time is defined as time spent outdoors in the open environment. Overlaps may exist, for instance if spending time in the environment with others or working outside. Then respondents are advised to indicate both categories as overlapping times. So for instance, a person could indicate to spend 10% of a day for economic, 65% of a day for social and 45% of a day for environmental time, which adds up to 120% time use as for overlapping categories.

Study 2 was conducted over the Internet using the website Amazon Mechanical Turk (MTurk). MTurk is an online labor market in which employers can advertise jobs (typically taking less than 10 minutes and paying less than \$1), and employees can accept posted jobs that are attractive to them. Workers are incentivized based on their performance, which makes MTurk an attractive tool for conducting experiments and surveys (Puaschunder & Schwarz 2012). Online labor markets allow to conduct behavioral experiments in the international arena. Online labor markets use the internet to connect researchers with potential subjects drawn from an international sample (Rand 2012). The entire process of meeting subjects, the survey and experiment as well as payment of subjects by the researcher occurs over the internet and computer simulations. The experience is quite similar to performing a set of computer simulations. In literature overviews and replication studies, MTurk has been proven to provide valid and reliable results (Horton, Rand & Zeckhauser 2011; Rand, 2012; Suri & Watts 2011). With the advent of online markets, many laboratory experiment barriers, such as limited samples and location biases, have been removed. MTurk workers draw samples from all over the world, with the majority of workers being either in the United States or India (Rand 2012). The international sample character with an US and Asian sample population makes MTurk an interesting resource pool for conducting experiments on the global validity of time use decision making.

### **Sample**

In total, 110 individuals (female=32 [29.09 percent], male=77 [70 percent],  $M_{age}=31$ ,  $SD_{age}=8.55$ , Range=[18,64]) from around the world participated in the study online. After an informed consent, the online questionnaire investigated time use of men and women. Of the entire sample, 54 individuals (49.1 percent) indicated to have children and 56 (50.9 percent) reported that they do not have children. Of the sample with children, 33 respondents had one child (61.11 percent of the parents sample, 30 percent of the total sample), 17 respondents had two children (31.48 percent of the parents sample, 16 percent of the total sample), 3 subjects had 3 children (5.56 percent of the parents sample, 2.7 percent of the total sample) and only 1 survey taker had 4 children (1.85 percent of the parents sample, .9 percent of the total sample).

General time-use questions were presented to subjects on Amazon Mechanical Turk in a Qualtrics questionnaire solution. After consenting to a standard informed consent form, all subjects were asked to make an assumption how much time they spend on (1) Social time defined as time spent with other people and engaging in social interaction, communication or activities with others. (2) Economic time defined as time spent using one's labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. (3) Environmental time defined as time spent outdoors in the open environment. The specific question read: 'Please make an assumption how much time you spend for: (1) Social time defined as time spent with other people and engaging in social interaction, communication or activities with others. (2) Economic time defined as time spent using one's labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. (3) Environmental time defined as time spent outdoors in the open environment on average over a day. The scale below indicates percentages of a day.'

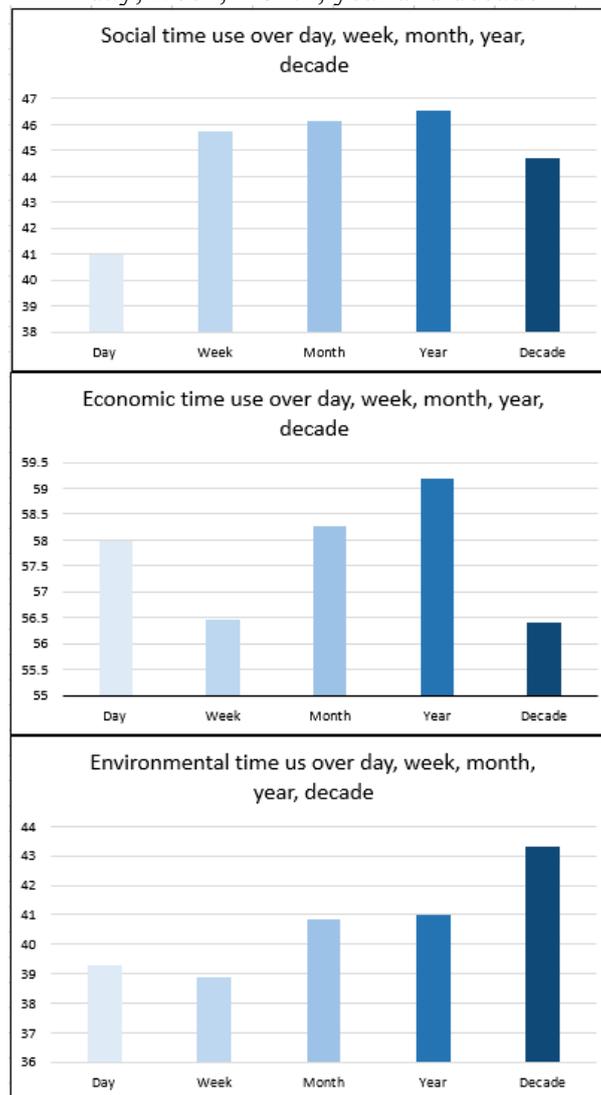
The time use categories were scrambled. All subjects had questions about all time horizons of a day, week, month, year and a decade. Time frames and time use categories' display was scrambled between subjects. Study 2 thereby quantitatively depicted the percentage of time use estimates between categories per day, week, month, year and over a decade. The influence of age-varying time use differences as well as the critical life event of parenthood were studied.

### **Results**

Over all subjects, time is reported to be used differently for social, economic and environmental time use over a day ( $t_{S(107)}=17.050$ ,  $df=106$ ,  $p<0.000$ ;  $t_{Ec(108)}=28.832$ ,  $df=107$ ,  $p<0.000$ ;  $t_{En(107)}=39.271$ ,  $df=106$ ,  $p<0.000$ ); a week ( $t_{S(106)}=19.011$ ,  $df=105$ ,  $p<0.000$ ;  $t_{Ec(106)}=29.025$ ,  $df=105$ ,  $p<0.000$ ;  $t_{En(106)}=14.019$ ,  $df=105$ ,  $p<0.000$ ); a month ( $t_{S(104)}=19.219$ ,  $df=103$ ,  $p<0.000$ ;  $t_{Ec(105)}=27.927$ ,  $df=104$ ,  $p<0.000$ ;  $t_{En(105)}=14.404$ ,  $df=104$ ,  $p<0.000$ ); a year ( $t_{S(104)}=19.752$ ,  $df=103$ ,  $p<0.000$ ;  $t_{Ec(104)}=28.339$ ,  $df=103$ ,  $p<0.000$ ;  $t_{En(104)}=14.443$ ,  $df=103$ ,  $p<0.000$ ); and a decade ( $t_{S(108)}=20.600$ ,  $df=107$ ,  $p<0.000$ ;  $t_{Ec(108)}=28.455$ ,  $df=107$ ,  $p<0.000$ ;  $t_{En(107)}=15.937$ ,  $df=106$ ,  $p<0.000$ ).

Over different time horizons, all subjects report different social, economic and environmental time use. Social time use perception differs over a day ( $t_{S(107)}=17.050$ ,  $df=106$ ,  $p<0.000$ ), week ( $t_{S(106)}=19.011$ ,  $df=105$ ,  $p<0.000$ ), month ( $t_{S(104)}=19.219$ ,  $df=103$ ,  $p<0.000$ ), year ( $t_{S(104)}=19.752$ ,  $df=103$ ,  $p<0.000$ ) and a decade ( $t_{S(108)}=20.600$ ,  $df=107$ ,  $p<0.000$ ). Economic time use perception differs over a day ( $t_{Ec(108)}=28.832$ ,  $df=107$ ,  $p<0.000$ ), week ( $t_{Ec(106)}=29.025$ ,  $df=105$ ,  $p<0.000$ ), month ( $t_{Ec(105)}=27.927$ ,  $df=104$ ,  $p<0.000$ ), year ( $t_{Ec(104)}=28.339$ ,  $df=103$ ,  $p<0.000$ ) and a decade ( $t_{Ec(108)}=28.455$ ,  $df=107$ ,  $p<0.000$ ). Environmental time use perception differs over a day ( $t_{En(107)}=12.979$ ,  $df=106$ ,  $p<0.000$ ), week ( $t_{En(106)}=14.019$ ,  $df=105$ ,  $p<0.000$ ), month ( $t_{En(105)}=14.404$ ,  $df=104$ ,  $p<0.000$ ), year ( $t_{En(104)}=14.443$ ,  $df=103$ ,  $p<0.000$ ) and a decade ( $t_{En(107)}=15.937$ ,  $df=106$ ,  $p<0.000$ ). All mean distributions for social, economic and environmental time use perception over day, week, month, year and decade are displayed in Graph 1.

Graph 1: Mean distributions for social, economic and environmental time use perception over day, week, month, year and decade



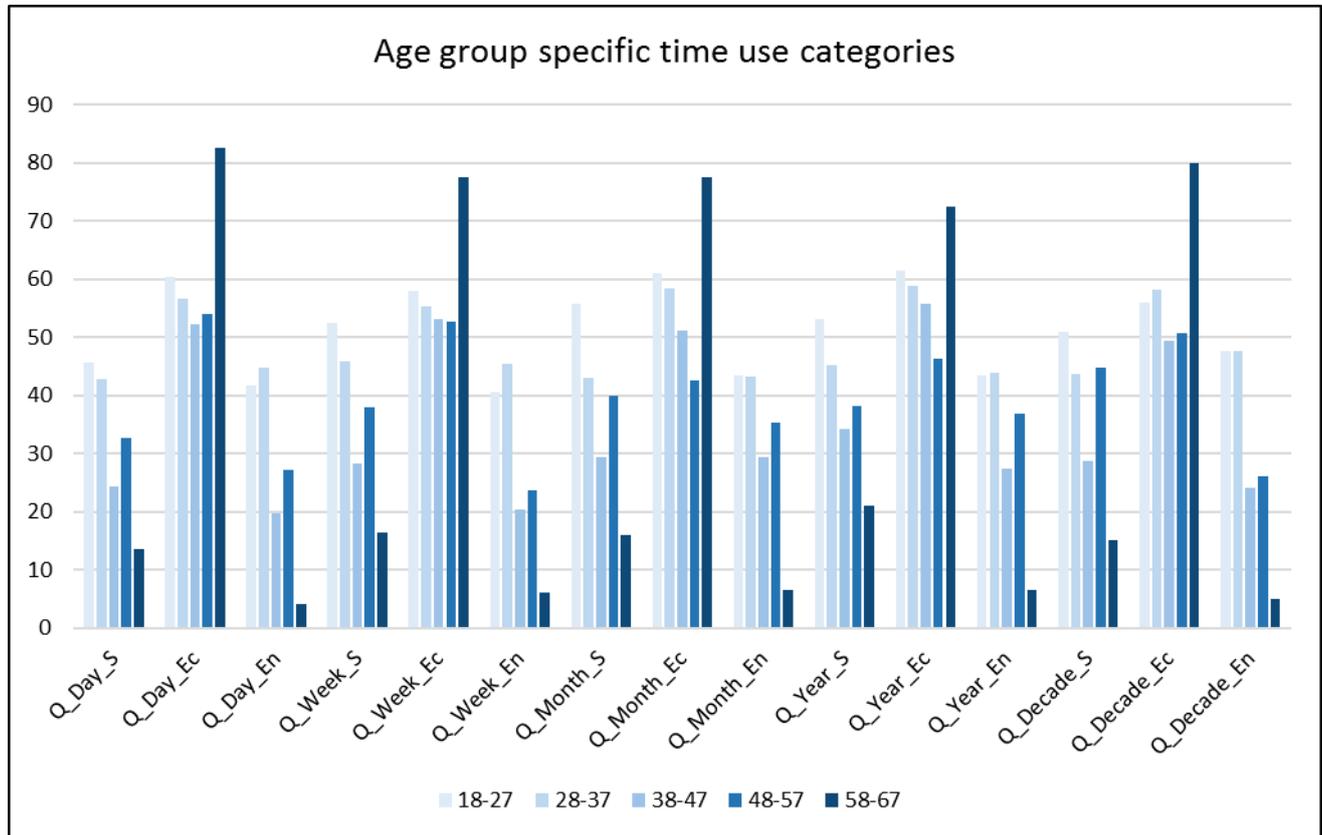
Social time use perception differs over a day ( $\text{Mean}_{(107)}=40.99$ ;  $\text{SD}=24.890$ ), week ( $\text{Mean}_{(106)}=45.76$ ;  $\text{SD}=24.784$ ), month ( $\text{Mean}_{(104)}=46.13$ ;  $\text{SD}=24.480$ ), year ( $\text{Mean}_{(104)}=46.54$ ;  $\text{SD}=24.028$ ), and decade ( $\text{Mean}_{(104)}=46.54$ ;  $\text{SD}=24.028$ ). Economic time use perception differs over a day ( $\text{Mean}_{(108)}=57.99$ ;  $\text{SD}=20.902$ ), week ( $\text{Mean}_{(106)}=56.45$ ;  $\text{SD}=20.025$ ), month ( $\text{Mean}_{(105)}=58.26$ ;  $\text{SD}=21.376$ ), year ( $\text{Mean}_{(104)}=59.18$ ;  $\text{SD}=21.297$ ), and decade ( $\text{Mean}_{(108)}=56.40$ ;  $\text{SD}=20.598$ ). Environmental time use perception differs over a day ( $\text{Mean}_{(107)}=39.27$ ;  $\text{SD}=31.298$ ), week ( $\text{Mean}_{(106)}=38.91$ ;  $\text{SD}=28.572$ ), month ( $\text{Mean}_{(105)}=40.83$ ;  $\text{SD}=29.046$ ), year ( $\text{Mean}_{(104)}=40.98$ ;  $\text{SD}=28.936$ ), and decade ( $\text{Mean}_{(107)}=43.34$ ;  $\text{SD}=28.128$ ).

While there are no gender differences to report; age groups make a difference when it comes to time allocation perceptions during a day in the social sphere [ $F(4, 102)=2.483$ ,  $p=0.048$ ] and the environmental domain [ $F(4, 102)=2.414$ ,  $p=0.054$ ]; during a week in the social sphere [ $F(4, 101)=3.142$ ,  $p=0.018$ ] and the environmental domain [ $F(4, 101)=3.065$ ,  $p=0.020$ ]; during a month in the social sphere [ $F(4, 99)=4.356$ ,  $p=0.003$ ]; during a year in the social sphere [ $F(4, 99)=2.397$ ,  $p=0.055$ ]; and during a decade in the social sphere [ $F(4, 103)=3.203$ ,  $p=0.016$ ] and the environmental domain [ $F(4, 102)=3.438$ ,  $p=0.011$ ].

Over different time horizons, the different age groups report different social and environmental time use. Social time use perception differs over a day [ $F(4, 102)=2.483$ ,  $p=0.048$ ], week [ $F(4, 101)=3.142$ ,  $p=0.018$ ], month [ $F(4, 99)=4.356$ ,  $p=0.003$ ], year [ $F(4, 99)=2.397$ ,  $p=0.055$ ] and a decade [ $F(4, 103)=3.203$ ,  $p=0.016$ ]. Environmental time use perception differs over a day [ $F(4, 102)=2.414$ ,

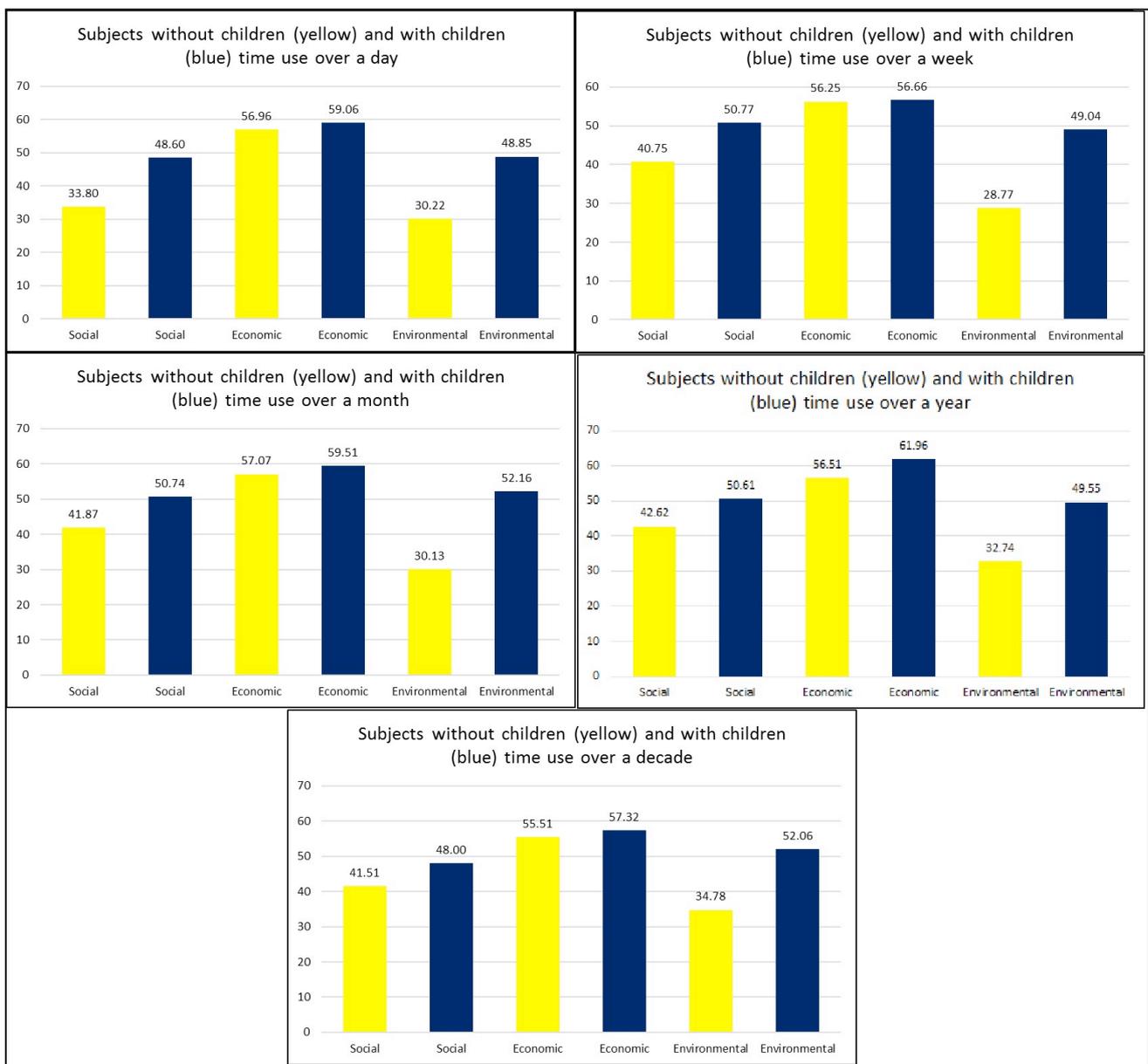
$p=0.054$ ], week [ $F(4, 101)=3.065, p=0.020$ ], and a decade [ $F(4, 102)=3.438, p=0.011$ ]. Economic time use perception does not differ over age groups. Table 1 exhibits the means of time use per social, economic and environmental category for the different age groups.

Graph 2 holds the means of time use per social, economic and environmental category for all age groups. Graph 2: Age-group dependent time use per social, economic and environmental category



Children make a difference when it comes to social ( $t_{S(106)}=-3.208, df=105, p<0.002$ ) and environmental time use during a day ( $t_{En(106)}=-3.209, df=105, p<0.002$ ); during a week in the social sphere ( $t_{S(105)}=-2.115, df=104, p<0.037$ ) and the environmental domain ( $t_{En(105)}=-3.889, df=104, p<0.000$ ); during a month in the environmental sphere ( $t_{En(104)}=-4.180, df=103, p<0.000$ ); during a year in the environmental sphere ( $t_{En(103)}=-3.082, df=102, p<0.003$ ); and during a decade in the environmental domain ( $t_{En(106)}=-3.324, df=105, p<0.001$ ). Graph 3 holds the means of time use per social, economic and environmental category for the group of individuals with children and without children.

Graph 3: Groups of parents or not-parents’ time use per social, economic and environmental category



Over different time horizons and different parent or non-parent groups, social time use perception differs over a day ( $t_{S(106)}=-3.208$ ,  $df=105$ ,  $p<0.002$ ) and a week ( $t_{S(105)}=-2.2115$ ,  $df=104$ ,  $p<0.037$ ). Environmental time use perception differs over a day ( $t_{En(106)}=-3.209$ ,  $df=105$ ,  $p<0.002$ ), week ( $t_{En(105)}=-3.889$ ,  $df=104$ ,  $p<0.000$ ), a month ( $t_{En(104)}=-4.180$ ,  $df=103$ ,  $p<0.000$ ), a year ( $t_{En(103)}=-3.082$ ,  $df=102$ ,  $p<0.003$ ) and a decade ( $t_{En(106)}=-3.324$ ,  $df=105$ ,  $p<0.001$ ). Economic time use perception does not differ between parents and non-parents.

Overall, time is reported to be used differently for social, economic and environmental time use over all different time horizons. Over different time horizons, all subjects report different social, economic and environmental time use differently. Social time is rated highest over a year, month and week. Economic time is assumed to be the highest over a year, month and day. Environmental time is assumed to be highest over a decade, year and month. While there are no gender differences to report; the in-between study of age differences reveals whether age serves as a reference point for changed time use throughout life. The in-between subject measurement of parenthood serves as evidence for the importance of critical life events, in particular parenthood, for time use variation. Different age groups report different social and environmental time use over different time horizons. While self-reported time use tends to drop in the age bracket from 18 to 47, from 48 to 67 time use seems to rise,

particularly in the economic domain – although these results have to be seen with a caveat of the sample of 58-67 age group only being comprised of two individuals. In general, parents report more time use than non-parents. Children make a significant difference when it comes to social and environmental time use.

*Study 3: Survey study of external influences on time use preferences and age-dependent reference points*

### **Design**

An experimental survey study was operationalized by Qualtrics and administered via Amazon Mechanical Turk. Four groups of participants will be exposed to either (1) Social cues (Test group 1), (2) Economic cues (Test group 2), (3) Environmental cues (Test group 3) or (4) No cues (Control group).

Participants were recruited via Amazon Mechanical Turk. After having been exposed to an informed consent disclaimer, the respondents who agreed to participate were asked to answer an open-ended free-association writing task on either one of the following 3 conditions in a between subjects design: (1) ‘Describe your friends (social cue)’ (Test condition 1 for Test group 1) or (2) ‘Describe your paid work (economic cue)’ (Test condition 2 for Test group 2) or (3) ‘Describe a place in nature (environmental cue)’ (Test condition 3 for Test group 3). The questions elicited a writing task, in which the respondents were meant to write down free-associations after exposure to the cues. The writing task was meant to prime respondents into a *social* (Test group 1), *economic* (Test group 2), *environmental* (Test group 3) or *neutral* (Control group) condition. The subjects were split evenly among the 3 Test conditions (between subjects design). The sample from study 2 served as neutral control condition, which did not have any priming of any cues and writing task questions.

Subsequently, all respondents were asked to make an assumption how much time they spend as ‘(1) Social time defined as time spent with other people and engaging in social interaction, communication or activities with others. (2) Economic time defined as time spent using one’s labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. (3) Environmental time defined as time spent outdoors in the open environment.’ All subjects then had to provide an estimate of how much time in relation to each other they spend on the outlined categories social, economic and environmental time. Social, economic and environmental time use of an average over an entire day, an entire week, an entire month, an entire year and in the last decade of one’s life were asked for being estimated.

The questionnaire measured the influence of cues on time allocation preferences and perceptions. The cues served to put the respondents into different social, economic and environmental mindsets. These external frames were tested for influencing the respondents’ time allocation perceptions.

In order to study the impact of situational cues on time allocation choices, the different groups were compared in their general time-use description after having been exposed to a writing task cue. The differences in the time use description were generated by quantitative responses to the question to estimate their time use per category social, economic and environmental times. A quantification of contents in relation to each other were pursued in order to derive information on the relative percentage of time use categories to each other.

After a writing task, general time-use questions were presented to subjects on Amazon Mechanical Turk in a Qualtrics questionnaire solution. After consenting to a standard informed consent form, all subjects were asked to make an assumption how much time they spend on (1) Social time defined as time spent with other people and engaging in social interaction, communication or activities with others. (2) Economic time defined as time spent using one’s labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. (3) Environmental time defined as time spent outdoors in the open environment. The specific question read: ‘Please make an assumption how much time you spend for: (1) Social time defined as time spent with other people and engaging in social interaction, communication or activities with

others. (2) Economic time defined as time spent using one's labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. (3) Environmental time defined as time spent outdoors in the open environment on average over a day. The scale below indicates percentages of a day.'

The time use categories were scrambled. All subjects had questions about all time horizons of a day, week, month, year and a decade. Time frames and time use categories' display was scrambled between subjects. Study 2 thereby quantitatively depicted the percentage of time use estimates between categories per day, week, month, year and over a decade. The influence of age-varying time use differences as well as the critical life event of parenthood were studied.

The mindframes of social, economic and environmental factors allowed to draw inferences whether social, economic or environmental context are prone to elicit certain discounting anomalies. The prospective results elucidate whether social, economic or environmental cues can manipulate time use preferences. The category priming followed by a free-association writing task will also reveal if a certain mindframe either enhances or depletes continuous use of time for the same category.

In addition, the survey asked for the age of the respondent and if they have children and if so, how many children. The time use of different age groups and groups with or without children were compared in order to test for discounting differences and pro-social behavior variations during different time periods throughout life. Children's influence as critical life event in parents' lives on time allocation preferences was examined.

### **Sample**

In total, 262 respondents were included in Study 3. The subjects (female=75 [28.07 percent], male=186 [71.3 percent],  $M_{age}=30$ ,  $SD_{age}=8.21$ , Range=[18,65]) from around the world participated in the study online. After an informed consent, the online questionnaire investigated time use of men and women. Of the entire sample, 130 individuals (49.6 percent) indicated to have children and 132 (50.4 percent) reported that they do not have children. Of the sample with children, 47 respondents had one child (63.15 percent of the parents sample, 17.9 percent of the total sample), 46 respondents had two children (35.38 percent of the parents sample, 17.6 percent of the total sample), 16 subjects had 3 children (12.31 percent of the parents sample, 6.1 percent of the total sample), 5 survey takers had 4 children (3.85 percent of the parents sample, 1.9 percent of the total sample) and 16 survey takers had 5 children (12.31 percent of the parents sample, 6.1 percent of the total sample).

### **Results**

Over all subjects and condition and control groups, time is reported to be used differently for social, economic and environmental time use over a day [ $F_S(3, 256)=9.238$ ,  $p=0.000$ ;  $F_{EC}(3, 256)=8.362$ ,  $p=0.000$ ;  $F_{EN}(3, 256)=9.442$ ,  $p=0.000$ ]; a week [ $F_S(3, 254)=7.421$ ,  $p=0.000$ ;  $F_{EC}(3, 254)=10.423$ ,  $p=0.000$ ;  $F_{EN}(3, 254)=10.433$ ,  $p=0.000$ ]; a month [ $F_S(3, 253)=6.725$ ,  $p=0.000$ ;  $F_{EC}(3, 253)=6.402$ ,  $p=0.000$ ;  $F_{EN}(3, 253)=6.247$ ,  $p=0.000$ ]; a year [ $F_S(3, 252)=7.832$ ,  $p=0.000$ ;  $F_{EC}(3, 252)=8.397$ ,  $p=0.000$ ;  $F_{EN}(3, 252)=6.810$ ,  $p=0.000$ ]; and a decade [ $F_S(3, 256)=8.576$ ,  $p=0.000$ ;  $F_{EC}(3, 256)=8.472$ ,  $p=0.000$ ;  $F_{EN}(3, 256)=7.655$ ,  $p=0.000$ ].

### **Discussion**

Behavioral economics found individuals to hold mental accounts dependent on a reference point but also in regards as to how to allocate money to causes individuals care about. This paper presents that individuals also differ in mental temporal accounts, hence regarding how to spend their time. Over all subjects we find people perceiving time use differently in different time brackets. Individuals tend to have compartments, in which they discount and allocate social, economic and environmental time use differently. Decision makers have natural mental temporal accounts for how to spend social, economic and environmental parts of their lives throughout a day, week, month, year or decade of an average life. We have implicit mental accounts for how much time to spend on their own, how much time to be allocated towards working and how much time to just enjoy in the open environment. We can be nudged into different time use perception by external cues. But also the critical life event of parenthood sets us into a

different path of spending time in the social, economic and environmental spheres. It is not a trade off between categories but rather granting people mental time or more efficient use of time when they become parents.

As a limitation and future research prospect, the found differences of social, economic and environmental cues impacting on temporal discounting but not public policy choices in the social, economic and environment sphere demand for future investigations of the relation of mental temporal discounting and financial allocation preferences. Mental accounting theory may not easily be extendable on the untested domain of time insofar as the mental cues manipulated time perception but not monetary allocation preferences to the domains of social, economic and environmental causes. So while we have context-dependent temporal accounting strategies for time, this may not hold for monetary allocation preferences. Time is not money.

The found age-dependency of time use categories demands for additional attention. A clear limitation of the study is the narrow sample with a relatively young population. Future research may focus on testing concrete age differences in the time use preferences with a focus on a more harmoniously stratified sampling. Specific age categories hold invaluable insights on age groups' specific use of time, which hold precious market implications for very many different industries ranging from consumption goods to service industry, health care and insurance industries that could serve different age groups more efficiently.

Lastly, the results of environmental cues bestowing with a higher perception of time use in all other domains as well serve as a beautiful case for environmental recreation preservation. Sustainability may bestow us with a long-term view but also with a meaning of using our time more efficiently in all domains, the environmental but also social and economic spheres as well. In this regard, the results have ample applications, ranging from improving individual's day-to-day decision making up to intergenerational leadership in light of climate justice demands (Puaschunder 2015b, 2016a, e, f, 2017c, d, f, g, i, j, 2018a, c, forthcoming a, b). The findings hold invaluable insights for improving future-oriented and socially responsible decision making nudges (Puaschunder, 2011, 2015a, 2016b, c, 2018d). The research therefore holds direct applicability for improving the lives of current and future generations in private and public domains (Puaschunder 2015c, 2016d, 2017b, d, e, h, 2018b, e, f, g, forthcoming c, d).

Overall, pointing at the necessity to include past individual points in life into neoclassic economics and hyperbolic discounting spearheads heterodox economics by opening a detected black box of forward-looking discounting paradigms (Heidegger 1929/1963; Puaschunder 2015c; Puaschunder & Schwarz 2012). Outlining fundamental differences of temporal discounting throughout different ages allows retrieving multi-faceted decision making influences as well as generating wide-ranging nudges to improve choices over the entire life cycle (Thaler & Sunstein 2008). The prospective findings also promise to add to contemporary contract theory, which is primarily focused on monetary incentives an attention for non-monetary gratification nudges that may imbue motivation to act beyond financial gains-driven ones (Puaschunder 2018c). Contrasting orthodox temporal discounting with heterodox multi-faceted decision making approaches that elucidate more exactly how individuals choose to spend time in the course of their lives but also shedding light on the importance of integrating backward looking aspects in discounting sets the stage for improving future social care beyond one's own existence in a real-world relevant way granting opportunities to imbue eternal equity in humankind.

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# Transparency, Accountability and Participation through Social Audit: Case of MGNREGA in Sikkim, India

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**ABSTRACT:** Transparency, accountability and participation (TAP) are some essential elements for ensuring democratic governance. Social audit is an operational instrument to reduce corruption by empowering people to scrutinize public expenses, detect corruption, and ensure accountability. Social audit is one of the robust element of MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme) in India as they work through the Panchayat, and stimulate the public to participate with a sense of communal accountability. At the state level even five years after the issue of operational guidelines, we witness wide variations in the quality of social audits. Different states have adopted their own models and while some of them are successful, some of the states have still not set up and some are in the process of setting up an independent social audit unit. The Non-Governmental Organization (NGO) model of social audit in the state of Sikkim which is not widely discussed in literature is the focus of the study. This research attempts to study the efficacy of Social audit as a tool to bring Transparency, Accountability and Participation in MGNREGA taking the case of Sikkim.

**KEYWORDS:** Transparency, Accountability, Participation, Social Audit, MGNREGA, Development, Public Policy

## Introduction

Social audit is a tool in democratic governance where the concerned group claims the right to information and verification from implementing agencies in an organized manner, thus leading to public accountability (Aakella & Kidambi 2007), transparency and participation. It is a tool for empowerment of the stakeholders by an independent body not belonging to the parent institution (Aiyer & Samji 2009). The social audit process involves a participatory approach from the beneficiaries (people who have received the benefit from the scheme) to ensure better transparency, accountability and participation.

With more than 110 million active workers, Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) is one of the world's largest social security schemes in the world guaranteeing 100 days of unskilled manual work to all rural households in India. In the year 2018-19, MGNREGS generated 2.67 billion person days reaching 52.6 million households in rural India. Taking into consideration, the large span of region it has to cover, tracking the massive volume of benefit it offers is a really big task. Even though, MGNREGA has a vibrant and technically sound Management Information System (MIS) to monitor the different tasks and implementation status of the department, the field experience shows that it doesn't always comply with the ground truths and the need to go for a participatory approach is quite real on ground.

The MGNREGS guidelines mandates the necessity to encourage public's participation within the audit in conjunction with assistance furnished via an independent social audit unit that enables the process (MoRD 2013). According to the recommendations of the Ministry of Rural Development (MoRD), the state governments are to establish a Social Audit Unit (SAU) that is independent from the implementing authorities. The SAU ought to be located outside the department that is executing MGNREGS and it needs to have an independent bank account. The SAU must also have a full time director who is not involved in the implementation of MGNREGS. The guidelines mandates that it is to be conducted in each Gram Panchayat (GP) as a minimum once in six months (MoRD 2013). The

focus on this study is focused on the NGO model of social audit followed by the North-Eastern state of Sikkim, India in understanding how efficient is social audit in ensuring the elements of transparency, accountability and participation in MGNREGS.

### **Social audit in an Indian Context**

There are various movements that have rose in the country in the context of transparency, accountability and public participation in the activities of the government and some of them are associated with a specific cause, sectoral issue and local crisis. The movement towards environment protection, farmer's movements, public interest litigation movement etc., are few examples of this movement. Most of these movements come into action on perceiving the failure of government in effectively implementing schemes and there was a need for policy interventions.

In the early 1990s, the city of Bangalore was facing issues because of sub-standard public service despite being a major service sector hub. It was observed that the municipal corporations were unreliable and an independent citizen report card exercise was conducted by a group of residents to evaluate citizen satisfaction from services in the year 1993. Successively, the group formed the Public Affairs Centre (PAC) to carry out more surveys. Literatures report that this exercise of report card helped to raise the awareness of service providers' poor performance and compelled them to take corrective measures (Thampi 2005). The report card exercise was again conducted in the years 1999 and 2003. The feedback form used assessed user satisfaction in such parts as staff behaviour, the number of visits required to complete a task, ease of resolving issues, and the quality of information delivered (Thampi 2005).

Another pioneer in conducting social audit in India is the organization named Mazdoor Kisaan Shakti Sangathan (MKSS) rooted in the state of Rajasthan. It is a well-known organization in India famed for its advocacy towards Right to Information Act and for its use of public hearings as a monitoring tool towards accountability. After procurement, data is analysed and are made public to the citizens through the process of 'Jan Sunwai' or public hearing (Goetz, A.M and Jenkins J, 1999). MKSS started conducting 'public hearings' or 'Jansunwai' to enable people to speak about the issues they were facing in various government programmes. MKSS also went to the leadership and discussed the issues with the Chief minister of Rajasthan and their first victory came with government notification of Panchayat Act that the data pertaining to Panchayat expenditure could be scrutinized by the citizens.

Rajasthan passed the Right to Information Act in 2000, an advancement made successful by the pressure of MKSS. The MKSS deduced that non-transparency and non-accountability are the primary reasons for the proliferation such widespread corruption. Until then no official records were shared with the citizens and hence no one could question or demand explanation. The right of people to know the activities of governments and how government money from citizens is being utilized thus became one of the major agenda of the MKSS. Through their accomplishments, the MKSS claimed admittance to government data related to local administration and development (Aiyer, Yamini and Salimah Samji, 2009). Obtaining official records is the first step in social audit and Right to Information Act in 2005 made this an easy process.

An important conception in this process was the 'public hearing' where details of the authorized records were read out to the assembled villagers. The local citizens who were victims of corruption were summoned to give witnesses and the officers and local politicians were given a chance to publicly shield their activities (Goetz, A.M and Jenkins J, 1999). In addition to exposure of corruption, the public hearings also play a crucial role to empower citizens and it aids in strengthening democracy. Chandoke in her study of the public hearing discusses that public hearings perform three purposes inherent to democracy which are informing citizens, encouraging public participation and creating responsibility to resolve issues of collective concern (Chandoke N. 2007). The social audit process creates a platform to spread awareness and to exercise the rights and entitlements. As per Para 6, Audit of Scheme Rules 2011, the activities that are being undertaken for facilitating the conduct of Social Audit by Gram Sabha are as shown (Table 1).

Table 1. Activities in Social Audit

Activity	Tasks Involved
Verification and Awareness	Door to Door Verification, Inspection of Worksite and conduct of village level awareness
Documentation & Reporting	Preparation of Social Audit Report and display on the notice board of the Gram Panchayat
Public Hearing / Jan Sunwai	Conduct of Public hearing or Jan Sunwai to share findings of the verification exercise (Auditing Standards mandates that all the elected members of the Panchayat and staff shall be present at the Gram Sabha and respond to queries).

### Initial Steps of Institutionalizing Social Audit in MGNREGA

Andhra Pradesh is the first state in India that took steps to Institutionalize the social audit in MGNREGA. In the past, the state of Andhra Pradesh had an unpleasant record of implementing rural employment guarantee programs and there were outcries for improvement. (Deshingar, P. and Johnson, 2003). The Department of Rural Development decided to implement the social audit process as part of the Administrative Reform Action Plan. It began in 2006 as a project carried out by the Strategies Performance Innovation Unit (SPIU), Rural Development in three districts of AP. This later on led to its metamorphosis into the Society for Social Audit, Accountability and Transparency (SSAAT) carrying out regular and concurrent social audits across 22 districts. SSAAT was formally registered as an independent Society on the 15th of May, 2009. While Section 17 of MGNREGA mandates the conduct of Social Audits, no clear mechanism of how to conduct a Social Audit has been indicated in the Act or associated guidelines. The first state to make an independent effort to push for this was the Department of Rural Development, Andhra Pradesh.

After realizing the merits of the Social Audit process in Andhra Pradesh, the Government of India adopted a similar model of social audit and made it mandatory for every state to establish an independent Social Audit Unit (SAU), as per the Audit of Scheme Rules 2011, MGNREGA. Every SAU should be headed by a governing body responsible for overseeing the performance and it shall compose of Principal Accountant General, C&AG, Principal secretary Department of Rural Development, director social audit Unit, 3 representatives from Civil Society Organization (CSO) and other special invitees from departments that are undertaking social audit programmes. It shall also be ensured the Principal Secretary, Department of Rural Development does not chair the governing body for ensuring independence. The Ministry also recommends 100% audit of beneficiaries and that social audit needs to be conducted at least once in 6 months.

### Focus & Study Area

Advancing transparency and accountability is presently generally acknowledged as a foundation of reasonable improvement. The field at present includes zones, for example, anti-corruption, right to use data, resident input and participation in administration forms, accountability inside administration conveyance, and increasing subject "voice" in broad daylight issues (Kalathil, 2016). As greater government data end up accessible to the more extensive open, common society will have more weapons to consider executors answerable, in this way lessening defilement and fortifying government authenticity. Empowerment ought to be viewed as a procedure through which poor people, barred and powerless areas of the social order are educated of their rights and qualifications, so they can take an interest and impact the governance procedure and in the long run coordinate with the standard talk (Vij, 2011). Social audit is additionally a procedure through which individuals draw in themselves in assessing the plan and their insight into their rights and privileges are upgraded. The research framework used for the study is depicted in the figure 1. The Transparency, Accountability,

Participation (TAP) elements in social audit in MGNREGA was evaluated by studying the policy in detail along with field visit experiences as a first step.

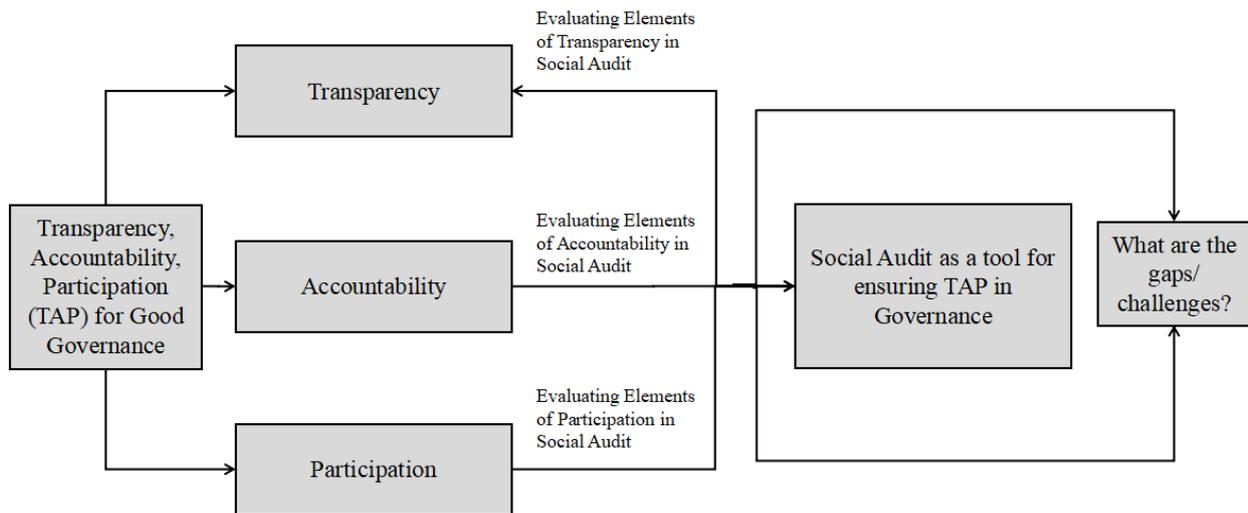


Figure 1. Framework for Analysis in the Study

The performance and quality of social audits across the states have been far from uniform and different states have adopted different models of SAU like society model, cell within implementing agencies, Non-Government Organization (NGO) model etc. In 2014, Ministry of Rural development (MoRD) evaluated that only Andhra Pradesh and Sikkim were fulfilling the requirements social audits as foreseen in the guidelines (Tambe, Subba, Basi, Pradhan, & Rai 2016).

With this context, this paper focuses on the NGO model of social audit followed by the state of Sikkim which is not widely discussed in literature. The primary data for this research was collected from field visits to villages in Sikkim, Andhra Pradesh and Maharashtra from December 2016 to May 2018. For the research, primarily three Gram Panchayats (GP) of Sikkim were selected, Sanghanath GP from South District and Samlick Marchak and Nandok Saramsa GPs from East District. The secondary data was collected from the MGNREGA official MIS and from the social audit offices for validation purposes to deepen the understanding. Also, for quantitative analysis and mapping, secondary data from 30 GPs from different districts of Sikkim (depending on the availability) was collected from offline documents. The qualitative data was collected with the use of semi-structured, unstructured interviews and focus group discussions. The focus of this paper is on the NGO model of Sikkim owing to the fact that it isn't much discussed in the literature and a good understanding of this model will assist in replication in other states trying to establish their own Social Audit Unit.

### SAU Model in Sikkim

The Rule 4 of Audit of Schemes Rules, 2011 stipulate that each state Government shall identify or establish an independent organization, Social Audit Unit (SAU) to facilitate conduct of the Social Audit of MGNREGS works. Voluntary Health Association (VHA) of Sikkim has been recognized by the Rural Management & Development Department, Government of Sikkim as the independent organization to function as the Social Audit Unit (SAU) for conducting Social Audits of MGNREGS works in the state of Sikkim. In the case of Sikkim, it was the civil society organizations who were instrumental in institutionalizing the Social Audit Unit. VHA has been facilitating the Social Audit for East and North of over 5 years since 2008. Over this year SAU has under gone for long process in collaboration with Rural Management & Development Department, Government of Sikkim to set up Social Audit Unit in the State. In district level there are District Resource Institutions (DRIs) for each

district supported by District Resource Persons (DRPs) who will conduct Social Audit in their respective district.

Sikkim has developed two models of Social Audit process for MGNREGA, viz. Intensive model and Paired Model. In the Intensive model, all step wise activities would be held for the particular GP by the concerned District Resource Institutions (DRI) at a time. The DRI would complete one Gram Panchayat at a time. In Paired Model of MGNREGA, Social Audit process will remain as intensive model but the Social Audit will be conducted in two GP at a time in order to save the resources.

Full-fledged social audit began in the state from financial year 2013-14 and the same has been continued from 2014-15. The details of the number of GPs covered over consecutive years are mapped as given (Table 2, Compiled from information available from VHA, Sikkim). In the pilot audits, they could cover only 50.57% of the total GPs could be covered but from 2015, all the GPs under MGNREGA are covered by the Social Audit but 100% coverage through house visit is not achieved. In all the districts except the East district, the social audit is further distributed to other NGOs in the respective districts under the guidance of VHA. VHA organizes training for the personnel involved from other NGOs and during field work, the DRP from VHA also accompanies them.

Table 2. Percentage Coverage of GPs by SAU over consecutive years

S.L No.	District	% Coverage of GPs by SAU			
		2013-14	2014-15	2015-16	2016-17
1	North District	75%	50%	100%	100%
2	East District	48%	52%	100%	100%
3	South District	44%	53%	100%	100%
4	West District	47%	52.73%	100%	100%
<b>Total</b>		50.57%	52.27%	100%	100%

### Transparency through Social Audit

Transparency basically includes the components of information, accessibility and usability. Data transparency portrays a condition in which residents approach the information and reports that bear upon moves and choices made by government on-screen characters (Harrison & Sayogo, 2014). The privilege of individuals to comprehend what their governments are doing and how government reserves are being used in this manner is the key element of transparency being insured through social audit in MGNREGA.

Getting official records is the initial phase in social audit and Right to Information Act in 2005 made this a simple process. One of the critical command in the policy is that the Programming Officer should make the required data accessible with the social audit groups 15 days before the initiation of Social Audit. The GP officials should ensure that all the pertinent records, including complete documents of the works or duplicates of them, ought to be made accessible for review at the Gram Panchayat office no less than 15 days ahead of time of the Social Audit Forum. There ought to be free and simple access to these reports for all inhabitants of the Gram Panchayat amid this period, and no expenses ought to be charged for examination. The first records ought to be accessible upon the arrival of the Forum, with the goal that any document can be verified.

Along these lines, the kind of transparency that existed prior to the establishment of Social Audit was reactive transparency and through the establishment of Right to Information Act, there was a request to move to pro-active transparency. Earlier, the poor beneficiaries of MGNREGA didn't have any mechanism to know or understand how the fund is being utilized by the officials and the social audit has opened their eyes to this issue. During our interaction one of the mate (Mate is a work-site supervisor. At least one mate should be present for every 100 workers.) commented saying, "If social audit didn't exist these people would have come accused us of misusing/ withholding their money. Because of the audit these people have more faith in us since all things are transparent to them". The Gram Sabha is supposed to discuss findings of the social audit through 'Public Hearing' and this is a

step towards enhancing the transparency of information. It was observed during the house visit that some were curious as to why the social audit people were collecting the information and the officials had to softly explain to them the purpose and need for audits.

Analysis of available information show that from 2013 to 2017 as shown (Table 3, Compiled from information available at VHA, Sikkim). This could be a reason of more misappropriations or as a result of people being more vocal about their issues. Semi structured interview revealed that the cases of financial misappropriation were high in the initial years but at present more cases of process violation are being reported. In social audit in MGNREGA of Sikkim, the steps towards transparency were mainly through Pro-active disclosures, meticulous documentation and through discussions in Public Hearing.

Table 3. Number of Issues Reported in Social Audit

S.L No.	District	Total GPs	Number of Issues Reported			
			2013-14	2014-15	2015-16	2016-17
1	North District	24	573	121	281	278
2	East District	50	364	374	702	507
3	South District	47	235	194	392	381
4	West District	55	309	364	1110	997
Total		176	1481	1053	2485	2163

Proper documentation is an essential element to ensure good transparency of the scheme. All the MGNREGA documents are to be properly verified during the Document verification phase in Sikkim through systematized formats and the findings are meticulously documented as booklets for future use. The Gram Panchayat personnel are instructed to make available all relevant documents available to the Gram Sabha for the purpose of facilitating the social audit. The audit of Scheme Rules recommends the entire proceeding of the Social Audit Gram Sabha to be video recorded and uploaded on website without editing which is also a step towards more transparency. However at present, this is not being done as the computer system server doesn't have enough to space to accommodate the large video files.

Through social audit in MGNREGA, many pro-active disclosures have made things more transparent to the people. To ensure transparency, calendar uploading is done prior to audit but field level experience often showed that if the mates knew when the visit is going to take place, they would try to set things right for the day of audit. Prior to the Jan Sunwai, announcements are made through microphone in the village and posters are pasted in important places to inform the public about the audit but in the hilly terrain with less dense population, it is harder than plain areas to inform the public. During the public hearing, all the findings made in the audit process is displayed in the form of charts to make the information more understandable to the people. The minutes of the Public Hearing is also supposed to be displayed on the notice board of Gram Panchayat in the local language according to the policy and it was observed to be followed.

### Participation through Social Audit

The involvement of citizens in the political process is an essential part of democracy. Inclusiveness is also an important element along with the consideration in basic leadership of those most influenced by the proposed decisions. At its most impenetrable, support in a social occasion is described similar to nominal participation (Molinas 1998) and at its broadest to an extent in which even the vulnerable have voice and effect in essential authority (White 1996). The types of participation as given by literature are (Agarwal 2001):

- i. Nominal participation: People have membership in the group
- ii. Passive Participation: Participants are aware of choices ex post facto; go to gatherings and listen but do not voice their opinions
- iii. Consultative Participation: Participants are asked opinions in specific matters but there is no assurance their opinion will influence the decisions

- iv. Activity-specific Participation: Participants are asked to volunteer for certain tasks alone
- v. Active Participation: Participants can express views, whether or not implored, and can take initiatives of some sorts
- vi. Interactive (empowering) participation: Participants have speech and their opinions can influence in the group's decisions

Accomplishing successful participation should ensure a move from the lower level of nominal participation to the more elevated levels of interactive participation, with levels being categorized here not by how a gathering is started but rather by the degree of individuals' vibrancy (Agarwal, 2001). Women's successful participation in Social audit basic leadership would require that they move toward becoming individuals from the gathering, as well as go to and talk in gatherings, and can (in any event a portion of the time) guarantee that decisions are considerate of them.

An important point to be noted in NGO model is that until Jan Sunwai (a meeting of the citizens of Gram Panchayat), the beneficiaries do not play any active role by adding to participation element other than being surveyed during stage of household visits. Their role of participation comes into existence only during Public Hearing and until then the social audit is run by the NGO and the MGNREGA officials. The mates who are both site supervisor as well as a semi-skilled worker in Sikkim is the only beneficiary who assists the SAU officials during house visit along with ward members and Gram Rozgar Sahayak.

All villagers are expected to participate in the Public Hearing but field visit in Sanghanath showed that mainly men from the household attended the event and women didn't attend much. But in Samlik Marchak GP, the number of women who attended the public hearing was in par with that of men. In Sikkim, the rule followed is that, for Jan Sunwai to begin at least 33% of active workers in the GP should be present otherwise the block functionaries should conduct the public hearing again at their expense. As part of the this study, data from 30 GPs of four districts of Sikkim was collected from the four districts of Sikkim for two consecutive years 2016-17 and 2017-18 and the participation statistics over the years was analyzed. In the last two years, the participation has increased slightly from 34.25% to 35.96% as shown (Figure 2) and the standard deviation has also reduced slightly. But although the overall the participation seems to be greater than 33%, in the year 2016, 43% of the samples had less than 33% active household participation and it decreased to 30% of the samples violating the quorum in the subsequent year.

The gender wise participation data was also collected for these GPs and their trend of participation in terms of number was also analyzed as shown (Figure 3). In 2016-17, it was observed that men's participation (53.66%) was slightly more than women (46.34%) in terms of number and it is understandable owing to the fact that average women person days in MGNREGA of Sikkim is about 48%. But in 2017-18, the participation of men seems to have slightly increased (55.24%) but the woman participation (44.76%) seems to have slightly gone below the previous year for the sample chosen.

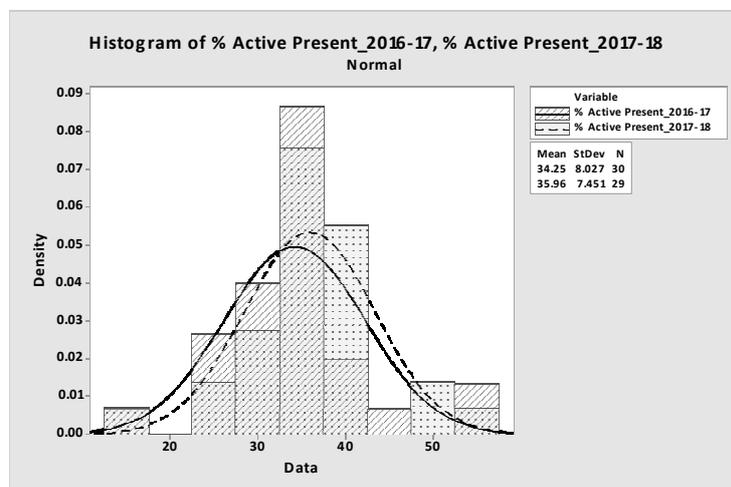


Figure 2. Sample Participation Statistics in 2016-17 & 2017-18

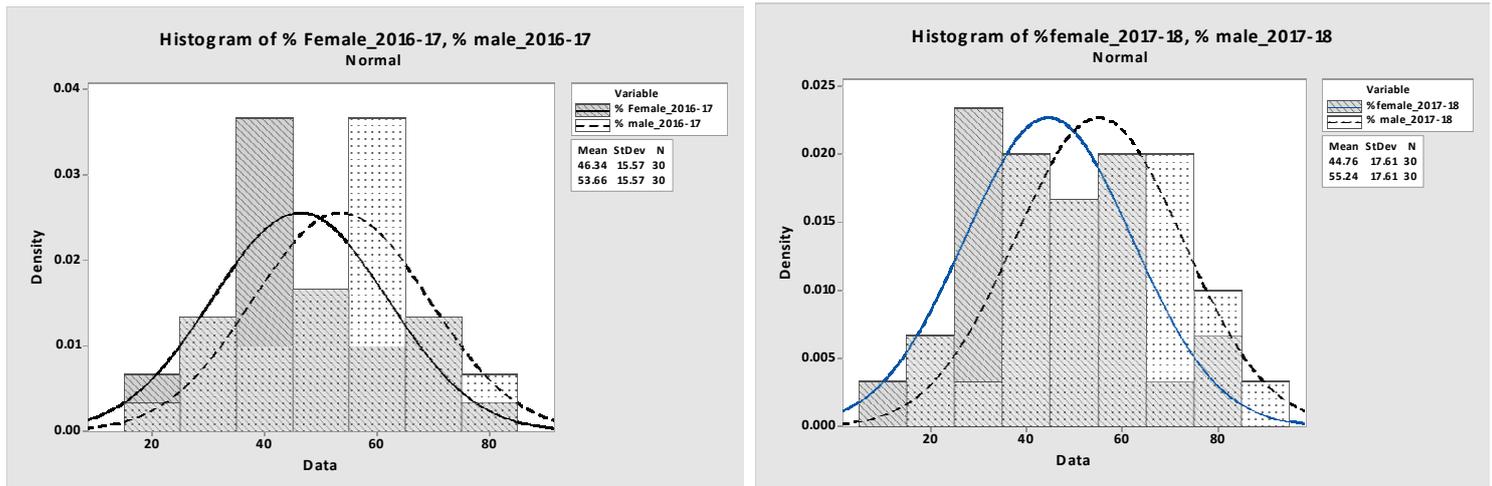


Figure 3. Sample Gender-wise Participation Statistics in 2016-17 & 2017-18

In terms of absolute value, the average number of people attending a Public Hearing was about 113 people in the sample and there was also a case where 243 people attended a Public Hearing. From the field experience, it was also observed that the woman who participated in the Public Hearing was more vocal about their opinions during Public Hearing. The Public Hearing in Samlik Marchak was headed by woman political leader very contrasting to the case of observation in Maharashtra, women were very vocal about their opinion all throughout the Public Hearing. So, during Public Hearing active participation was observed from both men and women while there was interactive participation from the side of semi-skilled workers.

### Accountability

Accountability in a democratic government includes both answerability and enforceability. Answerability is the obligation of office bearers to give data and legitimization about their activities while enforceability is the likelihood of punishments or outcomes for neglecting to answer accountability guarantees (Goetz & Jenkins 2004).

Currently, public hearing is again the instrument utilized to meet the element answerability in accountability. In the first four days of audit, the SAU analyses the documents and interacts with the people in the first four days of audit to understand the issues and classify them primarily into four categories: Financial misappropriation, Financial deviation, Procedural violation and Grievances. Financial misappropriation involves cases where payment is made to person who did not work, Bribes, Work Related issues, Material Procurement etc. The issues related to denial of entitlements, lack of transparency & accountability from officials, Work Selection issues, Maintenance of Registers etc., comes in the category of process violation and this was the most common issue cropping up in the audits. Records not produced, work Selection and work execution issues comes in financial deviation which checks if there is a deviation in finance than the sanctioned amount. The grievances section includes the issues from the people which may be related to Job Card, Aadhar / Bank Account, Work site facilities, Wages related Injury / Death, Individual Assets related, complaint on specific individuals etc. All the identified issues are discussed openly in the public hearing in the presence of all the people present and they are also represented in charts. The officials are answerable to any questions raised by the beneficiaries during the time of public hearing.

The Action Taken report (ATR) is to be submitted by the authorities and it is supposed to be discussed in the next consecutive year. But in the GPs visited, the ATR was not submitted by the block functionaries to the GP and it couldn't be discussed. So if no follow up action is taken it takes away the role of enforceability in accountability through social audit. The details of number of issues resolved after the audit is given (Table 3, as compiled from VHA). It was observed that the percentage of issues

being resolved has reduced especially for west and east district and it was noted earlier that the issues reported was also more in these districts.

Table 3. Number of Issues Resolved after Social Audit

S.L No.	District	2013-14	2014-15	2015-16	2016-17
1	North District	39%	48%	44%	56%
2	East District	67%	63%	53%	14%
3	South District	96%	90%	86%	59%
4	West District	79%	76%	47%	16%
Total		63%	71%	55%	28%

Another big issue in MGNREGA is the case where beneficiaries do not use the assets constructed for the right purpose. For example, there were cases in the village where the beneficiary was using the cowshed for storage purposes instead of its actual purpose. The social audit teams also take note of these type of cases, interacts with the beneficiary and he/she is answerable in the public hearing to the other beneficiaries as to why he is not utilizing the assets for its actual cause. This type of internal answerability is also a good lesson from the NGO model of audit.

The element of enforceability is the tricky part and Social Audit agency being a facilitator and not implementer often have limitations in ensuring it. After the audit report is submitted, the role of enforceability still lies in the hands of the implementing institution by taking actions. So, the SAU may follow the method of collecting strong evidences to back up their review report submitting to the implementing department of MGNREGA. Whenever any issue is found out, photographs of the documents and testimonies are taken in writing from the concerned officials. They also take photographs and videos of the assets, testimonies, statements in the public hearing etc., to further back their evidences.

### Challenges of Social Audit: Field level

The various challenges observed on field is discussed in detail in this section. The main issues are geographical challenges, errors in sampling, limiting works to checks and balances, weak follow-up and decision making, time constraints etc., and these are discussed below.

Firstly, Geographical terrain of the hilly state poses serious challenge to the social audit personnel in effectively carrying out their work in Sikkim. It is not practically possible for the social audit personnel to climb mountains and survey houses where vehicles are non-approachable within the limitations of time which is hardly 5 days in a GP. During the field visit and Non-participant observation, it was evident that not more than ten households can be covered in a day in such a difficult terrain where people are scattered. So often it is not possible to do regular inspections in areas because of the challenge of mobility. In many cases, if the house of the beneficiary is away from the main road and the social audit team would have to invest extra time just to visit that house and they are sometimes forced to end up surveying only houses close to the road side. But still we could see the team working hard to complete most of the ongoing and completed works for inspection. The geographical remoteness of people is also a reason that prevents them from attending social audit.

During official social audit of MGNREGA, most of the time the samples tend to be taken from houses that are close to the road alone because of the lack of time and difficulty in climbing. Owing to the difficulty in transportation, the MGNREGA officials also often do not keep a close check on the works far away from roadside and the quality of work may be tampered as a result of this problem. During the stay, it was found that the supervisors from the lower region of the ward was unwilling to visit the upper region of the mountain as it takes a journey of two hours back and forth and inspection was merely done by mobile phone without actual visit. This is typically a case where the street level bureaucrats are shifting towards screen level bureaucrats (Carausan, 2015). So is the case of monitoring

as we observed with the Gram Rozgar Sahayak (GRS) and with the Junior Engineer (JE). But these areas which actually require more accountability to bring out their disadvantages when further disregarded by the social audit personnel due to lack of time and this create the doubts on efficiency of social audit as a TAP tool on field.

Secondly, the social audit reports are often limited to checks and balances based on the available format and sometimes there might be unwillingness among the personnel also to go beyond the realms of normal procedures. If Social audit is limited to checks and balances, the real purpose of transparency and accountability cannot be achieved through it. And involvement of NGO's having no relation to the beneficiaries coupled with time constraints, the level of commitment often gets reduce to task completion unless they have sincere motivation towards their work.

The third challenge is with respect to weak follow-up and decision making. SAU is merely a facilitating body and they aren't quite responsible for the final decisions according to the present structure of social audit observed in states. The offenders also learn to manipulate a new system while discovering other avenues through the institution of monitoring (Olken, 2009) (Afridi & Iversen, 2013). Also, the action is taken by the implementing organization and the social audit team has no power in this other than reporting and evidence collection.

Fourthly, the SAU team is many times forced to be dependent on the MGNREGA officials to meet their requirements. According to the guidelines of the central government, the state governments are to set up a Social Audit Unit (SAU) that is independent from the executing authorities. But in order to operate on ground, the Social Audit Unit personnel are very much dependent on the MGNREGA officials as they are not familiar with the place of audit. We observed that the Gram Rozgar Sahayak (GRS), the MGNREGA mates and the Junior Engineer also travelled with the group of social auditors in their vehicle and the sample households were chosen under their guidance. In our visit there was an incident where a beneficiary shouted at the supervisor for not bringing the team to her house and she made accusations against the person. This again questions the real independence of the Social Audit Unit as an entity because there are practical difficulties to remain independent from the implementing agency in order to audit the scheme. In this case, instead of the supervisor, if it was a group of beneficiaries who were guiding the SAU personnel, then the audit team may have got a better perspective of the situation.

Fifthly, the team also faces difficulty in identifying problems in a short span of few days. Some of the corruption stages like labour related irregularities comprise of non- and delayed wage payment and a failure to provide work are ETD (easy to detect) while labour related irregularities comprise of benami and bribes are HTD (hard to detect). ETD related irregularities relates to 'ghost' or non-existent project. HTD material related irregularities comprise sub-standard material quality, material bribes and non-availability of material records (Afridi & Iversen, 2014). Also, during the field stay with the villagers, we could observe more crude realities where materials were being hoarded with the knowledge of officials but all these abnormalities are difficult to be identified by an external agency unless people themselves are vocal about issues.

## **Discussion**

Despite the various challenges discussed above, Sikkim has gone way ahead of other states in trying to overcome it. Some of the strikingly positive elements of NGO model in comparison to the society model are listed below and they would act as good lessons for other states for improvement. The Sikkim model follows a system of meticulous documentation and all the reporting formats are clearly laid out. So anyone joining the team can easily complete the verifications in line with the reporting formats. They were not just dependent on the downloaded MIS report of social audit sections from server but they had their own system suited to their purpose. Another highlight of the Sikkim model is good communication and awareness. In order to ensure good transparency, the message should be conveyed to the people in a way that it is understandable to them. So 'text' may not be the best suited way of communication in a village where there are illiterate people partaking in the scheme. Hence, Sikkim model also effectively utilizes cartoons and other pictorial representations to effectively convey the information to the public.

In addition to it, announcements are also made on the microphone, to inform the people about public hearing. Even during the public hearing, the information is neatly depicted on charts for the people.

These type of Public Rural Appraisal activities are also required to ensure good involvement of people in social audit. One important point noted is that the delivery of possible multimedia communication was employed with due importance to culturally acceptable mode of communication. In our field visit we saw that announcements were not made on a particular day through microphone as a death had occurred that day in the village. It is really appreciable to see such respect for the traditions of the village from the social audit team while delivering their duties. The team by themselves being part of the same culture could also have been a reason for deepened understanding of the cultural setting. The auditors also question and checks the awareness of beneficiaries of their rights in MGNREGA. This type of approach in creating awareness through audit helps the beneficiaries as well to make better claims of their rights in future.

## Conclusion

The needs and challenges in different states of India are different and hence a model working in one state may not be the best solution in another state although insights can be taken for improvement. In Andhra Pradesh, the society model is running effectively but it may not be suited to hilly state like Sikkim owing to different challenges in geography, density of population, educational opportunities etc.

The NGO model of social audit in Sikkim was analysed with the framework of transparency, accountability and participation and the observations seems to be largely successful with certain challenges at the micro-level. The main challenges include geography, errors in sampling, weak follow up, dependency on MGNREGA for choice of houses during visit, officials and the difficulty to identify problems. As a state social audit unit, the state is trying its own ways to overcome some of these challenges using meticulous documentation, team work and strong evidence collection. They also use good communication and awareness methods like cartoons and other pictorial representations to effectively convey the information the public. The NGO model of Sikkim seems to be good model for conducting social although there are windows of improvement to better the system.

Most importantly, the process of social audits clearly had a momentous impact on the citizens who were part of this process. The citizen's awareness of the government programme and their rights enhances and this has a long term positive impact on the delivery of the government programmes. Social Audits could therefore emerge as a catalyst in the process of citizen empowerment.

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# Corporate Financing in Romania

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**ABSTRACT:** Two are the external sources of corporate financing: equity and debt. These are exclusive (other sources of external financing no longer exist, but only variants thereof) and can be combined in turn. Capital with which a company is financed is its engine, no company being able to operate without capital regardless of the industry. Funding may be private or public. Private financing is provided through banking credit or equity contracted through direct negotiation with investors. Each mode of financing has advantages and disadvantages, not only in terms of financial costs (direct) but also indirect costs. Internal funding source is self-financing, i.e. reinvesting the company's profit instead of distributing it in the form of dividends. Balancing the use of internal and external financing sources, as well as the share of an external source in relation to another external source, primarily depending on the cost of financing (direct or opportunity) is a difficult, important and complex decision. The more the company is and / or the more attractive for investors, the more varied the range of financing options and the cost structure that is heavily influenced by rating agencies. Conversely, a small company without too many development prospects will not have access to all available sources in the market and will have to confine itself to small bank loans. Corporate contributions can be in cash, in kind, in debt and in services. They constitute the common fund that the shareholders exploit under the umbrella of the legal personality of the company. From a legal point of view, contributions become property of the company (assets) and it dispose of them as it deems necessary by spending, selling or mortgaging. In order to be valid, the contributions must fulfill several conditions. In all cases, the contributions must be real, fictitious inputs being forbidden. Apart from the reality of contributions, they must also be useful to company. In exchange for its contribution, the shareholder receives shares incorporating rights, which for a shareholder or future shareholder interested in his investment is the share of legal capital or, in other words, the share of the legal capital represented by his shares in the company. The second form of external financing, credit, may be private or institutionalized. Institutionalized credit is an interest-rate loan granted by a financial institution such as a bank, an investment fund, or a non-banking financial institution. In practice, funders put conditions for the funded company in relation to its shareholders, managers or assets, so as to avoid changes that would risk reimbursing the credit. The statute of limitation of the right to request repayment of the credit is within three years of the maturity date, and in the case of successive loans between the same parties, a separate term will begin to run for each loan. The repayment of credits granted in a given currency must be made in the same currency, regardless of the increase or decrease of the value of the respective currency against other currencies (*the monetary denomination rule*). To hedge foreign exchange risk, some companies resort to hedging through options on the foreign exchange market in the form of risk transactions in the opposite direction to that assumed by the contracted loan.

**KEYWORDS:** contributions, company, corporate finance, currency, debt, dividends, equity, loan, profit, statute of limitation

## 1. Corporate finance sources

It is known that the "engine" of an enterprise is capital. It can come from different sources, either in the form of equity or in the form of debt (Dimitriu 1902, 249). As a consequence, managing the financing sources is a vital issue for the functioning of a company, in the absence of such sources, the company being unable to obtain the necessary resources to carry out its activity. A company has a choice of several funding options from the two source forms. Once the funding has been procured, attracted amounts turn into resources, i.e. assets that are used in revenue generating operations. The fundamental objective of a company is to maximize the wealth of its shareholders, that is to say, the fair market value of the company, and, therefore, all the shares issued and held (Prunea 2001, 281). In order to do this, the company must develop its operations, grow as a business, and for this purpose it needs investment to be financed either from the two sources – equity and debt – also called *external financing sources*, or self-financing, also referred to as a source of internal funding, as well as a combination of these.

The two types of external financing source – equity and debt – are exclusive (other sources of external funding no longer exist but only variants) and can be combined in turn. Funding through new contributions can be done through equity (ordinary shares, preference shares, convertible preferred shares). Debt financing can be done by banks loans, loans from other financial institutions, shareholders or any third party willing to finance the company, including through the issuance of simple or convertible bonds, or it can be done in the form of leasing or credit-supplier (Popa, et. al. 1997, 407) (financing by convertible into share capital is called *mezzanine finance*). Of all these, bank loans are the largest share in the domestic and European-continental economy (Prunea 2001, 266), as opposed to the US and UK markets where the issuance of financial instruments prevails. Even in the United States or the United Kingdom, issues of financial instruments are, however, specific to large, listed companies, the smallest and medium-sized ones, usually resorting to institutional loans as well (Bank of England, Quarterly Bulletin 2018 Q1).

Regardless of source – equity or debt – funding may be private or public. Attracting an investor to subscribe new shares issued by the company or taking a debt are the private forms of financing. *Public form* is the way to attract financing from the capital market through the issuance of financial instruments in the form of a public offering, in which case, in addition to the provisions of the general law or the company's law on the operation, the capital market regulation apply to protect the investors. Each model of financing has advantages and disadvantages, not only in terms of financial costs (direct) but also indirect costs. Indirect costs are compliance with the securities regulation regarding both reporting and transparency requirements, as well as the rules of the stock exchange where its securities are traded. But perhaps even more indirect costs are the loss of control over voting rights in the company as a result of dilution of initial shareholders. The advantage of listing is, first of all, the liquidity of the market on which the securities traded, investors being able any time convert their investment in cash at the market price, which makes the investment in securities a more secure than the investment in the stock of a closed-end company.

Accounting records are based on the source of funding and the liquidity of the debt resulting from financing, with a synthetic accounting account specifically allocated to that form of finance, accounts in the same class or in different classes. If the company has unpaid shares from a previous issue, calling for debt to finance is the only option (Stelian 1916, II, 273). From the investor's point of view, the financing of the company must be attractive, i.e. it should have a better return than another similar financing opportunity. A funny example is the issuance of bonds denominated in hard currency by a Russian vodka producer paying an interest of 20% p.a. or 25% in vodka. According to the bidder, "vodka is used as a 1000-year exchange currency" (Higgins 1996, 146).

Financing from internal sources (or self-financing) means reinvesting the company's profit instead of distributing it in the form of dividends (Băcanu 1999, 134; Pătulea 2009, 276), which implies that the shareholders give up their share of net profit, capitalizing on the company and increasing its value, starting with the accounting one (net assets). This is quite rare, with only very profitable companies being in the position of not resorting to external sources, and that, as I said, is due to the reduction or suppression of dividends (Apple, Inc., for example, had a policy of retaining and reinvesting all profits by 2012 that allowed it to self-finance). Self-financing therefore means buying money for investments (buying assets) from its own corporate operations, money that, if distributed as dividends in full, would be to the detriment of the capitalization of the company, which would, from the point of view of financial view – not accountant (Oroviceanu 2010, 65) – a decapitalization. Increasing the value of a company means increasing the value of shares, and such an increase has a twofold consequence: (i) improving the financial ratios of the company and (ii) reducing the cost of financing from sources external. However, if the company's investments funded from the retained (capitalized) profit are unprofitable, i.e. the company bears losses, its value decreases as a direct consequence of the unprofitable nature of those investments. In theory, self-financing is the cheapest method of corporate finance, cheaper than a donation, but this is certainly more theoretical, especially since the donation is not financing; the definition of financing is the return of the money invested, in a time-frame, with the addition of a yield (Pătulea 2009, 276). The investor's gain is an expense for the financed company, and the company's best interest is

to have the lowest financing cost. In case of self-financing, the cost is not direct, but indirect, what the investor would have done with the money he could withdraw in the form of dividends to invest in something else, at a better return. As a conclusion, self-financing is not free, but has a cost: the opportunity one. It is true that, depending on the size of company, this cost is viewed more objectively or more subjectively. The larger the company (by shareholders), the more costly it is; conversely, the smaller the company, like a partnership (or a single member company), the cost is more subjective because the shareholder is also sentimental to the company, his participation being not only an investment but also a personal business, professional satisfaction, a self-paid job, or even a way of life.

Balancing the use of internal and external financing sources, as well as the share of an external source in relation to another external source, primarily depending on the cost of financing (direct or opportunity one) is a difficult, important and complex decision. The analysis of all funding options is called *financial management*, and, when it comes to costs, falls primarily under the responsibility of the Chief Financial Officer. The financiers, in their turn, are interested in the gain obtained from the company and the priority rank of the financier on the assets of the company, all of which are interdependent. For example, corporate creditors have priority over shareholders, who are residual creditors (Kershaw 2012, 709), and preferential shareholders have a priority (dividend distribution and shares redemption) over ordinary shareholders. Among them, creditors only take precedence based on legal priority (privilege) and lien registered in their favor. According to Art. 2333 par. (1) of the Civil Code, a *privilege* is the preference given by law to a creditor considering his claim and the company cannot agree subordination among creditors, because the preference on certain assets, as in the case of privileges (Deleanu, Ion. 2002, 183), is the result of a favor granted directly by the law (Zlătescu 1970, 48).

Attracting finance is a three-step operation. The first step is to establish its size, depending on the investments to be funded, necessary for the development of company. The second step is to determine how much funding can be provided from internal sources, i.e. from the retained profits to which shareholders are willing to give up by not distributing or distributing limited dividends, because what uncovered balance is taken from an external source. The third step is the choice of the external source, i.e. the issue of new shares or the indebtedness, or a combination of them. The decision is not easy because it is necessary to analyze the direct and indirect risks and costs of each source. If these costs are considered too high, the company can re-analyze the investment plan and give up (some of the) costs that are too high that can lead to financial difficulties (Robert 1996, 191). Financing costs are quantified as the *rate of return*. The cost of equity financing is higher than that of debt financing (Șcheaua 2000, 85; Cârpenaru, Predoiu, David, and Piperea 2001, 446), with the rate of return being higher for equity than for debt. The reason why the return on equity financing (referred to as the "Internal Rate of Return"/IRR, that is that discount rate applied to a company as a business after an investment in the form of share capital, for which the present net value equals 0) is higher than the (external) rate of return on a debt finance (i.e. interest rate) is that financing in the form of equity is more risky than in the case of debt financing (total risks include the risk of the industry and, in addition to foreign investment, country risk) because creditors are preferred to shareholders in claiming the assets, according to the *theory of risk and return* that says the two are in a direct relationship of proportionality: the higher the risk, the higher the investor's earnings, hence the more expensive financing. It is true that the Internal Return Rate is a expectation, an investment projection and not a contractual element such as the interest rate, but equity providers such as private equity funds sometimes convert the forecasted earnings into a debt (total risks include the risk of the industry and, in addition to foreign investment, country risk) as debt investors can remain with a simple expectation at risk of insolvency, in the absence of sufficient security from the debtor. The cost of equity financing – that is, dividends and/or the capital gain obtained from the sale of shares – is strictly financial, non-deductible, while interest on debt is not only a financial cost but also an accounting one, and is fiscally deductible. However, the direct financial cost is not the only criterion in choosing the source of funding but only one of them, other indirect costs being the lien given by the company or the involvement of the investors in the

company decision. Securing the debt with assets as a lien for the claim of the lender is an indirect cost that may occur on debt financing, while dilution (including losing the control stake) is an indirect cost associated with equity. Also, excessive debt does not only mean high direct financial costs, which reduce profit, but also increase the risk of insolvency, a risk that is absent when the company is financed through equity (Kershaw, David. 2012, 715). An interim financing option, which reduces the risk of insolvency and at the same time allows for the maintenance of decisional control, is the issue of preferred shares.

The more the company is and/or the more attractive for investors, the more varied the range of financing options and the cost structure that is heavily influenced by credit rating agencies. Conversely, a small company with little developmental prospects (know-how, patents, operating licenses, etc.) will not have access to all available sources in the market and will have to confine itself to small bank loans (Ferran 2011, 342). In all cases, there is no credit financing in any form (bank credit, leasing or debt issue) that is not influenced by the company's debt-to-equity ratio: the lower the ratio, the more borrowing space and vice-versa. Also, when indebtedness complements funding by equity or self-financing, the financial leverage effect is created and the shareholders will want their equity contributions to be as small as possible and the indebtedness the highest, to develop the business with someone else's money. The concept of "Other Peoples' Money" is in fact the fundamental principle of corporate finance, as it maximizes the most important financial ratios: *Return On Equity* (ROE) and *Return On Assets* (ROA), though at the same time it is a two-edged sword: if the debt financed investment produce the estimated returns, the company (and its shareholders) earn; if not, then borrowing costs will create financial difficulties for the company (Higgins 1996, 194). A perfect ratio of indebtedness exists only in an ideal theoretical market, so the corporate executives must find the optimum ratio in the given conditions, which implies a good knowledge of the market and its prospects. In other words, a company's decision to incur debt is more than pertinent, up to a point, because the money drawn from debt has the leverage effect on shareholder money, the latter taking advantage of the fact that the money (especially those borrowed through long-term debt such as certain bonds) are invested in wealth-generating assets that bring a higher return on their cost (interest), which increases the value of their shares (Downes, and Goodman 1995, 534).

Leveraged recapitalization takes place when the company borrows intensely (especially through bond issues) in order to distribute and pay dividends to shareholders, so that assets, economically speaking "belong" to both categories of investors (shareholders and creditors) because they secure the repayment of debt, and the company's revenues is used more to pay these debts. By distributing dividends, the value of market shares increases significantly, but the value of the company decreases due to capital outflows in the form of dividend payments and because of worsening the debt-to-equity ratio, with creditors sometimes becoming more concerned with the company than shareholders. The strategy of recapitalization through indebtedness is used by a company's management in an attempt to increase shareholders' equity, but not by increasing the value of the company but by distributing dividends (Haas 2011, 616). This method is sometimes used by the company's management to avoid a hostile takeover, sometimes comes from the shareholders' initiative.

## 2. Equity contributions

A first meaning of *contribution* is that of a liability arising from the subscription of shares, in the form of bringing value to the company in exchange for new issued stock that is the object of the subscription relationship (Georgescu 2002, II, 27). A second meaning is that of financial value in its materiality (Popescu 1983, 96), that is, the object of the obligation (Ionaşcu et. al. 1967, I, 208). From this point of view, contributions are in cash, in kind, in receivables and in services. They constitute the common fund (Paşcanu 1909, 485), which the shareholders exploit under the umbrella of the legal personality of the company. A special form of equity contribution, allowed by law, is the goodwill, which is considered to be an asset in itself, although it is a *de facto* universality. However, contributing one's assets and liabilities is not allowed, as it is a *de jure* universality, non-transferrable through *inter-vivos* acts.

By *legal regime*, in this study, it is understood the situation of equity contributions (in cash, in kind and in receivables) after their transfer to the legal capital of the company. From both legal and accounting point of view, once the contribution is paid in, the amounts represented by these contributions are recorded in the balance sheet liability (Petrescu-Ercea 1939, II, 199), in the legal capital account (account no. 101) and represent the debts of the company to the shareholders born of subscription, while the amounts and assets in their materiality are recorded in the assets side of the balance sheet (in the related accounts, by their nature), together with the other assets of the company acquired in any other different ways. Besides debts to shareholders, the company also records debts to third parties arising from the various legal acts and operations of the company (loans, bonds issue, leasing, torts, etc.). Both categories of debt form together the balance sheet or the financing sources of the company, while the assets and amounts in the balance sheet represent the resources with which the company has been financed from the sources or the self-financing, the resources it uses in its economic activity.

The legal capital of the company, as stated in the articles of incorporation, need not be detailed in terms of its composition (depending on the nature of the contribution or the currency in which it is expressed), its value being sufficient; the mention appears only because the charter/amendment to the charter represents in general the instrument of the subscription relationship. However, upon its updating, made under Art. 204 par. (4) of the Companies Law no. 31/1990, the mention (Ion 1999, 31) becomes not only unnecessary but also wrong because, as I said, the contributions – in their materiality (cash, goods, receivables) – were never part of the legal capital as an element of the liabilities, but as part of the asset, in the legal capital being recorded only their value, in order to quantify the company's debt to the shareholders who financed the company through equity contributions, on the basis of which they acquired shares granting them corporate rights. Once entered as corporate assets, including by means of equity contribution, the amounts, goods or receivables merge with the other amounts, goods or receivables entered into that asset side of the balance sheet in any other way and lose their individuality, the company having all rights on them, as it see fit. The Companies Law (Art. 7 letter d) and Art. 8 letter e) does not require the charter to mention the "composition of legal capital", that is, the currency of the payment, namely the nature and description of the contributed goods, but only the value and the way of valuation of the latter, and the structure of the legal capital is not its composition, but something else: its distribution among the shareholders, or, in other words, the equity participation of the shareholders in the legal capital, depending on the share of each of them.

Operationally, money, irrespective of the legal way of entering the company's balance sheet (equity contribution, loan, bank credit, payment from customers, etc.), if they exceed the ceiling, their transfer to the company is done by bank transfer. If a company has open accounts with several banks, it does not mean that each bank account is linked to an account such as the equity account; the existence of multiple accounts is motivated by the flexibility of payments to and from the company, not by an imperative legal provision (we are surprised, therefore, by the way a company was denied an petition on the grounds that certain sums were not in a "legal capital bank account"; see C. Ap. Constanța, dec. no. 1283/com/28 June 2007. Jurindex), the court having erroneously believed that if the legal capital equity contributions were paid into the company's bank account, that is a "legal capital bank account". In fact, even in the formation, in that account, which, of course, does not have an accounting function, other amounts may be paid from a company's operation made even before the registration. If the shares issued in return for such equity contributions also include a premium, there will be a double accounting recording, namely the legal capital account (no. 101) and the premiums account (no. 104). This double entry does not change the nature of acquiring a good by way of in-kind contribution to the legal capital nor does it make the good become a "partial equity contribution", which is a wrong notion.

From a legal point of view, equity contributions become property of the company (its assets) and it dispose of them as they see fit, by spending (in the case of amounts) and selling, pledging/mortgaging (generally for goods and receivables). Goods (assets), money, and receivables come in and out of the balance sheet by the rule of universal subrogation, the assets are depreciated and

cash. The subrogation operates within the assets side of the balance sheet, with no relation to its liabilities side, whether it is share or legal capital. The connection of the equity contributions with the legal capital exists only at the time of the subscription, when their value is recorded in the liabilities side of the balance sheet in order to quantify the obligation of the company towards its shareholders and to correlate it to the equity contribution made, the obligation being that of recognizing the corporate rights attached to the subscribed shares. Therefore, the equity contributions are not to be confused with their financial value, the former constituting, together with the other goods and rights entered into the company by other means than subscription, its corporate assets, while the value of the equity contributions representing debts to the shareholders resulting from the subscription of shares, and is recorded in the balance sheet liabilities side, where debts to third parties are also the result of the indebtedness of the company (loans, supplier-credit, unpaid taxes, etc.).

In order to be valid, the equity contributions must fulfill several conditions. In all cases, the contribution must be real. Sham contributions are forbidden, according to Art. 73 par. (1) letter (a) of the Companies Law, which entrusts the directors (or the executives) with checking the reality of the payments (Lefter 1996, 178). The application for the registration of a company must be accompanied by proof of payment, which means that regardless of the form of company, the contribution is mandatory for each shareholder and is the essence of the company (Dogaru, Ion and Olteanu, Edmond Gabriel and Săuleanu Lucian Bernd. 2009, IV, 871). However, the contribution must not be paid in by the shareholder who is liable for the payment of the subscribed shares, but also by a third party or another shareholder, as we are not in the presence of an obligation *intuitu personae* (with the exception of the contribution in services), which can only be executed by its provider (Roșu 2008, 78).

Shame contribution was defined in the doctrine as "that lacking any actual or certain value or having an insignificant value that is unlikely to lead to the increase of the common fund or to be taken into account for determining the legal capital". In another definition, shame contribution is "that contribution from which the company cannot draw any advantage directly or indirectly" (Pătulea 2009, 23). Shamming the equity contributions is fraudulent both to the other shareholders who see themselves diluted, as well as to the corporate creditors who trust in the irreducible core capital expressed by the legal capital. Examples of shame contributions would be a stock or a goodwill of a clearly insolvent company, with no liquidation value, an unsecured claim on an insolvent debtor, a worthless, intangible goods (Turcu 2009, II, 382), mortgaged goods of modest residual value, made up convertible to equity receivables, or goods purchased with amounts lent by future shareholders of the company or for which the company has guaranteed. Another example of sham is that the property that is not in legal use or it has been seized. Another variety of sham, which, however, is sanctioned distinctly by prohibiting the exercise of corporate rights, is the transfer of contributions from one company to another within the same group: the parent company increases the legal capital of the subsidiary, and subsidiary increases then the share capital of the parent company (Băcanu 1999, 73), constituting or consolidating cross-holding, for the purpose to dilute the minority shareholders rather than trick third parties, because the creditors basically do not trust in the value of the legal capital, on the one hand, and the financial statements of the companies belonging to the same group must be viewed in a consolidated manner on the other hand.

In general, the sham contribution is the result of a liability that equals or exceeds the value of the contributed good (Pătulea 2009, 24) or subject to conditions of any kind or terms. The sanction of the sham contribution is the rejection of the incorporating the company that has such contribution, respectively the rejection of the registration of the increase of the legal capital, when the sham contribution is made after the establishment. If the sham is not observed by the Trade Registry Office, the shareholders can challenge the decision of the general meeting of shareholders that approved the shamming increase of the legal capital, and the creditors can oppose to the same decision, as stipulated in Art. 61-62 of the Companies Law. Furthermore, there are specific action of civil liability against the directors in charge with checking the reality of the contributions (derivative action), grafted on Art. 73 par. (1) letter a) of the same law (also available for creditors,

but only in case of insolvency of the company). To all this, of course, is added the criminal liability, when the conditions provided in Art. 273 letter c) and e) of the same law.

Apart from the reality, the equity contributions must also be useful to the company, and the two notions are not to be confused. If the reality of the assumption implies its palpable, concrete, unimproved existence, futility means that it is out of the interest or financial needs of the company. However, there should be no sign of equality between the scope and the object of activity, the scope exceeding the registered activity, indicated in the charter, especially in the context of the abrogation of the *ultra-vires* sanction for the companies. For example, a "freight and passenger transport" company based in the city of Bucharest receives as an equity contribution an immovable asset located in the town of Suceava (Lefter 1996, 178). Although the aspect is more likely to occur for in-kind contributions, the uselessness of cash contributions is not excluded. Also, the conversion of debt into equity could be used as a dilution method when there are no economic grounds for such operation. As a conclusion, has utility a contribution that produces or brings revenues at a time when the company needs them.

Irrespective of the nature of the equity contributions, they are not interest-bearing (Art. 68 of the Companies Law), in exchange for their contributions, shareholders receiving equity shares generating corporate rights. If it were otherwise, it would mean interest to be paid out of the legal capital, which would deny the idea of associating not only for profit but also for loss, making the shareholder both the beneficiary of the dividends, when there is profit, and the beneficiary of interest (creditor), when there is a loss, what cannot be (Dumitrescu, M.A. 1924, 443). Profit replaces interest, and this is the essential difference between a shareholder and a creditor (Arion 1915, II, 66). Therefore, the norm provided by Art. 68 of the Companies Law is imperative and cannot be derogated from.

The value of the shares issued for subscription in exchange for equity contributions is, generally, not the par value but a value influenced by both the relationship between the shareholders and the relationship between all the existing shareholders on the one hand, and third parties investors that want to subscribe, on the other hand, as well as the combination of the two (i.e. when not all shareholders participate in the subscription). Issue of shares at par value is rather a particular situation, when the value of the company (small size) – practically for reasons of convenience – is accepted as equal to that of the legal capital. In all other cases, the issue value of the shares is not determined by reference to the par value but as a ratio between the fair market value of the company and the total number of issued shares (in circulation). The lack of any economic link between the par value and the fair market value of the shares has been the reason why, in some legislations (like in the United States and in all Commonwealth countries, less the United Kingdom, which is (still) hold by the Companies Directive (EU) 2017/1132), the concept of *legal capital* and, implicitly, of *par value* has become practically and therefore unnecessarily useless (Căpățină 1996, 184).

The issue value is not directly related to the sale value of the shares by a shareholder of the company, but only indirect, in the sense that it also departs from the value of the company, but this value changes according to the size of the stake sold. The sale price is the price received by the shareholder and may be lower, higher or equal to the par value, or, more correctly, not related to the par value, but (only) with the fair market value. The determination of the issue value of the shares is a matter of internal evaluation of the company, a value proposed by the management and accepted by the shareholders, without any obligation to be mentioned in the decision of the general meeting.

Starting from corporate rights embedded in shares, what matters for a shareholder or future shareholder interested in his investment is the stake in the company's legal capital, or, in other words, the stake of the legal capital represented by his shares in the company. Every existing or potential shareholder will attempt to obtain from a subscription – whether it participates in it or not – as much of the stake of the company, according to which the amount of the corporate rights and the degree of influence of the company decision will be measured. This means that prior to subscribing to shares in the company, the subscriber (i.e. who intends either to become a shareholder or to increase or preserve his existing stake) will not negotiate the number of shares

subscribed but the stake of the legal capital represented of those shares at the end of the subscription. The reason is that the number has only a writable importance, highlighted in the amendment to the corporate charter concluded after the increase of the legal capital, after the subscription, as opposed to the stake in the legal capital, whose importance is to establish the extent of corporate rights. Of course, we are talking about a significant stake, regardless of the type of the company, not a small percentage (like a few shares bought on the capital market).

In order to hold its stake as large as possible, the non-participating shareholder in whole or in part in a subscription will attempt to overestimate the value of the company and implicitly the price paid by the subscriber for the stake desired, on the one hand, and the subscriber will try to underestimate the same value, on the other hand. We will call these attempts, in the following, "situations of divergence". These are as follows: overvaluation will benefit (i) the shareholders who do not intend to participate in the subscription; and (ii) the participating shareholders but less than the pre-emptive right grants. Vice-versa, undervaluation will benefit: (i) the shareholders who participate based on the pre-emptive rights, and (iii) third parties, in any circumstances (with the understanding that the Companies Law no. 31/1990 logically assimilates to third-party those shareholders that subscribe above the pre-emptive rights).

From this game, where, depending on the position of the participant in the subscription operation, one party wants to overstate the company and the other party to underestimate it, it results in its fair market value, and, implicitly, the fair market value of one share, as a ratio between the value of the company and the number of shares issued prior to subscription. As we can see, the process is similar to the one in which a vendor tries to sell his merchandise as expensively, and the customer tries to get it as cheaply as possible; in our case, the parties are (i) non-subscribing shareholders, in whole or in part, in the position of the seller, and the subscribing ones, for all the pre-emptive rights or in addition, in the position of the buyer, and the object of the contract is the stake negotiated as a fraction of the legal capital, in the position of the commodity. Of course, the starting point of these negotiations is a valuation of the company carried out by each of the parties by various assessment methods.

### 3. Institutionalized credit

Institutionalized credit is an interest-rate loan extended by a financial institution such as a bank, an investment fund, or a non-banking financial institution. In principle, the loan agreement is negotiable, but the extent to which the proportion of each party's negotiating powers varies in favor of the lender, the more the contract tends to be an adhesion. Where it exists, the bargaining is different from one debtor company to another, depending on its size, market position, financial situation, business plan, the investment it intends to finance (and) the borrowed loan, the quality the size of the borrowed amount and the lending period, the guarantees provided, the leverage capacity, the level of other sources of financing of the company, and, as a consequence, the risks to which it would be exposed the creditor would extend the credit. Some of these are found in the loan agreement (in its main content or in an annex), constituting conditions that the company fulfilled at the date of the conclusion of the agreement and which were the basis for the loan. The loan may be extended either as a maximum amount, disbursed in one installment or withdrawn periodically, as required, or in the form of an overdraft. In addition to the interest accrued on the remaining amounts to be repaid (although there are contracts, usually with non-bank financial institutions, where interest accrues to the whole of the capital), the bank may still charge certain commissions that loan agreements obscure more much or less, as they can be considered abusive clauses.

In order to minimize the risk of non-payment and to intervene when the debtor company goes to insolvency, loan agreements contain clauses whereby the latter assumes certain obligations *to do* and *not to do*, the breach of which gives the creditor the possibility to accelerate the repayment, based on Art. 1418 of the Civil Code (default), i.e. a debtor's deferral from the benefit of the term (Eilis 2011, 315). According to Art. 1417 par. (3) of the Civil Code, "*Withdrawal from the benefit of the term may be demanded when, from his fault, the debtor comes to no longer satisfies a condition deemed essential by the creditor at the date of conclusion of the contract. In this case, it*

*is necessary to have expressly stipulated the essential character of the condition and the possibility of the sanction of the forfeiture, and there was a legitimate interest for the creditor to regard that condition as essential."*

In practice, the lending institutions resort to the following conditions that the debtor company must meet until all the amounts due are repaid or, in other words, the company maintains a certain situation throughout the existence of the funding, any modification requiring the creditor's consent: (i) there are no changes in the managerial structure of company; (ii) there is no change in (majority) shareholding; (iii) shareholders who are also key-persons (top-managers) not to sell their shares; (iv) the company does not change its core business; (v) the company does not alienate its main assets; (vi) the amounts of the financing to be used in accordance with the business plan attached to the loan agreement, and, last but not least, (vii) the financing institution may intervene in the company decision if the company no longer meets certain financial ratios (it is said that lenders' intervention in corporate governance, when the debtor approaches insolvency, means a change of place with shareholders (Armour, Cheffins, and Skeel 2002, 1722), who, being residual creditors, lose their financial interest in company). In order to see the status of these ratios, the company must provide a certain quality of the financial statements, audited by censors or financial auditors; the credit institution may not, however, condition the funding of the appointment of a particular audit firm (8<sup>th</sup> EU Companies Directive, as amended and supplemented in 2014). Intervention in the company's decision may be in the form of accepting a creditor's representative on the board of directors (insider governance) or modeling the board's decisions in accordance with the instructions of a representative appointed by the credit institution, prohibiting the distribution of dividends, prohibiting the contracting of new debts or even the obligation to increase its share capital when net assets decrease significantly due to losses. These actions of the creditor are taken before the company becomes insolvent and without relying in any way on the security and even less on a vaguely illusory security such as the irreducible core capital. The debtor company also has an interest in accepting the creditor's intervention in its decision, given the sanction of acceleration of the repayment that would put the company in insolvency, but also because the financing institutions have (or should have) specialists in recovering companies with financial problems, who can come up with solutions (Klein, and Coffee 1996, 292). In this way, the creditor tries to determine the recovery of his debtor, the functioning of the company under conditions that generate positive cash flows being the best guarantee that the debt will be repaid. In the absence of fulfillment of the conditions of Art. 1147 par. (3) of the Civil Code, The creditor cannot accelerate the repayment, since the term of the loan was considered as *essential* not only for the financing institution, but also for the debtor. The provisions of this article also apply to cross-default clauses, that are, those clauses requiring or failing to do with a company affiliated to the debtor company (parent company, subsidiary company or sister company).

In order to minimize exposure to the debtor, financial institutions generally require that part of the financing of an investment, according to the business plan, be provided from shareholders' own sources, especially as companies that use bank loans are generally small enterprises, where the main shareholders are at the same time managers. This scheme also has the role of to keep the managers loyal to the funded project, so their involvement is maximal. Minimizing the exposure of the financing institution to the debtor can also be done by syndicating the credit, in particular by co-opting some other financing institutions to take over part of the debt by way of assignment. Debtor companies can turn to refinancing when they identify a source that offers them more favorable financial terms (a lower interest rate or a longer repayment term). Refinancing does not necessarily mean the same type of source but also other types such as a bond or equity issue, ordinary or preferential (especially listed companies).

The loan agreement is governed by Art. 2158 et seq. of the Civil Code. With regard to the amounts of money, the possibility of extending loans without the need for any authorization from any regulatory body has been legally enshrined in the last article of Title VI of Law no. 161/2003 on security, currently repealed by the new Civil Code (and replaced by the latter). Currently, by enshrining the principle of "anything expressly non-forbidden is allowed", the prohibitions remain

only to be expressly stipulated. In this case, the express prohibition is in the Emergency Ordinance no. 99/2006 *regarding the credit institution and the capital adequacy*, referring only to the lending from deposits.

The statute of limitation to request repayment of the loan is within three years of the maturity date, and in the case of successive loans between the same parties, a separate term of statute of limitation will begin to run for each loan. Thus, in the case of a loan disbursed in tranches, the statute of limitation term runs separately for each tranche, from the date of each disbursement. Being a one-sided real contract, the effects of bilateral contracts, i.e. the exception of non-performance of the contract and its rescission, are not applicable (therefore, we consider that the provisions of Art. 20 of Law no. 190/1999 *regarding the mortgaged loans*, according to which, in case of non-fulfillment of the repayment obligation, the agreement is terminated, the resolutions cannot intervene, in the case of unilateral contracts, only on the basis of the joint agreement of the parties, according to Art. 1270 par. (2) of the Civil Code – *mutuus consensus, mutuus dissensus* – which replaced Art. 969 par. (2) of the old civil code). If, as regards the impossibility of opposing the exception for non-performance, things are obvious, with respect to the repayment the loan at the maturity date, we know that the creditor can obtain this by enforcement, together with interest at the time of repayment. Considering the unilateral character, the concluded but not disbursed loan agreement can only be qualified as a bilateral pre-agreement, which means that the financial institution has the obligation to extend the loan amount and the borrower's obligation to accept it. Otherwise, a party may request the rescission of the pre-agreement if the other party does not fulfill its contractual obligations as well as compensation (for example, the borrower, although fulfilling all the conditions to receive the loan amount, hits the refusal of the financing institution, thus causing injury). If the interest rate was aligned to the market average, the borrower would not have a financial interest in claiming compensation to the financial institution because it would call for another source of funding; but if the interest rate was an advantage, it would have the interest to do it.

The repayment of loans extended in a given currency must be repaid in the same currency, regardless of the increase or decrease of the value of the respective currency relative to other currencies (Art. 2164 of the Civil Code). However, it is considered that the *monetary nominal rule* does not apply if the devaluation of the reference currency took place after maturity, at which point the value difference can be obtained by the lender as compensation. The debtor companies must therefore be very careful about the currency in which they take the loan, because they assume the currency risk out of which they that can profit or they can lose. If they are exporters, then a weakened national currency is desirable for them because the costs, denominated in this currency, are lower. Conversely, if they import, a strengthened national currency will be desirable because the costs will be in the foreign currency in which the imported goods are paid. If the company sells goods or services on the domestic market, an appreciation of the national currency will favor the company because it will lower credit costs, as a devaluation of the national currency will increase the cost of the credit.

To hedge foreign exchange risk, some companies resort to option contracts on the foreign exchange market in the form of risk transactions in the opposite direction to that assumed by the contracted loan. For example, if the company has an exposure to the Euro on a loan contracted in this currency and its costs are in Romanian Lei, so it will be *long* on the Euro, it will create a *short* position to offset it so that what would lose from the *long* position by appreciating the Euro will recover from the *short* option, and will only bear the cost of the option. If the Euro depreciates, it will earn from the loan agreement but will lose an equal amount of the option plus its cost. As we can see, it is as if the company were to buy an insurance policy for foreign exchange risk, a policy whose cost is equal to the one of the option (Higgins 1996, 180).

Interest may be (i) current and (ii) penalty. The current interest is that accrued on the non-repayable amounts owed by the debtor to the lender as the price of the capital with which it was credited, having the nature of an adjudicating debt (under the *accessorium sequitur principale* rule, any exception that may be raised by the debtor in relation to the principal (such as the statute of limitation) also affects interest). Therefore, current interest is also called *remunerating interest*.

Penalty interest is that accrued at the due debts owed by the debtor to the lender, having the nature of compensation for non-repayment at maturity of the principal and any current interest (if capitalized). The legal nature of the penalties is that of a pre-determined compensation. Therefore, the current interest is not a compensation, but a service price consisting in the borrower making the borrowed amount (the capital) at the disposal of the borrower, only the penalty interest being a compensation. Current interest is fixed or variable. When it varies, it is linked to an external indicator such as a monetary index (IRCC, EURIBOR, LIBOR etc.) plus a margin. Interest rate variation is normal as long as the lending institution is funded from other sources, which allows it to transfer costs to the client. Therefore, a fixed rate of interest means the bearing of a monetary risk by both parties, depending on market fluctuations in interest rates. In any event, the financing institution may not change the interest rate without this being specified in the loan agreement and without the amendment being based on a calculation formula agreed by the parties that sends out verifiable ratios under the sanction of its cancellation as a clause abusive.

#### 4. Conclusions

Corporate financing is an important tool that, alongside with corporate governance, assemble the corporate law. Equity and debt, as the only source of finance, should be elected or combined to form the right instrument for a company to develop. Balancing the use of internal and external financing sources, as well as the share of an external source in relation to another external source, primarily depending on many factors that makes the funding decision difficult, important and complex.

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# What Makes a State Swing?

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**ABSTRACT:** This report provides a methodology for defining and identifying true swing states in US presidential elections. After these states are identified by cross-tabulating high-performing states under the categories of battleground (states with the lowest margin between competitors), shift (states with the highest frequency of flipping from Republican to Democrat or vice-versa), and bellwether (the accuracy of a state to vote concurrently with the winner of the electoral college) during the US presidential elections from 1992 through 2016, an examination is completed to determine any similarities among these states in terms of median household income, population density, racial demographics, political party affiliation, voter behavior, and voter registration. These states are then compared to national averages to determine if the “average swing state” can be identified. Hecht and Schultz utilize a four-point method for identifying swing states (2015). This report attempts to utilize less arbitrary data, using a three-point methodology: battleground, shift, and bellwether.

**KEYWORDS:** swing state, bellwether, battleground, election

## Introduction

The term “swing state” has been present in the American media during quadrennial presidential elections for several decades. Upon a search in Lexis Nexis Academic, the term “swing state” first appears in a 1980 Washington Post article referencing the presidential election between sitting president Jimmy Carter and challenger Ronald Reagan (Broder, 1980). Swing state is repeated more and more frequently as election dates draw nearer, with the media and curious voters focusing in on states that they perceive to have sway or will give tell of the outcome of an election.

During the most recent US presidential election in 2016, several states were incorrectly assumed to swing, or flip, to a candidate that the state had not voted for in recent history. Moreover, several states changed their recent historical voting patterns of selecting a candidate from a party that the state had chosen throughout the last seven presidential elections. Specifically, Wisconsin, Michigan, and Pennsylvania had each voted for the Democratic candidate during all the presidential elections from 1992 through 2012, changing to Republican in 2016. Why were these states not considered viable until after the election? Why did the press so intensely focus on the same swing states as previous elections, such as Virginia, Florida, and Ohio?

To better understand and identify possible swing states, this study hypothesizes that similar characteristics can be found in states that are identified as swing states, and that when averaged, these states will show a significant difference in these characteristics from national averages. This report examines a methodology for identifying swing states based on voting behavior. From these defined states, the demographic characteristics of race, income, and employment are studied, and compare these to national averages to determine if a swing state is significantly different or similar to national averages. This study will also examine the voter registration and turnout reports of these states to determine if these data points are also similar or vastly different from national averages.

## Literature Review

This report will relate a study of swing states and attempt to identify characteristics or traits found common among them. To review and synthesize this study with previous works on similar matters, this study compares the findings to those made in previous texts around the subjects of voter turnout, current swing state status, voting behavior, flips in party choice by a state, and voter demographics. This report will also compare previous studies of swing state identification and behavior to attempt to further identify similar characteristics among swing states as a group or bloc of states.

Abbott and Levin (1991) provide an in-depth analysis of the electoral college and its usefulness, or lack thereof, of placing the winner of the election into the office of President. What Abbott and James conclude is that the electoral college is an unnecessary and rather dangerously out-of-date method for the United States to choose its chief executive. They correctly predict that in future elections, albeit off by just one cycle, the electoral college votes will conflict with the popular vote, sending a candidate into office under the guise of winning only the electoral college, negating the majority will of the American people. Their publication regards the necessity for understanding the influence of the electoral college, how it can disproportionately favor certain states over others in terms of their intense focus and effect on the outcome of an election. They also discuss the bias against rapidly growing states, as well as states with high voter turnout. These qualities are significant in terms of their relation to swing state status and will be reported further.

Lau and Redlawsk (2006) discuss the normative decision by voters to vote “correctly.” They describe this behavior as if a voter would be deciding “based on the values and beliefs of the individual voter” (75). This can relate to a study of swing states in terms of the state’s ability to choose candidates of differing parties over a period of time, causing the state to flip back and forth from Republican to Democrat, or vice versa. The demographics of voters are studied by Leighley and Nagler’s (2014). Leighley and Nagler delve into the minute data of voting behaviors and characteristics of voters, drilled down to income level, race, religion, and more. This study provides insight into the attitudes of all voters, and how those attitudes have led to changes in voting behavior or the past 40 years. Regarding this report, Leighley and Nagler relate the importance of understanding these voters and how these changing demographics have placed an importance on where they are located within the United States.

One of the most recent and thorough examinations into swing state behavior and characteristics comes from Hecht & Schultz (2015), a compendium and case-by-case study of ten identified swing states and their reasoning for this identification. Hecht and Schultz itemize four criteria for identifying swing states: competitiveness of a presidential election, ability of a state to predict and vote for the eventual winner of a presidential election, occurrence of the state flipping between the major parties during a presidential election, and number of post-convention campaign events. Hecht and Schultz do provide some limitations to their study of post-convention campaign events, restricting the examination to only the 2012 presidential election cycle. Furthermore, the use of a 5% threshold for determining if a state is competitive during an election also appears rather arbitrary, even citing that previous studies examined a 10% threshold.

Most importantly, while Hecht and Schultz examine each of their identified swing states in depth, they do not pose a collective assessment of swing states as a bloc. They do not provide any significant data on the group of their swing states, nor do they identify similar behavior or characteristics thoroughly. This report will examine identified swing states utilizing the top 25%, or 12, states that identify with each of the first three criteria from Hecht and Schultz: competitiveness, occurrence of party flips, and bellwether status. These three criteria will represent the common and frequently used terminology found in discussions of swing states: *battleground*, *shift*, and *bellwether*. Any state that satisfies all three criteria will be determined as swing state for this report.

### **Methodology for Swing State Determination**

The first task of identifying similarities among swing states is to define and execute a model for determining a swing state. As discussed previously, the method for determining a swing state will consist of three criteria: vote margin between Republicans and Democrats in presidential elections (battleground criteria), variation of party choice in presidential elections (shift criteria), and the state’s accuracy for correctly voting for the outcome of the presidential election (bellwether criteria). After calculating the top 25% (12) races for each of these three standards, those states identified as completing all three criteria will then be designated as swing states for this report.

To accurately reflect the patterns of these outcomes, this report will study the elections over the past 24 years, consistent with a generational study, and will include the general elections of 1992, 1996, 2000, 2004, 2008, 2012, and 2016. The beginning point for measurement is also determined best for 1992 as this was the first presidential election in 12 years to flip parties, as well as the starting point of an ongoing eight-year cycle of party power change in the executive office. To accurately report the final votes for each state in the elections from 1992 through and including 2012, I have utilized the findings from the quadrennial election reports of the US Federal Election Commission (FEC) (Federal Election Commission [FEC], 1993; FEC, 1997; FEC, 2001; FEC, 2005; FEC, 2009; FEC, 2013).

### ***Battleground Criteria***

The measure of each state's average margin of difference among the Republican and Democratic candidates in the Presidential elections from 1992 through 2016 provided the results shown in Table 1, ranked in ascending order. The 12 states with the lowest average, or closest races between the two candidates, included the following: Florida (2.5%), New Hampshire (4.19%), Ohio (4.21%), Nevada (4.48%), North Carolina (5.24%), Wisconsin (5.26%), Colorado (5.41%), Virginia (5.45%), Pennsylvania (5.9%), Iowa (6.01%), Arizona (6.02%), and Georgia (6.88%). The full list of state averages can be found in Appendix A.

### ***Shift Criteria***

For the second criteria of party variation by state, each state was examined by tabulating the count of the presidential candidate's political party associated with the state's choice from 1992 through 2016. A count was completed for each state to determine the split in Republican and Democratic candidates for president over this period of time. As this was a count of the change in political party preference and not of the ratio of Democratic to Republican preference, the 1992 election was viewed as the baseline and not counted. Each time that a state changed its party, a count was tabulated for the full number of changes each state made in political party of its preference for president. Table 2 depicts the choices by each state with the respective count.

Table 1. Average Margin of Difference Between Presidential Candidates by State, 1992-2016  
(Battleground Criteria)

Elections	FL	NH	OH	NV	NC	WI	CO	VA	PA	IA	AZ	GA
1992	1.89	1.22	1.83	2.63	0.79	4.35	4.26	4.37	9.02	6.01	1.95	0.59
1996	5.70	9.95	6.36	1.02	4.69	10.3 3	1.37	1.95	9.20	10.3 4	2.23	1.17
2000	0.01	1.27	3.51	3.54	12.83	0.22	8.36	8.03	4.17	0.32	6.29	11.6 9
2004	5.01	1.37	2.10	2.59	12.44	0.38	4.67	8.20	2.50	0.67	10.4 7	16.6 0
2008	2.81	9.61	4.59	12.5 0	0.32	13.9 1	8.95	6.30	10.3 2	9.54	8.52	5.21
2012	0.88	5.58	2.98	6.68	2.04	6.94	5.36	3.88	5.38	5.81	9.06	7.82
2016	1.20	0.30	8.10	2.40	3.60	0.70	4.91	5.40	0.70	9.40	3.60	5.10
AVERAGE	2.50	4.19	4.21	4.48	5.24	5.26	5.41	5.45	5.90	6.01	6.02	6.88

*Note.* Data for margin of difference between presidential candidates by state for 1992 from FEC (1993), for 1996 from FEC (1997), for 2000 from FEC (2001), for 2004 from FEC (2005), for 2008 from FEC (2009), for 2012 from FEC (2013), and for 2016 from FEC (2017).

More than 12 states are designated as meeting these criteria for swing state status, due to the identical number of presidential party change by state for multiple states. Florida had more changes

than any other state, changing between the parties four times from 1992 through 2016, with Iowa and Ohio each making three changes during this period. Arizona, Colorado, Indiana, Nevada, New Hampshire, New Mexico, and North Carolina each varied in their choices twice over the 24-year period. As these states only constitute 10 of the 51 races and not the top 12 states mentioned as necessary, the next full block of states that obtained one change in political party should be included (Arkansas, Georgia, Kentucky, Louisiana, Michigan, Missouri, Montana, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin).

***Bellwether Criteria***

Moving to the final of the three criteria for determination of swing state status, this report calculated the accuracy of each state for voting for the presidential candidate who eventually won the general election, fulfilling the “bellwether” criteria. This standard was calculated by designating a point for each correct vote. After calculating the seven elections from 1992-2016 for the 51 contests, a percentage of accuracy was determined for each contest. Those 15 states with the highest average of accuracy from these elections (Ohio, 100%; Iowa, Nevada, and Ohio, 85.71%; and Arkansas, Colorado, Kentucky, Louisiana, Michigan, Missouri, New Hampshire, New Mexico, Pennsylvania, Tennessee, and West Virginia, 71.43%) are shown below in Table 3. Again, as in the results for the “swing” criteria, the top 12 performing states by accuracy to predict the eventual winner of the presidential election include three additional states due to equivalent performance measures. The full results for all states are found in Appendix B.

Table 2. Variance in Political Party for Presidential Election by State, 1992-2016 (Shift Criteria)

FL (4)	RDRRDDR	IA (3)	DDDRDDR	OH (3)	DDRRDDR
AZ (2)	RDRRRRR	CO (2)	DRRRDDD	IN (2)	RRRRDRR
NC (2)	RRRRDRR	NH (2)	DDRDDDD	NM (2)	DDDRDDD
NV (2)	DDRRDDD	AR (1)	DDRRRRR	GA (1)	DRRRRRR
KY (1)	DDRRRRR	LA (1)	DDRRRRR	MI (1)	DDDDDDR
MO (1)	DDRRRRR	MT (1)	DRRRRRR	PA (1)	DDDDDDR
TN (1)	DDRRRRR	VA (1)	RRRRDDD	WV (1)	DDRRRRR
WI (1)	DDDDDDR	AK (0)	RRRRRRR	AL (0)	RRRRRRR
CA (0)	DDDDDDD	CT (0)	DDDDDDD	DE (0)	DDDDDDD
HI (0)	DDDDDDD	ID (0)	RRRRRRR	IL (0)	DDDDDDD
KS (0)	RRRRRRR	ME (0)	DDDDDDD	MD (0)	DDDDDDD
MA (0)	DDDDDDD	MN (0)	DDDDDDD	MS (0)	RRRRRRR
NE (0)	RRRRRRR	NJ (0)	DDDDDDD	NY (0)	DDDDDDD
ND (0)	RRRRRRR	OK (0)	RRRRRRR	OR (0)	DDDDDDD
RI (0)	DDDDDDD	SC (0)	RRRRRRR	SD (0)	RRRRRRR
TX (0)	RRRRRRR	UT (0)	RRRRRRR	VT (0)	DDDDDDD
WA (0)	DDDDDDD	DC (0)	DDDDDDD	WY (0)	RRRRRRR

*Note.* Data for variance in political party for presidential election by state for 1992 from FEC (1993), for 1996 from FEC (1997), for 2000 from FEC (2001), for 2004 from FEC (2005), for 2008 from FEC (2009), for 2012 from FEC (2013), and for 2016 from FEC (2017).

***Swing States Identified***

After completing the analysis of the battleground, swing, and bellwether criteria, I then cross-referenced each result to determine any states that were identified with all three criteria. Those states identified as meeting all three criteria are listed below in Table 4. The seven swing states designated as

meeting all three BSB criteria include Colorado, Florida, Iowa, Nevada, New Hampshire, Ohio, and Pennsylvania. These states will now be used for an analysis to determine if there are any certain similarities among racial demographics, median income, and population density and allocation during respective census reports, and political party affiliation, voter turnout, and unemployment ratings during the months of their respective elections.

### Searching for Swing State Similarities

#### *Comparison of Swing States Using US Census Measures*

*Racial demographics.* To compare the racial demographics of the seven swing states, I have gathered the findings of the 1990, 2000, and 2010 US Census reports. These reports can produce an accurate description of the racial composition of these states, determining if there are any similarities among them and how they measured compared to US averages. For this report, I will be assessing the ratios of White, Black, and Hispanic citizens. Table 5 produces the percentages of each racial demographic for the seven swing states through these three census reports.

Table 3. Accuracy of States to Predict Eventual Presidential Election Winner by State, 1992-2016 (Bellwether Criteria)

Elections	OH	FL	IA	NV	AR	CO	KY	LA
1992	<input type="checkbox"/>		<input type="checkbox"/>					
1996	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>				
2000	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				
2004	<input type="checkbox"/>							
2008	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		
2012	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		
2016	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Accuracy %	100	85.71	85.71	85.71	71.43	71.43	71.43	71.43

Elections	MI	MO	NH	NM	PA	TN	WV
1992	<input type="checkbox"/>						
1996	<input type="checkbox"/>						
2000		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
2004		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
2008	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2012	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2016	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accuracy %	71.43	71.43	71.43	71.43	71.43	71.43	71.43

*Note.* Data for accuracy of states to predict eventual presidential election winner by state for 1992 from FEC (1993), for 1996 from FEC (1997), for 2000 from FEC (2001), for 2004 from FEC (2005), for 2008 from FEC (2009), for 2012 from FEC (2013), and for 2016 from FEC (2017).

It can be viewed that in each census, the White population of each of these seven swing states were above the national data, with the exception of Nevada in 2010. Moreover, the average White population of the seven swing states is significantly higher than the US average, while the average of Blacks and Hispanics of the seven swing states measures lower than the US numbers.

*Median income.* The same US Census Reports also conveyed information regarding household income. These reports can verify any similarities between the designated seven swing states and the US

averages, as shown on Table 6. It can be viewed that each of the swing states, as well as the US data, all reported a decrease in median household income from 2000 to 2010, with the exception of New Hampshire. It can also be viewed that the average median household income of the seven swing states is higher than the US data in both 2000 and 2010, and nearly identical in 1990.

Table 4. Cross-Tabulation and Identification of Swing States from BSB Methodology

BATTLEGROUND CRITERIA	SWING CRITERIA	BELLWETHER CRITERIA	ALL THREE CRITERIA MET
Arizona	Arizona	Arkansas	Colorado
Colorado*	Arkansas	Colorado*	Florida
Florida*	Colorado*	Florida*	Iowa
Georgia	Florida*	Iowa*	Nevada
Iowa*	Indiana	Kentucky	New Hampshire
Nevada*	Iowa*	Louisiana	Ohio
New Hampshire*	Kentucky	Michigan	Pennsylvania
North Carolina	Louisiana	Missouri	
Ohio*	Michigan	Nevada*	
Pennsylvania*	Missouri	New Hampshire*	
Virginia	Nevada*	New Mexico	
Wisconsin	New Hampshire*	Ohio*	
	New Mexico	Pennsylvania*	
	North Carolina	Tennessee	
	Ohio*	West Virginia	
	Pennsylvania*		
	Tennessee		
	Virginia		
	West Virginia		
	Wisconsin		

Table 5. Racial Demographics in Swing States from 1990, 2000, & 2010 US Census Reports

SWING STATE	1990			2000			2010		
	W	B	H	W	B	H	W	B	H
COLORADO	88.2	4.0	12.9	82.8	3.8	17.1	81.3	4	20.7
FLORIDA	83.1	13.6	12.2	78.0	14.6	16.8	75	16	22.5
IOWA	96.6	1.7	1.2	93.9	2.1	2.8	91.3	2.9	5
NEVADA	84.3	6.6	10.4	75.2	6.8	19.7	66.2	8.1	26.5
NEW HAMPSHIRE	98.0	0.6	1.0	96	0.7	1.7	93.9	1.1	2.8
OHIO	87.8	10.6	1.3	85	11.5	1.9	82.7	12.2	3.1
PENNSYLVANIA	88.5	9.2	2.0	85.4	10	3.2	81.9	10.8	5.7
US	80.3	12.1	9.0	75.1	12.3	12.5	72.4	12.6	16.3
SWING AVERAGE	89.5	6.6	5.8	85.2	7.1	9.0	81.8	7.9	12.3

Note. Data for racial demographics for 1990 from United States Census Bureau (1992) and for 2000 & 2010 from United States Census Bureau (n.d.).

*Population density and allocation.* For the final analysis utilizing US Census data, I have examined the population allocation for the seven swing states in comparison with US data to see if there are similarities among these states to determine if the ratio of urban and rural citizens is comparative to US data, as shown in Table 7. From this data, I have examined the population density in people per square mile (PPM<sup>2</sup>), as well as the percentage of rural and urban residents. Notably, the average of the seven swing states are all at a much higher population density than the US data, nearly double, in all three measures. Furthermore, the average percentage of rural citizens is slightly higher than the US data in each of the three Census reports, leading to a lower urban population.

Table 6. Median Household Income in Swing States from 1990, 2000, & 2010  
US Census Reports

STATE	1990 MEDIAN \$	2000 MEDIAN \$	2010 MEDIAN \$
COLORADO	\$50,340	\$60,764	\$59,669
FLORIDA	\$45,902	\$49,971	\$45,350
IOWA	\$43,808	\$50,808	\$50,504
NEVADA	\$51,795	\$57,389	\$53,082
NEW HAMPSHIRE	\$60,677	\$63,678	\$66,303
OHIO	\$47,495	\$52,722	\$46,752
PENNSYLVANIA	\$48,551	\$51,628	\$49,826
US	\$50,200	\$54,058	\$50,599
SWING AVERAGE	\$49,795	\$55,280	\$53,069

*Note.* Data for state income in 1990 and 2000 from National Center for Education Statistics (n.d.) and for 2010 from United States Census Bureau (2011).

Individually, the seven swing states range drastically in population density in all three reports, ranging from 10.9PPM<sup>2</sup> to 265.1PPM<sup>2</sup> (1990), 18.2PPM<sup>2</sup> to 296.4PPM<sup>2</sup> (2000), and 24.6PPM<sup>2</sup> to 350.6PPM<sup>2</sup> (2010). Each state also showed a larger growth of PPM<sup>2</sup> from 1990 to 2000 than from 2000 to 2010.

### ***Comparison of Swing States Using Voter Registration Data and Voter Turnout***

*Political party affiliation.* Due to the state of Ohio delaying their request for a public information report on political party affiliation throughout the previous seven presidential elections, the data for this measurement is not entirely complete, with the exception of 2016. However, an average can still be determined with the remaining six swing states, and a comparison to national averages. Table 8 provides the breakdown of party registration by election cycle for each of the swing states and separates the responses into Democratic (DEM), Republican (GOP), and Independent/Other (IND/OTH) registrants. The IND/OTH registrants also includes citizens who registered and selected no party or affiliation.

As shown in Table 8, political party affiliation for the average of the seven swing states is stronger for the registered Democrats and Republicans compared to the national average. Both political parties do exhibit and downturn overall from 1992 to 2016 in party identification, mirroring the national average, but the swing states do have stronger registration for both parties, compared to Independents or Unaffiliated.

Table 7. Population Density and Rural/Urban Percentages of Swing States from 1990, 2000, &amp; 2010 US Census Reports

STATE	1990			2000			2010		
	PPM <sup>2</sup>	RURAL	URBAN	PPM <sup>2</sup>	RURAL	URBAN	PPM <sup>2</sup>	RURAL	URBAN
CO	31.8	17.6	82.4	41.5	18	82	48.5	16.9	83.1
FL	239.6	15.2	84.8	296.4	10.7	89.3	350.6	8.9	91.1
IA	49.7	39.4	60.6	52.4	38.6	61.4	54.5	36.5	63.5
NV	10.9	11.7	88.3	18.2	9.4	90.6	24.6	6.5	93.5
NH	123.7	49	51	137.8	44.4	55.6	147	44.1	55.9
OH	264.9	25.9	74.1	277.3	21.1	78.9	282.3	20.5	79.5
PA	265.1	31.1	68.9	274	23.6	76.4	283.9	22.5	77.5
US	70.3	24.8	75.2	79.6	21	79	87.4	19.3	80.7
SWING AVERAGE	140.8	27.1	72.9	156.8	23.7	76.3	170.2	22.3	77.7

*Note.* PPM<sup>2</sup> among swing states from United States Census Bureau (n.d). Percentage of rural/urban split among swing states for 1990 from United States Census Bureau (1995), and for 2000 & 2010 from United States Census Bureau (n.d.).

*Voter turnout.* By measuring the turnout for each of the seven swing states during presidential elections from 1992-2016, I can report at any observable similarities or differences among the states and compare the swing state average to national voter turnout. Table 9 reports these findings regarding eligible voter population.

As shown in Table 9, the seven swing state average was higher in every presidential general election, with the exception of 2000. Individually, Iowa was the only state that never dropped below the national turnout level in any of the seven presidential elections, while Nevada never rose above the national turnout level on a statewide basis.

### ***Comparison of Swing States Using Unemployment Data***

The Bureau of Labor and Statistics has provided vast amounts of data regarding statewide unemployment figures for decades. Table 10 identifies the unemployment records during the months of November on general election years. Most notably, the average of the seven swing states reports lower unemployment percentages than the US national data in each of the seven election cycles. No more than three states had higher unemployment figures than that of the US as whole.

### **Summary of Findings**

From the measurements of the seven swing states, several similarities were reported among the states, as well as their trends with or against national data. Regarding the US Census data on racial demographics, the average of the seven swing states displayed a higher percentage of White citizens than the US average in all three Census reports. Additionally, the median household income average for these swing states was slightly higher than national averages. Finally, the population density averaged significantly higher than US reports, and showed a slightly higher number in rural citizens than urban city dwellers. Demographically, our swing states are less racially diverse with a higher White population, contain a slightly higher than average median household income, have more people per square mile than the US average, and are slightly more rurally populated than the US average. Unemployment numbers are also lower than national averages.

Regarding the political party affiliation and turnout for the swing states, several similarities were also discovered. The average of the swing states showed more self-identified Democrats and Republicans than the national data. These states do not have an abundance of independent or third-party members; rather, they are exhibiting slightly stronger identification with a political party. This could answer an important question as to the composition of the swing state. With a smaller group of voters unaffiliated, this could be the cause for the state to flip between parties and prohibit one party controlling all decisions. As with national trends, the average of the swing states does also show a growing number of voters not affiliating with either Democrats or Republicans. The voter turnout in the seven swing states was also slightly higher than national averages, whereas the voters in these states are more active and knowledgeable, possibly causing their choice of president to sway with their focus on the election.

Table 8. Voter Registration by Political Party during Presidential Elections, 1992-2016

	1992			1996		
STATE	DEM	GOP	IND/OTH	DEM	GOP	IND/OTH
COLORADO	34.0	33.3	32.7	31.5	36.1	32.4
FLORIDA	50.7	40.9	8.4	46.1	40.8	13.1
IOWA	37.6	31.5	30.9	32.6	34.0	33.4
NEVADA	45.4	39.4	15.2	41.8	42.4	15.8
NEW HAMPSHIRE	33.2	38.9	27.9	27.3	36.6	36.1
OHIO	NO DATA AVAILABLE					
PENNSYLVANIA	50.8	42.8	6.4	49.0	42.8	8.2
US	36.0	29.0	32.0	34.0	33.0	29.0
SWING AVERAGE	42.0	37.8	20.3	38.1	38.8	23.2
	2000			2004		
STATE	DEM	GOP	IND/OTH	DEM	GOP	IND/OTH
COLORADO	29.9	35.5	34.6	30.4	36.1	33.5
FLORIDA	43.4	39.1	17.5	41.3	37.7	21.0
IOWA	30.4	31.6	38	30.5	30.9	38.6
NEVADA	41.6	41.7	16.7	40.1	40.5	19.4
NEW HAMPSHIRE	26.2	35.3	38.4	26.7	31.2	42.1
OHIO	NO DATA AVAILABLE					
PENNSYLVANIA	48.0	41.8	10.2	47.6	40.7	11.7
US	35.0	31.0	27.0	35.0	33.0	27.0
SWING AVERAGE	36.6	37.5	25.9	36.1	36.2	27.7
	2008			2012		
STATE	DEM	GOP	IND/OTH	DEM	GOP	IND/OTH
COLORADO	32.9	33.2	33.9	31.6	31.7	36.7
FLORIDA	42.1	36.0	21.9	40.1	35.4	24.5
IOWA	34.5	29.1	36.4	31.9	31.0	37.1
NEVADA	43.2	35.5	21.3	42.3	33.6	24.1
NEW HAMPSHIRE	29.5	28.3	42.2	27.6	30.2	42.2
OHIO	NO DATA AVAILABLE					
PENNSYLVANIA	51.2	37.0	11.8	50.1	36.8	13.1
US	38.0	28.0	29.0	35.0	29.0	33.0
SWING AVERAGE	38.9	33.2	27.9	37.3	33.1	29.6
	2016					
STATE	DEM	GOP	IND/OTH			
COLORADO	31.2	30.6	38.2			

FLORIDA	37.9	35.3	26.8
IOWA	31.0	32.2	36.8
NEVADA	39.7	32.6	27.7
NEW HAMPSHIRE	28.7	30.7	40.6
OHIO	16.7	26.2	57.1
PENNSYLVANIA	48.3	37.8	13.9
US	33.0	29.0	34.0
SWING AVERAGE	33.4	32.2	34.4

*Note:* Data for Colorado from 1992 and 1996 from Colorado Secretary of State (n.d.), from 2000 from Sanchez (2017), and from 2004-2016 from Colorado Secretary of State (n.d.). Data for Florida from Florida Department of State (2016). Data for Iowa from 1992 and 1996 from Iowa Secretary of State (n.d.) and from 2000-2016 from Iowa Secretary of State (2017). Data for Nevada from Nevada Secretary of State (n.d.). Data for New Hampshire from New Hampshire Secretary of State (n.d.). Data for Ohio for 1992-2012 not available, and for Ohio from Ohio Voter Project (2019). Data for Pennsylvania from 1992 from Commonwealth of Pennsylvania Bureau of Elections (1992), from 1996 from Commonwealth of Pennsylvania Bureau of Elections (1996), and from 2000-2016 from PA Department of State (n.d.). Data for US from Pew Research Center for the People and Press (2016).

Table 9. Swing State Voter Turnout during Presidential General Elections, 1992-2016

STATE	1992	1996	2000	2004	2008	2012	2016
COLORADO	64	54.4	57.5	67.3	71.6	70.6	72.1
FLORIDA	57.2	53.3	57.5	64.7	66.6	63.3	65.7
IOWA	66.1	59.7	63.2	70.6	69.7	70.6	69
NEVADA	54.6	41.2	45.6	55.4	57.2	56.5	57.3
NEW HAMPSHIRE	67	60.1	65.0	71.5	72.5	70.9	72.5
OHIO	62.5	56.7	57.8	67.9	67.8	65.1	64.2
PENNSYLVANIA	54.9	49.7	54.1	62.6	64.2	59.5	63.6
US	58.1	51.7	60.2	60.7	62.2	58.6	60.2
SWING AVERAGE	60.9	53.6	57.2	65.7	67.1	65.2	66.3

*Note.* Data from United States Elections Project (n.d.). Retrieved from <http://www.electproject.org/home/voter-turnout/voter-turnout-data>.

Table 10 Swing State Unemployment Percentages during November in General Election Years

STATE	1992	1996	2000	2004	2008	2012	2016
COLORADO	6.1	4	2.7	5.3	5.7	7.5	3
FLORIDA	7.8	5	3.7	4.4	8.1	7.9	4.9
IOWA	4.3	3.5	2.9	4.5	5	4.9	3.5
NEVADA	6.7	4.8	4.5	4.1	8.5	10.5	5.2
NEW HAMPSHIRE	7.1	3.7	2.6	3.6	4.5	5.5	2.8
OHIO	7.3	5	3.8	6.3	7.7	7.3	5
PENNSYLVANIA	7.4	5.2	4.3	5.3	6.4	7.8	5.5
US	7.4	5.4	3.9	5.4	6.8	7.7	4.6
SWING AVERAGE	6.7	4.5	3.5	4.8	6.6	7.3	4.3

*Note.* Data from Bureau of Labor Statistics (2017). Bureau of Labor Statistics. Retrieved from <https://www.bls.gov/lau/>

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Appendix A. Average Margin of Difference Between Presidential Candidates by State, 1992-2016

	FL	NH	OH	NV	NC	WI	CO	VA	PA	IA	AZ	GA	NM	MN	MO	MI	OR	IN	ME	SC	WA	TN	MT	TX	NJ
1992	1.89	1.22	1.83	2.63	0.79	4.35	4.26	4.37	9.02	6.01	1.95	0.59	8.56	11.63	10.15	7.39	9.95	6.12	8.37	8.14	11.44	4.65	2.51	3.48	2.37
1996	5.70	9.95	6.36	1.02	4.69	10.33	1.37	1.95	9.20	10.34	2.23	1.17	7.32	16.14	6.30	13.21	8.09	5.58	20.86	5.83	12.54	2.41	2.88	5.38	17.86
2000	0.01	1.27	3.51	3.54	12.83	0.22	8.36	8.03	4.17	0.32	6.29	11.69	0.06	2.40	3.34	5.13	0.44	15.64	5.12	15.94	5.58	3.87	25.08	21.32	15.83
2004	5.01	1.37	2.10	2.59	12.44	0.38	4.67	8.20	2.50	0.67	10.47	16.60	0.79	3.48	7.20	3.42	4.16	20.68	8.99	17.08	7.18	14.27	20.51	22.87	6.68
2008	2.81	9.61	4.59	12.50	0.32	13.91	8.95	6.30	10.32	9.54	8.52	5.21	15.13	10.24	0.14	16.47	16.35	1.04	17.33	8.97	17.17	15.07	2.26	11.77	15.57
2012	0.88	5.58	2.98	6.68	2.04	6.94	5.36	3.88	5.38	5.81	9.06	7.82	10.15	7.69	9.38	9.50	12.09	10.20	15.29	10.47	14.87	20.40	13.65	15.79	17.79
2016	1.20	0.30	8.10	2.40	3.60	0.70	4.91	5.40	0.70	9.40	3.60	5.10	8.30	1.50	18.70	0.20	11.00	19.10	2.90	14.20	15.50	26.00	20.50	9.00	14.10
AVERAGE	2.50	4.19	4.21	4.48	5.24	5.26	5.41	5.45	5.90	6.01	6.02	6.88	7.19	7.58	7.89	7.90	8.87	11.19	11.27	11.52	12.04	12.38	12.48	12.80	12.89

	MS	LA	DE	CT	SD	KY	IL	AR	CA	AL	KS	WV	AK	MD	ND	NE	NY	VT	OK	RI	MA	HI	ID	UT	WY	DC	US
1992	8.91	4.61	8.20	6.43	3.52	3.21	14.24	17.73	13.40	6.76	5.14	13.02	9.17	14.18	12.04	17.18	15.84	15.69	8.62	18.02	18.52	11.39	13.61	16.02	5.58	75.54	5.56
1996	5.13	12.07	15.24	18.14	3.46	0.96	17.50	16.94	12.89	6.96	18.21	14.74	17.53	15.98	6.81	18.71	28.86	22.26	7.81	32.89	33.39	25.29	18.54	21.07	12.97	75.85	8.53
2000	16.92	7.67	13.06	17.47	22.74	15.13	12.02	5.45	11.80	14.91	20.80	6.33	30.95	16.39	27.60	28.99	24.98	9.93	21.88	29.08	27.30	18.33	39.53	40.49	40.06	76.21	0.51
2004	19.69	14.50	7.60	10.36	21.47	19.86	10.34	9.76	9.94	25.62	25.38	12.86	25.55	12.98	27.36	33.22	18.29	20.14	31.14	20.75	25.16	8.75	38.12	45.54	39.79	79.84	2.46
2008	13.18	18.63	24.99	22.37	8.41	16.23	25.14	19.86	24.06	21.58	14.96	13.12	21.53	25.45	8.63	14.93	26.85	37.01	31.30	27.80	25.81	45.27	25.43	28.17	32.24	85.93	7.28
2012	11.50	17.20	18.63	17.33	18.02	22.69	16.87	23.69	23.12	22.19	21.72	26.76	13.99	26.07	19.63	21.77	28.18	35.60	33.54	27.46	23.14	42.71	31.91	48.04	40.82	83.63	3.86
2016	17.80	19.70	11.50	13.64	29.80	29.80	17.00	26.92	30.10	27.96	20.60	42.10	14.73	26.40	35.80	25.00	22.50	26.40	34.40	15.50	27.20	32.20	31.80	18.00	46.30	86.80	2.10
AVERAGE	13.30	13.48	14.17	15.11	15.35	15.41	16.16	17.19	17.90	18.00	18.12	18.42	19.06	19.64	19.70	22.83	23.64	23.86	24.10	24.50	25.79	26.28	28.42	31.05	31.11	80.54	4.33

Appendix B. Accuracy of States to Predict Eventual Presidential Election Winner by State, 1992-2016

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS
1992	R	R	R	D	D	D	D	D	D	R	D	D	R	D	R	D	R	D	D	D	D	D	D	D	R
1996	R	R	D	D	D	R	D	D	D	D	R	D	R	D	R	D	R	D	D	D	D	D	D	D	R
2000	R	R	R	R	D	R	D	D	D	R	R	D	R	D	R	D	R	R	R	D	D	D	D	D	R
2004	R	R	R	R	D	R	D	D	D	R	R	D	R	D	R	R	R	R	R	D	D	D	D	D	R
2008	R	R	R	R	D	D	D	D	D	D	R	D	R	D	D	D	R	R	R	R	D	D	D	D	R
2012	R	R	R	R	D	D	D	D	D	D	R	D	R	D	R	D	R	R	R	R	D	D	D	D	R
2016	R	R	R	R	D	D	D	D	D	R	R	D	R	D	R	R	R	R	R	R	D	D	D	R	R
ACCURACY	42.86%	42.86%	42.86%	71.43%	57.14%	71.43%	57.14%	57.14%	57.14%	85.71%	42.86%	57.14%	42.86%	57.14%	57.14%	85.71%	42.86%	71.43%	71.43%	57.14%	57.14%	57.14%	71.43%	57.14%	42.86%

	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	US
1992	D	D	R	D	D	D	D	D	R	R	D	R	D	D	D	R	R	D	R	R	D	R	D	D	D	R	D
1996	D	R	R	D	D	D	D	D	R	R	D	R	D	D	D	R	R	D	R	R	D	R	D	D	D	R	D
2000	R	R	R	R	R	D	D	D	R	R	R	R	D	D	D	R	R	R	R	R	D	R	D	R	D	R	D
2004	R	R	R	D	D	D	D	D	R	R	R	R	D	D	D	R	R	R	R	R	D	R	D	R	D	R	D
2008	R	R	R	D	D	D	D	D	D	R	D	R	D	D	D	R	R	R	R	R	D	D	D	R	D	R	D
2012	R	R	R	D	D	D	D	D	R	R	D	R	D	D	D	R	R	R	R	R	D	D	D	R	D	R	D
2016	R	R	R	D	D	D	D	D	R	R	R	D	R	D	D	R	R	R	R	R	D	D	D	R	R	R	D
ACCURACY	71.43%	57.14%	42.86%	85.71%	71.43%	57.14%	71.43%	57.14%	57.14%	42.86%	100.00%	42.86%	57.14%	71.43%	57.14%	42.86%	42.86%	71.43%	42.86%	42.86%	57.14%	57.14%	57.14%	71.43%	57.14%	42.86%	71.43%

Note: Boxes marked green validate a state’s vote siding with the winner of the Electoral College vote for President

# The Impact of Internal Communication in Organizational Management

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**ABSTRACT:** Modern society represents a set of organizations. Almost all aspects of human existence are regulated, assisted or facilitated by an organization or another. Almost all people are part of the structures and processes of a type of organization, be it family, school, government, church, business or club. According to a simple definition, an organization is the combination and use of human, financial and material resources to achieve objectives. The organization is a social system composed of activities that brings together human and material resources, through which the objective for which it was created is achieved: products, works, services appropriate to social order. The organization is not defined only by its products and/or services, but also by the manager's ability to communicate with employees and the management team. All activities related to the organization are mediated by communication, so communication is a key element in the organizational processes, interfering with their success or failure. Communication is one of the most important organizational activities. Fundamentally, human relations grow out of communication and the functioning and survival of organizations is based on effective relationships between individuals and groups. Moreover, organizational capabilities are adopted and developed through intense social and communication processes. Internal communication, seen as a set of procedures and organized communication exchanges, participates in the construction of numerous definitions of problematic situations underlying the understanding and behavior of employees. Every organization has its moments of glory and decay in functional and communicative terms. It is very easy to go from an effective communication situation to a poor one, given the multitude of factors that can disrupt the flow of information and communication of a group or of an organization. Like any activity that takes place within the organization, communication must have a planned dimension; it cannot be done randomly, but requires a plan, a strategy, rules and procedures. In other words, communication must be institutionalized and incorporated into the strategic plan of the organization. Communication is specific to each organization; each organization has its own communication system based on the profile, size and especially the organizational culture.

**KEYWORDS:** internal communication, management, managers, efficiency, organization

## Introduction

Trying to find a universally valid definition for communication is almost impossible. Most communication specialists have suggested definitions, more or less comprehensive for this term. Any explanatory dictionary speaks of notice, information, knowledge, update, etc.

From the sociological point of view, communication is a fundamental psychosocial interaction of people, achieved through articulated language or codes in order to send a message, with the purpose of modifying individual or group behavior.

Communication, unlike other components of management and organization as a whole, has features that prevent its research in the same way as other organizational or managerial problems. First, communication is pervasive in all company activities; its study cannot be done in isolation, but in an organizational context by integrating managerial functions.

In this context, we can state that the organization is a social system of activity that brings together human and material resources through which the goal for which it was created is realized: products, works, services, corresponding to the social order.

The structure results from the combination or relationship of people, groups and leaders. Each of the three categories of elements is an important subsystem of the organization - the individual subsystem, the group subsystem and the management subsystem. The individual subsystem is

dominated by characteristic processes such as communication, adaptation, motivation and development (professional and human evolution).

As organizations grow they are dealing with a number of key aspects of organizational management, namely human resource management. Managers create a plan to attract and retain people with the skills needed by the organization. Implementing the plan involves the recruitment, selection, integration, training, rewarding, choosing the most appropriate benefits and ongoing assessment of performance to verify whether organizational objectives are achieved.

By management as a science we understand: “the study of management processes and relationships within the organizations in order to discover legalities and principles that govern them and designing new systems, methods, techniques of management, such as ensuring acquisition and competitiveness” (Nicolescu & Verboncu 2008, 38).

Organizational management is a series of activities (functions) including planning (forecasting), organization, guiding (coordination) with decision-making, training and control of the assessment, all geared to the use of human, financial, material and information resources of an organization in a effective and efficient manner necessary to achieve organizational objectives. Consequently, the five functions are vital for a real, effective and efficient management. The interdependence of management functions is shown in Figure no. 1.

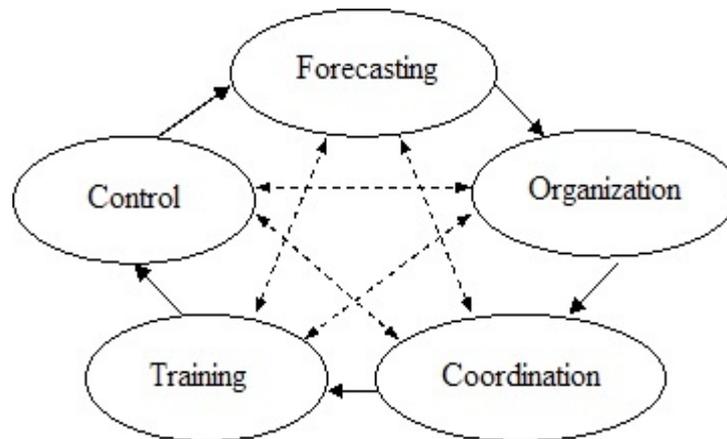


Figure no. 1 – Interdependence between management functions

*Source: Nicolescu & Verboncu 2008, 49*

The interdependent approach to management functions is determined by the systemic nature of the organization being closely related to organizational communication. A management review is related, in principle, to the ways of approach, namely, the complexity and content of activities when exercising organizational approach. From the types of management analysis we can list: causal approach, empirical, behavior and interpersonal communication, group behavior and communication, system of cooperation, decision theory, system approach, the mathematical approach (mathematical, computerized management), situational approach (tangents), addressing the role of management, operational approach. Since all these approaches are evidenced by effective communication we must take into account the importance of organizational communication.

### **1. A brief foray into theories of organizational communication**

The study of organizational communication concerns researchers and practitioners interested in the welfare of the organization. Since classical theories and going all the way to the modern ones, there was hardly any thinker which does not relate in one way or another to the role of organizational communication.

For Frederick Taylor, a great importance was held by the hierarchical communication plan while for Hanry Fayol horizontal communication conducted between people on the same hierarchical level but belonging to different hierarchical lines was essential. If for both of them the communication between bosses and subordinates was essential, for the representatives of the current of human relations and resource (Mayo, McGregor, Likert) the most important are communication relationships within the group. This opens the way to study the informal communication quite neglected previously.

Modern theories bring with them an integrative perspective in the study of communication, which is extended to the entire organization. It acknowledges the role of external and environmental factors and the need to correlate different phenomena such as social or psychological ones.

Traditionally, communication has been seen as a linear process comprising a transmitter that sends a message to a receiver, message that is understood, internalized and on which the receiver acts. Research in organizational communication has focused on how this process can be conducted in order to improve performance, productivity and profitability.

The modern management emphasizes further the role of communication in business management. Thus, it is considered that the managers spend between around 60 and 80% of the time communicating (Luthans & Larsen 1986. apud. Hargie Tourish 2009, 22). Studies show that effective managers spend a great deal of time in activities based on communication. Even from 1973 Mintzberg revealed the ubiquitous nature of interpersonal communication in management activities (Mintzberg 1973, 18).

More recent studies of leadership reaffirm that effective leadership at the work place involves the constant use of communication tools in order to create meaning, to share views and to build a common purpose (Sims & Lorenzi 1992 apud Hargie & Tourish 2009, 25).

Organizational efficiency and effectiveness depend heavily on the managers' ability to send messages within and outside the organization with maximum efficiency. The human ability means the ability to work well in collaboration with others. At work, human skills are manifested in the form of enthusiasm, confidence, and real involvement in interpersonal relationships. In this regard, we identified certain skills and abilities that contribute to the effective organizational communication process. After Jennifer M. George & Gareth R. Jones (George & Jones 2011, 53), in the instance of emitters, managers should possess certain skills while in the position of recipients of messages they should possess a different set of skills, as described in Table 1.

Table 1. Skills required of managers in their role as transmitters/receivers of them messages

<b>Managerial skills of managers in their capacity as transmitters of messages</b>
<ul style="list-style-type: none"> <li>• To encode the message into symbols that the receiver can understand;</li> <li>• To send messages that are clear and complete;</li> <li>• To avoid the filtering and distortion of information;</li> <li>• To ensure that the feedback mechanism is embedded in the message;</li> <li>• To provide accurate information to ensure that misleading rumors don't spread.</li> </ul>
<b>Managerial skills of managers in their capacity as receivers of messages</b>
<ul style="list-style-type: none"> <li>• To be careful (managers, busy as they are, should pay attention to all the messages they receive);</li> <li>• To be good listeners (to refrain from interrupting others, maintain eye contact, to ask questions to clarify items after receiving the message, to paraphrase or rephrase important points as a form of feedback);</li> <li>• To show empathy;</li> <li>• To understand linguistic styles through the awareness of cultural differences.</li> </ul>

Nowadays, communication is widely recognized as "the key to organizational excellence and effectiveness" (Gruning 1992).

Philippe Cabin, said: "*Currently, the communication within the organization is a less structured research area, divided into very different approaches: interpersonal communication, group dynamics, sociology of organizations, management, semiotics, sociolinguistics ... Very recent studies tend to provide a pluralist and systemic analysis of phenomena related to communication in the organization*" (Cabin & Dortier coord. 2010, 147).

No matter how strong an organization is, it cannot function properly without a good system of communication. Communication is what keeps the organization together and makes it work. The effectiveness of communication is vital to the effectiveness of the entire organization.

Like any activity that takes place within the organization, communication too must have a planned size; it cannot be done at random, but needs a plan, a strategy, rules and procedures. In other words, communication must be institutionalized and incorporated into the strategic plan of the company.

## 2. Management and communication

Management has always been linked to communication. Like people, organizations have their own destiny, and its search and fulfillment differentiates a performing organization from an underperforming one. Managers are those who have a special responsibility for the mission and can perform it through a deep understanding of the past, mature approach on the present and by creating a "picture" of the future. The organization is not defined only by its products and / or services, but also through the manager's ability to communicate to its employees and the management team.

Broadly, the manager is the person applying management functions in line with the tasks, powers and responsibilities assigned to the position they perform.

The manager will always use communication processes to be understood in order to coordinate its business activities and to make decisions and implement them, in order to enter into partnership and collaborations etc. "*Communication is, in terms of management, the process by which people are informed and advised to get the best results. Communicating effectively is not only to put your thoughts in order and present them in an accessible way, but also to express them in a way that will capture the attention of the receiver*" (Keenan 2002, 59).

The manager must consider including the individual's emotional side and paying attention to each receiver when transmitting the message because "for management, information is *conditio sine qua non*. The same can be said about the inner communication of any organization, given that within the organization, information must reach the court (person or group) when appropriate and necessary. Otherwise the information loses its value". (VanCuilenburg and Scholten Noomen 1998, 98). Schematically, the share of managers' activities – in the conceptual dimension, of human relations (motivation, training, communication) and the technical level is different depending on each operating level.

Managers work their obligations deriving from the functions of management: create and implement development strategies, make predictions and plans; organize and coordinate the work; provides a favorable climate for performance, that motivates employees; is working to raise the efficiency of leadership; promotes the communication with the staff, with customers and suppliers; develops strategic relationships etc.

Managers are associated to action verbs: to do, to develop, to intervene, to direct, to correct and the like. Managers do not maintain steady but dynamic phenomena; they do not seek an existing situation, if it is no longer profitable. Managers are often associated to the verb to change. Their characteristic is that they can identify the true hierarchy of priorities, that they can operate effectively in interdisciplinary areas with a high degree of uncertainty, taking risks and finding ways to solve, not least through the joint efforts of their employees. (Stanciu, Ionescu, Leovaridis and Stanescu 2003, 59).

Credibility is hard to gain in an environment where information flows are both formal and informal. The audience will always listen to what the boss has to say, but the latter cannot be sure if

he was pursued to the end and believed: *"If the listeners do not infer from what you say or how you say something, that you're credible, you have little chance to be followed to the end. It is clear that when people do not listen or pay attention to things that are communicated to them, they will remember only a small part of them. And from there to complement the message in error is only one step"* (Keenan 2002, 9).

Organizations have always satisfied their communication requirements. But this does not mean that they followed a strategic approach to communication management. To illustrate the previous statement we stop at the models proposed by Ulrich (Ulrich 1970) and Bleicher (Bleicher 1999).

Ulrich uses four managerial dimensions: physical, social, value and communicative. Bleicher describes the need for communicating the policies, organizational and cultural rules of the firms. Both authors see communication rather as a tool with a facilitating role rather than as one of the actions involved in development or management itself.

In this respect, Alex Mucchielli (Mucchielli 2008, 254) defines internal communication as: *"a mix of communication exchanges developed by the managers involved in the situation. This communication plan aims to address the main issues arising in the situation defined at the beginning by the organization's management, providing as much as possible, a response built by actors directly involved."* In his organization, the manager will permanently have to resolve issues. Thus, at any level of management he would be, he will have to solve problems related to work organization, organizational aspects, coordination, decision-making and not least, he will have to solve issues related to the evolution and change in the organization.

*"Management appears to us as the art to solve, through various forms of internal communication, the standard and recurring organizational problems faced by every manager. This definition is essential, because it allows, through the manager's position, to catalog the internal communication as a management tool"* (Mucchielli 2008, 259).

The systematic and constructivist model of communication considers communication as a response of the actors to the problems and situations in the organization. Internal communication results thus as a building together of people within the organization.

Internal communication is a managerial act because it is initiated and coordinated by the management and because it responds to an issue that reveals the functioning of the organization and its human potential.

Through internal communication, communication and information sciences become partners of management sciences. This finding entitles us to say that in an efficient organization, internal communication is undoubtedly a participatory management tool that gives employees the opportunity to express their opinions by turning them into involved, competent and inventive partners in solving the problems which they face.

The increased frequency and amplitude of the organizational communication is one of the factors that can ensure increased job satisfaction, loyalty and motivation. The absence of communication or random communication is a sign of poor and counterproductive management.

If managers do not perceive the structural and functional imbalances, if they do not encourage the development of group relations and communication, if the organization does not practice human resource performance policies and the like, the staff will engage increasingly less in work and there will be conflicts of work and also truancy and dropout.

## Conclusions

Managers are supposed to have an overview of all the opportunities that increase employee productivity. Such an opportunity is also the use of effective managerial communication to increase this indicator.

Effective communication is the key to the success of a modern organization. Within the organization, it strengthens employees' trust in the vision and mission of the organization, connects employees to the reality of the business, achieves goals, strengthens the organization's development process, facilitates changes necessary to progress, and contributes to changing employee behavior.

On the outside, the image of the organization, the discovery of new business opportunities and the relationship with society depend to a large extent on how well this continuous process of communication is conceived and guided.

Organizational efficiency and effectiveness depend heavily on the managers' ability to send messages within and outside the organization with maximum efficiency. No matter how strong an organization is, it cannot function properly without a good system of communication. Communication is what keeps the company together and makes it work. The effectiveness of communication is vital to the effectiveness of the entire organization.

Communication plays an important role in evaluating and motivating the human resource. If a manager does not close the loop and regularly communicate with employees, he will not be able to understand their needs and to assess the performance correctly. Moreover, an excessive severity and criticism creates a stressful atmosphere within the organization and employees will begin to reject the communication out of fear or as a precaution. The lack of communication between management and employees may result in poor performance and even conflicts.

Through internal communication, the science of communication and information become partners of the management sciences. This finding enables us to say that in an effective organization, the internal communication is undeniably a participatory management tool, which gives employees the opportunity to express their views turning them into involved partners, competent and resourceful in solving the problems they face.

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# Political Economy of Connectivity: China's Belt and Road Initiative

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**ABSTRACT:** There are ongoing academic and public debates on the nature of China's Belt and Road Initiative (BRI). While some observers hold that the BRI is primarily about economic development, others see it as a grand strategy of a great power with hegemonic aspirations. Is the BRI about development or geopolitics? This article adopts a political economy approach to bridge the developmental and geopolitical perspectives. The main argument is that the BRI signifies an attempt by the Chinese state to manage internal problems of capital accumulation by externalizing development on a trans-regional scale. The problems of capital accumulation under China's export-oriented growth model indicates a particular form of spatial fix via the BRI, which goes beyond the exportation of excess industrial/financial capacity and seeks to transform external productive spaces through inter-regional connectivity. The process of constructing new nodes and infrastructures of capital creates space for new forms of asymmetric interdependencies, rendering it prohibitively costly for most BRI partners to exit China-centered networks. To the extent that such asymmetric dependencies can be leveraged for strategic purposes, the BRI serves a geopolitical as well as a developmental function.

**KEYWORDS:** China, the Belt and Road Initiative, geopolitics, development, interdependence

## Introduction

President of the People's Republic of China, Xi Jinping, announced the Belt and Road Initiative (BRI) in late 2013. Since then the BRI has evolved, expanding not only in terms of geographic scale but also ambition. The BRI initially involved 65 countries—mostly across Eurasia—covering 30 percent of the world's GNP, 62 percent of population, and 75 percent of the proven energy reserves (World Bank 2018). As of 2019, the BRI is an essentially global project, encompassing all countries willing to participate. Speaking at the Belt and Road Forum in Beijing in 2017, President Xi defined the BRI as “project of the century” that “will benefit people across the world” (Xinhua 2017). The expanding margins of the BRI reflect the official narrative that it is an inclusive and participatory project of shared economic development.

Not everyone is convinced by this rhetoric of openness and win-win cooperation. Sceptics consider the ambitions of the BRI as evidence for China's assertiveness in international affairs (Callahan 2016; Chang-Liao 2016; Ferdinand 2016; Y. Wang 2016). Arguments underlining China's ambitions as a rising power are grounded in the long-standing debates regarding hegemonic transitions (Allison 2017). Offensive realists in particular have argued that China cannot rise peacefully and as its capabilities increase, it will inevitably become more aggressive and pursue regional hegemony (Mearsheimer 2014). Those who consider the BRI a hegemonic project often point out that China's foreign policy direction has become more proactive and globally-driven (H. Yu 2017). Critical shifts in foreign policy narrative including the notions such as “China Dream” of “great national rejuvenation” or “striving for achievement” are taken as further evidence for China's true intentions (Blanchard 2017, 256). Many observers are convinced that Xi abandoned Deng's long-held policy of “keeping a low profile” and is now “confident enough to openly undermine the US-led international order” (Mayer 2018, 14).

As China upsets the international order, it frequently turns to economic statecraft, understood as the systematic use of trade, investment and other economic instruments for strategic purposes (Blackwill and Harris 2016; Chin 2015; Harrell, Rosenberg, and Saravalle 2018; Huotari and Heep 2016; Norris 2016; Reilly 2013; Xiaotong and Keith 2017). In great power politics, military capabilities still remain relevant, as evidenced by China's increased spending on defense modernization (Defense Intelligence Agency 2019). Nonetheless, costs of using military force are prohibitively high for China, given both the level of economic interdependence with the US (Lee

2018; Wright 2013) and the persistent superiority of American military capabilities (Beckley 2018). It is within this context that the BRI is often viewed as a plot by Beijing for seeking relative advantage by non-military means.

Critics often suggest that by leveraging its massive economic resources for strategic purposes, China follows in the footsteps of the US and the Marshall Plan (Diplomat 2014; S. Shen and Chan 2018; Sidaway and Woon 2017), an analogy which Chinese officials dismiss firmly and repeatedly. Foreign Minister Wang Yi said in a 2015 speech, “The Belt and Road Initiative...is born in the era of globalization. It is a product of inclusive cooperation, not a tool of geopolitics, and must not be viewed with the outdated Cold War mentality” (Ministry of Foreign Affairs of the People’s Republic of China 2015). In 2018 Wang re-emphasized that the BRI is not about geopolitics: “It is neither a Marshall Plan, nor a geostrategic concept. Ever since the very beginning of proposing the Belt and Road Initiative, the Chinese side has been adhering to the principle of extensive consultation, joint contribution and shared benefits, sticking to the concept of transparency, openness and inclusiveness.” (Ministry of Foreign Affairs of the People’s Republic of China 2018). Or as Xi put it in his address to Boao Forum in April 2018, “The Belt and Road is not a plot of China, but a plan in sunshine” (Macaes 2019, 32).

Looking past the predictably self-serving rhetoric, some analyses underscore the developmental benefits of the BRI for the partner countries. In 2017, Asian Development Bank reported that there is a significant “infrastructure gap” in Asia requiring a capital injection of \$1.7 trillion per year (Asian Development Bank 2017). The BRI can help at least partially fill that gap. It is also often voiced that the BRI can be a template of a new phase of globalization, marked by the reopening and reintegration of markets under China’s leadership (Bijian 2017; Li and Taube 2018). China appears keen on being the flag bearer of free-trade, as exemplified most vividly by Xi’s 2017 keynote speech in Davos (CGTN 2017).

Even though there are various narratives about the BRI (Blanchard 2017; Clarke 2018; Sidaway and Woon 2017; Y. Wang 2016) the academic and public debate is primarily framed along the development-geopolitics axis laid out above. While some observers hold that the BRI is primarily about economic development, others see it as a grand strategy of a great power with hegemonic aspirations. Is the BRI about development or geopolitics? This article adopts a political economy approach to bridge the developmental and geopolitical perspectives. The BRI signifies an attempt by the Chinese state to manage internal problems of capital accumulation by externalizing development on a trans-regional scale. The feature that separates the BRI from historical instances of capitalist expansion is the emphasis on connectivity. The BRI does not simply aim to export excess capacity onto developing countries but rather reorganize external economic space by linking markets and producers, by multiplying and controlling trans-regional value chains. The process of constructing new nodes and infrastructures of capital also creates space for new forms of asymmetric interdependencies, rendering it prohibitively costly for most BRI partners to exit China-centered networks. To the extent that such asymmetric dependencies can be leveraged for strategic purposes, the BRI serves a geopolitical as well as a developmental function.

The argument is presented in two sections. First section deals with the historical processes of capital accumulation in China. While the literature on the domestic origins of the BRI emphasizes excess industrial capacity and massive foreign exchange reserves as primary drivers of infrastructure investments abroad, this section contends that overproduction issues themselves reflect the structural limits of China’s capital accumulation regime. While there are various aspects of the problem of capital accumulation, ranging from rising labor costs to the political infeasibility of reforms, the main limitation is China’s dependence of economic performance on global value chains, which the Chinese state and capital have limited influence over. To reduce the vulnerabilities stemming from overdependence on global supply chains, China adopted the neo-mercantilist policy of establishing direct (non-market) access to supplies (particularly natural resources). Dependence on global demand however, proved more difficult to manage, as indicated by the impact of the 2008 financial crisis on China’s export processing sectors. To cushion the impact of demand shock, Chinese government provided a massive stimulus package in late 2008,

which aggravated the problem of capital accumulation by creating further excess capacity, squeezing corporate profitability and increasing debt. As the limits of capital accumulation are set externally, internal policy solutions inevitably fall short.

Second section discusses how the BRI seeks to transcend the structural limitations of capital accumulation regime via externalization. The BRI involves various investment projects abroad including but not limited to massive transportation projects, which serve as spatial fixes, absorbing some of the excess industrial capacity and financial capital. More importantly, by establishing intra-regional connectivity, the BRI seeks to transform, create and interconnect networks and regions to facilitate the movement of capital. The defining feature of the BRI that separates it from previous instances of capitalist expansion is the emphasis on connectivity. The BRI does not simply aim to “dump” excess capacity onto others, which would have only a limited impact, but rather reorganize external economic space by linking markets and producers, by multiplying and controlling trans-regional and global value chains. In the process of creating new nodes and infrastructures of capital, China also creates space for new forms of asymmetric interdependence, raising the costs of exit for others that depend on China-centered networks, which in turn indicates the geopolitical nature of the initiative. Two aspects of this process are highlighted here: the internationalization of RMB and loan-debt contractuality.

### **Domestic Economic Liabilities**

While the global financial crisis is taken as a turning point for China’s problem with excess industrial and financial capacity, evidence indicates that overproduction enters domestic policy debates well before 2008. As early as 1997, the State Council Work Report to the National People’s Congress mentions “the excess production capacity of certain industries” as a major problem requiring structural adjustment (State Council 1997). Virtually every year since 2003, The National Development and Reform Commission, the primary office tasked with long-term economic planning, highlighted overproduction as a key problem for national economy (Zhang 2017, 318). “Nine traditional industries,” i.e. steel, cement, plate glass, aluminum, coal, ship building, solar, wind energy and petrochemicals are identified as the culprits. In a market economy, the typical policy to combat the problem of overcapacity would be to allow the market to trim the most bloated industrial segments. However, given the importance of “performance legitimacy” for CCP, this would not be a feasible option (Sum 2018). The unwavering commitment of the party leadership to high growth would be prohibitive of any prescriptions that could result even in a temporary economic contraction.

Since late 1990s, the preferred policy to combat overaccumulation has been to redirect investment to less developed areas that could absorb the excess capacity and increase domestic demand. An early example of this policy was the Great Western Development (GWD) strategy put forward in 1999, which aimed to reduce the gap between western regions and coastal provinces. GWD initiative sought to develop China’s western provinces by encouraging them to invest in infrastructure and establish trade ties with other regions. The development of these regions would have boosted demand for domestic goods and commodities. Preferential policies and large fiscal subsidies prescribed by the government, however, failed to raise growth rates sufficiently to achieve this objective.

The problem of industrial overcapacity cannot be understood in isolation from China’s role in the global value chains. Following 1978 economic reforms, China integrated into a world economy that was rapidly undergoing transformation. Changes in information technology and the declining costs of transportation facilitated the coordination of different stages of production across time and space. The fragmentation of global value chains allowed developing countries to specialize in limited segments of production, taking advantage of their comparative advantages (Baldwin 2006). China relied on low labor costs and economies of scale to develop export-processing industries targeting advanced markets like the US and Japan (Zhang 2017, 316). China’s WTO membership in 2001 boosted exports, allowing Beijing to maintain the momentum of growth. The share of China’s total exports in GDP rose from 20.3 percent in 2001 to 36 percent in 2006 (World Bank 2019). A major source of vulnerability of the export-driven growth model, and a sign of the

problem of overaccumulation, was rising labor costs. With rapid industrialization and the accompanying social changes, labor shortages began to appear as early as 2004, particularly in the southeastern coastal cities where export-oriented processing industries were densely located. China's nominal average wages increased more than seven-fold from 2000 to 2017 (EPS China Data 2019). While China's competitive edge eroded due to rising labor costs, the post-WTO export boom persisted mainly due to high global demand.

The accumulation of trade surplus resulted in massive foreign exchange reserves, which peaked at \$3.9 trillion in 2013 (US total reserves that year was \$537 billion). While the composition of reserves held by China's Central Bank is classified, most of the reserves are held in USD-denominated financial assets like the US Treasury Securities. Concerns about the depreciation of massive foreign reserves led Beijing to explore several venues to both rein in the rate of trade surplus accumulation and redirect the capital glut towards more productive investments. In 2005 Beijing introduced a new exchange rate rule, anchoring RMB to a basket of foreign currencies. The goal was to incrementally reduce the profitability of exports, incentivizing manufacturers to produce more for the domestic market. The redirected capital was poured into construction and infrastructure, a substantial portion of which was financed by local governments. Thus, the policies that were intended to cool down the export boom paved the way for further imbalances in the form of excessive investment in the real estate sector and rising debt (Amighini 2015, 50–51). Given the global nature of China's problem of overaccumulation domestic policies were of limited impact.

A major external initiative also driven by China's unfolding crisis of capital accumulation is the "go out" policy, encouraging firms to invest overseas, particularly in the fields of energy and infrastructure (Cabestan 2018). Chinese energy SOEs were exploring oil projects in Africa and Latin America as early as 1994, yet these were limited efforts. Given the priority of domestic energy sector development, overseas investments were not fully backed by the government at the time. In 1999, Chinese government launched the Going Global strategy and to actively push state firms to invest in overseas projects. To coordinate these efforts, Beijing established the State-owned Assets Supervision and Administration Commission (SASAC) under the State Council. Outward FDI flows climbed from less than \$1 billion in 2000 to \$12 billion in 2005 and \$69 billion in 2009. China became a net FDI exporter with \$145 billion in 2015. In 2016, FDI outflows reached a peak with \$196 billion while inflows remained at \$133 billion (UNCTAD 2019). By redirecting the trade surplus towards overseas infrastructure investments, the go out policy sought to relieve the pressure of overaccumulation by external expansion. In that sense, the go out strategy was a precursor to the BRI, which would take it to the next level.

A key objective of the go out policy was to reduce China's vulnerability stemming from dependence on global resource supply chains, particularly of vital resources. Instead of relying exclusively on market mechanisms for oil supply—the key manufacturing input for China's export processing industries—Beijing sought direct access to natural resources by acquiring equity shares and service contracts with oil producers. Virtually all energy-dependent countries are vulnerable to supply disruptions and market fluctuations, albeit in varying degrees. However, Chinese leadership's overwhelming concern with energy transit security, particularly the so-called Malacca Dilemma (Chaziza 2018; Len 2015) pushed Beijing to pursue mercantilist policies to control larger segments of the supply chain (Lind and Press 2018; F.-L. T. Yu 2017).

While mercantilist energy policies were deployed to alleviate the risks from reliance on global supply chains, dependence on global demand constituted a more complicated problem for Beijing. The 2008 global financial crisis and the collapse of global demand revealed the limits of China's export-oriented model. Already under pressure from overaccumulation and high labor costs, China's economy could potentially slide into recession due to external shock. Unemployment in export-oriented sectors would have posed a major threat to the political legitimacy of the regime. To cushion the impact of the crisis, Chinese leadership introduced in November 2008 a stimulus package of RMB 4 trillion (roughly \$580 billion at the time). The government relaxed credit by getting state-owned banks to lend, mostly to local governments, which then used the credit primarily for real estate development.

In the short term, the stimulus package succeeded in saving Chinese economy from recession. By early 2010, however, the cash injection had been spent, and many local governments were in debt. (Jones and Zeng 2019, 8). The long-term impact of the stimulus package was the aggravation of the crisis of capital overaccumulation. There already was a property bubble in many Chinese cities prior to 2009 (Davis 2011). The real estate development projects financed by local governments awash with stimulus cash led to a further saturation of the housing market. The “ghost town index” published by China Investment Network in 2014 noted around 50 virtually unoccupied new towns in China (Sum 2018, 4). The debt-financed construction boom exacerbated industrial overproduction. China’s annual steel production increased from 512 million tons in 2008 to 803 million tons in 2015 (P. Cai 2017, 12). In 2015, steel consumption was 664 million tons, resulting in a surplus exceeding the total demand for steel in the US that year (about 100 million tons) (Statista 2019). Overcapacity approached 30 percent in iron, glass, cement, aluminum and power generation industries (Jones and Zeng 2019, 8). As overproduction lowered prices, many SOEs faced negative returns on investment.

As excess capacity squeezed corporate profits and led to the rapid accumulation of debt, China’s financial system became more vulnerable. To limit the adverse impact of the infrastructural bubble on the financial system, the central government intervened several times to tighten official credit. As credit became scarce, local governments and companies linked with them frequently turned to shadow banking for servicing debt (McMahon 2018). While policy interventions delayed the crisis, they failed to address the structural limitation of China’s capital accumulation model: dependence on global value chains that China is unable to influence. Following decades of impressive export-driven economic growth, China faced progressively falling annual growth rates after 2010. The slowdown was partially the result of the 2008 crisis. Yet in the background of the falling growth rates were the structural issues accumulated throughout the last three decades of export-fueled growth. The availability of credit made the economy vulnerable to low-profit investments, which in turn opened the door to bad loans and debt. China’s total external debt stocks have been climbing over the past two decades, at alarmingly higher rates since 2010. In 2017, China’s external debt stocks were over \$1.7 trillion. Debt grew at a rate faster than GDP, which is the main cause of concern.

Economic pressures stemming from the dynamics of capital expansion were compounded by the dynamics of China’s political regime. Competition among local governments in pursuit of financial subsidies fed back into excess capacity. To increase local growth figures and attract funds from the central government, local governments channeled investment into sectors that had already built up overcapacities. According to a 2018 S&P report, “hidden” (off-balance-sheet) borrowings of local governments could be as high as 40 trillion yuan (\$5.78 trillion), which has been labeled a “debt iceberg with titanic credit risks” (Reuters 2018a). The central government’s concerns about performance legitimacy also disincentivized the policymakers from trimming industrial overcapacity, which would mean massive job losses without substitution and retraining mechanisms in place. It was in 2016 when Beijing finally announced a reduction of 1.8 million jobs in state-owned enterprises (1.3 million in coal and .5 million in steel industries). However, the central government’s commitment to growth and employment “superseded the need to implement structural reforms” (Rolland 2017, 100).

Chinese leadership raised concerns about middle income trap (F. Cai 2012), the notion that countries that reach middle-income country status in a very short period of time may not be able to catch up with high-income economies (Glawe and Wagner 2019). In terms of global value chains, middle income trap indicates the precarious position of these economies which are competitive neither in labor intensive segments of production (due to high labor costs) nor in higher value-added activities (due to low labor productivity, technological limits). Transitioning from an economy dependent on cheap labor and abundant capital to one of high productivity requires structural reforms as well as new export markets for high value-added goods, particularly for countries like China with low domestic consumption rates.

Next section discusses how the BRI seeks to overcome the structural limits of China's capital accumulation regime via externalization of development. The BRI not only pursues the exportation of surplus productive capacity but attempts to transform, connect and even create economic networks and regions in a way that would be conducive for further capital expansion. The goal is not just to diminish domestic liabilities but to transform them into external assets, which can be mobilized in pursuit of geopolitical as well as economic interests.

### **From Domestic Liabilities to External Assets**

When Xi announced the “Silk Road Economic Belt” and 21<sup>st</sup> Century Maritime Silk Road” in 2013, he painted the initiative in broad strokes. At the time, the BRI was primarily perceived as an umbrella framework for various ongoing and planned regional infrastructure projects. Following Xi's announcement, officials from National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce worked on specifying the details of the initiative. Throughout 2013–2014, party leaders' statements suggested that the BRI would primarily target China's periphery, involving about 65 countries, mostly in Asia. During 2014 however, the BRI continued to expand to Eastern Africa and Europe. By 2015, the scope of the initiative became global, open to all countries (Jones and Zeng 2019, 10–11). In March 2015, National Development and Reform Commission and related agencies released “Vision and Actions on Jointly Building Silk Road Economic Belt and 21<sup>st</sup> Century Maritime Silk Road” which remains the primary policy document outlining the guiding principles and areas of cooperation of the BRI (National Development and Research Commission 2015). Section III of “Vision and Actions” specifies not just one belt and one road but rather three land routes, two maritime routes and six corridors.<sup>1</sup> Components contain multiple infrastructure projects, including railroads, ports, pipelines as well as power production facilities, industrial parks, special economic zones and cities.

There is no official list of BRI projects. Given the increasingly ambiguous nature of the BRI as an umbrella term referring to virtually all investments abroad by China, it is problematic to identify which projects are part of the BRI at any given time. In a study of the six economic corridors, CSIS estimates that there are at least major 173 Chinese-funded and BRI-affiliated projects initiated between 2013 and 2017 in these corridors alone, including some colossal projects like the Gwadar Port in Pakistan. The majority of the BRI-related infrastructure activity so far seems to have focused on the China-Pakistan Economic Corridor, which is estimated to cost \$68 billion (Council on Foreign Relations 2019). China's overall expenses by 2027 is estimated at \$1.3 trillion (Morgan Stanley 2018).

How does the BRI help address China's problems of capital accumulation? As an infrastructure driven initiative, the BRI creates new external productive spaces that could absorb some of the excess capacity. In October 2013, trailing the initial announcement of the BRI by XI, State Council published a “guiding opinion” on “resolving the contradictions of overcapacity” where they suggested “actively expanding the external market” as a solution (State Council 2013). The construction of various roads, railroads, ports, new urban and industrial zones will create demand for China's steel, cement and other construction material. For instance, according to the Ministry of Industry and Informational Technology, 20000 km of new railways would absorb 85 million tons of steel (Holslag 2017, 49). While demand from the BRI countries may not be immediately sufficient to consume all excess production, taking the pressure off even partially can allow Beijing the much needed space for rebalancing the economy.

In addition to traditional industrial sectors weighed down by excess capacity, high tech industries like optical fiber and cable industries also accumulated a 50 percent overcapacity by the end of 2015 (H. Shen 2018, 2686). July 2015 State Council report identified the

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<sup>1</sup> Land routes link China to Europe via Central Asia and Russia; to the Middle East via Central Asia and to India via Southeast Asia. Maritime routes reach to Europe via the Indian Ocean; and to the South Pacific via the South China Sea. The economic corridors are the New Eurasian Land Bridge, China-Mongolia-Russia, China-Indochina, China-Central Asia-West Asia, Bangladesh-China-India-Myanmar and China-Pakistan corridors.

telecommunications industry as one of the 13 sectors that needed to increase “international industrial cooperation” (State Council 2015). The so-called Digital Silk Road—the global network of fiber optic cables, international trunk passageways, mobile structures and standards like 5G networks—is partially driven by the need to find new outlets for the excess capacity in the Internet and communication sector. The Digital Silk Road also provides the infrastructure necessary for the internationalization of RMB (more on this below).

In addition to exporting construction material, China seeks to relocate entire domestic production facilities into the BRI countries. China currently has excess equipment for manufacturing steel, cement and other material. Beijing seeks to export its entire unwanted surplus industrial capacity to countries that are lower in the global value chains. This would not only allow production to take place closer to the markets but also facilitate China’s industrial transition from labor intensive, mass manufacturing model (P. Cai 2017, 13) The process is well underway. Hebei, China’s top steel making province, cut 98 million tons of steel making capacity and 86 million tons of iron making capacity between 2013 and 2018 (Reuters 2018b). The province seeks to relocate some of this capacity abroad by 2023.

The relocation of industrial capacity abroad is often framed as providing the developing world with “China development dividend” (Summers 2016, 1637). As Jin Qi, the Chairperson of the Silk Road Fund said, “China possesses high-quality industrial production capacity, equipment, and technology, ample supply of funds and 30 years of development experience” which can “help facilitate international production cooperation, and reorganize global production chain” (P. Cai 2017, 3). This rationale is partially informed by China’s own industrialization experience in the 1980s and 1990s when Chinese manufacturers imported second-hand, surplus equipment and even complete lines from developed countries to jump start industrialization. By exporting its low-end manufacturing capacity, China perceives itself as replicating its experience with others. Beijing publicly denies that exportation of overcapacity has anything to do with the BRI and instead uses the term “international industrial cooperation.” China’s projects are portrayed as “magnanimous gifts to underdeveloped countries in desperate need of basic transportation networks or energy supplies to which China brings its experience in infrastructure construction” (Rolland 2017, 100). International industrial cooperation, it is argued, is “fundamentally different from the transfer of excess capacity practiced in the past by the developed countries” (Global Times 2016).

Critics however describe this process as a form of “spatial fix,” (Sum 2018; Summers 2017; Zhang 2017), invoking Harvey’s notion that inner crisis tendencies in capitalist societies generated a drive for geographical expansion and restructuring (Harvey 1982). The infrastructure projects implemented within the framework of the BRI are spatial fixes in and of themselves (Flint and Zhu 2018, 4) as they facilitate the exportation of over accumulated capital. However, the distinctive feature of the BRI as a spatial fix, one that conceivably separates it from previous forms of capitalist expansion around the world is the BRI’s emphasis on connectivity. The BRI seeks to reterritorialize economic activity by linking markets and producers, and by expanding, multiplying and inter-connecting trans-regional and global value chains. This reterritorialization via connectivity is fundamental to overcoming the structural problems of capital accumulation. Simply “dumping” the excess industrial capacity and capital on the underdeveloped and often politically unstable countries along the BRI will be likely insufficient. The geographic spaces that are targeted for investment must be connected so they can generate adequate economic returns to allow for capital expansion on a trans-regional scale.

The “Vision and Actions” defines five “connectivities” –policy coordination, facilities connectivity, unimpeded trade, financial integration, and people-to-people bonds— as the major goals of the BRI. In addition to hard infrastructure like roads and ports which facilitate the movement of goods and people, the BRI also aims at enhancing connectivity via soft infrastructure like Free Trade Agreements. Since the announcement of 2013, Beijing made a major effort to establish a global network of bilateral trade and investment ties. The majority of the BRI partners are in the process of negotiating with China. Many countries that already had agreements in place are renegotiating for revised and more comprehensive deals (Baltensperger and Dadush 2019). A

key component of these new networks of capital is the creation of new urban centers, the nodes which are being interconnected via hard and soft infrastructure. According to China's Ministry of Commerce, at least 56 industrial parks are being built in 20 countries along the BRI (South China Morning Post 2017). The zones are conceived as industrial and commercial spaces, which would create employment and cultivate investment. Since 1980s, China put up dozens of similar zones in China, including Shenzhen, now a city of 12.5 million people. An example of special economic zones is the China-Belarus Industrial Park, established 25 km outside of Minsk in 2013. Funded primarily by the State Bank of China, the industrial park offers tax incentives to attract investment and create jobs. The expectation is that the park will become a "real city" by 2030 (China Daily 2017).

The analysis so far indicated that the problems of capital accumulation under China's export-oriented growth model indicates a particular form of spatial fix via the BRI, which goes beyond the exportation of excess industrial/financial capacity and seeks to transform external productive spaces by means of inter-regional connectivity via hard and soft infrastructure. The logic of connectivity structures the financing of the BRI as well. As massive as China's foreign exchange reserves are, given the scale of the BRI projects, Beijing will need to raise capital from other sources, if only to hedge against the considerable risks involved in financing long-term projects in highly volatile regions. According to Asian Development Bank, the "infrastructure gap" in Asia alone will be \$26 trillion by 2030. This is one reason why in October 2013 Xi proposed a multilateral development bank dedicated to lending for infrastructure projects. The Asian Infrastructure and Investment Bank (AIIB) was established in October 2014 with an initial authorized capital of \$100 billion, about \$30 billion provided by China.

The BRI does not have a unified budget and draws funds from multiple sources. While AIIB is the most visible component of the financial structure of the BRI, in terms of the relative contributions to the BRI-related projects so far, AIIB resources are dwarfed by the commitments of Chinese national lending institutions. Lending institutions include the Silk Road Fund established in 2014 with a \$40 billion initial capital as well as China Investment Cooperation, China Development Bank (CDB), and the Export-Import Bank (EXIM). In June 2015, the CDB announced that it would invest a total of \$890 billion in 900 BRI projects (The Telegraph 2015). Indeed, even annual allocations of resources by CDB and EXIM far exceed that of the AIIB's total capital commitment (Jones and Zeng 2019, 14).

Despite its relatively limited resources, AIIB indicates a critical component in the establishment of new inter-regional and global financial networks, where China would be a central node. Throughout 2014 and 2015, Beijing conducted extensive economic diplomacy to establish a wide network of regional and non-regional (western) partners. Despite US efforts to dissuade allies from joining, UK became the first major western power to apply to be a founding member in March 2015. Germany, France, Italy, Australia, and South Korea followed suit. After lengthy negotiations among prospective founding members, the legal framework of AIIB was finalized in December 2015. AIIB is often conceived as part of China's efforts to offer an alternative to US-controlled financial institutions like the World Bank and IMF (K. G. Cai 2018). Beijing's discontent with the existing international economic governance is well-known (H. Yu 2017). Even after recent voting reforms, China's share in votes in IMF governance is about 6 percent, compared to US's 16 (IMF 2019). Thus, by spearheading the creation of new multilateral institutions, China seeks to close the gap between its economic power and its political clout in global governance. Within the governance structure of AIIB, China is the veto player with 26 percent voting power (AIIB 2019), enough to influence key decisions regarding membership and capital increases.

A key component of China's strategy of enhancing China's roles in financial networks is the internationalization of RMB. Even before the advent of the BRI, Beijing had been experimenting with financial mechanisms to enhance capital convertibility and the cross-border use of RMB (Huotari and Heep 2016). To facilitate trade settlements, China increased the number of RMB bilateral swap agreements with regional and non-regional actors, including Canada and Eurozone countries. Internationalization of Chinese currency is widely considered a critical aspect of China's

geoeconomic strategy in an emergent multipolar order. While the objective is not to replace the US Dollar as the international reserve currency, the widespread use of RMB to settle international transactions would increase Beijing's economic and political influence. In addition to reputation gains, internationalization of its currency would allow greater flexibility with monetary policy. There are critical geopolitical benefits for other states, most notably the circumvention of US sanctions, which are increasingly based on the use of US Dollar. China's BRI lending through AIIB and policy banks spurs the internationalization of RMB as more countries accept the RMB to facilitate Chinese investment. While internationalization is a long and gradual process, data on trade settlements and foreign holdings in RMB since 2013 suggest an increased heft of the Chinese currency (Pugliese 2018). In 2016, RMB was included in the Special Drawing Rights of IMF, joining US Dollar, Euro, the Japanese Yen, and the British Pound.

China's infrastructure lending activities are criticized for being predatory. It is claimed that China offers funding to unsound projects to secure access to resources and local markets. As many of the countries that China invests in already have high debt/GDP ratios, the increased debt burden raises the probability of defaults. The fact that bilateral loan contracts China offers often lack transparency has led many to argue that Beijing lays out "debt traps" (Green 2019; The Economist 2018). The oft-cited example of the so-called debt diplomacy is the case of Sri Lanka. The government was about \$8 billion in debt to China in 2017, which included more than \$300 million for the Hambantota Port being constructed by China Merchant Port Holdings. Due to sluggish economic performance and low demand, Sri Lankan government could not repay concessional loans to China. China provided a four-year grace period but the interest rates for the port project were very high (at least twice as high as that of WB) (Graceffo 2017). Rather than rescheduling debt, Beijing offered to convert the debt into equity, acquiring 70 percent of the Hambantota port along with a 99-year lease for a surrounding industrial zone (Dutta 2017).

Beijing vehemently rejects the criticism of debt diplomacy, claiming that China has no intention of trapping other countries with debts. In line with the broader discourse of the BRI as an initiative of achieving shared growth through win-win collaboration, Beijing argues that the loans to Sri Lanka were simply a response to "Colombo's call for development" and "China cannot be blamed for Sri Lanka's debt quagmire" (S. Wang 2018). Others claim that funding for unsound project investments is driven by lobbying and politically minded credit allocation (Jones and Zeng 2019, 14). Rather than elements of a dubious grand strategy of debt entrapment, investments like Hambantota are essentially products of poor economic design and decision-making.

In the absence of direct evidence that Chinese decision makers deliberately propose unsound projects as a pretext for procuring controlling stakes in the indebted countries, it is challenging to substantiate these claims. However, even if one does not presume that there is an explicitly manipulative, bait-and-switch rationale, China's loan-debt contractuality still serves a critical role in transforming internal economic liabilities into external economic and political assets. First, as discussed in the previous section, limits of internal capital accumulation necessitated productive channels for excess capacity, both as accumulated foreign exchange reserves and industrial production. Previous attempts to resolve this issue domestically, from the Great Western Development Program of 2000 to the 2008 stimulus package provided only limited relief in the short-term and aggravated the problem by lowering profitability and raising debt. BRI lending allows China to externalize its debt burden as loan-investment. A counter argument would be that by externalizing its debt, China is creating a vicious cycle of debt in the developing countries targeted by the BRI, which would eventually loop back into the Chinese economy. Given that most BRI investments are still in their infancy, it is difficult to estimate the level of systemic risk of debt sustainability. A report by the Center for Global Development indicates that of the 68 countries that were identified as potential BRI borrowers, eight were at particular debt distress based on lending associated by the BRI (Hurley, Morris, and Portelance 2018). Given the large and diversified investment portfolio, however, China can also hedge its bets and manage potential net gains/losses.

This takes us to the second and final point regarding the importance of loan-debt mechanisms as a strategic tool; the relative costs of exit from mutual dependence. While it is true that this is a

relationship of interdependence based on mutual interest between the creditor and the debtor, the cost of severing the tie differs significantly for the two actors. Given the size of its economy and the total investment outflows of China, losses from sunk investments in any particular country will likely be less than the potential losses to the host country. Even when China does not purposefully set up and implement debt traps, the asymmetric distribution of exit costs provides Beijing with a certain degree of leverage. The net difference between the costs that China would incur from sunk investments (minus the value of any asset that may be acquired as a result) and the costs for the indebted country (increased debt/GDP ratio, loss of assets etc.) would indicate the size of the leverage China would have in any given relationship.

## Conclusion

This article offered a political economy perspective which sought to bridge the analytical divide between the developmental and geopolitical perspectives. The primary point of departure was that the BRI reflects Chinese state's effort to manage internal problems of capital accumulation by externalizing development on a trans-regional scale. China's problems of capital accumulation, it has been argued, primarily stem from dependence on global value chains over which the Chinese state and capital have limited control over. By expanding capital outward, China seeks to reduce its vulnerability stemming from its own dependence on global value chains.

The article has also argued that what separates the BRI from historical instances of capitalist expansion is the emphasis on connectivity. Rather than simply exporting export capacity onto developing countries, the BRI seeks to reorganize the external economic space, aiming to render it more suitable for capital expansion. In the process of creating new nodes and networks of trade, investment and production, China also creates new asymmetric interdependencies. The article briefly discussed two instances of such new asymmetries favoring China: internationalization of RMB and loan-debt relations. To the extent that such asymmetric dependencies can be leveraged for strategic purposes, the BRI can be construed as a geopolitical as well as developmental initiative.

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# The Legal Extent of Malpractice in Romania. A Glance

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**ABSTRACT:** This article aims to focus on the phenomenon of malpractice with its causes, conditions and causality, as well as how it is regulated from the legal perspective. The aim is to take into account the causes that can lead to errors occurring in the exercise of a profession, to deepen the idea of accountability of the professional causing harm, to establish possible solutions for avoiding malpractice events. In the first instance, the concept of malpractice was analyzed and subsequently, following the documentary analysis, taking into consideration that the casuistic and specialized literature are focused on the medical field, this route was taken by focusing on this sphere of interest. It is a reality that, not long ago, the malpractice lawsuits were practically non-existent, but with the passage of time their number has most definitely increased. Thus, a first question to which I wanted to find an answer is: What are the underlying causes of this phenomenon? The specialized literature refers especially to the medical field, but not so much in terms of how physicians are exercising their profession, but, rather being focused on the legal and judicial aspects of the matter, namely the ways of recovering the damages, and how the guilty professional shall be held accountable for his harmful actions.

**KEYWORDS:** causal link, guilt, injury, malpractice, phenomenon, tort

## Introduction

The focus of this work is the professional who is part of the legal, probative relationship established between him and his client and who, in breach of his obligations, turns into the causer of the damage, being liable for tort and to the consequences resulting therefrom. It is worth mentioning that any kind of civil liability implies the fulfillment of the cumulative general conditions related to the illicit deed, the injury, the causal link and the guilt.

Over time, the concept of *malpractice* has been used particularly in the medical field, being associated with the professional work of the medical staff and to the provider of pharmaceutical products and services. However, currently, the notion of *malpractice* has expanded to other *non-medical professions* such as: the profession of notary public, the profession of attorney-at-law, the accounting expert, the evaluator, etc. (the legal basis of interest regarding the medical malpractice and the related civil liability being Law no 95/2006, and for the rest the Deontological regulations being set). Consequently, a first conclusion that can be drawn is the existence of a common denominator of these professions, namely the original meaning of the term *malpractice* (inappropriate practice), the fact that all these professions belong to its own regulatory body that issues rules of conduct (codes of conduct, good practices, statutes, guides, etc.), regulated by the law (Cimpoeru 2013, 4). For instance, in the case of lawyers and their clients, we are dealing with the existence of a legal assistance contract concluded in written with the client, and in the case of the doctor-client relationships, although there is often no written form of the agreement, the legal relationship exists *de jure*.

Consequently, as a general definition of malpractice, it can be taken into account that *“it is a form of civil liability that occurs when certain categories of individuals - generically named professionals - violate certain rules of conduct (included in statutes, codes of ethics, guides, good practices, standards, etc.) established by law and / or by the professional regulatory body; in the event these breaches of the obligations cause injuries to another individual, then the obligation to repair the damage is born”* (Cimpoeru 2013, 5). This general definition of malpractice facilitates the extraction of several important features of the phenomenon:

## Various forms of liability

We are dealing with a supposed existence of a legal relationship between two subjects, namely between the professional and his client (patient), which implies, in addition to certain obligations, the partial or total breach of these obligations. It is therefore appropriate to obtain the legal liability of the professional concerned. The injured person will be subject to the legal obligation to prove the existence of the legal relationship (medical-patient, lawyer-client, etc.) between him and the

professional who has caused him the damage, its materialisation being possible in various forms (legal representation contracts, patient hospitalization cards, etc.) (Niculeasa, 2006, 28).

According to the law, the damage does not appear to be an underlying condition of criminal liability. However, if we are in the situation where the illicit act of causing harm is the same as that which constitutes an offense, both criminal liability and tort will be committed. There will therefore, be two possible actions: a civil case and a criminal one that can be judged either jointly or separately. Article 14 Alin. (2) of the Romanian Criminal Procedure Code provides that the civil case can be judged in the criminal trial together with the criminal proceeding on the assumption that the injured party is constituted as a damaged party by applying the rules specific to each individual legal scenario. However, it must be borne in mind that under the rule of law *electa una via, non datur recursus ad alteram*, the injured person that has been constituted a civil party in the criminal proceedings cannot bring a separate trial before the civil court in which to ask for the same claims, unless according to art. 20 of the Romanian Criminal Procedure Code, the criminal court following the final judgment has not settled the civil action or if, from new evidence, the fact that the damage and the moral damages have not been fully repaired will result. If the cases are to be judged separately, the principles laid down in Article 19 (2) Romanian Criminal Procedure Code shall apply: “Judgment before the civil court is suspended until the criminal case is finally settled”.

Tort embraces many forms that are more or less specific to malpractice.

Taking into account that civil liability under malpractice is committed when the professional has cumulatively violated a professional conduct rules together with another malpractice underlying condition, the pre-existence of a legal relationship between the professional and the victim, we have to deal with the form of responsibility *for his own deeds* (a malpractice-specific form and also the main form for tort or for civil liability) and not for acts caused by other individuals or for acts caused by other things except those governed by law, when, as a result of having caused various harms to the individual, the author will not be held liable: legitimate defense, the state of necessity, the disclosure of professional secrecy generated by serious circumstances and activities required by the law.

Art. 1357 (1) of the Romanian New Civil Code clearly provides that "the person who causes damage to another one by an unlawful act committed by guilt shall be obliged to repair it" as well as the general premises underlying tort: a) the existence of the damage; b) the existence of an illegal act; c) the existence of a causal relationship between the act and the damage; d) the existence of guilt.

All these general requirements are accompanied by a special condition, namely the existence of a legal relationship between the author and the victim. The burden of proving the existence of that legal relationship lies with the victim, who can bring in any kind of evidence. In the case of the legal relationship established between a lawyer and his client as a probative means is the legal assistance agreement concluded between him and his client in written is the actual proof. In the case of the legal relationship between a physician and his patient, although we are in the absence of a written form, it can be easily derived from the law.

### **The existence of guilt**

In order for the author of the action to be held liable, a certain mental state needs to be present at the moment of committing it, both in terms of the action and to its consequences. Thus, in order for the deed to be attributable to the author, after the damage has been caused to the injured person, the author must have acted guiltily. We therefore have to deal with an intellectual (consciousness) factor through which the author, by means of an internal process, foresees his choices, actions, conduct, and consequences, and with a volitional (will) factor that “materializes in the mental act of deliberation and decision-making on the behavior to be adopted” (Bulai 1992, 60).

#### *The result/ the injury*

The damage is the negative result of the offense committed by the author against another individual. The damage must cumulatively meet the following conditions in order to be reprehensible:

- To be certain. Its existence must be provable and measurable. The law provides, in addition to repairing the actual damage that has already occurred at the time of requesting its repair, also repairing future damages in accordance to Art. 1385 (2) New Civil Code and Art. 1357 (1) NCC;

- To not have been repaired yet.

*The causal link* between the caused damage and the illicit act is extremely important in relation to the engagement of tort. This connection must be concrete and not generic, in conformity with Art. 1357 (1) of the Romanian New Civil Code.

### **Medical Malpractice**

Living in a time of globalization, increasing medical services, and due to the diversification of activities in the everyday life of the population, the family physician as well as the other more specialized physicians can permanently face medical malpractice lawsuits that are continuously growing, but also with the significant traumatic emotional experiences that this can generate.

Medical responsibility arises from the particularities of the medical profession, the patient's confidence in the doctor's decisions, as well as the possibility that the medical act is sometimes unpredictable or irreversible.

The existence of medical malpractice cases is possible at any moment of the medical activity due to the number and selection of the patients, the type of medical investigations (more or less invasive), the implementation of new techniques with state-of-the-art equipment, incomplete experience, etc. In this context, the definition of a good physician is represented by a significant practice he has, his professional competence that justifies his reputation, but also a smaller number of personal cases of medical malpractice. The danger represented by such cases of malpractice in the work of a doctor is of a dual nature: for a doctor, representing the loss of his reputation, his lack of control over the current activity, the loss of financial resources and even the freedom, and for the patient, an aggravation of his suffering condition, the amputation of healthy organs, sometimes even physical or mental disability for life, or even death.

Following graduation from medical studies, the graduates are required to take the Oath of Hippocrates (updated by the World Medical Association in the 1975 - Declaration of Geneva) at the end of the university's closing ceremony, which includes the moral duties of a physician in the exercise of his profession. Therefore, the doctor has a responsibility to the supreme authority, but also to his patient (Rosenbach, Margo and Stone 1990, 9:176–185).

### **Malpractice - civil vs. criminal proceedings**

In fact, there are no big differences in the conduct of the trial before the Courts of Law, between a civil case of tort or contract liability and the civil side of a criminal trial.

One of the similarities is that the guilt, respectively the fault, both in the criminal and the civil matters, is established within the trial of the main claim.

The main difference lies in the fact that common law lawsuits on civil liability are not preceded by a precursor and institutionalized research phase of the deed, as is the case in criminal proceedings.

On the other hand, while establishing the existence of an injury is an important step in determining the conditions of the liability, in both cases, its size is of different importance. Thus, in the case of the civil case, assessing the extent of damages is precisely the essence of the application for a lawsuit, whereas in the case of the civil aspect of the criminal case, the establishment of the amount of the compensation has mainly an influence on the determination of the effects of the offense in terms of the danger to society.

As for the burden of providing evidence, differences still exist, despite the similarities. In both cases, the burden of proof in establishing the guilt / culprit belongs to the injured party. The difference lies in the fact that, in the criminal proceedings, the main injured is, in reality, the concept of social value, the defendant of which is the State and, only after that, the injured person, while in a civil claim, the injured person is the only one directly interested in the outcome of the trial.

### **Conclusions**

As a general idea, as priorly mentioned from the very beginning, the most common form of malpractice in Romania remains that relating to the profession of physician. Undoubtedly, the

profession of physician is one of the oldest human professions dealing with the prevention, recognition (diagnosis), therapy and the consequences of illnesses and accidents. However, this profession entails a degree of both moral and legal responsibility on the part of the practitioner, and the existence of malpractice cases that are constantly growing is now being noted. Therefore, an in-depth analysis of the phenomenon is necessary in order to reduce the occurrence of these cases, even if we start from Seneca's old diction – *Errare humanum est sed perseverare diabolicum*, due to the fact that the traumatic emotional experiences it generates are significant. Although the vast majority of health care professionals and professionals in the areas mentioned above (lawyers, notaries, accountants, assessors, etc.) exercise their professional duties carefully, however, they remain human, and people are prone to make mistakes.

In the exercise of medical activity there is a risk that doctors assume in order to restore the patient's state of health. Physicians may have a series of solutions to prevent malpractice events:

- Preventing negligence: limiting the number of patients treated by an appropriate selection, correctly informing the patient and caregivers, proposing a surgical procedure that can be done with the facilities of the medical unit, but also for which there is sufficient expertise gained by study, practical activity, continuing medical education;

- Permanent communication with the patient during treatment so that he/she feels the physician's support, more frequent visits, overseeing complications and treatment, and seeking to provide medical information as complete as possible;

- The occurrence of a complication should be properly dealt with, justified to the patient, so that the patient, possibly the lawyers discern that it was an inevitable complication and not a negligence;

- The correct presentation of the facts - their hiding will be finally discovered;

- Involvement in the patient's recovery so that he will, ultimately, become the main defender of the physician;

I believe that in malpractice situations both physicians and the hospital should be jointly responsible. The hospital is a factor that facilitates the presence of this phenomenon. How can we expect doctors to perform at their best, under disastrous working conditions? How do we expect a sick individual to recover if he or she can enter in contact with in-hospital infections, due to the improper sterilization of the equipment or hospital accommodation conditions?

The hospital, as a service provider, should ensure the good performance of the medical act with regard to the provision of performant devices, medicines of any kind, continuous monitoring of the patient, anesthesia, properly equipped rooms, lack of which causes harm to the patient.

The analysis of the data revealed that if the image of malpractice could be changed in Romania, it would be to make changes in the educational system, to motivate the professionals to assume their human responsibility, to inform the general public. Unfortunately, in Romania, the current legislation on malpractice is not clear enough to protect both the professional and the injured party: the professional defends himself the professional body defends the profession more than the professional.

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# **New Concerns in International Business: The Application of Sanitary and Phytosanitary Policies**

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**ABSTRACT:** In recent years, the debate over the application of non-tariff measures for environmental protection as a new form of disguised restriction on international trade by developed countries has become increasingly important. While tariffs have decreased over the decades, the increasing application of environmental-related requirements are a new factor that affects international business. These new requirements not only modify companies' decision-making processes at national and international levels, but also within the firm. Hence, this paper proposes to examine the application of such measures by the European Union in the tea, coffee and yerba mate market, and their impact on exporting Latin-American firms for the 1995-2015 period and analyze whether there has been an improvement in their productive quality. For this aim, through a qualitative methodology, we carried out interviews with specialists of the field and surveys to Latin-American exporting companies. In this way, this analysis discusses with theorists if the application of measures related to environmental sustainability leads to ameliorate firms' productive quality. Among the results, it is highlighted the fact that non-tariff measures—in particular sanitary and phytosanitary ones—have been used as trade barriers. However, complying with them allows exporting companies to develop environmental performance strategies and ultimately, it leads to a positive growth in their productive quality in the medium-long term.

**KEYWORDS:** non-tariff measures, trade barriers, sanitary and phytosanitary policies, productive quality

## **Introduction**

In the last decades, the exponential increase of deregulation of national industries and foreign investment, new trade agreements and regional cooperation in trade issues are clear evidences of the advance of globalization. In this context, tariffs have decreased—especially after the Uruguay Round, when member countries committed to reduce them. However, paradoxically, Non-Tariff Measures (NTMs) started to become increasingly important, and by the 1990s, their impact in international business and trade was inevitable.

At the same time, concerns about the environment and sustainability have gained a primordial place in the international agenda. Thus, different countries are increasingly applying sanitary and phytosanitary measures (SPS) with the aim to protect, prevent and preserve human, animal and plant health. The application of such standards—mainly applied by developed countries—led to affected exporting developing countries to be strongly concerned about their businesses, as they do not only restrain their market access, but also, they imply huge costs, as if firms cannot comply with them, they can be in disadvantage, losing competitiveness.

In consequence, exporters of the affected primary goods have shown strong criticism, claiming that these standards serve as hidden restrictions on trade. Although many experts have provided evidence of the negative effects of these measures in the short term, it may be possible for companies to overcome the assumed costs in the long term, and eventually improve their competitiveness through innovation. According to Galperin (2013), standards only have negative effects on exporters when they are not able to comply with them, as it is possible to observe an increase in exports sales in those companies that do.

Therefore, it is necessary to work in the development of strategies so that both trade and environmental goals are achieved, in a way that neither of them is harmed. As it is observed, the challenge lies in the improvement of productive systems, which requires regional and international cooperation (Kim 2018).

Thus, in this paper, our main goal is to discuss how the application of SPS affect international business. In order to do so, we study the effects of their application by the EU in the coffee, tea and

mate market in Latin-America. By surveying companies involved in the infusion industry, we measure the results in a period of 10 years.

From the results, it is expected to find that although these measures may have negative impacts in the short term, it is possible for firms to overcome these costs in the long term. In fact, those companies that have complied with NTMs may establish more environmental goals and give more importance to sustainable development than the ones that have not. Hence, if firms comply with SPS, they may improve their competitiveness.

### **Coffee, tea and mate industry in Latin America**

The three drinks to be analyzed in this paper play an important role in the regional agricultural industry. In the case of coffee, South America, Central America and Mexico have represented more than 60% of the total global production from 2013 to 2017 (IHCAFE 2017). In fact, by 2013, 7 out of the 20 top coffee exporters were Latin-American: Brazil (who is in fact the first coffee exporter in the world), Colombia, Honduras, Peru, Guatemala, Mexico and Nicaragua (ICO 2013). Additionally, because regional consumption of coffee is relatively low (around 2.5 kilos/person per year) compared to the global average (4.5 kilos/person per year), the region has exported 90% of its production between 1980 and 2011 (Brenes and Viquez 2016).

Production and export of tea and yerba mate are not as widely known internationally as coffee, but they are still an interesting market to be analyzed for two main reasons: the first one is that their consumption are expected to increase potentially in the following years; the second one is that the EU apply many non-tariff measures that affect these markets and seem to present a threat to Latin-American exports' growth in the short-term.

In the case of yerba mate, this drink is becoming a trend in international markets. The consumption of this beverage has been increasing throughout the decades, which can represent a window of opportunity for Argentina, Brazil and Paraguay. Currently, the market is concentrated in these three South American countries. While Argentina remained the leader in exports in FOB terms by 2013, Brazil did so in terms of exported tons. Paraguay is self-sufficient and it also generates exportable balances, while the Uruguay market is supplied by the Brazilian market through linked businesses.

In the case of the tea market, Latin-American countries represent a very small proportion of the global tea production. Among the most important producing countries are Brazil and Argentina. According to the analyzed information from FAO, Argentina is among the top 10 tea exporters in the world, representing around 2% of the global production of tea in 1995, 2010 and 2015, and 1.5% of the total exports. Being among the top 10 exporters in the world, Argentine's tea industry has shown a growth tendency since the beginning of 2000s. It is important to highlight that among the most important importers of Argentine tea we find members of the European Union.

### **Methodology**

In order to analyze the impact of NTMs in Latin America, we surveyed 39 different Latin-American companies that are involved in the coffee, mate and tea industries. The survey was made in 2018 with the purpose to study these firms' decision-making processes and actions in the last 10 years in terms of cost perception, NTMs compliance, and sustainability strategies (Kim 2018).

Experts on the area were contacted via email and social media such as LinkedIn and Facebook. Among the respondents of the survey we find production, logistics, and exports managers, quality experts, company owners and safety assistants. The survey consisted of 34 questions, which were divided in three sections: the first one was "General Questions", compounded by 11 questions related to the firms' characteristics. The second one was "Non-Tariff Measures", which had 17 questions related to the companies' perception of NTMs and their compliance. The third section was "Sustainable Development", which consisted of 6 questions related to the companies' strategies and decisions on this matter.

For this study, we analyze whether there is a correlation between compliance with NTMs and positive effects in the long-term plus an orientation towards sustainability and a more positive view over the application of these measures. For that aim, it was necessary to add questions that served as direct indicators. Hence, for the firms' compliance with NTMs, we asked the companies about their level of compliance in four different types of measures: maximum levels of contaminants, packaging and technical certifications. Answers were divided in 5 main categories: "Excellent Compliance", "Moderate Compliance", "Low Compliance" and "Null Compliance". Then, we added questions where companies had to show their opinion regarding the application of such measures, and the evolution of the productive capacity and exports in a period of 10 years. Mainly, we asked them about the introduction of sustainable technology, the evolution of the use of water, if they established environmental performance goals for the firm, and how their productive capacity and competitiveness improved in the last 10 years. Combined, these indicators will allow us to study the correlation between the variables.

Before measuring the results, it is important to mention some general results of the survey. In general terms, 10 different countries participated of the survey. As we observe in Figure 1, 23% of the surveyed firms were from Mexico, followed by Argentina (18%) and then Peru (15%). Additionally, it is important to highlight that 72% of the total surveyed firms claimed to be specialized in coffee, 21% in yerba mate, and only 8% in tea, which is explained by the fact that tea is mostly produced in Argentina and Brazil, and also, its production is concentrated in few companies.



Figure 1. Question of survey: "In what country is your firm located?"

Lastly, it is important to highlight the strong relationship that Latin-American firms have with European Union. They were asked to give a number from 1 (most important) to 8 (least important) depending on the importance that they give to each of the following regions in terms of exports: North America, Central America, South America, European Union, Rest of Europe, Africa Asia and Oceania. From our results, we observe that 62% of the surveyed companies said that the EU was among their exports' main destinations (from 1 to 4).

## Results

Among the first results, it is important to mention that most companies have shown to have a good compliance with NTMs. When asked about the Maximum Levels of Contaminants/Residues, around 56% informed that they have had an "excellent compliance", followed by a 38% of "moderate compliance". A very similar result was obtained when firms were asked about the packaging requirements (see Table 1). Then, almost 70% of the firms selected the category "excellent compliance" when asked about technical certifications required by importing countries. As we observe, although it may be costly for firms to comply with these requirements, evidence shows that most of them do.

Table 1. Results obtained to questions related to the firms' level of compliance with NTMs

Compliance Level	What was your firm's level of compliance of the Maximum Levels of Contaminants/Residues requirements on your products?	%	What was your firm's level of compliance in order to obtain technical certifications required by importing countries on your products?	%	What was your firm's level of compliance of the packaging requirements on your products?	%
Excellent Compliance	22	56%	27	69%	22	56%
Moderate Compliance	15	38%	9	23%	14	36%
Low Compliance	1	3%	1	3%	1	3%
Null Compliance	1	3%	2	5%	2	5%
<b>TOTAL</b>	<b>39</b>	<b>100%</b>	<b>39</b>	<b>100%</b>	<b>39</b>	<b>100%</b>

In order to analyze the correlation between degrees of compliance and results in the long term, we compare the results of Figure 2 with some indicators that help us to understand firms' growth in the last ten years. First, we asked firms about the evolution of their exports in the last ten years. The categories were divided in 5, from which more than 50% of the surveyed firms selected "increased" (Figure 2). Categories "increased" and "increased significantly" sum 66% of the total answers. An even more positive result was observed when we asked firms about the evolution of the firm's productive capacity in that period, as these two categories summed almost 80% of the total. The main difference was that there were more firms that said they have increased their production capacity (around 26%).

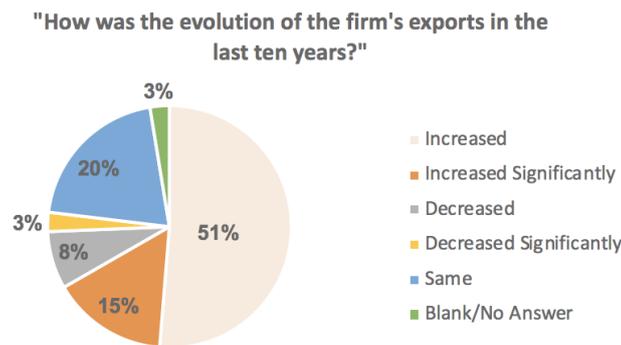


Figure 2. Results obtained to the question: "How was the evolution of the firm's exports in the last ten years?"

When we combine the answers of the surveyed firms of questions under Figures 2 and Table 1, we obtained that most companies that had complied excellently with packaging requirements also informed that their exports "increased" (45%) or "increased significantly" (23%) in the last ten years. Only three firms have declared to have null compliance or low compliance, but all of them did not have an increase of their exports in that same period (Table 2). The other two questions related to compliance show similar results, which lead us to confirm a correlation between level of compliance and evolution of exports in the long-term.

Table 2. Correlation between level of compliance with packaging requirements and evolution of exports in the last ten years

What was your firm's level of compliance of the packaging requirements on your products?	How was the evolution of the firm's exports in the last ten years?						Total Answers
	Increased Significantly	Increased	Same	Decreased	Decreased Significantly	Blank/No Answer	
Excellent Compliance	22.73%	45.45%	13.64%	9.09%	4.55%	4.55%	22
Moderate Compliance	7.14%	71.43%	21.43%	0.00%	0.00%	0.00%	14
Null Compliance	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	2
Low Compliance	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	1
<b>TOTAL</b>	<b>15.38%</b>	<b>51.28%</b>	<b>20.51%</b>	<b>7.69%</b>	<b>2.56%</b>	<b>2.56%</b>	<b>39</b>

Similarly, those companies that tend to comply with these measures also have an increase of their production capacity in the last ten years. In order to achieve this result, we compared the answers related to the firms’ degree of compliance with technical certifications required by importing countries, and the evolution of their production capacity in the last ten years. We presume that those companies that decided to certify their products had to introduce more sustainable practices and essentially, improve the inefficiencies of their production processes, which would help them improve and increase their productive capacity in the long-term. As we can observe (Figure 3), those companies that selected the category “*excellent compliance*” tended to increase their production capacity (more than 81% selected either category “*increased*” or “*increased significantly*”). Regarding those companies that showed a moderate compliance, the answers are also positive, but they are slightly lower than the first group. For the total of 3 companies that did not comply at all or had a low degree of compliance, all answers are different, for which it is not possible to make a generalized conclusion.

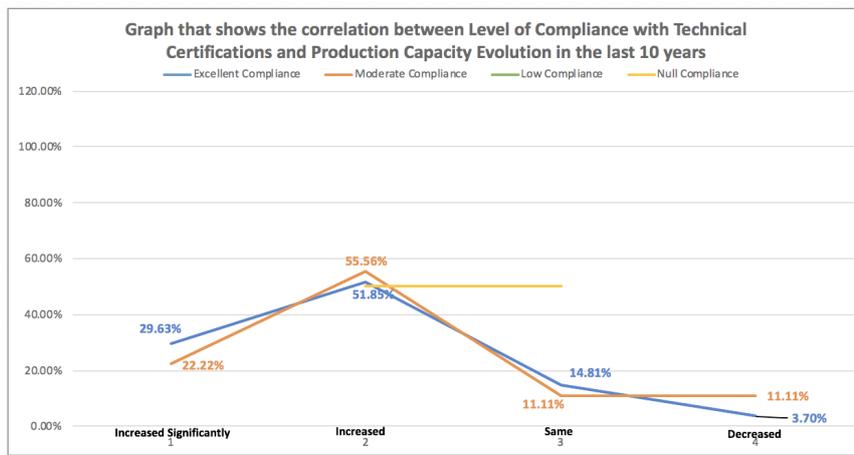


Figure 3. Correlation between Level of Compliance with Technical Certifications and Evolution of Productive Capacity

Thus, we can conclude that regardless of how costly complying with non-tariff measures are, we observe that those companies in the infusions industry in Latin America who comply with non-tariff measures tend to see positive results for their firms in the long term, both in their exports and in their productive capacity. In order to study how firms perceive the impact of NTMs, we asked them to what extent they considered that these measures impact the evolution of their exports. Given the importance of this issue in the international agenda, our first presumption was that most of them would choose the category “*it is the main factor that explains the evolution of our exports*”. However, surprisingly, only 2 firms selected it (5%). Most of the answers were concentrated in the following two categories (Figure 4), which lead us to conclude that although NTMs are not the main factor, they still have a relevant weight when explaining the evolution of a company’s exports.

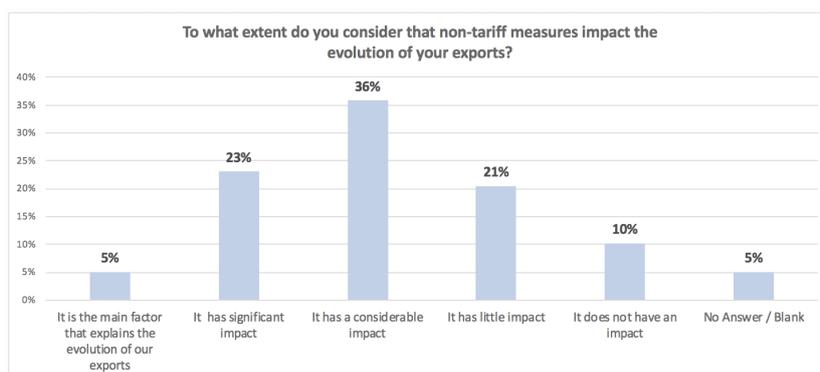


Figure 4. Results obtained to the question “To what extent do you consider that non-tariff measures impact the evolution of your exports?”

Moreover, it is possible to observe that there is a general tendency of firms to consider that the NTMs applied by the European Union in this industry can benefit the firm in the long term (around 50%). However, this perception diverges depending on their level of compliance (Table 3). In order to analyze this, all the answers to the questions shown in Figure 2 were combined, and we matched them with the firms' answers to the question: *“Do you consider that the NTMs applied by the European Union can benefit your firm in the long term?”*. Hence, in this case we will not have 39 answers, but instead, 117 (for the three indicators of Level of Compliance). Thus, of all answers of the category *“excellent compliance”*, around 58% matched the answer of the firm that NTMs could benefit them in the long term. On the contrary, those answers under the categories *“low compliance”* or *“null compliance”* tended to match answers that doubted about the benefits of these measures in the long term, and some of them believe that they do not bring such benefits.

Similarly, 64% of the firms that stated that they comply excellently with the Maximum Levels of Contaminants/Residues requirements agreed that the established maximum levels are the ones that are necessary to preserve human health and should be applied to all firms, against 23% that decided not to give their opinion, 9% that selected the category *“The maximum levels are correct but could be more flexible”*, 4% that stated that *“Importers should not establish maximum levels”*, and none of them opined that *“the maximum levels are exaggerated and they should be higher”*. Differently, firms who had a moderate compliance showed more diverse opinions. Hence, companies that tend to comply more with Non-Tariff Measures have a more positive perception about their application.

Table 3. Comparison of Levels of Compliance with Certifications, Packaging Requirements and MLRs with the Perception of firms on the benefits that they can provide them in the long term

Level of Compliance with Certifications, Packaging and Maximum Levels of Residues/Contaminants	¿Do you consider that the NTMs applied by the European Union can benefit your firm in the long term?			
	No	Yes	Maybe	Total Answers
Excellent Compliance	8.45%	57.75%	33.80%	71
Moderate Compliance	13.16%	42.11%	44.74%	38
Low Compliance	0.00%	0.00%	100.00%	3
Null Compliance	20.00%	0.00%	80.00%	5
<b>Total Answers</b>	<b>12</b>	<b>57</b>	<b>48</b>	<b>117</b>

Finally, it is possible to analyze if there is a positive correlation between compliance and commitment with the environmental performance and sustainability development. We presume that firms that have a tendency to comply are also more compromised with a sustainable development.

For that purpose, we first asked firms to provide numbers from 1 to 5 to the importance that their firm gives to the introduction of more sustainable technologies -being 1 *“totally unimportant”* and 5 *“totally important”*. Among the results, it was found that 82% of the answers were concentrated in Categories 4 and 5 (Figure 5), with a gap of 30% or more with the other categories. This shows a general tendency of firms to acknowledge the importance of introducing more sustainable technologies in the firms. Because the results were highly positive, it seems unlikely that there would be real differences in the answers depending on whether firms complied more or less with NTMs.

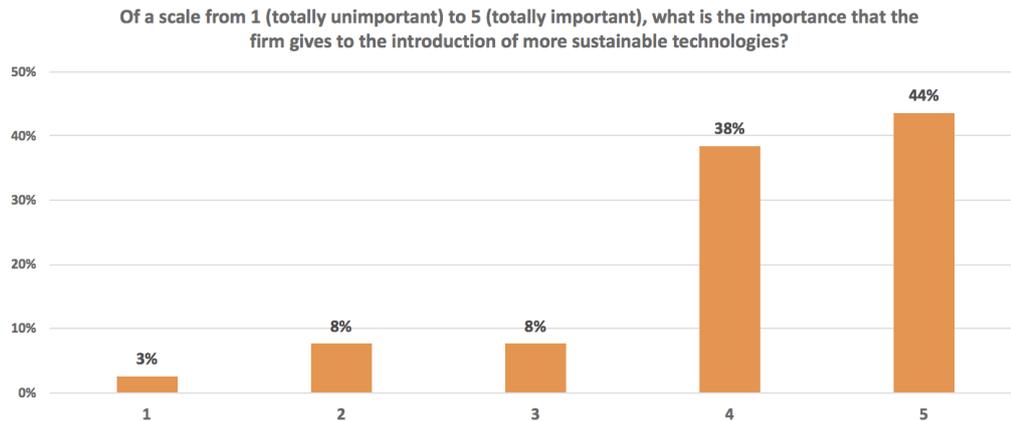


Figure 5. Question "Of a scale from 1 (totally unimportant) to 5 (totally important), what is the importance that the firm gives to the introduction of more sustainable technologies?"

Hence, we compared the degree of compliance in terms of Maximum Levels of Contaminants with the importance given to sustainable technologies. Of those firms that showed an “*excellent compliance*”, around 55% considered them as totally important, against 41% that chose category 4 “*important*”, and only 4% said they were irrelevant (Table 4). When we observe the answers of the group of firms “*moderate compliance*”, although the percentage that consider the introduction of more sustainable technologies as important is higher, the answers are more equally distributed among the 5 categories. Regarding the firms in the category “*low compliance*” and “*null compliance*”, neither of them chose the category 5. Similar results were obtained when comparing the level of compliance in terms of required certifications. However, as in both cases there was only one firm on each category, they might be outliers, so it would not be possible to generalize the results.

Table 4. Correlation between the degree of compliance in terms of Maximum Levels of Contaminants/Residues and Importance given to the introduction of more sustainable technologies

What was your firm's level of compliance of the Maximum Levels of Contaminants/Residues requirements on your products?	Of a scale from 1 (totally unimportant) to 5 (totally important), what is the importance that the firm gives to the introduction of more sustainable technologies?					Total Answers
	1	2	3	4	5	
<b>Excellent Compliance</b>	0.00%	4.55%	0.00%	40.91%	54.55%	22
<b>Moderate Compliance</b>	6.67%	13.33%	13.33%	33.33%	33.33%	15
<b>Low Compliance</b>	0.00%	0.00%	0.00%	100.00%	0.00%	1
<b>Null Compliance</b>	0.00%	0.00%	100.00%	0.00%	0.00%	1
<b>Total Answers</b>	1	3	3	15	17	39

Secondly, firms were asked about the evolution of the use of water in the production process of the company in the last years. Compared to the importance given to sustainable development, results of the companies’ actions are not as highly positive. While it is true that the categories “*noticeably decreased*” and “*decreased*” still compound more than 60%, there is almost a 30% of the surveyed respondents that say the use of water has remained the same in their production process. Fortunately, only a small percentage of the firms increased it (Figure 6).

How would you evaluate the evolution of the use of water in the production process of your company in recent years?

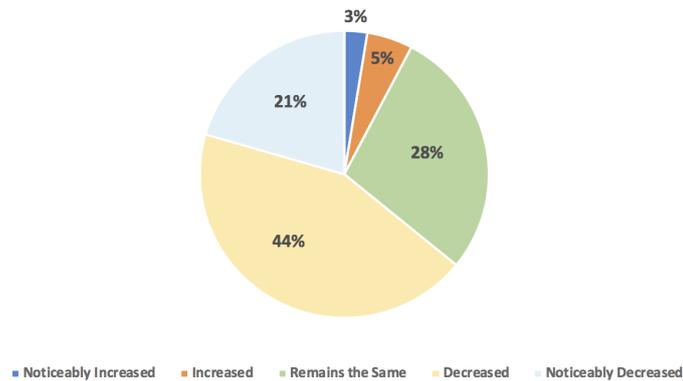


Figure 6. Results obtained to the question: "How would you evaluate the evolution of the use of water in the production process of your company in recent years?"

In order to analyze the correlation between the observed variables, obtained answers regarding the firms’ degree of compliance in terms of technical certifications were compared with the answers related to the evolution of the use of water in the production process. Our presumption is that those firms that certify their products tend to ameliorate their production process, which includes an increase of awareness about the use of water and hence, a better use of it. In the obtained results, differences between groups of firms are more evident. Among those companies in the category “*excellent compliance*”, more than 50% chose the category “*decreased*”, having the highest percentage. As it is observed, the rest of the answers were mainly distributed between the categories “*noticeably decreased*” and “*remains the same*”, with around 22% each. Instead, firms under the category “*moderate compliance*” show a different tendency. The category with the most answers was “*remains the same*” (44%), followed by the category “*decreased*” (22%), and the rest of the answers equally distributed in the remaining categories (Table 5). In addition, it is important to mention that not complying with NTMs does not necessarily mean that firms will increase the use of water in the production process, although it could be more likely. It was expected that low and null compliant firms would have more neutral answers. However, surprisingly the three of them have answered differently, which means there may not be a particular pattern when firms do not comply with these measures. Similar results are obtained when analyzing the degree of compliance in terms of packaging, which confirms these tendencies.

Last but not least, we analyze the correlation between the level of compliance with NTMs and the establishment of environmental performance goals. It is highlighted that 67% of the total surveyed firms confirmed to have established them, against 18% that have not, and 15% that preferred not to answer (Figure 7). However, when we divide these answers depending on the degree of compliance with technical certifications, we find that companies that comply with them establish environmental performance goals more than those who do not comply.

Table 5. Correlation between degree of compliance in terms of technical certifications and evolution of the use of water in the production process

What was your firm's level of compliance in order to obtain technical certifications required by importing countries on your products?	How would you evaluate the evolution of the use of water in the production process of your company in recent years?					Total Answers
	Noticeably Increased	Increased	Remains the Same	Decreased	Noticeably Decreased	
Excellent Compliance	0.00%	3.70%	22.22%	51.85%	22.22%	27
Moderate Compliance	11.11%	11.11%	44.44%	22.22%	11.11%	9
Low Compliance	0.00%	0.00%	50.00%	50.00%	0.00%	2
Null Compliance	0.00%	0.00%	0.00%	0.00%	100.00%	1
<b>Total Answers</b>	1	2	11	17	8	39

Has the company established environmental performance goals?

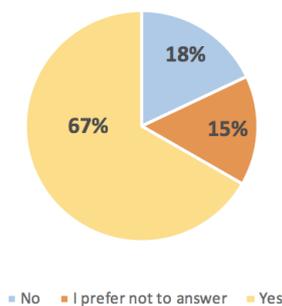


Figure 7. Results obtained to the question: "Has the company established environmental performance goals?"

Thus, we obtained that 86% of the firms under the category “*excellent compliance*” also chose the category “*yes*”, against only around 5% that said they have not established these types of goals. On the opposite side, two out of the three low and null compliant firms selected the category “*no*”, which gives more consistency of the tendency of these kinds of companies. Regarding the moderate compliant companies, we find once again that although there are more positive answers (43%), the rest are equally distributed between the other two categories (Table 6).

Table 6. Correlation between degree of compliance with technical certifications and the establishment of environmental performance goals

What was your firm's level of compliance in order to obtain technical certifications required by importing countries on your products?	Has the company established environmental performance goals?			
	No	I prefer not to answer	Yes	Total Answers
Excellent Compliance	4.55%	9.09%	86.36%	22
Moderate Compliance	28.57%	28.57%	42.86%	14
Low Compliance	50.00%	0.00%	50.00%	2
Null Compliance	100.00%	0.00%	0.00%	1
<b>Total Answers</b>	<b>7</b>	<b>6</b>	<b>26</b>	<b>39</b>

Thus, as we have observed in the results, there is a positive correlation between the degree of compliance in terms of Non-Tariff Measures and three factors: improvement of productive capacity and exports, perception of the application of these measures, and commitment with a sustainable development. In other words, companies who have complied with all or most packaging, technical certifications and maximum levels of contaminants/residues requirements tend to see a positive evolution of their exports and an improvement of their productive capacity. Additionally, they perceive the application of NTMs in a more positive way than those who comply less with them, and they show a better commitment to the environment and sustainability. It is important to highlight that we have had a very small quantity of firms that say to have had a low compliance or to have not complied at all with these measures. Hence, some of the indicators show no clear pattern of how these companies would behave, which could mean either that these kinds of firms may perform differently depending on each case, or that the surveyed firms are simply outsiders.

**Conclusion**

As globalization continues to progress and foreign trade is increasingly encouraged by the decrease of transportation costs, tariffs and other traditional barriers, countries have started to apply Non-Tariff Measures. These standards have become a primary concern in global trade, as they now constitute the most important barriers to business between countries. Developed countries, in particular the EU, have

extensively applied sanitary and phytosanitary measures in the form of technical certifications, maximum limits of contaminants, packaging requirements, laboratory inspections, and others.

While many experts claim that they negatively affect trade in developing countries, these impacts may vary depending on the firms' degree of compliance with these measures. The aim of this paper was to show that SPS can have positive impacts in the long term. Through a qualitative research, we did a case analysis of the application of sanitary and phytosanitary measures in the tea, coffee and yerba mate industry in Latin America.

In our research, we highlight three main results. First, those companies that complied with all of SPS (or most of them) have a more positive view regarding their application and their effects in the long-term than those firms that comply less with them or do not comply at all. Second, there is a tendency in those firms who comply more to increase their productive capacity and their exports, compared to those that comply less or do not comply. Third, firms who tend to comply with SPS show more commitment to an environmental and sustainable development. According to our results, the more they comply, the more importance they give to sustainable technologies, the more they tended to reduce the use of water in the production process, and the more they have established environmental performance goals in the last years.

In conclusion, the application of Non-Tariff Measures can have positive effects in international business. Although it may be true that firms face new unprecedented costs, when they comply with these standards, they introduce new sustainable technologies, include sustainable plans for the company and improve the quality of their products and production process, which would eventually help them to become more competitive, increase their production capacity and their exports, and become more profitable.

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# The Ambassador Program: A Framework for Recruiting and Engaging Flexible Volunteers

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**ABSTRACT:** Volunteers are vital to the mission of nonprofit organizations. However, most nonprofits are struggling to recruit the volunteers they need to support their goals. Due to this difficulty, many of these organizations are seeking innovative techniques for recruiting and engaging volunteers in ways that are enriching, meaningful and productive. On the basis of this need we surveyed 55 participants, interviewed 10 users and conducted literature reviews on 30 materials to uncover insights into the best method for recruiting and retaining volunteers. Findings from the study revealed that most of the respondents were interested in a flexible and open-choice approach to volunteering. It also showed that the respondents would like to participate with their friends and that they wouldn't mind a reward for helping out such organizations. Based on these findings, we developed a flexible volunteer framework that could be implemented by nonprofits or any other organization that needs help recruiting volunteers. This paper should provide a clear understanding of the process, its benefits, and how to incorporate them into their current volunteer, recruitment, and engagement strategies.

**KEYWORDS:** flexible volunteering, non-profits, design thinking, transmedia storytelling, volunteer recruitment

## Introduction

Volunteers are vital to the mission of nonprofit organizations. However, most nonprofits are struggling to recruit the volunteers they need to support their goals. Due to this difficulty, many of such organizations are seeking innovative techniques for recruiting and engaging volunteers in ways that are enriching, meaningful and productive. This paper proposes the use of a flexible volunteering framework to fill this gap. The framework was built upon the findings from a survey (n=55), interviews (n=10) and literature review (n = 30) that was conducted with samples from the target audience.

Flexible volunteering is as an approach to volunteer engagement that gives volunteers the freedom to choose how they want to support their favorite nonprofit organization or charity. This approach gives volunteers the freedom to determine the kinds of tasks in which they would want to participate and the frequency of their participation. According to Durham (2016):

What flexible volunteering really should be about is the ability to be able to help out by offering your services as a volunteer as and when it suits you with no regular pattern of commitment or a minimum stipulated number of hours each week. Therefore, one week you might choose to give an hour of your time, the next week 5 hours, then the following two weeks, you may choose not to devote any of your time to volunteering at all due to other commitments. (para. 4)

The need for a flexible approach to volunteering arose as a result of the observed limitations of traditional methods of volunteer recruitment and engagement. In the conventional process of recruiting and engaging volunteers, nonprofit associations typically establish a structure and then expect the recruited volunteers to work within those structures. Often, the volunteers are expected to adjust their schedule to suit those of the nonprofits. The organizations in most cases do not consider that the volunteers have other commitments that are equally important to them.

A flexible approach to volunteering differs from the traditional method in that the volunteers do not have to adhere to the strict a structure or timeline. For instance, the volunteers can pledge to complete simple tasks such as posting content about the organization on social media or organizing events of their own choosing. They can do this in a sequence and frequency that suits them. At the

end of that task, they can choose to continue completing more of the simple tasks or move on. Some organizations decide to reward volunteers for every simple task they complete to encourage them to achieve more. This approach gamifies the volunteering experience, and in turn, makes it exciting for people to volunteer.

Flexible volunteering can also help non-profit organizations to tap into a pool of volunteers that might not have volunteered due to time constraints or geographic limitations. Equally, the approach allows such organizations to reach a much broader network of volunteers that would have been unreachable through traditional recruitment methods. Hence, nonprofits can benefit from this approach by structuring their activities in ways that makes it easy to distribute volunteer tasks across a broader network.

To prototype the process of recruiting and engaging flexible volunteers, we developed the following components: First, an ambassador program, which is a small pool of highly dedicated volunteers who were given the freedom and the flexibility to define how they want to assist the organization. Second, a digital platform, *Oh, Goody*, which is a brand engagement platform used to reward both the ambassadors and the other non-commissioned flexible volunteers for every task they complete. The Oh, Goody platform was also used to monitor volunteer engagement metrics and to manage the content directed to volunteers.

Though this project was initially researched and designed for the International Committee of the Red Cross (ICRC), our low-fidelity prototyping project partner was Big Brothers Big Sisters of East Central Indiana (BBBS ECI). BBBS ECI is a nonprofit organization that matches kids who need mentors with willing adults. We selected this project partner because they were having challenges recruiting and engaging prospective mentors. They were also having difficulty creating awareness for their mission and goals among their target audience.

## **Background Research**

A significant number of non-profit organizations fail to use any system to learn about prospective volunteers or to improve service delivery. This claim is supported by research published by Sahni, Lanzerotti, Bliss and Pike (2017) which showed that 40-60 % of the surveyed non-profit organizations do not use any methodology to recruit and engage volunteers. The organizations that do not use any framework admitted that this makes their work inefficient and sometimes ineffective. The study went on to highlight that such organizations do not innovate until there is an obvious problem with their existing method of recruitment or service delivery (Sahni, Lanzerotti, Bliss & Pike 2017).

Another study found that nonprofit managers tend to base their decisions on their own experiences and knowledge. This approach leads them to adopt or adapt yesterday's solutions to today's problems (Barrett, Balloun, & Weinstein 2005). Not using any framework to recruit and engage volunteers leads to missed opportunities for human resources, social impact, and influence. This approach may also deny them the opportunity to actualize their organizations' goals and to stay in touch with changing trends.

Furthermore, most nonprofits are facing challenges in recruiting volunteers and creating awareness for their mission and goals because of saturated media channels. According to Silverstein (2017) "reaching out to potential volunteers, donors, and a new audience has become more accessible through social media. However, this has also created a new problem in which nonprofits are reaching out to the same pool of prospective volunteers and donors" (para. 2). Ultimately, these organizations are competing with multiple other organizations that are trying to gain the attention of users. This competition makes it difficult for nonprofits to create awareness for their events and to reach out to potential volunteers.

In today's fast-paced digital environment being able to address problems and implement solutions quickly can be extremely advantageous, primarily when these problems concern volunteer recruitment and audience engagement. It can allow organizations to stay competitive in the quest for volunteer human resources while also creating awareness of their missions and goals. Hence, it is essential for organizations to study their audience to understand their pain points and to know their content and media preferences. Analyzing their users will also help them to create engaging

content and experiences to which users can easily relate; consequently making it easy to recruit or involve volunteers in the organization.

Most organizations that do not study their users typically resort to using the traditional method of volunteer engagement. However, the potency and the adoption of the traditional method of recruiting and engaging volunteers have been waning over the years. According to Barnes and Sharpe (2009), this may be because the conventional method of "volunteer management is structured in a way that prevents an enriched volunteering experience" (Barnes & Sharpe 2009, p. 169). According to them, "overly formalizing and controlling the volunteer experience reduces pathways for engagement and opportunities for volunteers to flourish in their work" (Barnes & Sharpe 2009, 169). The assertion of Barnes and Sharpe (2009) implies that coupled with the challenges of time constraints which prevent people from volunteering, the rigid structure of the traditional method of volunteering is also another decisive factor that discourages people from participating in the activities of nonprofit organizations.

Furthermore, Clary & Snyder (1999) recommend that it is essential that volunteers are assigned the tasks that align with their motivations for signing up to volunteer. They state that, when volunteers are given tasks that do not satisfy their motives for volunteering, they may not enjoy the experience; and this implies that such volunteers may not stay with the organization for a long time. Simply put, their statement implies that the fulfillment of volunteer motivations is essential in the recruitment and retention of volunteers.

According to Alex Peace-Gadsby, chief commissioner of England at the Scout Association, flexible volunteering is "essential for survival and continued growth of our organization" (Weakley 2017, para. 1). She said that this is because "society has evolved and people are leading busier lives" (Weakley 2017, para. 3). Furthermore, Peace-Gadsby also advised that the volunteering experience should be designed in a way that is exciting and engaging. The reason for this is that when "the volunteers stop having fun they leave" (Weakley 2017, para. 7). Her comments imply that when the volunteers are not actualizing their motivations for volunteering to the organization, they might not continue to volunteer. Furthermore, her observations also suggest that when the volunteers are not given the freedom and flexibility to choose how they engage with the organization that they are not going to stick around for a long time.

Additionally, Rajaram (2017) states that "organizations that adopt a more flexible, open-choice approach to corporate volunteerism realize greater engagement" (para. 2) She also added that "the opposite is also true — the more limits and thresholds in place, the lower the participation and impact" (para. 2) Her statement reinforces the need to provide prospective volunteers the freedom and the opportunity to choose when and how to engage with the organizations they are interested in supporting.

## **Research method**

*Overview:* We used the design thinking framework to research, ideate, and prototype this project. From an academic perspective, design thinking is a mixed-methods research and innovation process that has both qualitative and quantitative components. Design thinking adopts a human-centered approach to user research and design, and this makes it suitable for tackling problem spaces such as the one under discussion. Using design thinking also allowed us to easily transition from research to the innovation of possible solutions based on the findings from the study. Furthermore, design thinking also allowed us to gain an in-depth understanding of the problem space, and to empathize with the users for a deeper understanding of how organizations can engage them.

*Participants:* Fifty-five respondents from various locations, including Texas, Wisconsin, Illinois, Florida, Indiana, Nebraska, and Tennessee, provided answers to the online survey designed to gather insights into the perception of the participants on their volunteering experience. The minimum age requirement to participate in the study was 18 years. The open-ended questions gave the participants the freedom to determine the length of their responses. In addition to the survey, 10 users were also engaged in an extended empathy interviews.

*Research instruments:* (a) questionnaire - an open-ended survey was administered to the respondents. The survey included 12 questions: six to test their knowledge of the missions and goals of our project partner and the other six dedicated to user experience research. The study was designed to uncover the perception of the participants on their volunteering experience (for those that have volunteered previously) or the limitations that are hindering them from volunteering (for those who have yet to volunteer). Findings from the survey were analyzed using a thematic analysis. The six user research questions were as follows:

- Have you ever done volunteer work? Yes/No. If so, please explain.
- What do you think when you hear the word “volunteer”?
- What would attract you to volunteer?
- What would you want to take away from a volunteer experience?
- What do you think when you hear the word “ambassador”?
- Have you ever considered yourself an ambassador? Yes/No. If so, please explain.

(b) Interview: an empathy research interviews were also conducted with some participants to uncover more in-depth insights into their perception of nonprofit associations and media preferences. Participants were randomly selected and were interviewed in different settings and times. The empathy interview allowed us to move beyond the formality and the structured nature of the survey and to probe more and also ask follow-up questions where necessary. The interview also allowed the participants to share their experience via stories against the short comments they supplied in the survey. Some of the interview questions included:

- What do you know about the International Committee of the Red Cross?
- What do you believe makes a story stand out/stick with you over time? Do you follow any NGO on social media? Why or why not?
- What was it that attracted you to an NGO, what would put you off from viewing an image or story?
- What kind of content would you like to see on the social media accounts of The International Committee of the Red Cross? Why?
- How would you want the Red Cross to feature these stories?
- What do you think are the main interests of the younger generation?
- What types of content genre in media do you (or younger audiences) shy away from?
- How can the Red Cross engage the younger audience via social media?
- How would you explain a sad story in a way that still gives hope?

(c) Literature Review/Academic Research: in addition to the survey and interview, a literature review was employed to evaluate the work that has been done by other researchers to learn from their findings. Specifically, the literature review sought to uncover the connection between social media usage and volunteerism, images and the motivation to volunteer, and the effect of traditional media on one’s motivation to volunteer. The researchers also reviewed other successful social media campaigns like the KONY 2012, ALS ICE Bucket challenge, and the Humans of New York to uncover the attributes that made them successful.

## Results

The project employed the qualitative and quantitative aspects of design thinking to investigate the best approach for recruiting and engaging volunteers. Findings from the study revealed that participants would want to know that their volunteering activities are making a difference. It also showed that the participants are interested in a flexible approach to volunteering and that they would want to get some reward for helping the organizations. The headings below chronicle the findings from the study.

*Survey Results:* When the participants were asked if they have ever done volunteer work, 96% of the respondents said yes while 4% of the respondents said that they have never volunteered. Some of the participants shared stories about their volunteering experience with organizations like Habitat for Humanity, Local Shelters, Big Brothers Big Sisters, and others.

When the participants were asked what they think of when they hear the word volunteer, various themes emerged: service to others, helping others and giving back, taking a large chunk of time out of the day, time commitment, an effort that may or may not make a difference, free labor, extra work, not getting paid, cleaning the river, picking up garbage, and others.

When they were asked what would attract them to volunteer, the common themes were, a good cause, knowing that they are making a difference, pictures of others volunteering, easy to reach location, free food, rewarding experience and others. Similarly, when the participants were asked what they would want to take away from a volunteer experience, some of the responses were: new connections, new skills, some form of compensation, feeling of goodwill, knowing what I do is making a difference, social interactions with the people I'm helping, time with friends, free food.

When the participants were asked what they think of when they hear the word “ambassador,” some the responses were: representative, leader, the face of a group, advocate, influence for a brand, role model, a worthy person, speaks on behalf of a group. Furthermore, when the participants were also asked whether they have ever considered themselves an ambassador, the respondents shared their experience on the times that they served as the face or the leader of an organization or a group.

*Interview:* Findings from the interview revealed that most of the participants were unaware of the mission and vision of our project partner, it also revealed the need to educate the audience first on the goals of the organization before attempting to recruit them to serve either as volunteers or as donors. The interview also revealed that a significant number of the sampled population were not bothered by the goals and the mission of our project partner. However, they would be interested in participating when their friends join or if there was some free food. The respondents also stated that they will be interested in stories that shows that things are getting better. Our stories that offer hope rather than the typical disaster images that are associated with the International Committee of the Red Cross.

*Academic Research/Literature Review:* Findings from the academic literature on the connection between social media and volunteerism showed that organizations that show empathy to their audience have more retention and interaction rates (Crompton 2018). Furthermore, the findings also revealed that social media campaigns could be energized through physical events (Gerbaudo 2012). The academic literature on the connection between images and motivation showed that photographs play a crucial role in the communication of humanitarian issues to the target audience (de Laat 2017). Similarly, a review of the effect of traditional media on people's motivation to volunteer showed that users prefer social media to traditional media because it helps them to engage and provide immediate feedback in a way that is often not available in the traditional media (Beheshti-Kashi & Makki 2013). A review of the KONY 2012, The ALS ICE Bucket challenge, and the Humans of New York social media campaigns showed that the use of physical events in the social media campaigns was instrumental in the positive outcomes of the various campaigns.

### **Innovation method**

Based on the findings from the research, we used the design thinking framework to transition to the ideation of possible solutions for the problem space. Design thinking is a “human-centered approach to innovation that draws from the designer's toolkit to integrate the needs of people, the possibilities of technology, and the requirements for organizational success” (IDEO U 2018). According to Brown and Wyatt (2010) “design thinking incorporates constituent or consumer insights for in-depth ideation and rapid prototyping, all aimed at getting beyond the assumptions that block effective solutions” (para. 8). It is best suited for acquiring ideas related to an audience or user behaviors, which can then be used to design successful recruitment marketing content or social media campaigns. Using the five phases of design thinking — empathize, define, ideate, prototype, and test (Whearley 2017), we developed, and a prototyped a framework that can be used by nonprofits to recruit and retain volunteers. Each phase of design thinking serves a unique role in guiding the design to a solution that will apply to different types of prospective volunteers. The next section details the framework that was designed based on the findings from the research.

**The Framework**

Findings from the research showed that prospective volunteers would love to acquire new connections, new skills, some form of compensation, and the feeling of goodwill from their volunteering experience. The volunteers would also want to know that what they are doing is making a difference and that they are making the lives of other people better. However, some of them were concerned that volunteering would take a large chunk of time out of their day.

Furthermore, a common theme that emerged from the literature review was that the use of images is very crucial to the communication strategies of nonprofits. The literature review also showed that users prefer to use social media than traditional media for their information needs and that real events can energize social media campaigns. It also revealed that physical events are very vital to the success of social media campaigns and vice versa.

Based on these findings, we developed a framework that intends to enhance the volunteering experience. The primary goal of the process is to allow volunteers to influence the outcome of their volunteering experience and to give nonprofits more options on how to engage their volunteers. A secondary goal is to ensure that the volunteers enjoy their volunteering experience and to continue to be interested in supporting the organization. The steps that are highlighted in the process-flow are meant to serve as a guide to the organizations that use this process. The nonprofits that adopt this process are free to adjust the sequence of the process to suit the outcomes they desire. However, the greatest benefit would be achieved by implementing all processes in this framework.

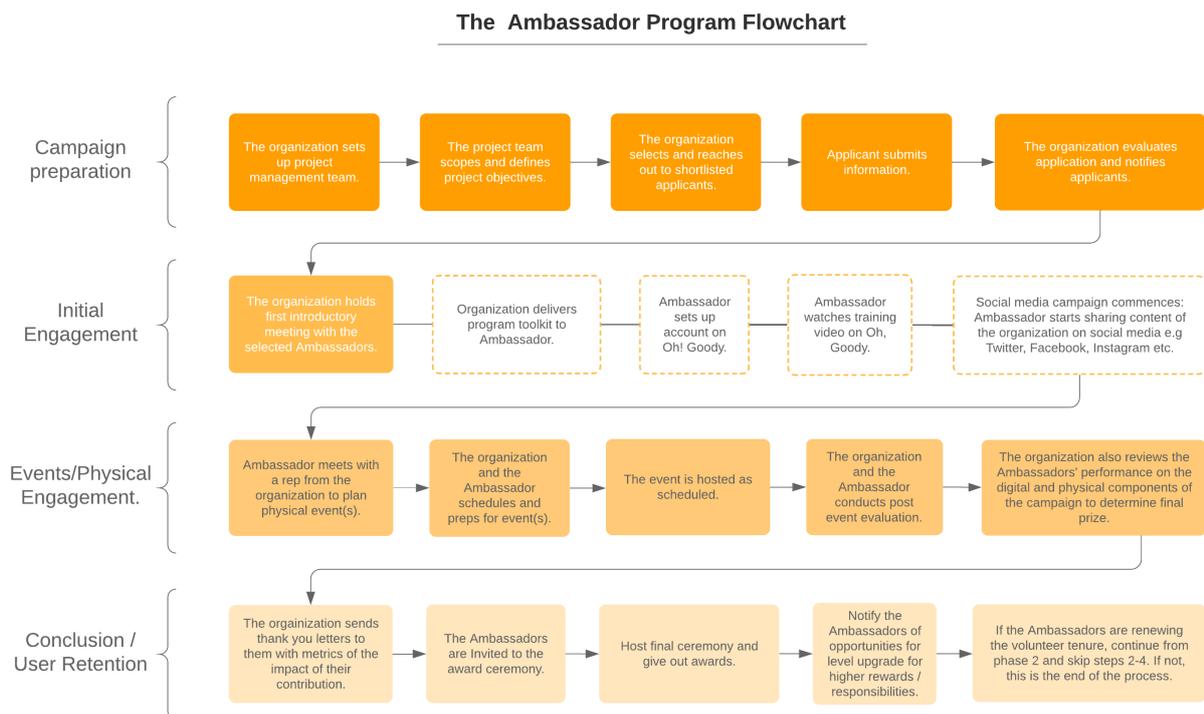


Figure 1. The flowchart for a flexible approach to volunteer engagement

The process of implementation includes four major phases. Undergoing the procedures will help the nonprofits that use the framework to be ready for every step of the campaign. It will also help to keep them organized, and also give them the ability to monitor the success of the campaign.

The phases include:

1. Campaign Preparation Phase.
2. Initial Engagement Phase.
3. Events/Physical Engagement Phase.
4. Project Conclusion and User Retention phase.

1. Campaign Preparation Phase: Project preparation is the first phase of the program. This stage involves laying the groundwork of the different aspects of the project to ensure that the requirements are adequately articulated and defined. Articulating and defining the project objectives increases the likelihood of a successful campaign or project. Some of the steps to be undertaken at this stage include:

- a. Setting-up the project management team: The goal is to ensure that the different team members — Project Manager, Content Creator, Support Analyst, among others — take ownership of the various aspects of the program. The team members are expected to be assigned tasks that suit their capabilities. In most cases they are to serve as support staff to the ambassadors, that is persons the ambassadors can easily reach out whenever they have specific questions. For organizations with fewer human resources and a small number of ambassadors, the task of the committee can be handled by a single dedicated staff member.
- b. Defining the project objectives: Here the organization is expected to clearly define the goals they wish to achieve with the project — fundraising, recruiting more volunteers, creating awareness of the organization’s mission and goals, community outreach, disaster relief among others. Defining the project goals will help the organization to define the metrics that can be used to determine a successful campaign. For instance, with a fundraising goal of \$2,000 at the end of the campaign, the organization can be able to determine if the campaign was a success or not. Similarly, with a recruitment goal of 200 new volunteers in 2 months, at the end of the campaign, the organization should be able to determine if the project was a success. It should be noted that fundraising and recruitment goals in addition to other objectives can be a part of a much broader campaign.
- c. Define who can become an ambassador: At this stage, the organization determines the characteristics they want in prospective ambassadors. It is important to note that the goals that the organization wants to achieve should influence the kind of ambassador they recruit. For example, do we want people with a strong following on social media so we can leverage their popularity to reach more audience? Do we need people with social work degrees?
- d. Ambassador application: Recruiting volunteers is often a difficult task for nonprofit associations. Therefore, it is recommended that the organization should start with the volunteers that are already engaged to reach out into their personal networks. The goal is to build up the numbers gradually. At this stage, the selected ambassadors should complete an application form if they have not done so before. It is essential that the right set of questions are asked at this point to ensure that the organization obtains an in-depth knowledge of the inclinations of the potential ambassadors before recruiting them.
- e. Application evaluation: at this phase, the organization evaluates the application to ensure that the information that is submitted by the participants matches the parameters that they established for the prospective ambassadors.
- f. Applicant approval: The last thing at this phase is to notify the applicants if their application has either been accepted or rejected. For those that have been denied, the organization can engage them through other ways than becoming an ambassador.

2. Initial Engagement Phase: The significant activities that will take place in this phase include:

- a. First meeting: The organization holds the first meeting with the ambassador to discuss the kind of duties they would want to undertake. For example, if the goals the organization had set in the project preparation phase were to create awareness, recruit volunteers or raise money, the ambassador could choose an option and then decide how they want to achieve this goal and also how much time they may need to do so. They can also choose the size of their deliverable. The ambassador is also free to recruit more volunteers such as friends and family to help achieve this objective. The ambassadors can also form a group to help pool their resources together. This stage is the defining moment of the process. In the traditional approach, volunteers are typically assigned tasks. In this process, however, the volunteers are given the freedom to choose how they want to assist the organization and the frequency

of their participation. The goal of the nonprofit is to support the volunteers to achieve their goals on behalf of the organization.

- b. The organization delivers toolkit to the ambassador: After the initial meeting, the organization would provide a programming toolkit to the ambassador. This toolkit should outline the obligations, constraints and requirements of their tasks. This ensures that regardless of the activities the ambassador chooses, their message should not stray from the mission and core values of the organization.
- c. Account set-up: The next step is to ensure that the ambassadors register on the digital tools used to coordinate the campaign. At this stage, the organization will also train the ambassadors to ensure that they are adequately equipped to achieve their objectives. This can be achieved using brand engagement platforms like Oh, Goody.
- d. Commencement of social media campaign: After registering on the digital platforms and completing the required training, the ambassadors that chose the creation of awareness as their primary task can commence sharing content on social media, within required parameters. For those that are interested in helping in other ways other than sharing content on social media, they can choose physical events as highlighted in the next stage. It is recommended that the ambassadors that did not sign-up to share content on social media should be encouraged to share images of themselves helping the organization on social media. Brand engagement platforms like Oh, Goody are very crucial at this stage. Platforms such as this are vital because the organization can use them to monitor engagement of ambassadors with training videos, track social media metrics for pushed content. Also, the organization can use the platform to reward ambassadors and volunteers for watching training videos or for sharing the content of the organization on social media. Rewarding volunteers and ambassadors for every activity they complete gamifies the experience and encourages them to do more.

3. Events/Physical Engagement Phase: The primary activities that take place at this stage include the following:

- a. Planning Events: Ambassadors that chose to organize events like recruitment drives and fundraising efforts will need to meet with the representatives of the organization to plan and schedule for the activities to ensure that they are a success. This meeting can either be a physical or virtual meeting depending on the schedule of the ambassador. The ambassadors and the organization should collaborate to set goals that both meet the needs of the organization and engage the volunteer with flexible and meaningful tasks. The goal of the organization is to support the ambassadors to achieve their goals and not to blindly dictate to them.
- b. Hosting Events: Physical events, such as a bowling competition, a dancing competition, fundraising dinners, and volunteer drives foster deeper and more personal engagement with the community. The type of event held depends on the skills of the ambassador and the goals they and the organization want to achieve.
- c. Campaign Evaluation: The last step of this stage is for both parties to evaluate the outcome of the event and determine areas that require further improvement. This can be achieved using the Plus/Delta (+/Δ) format of evaluation. Plus highlights the things they did well, and delta areas that need improvement.

4. Project Conclusion and User Retention phase: This phase is the final part of the process. The goal of this stage is to reward volunteers for their contribution and retain them in the system. They can choose to repeat the tasks they completed or set new goals.

- a. The first step of this phase is to send a personalized thank you note or letter to the ambassadors with the metrics of the impact of their contribution. This thank you note will also contain a letter inviting them to a final awards ceremony. The metrics of the impact of their activities can be generated from the Oh, Goody platform. This platform makes it easy

to keep track of the engagement rates of the content that is being shared by the ambassador or the organization. The metrics can include the number of times their posts were liked, shared or retweeted. It can also include the number of people that were reached by their posts, among other details. Showing the volunteers the impact of their actions will encourage them to do more and leave them satisfied that their contributions made a difference.

- b. The second step is to host the closing ceremony and present awards to the ambassadors that have completed their term. The awards ceremony is an opportunity to notify ambassadors that they can renew their program and are free to choose new goals that fit their availability. The organization should use the metrics to remind the volunteers that their contributions will be missed if they stop volunteering.

## Conclusion

The goal of developing this framework was to avail nonprofits a new method of volunteer management. At the end of the campaign, the organization should expect to see a significant improvement in their ability to recruit and retain volunteers and donors, likewise an increase in volunteer satisfaction.

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# Aggressions Committed with White Weapons and Injuries Caused

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**ABSTRACT:** Violence is one of the negative signs of our time, without age, gender and continent limitations, combining peace partnerships with bloody crimes. Aggressions using white weapons are more frequent than other vulnerable agents due to accessibility to these objects. Guns such as the knife, the ax were originally designed as tools; they were the first tools of humanity. But with time, they became weapons. There is a difference of the "weapon", a distinction that lies not in the material from which they are made but in the way humans use them. Thus, by using them as a "weapon", the rights of the human being are violated which implies liability in accordance with the law. White weapons are part of the category of mechanical traumatic agents, acting on the skin they always affect its anatomical integrity. Classification of white weapons is important because the lesions have characteristic shapes depending on the properties of the white weapon that created them.

**KEYWORDS:** body integrity, lesion, white weapon, violence

## Introduction

Of particular importance is the knowledge of the causes that generate such antisocial behaviors in order to prevent and limit them. However, weapons offenses are numerous as a topical issue.

In order to classify certain circumstances regarding the means and procedures used by the perpetrator to suppress the victim's life, it is necessary to take into account the specificities of the injuries caused by the vulnerable agents from the beginning of the research. White guns are all the mechanical agents acting on the body, causing specific lesions by its sharp features.

Gh. Scripcaru defines weapons as "mechanical objects with brilliant blades, and which may be classified by their way of reflection into the wound in splintering, dirty or sharp objects" (Scripcaru 1993, 141). As we can see, the attributes of the white weapon are:

- the existence of a blade (the word "brilliant" probably suggests metal shine and "white" association);
- the possibility of causing wounded, cut and split wounds.

In a short comparison with the legal provisions, it is observed that the effects of the white gun, the lesions that the forensic traumatology catalogues and individualises through the characteristics given by the reaction of the human body, where they are similar to those of the objects listed by the legislator (type of action): cutting, punching = punching, hitting = splitting. However, Gh. Scripcaru significantly reduces the number of objects that can cause such injuries to those who necessarily have a "white" metal blade.

## General classification of white weapons

Classification of sharps weapons is important because the lesions have characteristic shapes depending on the properties of the weapon that created them. Sharpened weapons act on the human body on a surface of varying length and width, along a line, over a point. (Dix and Graham 2000, 85). According to some authors, the sharp weapons have been classified in terms of how they are handled as follows:

- Weapons held in hand by a handle (knife, sword, sword);
- Guns handled by their right position at the tip of the rifle, being bayonet;
- Guns handled thanks to a long and light rod - the lance;
- Weapons to throw (spear, arrow). V. Beliș resumes the classification of vulnerable objects, which he does not call "white weapons," but "sharp weapons," made in I. Moraru's legal medicine

manual, considering it the most morphologically closest to the appearance lesion result (Beliş 1995, 320):

1. Stinging: They act by their sharp tip when they are pushed and twisted at the same time around their spindle. They can be grouped as follows:

- with circular section: needle, sula, nail, tooth of a brush, circular saw (conical and cylindrical-conical);

- with the semicircular section: the tip of the skewer, the semi-circular saw);

- with the fusiform section: two-sided and two-edged saw;

- with triangular or patricular section: compass, floret, pole; screwdriver;

- with irregular section: glass bead; scissors.

2. Cutter: scissors, knife blade, tipless scalpel, saw, saw, glass.

3. Sharps:

- with cutting edge: knife;

- with two edges: peaked knife;

- three edges: the bush;

- four edges: floret.

4. Splitting: ax, sower, bard, sword, chisel.

Scraping objects and tools are also called cut-offs. They have a sharp blade, a volume and a weight that, animated by a kinetic force in a perpendicular or oblique direction on the surface of the body, come in contact with its tissues and organs. The other used tools (hard knife, blade, sword, hoe, hack, chisel, hook, bard) are rarely encountered in court practice and their injuries are the same as those produced by the ax and the sower. The guillotine, a weapon of historical interest and meeting at some museums in the world - once produced numerous victims as a tool for the execution of legal judgments (Knight 1992).

Precious data are found in foreign literature. The French Encyclopedia “Focus” quotes, in general terms, on the contents of the French Criminal Code of 1791. Thus: “The delinquency committed by the use of weapons is that committed with the aid of rifles, pistols and other firearms, spears, swords, daggers, machetes and all cutting, drilling and boring tools.” Article 101 of the same Code of Criminal Procedure states: “All the machines, tools or utensils that cut, drill or blunt are included in the word weapons. Knives and scissors will not be retained as weapons unless they have been used to kill, injure or strike.”

The bottom line is that there are two categories of weapons:

- those whose mere possession is an aggravating circumstance;

- those whose use can lead to aggravated punishment.

Sticks and stones are considered to be blunt objects.

Remaining with the French, the 1967 “Petit Larousse” dictionary describes “blanche weapons” as a weapon that acts through an iron.

According to the explanatory glossary dictionary of H. Möller and H.Kölling’s “European Weapons and Pruning Weapons”, “white guns” are all blade weapons, intended for hitting, cutting, punching and throwing by hand.

In this amalgam of definitions, history intervenes and simplifies. Surely there are others like this, but they are not useful since they are not found in legal formulations. But the information given by these definitions can be synthesized in order to find a single one, giving the white weapon the correct and complete understanding of which the Romanian judicial practice needs.

### **Classification of white weapons by destination**

1. Combat white weapons: they have a precise attack / defense destination derived from their construction - sword, dagger, sword, jatagan, spear, box, etc.;

2. Occasional white weapons: they have domestic use (tools) but can be used due to their construction as weapons - knife, crochet, fork, ax, hoe, chisel, etc.;

3. White hunting weapons: bow with arrows, spear, hunting knife, basket, etc.;

4. White sporting weapons: guns used in demonstrations and competitions, cutting and punching with a rounded tip or with a blade unshaven;
5. White parade weapons: richly decorated and inscribed fighting weapons;
6. Panoply white weapons: from arms collections;
7. Props white weapons;
8. Hidden white weapons - disguised in different objects: umbrella, pen, etc. (Iftenie and Dermengiu 2009, 123).

### **Classification of white weapons according to their structure**

This classification is relative, as a bullet weapon can cause, using the handle, a crushed wound, specific to a shot with a blunt weapon. From a forensic point of view, the general issue of white weapons refers to determining whether an object is a weapon white or can be assimilated to a white weapon (in the case of tools that occasionally become white weapons) (Ciornea et al. 1986).

- Simple white weapons: a single body with the appropriate accessories: sling, crotch, pole, boot, bucket, box, disc, boomerang, fight whip, etc.;
- White weapons with handle: buckle, knife, sword, sword, bayonet, sickle, ax, secure, bark, battle hammer, dagger, etc.;
- White guns: halberd, spear, seashell, lance, battle fork, etc.;
- White weapons with a mechanism: crossbow, archery.

### **Injuries produced by the action of white weapons**

Traumatic Mechanical Agents combine harsh vulnerable objects that cause traumatic lesions due to their kinetic energy coming in contact with the human body in a violent action. (Iftenie and Dermengiu 2009). More often than not, the violent action of mechanical traumatic agents is a consequence of heteroaggression, criminally punishable criminal activity by interfering with the social relationships that are constituted and carried out in connection with the absolute right of every person to life, body integrity and health, legal objective is dependent on the medical forensic evidence.

Blunt bodies act by compressing and crushing tissues. In relation to the impact surface and the force with which they have acted, they produce superficial or profound lesions. Sometimes these bodies do not damage the integrity of the skin. As a result, there can be no evidence of ecchymosis, hematoma, rupture and muscle strain on the body. If there was a small body with a small surface, there would be limited areas of damage to the corpse without reproducing the shape and particularities of the vulnerable agent. If it acted in the head area, the blunt body causes limited, clogged fractures that reproduce its shape and size. If a large body has been used, depending on the weight and speed at which the perpetrator acted, fractures, multiple lesions on the head, with or without the integrity of the skin, will be discovered on the body (Buzatu 2013, 141).

Under the name of wound or wound is understood the solution of continuity of the integrity of the skin or mucosa with the participation of the underlying tissues or organs.

Gh. Scripcaru asserts that the deadly wound is any lesion that either immediately or lately causes death.

*Offensive and defensive injuries* are injuries as a result of the victim's attempts to defend himself.

These plagues can be:

- Offensive or active defense wounds, especially located at the palm of the hand - the victim tries to grab the white gun;
- Defensive or passive defense wounds, usually located at the level of the antebrates - the victim tries to conceal the blow.

The diagnosis of such defensive injury is not anatomical or pathological and is indeed a circumstance with a dependent name. For example, it can be sustained while eating, sliding the knife as cutting a sliced tomato and becoming a pathological defensive injury and not a defensive defensive injury. Cuts on the hands, typical of active defense attempts, knocking, or passive defense by covering

the face or the chest, exclude the possibility of suicide as well as back injuries inaccessible to possible autolysis. (Spitz, Petty, Fischer 1961).

Offensive complaints target certain regions of the victim's body, depending on the purpose pursued by the aggressor are: death of the victim, in which case the wounds concern the projection of vital organs; disfigurement, where wounds are located mainly visceral level; threat when localization of wounds is of particular interest to regions whose functionality is not of vital importance. (Beliş 2001).

*The plaque contusion*, also called crushed wound, is produced by bumping with or rough body.

It has the following features (Iftenie and Dermengiu 2009):

- Low depth (and therefore reduced bleeding);
- Uneven, ragged, toothed edges, sometimes alternating with intact skin surfaces), unequal in size, with excised areas and / or adjacent bumps;
- The bumpy walls are united from place to place by bridges;
- Anfractus with blood clots;
- Edges can be taken off, echoed or peeled in the body.

In skull, anterior and cubital tibia, contusive wounds can take the form of star wounds with multiple overlapping and often, due to overlapping tears directly on the bone, imitate cut wounds (due to their "hit") (Astărăstoae, Grigoriu and Scripcaru 1993).

*The hit plaque* is encountered when the blunt body acts in an area where the skin is immediately above a bony plane (head, knee, elbows, etc.), having the following characteristics (Beliş 1995):

- The form is sterile (when the traumatic agent is flat), sometimes linear (when the traumatic agent is long and thin), with small secondary tracts;
- The margins are relatively straight, with small irregularities (frizz);
- Decreased deflection (due to tissue bridges) (Iftenie, and Dermengiu 2009) due to tissue bridges that do not allow margin removal.

*The crushed plaque* is described when the weight of the traumatic agent is significant; this type of wound contusion has (Groza and Astărăstoae 2007):

- Irregular shape;
- Rough edges (jagged);
- Multiple excised areas and / or bruising on the skin around the wound.

*The bruised plague*, which can be produced by man or animal, the bile contusion wound reproduces the shape of the dental arches and, depending on the force they act on, carries different aspects: (Dolinak, Matsher and Lew 2005):

- Superficial traumatic lesions represented by bumps, sometimes confluent, or small tooth wounds (generated by each tooth), arranged in the form of two springs (brackets) joining at the extremities;
- The skin at the center of this lesion is indisposed;
- Deep wounds, with the shape of the tooth, corresponding to the dental arcade; adjacent to each wound appears ecchymosis that can sometimes confuse;
- Detachment of the bite fragment/area; on the edge of the remaining skin can be ratified the traces generated by each tooth in the form of depressions, between which the skin is slightly protruding due to interdental spaces.

*The plaque pull* recognizes as a mechanism of production a forced traction that exceeds the resistance (elasticity) of the tissue; may appear in the form of scalp wounds when a piece of tegument detaches (usually bones) or tears (which is, in most cases, a biting-throat wound) (Iftenie and Dermengiu 2009).

Differential diagnosis between the lesions produced by hetero- and auto-aggression is by way of: the way, the position, the direction of the lesion, the number of lesions, the combination of the wounds between them, the presence or absence of defense lesions, the breaking of the clothes that denote the fight between the victim and the aggressor, (in the case of suicide - from top to bottom), the presence or absence of the instrument used, and the on-site examination.

## Conclusions

The right to life is the most natural human right; he imposed himself in rules and norms in the legal system of time, being enshrined in both the first declarations of rights and in constitutions. The prevention of murder crimes (as well as other antisocial deeds) presupposes the elaboration on scientific bases of new and effective methods work. This involves; necessarily the scientific knowledge of the criminal phenomenon by Criminological studying the facts (as well as their triggering causes) in order to find efficient ways and means of action against criminality. Individual criminogenic factors associate with social and political criminals, preceding crimes through small criminality and collective assaults through false alarms. The knife is replaced by the gun and the professional killers join the killers. Studies and statistics reveal the criminogenic role of situations such as: lack of school education, lack of interest in culture, low living standards, socio-professional disintegration, exaggerated consumption of alcoholic beverages, drug use, existence of conflicting states, inadequate mood, and so on These features have been exacerbated for several years, with no signs of recovery.

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# What's in a Name?

## The Semantics of Migration and Its Policy Implications

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**ABSTRACT:** Across the globe, migration has emerged as one of the most daunting challenges bedeviling globalization. The second decade of the 21st Century has been marked by issues on how to manage influx of migrants on both sides of the Atlantic (the European Migrant Crisis of 2015 and debates on ‘Migrant Caravan’ and border security in the US). A major borne of contention on migration is a war of words over its framing. The semantics of migration are meticulously exploited by rival politicians and political parties, policy actors, and other stakeholders to frame the issue, orient policy and mobilize support or acquiescence to their cause (usually securitization versus accommodation). This paper probes into the discourse on migration with a focus on its framing by pro and anti-migration actors and stakeholders and how this has affected policy decisions and actions concerning the issue. Empirical cases of how migration was framed in Europe and the US were examined with a greater tendency towards securitization. Recommendations were also advanced on how to resolved the migration stalemate with the de-politicization of the term as a starting point.

**KEYWORDS:** Migration, Immigration, Migrant crisis, Refugee, ‘Open door policy’

### Introduction

From the European migrant crisis which erupted in 2015 with an influx of more than a million refugees and migrants to the shores of Europe; to the Central American migrant caravan to the US through the US/Mexico borders in December 2018; and the debate on border security between the Trump Administration and the US Congress, migration has become an epic challenge to the contemporary international system. Debates over migration and what policy measures are needed to confront the challenge has deeply polarized states; divided politicians and their supporters, and created a wedge in international institutions between pro and anti-migration camps.

A major borne of contention on migration is a war of words over its framing. “What’s in a name?” Shakespeare’s Juliet famously asked. As far as the debate over migration and its policy implications are concern, a big deal. The semantics of migration are meticulously exploited by rival politicians and political parties, policy actors, and other stakeholders to frame the issue, orient policy and mobilize support or acquiescence to their cause (usually securitization versus accommodation). The stakes and policy implications are huge as a determination of a migrant as an “illegal migrant”, a “refugee” or an “asylee” imposes different sets of obligations and policies on the recipient state.

This paper probes into the discourse on migration with a focus on its framing by pro and anti-migration actors and stakeholders and how this has affected policy decisions and actions concerning the issue. It takes a case-study of Western democracies (Europe and the United States) where a clear dichotomy has emerged among populists and nationalists, on the one hand and globalists, and liberal institutionalists on the other on how to approach the migration challenge. It examines the securitization of migration by populist movements and politicians and the pros and cons of an open border policy. It proposes policy recommendations on a comprehensive solution to issues of migration.

### Framing the migration Debate in Europe and the US

The years 2015 and 2016 witnessed a phenomenal challenge in the debates over migration across the Atlantic. On the one hand, Europe was faced with a migrant influx as more than a million migrants arrived its shores through the Mediterranean Sea (deHahn 2019). The crisis was compounded by the fact that the Mediterranean crossing took away the lives of 3,771 individuals in 2015 and an appalling

total of 5,096 lives in 2016 (UNHCR 2018). This crisis of unprecedented proportion easily drew a wedge between European Leaders. While Angela Merkel's Germany opted for an "Open Door" policy, stretching its arms to welcome more than a million Syrian, Afghan and Iraqi refugees (De La Baume 2017); Viktor Orbán's Hungary went the opposite direction by building a 13-foot tall, 325-mile-long border wall along its borders with Serbia and Croatia (S4Cnews 2018).

The political discourse of migration was framed differently among politicians, parties and countries that supported an open-door approach and those that preferred a hardline approach. From an ideological stand point, the dichotomy on the framing of migration pitted globalist and liberal institutionalists on the one hand and nationalists and populist on the other. Globalists and liberal institutionalists generally tend to be more receptive to international migration. Migration in the perspective of globalists is the engine of globalization. As Daly (2004) puts it, globalization represents "the effective erasure of national boundaries-opening the way not only to free mobility of capital and goods but also, in effect, to free movement (or uncontrolled migration) of vast labor pools from regions of rapid population growth".

The language or diction used in the framing the migration discourse in migrant friendly countries in Europe at the wake of the migrant crisis was focused on giving it's a positive connotation or spin. Two countries where the aforementioned rhetoric was dominant were Germany and Sweden. A report commissioned by the United Nations High Commissioner for Human Rights (Berry et al. 2016) found out that during the European migrant crisis in countries like Germany and Sweden that opted for an open door approach used overwhelmingly used the migrant friendly terms 'refugee' and 'asylum' by 91% and 75.3% respectively for both. In Greece, which took in over 271,000 migrants in 2015 (MPC 2019), Siapera (2019) points out the important role grassroots refugee support group played in framing the discourse in favor of assisting refugees during the migrant crisis.

The overwhelming majority of European Union states however opted for a hardline approach on migration. Most of them like Hungary and its Visegrád neighbors, and Italy, witnessed the rise of nationalist and populist governments prone to the securitization of migration. The public and political discourses, media framing and public opinion in most of these countries tend to reify the security threat posed by migrants and push an antagonistic or derogatory label and perception of migration and migrant.

In the Netherlands, for instance, Brouwer et al (2017) introduce the concept of 'crimmigration' (the criminalization of migration). They point of that "the adoption of restrictive migrant policies and the strong anti-migration discourse surrounding these policies".

Chebel d'Appollonia (2015) on her part traces the securitization of migration (immigration-security nexus) in France to a decade long process which originated from a conviction in the 1980s that the presence of immigrants created a socio-economic menace to French natives. This was brought to the fore by the National Front which made is part of its political propaganda. This issue was reinforced by the terrorist attack against Charlie Hebdo (a French satirical magazine) in 2015 which also contributed to shape public opinion against migrants in France.

The strongest anti-migration rhetoric in Europe has undoubtedly been that of Hungarian Prime Minister Viktor Orbán. His vitriolic attack at the EU and persistent anti-immigration rhetoric is second to none. In 2016, the Hungarian government under Orbán launched an anti-immigration campaign with billboards targeting EU Commission President Jean-Claude Juncker and Hungarian US Based billionaire George Soros of a plot to destroy Europe's civilization by opening up to masses of Moslems (Dunai 2019). Bocskor (2018) also highlights the anti-immigration discourse that underpinning the national consultation campaign on the issues of "immigration and terrorism held by the Hungarian government in 2015. He points out: "The consultation framed immigration as both an economic and security threat and conflated asylum seekers, economic migrants and terrorists, as well as regular and irregular migration" (Ibid., p.551).

The dichotomy in the framing of migration between pro and anti-immigration camps is more glaring in the US, which has witnessed an unprecedented upsurge in political polarization in recent times. The anti-immigration camp championed by President Donald Trump has essentially focused

its framing on the securitization of migration. Trump made the building of a wall across the US Southern borders, the signature promise of his 2016 presidential campaign and so far has coined his rhetoric around it. From the "Build the Wall"; "Finish the Wall" placards in his campaign rallies across the US; his Oval Office Address on the Border Wall; and the "National Emergency" declaration, Trump has been consistent in framing migration as a national security issue. Gessen (2018) notes Trump's use of phrases like "criminal aliens"; "very bad people"; "national emergency" and "safety of every single American" to pass across his message.

The migration discourse is also dominated by the "them-versus-us" framing under which "restrictionist groups" place US political leaders on the spot by insisting they let the public know the side they are on (that of pro-immigrant groups or that of those standing against "open borders", "immigrant terrorists" and "mass immigration" (Barry 2007).

On the framing of migration from the pro-immigration camp, Shepard (2016) notes the phenomenon among a growing number of American cities to frame themselves as "immigrant-friendly" cities. She points out that such designation is used as a strategy for urban regeneration and the promotion of economic revival.

In a study on frames utilized in the news coverage of immigration debate in the US during election years (from four major U.S. newspapers: New York Times; Los Angeles Times; St. Louis Post-Dispatch; and St. Petersburg Times), Kim and Wanta (2018) note that there is more likelihood for the human interest frame to possess a pro-immigration tone in comparison to other frames.

Both sides of the migration debate in the US are impacted by the use of labels. In a study on the effect of labels on people's attitude towards immigrants, Ommundsen et al (2014) underscore that the terms; "unauthorized immigrants", "illegal immigrants", "illegal aliens", and "undocumented immigrants" bear different meanings though used interchangeably. Their research found out the use of "illegal immigrants" resulted to a lower positive attitude in comparison to the use of "undocumented immigrants".

### **Policy Recommendation for a Comprehensive Solution on Migration**

The issue of migration presents both a daunting task and formidable opportunity for developing and developed states in today's world. In this era of globalization, perhaps the first step in tackling migration is to depoliticize its usage. Migration should cease to be used as a political tool by rival political camps to win support in times of elections without any concrete platform or sincere commitment to solve the problem. The European Union has made great strides in coming out with institutional solutions towards the migrant crisis is faced such as relocation and resettlement patrol of their common frontiers. However, in the US it is imperative for the legislative and the executive to work out a comprehensive solution towards the problem of migration.

To achieve a comprehensive solution, one of the pre-requisite would be the setting up of a committee of experts (custom and border patrol chiefs, immigration experts, civil society actors and other key stakeholders) to come out with a draft proposal on how to tackle the challenge of immigration. Such a proposal can form a working document for both the legislative and executive branch to draw inspiration and negotiate a solution.

Thirdly, best practices across the globe could also serve as an example. Cases like Sweden with its successful migrant integration program, and the European Union with its successful handling of the migrant crisis could also be helpful to the United States.

Lastly, multilateral efforts like the Global Compact on Migration should not be neglected. The documents contain important guidelines that can inspire a customized solution at the domestic level. Being an internationally negotiated agreement with non-binding recommendations, the Global Compact on Migration certainly benefits from a large endorsement and huge opportunities for international cooperation.

### **Conclusion**

From the forgone analysis, it is evident that migration remains a very polarizing issue around the globe. Countries and their citizens, political leaders and their parties, differ significantly on how to confront the

challenge of migration. While some advocate an ‘open-door’ policy others uphold a hardline approach focus towards border security. Globalization and securitization seems to be the catalyst behind these rival positions. The dichotomy on what approach to use is clearly manifested in the way the issue of migration is framed. This paper has examined the framing of migration in Europe and the US among pro and anti-immigration camps. It ends up with some recommendation on how the challenge of migration can be resolved and why not transformed into an opportunity to enhance corporation, economic growth and solidarity across the globe.

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# Fight against Crime - Criminological Perspective

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**ABSTRACT:** The fight against crime aims to prevent the impact on social values. This preventive approach must be based on the principle of legality and should be carried out on the basis of pre-established procedures. At present, criminality has a diverse typology that implies not only a permanent adaptation and diversification of procedures, but also a rigorous definition that must reflect as accurately as possible the hypothesis, disposition and sanction for each type of crime. From a criminological perspective, a series of concepts such as high crime, organized crime, terrorism, drug trafficking, or trafficking in human beings can easily highlight defective definitions. However, there are a number of concepts and philosophies surrounding these types of crime. We propose a review of how crime is defined in order to assess to what extent the identified operational definitions can or must imperatively be improved.

**KEYWORDS:** Criminology, law, organized crime, prevention, typology

## Introduction

The crime and its author have preoccupied the great thinkers well before the nineteenth century, a convincing example of which is Cesare Beccaria, who in the monograph *Dei Delitti e dele pene*, has revolutionized the legal thinking, opening up new horizons in the issues of crime and of criminal justice. In this time the principle has been enshrined, of the lawfulness of incrimination and the sanction, according to which no one can be prosecuted, investigated or sanctioned otherwise than in accordance with the legal norms.

From these ideas, according to which the criminality is a real concern for society, which must in turn react adequately to the phenomena emerging in social plan, we started the elaboration of the present criminological study, which will address drug trafficking, trafficking in persons and terrorism, topical subjects that are as complex as they are dynamic and therefore difficult to define. These criminal phenomena are to be addressed from a criminological perspective in an attempt to identify, within the available data, their theoretical and practical particularities in order to identify how these concepts are defined.

The study aims at presenting the analysis of these types of crime, which are classical and essential forms of objectivity of organized crime, on the coherent definition of which it depends in criminological plan the delimitation from other forms of criminality with which it resembles or the identification of the crime type in the criminal plan. The three forms of crime are very widespread worldwide, very lucrative, but at the same time representative of the poor way in which they have been defined. On a general level, it may be noted that between the rigid definition given to certain types of criminality that can fail to catch some forms of manifestation and a generic definition which lists some actions by which the criminality can manifest itself, the less rigid definitions of the analyzed types of criminality are enjoying a greater popularity.

## 1. Trafficking in drugs

The notion of *trafficking* is not recent, it being used for the first time in the 16<sup>th</sup> century as a synonym for trade. Thus, in its basic meaning this concept was not used in a negative sense. However, in the XVII<sup>th</sup> century, trafficking began to be associated with illicit or unfair sale of goods. Though, at first, through the trade, the sale of drugs and weapons was largely understood, to the XIX<sup>th</sup> century this notion also included the trade in human beings treated as goods and sold in slavery.

The criminological studies that have approached this issue have started from the relationship that can be established between drug use and crime (Brochu 1995). Reanalyzing the casual consumer, the drug user and the drug addict, the quoted study concludes that the relationship of the

drug to crime is not easy to understand as it would appear at first glance, this being a triangular relationship between a person, a product and a behavior.

In international law, drug trafficking was defined in *the Single Convention on Narcotic Drugs* of 1961, as amended by the 1972 Protocol. This document mentions, under Art. 1: “*Illicit trafficking means the culture of narcotics or any trafficking in narcotics, which have purposes contrary to those provided for in this Convention*”, and under Art. 19 letter (a) “*quantities of drugs to be consumed for medical and scientific purposes*” (Buzatu 2012, 141).

The definition of drug trafficking is also found in *the Convention against Illicit Traffic in Drugs and Psychotropic Substances* of 1988 which, under art. 1, letter m) provides 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 item (1) of the Convention, the signatory countries must, in accordance with their national law, confer the character of criminal offenses to some intentional acts regarding the narcotic drugs and psychotropic substances, that is to say to that acts committed in violation of the provisions of the 1961 Convention. In an interpretation *per a contrario* of the provisions of the Convention, it can be said that it is about those acts with narcotic drugs and psychotropic substances made for purposes other than medical purposes or for scientific research. The acts are expressly delimited in three categories, each category containing several subcategories.

The Convention provides, under art. 3 point 2), that the possession and cultivation of the drug for own consumption be classified as drug trafficking. Subject to the constitutional principles and fundamental concepts of its own legal system, each signatory may take the necessary measures to confer the character of a criminal offense to the act committed intentionally with respect to the possession and purchase of narcotic drugs and psychotropic substances and the cultivation of narcotic drugs for personal consumption, in violation of the provisions of the 1961 Convention and amended in 1972. The cited legal instruments do not provide a proper definition of drug trafficking but list drug-related operations that are forbidden.

The increase of trafficking in drugs after 1989 led to the emergence of a legal framework clearly superior to the previous legislation. The current national legal regime of drugs is Law no 143/2000 on the prevention and combating of illicit drug trafficking and consumption (Republished in the Official Gazette of Romania, Part I, no 163 of March 6, 2014). This is an operative normative act that is at a level similar to the Western countries, which emerged precisely as a result of the harmonization of national legislation with international legislation. This law was drafted to meet the requirements of the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1989, to which our country adhered by Law no 118/1992.

Art. 2 par. (1) of the Law no 143/2000 includes in the field of 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 regarding the movement of risk drugs, without right*”, the enumeration of the facts being not limitative (Law no 143/2000 on combating illicit drug trafficking and use, published in Official Gazette no 362 of 3 August 2000, republished in Official Gazette no 163 of March 6, 2014).

Also, Art. 4 para. 1 criminalizes the deeds regarding the *cultivation, production, manufacture, experimentation, extraction, preparation, transformation, purchase or possession of risk drugs for their own consumption, without right*.

There are also sanctioned other operations of trafficking in (risk and high-risk) drugs which presupposes the mere possession of the drug – as the material element, without right:

the introduction in or removal from the country, as well as the import or the export of drugs; as well as the physician intentionally prescribing high-risk drugs without it to be necessary from the medical viewpoint, the deliberate release of high-risk drugs on the basis of a prescribed medical recipe or a fake medical recipe, or getting high-risk drugs by using a prescribed medical recipe or a fake medical recipe; the administering of high-risk drugs to a person, outside legal conditions; providing, for consumption, of toxic chemical inhalants to a minor (Law no 143/2000 on

Combating Trafficking and Illicit Drug Use, art. 2-8). The operations listed are actions contained under the dome of the same offense.

The most severe incrimination is provided under art. 9 and refers to the *financing of the commission of the deeds stipulated under art. 2-5*, this article targeting those who finance and/or organize drug trafficking. As can be seen from the above, neither the Romanian law expressly defines the drug trafficking, but lists drug-related operations that are prohibited, as well as the sanctions provided for them.

However, we emphasize the similarity with the definition of illicit trafficking in drugs used by the 1988 Convention, namely the fact that, by *drug operations done without right*, those actions with drugs must be understood, which are contrary to the purposes set out in art. 19 of the 1961 Convention.

## 2. Trafficking in human beings

At the end of the 19<sup>th</sup> century the notion of trafficking in human beings referred to the trade with human beings treated as goods and sold in slavery, and this trade was outlawed at the beginning of the 20<sup>th</sup> century when it was defined as the movement across the international borders of women and children for the purpose of sexual exploitation (The Paris International Agreement for the Suppression of the White Slave Trade in 1904). In the 1990s, trafficking in human beings meant prostitution and the exploitation of women and children, and currently it is understood as the trafficking in women, children and men for sexual exploitation, forced labor, organ harvesting, both the trafficking by using force or deception, and the trafficking with the consent of the victims, both inside and outside the borders (Under the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, adopted by the UN on 15 November 2000).

As with the drug trafficking, there is no unanimously accepted definition of trafficking in human beings. At the international level, according to art. 3 of the Protocol on the prevention and punishment of the trafficking in persons, especially women and children, the trafficking in human beings means: the recruitment, transportation, housing, or receiving of persons by threatening or even using force or other means of coercion, by abduction, fraud, fraud, abuse of authority or a vulnerability, or by offering or accepting payments or benefits for obtaining the consent for the purpose of exploitation.

In the same way, at the level of the European Union art. 4 of the Convention of the Council of Europe on measures against trafficking in human beings, adopted in Warsaw on May 3, 2005, the expression “trafficking in human beings” means: the recruitment, transportation, transfer, accommodation or reception of persons by threat of by using force or other forms of constraint by abduction, fraud, deception, abuse of authority.

In the Directive 2011/36 / EU on the prevention of and fight against trafficking in human beings and the protection of its victims, the notion of trafficking in human beings is defined differently in the sense that the States are required to take into account the UN definition but certain actions such as the exploitation of labor in construction or agriculture, forced begging and its exploitation, or adolescence and forced marriage to be also considered as trafficking operations.

At national level, trafficking in human beings has been criminalized as a distinct form of crime by Law 678/2001 on preventing and combating trafficking in human beings, which has largely taken over the definition offered by the UN.

The New Criminal Code (286/2009 Law regarding the Criminal Code, published in the Official Gazette 510 on 24<sup>th</sup> of July 2009 with subsequent additions and modifications) enshrines for the first time a distinctive chapter, in the special part, dedicated to the crimes in the field of trafficking in human beings, meaning Chapter VII The Trafficking and exploitation of the vulnerable persons from the 1st Title, Crimes against the person (Buzatu 2018, 226).

### 3. Terrorism

The Nation of *Terrorism* comes from the Latin “terror” which means terror, fear, horror, intentionally provoked. Terrorism is a complex concept and the definitions formulated by antiterrorist, political, governmental and security institutions have failed to be unanimously accepted.

Numerous military academies or universities have offered more than 100 definitions of terrorism. They can be established as true statistics, on the basis of which the criteria can be synthesized through which the phenomenon can be identified, such as strength and violence, politics, terror, threat, psychological effects, anticipation of reactions etc. (Canadian Center for Intelligence and Security Studies, *Tendencias en terrorism - Le terrorism and crime: Liens reels et potentiels* 2006).

Although there is no universal definition of terrorism, the United Nations Security Council, regional organizations and the governments of the Member States have mentioned numerous armed groups as “terrorist” groups. The Security Council has imposed sanctions on 80 groups and over 380 persons linked with Talibans, Al Qaeda and Islamic State of Iraq and Levant (ISIL) on the ground that they are involved in terrorist activities or who support such of activities. The Talibans, Al-Qaida, ISIL and Boko Haram affiliated company accounted for 74% of all the deaths caused by terrorist, insurgent and non-state armed groups in 2015 (The World Drug Report 2017).

It is important to note that terrorist acts may be committed by a single author. In the context of globalization, there are important changes in the profile of the “new terrorist” (Stănoiu 2012, 21), he/she often adopting the tactic of *the lonely wolf*. The means by which terrorists act are visible, extremely violent, often directed at public figures, reference targets, or social symbols, to maximize panic among the citizens.

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 of claiming certain claims political or ideological plan.

The Convention of the Council of Europe on the Prevention of Terrorism, signed in Warsaw on 16 May 2005 (Ratified by Law no 411 of 9 November 2006 on the ratification of the Council of Europe Convention on the Prevention of Terrorism, adopted in Warsaw on 16 May 2005, published in Official Gazette no 949 of November 24, 2006), updated on 22.06.2018, under art. 1 para. 1 mentions that “*For the purposes of this Convention, a terrorist offense means any of the offenses falling within the scope of one of the Treaties listed in the Annex to this Convention as defined in those Treaties*”.

We appreciate that neither the concept of terrorism has been fully elucidated nor has it been given a clear definition despite the abundance with which it is present in legal instruments.

### Conclusions

From the foregoing, we appreciate that from a criminal perspective, the typical nature of the offenses mentioned in exemplifying terms by them results with difficulty. From a criminological point of view, we consider that some conceptual clarifications are necessary, in order these notions to be used in a coherent and scientific way in certain contexts, along with notions such as “Great Criminality”, “Crime Globalization”, “Crime Mondialization” or “Organized Crime”.

The mentioned offences are difficult to analyze particularly in view of the interaction with the great criminality, as this concept has been defined in the literature, (Stănoiu 2012, 20.) but also taking into account the dynamics specific to the phenomena in their entirety. In the vast majority of cases, the drug and human beings trafficking offenses cover the form of transnational organized crime.

As an example, we mention that the drug trafficking is the typical example of “*mondialization of crime*” (12th International Congress of Criminology, *Crime and Justice in an Evolving World: Perspectives in Asia and the International Community*, Seoul, August 24-29, 1988) or “*globalization of crime*” (International Criminology Course *Consequences of Globalization on Crime Evolution*, Miami, 6-8 September 1999).

The phenomenon of economic, cultural and socio-political globalization brings with it what we call the obscure face of globalization, namely a globalization of crime (Pless and Couvrat 1989, 358, quoted by Gassin 1993, 380). Drug trafficking includes elements of extraneity.

The existence of offenses that integrates one or more elements of extraneity with respect to a certain determined state is not a new phenomenon. This is a phenomenon known long ago debated in the doctrine of the international criminal law. But it would be erroneous to believe that the globalization of the crime is not distinguishable from international crime. The differences are both quantitative and qualitative. Between the two types of crime there is an essential difference. This difference consists of the fact that, with regard to classical international criminality, the foreign elements are occasional, sometimes accidental, while in the case of globalized criminality, the foreign elements are structural and are the essence of this kind of criminality (Gassin 1993, 381).

The international criminality is a very appropriate term to describe the acts committed in the habitual international framework. The vocabulary is sometimes too poor to adequately describe the globalized delinquency. We can think of terms such as “world crime” / “global crime” or “transnational crime”. The first term has the inconvenience of letting an uninformed person to believe that foreign elements must be spread throughout the world for such a crime to exist. The expression transnational crime is undoubtedly less equivocal, but on condition that the prefix *trans* refer to the vertical concept of transcendence related to the States concerned, while the prefix *inter* in international crime to evoke, in horizontal manner, the juxtaposing of the constituents of a criminal act overlapping one or more frontiers. The term transnational is also the term used in the conventional international law (UN Convention against Transnational Organized Crime of 15.11.2000).

Trafficking in drugs and persons are forms of organized crime in which extraneous elements are structural and are related to the essence of this type of crimes. Moreover, from the point of view of the foregoing, we assert that these are current forms of *organized transnational crime*. We believe that the referred offenses must also be examined from the perspective of international criminal law, as extraneous elements related to the essence of this type of crime. While maintaining the generic criterion of classifying criminalization in crimes, delicts and offences, the trafficking in drugs and persons was placed in the specialty literature in the category of international crimes (Bassiouni 2008, 121-123).

The quoted author, in his study on incrimination in international law recalled a potential classification in the international norms of a number of 28 type crimes, incriminated in 267 international treaties. In a potential hierarchy of these, the incriminations in paragraphs 1 to 11 (aggression, genocide, crimes against humanity, war crimes, the possession and illegal use of nuclear weapons, nuclear material theft, mercenary, apartheid, slavery, torture and experimentation on human subjects) are international crimes. Incriminations under points 12 to 24 (piracy, air piracy and operations against air safety, illegal acts against maritime navigation and the safety of platforms on the high seas, threat and use of force against internationally protected persons, crimes against the United Nations and its associated personnel, civilian hostages, illegal use of mail, attacks with explosive substances, *terrorism financing, drug trafficking and related crimes*, organized crime, destruction/theft of patrimony objects and illegal acts against internationally protected environmental items) are international delicts. The remainder of the incriminations set out in paragraphs 25 to 28 (international trafficking in obscene material, counterfeiting and falsification, illegal interference with underwater international cables and bribery of civil servants) are the international offences in the perception of the author.

Professor Cherif Bassiouni also proposes definitions for each of the three categories of international incriminations with which he operates. International crimes represent, in the author's view, those normative prescriptions of international criminal law the breach of which is likely to affect the peace and security of mankind or is contrary to the fundamental values of mankind, or which is the product of a state's action or of a favoring state's policy. International delicts are in the view of the same author those normative prescriptions of international criminal law that affect an internationally protected interest and the perpetration of which involves one or more states or are

harming victims from several states. Last but not least, international offenses are any other crimes that do not fall within the previous definitions.

Starting from the above criteria and definitions, also taking into account the criterion of gravity mentioned in the literature (Deteşeanu 2016, 153-166) we consider that the crimes of trafficking and terrorism can be classified in the category of international crimes, since now these types of crimes affect international peace and security, are against the fundamental values of humanity, the drugs, trafficking in persons and terrorism affect the life and health of millions of people, and not at last the trafficking is the product of state's favorable actions.

From the foregoing it follows that the definitions are outlined at the same time with the evolution of the typical nature of the crimes, and any attempt to define as accurately as possible a certain crime may omit certain circumstantial situations that would have the effect of impossibility of some impairments brought to the social values to be prosecuted and sanctioned. It is no less true that a defective definition may leave free the imagination of law professionals, be they criminal investigation bodies, judges or lawyers.

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# Historical Unemployment Rate and External Trade in Boyaca 2004-2016

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**ABSTRACT:** Through the historical study of numbers, it will be known how employment, in general, and public employment, in particular, has been suffering a detriment over the years. Likewise, by means of comparative tables, it will be reflected how the department of Boyacá, in Colombia, has been losing ground in the export field, generating lag in the economic activity and a higher unemployment rate, which converges in a low competitiveness index in the country. The economy is nourished by numbers because its strict use allows identifying the magnitude of the economic problems and reduces the uncertainty in decision-making. For which a set of indicators will be observed, such as unemployment and external trade in the department of Boyacá, which make it possible to design, to measure and to evaluate the policies performance for decision making.

**KEYWORDS:** numbers, indicators, unemployment, external trade

## **Introduction**

The Department of Boyacá has been behind from the others. In the indicators and national study of numbers, it has been very low. So, its results barely affect the national economy. For the same reason, there is contempt about the department contribution, focusing, generally, on the large cities such as Bogotá, Medellín, Cali, Barranquilla and Bucaramanga economic history. Main changes in the unemployment and the external trade variables are examined in order to make them known and to present the results before the academic community. The Department of Boyacá numbers indicate that it is a department which is lagging behind the external sector and employment, by comparing it with other departments in the country. Between 2004 and 2016, period of time for this research, unemployment had a cyclical behavior according to the economic upturn and production moments. It was observed that, in 2004, unemployment presented numbers of 12.4% and, in 2008, this unemployment rate dropped to 7%, but it rose again in the following years.

In this research, it is also evident how the Department of Boyacá participation, in terms of international trade, exports and imports, has been reduced by going from exporting 1% in 2000, from the national total percentage to 0.6% in 2011. During this study period, Boyacá stood out in raw materials and products for industry importation, especially, products related to mining and, followed closely by pharmaceutical chemical products and agricultural products.

## **1. Macroeconomic context**

Historically, the Department of Boyacá has been rich in natural resources, with a privileged geographical position, where its main economic dynamism is traditional agriculture, in the primary sector, focused on supplying the domestic market, being the capital of Colombia, the main destination for its products.

Before the reception of free market, people talked of growth and economic development at all levels, which would generate more employment and, therefore, improvement of the citizens' quality of life. Nowadays, reality is contrasting what was announced and neither Colombia nor the department have managed to maintain an economic balance, which allows generating greater development and employment. It has been on both sides of the economic models: on one hand, the Keynesian welfare model, which through subsidies, has maintained a policy of equity and resources distribution, but also government assistentialism and populism. On the other hand, the free market designed to give entry to multinational companies, which contribute to the generation of employment and development, has not been sufficient and employment, at national level, has not

increased and has been stuck in just one digit. In 2013, it stood at 9.88%, but, for the department of Boyacá and its capital, the unemployment rate has been decreasing with respect to their own numbers. In addition to the above, the corrective economic policies applied were contradictory to each other, causing delays in their effectiveness and generating greater uncertainty in the private sector (Fedesarrollo 2010, 2).

## 2. Unemployment

Unemployment is a social phenomenon caused by economic crises or adjustment measures which causes the demand for workers to decrease. Boyacá is a department located in the center east of Colombia, in the Andes mountain range. Its current population is 1,406,000 inhabitants, according to DANE (2015), distributed in 123 municipalities, of which, a little more than 90% of the municipalities in this department, are in category 5 and 6. It has an area of 23,189 km<sup>2</sup>, corresponding to the 2.03% of the national territory. It has a high unemployment rate due to the lack of opportunities and, according to the Boyacá labor market indicators during this study period (2004-2016), unemployment had a cyclical behavior according to the economic upturn and production moments. Table 1 shows that, in 2004, the unemployment rate in Colombia was well below departmental unemployment and its capital, Tunja.

Table 1. Unemployment rates

	<b>Tunja</b>	<b>Boyacá</b>	<b>Colombia</b>
<b>2004</b>	16,5	12,4	12,7
<b>2005</b>	17,3	9,0	10,33
<b>2006</b>	18,4	10,5	11,78
<b>2007</b>	13,7	9,6	9,89
<b>2008</b>	12,3	7,0	10,61
<b>2009</b>	13,3	9,7	11,31
<b>2010</b>	13,2	10,1	11,12
<b>2011</b>	11,9	8,0	9,82
<b>2012</b>	12,0	7,3	9,55
<b>2013</b>	12,1	8,9	9,88
<b>2014</b>	11,6	7,5	9,1
<b>2015</b>	10,4	6,2	8,0
<b>2016</b>	12,5	7,0	8,7

*Source: Author's elaboration based on DANE and ICER data*

According to Farné (2014), (director of the Employment Observatory in the Externado de Colombia University), recently in Colombia, the unemployment rate has been decreasing, as we can see in Boyacá and Tunja, the trend rose with respect to 2012 and 2013. Although unemployment fell from 2010, standing at Tunja with 13.2% and at Boyacá with 10.1%, it continues being higher than the national average.

In addition to all of the above, in the Department of Boyacá, people employed in informal areas has been increasing, such as street vendors, magazine sales, clothing, food, selling cellphone minutes, and other informal economy activities. This situation positions the Department of Boyacá among the first places in poverty indexes (72%), and, therefore, registering a high degree of intrafamily violence.

### 3. Public unemployment

The State is the largest employer in the country; currently the number of public employees reaches approximately one million one hundred and seventy-three thousand three hundred and fifty-one (1'173.351) employees (Administrative Department of Public Service 2014), of which the department of Boyacá contributes with approximately 3,200, without counting on those contracted by Special Service Agreement (SSA). When the free market economic model was introduced, public companies started to go private. It has been spoiling public employment little by little, changing the ways of hiring staff and, consequently, reducing the payrolls in the different State entities. It is generating unemployment and the ways of hiring staff through the so-called SSA, Special Service Agreement, which also reduces the overtime compensation and weakens union action.

The different reforms consequences on public employment and the State permissiveness against the exploitation in the less favored workers sectors show that this model benefits from failures and its complacency which also impoverishes its citizens. Rodríguez (2005) states that the sector with the highest job offer in Boyacá is the with the Government, through the mayor's office and the governor's office, despite the continuous and different administrative reforms carried out to dismiss public employees and close down state companies or give them in concession. From the above, Table 2 is presented based on information from the Human Talent Direction in the Government.

Table 2. Elimination of Jobs in Boyacá's Government

<b>YEARS</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>	<b>2005</b>	<b>2010</b>
<b>MEN</b>	494	547	470	228	229
<b>WOMEN</b>	480	368	405	328	332
<b>RESULT</b>	<b>974</b>	<b>915</b>	<b>875</b>	<b>556</b>	<b>561</b>

*Source: Martínez 2015*

The previous table shows how, in the course of time, public workers were substantially reduced by almost 58%, beginning in 1990 with the proposed development plan at that time "economic opening" and until 2010, when the free market was consolidated. Additionally, it is also observed how women have taken precedence in the activities development within the institution.

$$\text{Public Employment Participation} = \frac{\text{Number of Public Sector employees}}{\text{Economically active population}} \times 100$$

From 1995 onwards, there is a reduction in public sector employees, from 23,018 employees in the department to 3,200, in 2010. That is, in 20 years, it was reduced by 86%, equivalent to 19,818 people in the department of Boyacá who were unemployed in this period of time, due to privatizations and the supposed modernization of the State.

### 4. External Trade 2004 - 2016

The Department of Boyacá has had little export participation evidencing contributions to the national GDP that do not exceed 2%. In the same way, its industrial activity is very low. Although, the

productive tradition in a peasant economy and the tenacity of its people, as well as the privileged central location and its variety of climates, soils and rivers, are making the department of Boyacá have competitive and comparative advantages, which make it one of the 32 Colombian departments with the best prospects for growth and economic development.

The evolution and structure in the departmental exports during 2014 - 2016 (table 3) reflects the economic activity and the exports decline over time influenced by different domestic and external economic national policies. In those years in the department, quite contradictory variations were registered when moving from a rural economy based on the primary sector to a service economy, supported by the tertiary sector. In 2003, exports decreased by 23.3% (ICER 2001), in relation to the immediately previous year, dropping them from US\$102 million exported to US\$79,4 as a result of the decrease in exports from the agricultural sector and the retreat in the manufacturing industry, trade, construction and real estate activities. In 2009, exports again fell by approximately 73% with respect to the previous year and there was a rebound in imports, generating a trade balance in deficit. In the following years 2011, 2012 and 2013, exports maintained a moderate growth while imports grew at a higher rate. Industrial goods exports grew and agricultural products decreased from 12.4% to 1.7%; "Industrial goods reaffirmed their dominance until absorbing 94.2% in 2011, an increase of almost 10 pp since the beginning of the decade. The second factor favored was the exploitation of mines and quarries, which amounted to 4.1% of the exporting aggregate, "(Regional Center for Economic Studies, p. 43). Only until 2014 and 2015, there is evidence of a recovery in exports and a decrease in imports, generating better expectations for growth and departmental development with agricultural products taking the lead in exports.

Table 3. Boyacá External Trade (thousands of dollars)

<b>Boyacá External Trade (thousands of dollars)</b>				
	<b>Non-traditional exports (Fob)</b>	<b>Imports (Cif)</b>	<b>Balance of trade</b>	<b>GDP</b>
<b>2004</b>	83.417	17.838	65.579	<b>-0,9</b>
<b>2005</b>	80.959	27.529	53.430	<b>5,8</b>
<b>2006</b>	108.087	70.959	37.128	<b>4,9</b>
<b>2007</b>	130.924	139.162	-8.238	<b>12,9</b>
<b>2008</b>	165.545	167.376	-1.831	<b>7,2</b>
<b>2009</b>	95.244	104.230	-8.986	<b>1,6</b>
<b>2010</b>	114.965	156.282	-41.317	<b>2,7</b>
<b>2011</b>	136.277	181.919	-45.642	<b>9,4</b>
<b>2012</b>	129.894	208.614	-78.720	<b>3,6</b>
<b>2013</b>	132.698	132.912	-214	<b>2,9</b>
<b>2014</b>	159.238	140.403	18.835	<b>4</b>
<b>2015</b>	169.208	124.123	45.085	<b>3,5</b>
<b>2016</b>	278.854	97.1536	181.701	<b>2,6</b>

*Source: Author's elaboration based on DANE data*

The table shows that the exports registered numbers do not have a constant behavior in terms of growth, while imports rise significantly. In 2010 and 2011, there were greater imports at the departmental level constituting, in this way, a detriment in the balance of the department payments and, therefore, a problem which specifically translates into unemployment. In 2016, there was an increase in exports and detriment in imports which helped to consolidate the balance of payments.

## Conclusions

Within this investigation, it is clear that the Department of Boyacá participation, in terms of international trade, exports and imports, has been reduced by going from exporting 1% of the national total percentage in 2000 to 0.6% in 2011. During 2004 and 2012, it was evidenced as the highest unemployment rate in Boyacá, with 12.4% and 10.1% afterwards.

The departmental exports evolution and structure from 2014 to 2016 reflects the economic activity and the decline of its exports over time, influenced by the different national internal and external economic policies. The Department of Boyacá's economy has a great strength; its fields are fertile, its waters abundant, its privileged position and its modern road infrastructure allow it to offer its products easily to the national and foreign market.

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# Some Aspects of Forensic Identification

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**ABSTRACT:** Forensic identification is a very important factor in the investigation of both civil and criminal investigations. The object of forensic identification is the whole of the objects, phenomena, qualities, time and space intervals, the physical attributes or psychic actions of the person. Almost all cases are directly linked to the person, and information about the appearance or appearance of a person is among the most important. Information about age, gender, ethnicity is provided by the unique and almost unique look that each person is endowed with. Available evidence about a person's physical appearance can always be associated with functional features such as voice, hair color, mimics, etc. The essential content of probation with the help of forensic identification is the detection, detachment of the object or person involved from an indeterminate totality of objects or potential persons. Of great importance are both the clothes and the personal objects that give a complete picture and help identify the person. Specialized persons have the duty to perform the identification activity.

**KEYWORDS:** identification, legal activity, forensics, object, person

## **Introduction**

The purpose of Forensic research is to support investigative processes and discover traces in raw materials from which there is the possibility of building events and activities.

Personal identity, corroborated with evidence from various sources of evidence, has led to the development of methods and procedural means that help to solve cases in the field of forensic research.

The problem of identifying people was born with the appearance of man on the earth, since then a distinction has been made between people, and later this necessity has acquired a legal character. This was due to the fact that society began to know the elements harming social harmony, which had to be mastered, isolated and punished in relation to the gravity of the committed deeds (Nechita 2009, 14). Judicial identification is an indissoluble activity linked to the fulfillment of the act of justice and the prevention of antisocial phenomena. The detection of offenders, the identification of recidivists, the proving of criminal offenses and guilt, the determination of the circumstances in which they occurred, and other situations, including those relating to the settlement of civil disputes, necessarily require the identification of persons and objects (Ionescu and Sandu 2011, IX).

The main way to reach judicial identification is Forensic Identification. It appears not only in the middle but as a premise of judicial identification. The correct understanding of Forensic Identification and its application in practice is fundamental to the act of justice (Buzatu 2013, 20).

The process of identifying individuals, objects or even phenomena related to the illicit deed through forensic methods in order to establish veracity in the judicial process is the whole of the idea of forensic identification. The process of identification is based on the possibility of recognizing the objects of the material world by fixing in our thinking process their characteristics and by the relative change for at least a period of time (Ionescu and Sandu 2011, 172).

The criminalist has the duty to go with the identification to the level of an individual or object and not to remain at the generic level of the group of objects or the category of individuals according to the extent to which the means of examination and the methodology available at that time allow for individual identification. Finding the membership of the group to which the identification is part is not sufficient, the process having to proceed by means of comparison as a single object that created the trace from which it departs.

Regardless of who has been made the identification and the procedural form in which it has materialized, the connection between the deed and the person or the identified object rests solely with the judicial body. By corroborating the identity conclusion with the data provided by other evidence, forensic identification becomes judicial (Buzatu 2013, 21).

The relationship between them could be defined as a part-to-whole report, where the part is forensic identification and the entire judicial identification. This stems from their succession (the first precedent of the second), from the position it occupies in the probation (the first is subordinated to the second) and, above all, from the content and extent of each (Ionescu and Sandu 2011, IX).

The generalization of jurisprudence and expertise has led to the development of a theory of identification in the field of criminology, which is also useful for specialists and law enforcement. For the first one is a methodology and a working tool, for others a correct interpretation guide for scientifically determined data (Idem). In the literature (Ionescu 2007, 159), forensic identification has been defined as the establishment by technical-scientific means of the identity of a being or an object related to the crime in question.

### **The subject of Forensic Identification**

A material object of forensic identification can be any person, being or thing, any element of the material world that takes place in space and time, capable of being identified by the fingerprints created during the crime. The object of identification is a precise fact through the causal relationship itself with the deed investigated.

In a general sense, the object of forensic identification is constituted by the whole of the objects, phenomena, qualities, time and space intervals, physical attributes or mental actions of the individual. In a narrow sense, the subject of forensic identification is made up of the solid elements of the material world, with relatively constant volumes and characteristics.

Forensic identity is the process of determining the identity of a person, object or beings all in a causal relationship with the act criminalized by criminal law (Stancu 2010, 170). At the same time, this process has a unitary character, the identification being realized gradually, starting from general to particular. Throughout this process, all the specific attributes of objects, individuals or animals go through a selection stage that specifies the genre, group, species, type, model, etc.

### **The scientific premises of forensic identification**

#### ***1. Individuality***

The scientific basis of identification is individuality, unrepeatability, where the possibility of separating one object from another or similar. Individuality is given the initial attributes of the object and those acquired later, through use and exploitation (Buzatu 2013, 22).

#### ***2. Relative stability***

Objects and beings undergo changes under the influence of internal and external factors. Continuing the movement and transformation of the material world does not contradict the property of an object to be individual (Ionescu 2007, 160-161).

For certain time intervals, for example during the investigation, identification remains possible when changes are not essential. In this context, the individual appears to be relatively stable.

Apart from natural factors, there are also cases of artificial modification: writing disguise, axle blade failure, fingers, traces, etc.

#### ***3. Reflectivity***

The reflection of interest in the identification process consists in the change by which on or in an object there is a change of substance, the printing of the image of another object or some of its attributes (Buzatu 2013, 22).

In this situation the creative object will be the one reflected and the inviting object the one that reflects.

### **Establishment of gender or generic identification**

Establishing gender is at the forefront of forensic identification in the event of a positive consequence, continuing analysis until identity is established. The specification of generic membership is dependent on some rules established by the forensic practice.

Among these, we can exemplify the following:

1. In order to identify the unknown person, the information on the description of the obvious features from the first visual contact without establishing direct contact with it, ethnicity, state belonging must be determined.
2. If the determination of the person's belonging is not possible, it is subject to examination in a given gender. The forensic specialist must make a pronouncement on both gender and possible subclassifications.
3. If it is necessary to specify the belonging of several persons to the same genre, the one responsible for this procedure is the forensic expertise that can find that objects are the same, without specifying gender (Bercheșan 2007, 53).
4. If a forensic specialist is provided with a follower, the determination of gender must be made in relation to reflecting the external structure of the contact surface (Ionescu and Sandu 2011, 11).
5. In order to be able to establish gender identity, the characteristics must be quantitative enough.
6. The differences and the heterogeneity of the compared objects or substances have a great importance in determining the generic membership.
7. Emphasizing the essential differences results in the denial of gender in the conclusion and the identity
8. The more the group of the analyzed object is more restrained, the greater the likelihood of identity and the higher the number of common elements, the higher the difficulty and the chances of identifying the person or object are lower.
9. In order to be able to establish distinctive criteria, differences must exist, that is, be real and not artificially created by accidental circumstances (Bercheșan 2006, 53-55).

### **The Stages of Forensic Identification**

For the identification of forensics, we must go through certain stages:

#### ***1. Preliminary examination***

The preliminary examination is the first step of the examination itself the preliminary examination is a preparatory phase.

First of all, the forensic specialist must focus on researching the tasks resulting from scientific research or expertise. It must distribute the tasks in an organized manner to the team they work with. Second, the forensic specialist must organize the conduct of scientific research or expertise.

#### ***2. Intrinsic examination***

This phase of the intrinsic examination consists in the interpretation of the general and personal characteristics of each object, in order to establish the identity.

As a rule, this stage starts with a litigation and continues with the object to be identified following the comparison route (Bercheșan 2000, 61). This step is based on the analysis, designed to determine the characteristics of the objects either in the following or the object in its entirety as well as in certain parts. Thus, the analysis of characteristics and other defining elements implies observation (Bercheșan 2000, 62).

#### ***3. Comparative examination***

At this stage, the comparison is the fundamental method. It is accomplished by confronting two or more persons, beings or objects to appreciate the similarities and differences between them and the demonstration of identity or identity.

#### ***4. Formulate the conclusion***

The assessment of the consequences of the comparative research and the interpretation thereof undoubtedly establishes the greatest responsibility of the whole examination. As is also evidenced by the literature (Bercheșan 2000, 65), this phase has the role of assessing whether the sum of the constant characteristics is irreparable and unique.

The conclusion should only bear on the issues in which the expert is competent, must be precise and accessible, explicit, understandable for a non-specialist (Buzatu 2013, 25).

In relation to the degree of certainty reached, the conclusions of the expert or forensic specialist can be classified:

*Concluding conclusions* - consisting of positive or negative answers unequivocally. In other words, these conclusions must make it clear that the sum of the similar features of the studied subject and of the disputed subject is unique, even to other irreparable objects. This is the case for negative categorical conclusions, there must be certainty that the differences between the objects compared are essential and exclude identity.

*Conclusions of probability* - they must be exclusively the result of elements which restrict the possibility of a categorical idea, that is to say, of a definite, positive or negative conclusion. Such a conclusion should rather be considered as an indication of scientific probity. The claims of a reputed specialist in the field are an expression of this truth.

*Conclusions of impossibility* - the conclusions of the impossibility of solving the problem are necessary if the determination or rejection of the identity is not possible even with plausibility.

## **Conclusions**

Being a dynamic process, identification must not be regarded rigidly as the beings and objects that it is studying, constantly changing but still remaining the same. Thus, the forensic identification appears as a process of establishing, through the means and methods of forensic science, the creation factor of the trace based on its defining characteristics, in an individualized and unitary system. This can also be achieved without direct contact, instrumental, tactile, visual with the object to be identified using for this purpose, the recognition according to the essential features when using the previous perceptions of different persons regarding the place, aspect, mode of action of an object, a phenomenon, a person or even an instrument. This method can identify offenders, missing persons, abducted, by comparing their descriptions with the items available.

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# Hinduism and Women Religious Beliefs and Practices

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**ABSTRACT:** Religion plays a significant role in structuring and maintaining a society by enforcing certain morals and norms. Like any other religion, Hinduism has guided the Hindus to live in a particular way since time immemorial. India is predominantly a Hindu society and Hinduism has had a huge impact on the structure, function and culture of Indian societies. Ancient Hindu scriptures like the Vedas and Upanishads show profound respect for the feminine principle. It is the Supreme Being, from who all emanate. A woman is a Goddess to be worshipped. During ancient times, the condition of women was in conformity with the religion and they enjoyed freedom, equality and liberty in all spheres of life. However, subsequently, the emergence of texts like the Epics, Smritis, Sastras, vernacular writings and oral traditions, redefined an ideal woman and led to the practices where women were subservient to men. This dissonance and conflict between religious beliefs and practices has strengthened in present times, and has witnessed a steep rise in the number of crimes against women. Increasing domestic violence, sexual violation, female feticide, dowry deaths, declining ratio of women and men and the taboos (arising from having a female body, such as, menstruation) are causing not only distress but also widespread criticism and revolt among women and society at large. Despite the Indian Constitution rejecting any kind of discrimination against women and deeming it unlawful, these inhuman atrocities against women are on the rise. More than ever, there is a need to take refuge in the religion (early Vedic period), not to be too staunch, but to be flexible, democratic and liberal in our outlook with dynamic times and ever shifting contexts. This paper proposes to study (with particular reference to India), the religious beliefs in Hinduism concerning women, and the gradual discord between the beliefs and practices leading to discrimination against women in many spheres today.

**KEYWORDS:** religion, Hinduism, Vedic Period, culture, scriptures, beliefs, practices

## Introduction

Every society is heterogeneous and is governed by norms or laws regarding duties, morality, virtues, rights, behaviour, and many more things for maintaining order and stability. These norms evolve gradually from the earliest institutions which distinguish human societies from animal kingdom. Simone de Beauvoir (1997, 84) in her famous book *The Second Sex* states, 'Humanity is not an animal species, it is a historical reality,' History plays an important role in tracing the development of any society. Women who form an integral part of the society, too, can be studied historically. Considering the study of women in Hinduism, it becomes imperative to take into account both religiohistorical factors which affected the status and perception of women by men as well as by women themselves, then and onwards. Hinduism, as a way of life has been governed and structured by the earliest scriptures like Vedas, Upanishads, Smritis and Puranas. Cultural practises, beliefs, attitudes, points of view in Hinduism are thus governed directly or indirectly by these scriptures. However, the role of history cannot be undermined. The condition of women in today's Hindu societies, therefore, is undoubtedly an outcome of both religion and history. Historical forces deepened, distorted, modified, and appropriated what the early Vedic scriptures had directed. The early Vedic religion, known to be the foundation of *Sanatan Dharma* (Hinduism), and Vedic philosophy has had the most profound impact on Hinduism. Unfortunately Vedic philosophy was distorted and made compatible and advantageous for particular races as well as powerful kings and certain sections of the society predominantly constituted of men. Thus, to say that women in Hindu societies have always been subservient to men, or were differentiated on the bases of gender will not be true. In Hinduism, the position of women varies greatly from one historical period to another. Also, there is a conflict between the depiction of women in scriptures and in reality. Ancient Hindu scriptures like the Vedas and Upanishads show profound respect for the feminine principle. It is the Supreme Being, from whom everything emanates. She is Shakti in the form of Durga, Goddess of Knowledge as Saraswati and the Goddess of Wealth as Laxmi. All the life giving rivers are feminine and are to be venerated. Nonetheless, in actuality, women have always been discriminated and suppressed since long.

This paper discusses the disparities between Hindu beliefs and practices concerning women and explores the religiohistorical factors that lead to the contemporary perception and position of women in Hindu society.

### **Women in Early Vedic Period**

The Vedic Period which spanned from 1500 BCE to 600 BCE can be divided into early Vedic Period (1500 BCE -1000 BCE) and later Vedic Period (1000 BC -600 BC). It is noteworthy that women enjoyed more or less the same status as men during the early Vedic Period. They underwent *Upanayan Sanskaar* (a ceremony to begin with formal education) just like men, were free to choose between higher studies (philosophy and logic) to become *Brahmavadini*, or become *Sadhyavadhu* to marry and look after the household and family. These two institutions were open for both young men and women. Like the male sages and gurus, there were female sages and Upadhayayas (women gurus) who took part in most of the religious rites and rituals. The primal energy which formed the cosmos was the feminine principle. She was worshipped and feared too. Some well-known women-seers who composed several hymns in RgVeda during early Vedic Period are Mamta, Romsha, Lopamudra, Aditi, Apala and Shikhandini.

In early Vedic period, the Rg Veda, child marriage is not mentioned. The girl was free to choose her match, and dowry was unknown, except that it was offered if the girl had some physical defect or the bride money was paid if the groom was less qualified (Das 1993, 58). Even widow remarriage was permissible in Vedic period.

But the desire to get a son and not a daughter, (which became very prominent later) is very apparent through the hymns in Rg Veda, in this period too. These hymns invoking gods like Indra, Soma and Varuna during rituals, which were very common during that period, aimed at attaining wealth along with intelligent, valorous, and strong sons and grandsons. (Rg Veda. Part II 3:4:9, 3:6:1, 3:10:3, 3:13:7, 4:3:5, 4:4:11, 5:61:3). This could very well be attributed to the perpetuality of wars and the high demand of male warriors to protect the kingdoms, clans and families. Women are mentioned scantily, that too only as a mothers (mainly Aditi who is the mother of valorous men) and as wives.

It must be noted that during the early Vedic Period, when wars and skirmishes were frequent among groups, the need for warriors was a necessity. This need of the society was fulfilled by women, and thus the reason for women's respect, and the consent for widow remarriage. It is clear in the hymns where nature (in the form of gods) is invoked to help them destroy their enemies, fulfil their vessels with grains, grant them wealth and strong sons. Women, in these hymns are mentioned as goddess, mothers or truthful wives only (Atharva Veda. Part II. 20:126:6,9,10). All this changed drastically in the later Vedic Period, when Aryans had more or less established themselves in the northern parts of the Indian subcontinent.

### **Women in Later Vedic Period**

Another collection of religious texts, philosophical in nature, having tremendous effect on the Hindu philosophy are Upanishads, written probably between 800 BCE-500 BCE. It is in these texts where the Brahman and the Atman appears. Matters of spirituality and concern about birth, karma, rebirth, salvation and meditation are forcefully discussed here. In the later Vedic Period women had begun to lose the position acquired during early Vedic Period. We know this through the stories that women, though important, were given away by their fathers as gifts to oblige other men or power and position. However, there still were women like Gargi, Maitreyi, Usati, Satyakama who took part in spiritual debates along with men and composed hymns. Noteworthy is the Pavamana Mantra (*Om asato ma sad gamaya...*) from Brhadaranyaka Upanishad, which was valued much among all the prayers in the Parliament of World Religions in Chicago in 1893, was composed by Brahmavadini Maitreyi (Tandon 2016, 15).

The later Vedic Period spanning from 1000 BCE- 600 BCE, is the period of Dharmasastras, Smritis including Puranas, Ramayana and Mahabharat which contain the renowned philosophy of Bhagavadgita. This period witnessed social stratification in the form of caste system (still present in

Hinduism), based on inheritance, birth rights and privileges. It was different from the early Vedic Period, where the social stratification in human society (Varna system) was based on colour, class, individual capacity, occupational aptitude, and moral and intellectual worth (Kane 1974, 82-86). Later Vedic or Post-Vedic scriptures like the Dharmasastras and Manusmriti codified the laws and commented upon the duties and social behaviour towards the society, family and oneself. Murray (1994, 206-207) has listed some of the features of the caste system stated by Manu which have formed the basis of the social practices. These are:

- Continuous cultural prominence of the Brahmins in religious rituals
- Caste system based on birth and inheritance
- Prohibition of mobility across the caste boundaries, to be maintained strictly by regulating marriages and eating arrangements
- Centrality of rituals for maintaining social stratification based on the concept of Dharma.

Smritis, especially Manusmriti is known for its injunctions on morality and social codes pertaining to women, which are still considered as the gold standards for women's responsibilities, attitude, behaviour and conduct towards the society, family and oneself. Manusmriti has several contradictory statements that shift from derogatory remarks to glorification of women. Some noteworthy examples are as follows:

- Her father protects (her) in childhood, her husband protects (her) in youth, and her son protect (her) in old age; a woman is never fit for independence (Buhler 1886, IX, 3).
- She who, controlling her thoughts, speech, and acts, violates not her duty towards her lord, dwells with him (after death) in heaven, and in this world is called by the virtuous a faithful (wife, *sadhvi*) (Buhler 1886, IX, 29).
- But for disloyalty to her husband a wife is censured among men, and (in her next life) she is born in the womb of a jackal and tormented by diseases, the punishment of her sin (Buhler 1886, IX, 30).

Contradictory to this, he glorifies women:

- Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields reward (Buhler 1886, III, 56).
- The houses on which female relations, not being duly honoured, pronounce a curse, perish completely, as if by magic (Buhler 1886, III, 58).

The custom of Sati (burning oneself in one's husband's pyre), and which later grew tremendously (but is totally obsolete in current times), is nowhere mentioned in Vedic texts. There was a gradual deterioration in the condition of not only the widows who were expected to live a life of strict austerity and self-denial but also in the general condition of women too. The concept of *Stridhan* (which later became dowry) also comes into being by the later Vedic Period, which refers to land, money or other gifts like ornaments given to a woman during her marriage for her future maintenance. Puranas, another Vedic text, deal with several myths and legends. Some of these Puranas are named after the deities like Shiva, Vishnu and Devi (especially Durga). These can be taken as reflection of the socio-cultural scenario of their times, and thus throw light on the condition of women. By the end of the Vedic period and dawn of the Puranas, girls were forced into marriage even before they attained puberty. According to Vishnu Purana, after completing his education, a man should marry a maiden who is a third of his age. Thus, a man of thirty years of age must marry a girl of ten. It's also mentioned that the girl must worship him with white flowers, should be attentive to all his requirements and must try to keep him happy at any cost (Roy 2012, 128). The text of Skanda Purana also mentions that a wife should never utter the name of her husband if she wants a long life for him (practice is still prevalent). Other Puranas like Garud Purana too is full of such directions for a wife, and also the importance of begetting a son for attainment of heaven and salvation. It says, 'How do you desire to attain heaven without begetting a son, worshipping gods and without offering prayers (*Pind daan*) to your ancestors? (2010, 136).' By the time of Puranas, between 750 BCE and 350 BCE (later collected between the fourth and sixth century AD under Gupta dynasty), the society had become fully patriarchal and the matters regarding women were perhaps settled and carried on further till the contemporary times. These beliefs were reinforced through

several texts as well as practices. The condition of women was no less than animals, which could be sold and bought or given away as gifts. The treatment of women as mere commodities can also be attributed to the establishment of Aryans in the northern region of India and the absorption of non Aryans into the social framework of the Aryans as Sudras who fulfilled the requirement of cheap labour, as well as an abundant source of available women. These factors combined together with the spiritual texts, drastically eroded the value of women and the independence she had once enjoyed, leading to gender polarity. Tharu and Lalita (1991, 54) write, ‘The Vedic idealism was itself shaped by the struggle against matriarchal materialistic cultures and still carries the mark of the engagement.’

### **Therigathas (Verses of the Elder Nuns)**

The sufferings of women led them to surrender to Lord Buddha (around 600 BCE), and it is in the Therigathas or the poems (translated as Verses of the Elder Nuns), that pain, revolt and the spiritual opportunity of these women through Dhamma and Sangha of Buddhism is readily apparent. For instance, in the following therigatha, one of the bhikkhunis, satirizing upon the false beliefs and rituals common in Hinduism writes:

Who taught you this  
 — the ignorant to the ignorant —  
 ‘One through water ablution,  
 is from evil kamma set free?’  
 In that case they would all go to heaven:  
     all the frogs, turtles,  
     serpents, crocodiles,  
     & anything else that lives in the water.

Another therigatha clearly shows not only the predicament of a widow woman but also reflects upon the importance of a son, without whom a woman is doomed.

I was poor in past, widow and without sons;  
 Without friends and relatives, I didn’t acquire food and  
 clothes.  
 Holding the bowl and walking stick, begging alms from  
 family to family;  
 Burning by heat and cold, I dwell for seven years.  
 (Translated by Bhikkhu 2005)

### **Women in Later Periods**

During the later periods of Indian history, some of the beliefs and rituals relating to salvation had already given primacy to a son over a daughter. A daughter could only hold a right to private property in the absence of a son. It was the son and not the daughter who could perform the last rites of his dead parents and could perform ‘shraddha’ and ‘Pind daan’, required for the salvation of his parents. It must be noted that these performances were prohibited in Vedas and the Gita but can be seen in Puranas. Garuda Purana says, “...there is no salvation for a man without a son” (Singh 2004, 62).

Other than this, there were common traditional practices based on discrimination because of the birth and gender (which are still seen). It is generally agreed that the basis of caste system is determined by the notions of purity and pollution. ‘All margins...and matters issuing from them (peripheral extremities of the human body) are considered polluting...hair, nails...spittle, blood, semen, urine, faeces or even tears’ (Murray 1994, 174). This belief naturally keeps the Brahmins in the highest pedestal performing religious activities, whereas the Sudras (the lowest in the hierarchy of caste system) are defiled because of the menial jobs they perform/ed. Apart from this, women too are considered impure not only because of the cyclical process of menstruation but also because of the child birth.

All these false beliefs (as they were not mentioned in the early Vedas, called Sanatan Dharma) and the practices which had become the part of social and religious life of people aggravated the sufferings of women. ‘Due to fear of abduction and molestation by Muslim invaders;

child marriages, purdah system, restriction on free movement of women and their education became an inherent part of medieval Hindu society (Rawat and Kumar 2015, 86). However, in spite of all this deterrence there were many women like Queen Durgawati, Shivaji's mother Jijabai, Ahilya Bai Holkar who were able warriors and administrators. Bhakti movement during this period which tried to 'restore women's status by providing them equal footing with men thus questioning their subservient status and openly advocating equality among men and women' (Rawat and Kumar 2015, 86), saw women like Meera Bai, Akkamahadevi, Habbakhatun and Chandravati.

### **Women before Independence**

Modern India saw noticeable change in the condition of women with the social reforms in the field of education, opposition of sati system and child marriage, stress on widow remarriage and abolition of purdah system. During the British rule, many reformers like Ram Mohan Roy, Ishwar Chandra Vidyasagar and Jyotiba Phule fought tirelessly for the upliftment of women. Christian missionaries spread education among women. Mahatma Gandhi, who did a lot to uplift the downtrodden, instilled a sense of dignity, pride and hope in women by making them participate in the struggle for independence. He was against child marriage, purdah system, dowry system, and advocated widow remarriage. His influence is immense in the improvement of the condition of women in India. 'Women, urban and rural, educated and uneducated, Indian and foreign were attracted to his ideas and deeds. While some like Sarojini Naidu, Lakshmi Menon, Sushila Nayyar and Rajkumari Amrit Kaur rose to prominence, there were thousands of unsung and unnoticed heroines of India who learnt the meaning of liberation from him and contributed with all their energy to the struggle of independence' (Rathi n.d.).

### **Women after Independence**

Indian women have experienced enormous progress in post independent India. Fortunately, Indian women did not have to fight for the right to vote. 'The Indian constitution guarantees equality to all women (Article 14), there shall be no discrimination by the state (Article 15(1)), equality of opportunity (Article 16) and guarantees equal pay for equal work (Article 39 (d)) (Rawat and Kumar 2015). There have been several campaigns and schemes from the government for awareness and improvement in the condition of women. Some of them are Beti Bachao, Beti Padao (Save the Daughter, Educate the Daughter), Sakshar Bharat (Literate India) Mission for Female Literacy, SABLA- Rajiv Gandhi Scheme for Empowerment of Adolescent Girls, National Programme for Education of Girls at Elementary Level. There are reserved spots for women in nearly all the government provided employment opportunities. Women have active participation in each and every field, be it politics, economy, public and private sectors, sports, science or media. Besides this there are many NGOs spreading awareness, and fighting against domestic violence, dowry deaths, rape, female foeticide and gender rights. Nonetheless, there are several instances showing gender discrimination and exploitation to be still common in Indian society.

The biggest paradox found in the Hindu society is its general attitude towards women. On one hand Goddesses are worshipped (Shakti or Durga being the most important) in every house, nine days fasts are observed with great faith, by both men and women, Durga pooja is celebrated with much fervour and gaiety, hymns are chanted from the book of Durga Saptashati, girls become the symbol of the Goddess Herself and are literally worshipped in many households, but on the other hand, ironically enough and contradictory to this, women are the victims of everyday domestic violence. Women have always been considered the weaker sex, emotionally, intellectually, as well as physically by the patriarchal society.

'Government runs according to the written law whereas society is controlled by unwritten traditions' says Mahadevi Verma (1969, 384), an eminent writer. Indian society is still bound by age long religious beliefs (distorted and appropriated by kings and other powerful castes for their own advantages), which still consider women inferior to men. The Upanayan Sanskar which after early Vedic period was denied to women still has its repercussions all over. According to 2011 census the male literacy rate in India is 82.14% whereas the female literacy rate is 65.46% only. This huge disparity in literacy rates can be attributed to poverty as well as the attitude of the parents

who somehow manage to send their boys to school but restrict and dedicate their girls to mere household duties which reaffirms the age old belief that women are for hearth, and should be expert in domestic works. Another factor which plays against women is her perception as a non-earning member of the family, and it is considered an additional financial burden to educate a girl who later on will be married into another family with huge sums of money as dowry. Yet another factor which adds to the low literacy rate of women in India is the location of the schools, which makes it hard (due to safety reasons) for a girl child to cover a long distance to attend school every day. However, it must be kept in mind that by devoiding half of the population of its education, a nation cannot be strong. An educated woman is not only an asset to the family but also to the nation building process. Getting educated is the strongest way for women to get rid of their inferiority which has been instilled in women since long. Mary Wollstonecraft (1988, 141), strongly advocating women's education in her famous book *A Vindication of the Rights of Woman* writes "There must be more equality established in society, or morality will never gain ground, and this virtuous equality will not rest firmly even when founded in a rock, if one half of mankind be chained to its bottom by fate."

Another serious problem faced by Indian society is the sex ratio of India, which according to the census of 2011 is 943 females per 1000 males. This trend has been more or less the same after independence. The main reason has its deep and strong roots in socio religious beliefs, which would need not years and rather decades to diminish. The birth of a male child is rejoiced in a family for several reasons. Some of these find expression in age old Puranas (Garud Purana) and Manu smriti where the right of performing last rites as well as the shraddh and pind daan of the parents is exclusive right of the male child. These performances are a must for attaining salvation, which for Hindus is the ultimate objective of life. The son is responsible for extending the family tree whereas a girl child is considered to be 'paraya dhan' (others property) from the beginning only. However, this strong perception is losing grounds day by day, with women becoming educated, getting employed and thus, in this way, proving themselves to be 'sons' to their parents.

One of the recent cases of Sabrimala Temple which made media headlines in 2018, led to a women's revolt, is one of the incidents of its own kind against the socio-cultural beliefs and its sanctions on a woman's body by patriarchal society. Sabrimala Temple is a famous temple of Ayappa in the Kerala state of India, and is the site of one of the largest annual pilgrimages in the world. In the year 1991 Kerala High Court denied the entry of women above ten and below fifty years of age to the temple. 'In its verdict, the Kerala High Court mentioned that the ban on women entering the Sabrimala Temple had existed since time immemorial and only the "tantric" (priest) was empowered to decide on traditions. This however was 'challenged by a group of women lawyers on the ground that banning women from visiting a public place of worship was a violation of ideals of equality, non-discrimination and religious freedom' (The Times of India 2018). The case reached to the Supreme Court of India, and the bench of five judges, on the 28th of September 2018, lifted the ban on the entrance of women in the temple. This was a great triumph of Indian Constitution as well as Indian women against patriarchy through culture and religion. Noticeably, the men judges (4 in number) in the five judge bench in this case showed extraordinary wisdom and strength of character in delivering a judgement unforeseen and unheard before. Justice Chandrachud wrote in his judgement:

To exclude women from worship by allowing the right to worship to men is to place women in a position of subordination. The constitution should not become an instrument for the perpetuation of patriarchy. (Mishra 2018).

He very categorically remarked: Women have a right to control their own bodies. The menstrual status of a woman is an attribute of her privacy and person. Women have a constitutional entitlement that their biological processes must be free from social and religious practices, which enforce segregation and exclusion' (kini, livelaw, web).

Taboos based on menstruation are common in every religion. However, it is to be noted that in Hindu culture, early Vedic texts are silent about these prohibitions. It's the later Vedic texts or Smritis like Aangirasa smriti and Aapstamba smriti which mention restrictions towards women

based on menstruation. The menstrual blood of women, according to these Smritis is based on the myth of Indra killing an ungendered being (later transformed by certain texts into a Brahman) whose sin is shared by women. Most of the Hindu women still follow restrictions based on religious beliefs of menstruation. Some of these restrictions include segregation of women (specific place, utensils, bathing restrictions), restriction of movement (to kitchen, temples etc). These are more strenuously followed in the rural parts as compared to urban societies. In rural areas, especially in mountain regions where the temples of local gods are common along the walkways/pathways, school going girls are forced to stay home during their menstrual cycle. In some regions menstrual huts/rooms have been built to isolate the menstruating women from rest of the village. Women are also known to have been living in cowsheds during this period. Noteworthy is however, the swiftness and strictness shown by the law enforcement for these kind of inhumane restrictions. In recent times, any such cases are dealt with promptness and are severely punished by the law.

## Conclusion

Unfortunately, many women have internalised the idea of inferiority, physical or mental, propagated and appropriated by patriarchy since ages through religion and traditional practices. The need is to redefine the subjectivity which has been for long defined by men for women. We must think ‘...how our femininity and sexuality are defined for us and how we might begin to redefine them for ourselves’ (Weedon 1987, v). The crucial factors for change in the condition of women in India are education, employment and mobility. Virginia Woolf (2005, 2), a famous British writer and critic emphasises on economic independence. She writes, ‘a woman must have money and a room of her own if she is to write fiction.’ Access to education, which was long ago taken away from women, can bring about immense change in the condition of women. Indian society which has been blinded long enough by the distortions and corruptions in the original Vedic religion/scriptures, must take its cue from early Vedic period for an egalitarian society in changing times and contexts.

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# Women, Law, Court and Justice in India (1970 to 2016)

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**ABSTRACT:** In the personal sphere, the Indian women are facing various issues related to marriage, divorce, inheritance, guardianship, adoption and succession as they are the subjects of personal law, which varies from religion to religion and is attached to an individual at birth and applied to the person wherever she goes. After independence in the 1970s the government first time felt the need to review the ongoing women specific laws and their impact on the status of the women in India. This paper attempts to review the efforts made by the government in this direction. The paper is divided into three sections. The first section covers the legal obstructions for women justice. Second section dealt with the significant recommendations made by the two 'High Level committee on the Status of Women in India' (1974 and 2015) to improve the status of women in India. In the last section analysis were made on the basis of the statistical data of the women's trials and to review the status of the justice delivered to women's in the Indian Courts. The gap between the passing of laws and its implementation by the State needs to be examined, as mere passing of laws cannot transform the lives of women in society. The optimal use of laws can only be judged by the reportage of crimes under various acts and the punishments given to convicts under them.

**KEYWORDS:** Women, Indian Law, Justice, and Status of Women

## **Introduction**

In India, Justice in relation to marriage, divorce, inheritance, guardianship, adoption and succession imparted according to the personal law of the individual, which varies from religion to religion. This is not a new phenomenon of an independent India even in the times of colonial rule same system of different personal laws was applicable on personal sphere of the individuals. After India's independence on 15<sup>th</sup> August 1947, it was only in the 1970s the Government of India felt the need to review the ongoing women specific laws and their impact on the status of the women in India. The change and continuity in the women's life was the concern of the Government as it was already a journey of 23 years of the independent India. To review the status of women in India the Government of India formed first committee in 1971 and then second in the year of 2013 only.

The first two sections of the paper highlight the certain legal inequalities of the laws towards the women justice and recommendation to remove these legal inequalities for women justice. The second section specifically focuses on the recommendations made by the committee on the status of women in India in the year of 1974 and 2015 respectively (Ministry of Education and Social Welfare 1974; Ministry of Women and Child Development 2015). Till 1970's no comprehensive review of the women specific laws had been undertaken. Some laws were passed from time to time to raise the status of Indian women and embodied the principles underlying by the Indian constitution - As the Preamble to the Constitution of India promises 'to secure to all its citizens, Justice-Social, economic and political; Liberty of thought, expression, belief, faith and worship, Equality of status and oppourtunity; and to promote among them all (Preamble *The Constitution of India* 1949).

To review the status of women, the Government of India constituted the committee on the Status of women by a resolution of the Ministry of Education and Social Welfare on 22<sup>nd</sup> September, 1971 to get useful guidelines for the formulation of social policies (Ministry of Education and Social Welfare 1974, xii). The main objective of the Committee was to examine the Constitutional legal and administrative provisions that have a bearing on the social status of women, their education and employment. The committee submitted its report on 31<sup>st</sup> December 1974, by clearly saying that 'Our

investigation has revealed that large masses of women in this country have remained unaffected by the rights guaranteed to them by the Constitution and the laws enacted since independence. Our recommendations are made primarily with view to making these rights more real and meaningful' (Ministry of Education and Social Welfare 1974, Preface). In relation to women specific laws the report of 1974 dedicated the chapter IV, 'Women and the Law' to highlights the legal inequalities towards the women of India. This chapter broadly discussed issues of Polygamy, Age of Marriage, Dowry, Divorce, Adoption, Guardianship, Maintenance and Inheritance. The committee recommends the various changes those were required in the laws to strengthen the women's position in legal terms.

The committee report of 1974 entitled, *Towards Equality A Report of the Committee on the Status of Women in India*, not only highlights the unequal provisions of the women specific laws it also suggests their solutions. First, the committee highlights the diverse personal laws in relation to bigamy or polygamy, those weaken the position of women in many folds in India. The Committee (1974) was of the view that the continuation of such diverse personal Laws of the Hindus, Muslims, Parsee and Christians are contradictory to our social policy and totally unjustified. As the Muslims personal law supports polygamy. The committee recommends the immediate replacement of these laws by the Hindu Marriage Act of 1955. On the issue of bigamy, the Committee (1974) recommends a clause to be added to Section 5 or in the Section 11 of the Hindu Marriage Act (Ministry of Education and Social Welfare 1974, 111).

Further the Committee (1974) recommends that the Section 16 should also be amended to include all children born outside wedlock and not only children of void and voidable marriage. Further, the term "illegitimate" should not be used in any statute or document. The offence of bigamy may be punished with imprisonment up to seven years and a fine. This indicates the seriousness of the offence. But limiting the right of initiating prosecution to only the aggrieved person, in our social context, defeats the purpose of the law. To remedy, the Committee recommends permitting any person to initiating prosecution for bigamy with the permission of the court.

In relation to child marriage, the Committee (1974) recommends that all offences under the Child Marriage Restraint Act of 1929 should be made cognizable and special officers appointed to enforce the law. With this they also recommend legislation prohibiting courts from granting any relief in respect of a marriage solemnized in violation of the age requirements prescribed by law unless both the parties have completed the age of 18 years (Ministry of Education and Social Welfare 1974, 114). On the Dowry Prohibition Act of 1961 the committee had been pointed out that one of the 'major loopholes' in the existing legislation is that anything is allowed in the name of gifts and presents. Therefore, any gifts made to the bridegroom or his parents in excess of Rs. 500/- or which can be so used as to reduce his own financial liability should be made punishable.

On the issue of the divorce the Committee (1974) reviews the tendency and the role of the judiciary. Instead of the guiding the conflicting parties towards a rational adjustment to the process of social change, the judiciary has either evaded the issue or thrown its weight on the side of the traditional view of the husband's authority. Further on the issue of divorce, the Committee recommends that a definition of 'cruelty' under the Hindu Marriage Act and other Laws must be introduced in order to ensure that it is not completely left to the interpretation of the courts. A provision must be added to the definition of cruelty stating that patriarchal notions of a wife's behavior will not constitute cruelty (Ministry of Education and Social Welfare 1974, 201). Unlike divorce by mutual consent, one party's wish to dissolve the marriage, coupled with a long period of separation, is enough to deem a marriage 'irretrievably broken' where reconciliation is impossible.' The Committee (1974) also recommended that no religion converted person can, for a period of two years at least, be able to affect any marital rights by resorting to the new religion. The merit of deterring people from easy conversion to solve their matrimonial problems, in our opinion conversion should not be a ground for divorce as it offers an easy way of evading matrimonial obligation (Ministry of Education and Social Welfare 1974, 123).

People in India escape the punishment of bigamy by just converting their religion to Muslim. As bigamy is allowed among the Muslim community, this deteriorated the condition of the women in India.

The Committee of 1974 made general observations in relation to the guardianship rights. The contemporary legislation of various countries has shifted to regarding the child's interest as of prime consideration and parental rights as being subordinate to it. But unfortunately our law does not clearly reflect this trend. The Committee (1974) recommends in relation to various laws related to women maintenance claims. As the right of the maintenance was given in the personal laws the Criminal Procedure Code, enacted in 1898. The right of the wife and dependent children to move the Court for relief against the husband or the father who neglects or refuses to maintain his dependent family members is thus not confined to any particular religion but is given to all wives and children irrespective of their personal laws.

To this extent uniformity had been achieved in at least one aspect of family law (Ministry of Education and Social Welfare 1974, 128). This code has, however, been repealed and we are today governed by the New Criminal Procedure Code of 1974. In spite of the passage of 76 years, however, the new Code continues to reflect the old attitude to women. At last in relation to inheritance the Committee (1974) highlights the one major factor which has contributed to continuing the inequality between sons and daughters is the retention of the Mitakshara coparcenary. It is confined only to male members. One primary principle of Muslim law which grossly discriminates against women is that under the law of inheritance, if there are male heirs and female heirs of the same degree like a son and daughter, full brother and a full sister, the share of a female member is half that of the male (Ministry of Education and Social Welfare 1974, 139). In regard to guardianship, adoption and inheritance women should be dealt on par with men. On analysis, the Committee of 1974 has found that 'Personal Laws' contain several provisions that are discriminatory towards women and amongst women of different religions. Law has to be dynamic and should keep pace with the changes in social, cultural, economic and political arena. In order for an egalitarian system to prevail, the Legislature must ensure that the law acts as a catalyst in achieving the ultimate objective of a welfare state.

In 2013, the Government of India (Ministry for Women and Child Development 2015, XV), based on the recommendation of the committee of Governors constituted by the President of India, set up a High Level Committee on the Status of Women in India on 24<sup>th</sup> May 2013. The main objective of the committee was to undertake a comprehensive study on the status of women since 1989 as well as to evolve appropriate policy interventions based on a contemporary assessment of women's needs. The high level committee of 2015 recommends amendments according to present scenario of living.

The summary of the report of 2015 in regard to legal aspect showed that it discusses and recommends all the required amendments in women specific laws in India. The Committee recommends that the provision relating to restitution of conjugal rights under various statutes should be deleted. Again in 2015 repeated recommendation of Committee of 1974 was placed for the definition of word cruelty under Hindu Marriage Act of 1955. The same issue of the irretrievable breakdown of marriage highlighted and demanded that it should not be made a ground for divorce as recommended in 1974. As husband could get a divorce on the ground of adultery, the wife had to prove an additional ground of cruelty or desertion as well which is quite discriminatory on the part of women should be amended. Both the spouses should be treated equally in relation to adultery charges.

On the issue of adultery, in a historic verdict the Supreme Court on 27<sup>th</sup> September 2018 declared unconstitutional Section 497 of the Indian Penal Code, which punished only men for having sexual relationship with a married woman. The Court said the law on adultery violated a woman's sexual autonomy and deprived her of dignity. In a unanimous verdict, a five-judge constitution Bench headed by Chief Justice of India Dipak Misra said the archaic Victorian-era law violated a woman's right to equality and right to non-discrimination guaranteed under Article 14 and 15 as it treated women

as chattel. The Bench, however said adultery can be used as a ground for divorce by a husband or a wife in matrimonial proceedings. While declaring the penal provision, Chief Justice of India Deepak Misra cautioned that the verdict should not be taken as a license to indulge in such acts (Parkash 2018). The Supreme Court of India scrapped the colonial-era anti-adultery law that punished the offence with jail time and was considered unconstitutional and discriminatory against women. It was the second legal decision of September 2018 reflected the liberal approach of the apex Court. The top Court had earlier decriminalized the controversial Section 377-a 158 year old draconian law on consensual gay sex (Times Now News 2018). The National Commission for Women, Chairperson Rekha Sharma on hailed the Supreme Court's Verdict Section 497 (adultery) and said, 'we are finally thinking on lines of equality' (Sharma 2018). The country has now started with a new way. There were many laws in which women had no equality but finally we are thinking on equal terms.

In matters related to 'divorce' under Section 9 of Hindu Marriage Act of 1956 is discussed by the Committee of 2015. As it has only been post 1975 that Courts began to look into aspects of a woman having a right to hold her job in case it requires her from being away from her husband. (In the case of N. R. Radhakrishna V. Dhanalakshmi the Madras High Court stated that under the modern law the concept of the wife's obedience to her husband and her duty to live under his roof under all circumstances does not apply. Similarly in the case of SwarajGarg V. R. M. Garg the Delhi High Court providing Constitutional validity to the wife's right to hold a job ruled that an exclusive right to the husband to decide on the matrimonial home would be violate of the equality clause under Article 14 of the Constitution - Ministry of Women and Child Development 2015, 199).

The objective of Section 9 was to preserve the institution of marriage but is now being misused. Further restitution of conjugal rights is against human rights of a person as no one can be or should be forced to live with any other person. The Committee (2015) recommends that the provision relating to restitution of conjugal rights under various statutes (Section 9 of the Hindu Marriage Act, Section 22 of the Special Marriage Act, Section 32 of the Divorce Act and others) should be deleted. It should no longer be available as a matrimonial remedy Ministry of Women and Child Development 2015, 200). The Committee (2015) has strong point of view that women do have equal right to work and restitution of conjugal right cannot be forced over women alone. Right to work of wife at far off place from husband should not be treated as matter relating to restitution of conjugal right and base for divorce petition.

On the Special Marriage Act of 1954 the Committee (2015) recommends the following changes, Section 6 of the Special Marriage Act requires the marriage officers to be put up every notice of intended marriage at some conspicuous place in his office. It is recommended that notices should not be displayed on the notice board outside the Registrar's office as it places young people, desirous of contracting marriages of choice, at great risk. At present the notice period prescribed under Section 5 is 30 days, this must be reduced to 7 days so that it is conducive for people registering their marriages under it. This is necessary because this provision serves no purpose, except delay the process and a couple wanting to marry in a hurry because of parental or other disapproval cannot afford to wait for a full month. Under Section 4, the age for performance of marriage is 18 for the girls and 21 for the boys, however under Section 15 the age for registration of marriage is 21 years for both the spouses. This provision needs to be clarified.

The special provision made for two Hindus marrying under the Act should be deleted (Section 21A read as follows "Special provision in certain cases-Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion with a person who professes the Hindu, Buddhist, Sikh or Jain religion, Section 19 and Section 21 shall not apply and so much of Section 20 as creates a disability shall also not apply). Thus, for everyone who marries under the Special Marriage Act, succession would be governed by the Indian Succession Act. This exception for Hindus should be deleted (Ministry for Women and Child

Development 2015, 208). The provision like 30 days waiting or notice period and minimum age of 21 years for both the spouses for the registration of marriage should needs amendment. As both the provisions are only delaying the process of registration of marriage and put pressure on the young couples, nothing else.

Another in relation to the registration of marriages the Committee (2015) recommends that a Central enactment for registration of marriages should be passed which is applicable to all religious groups. In regard to the 'Age of Marriage' the Committee (2015) recommends to bring uniformity in laws. There is a strict need to ensure the proper implementation of the Prohibition of Child Marriage Act of 2006. In the 205<sup>th</sup> report on the Prohibition of Child Marriage Act, the 18<sup>th</sup> Law commission had recommended that the minimum age of marriage for both girls and boys should be the same i.e. 18 years. This should be adhered to. This is also in tandem with the recommendations of various international bodies like the UNICEF which points out the discrimination inherent in a provision which stipulates a lower age of marriage of the girl. The Prohibition of Child Marriage Act, 2006 must hold all child marriages voidable and not void (Ministry for Women and Child Development 2015, 209). The age gap between the girl and boy for marriage sometimes becomes evidence that even the state want that girl should be younger to boy. It becomes hard for the couples to get married in which girl is elder than boy. So there is a need of hour to remove this sort of discrimination at legal level.

Further in relation to divorce repeated recommendation (same in 1974 Committee Report) was placed to reduce the period of two years prescribed for mutual consent divorce under the Divorce Act, 1869 should be amended to one year. The scope of Foreign Marriage Act should be enlarged to give relief to more women married abroad. In relation to guardianship both parents should treated at par and equally considered as naturally guardian of their children's. In maintenance claims states should wave off the court fees and has to make its decisions time bound to relief the women in distress. At last the Committee (2015) recommends that any property or rehabilitated property given by state should be registered on the name of both spouses. Still there is repetition of recommendation in relation to conjugal rights and irretrievable breakdown of marriage both should not be dealt as ground of divorce in 2015. But still legal inequalities for the women are not fading away except the relief given to Muslim women by the Supreme Court in the matter of triple talaq as it is declared unconstitutional. Further adultery is no more a criminal offence in India, it can be a ground of divorce. Some of these recommendations are also suggested by the Committee of 1974, still there are repetitive recommendations in the Committee report of 2015, specifically in relation to conjugal rights, definition of cruelty and irretrievable breakdown of marriage. But still certain legal inequalities for the women are not fading away except the relief given to Muslim women by the Supreme Court in the matter of triple talaq (divorce) as it is declared unconstitutional. Further adultery is no more a criminal offence in India, it can be a ground of divorce.

The third section of the paper covers the judicial procedure and Court disposal of the crime against women to get idea how justice is imparted to women in distress in India in five years from 2012 to 2016. Because to review the women cases and justice imparted in the Courts further clarifies the relevance of the women specific laws. This section covers that how many women are approaching Courts in order to get justice under various laws? How many women's are getting justice from the Courts? How many cases in total came before the Courts for disposal and how many sent for the trial each year from 2012 to 2016. In how many cases trial was completed each year and how many went to pendency percentage. After independence there is a series of constitutional guarantees, laws, policies and commissions formed by the Indian government to analysis and uplift the situation and position of the women at all spheres of the life. Still, women vulnerability towards crimes not only exists but show continues increase in the crime rate against

the women putting questions over the efforts made by the government to make India a safe place for the women. To analyze the effectiveness of the constitutional provisions and laws this section focuses on the Court disposal of crime against women by analyzing total number of cases for trial and the women cases sent for trial during the year. How many cases in which trials were completed and cases pendency percentage left for next year.

The Court disposal of crime against women is discussed crime head-wise from 2012 to 2016. The highest number of cases came before the Court under crime head of ‘Cruelty by Husband or his Relatives’ with total of 24,96,759 cases followed by crime of ‘Assault on Women with Intent to Outrage her Modesty’ with 13,03,645 cases, ‘Rape’ cases 6,30,882 and crime of ‘Kidnapping & Abduction’ 6,28,012 cases from 2012 to 2016. The lowest number of total cases came under crime head of ‘Domestic Violence’ with 2,529 cases followed by ‘Indecent Representation of Women’ cases of 5,057 and attempt to rape crime of 21916 cases from 2012 to 2016. The crime head of ‘Cruelty by Husband or his Relatives’ showed tremendous increase of 1,42,763 cases from 2012 (426922) to 2016 (569685) before the Court. Further the crime of ‘Assault on Women with Intent to Outrage her Modesty’ showed an increase of 1,21,541 cases and followed by 51124 increase in the ‘Rape’ cases from 2012 to 2016. The crime head of Kidnapping & Abduction (+19223), Dowry Deaths (+19662) and Dowry Prohibition (+13661) also showed increase in the number of cases from 2012 to 2016. There were two crime heads Immoral Traffic (-3430) and Indecent Representation of women (-369) showed declining trend in court cases from 2012 to 2016. (See Table-1, Crime-1). This showed that except Immoral Traffic and Indecent Representation of women all other crime heads showed significant increase in the court cases. The highest percentage of 2,29,138 71, 638 cases sent for trial. This clearly shows that even half of the cases didn’t go for trial in the Indian Courts which increase pendency percentage each year that is why justice is always delayed. (See Table-1, Crime -2) This showed that the Indian Courts are over burdened even they don’t have enough judges to even hear the trial of the registered cases once a year.

The crime head of cruelty by husband or his relatives had highest number of cases 16,03,758 those came before the court for disposal and only in 2,29,138 cases trials were completed from 2014 to 2016. Under crime of assault on women with ‘Intent to Outrage her Modesty’ 8,72,255 cases were put before the courts for disposal only in 1,49,498 cases trials were completed, in rape cases 4,15,056 were put before and in only 88,515 cases in which trials were completed from 2014 to 2016. The number of cases in which trials were completed clearly indicated that as even less than half of the cases went for trials and only 10 percent to 15 percent cases under trials were completed each year. This showed that the Courts only imparting justice or disposing 10 percent to 15 percent women cases each year.

This further clarified if cases pendency percentage analyzed. In 2016, highest cases pendency percentage registered in the cases of ‘Domestic Violence’ with 94.0 percent, followed by ‘Indecent Representation’ 92.2 percent, ‘Kidnapping & Abduction’ 91.4 percent, ‘Dowry Prohibition’ 91.2 percent, ‘Cruelty by Husband or his Relatives’ 90.6 percent and ‘Immoral Traffic’ 90.1 percent. These crime heads pendency percentages showed that there were only 10 percent cases in which trials were completed and more than 90 percent people still in pipe line to get justice. If the lowest pendency percentage is taken into consideration that was 86.5 percent of crime head of ‘Insult to the Modesty of Women’ followed by ‘Rape’ cases pendency 87.7 percent and ‘Assault on Women with Intent to Outrage Her Modesty’ 88.8 percent.

Table 1. Court Disposal of Crime against Women Cases at National Level

Year	2012	2013	2014		2015		2016		Total*
Crime	1	1	1	2	1	2	1	2	
Cruelty by Husband or his relatives	426922	466079	499642	97081	534431	90971	569685	91810	24,96,759
Assault on Women with intent to outrage her modesty	201501	229829	258104	66462	291109	66887	323042	71638	13,03,585
Rape	101041	114785	125433	30840	137458	30001	152165	33628	6,30,882
Kidnapping & Abduction	120708	134287	109035	26044	124051	27206	139931	29084	6,28,012
Dowry Deaths	24461	38901	40477	7653	42410	7150	44123	7067	1,90,372
Dowry Prohibition	24461	28073	31741	9007	33586	7162	38122	8455	1,78,452
Immoral Traffic	12325	12949	6614	1881	7772	2122	8895	1921	1,55,983
Insult to the Modesty of Women	33034	35696	36734	8144	36221	7019	36767	6336	48,555
Abetment of Suicide	-	-	9151	2403	11319	3190	13823	3872	34,293
Attempt to Rape	-	-	4806	2781	6940	3174	10170	4290	21,916
Indecent Representation	1128	1348	980	4	842	32	759	54	5,057
Domestic Violence	-	-	481	312	846	418	1202	403	2,529

\*Total-Total Number of Cases for trial during the year (Crime-1). Table 4.13, p.363, 2012, Table 4.9, 363, 2013. Table 5.6, 2014. Table 5.6, 1-2, 2015. Table 3A.7, 1-20, 2016 (Ministry of Home Affairs, Government of India. 2012-2016).

Crime 1 - Total Number of Cases for Trial During the Year

Crime 2 - Cases Sent for Trial During the year

The cases lowest pendency percentage indicates more than 85 percent cases pendency. This showed that pendency percentage is increasing each year. As in 2014, highest pendency is of 88.8 percent under crime head of abetment to suicide and domestic violence (See Table-2).

More than 85 percent cases always went to pendency and half of them never went under trial every year; showed that justice is given to 15 percent only and more than half of the people just have to wait for years for a trial. By imparting justice to less than 15 percent per year is not a good mark over Indian judicial system. Slow and long procedures of Indian courts are weakening women's faith over judiciary.

Table 2. Women Cases in which Trials were completed at National level

Year	2012	2013	2014		2015		2016		Total*
Crime	1	1	1	2 (%)	1	2 (%)	1	2 (%)	
Cruelty by Husband or his relatives	46054	45423	46853	88.4	46127	89.3	44681	80.6	2,29,138
Assault on Women with intent to outrage her modesty	25319	27528	29995	86.6	34541	86.3	32115	88.8	1,49,498
Rape	14717	18833	17649	85.7	18764	86.2	18552	87.7	88,515
Kidnapping & Abduction	14830	15988	11791	88.7	12879	89.2	11720	91.4	67,208
Insult to the Modesty of Women	6956	6604	5778	79.3	3998	84.0	3629	86.5	26,965
Dowry Deaths	5216	5284	5061	87.1	5165	87.4	4351	90.0	25,077
Dowry Prohibition	4225	4205	4617	83.1	3212	88.3	3233	91.2	19,492
Immoral Traffic	1817	1632	949	85.6	987	87.2	854	90.1	6,239
Abetment of Suicide	-	-	1014	88.8	1340	87.2	854	90.1	3,877
Attempt to Rape	-	-	1016	78.2	1035	84.8	1093	89.1	3,144
Indecent Representation	131	342	169	82.7	137	83.6	59	92.2	838
Domestic Violence	-	-	47	88.8	46	94.3	69	94.0	162

\*Total-Cases in which Trials were completed (Crime-1). Table 4.13, 363, 2012. Table 4.9, 363, 2013. Table 5.6, 2014. Table 5.6, 1-2, 2015. Table 3A.7, 1-20, 2016. (Ministry of Home Affairs, Government of India. 2012-2016).

Crime 1 - Cases in which Trials were completed.

Crime 2 - Cases Pendency Percentage.

## Conclusion

The analysis of the two committee's reports of 1974 and 2015 on the status of women in India showed that there are certain legal inequalities are present like bigamy or polygamy among the Muslims, the committee suggests the replacement of these laws with by the Hindu Marriage Act of 1955 or uniform civil code. Both the committees' recommends defining the 'cruelty' word and putting stop on the usage of the term "illegitimate" in any statute or document. The Committee (1974) recommends that all offences under the Child Marriage Restraint Act of 1929 should be made cognizable and special officers appointed to enforce the law. Unlike divorce by mutual consent, one party's wish to dissolve the marriage, coupled with a long period of separation, is enough to deem a marriage 'irretrievably broken' where reconciliation is impossible. The Committee (1974) also recommended that no religion

converted person can, for a period of two years at least, be able to affect any marital rights by resorting to the new religion. The committee's recommends reducing the period of two years prescribed for mutual consent divorce under the Divorce Act, 1869 should be amended to one year. The provisions like 30 days notice period and minimum age of 21 years for both the spouses for the registration of marriage should be amended to 7 days and same age of both the spouse should be introduced. In relation to inheritance the Committee of 1974 highlights the one major factor which has contributed to continuing the certain inequality between sons and daughters is the retention of the Mitakshara coparcenary. At last the Committee (2015) recommends that any property or rehabilitated property given by state should be registered on the name of both spouses. The Committee (2015) recommends that the provision relating to restitution of conjugal rights under various statutes should be deleted. Both committees repetitively recommend various suggestions to remove certain legal inequalities in relation to women. Till 2018, two major judgments in relation to triple talaq (divorce) and adultery came. The women are facing certain legal obstacles in personal sphere to get justice from the Courts. The third section further clarifies that if women went to the Courts to get justice, it is only 10 to 15 percent women those are getting justice annually. The pendency percentage of cases was more than 85 percent. The victims always have less patience and survival strengthen. Further, it was very hard for Indian women to fight such long cases as they always needs family support to continue their judicial fight. She was always accompanied by her family, relatives and friend to the Court proceedings. So in present times nobody has such time to go to the Courts years after year for justice. Even long and tedious judicial procedure also lessens the chances of women resettlement or rehabilitation specifically if she wants to remarry. The certain legal inequalities and slow procedure of the justice makes the women approach to justice hard in India but they do get justice.

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# **Dynamics in Nigerian Land Administration System and the Inevitability of Decentralization**

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**ABSTRACT:** The heterogenous nature of the Nigerian society underscores the emergence of pluralistic legal and land administration system. An evaluation of the historical synopsis of the Nigerian land administration system and reforms reveal the inevitability of statutory recognition of these practical realities and their implications. The adoption of the Nigerian Land Use Act of 1978 and its land nationalization agenda implied a sharp deviation from the status quo. Understandably, this policy choice was informed by the need to provide lasting solution to problems associated with pluralistic legal and land administration systems in Nigeria. However, the continued existence of these problems and the emergence of fresh constraints clearly underscore the ineffectiveness of this policy choice to the achievement of desired goals, particularly as it relates to customary tenurial arrangements. Thus, the urgent need for a paradigm shift. In respect of above concerns, this paper develops a novel and decentralized land administration model along the pre-existing zonal blocs; reflective of practical realities and social dynamics of the Nigerian state. Such would provide for the eventual adoption of innovative, more realistic and zone-specific land administration system reflective of practical realities and social dynamics of the Nigerian state, thereby providing equitable and secure land rights for all Nigerians.

**Keywords:** Legal pluralism, customary law, land administration, sustainable development, land reform, tenure security, decentralization

## **Introduction**

An examination of the narratives leading to the prevailing land tenure and administration system in Nigeria from a historical perspective is desirable to unravel the reasons behind the perceptions towards land, its uses, access, value and administration in Nigeria, as well as why calls for land reform continues to reverberate across the length and breadth of the Nigerian landscape despite the recent Supreme Court's clampdown on inequitable and discriminatory land practices (*Ukeje v. Ukeje* (2014) 3-4 MJSC 149; *Anekwe v. Nweke* (2014) 3-4 MJSC 183) and various efforts previously depicted towards land matters by both the colonial and post-colonial administrations in Nigeria.

Land administration entails the “process of determining, recording and disseminating information about ownership, value and use of land and its associated resources. These processes include the determination (sometimes called ‘adjudication’) of land rights and other attributes, surveying and describing these, their detailed documentation, and the provision of relevant information for supporting land markets” (Williamson, Ian Philip, 2000). Many land administration reforms have been carried out in Nigeria with varying outcomes and implications. The heterogenous nature of the country precipitated the existence of pluralistic tenure arrangements in attempts to accommodate, respect and preserve the definitive characteristics and the socio-cultural, ethno-tribal, linguistic and religious divides that characterize the Nigerian state. Thus, four major distinctive forms of land administrative and tenurial systems were operational in Nigeria prior to the introduction of the land nationalization and unification exercise which gave birth to the Land Use Act of 1978. These were the tenurial arrangements under the Received English Law, tenurial rights under the State Land Law, Tenurial rights under the Land Tenure Law, and finally the indigenous tenurial rights under the customary law. Whereas two of the above tenurial arrangements had nationwide applicability, the other two conformed to the North-South dichotomy that characterized Nigerian state (Oshio 1990, 44).

### Historical perspective on land administration in Nigeria

A look down the historical lane reveals the actions and developments that shaped land administration and tenure arrangements in Nigeria. The Uthman Dan-Fodio led jihadist war of conquest which was unleashed upon the Hausa tribe of the northern part of the present-day Nigeria by the Fulani invaders between 1804–1810 disrupted the indigenous customary tenure system of the indigenous Hausas. Following this Islamic conquest, feudal tenure arrangements were imposed on the indigenous Hausa communities and the Sharia law principles were introduced as Fulani emirate established their lordship over the conquered lands under the leadership of the Emirs. However, following the formal establishment of the British colonial government's authority over the then Northern protectorate in 1900 and the introduction of the Crown Lands Proclamation Ordinance of 1902, all lands originally acquired by the Royal Niger Company (the body responsible for the administration of Northern Nigeria prior to the establishment of direct administrative rule over the territory by the British colonial authority in 1900) were ceded to the British colonial authority and were known as Crown lands. While the lands previously administered by the Fulani Emirs were also expropriated by the colonial administration and classified as Native Lands. This position was consolidated via the Land and Native Rights Proclamation of 1910. Meanwhile, whereas the Governor holds all Crown land in trust for Her Majesty's government, native Lands were to be administered for the benefit of the Natives. These ordinances were later amended in 1916 and indigenised by the Northern parliament in 1962 after the Nigerian independence of 1960 (Kunle n.d., 8-10). Section 6 of this 1962 land law vested the power to grant rights of occupancy to natives on the minister (Laws of Northern Region of Nigeria, 1963, Ch. 59). By virtue of this law, any one whose father was not from any of the indigenous tribes within the northern Nigerian enclave is regarded as a non-native (Oshio 1990, 46). This position remained operational within the northern Nigerian region until the introduction of the Land Use Act in 1978.

Land matters in Southern part of Nigeria were regulated by the customary legal provisions deeply rooted in the customs and traditions of the people. It should be noted that lands within the southern Nigeria has both economic, socio-political and religious connotations as it is regarded by the people as a sacred gift from God for the good and maintenance of all members of the communities dead or alive. Thus, it is generally believed that “land belongs to a vast family of which many are dead, few are living, and countless members are still unborn” (Awari n.d., 1). The living only hold land in trust for the benefit of their dead ancestors, themselves and generations yet to come.

Thus, it was unthinkable that such a sacred gift of nature and veritable asset with complex web of ownership arrangements could be entrusted in the hands of single individuals whom circumstances, or greed may compel to dispose of parts of the assets to solve personal challenges or for personal aggrandizement thereby depriving unborn generations their future source of livelihood and survival. There exist therefore mythical connotations to the idea of inalienability of land with the intent to protect people's common heritage. It was considered a taboo and serious violation against departed ancestors whose spirit lay buried in the soil to sell the land, and an act of unwisdom to deficit the interest of the unborn (Awari n.d., 2)

In recognition of the above belief, and the high premium placed on community inter-relationships, extended family lineages and kingship, land rights were vested on communities, villages and kingships, and never on individuals. This customary attribute was given legal backing in *Amodu Tijani v. Secretary of Southern Nigeria* (1921) AC 399, 404, in which Viscount Haldane, in a bid to clarify and validate the status of the customary tenure system stated that “... the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual”. Alienation of land was foreign to the ideas, customs and traditions of the olden society. Therefore, rights of individuals over land was limited to use and the enjoyment of same only. No individual has the right to alienate any part of the land thereof in whatsoever form without the requisite consent of the village or family representatives (*Lewis v. Bankole* (1909) 1 N.L.R 82, *Eze v. Igiliege & Ors.*, 14 WCA 61).

Heads of the families and communities were charged with the responsibilities of managing lands and exercising rights of ownership on behalf of the families and communities, and in some loose characterization, are often referred to as the owners. However, their positions are just like that of

trustees, but not in the capacity trustees are perceived within the English law concept. Members of the families or communities with need for land for agricultural or residential purposes approach the heads of the families or communities for the permission to use the land. Such rights were legally recognized, and where a member of the family or community feels that such a right has been unreasonably denied, the person is at liberty to approach the court for redress (Oludayo, 2011, 61). The ownership of these lands can never either by effluxion of time or under any circumstances be divulged from the group to become personal property of the members of these groups. The heads of the families or chiefs of the communities cannot dispose of any piece of land thereof without consulting the elders of the groups, particularly, when such permissions were to be granted to strangers as customary tenants (Oshio 1990, 47). This idea of preserving land within the family and community units and its inalienability outside the confines of these allodial groups led to the emergence of different other subsidiary interests in land through which strangers and migrants could be allowed access to land for cultivation and dwelling under special arrangements. Thus, families and communities prefer to give out their land to outsiders to use after observing some customary rights as the radical ownership right remain with the family or community. This informed the emergence of some distinctive customary land ownership arrangements like the customary tenancy, kola tenancy and host of others.

At the assumption of direct rule over Nigeria by the British colonial authority in 1900, the colonial government also introduced *the Native Land Acquisition Proclamation law of 1900* in southern Nigeria. In line with the discriminatory customary principle that abhors foreigners' right to acquire land, this law also barred foreigners from acquiring interest in land from natives and aliens alike except through the written approval of the Governor. The difficulty also encountered by the colonial government in their attempts to acquire lands for public and developmental purposes because of the customary principle of inalienability of land, particularly to aliens, led to the enactment of the *Land Acquisition Ordinance (No. 9) of 1917* which gave the colonial government the right to compulsorily acquire land for public purposes (Dada 2010, 12) This marked the introduction of the doctrine of "eminent domain" in Nigerian legal system; a concept that is still generating controversies in Nigeria till date as subsequent Nigerian governments often hide under its clauses to expropriate people's land without commensurate compensations.

### **Land Administration Reforms in Nigeria - A Brief Overview**

The high labour migrations resulting from colonial activities and developments brought about unprecedented transformations which could not be sustained without land being alienated to strangers. As the society evolved over time, and political cum economic factors joined forces with colonial experimentations to shaped and re-shaped the environment, customary restrictions on land transfer to foreigners waned as private land ownership evolved. Thus, land gradually became alienable to foreigners in southern Nigeria, though collective ownership of land remained more prevalent (Oshio 1990, 49). Unfortunately, some unscrupulous heads of families and community leaders usurped the opportunity presented by this development and started alienating group lands under their trust for their personal aggrandizements (Elias 1981, 72-73). Greed and racketeering became the order of the day as land speculators flood the market with dubious offers and manipulative entrapments. Litigations and land disputes increased and sale of same land to many unsuspecting buyers became rampant. Some people resort to violent acts in attempt to maintain their interests in land. There was also the problem of land fragmentation mainly occasioned by the customary right of inheritance which allows for the devolution of land to the deceased heirs at the demise of the land owner. The prohibitive cost of acquiring land by the government for public uses led to the promulgation of the *Public Lands Acquisition (Miscellaneous Provision) Decree of 1978* to facilitate cheaper ways for government to acquire the desired land for public use and developments. However, the accompanying litigations, disputes and communal clashes that follow acquisitions based on leverages provided by the above decree often reduce such acquisitions to a pyrrhic accomplishment. (Dada 2010, 13-14).

Neither lands in the Northern part of Nigeria with a different tenure system nor public lands were immune to these corrupt onslaughts and callous profiteering. Governors dispossess members of the public of their lands and vest same on their preferred private individuals in contravention of the

statutory guidelines (*Ereku v. Military Governor of Mid-western state* (1974) 4 All NLR 695). Rich and powerful members of the society used their positions to forcefully and dubiously rob the poor and less privileged northerners of their lands (Jegede 1981, 37)

Above developments made land reform inevitable and compelled the then military government of Nigeria to institute a Land Use Panel of enquiry to ascertain the remote and immediate causes of the problems bedeviling land administration and transactions in Nigeria with the aim of making appropriate recommendations (Okpala 1982, 574). The outcome of this panel informed the enactment of the Land Use Decree of 1978. However, it must be noted that though the majority report of this panel warned against the possible unification of land administration system in Nigeria, the government acting on the minority report, unified and nationalized all land in Nigeria through the Land Use Decree of 1978. This Decree was later re-designated an “Act” and was subsequently entrenched into the 1999 Constitution of the Federal republic of Nigeria, thus making an ordinary statute extra-ordinary (Smith 2007, 472-473).

Four decades after the promulgation of the Act, the actualization of its set objectives remain a mirage. Instead of solving the problems and challenges it met on ground, the Act has exacerbated some of the problems and created new ones. Population growth, property market development and urban encroachment, increase in competing demands for land for conservation, developments, agriculture and pastoralism, natural disasters like draught, flooding and desert encroachments, population mobility, globalization and its resultant corporate investments in land by international investors and many other emerging factors have jointly placed more pressure on available land, thus making land in Nigeria increasingly more contentious.

However, the biggest challenge to the Act manifests in its inability to address and reconcile issues relating to customary tenurial arrangements that exists within the Southern parts of Nigeria. These customary tenure holdings, particularly, the customs and traditions of the Igbo people of the Eastern Nigeria is characterized by complex and overlapping tenurial arrangements which evolved through centuries of customary transactions and experimentations. Some of its definitive elements seem too complex, dynamic and vague for modern statutory tenure system to comprehend and accommodate. Tenure relations of this nature remain readily available in many rural communities and constitute the bulk of the land rights mostly available to many low-income earners, rural dwellers and vulnerable members of the society like women and children. Proclivity to conventional reform approaches and judicial interventions have also failed to usher in the much-needed reprieve and sustainable remedy to the land administration and tenure constraints (Madumere 2017). Unfortunately, these forms of customary land rights often remain unrecognized by the conventional land administration systems despite the important functionalities and their ability to provide various degrees of tenure security to the practitioners who are obviously in the majority (Chigbu et al. 2017, 1), and the chances of the prevailing paradigm scaling up to engage those excluded by the status quo is marginal. The obvious dysfunctional and ineffectiveness of the prevailing land administration system in Nigeria re-enforces the call for urgent reforms and adoption of workable, innovative, fit-for-purpose and responsible land reform approaches reflective of socio-cultural dynamics and peculiarities of the Nigerian state.

The first step towards realization of this goal lies in the adoption of decentralized land administration system, as against the current centralized format imposed by the Act. This will require the amendment of the extant laws and subsequent removal of the Land Act from the Nigerian constitution. Such decentralization would enable constituent units of the Nigerian state to formulate land administration policies and frameworks reflective of their socio-cultural, economic, religious, environmental and geographic peculiarities, in relation to available resources and associated challenges.

### **Prospects for Decentralised Land Administration System in Nigeria**

It will be impossible to devolve land administrative responsibilities along every ethno-tribal and religious divide of the heterogenous Nigerian State because of the vastness and similarities of the ethnic groups and contestations over the actual number of ethno-tribal divides in Nigeria. Fortunately, the existence of six

Geo-Political Zones propounded by former Vice President Dr. Alex Ekwueme as antidote to ethnic domination concerns in Nigeria adopted during the 1994 Constitutional Conference would save the pain and responsibility of formulating new administrative blocs for the proposed devolvement of land administration responsibilities. Various political and economic fortunes of the Nigerian state are currently being determined and shared along these zones blocs. (Abdallah et al. 2017). Although known as “Geo-political Zones”, geographical considerations were not the basic factor that determined the constituents of each of the zones, rather socio-cultural, tribal, religious and traditional history and similarities of the component units. Of course, states, tribes or ethnic groups ordinarily need to share common boundaries to be grouped together.

Fig. i: Proposed Structural Framework for Land Administration Decentralization in Nigeria



Source: The Author. ■ Bottom-up integration framework ■ Top-down command framework. ■ Delegation of functions

Fig. i above represents the preliminary structural framework for the proposed responsible, equitable and decentralized land administration system in Nigeria. This, when finally reviewed by experts and stakeholders in Nigerian land matters and adopted by appropriate authorities would guide the development and adoption of equitable, responsible and Fit-For-Purpose land administration system in Nigeria. This would enable the proposed zonal Land Authorities articulate, develop and adopt zone-specific land administration systems that would reflect their peculiar social ideologies, accord concerned citizens the maximum benefits accruable from their land and satisfy their peculiar needs.

In this proposed land administration framework, the National Government is to retain the responsibility of establishing the common or basic standard for land administration and management for the entire country. This would include the general principles of non-discrimination, guidelines for international and large-scale land acquisitions or transactions, as well as other areas of common interest to the federating units.

The responsibilities for the administration of public lands in urban areas will be delegated to the State Governments under a mutual arrangement that will be agreed by the stakeholders, while public lands in rural areas will be placed under the control of the Local Governments under similar arrangements. However, the responsibilities for the management and administration of natural resources in each of the six Zones that constitute the Nigerian State will be vested in the devolved Zonal Authorities under a new revenue sharing formula that will be agreed by the stakeholders.

In consideration of the important social functions performed by rural lands in general and communal lands in particular, most especially their usefulness to the livelihoods and survival of the rural populace, it is imperative that a systematic use and administrative guideline be established by each zonal authority to ensure that it meets its goal of providing for the needs of the low and vulnerable members of the society. Thus, this paper proposes for the return of allodial titles back to the original land owners and the traditional institutions, and the creation of community level land administration body that will be based on the pre-existing customary institutions. Such development would illustrate not only the government's willingness to recognize the existence and functionalities of customary institutions, but the readiness to collaborate with the local institutions for the attainment of the societal developmental goals.

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# Advertising and Its Subtle Role of Conflict Resolution

## A Semiotic Analysis of Two Ads (1914 Sainsbury's Ad & Axe Peace/Call to Arms)

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**ABSTRACT:** Till this present day, the role of advertising has remained a promotional tool for business brands with big business plans. Undoubtedly, its promotional role is of extreme importance in the society. This is due to its contribution on the increased consumption of goods and services, and wide arrange of awareness which has left consumers with numerous choices. Nevertheless, advertising has never stopped at shifting its frontiers to perform certain roles. It “goes beyond borders” to perform other roles that are deemed socially responsible in its nature. One of such social responsibilities is the resolution of conflict. A subtle role which has not being placed on the frontiers of academic scrutiny. It is on this ground the work moves to examine the subtle roles of advertising in resolving conflict. Employing the semiotic analytical approach, two ads will aid the work to further unmask certain actions that buttresses the subtle role of advertising in conflict resolution.

**KEYWORDS:** Advertising, Conflict Resolution

### Background

Over the years the role of advertising has to great extent being limited to the promotional role of marketing. Even though its existence in the 4ps in the marketing strategy is absolutely pertinent, its role of conflict resolution which can be attributed as its social responsibility is absolutely worth academic torchlight.

In the literature, there exist litany of definitions of advertising. However the ultimate purpose of advertising is to create wide range of awareness and subtly persuade the consumers to take actions on the biddings of the sellers, While this is being achieved, important information of the products get conveyed along to the target audience. These conveyed products are products of brands which are responsible for not only the well-being of its employees but also of the society which receives information about the brand. Subsequently, this responsibility places a social call on the brand to ensure that certain level of serenity is achieved in the society they operate and exist in. Hence advertising plays a communication role to reach its audience.

Brands are encouraged at all level to display certain aspect of social responsibility and one of these social responsibilities is conflict resolution. The role of conflict resolution (CR) is far from the mundane role of advertising which is promotionally inclined. As a result of this, one could be tempted to ask the question: Does advertising play a role of conflict resolution? With a constructive analysis of 1914 Sainsbury's advert and Axe peace/Call to Arms, this work will move to unravel the subtle role of advertising in resolving conflicts.

### Objective

The objective of this work is to examine the subtle role of advertising to resolving conflict in the society which is a gray area. This subtle role will be examined through the eyes of a semiotic analysis of two adverts namely;

- a) *1914 Sainsbury's*
- b) *AXE Peace/Call to Arms*

Through the lenses of both ads, an extensive semiotic analysis is carried out to examine the subtleness of advertising in resolving conflict.

## Advertising

According to the definition by the well-known UK Advertising Association, Advertising is a means of communication with the users of a product or service. Advertisements are messages paid for by those who send them and are intended to inform or influence people who receive the messages. Here, advertising and its messages are aimed at educating, enlightening and persuade the users of products of important messages which are of utmost benefit to their society. At this point, advertising can be seen as information. A “well-composed” piece of information dished out with the intention to improve or reverse a cause, knowledge or awareness. Advertising, which has existed for hundreds if not thousands of years (Some observers claim that even the Egyptian hieroglyphics contained advertising) has constantly adopted and adapted new formats in its roles. (Eder 1993). One of these new formats is information. To Nancy (1999), Advertising also educates. It informs us about candidates running for office. It tells us about important issues such as the benefits of seatbelt use, the dangers of drugs and the problem of drunk driving-which are all conflicting and affecting the daily human lives.

## Conflict Resolution (CR)

Conflict resolution is the intervention aimed at alleviating or eliminating discord through conciliation. The issue being intervened on is called conflict. Thus conflict is simply discord, disagreement, friction, hostility, quarrel etc. To Njoku (2006), one can identify from the above synonymous that conflict entails the presence of an object of contention that has brought about a divide.

According to Njoku (2006), conflict can be classified in different types namely,

1. **Gender conflict** which is gender-inclined. A conflict that evokes a sex divide between male and female. It cuts across socio-cultural differences between both sexes.
2. **Ethic conflict**- this involves tribal and communal clashes.
3. **Power conflict** - this conflict is attributed to power struggle between various classes of individuals in the society, the bourgeois and proletariat.
4. **International conflict** - this conflict dives into the discords and outright rancor between two or more sovereign nations. Sometimes, this rancor often musters into an outright war. Other types of conflict include: Civil, Industrial and Labour Conflict

However, this study is obsessively focused on the power and international conflicts with an intention of “semiotically” unmasking how certain advertisements help to ignite and initiate peace in a conflicting atmosphere.

From the media research conducted over certain period of time, it has been noted in the literature that even though conflict is an inevitable part of human life, it can be prevented, avoided, managed and brought under considerably space of control. These can be achieved through the media’s contribution to societal reconciliation, reconstruction of misconceptions and extensively understanding the causes and consequences of conflict. If the media embodies these ultimate contributions, advertising which is “element” of the media arguably embodies the same roles and contributions.

## Advertising and Conflict Resolution

It’s well known that advertising informs about the product, the brand and its promotional offers. It goes further to outline the availability of different range of products. The information function of advertising helps to influence the price of the product to increase sales.

However, few scholars see the advertising role from a different academic purview. The assertions of Angeline (2014) aligns with the view of these few scholars. “Without doubt, marketing and advertising can overstep its bounds. Some bad apples can ruin the bunch; however, the majority of marketing communications do add value to peoples’ lives...Hence, by reaching consumers – and perhaps in the process educating or entertaining them ...”

More so, ads are not only about selling, for they operate in a social context and have social effects. Thus, we must try to sift out the aspects of advertising practice that have potentially negative social effects and seek to address them as precisely as possible (Leiss, Kline, & Jhally 1990, 387).

The aforementioned negative social effects are effects which outcomes are conflict driven. Conflict does not occur in a vacuum, hence conflict resolving around gender, ethnic and power issues are born out from such social effects. It's on this ground, advertising in its social responsibility moves to mitigate and resolve gender, ethnic and power conflicts etc.

### **Theoretical background**

From the theoretical argument in the literature, the nexus between advertising and society is clearly without doubts extensively discussed. There exist two major arguments in terms of the inseparable relationship of the advertising and society.

The mirror school of thought argues that advertising reflects the norms, values and beliefs existing in the society. In relations to our study, it represents the notion that advertising reflects conflict which has been one of the realities of our present human existence (Njoku, 2006). That's through misinformation or disinformation, and representations which are basically established with certain contents geared towards instigating conflicts (either gender conflict, power, or international conflict). Contrary to this view, the molding school of thought sees advertising as an element with a role of constructing socio-cultural realities. That's the media (adverts) produces and constitutes understanding, subjectivities, and versions of the world (Williamson 2011).

Hence, the advertisement construct "anti-conflict related" contents in realities. Here, advertising simply serve as an agent of change. This means that advertising can change our views about a particular product or situation and eventually contribute significantly to what we purchase or receive (Pardin 2014). Pardin went further to decide on the path of argument to align to when it comes to the role of advertising to society. To him, "advertising must be both a mirror of the society and agent of change". However, he claimed that the most interesting and instructive aspect of this academically debated argument is to stick to one side or the other. To this ground, this academic work aligns itself to the side of advertising being an agent of drastic change. This change which wholly incorporates itself towards the precepts of social responsibility is a change that entails peace in its entirety.

Advertising carries out this social responsibility of conflict resolution as a corporate and creative strategy to sincerely and honestly engage and contribute to certain issues that affects society. Merskin (2004) gave three reasons to buttress this point when she articulated why SR is a smart, ethical and effective creative strategy for advertisers to use. She argued that SR is smart and ethical if the below three reasons are met,

1. The advertiser is truthfully and actively engaged in the cause or concern represented,
2. There is a clear and associative relationship between said cause and the advertised products, and
3. The ads educate and inform customer citizens about social issues, concerns and needs.

Following Merskin's views, this work brings to the fore the concerns of advertising in its truthful stance and engagement on conflict related issues, its clear articulations of peace-oriented discourse and its stance in educating and informing the consumer on these conflict-related issues in the course of performing its classic promotional role.

From the ultimate question raised by Merskin (2004) concerning SR which says: Does the "do good" or at least "do no harm" approach work when combined with advertising?

One could subtly infer that the phrase "do good" can be placed side by side with "peace" while "do no harm" aligns itself with "avoiding conflict". Based on this foregoing, advertising campaign objectives extends its boundaries beyond its classic role of increase sales, awareness and image to performing function that are responsible for the well-being of the society. This role which advertising performs can be easily encapsulated in its social responsibilities at the peripheral level but if dive further has other broad concepts. One of such concepts is its role of conflict resolution.

Following the definition of Social responsibility (SR) by Berman and La farge (1993, 7) as the alignment of business operations with social values," it's obvious that businesses will barely strive on societies which social values are devoid of peace. And it falls on the domain of advertising to construct a conflict-devoid atmosphere in the course of certain ads to incorporate peace into the

system. Tinin (1997, 4) posits that advertising can be regarded as a “significant site of cultural production” and thereby become a location for public discourse around meaning, social values...”As mentioned earlier on this work, advertising plays a role beyond mere increment of sales, creation of awareness and building image. Stadler (2004, 592) concurs to this position in his words asserting that “advertising which typically aims to sell a product by associating it with a resonant image, identity, lifestyle or ethos, is a form of persuasive communication that can be effectively harnessed for explicitly pro-social purposes”. These pro-social purposes puts the brand in an active position of a change agent in the process.

Lori and Arlene (1990) concurs to the above assertions in their words that as an accomplished technique of persuasive communication, advertising has played a leading part in shaping how consumers think about their needs and what will satisfy them. But advertising’s most important social impact is not to be found here, rather, it lies in the diffusion of the advertising model of persuasive communication to other social processes”. From a subtle view of the advertising role, one of such social process is to resolve issues of conflict in the social settings.

## **Methodology**

### **Semiotics**

The first major proponents of the semiotic analytical method were as Swiss linguist and an American philosopher, Ferdinand de Saussure (1857-1913) and Charles Peirce (1839-14). These move was followed by other remarkable scholars, like the French theorist Roland Barthes, Erving Goffman and the recent scholar Rosalind Gill.

Beyond the superficial definition of semiotic as the “study of signs”, a well-known semiotician, Umberto Eco, (1976, 7) gave one of the broadest definitions of the term as “a field concerned with that can be taken as a sign” (Chandler 2007).

Semiotics goes beyond the focus on only of what we refer to as “signs” in our everyday life interaction. It “stands for” or represents something else. In the realm of semiotic, signs are in different “shapes” in the forms of words, images, sounds, gestures and objects.

In the realm of semiotics, every sign has meaning and there are great chances of multiple meaning in every signs. Furthermore, these multiple meanings are to a large extent socially and culturally influenced thus caving a space for denotative and connotative meanings to be constructed. There are bunch of means deeply embedded into advertisements (products) and they intend not to manipulate us in exploitative form but rather create structures of meanings.

The intention of semiotic on this study is to decipher the underlying codes in ads that has conflict-resolution inclinations with the utmost purpose of acknowledging the contribution of advertisements in resolving conflicts on the frontiers of gender, ethnicity and power.

This study examines two ads that concretely buttresses the role of advertising in conflict resolution. These selected ads are *1914 Sainsbury’s* and *AXE Peace/Call to Arms*.

### **Sainsbury**

Sainsbury is one of the largest chain of supermarkets in the United Kingdom. It was founded in 1869, by John James Sainsbury with a shop in Drury Lane, London. The company became the largest retailer of groceries in 1922 and was an early adopter of self-service retailing in the United Kingdom (Sainsbury 2018).

#### ***1914 Sainsbury’s Ad***

##### ***Denotation***

The *1914 Sainsbury’s Christmas ad* was created in 2014 made in partnership with the Royal British Legion to commemorate the extra-ordinary events of Christmas (Sainsbury’s 2014). The ad begins with the display of soldiers on the battle field in a cold and snowy night weather taking a break and awaiting further instructions from their military regions. As they patiently await in the freezing weather, some of the English soldiers received postal packages from loved ones. One of the soldier named Jim, a knight in the force, gets a package from his lovely girlfriend. In it were her picture, a letter and a little blue box

of chocolate. As he stares at the packages with smile on his face, he could hear voices from a distance. Apparently, these voices were from their Russian rivals. The song titled “*Silent Night*” was sang in the calm battle field. Subsequently soldiers in both warring factions sang to this beautiful Christmas song in harmony and with smile, joy and peace on their faces.

In the break of dawn, Jim steps out from the trench built in the battle field to meet with the enemies. As he moves out, their rivals immediately initiates readiness to attack which was halted by a young soldier just like Jim. He shouts “Halt” to abort the attack. He didn’t stop at that but extended the friendly move by stepping out of his trench.

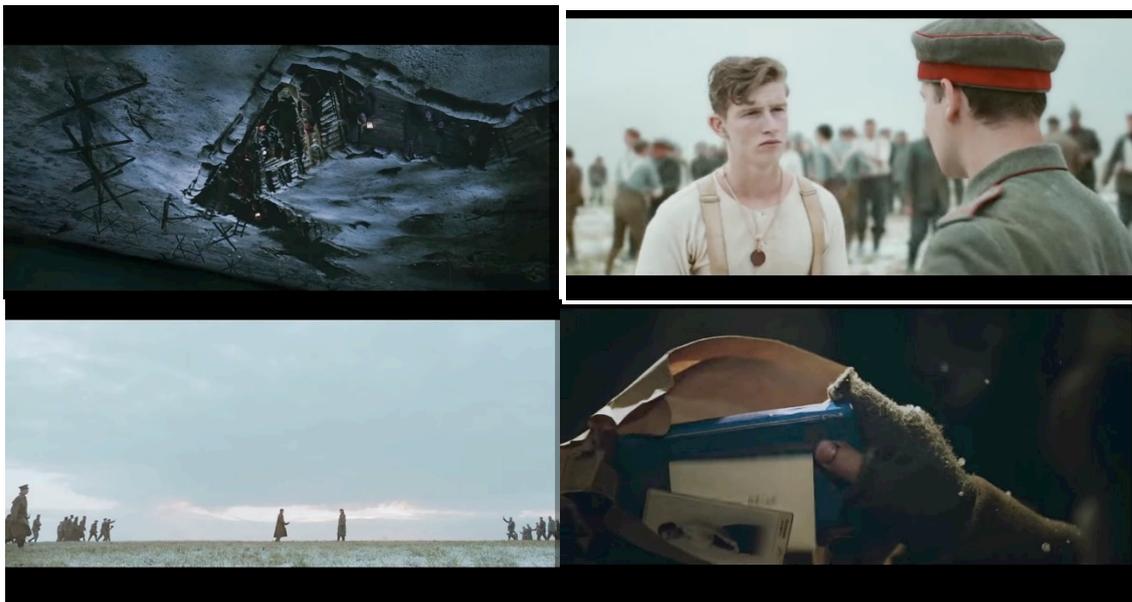
They met, shocked hands and shared other pleasantries with the introduction of names. These moves were further followed by the two armies coming together in no-man’s land, sharing gifts and even playing football together. The ad ends with a sudden disruption by bomb sounds from the fight jets. A caption: “*Christmas is for sharing*” was boldly displayed on the screen.

### **Connotation**

The ad employing the night visuals of a cold and snowy weather was never done in a vacuum. Snow and winter are often used to represent sadness, bleakness or death. This signification was equally represented on the faces of the soldiers as they bleakly sit in the trench awaiting further instructions from their military units. While they await instructions that decides their fate, they are presented with gift packages. These packages signifies love, affection and remembrance. It evokes an extra-ordinary feeling. In Jim’s package lies a picture, letter and chocolate which were visual, textual and objective symbolism respectively. As they all got entangled in the portrayed emotional web, a beautiful song with subtle emotional undertone was employed to align to the present situation. The choice of this beautiful Christmas song titled “*silent night*” was perfectly placed to evoke that conflict resolving spirit at that situation. The soldiers sang in harmony and it signifies “Agreement, Truce, and One Voice”. A voice of peace and understanding. The atmosphere was totally engulfed in a complete state of joy and peace with a broad smiles in the faces of the soldier.

The signification of peace was further represented in the visual display of “the break of dawn” and the melted snow a sign of new beginning/a new start. This scene was buttressed with Jim stepping out of the trench and a reciprocated move from the other soldier. These actions signifies “Friendship” and “Partnership”. This friendly signification was further elaborated with pleasantries, sharing gifts and playing football etc.

Figure 1: Christmas is for sharing



The scene which displays a sudden cut in joy and happiness by bomb sounds is a signification that even though there exist a bold strive to resolve conflict, conflict remains an inevitable part human which deserves a steady negotiation. However the caption “*Christmas is for sharing*” at the end of the ad preaches Peace, Love and Friendliness.

Table 1: Signification for Sainsbury’s Ad

Signifier	Signified
Snow and Winter	Sadness/Bleakness/Death
Gift Packages	Love/Affection/Remembrance
Voices	Agreement/Truce
Break of Dawn	New beginning/New Start
Soldiers Meeting	Friendship/Partnership

*Source: Personally designed by the author*

## AXE

The AXE brand was first launched in France back in 1983. After success in Europe, Latin America and other parts of the world, AXE was introduced in the U.S. in 2002. The AXE brand is obsessively focused on Fragrances and Deodorants (Unilever 2018).

### *Axe Peace/Call to Arms/Official Extended Cut Denotation*

The *Axe Peace ad* (BBHLondon 2014) starts with military convoys gradually stopping in front of a portrayed presidential villa with the top military officer being escorted by other military officers. As he walks through the hall, he’s being shown with his hands cuffed with a grey-colored briefcase. Other scenes are shown intermittently. Soldiers who profusely sweating are shown in a helicopter heading for a mission. In another cut, an armored vehicle roaming around in a destroyed city with individual in a shambles is displayed. Subsequently, Asian troops are shown embarking on a military drill in preparation for a battle is bought to the scene.

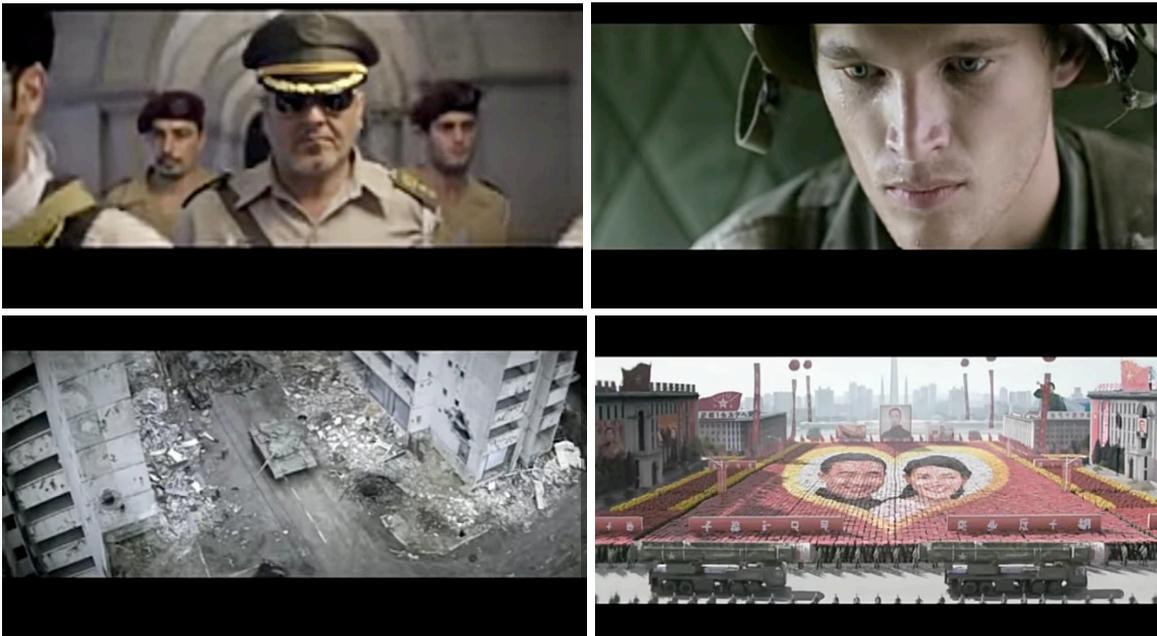
The top military officer gets the briefcase into the room while the president and his wife were discussing with the dignitaries. Immediately he gets into the room, he hands over the briefcase to the president. The president opens the briefcase which has a customized and configured detonator. While these actions were on going, another scene shows a pretty looking standing in front of the armored vehicle and a helicopter lands with soldiers alighting to begin their combat.

Suddenly her boyfriend steps out of the war machine and held each other. The same action is also reflected in the scene of the soldiers stepping out of the helicopter. The soldier throws his weapon on the muddy ground followed up with kisses and hugs to his pretty-looking lady.

As this lovely and peaceful atmosphere strives on, the leader of the Asian troop gives order by nodding his head and it was followed by the soldiers’ creative display which formed a photo of the leader and his lovely wife. This action got his wife smiling. Lastly, the president which was presented with detonator at the opening scene initiates the detonator but rather than a huge destruction or explosion as the outcome, fireworks lighted all over the sky. This received huge applauds from the dignitaries sitting with the president.

The ad ends with the caption “*Make love no war*” and the president was shown using the product “*New Axe Peace*”.

Figure 2: Make love not war



Source: Image extract from Sainsbury's. 2014. 1914 Sainsbury's Ad | Christmas 2014

### Connotation

Just like the Sainsbury's ad which is subtly geared towards resolving conflict, the AXE displays the same trait in its *AXE peace/call to arms ad*. At the beginning of the ad, the top military officer and his team were shown walking towards the presidential villa with his hands cuffed to a grey-coloured briefcase which clearly signified "intending discords" or "a ticking time bomb". A quite disturbing scene with visuals of tensions and diplomatic chaos. This scene is buttressed with soldiers in a helicopter profusely sweating on their way to an intending mission. The scene unveils a sign of despair, total tension and unknown fate of the soldiers.

Subsequently, a destroyed city is displayed showing armored vehicle roaming around. A full picture of a destroyed city is displayed with indicators of chaos/pandemonium as people are shown running from pillar to post looking for headway.

Suddenly, a pretty looking girl encroaches to stop the further movement of the armored machine. That action of boldness signifies "conflict confrontation." Hence the confrontation was successful as love was unwrapped at the end of that scene.

The scene takes us back to the president receiving and opening the briefcase. In it lies a customized and configured detonator which clearly signifies weapon of total mass-destruction. The ad goes further to display its subtle role on conflict resolution as it displays a scene of the soldier throwing his weapon in the muddy ground which was later followed by kisses and hugs. A call for peace and end of a war feud was the underlying significations.

It further moves over to the actions displayed by the leader of the military drill. Giving orders by mere nodding his head was a total indication of peace and understanding. A conflict-intended order was expected as he stood but the tension was melted with a positive call for an amazing creative display by the troops.

Lastly, the display of the beautiful fireworks through the activation of the detonator by the president was a clear visual symbolism of peace and happiness. These scenes were firmly supported at the end of the ad with the caption "*Make love not war.*"

Table 2: Signification for Axe Peace (Call to Arms)

Signifier	Signified
Hand-cuff & briefcase	Problems /Discords/Tensions
Destroyed city	Chaos/Pandemonium
Pretty-looking girl	Boldness/Conflict Confrontation
Fireworks	Peace and Happiness

Source: Personally designed by the author

## Summary

From the above semiotic analysis, the sign similarities in both ads on revolving conflict is subtly glaring for a symptomatic reader to easily decode. The “indicators” of conflict resolution were numerous portrayed leaving no signs behind. Both ads displayed the conflicts from the power-international scope. They further beamed the discourse torchlights on the power-related rancor and discords.

The signification were subtly derived from the interactions between different military actors. These significations cut across various positive and negative meaning for instance, in the ad SAINSBURY, the meeting between both armies was a sign of friendship/partnership. Likewise the fireworks that were displayed in the AXE ads, and signifies Peace and Happiness.

Although, the intentions of the above mentioned positive signification moves to obliterate and reconstruct the narratives placed by the negative significations in the ad. These negative signs such as the symbolism of snow and winter in the Sainsbury ads and that of the handcuff connected to briefcase linked to the wrist of the military officer were duly placed to show the advertising codes which are culturally embedded in the system. Other negative significations include the tensed entry by the military office at the beginning of the ad and a destroyed city which signifies chaos and pandemonium.

From these analyses, one could see how advertising “goes beyond borders” to perform other roles as its social responsibility. One of such is conflict resolution. On this ground, the advertising intentions is geared towards resolving conflict on the domain of gender, ethnic and power.

## Conclusion

The role of advertising on conflict resolution as one of its social responsibilities is given less attention. This is due to the fact that advertising has always been viewed from its promotional contributions to business. However, advertising is more than a mechanism for communicating product information for individuals. It’s a cultural system, a social discourse whose unifying theme is the meaning of consumption.

To this work, the unifying theme which serves as a meaning of consumption to users is the subtle role of advertising in the resolution of conflicts ranging from ethical, power-related dimension to gender-related issues (Leiss, Kline & Jhally 1990). On this note, the assertion that advertising wields great social power and influence and as such communicates on norms about matters, issues affecting lives other than selling products is indeed worthy of acknowledgement.

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# **Interdisciplinary Studies Between Law and Education. Mafia's Children: Removal and Cultural Contamination Against Indoctrination, Violence, and Oppression**

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**ABSTRACT:** In mafia families, children are educated in violence, revenge, and gender stereotypes. The research question is: What can be done to guarantee these children the right to education, the right to become citizens, to learn democratic values, the right to be men without killing and women without obeying? The studies carried out have discovered a possible answer in the recent judgment of the Juvenile Court of Reggio Calabria, which has mandated the revocation of parental responsibility in cases in which injury to children is proven. These limitations to parental rights have the purpose of allowing institutions to stop a system of behavior that is harmful to the proper development of the personality of the child and that transmits negative cultural values from father to son. This way can play an important role for democracy in creating the context for progressive social change. Man acquires morality from the environment in which he grows, so it is really dangerous for children growing up in families in which boys are predestined to follow in their father's footsteps and girls are sometimes compelled to marry the sons of other bosses, binding separate clans together through blood relations. So, by removal, it is possible for mafia children to discover new realities and new way of life, by new structure that connects them to the society. Socrates in the Platonic Apology says that laws educate and make better youth generations.

**KEYWORDS:** Mafia, Education, Law, Cultural contamination, Interdisciplinary

## **Introduction**

Assuming that the objective of education is the emancipation of the subject in formation, this research addresses the problem of compatibility between the educational models popular among families belonging to the mafia and educational models seeking to create free, emancipated, and autonomous persons. Man acquires morality from the environment in which it grows, but the true evolution of morality can be accomplished only through the critical skills learned during the complex phenomenon of training. In other words, only if child learns to be critical he can learn to participate consciously in the common good.

Democracy, before being political technique to modify and adapt to social and economic changes, it is basically a *way of life* (Dewey 1888; 1897) that only a critical pedagogy can favor. So, if families educate their children using values opposite those of democracy, legality, solidarity and the common good, how do you guarantee children the right to education and the right to become informed citizens who are integrated into their social context?

During my research on this subject, I examined the recent judgments of the Juvenile Court of Reggio Calabria, Southern Italy, where a judge is pioneering a program to help children of mafia families escape from a life of crime by taking them away from their parents at the first sign of trouble. The objective of these judges is to allow children who are growing up in similar contexts to learn about other realities in order to undermine the educational models inherited from their families of origin.

Analogous judgments have been taken from the English Courts in relation to the phenomenon of minors indoctrinated to jihadist extremism.

In one important case (*Re M children*, 5 March 2014, [2014] EWHC 667 (Fam) ), the English Judge considered radicalization a *significant harm* for minors, and defined it as follows:

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\* An earlier version of this paper was published in the *Review of Social Studies (RoSS)*, Vol.3, No.2. pp. 45-57.

"Radicalising' is a vague and non-specific word which different people may use to mean different things. There is quite a lot of material in this case to the effect that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance. This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents. If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate. On the other hand, if by "radicalising" is meant, as appears in paragraph 12 of the draft addendum report that I have already quoted, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether. If any child is being indoctrinated or infected with thoughts involving the possibility of "terrorism" or, indeed, hatred for their native country, which is England, or another religion, such as Christianity which is the religion of their grandparents and now, again, their mother, then that is potentially very abusive indeed and of the utmost gravity."

It is the same in mafia families: the educational action is abusive. No one should feel free to transmit negative cultural to sons and daughters. There are limits to educational freedom and if they are exceeded, the State must intervene and guarantee the child the right to be educated to democratic and shared values.

Before to highlight how the State can intervene to guarantee children the right to education, is preliminary the examination of the context in which the present research has matured.

### **Context and Research Question**

In mafia families, children are educated in the violence, revenge, and gender stereotypes that underpin the real strength of the clans, which are organized by families to control entire territories through intimidation and oppression. Clans are based on blood ties and on strongly hierarchical and patriarchal family models: Men have the power to make any decision concerning their wives and children, and women have the task of handing down this familiar pattern. The bond of blood is the real core of the mafia, since clans close themselves within their household, leaving out the outside world and its rules.

The strength of blood ties makes it particularly hard for security forces to penetrate clans. While the Sicilian mafia has been undermined by the so-called "Pentiti," who have collaborated with the police and informed on their fellow criminals, the 'Ndrangheta has not. In the case of the 'Ndrangheta, no one helps the police because the mafia is structured on the strength of ties among families, who transmit their codes from one generation to the next.

However, children who grow up in such contexts are entitled, like all children, to be educated about the principles of legality, solidarity, human dignity, and alternative standpoints. Italian regulations, including Civil Code Art. 315 bis and the international conventions to protect children (including the International Convention on the Rights of the Child, which was signed in New York on November 20, 1989) recognize children's right to education.

Thus, the research question of this study is: How can we ensure the right to education of mafia children? One possible answer could be the path chosen by the judges of the Juvenile Court of Reggio Calabria, who mandated that, in cases that could be considered parental abuse of children among mafia families, the children can be taken away. The purpose of removal is to allow these children to meet new realities and so develop a critical capacity towards a lifestyle diverted.

At this stage, in my opinion, it can be applied the Jack Mezirow's theory on transformative learning. Although the experiences of transformation are not necessarily easy or joyful, can still allow the subject to develop high capacities coping.

The transformation due to removal can be also useful to understand the thinking on trauma, with its effects and learning potential. In this sense Levine (1997; 2010), observing the trauma from the somatic point of view, both as a biological event that as psychological event, shows that the brain is an entity stratified and, as such, capable of continuously renegotiate the meanings of the experience.

For these reasons I consider essential the experience of removal from mafia families, just to allow these guys to try to renegotiate the meanings of reality, otherwise difficult to change.

The methodological approach used to pursue this question is the case study and review of recent judgments of the Juvenile Court of Reggio Calabria, Southern Italy, where Judge Roberto Di Bella is pioneering a program to help children who belong to mafia families escape a life of crime by taking them away from their parents at the first sign of trouble. To develop a comprehensive answer, I examined these judgments and the relevant psychological (e.g. Bruner 1986), pedagogical (Bertolini 1965; Mezirow 1991; 1995), and sociological (Bandura, 2000) literature.

Judge Di Bella's approach stems from the need to find a way to break the mafia cycle, which transmits negative cultural values from father to son. The region of focus, Reggio Calabria, is the heartland of one of the country's most terrible mafia groups: a criminal network known as the 'Ndrangheta, which is also the largest cocaine smuggling group in Europe. The sentences arise from an analysis of statistical data conducted by the judges of the Juvenile Court of Reggio Calabria, which, in the last twenty years, has treated over one hundred prosecutions of mafia-associated crimes and more than fifty cases of murders and attempted murders committed by children, many of whom were subjected to harsh prison terms, were killed during family feuds, or have assumed leadership of the 'Ndrangheta.

The judgments are novel for two reasons. First, they are the first to use pedagogical criteria in developing judicial decisions aimed at showing mafia children a world different from the one in which they grew up. Second, they draw parallels between classic assumptions of child abuse (e.g. beatings, psychological and physical violence) and cases in which children are exposed to violence, expected to follow the strict rules of the family, educated in killing and revenge (if they are males), or taught to perform the duties of wives and mothers (if they are females).

Education is seen as the only possibility of deconstructing these children's deviant educational models, and the law may be the only way to support this principle and the value of the educational function. This is particularly true if we reflect on the danger of the transmission of negative cultural values from one generation to another, following gender stereotypes useful to the consolidation of a criminal force.

The family's critical role in consolidating the strength of the 'Ndrangheta is demonstrated by the group's practice of arranging marriages among individuals from different clans in order to strengthen relations among mafia families. Marriages, in fact, have a high symbolic value and are infused with the idea of the family as a nucleus impenetrable from the outside. For this reason, marriages have been repeatedly used to sanction the end of a feud. The 'Ndrangheta began as a structured organization of families, each of which had full power and control over the territory in which it operated. These families confidently managed both licit and illicit monopoly activities.

In my research, I highlighted the danger that exists for children who grow up in 'Ndrangheta families, which stems from the unwritten codes through which these families transmit negative values to their children. Because of these codes and values, the sons of mafia bosses, particularly the first-born sons, are predestined to follow in their fathers' footsteps. Similarly, daughters are sometimes compelled to marry the sons of other bosses, thus binding separate clans together through blood relations.

The removal from similar contexts, followed by the personalized educational project, thus allowing these guys to confront a reality that otherwise would never have known, considered the close family environment from which they come.

## **Methodology**

The methodology used in this research was a case or document analysis, conducted using the judgements of the Juvenile Court of Reggio Calabria. From a scientific point of view, these judgments can be framed as documents. A document analysis is a valid method of investigation in empirical research, especially when it is integrated with other methods (Gibson & Brown 2009, 65). However, since there is no consensus on what can be considered a document (Flick 2014, 377), it is important to specify. Here, a document refers to information material on a particular social phenomenon that exists

independently of the researcher. It therefore is produced by individuals or institutions for purposes other than those of social research: this however you can use it to take possession of their knowledge purposes. (Corbetta 1999, 437)

One of the main benefits of document analysis is that it avoids potential problems related to the relational dimensions of other research methods (e.g., in cases of interviewers and interviewees: the interviewee looking for approval, the interviewer exerting influence, etc.). At the same time, however, in a document analysis, the researcher is unable to explore beyond what is written (Corbetta 1999). For this reason, it may be useful to combine document analysis with other types of investigation.

I chose to examine the Italian legislation on the right to education, as expressly expressed in Article 315 bis of the Civil Code, and the international law recognizing the same right (i.e., the International Convention on the Rights of the Child, which was signed in New York on November 20, 1989). The studied judgments pertain to the principles of the right to education in both Italian and international law.

I also chose to cross-examine the given documents (i.e., the judgments), which show the dysfunction of family relationships in mafia families, with the historical foundations of so-called amoral familism. The origins of the familistic culture reside in the history of Southern Italy in general and, in particular, in the history of Calabria. The latter was a land of conquest dominated by foreign powers. In Calabria, this conquest by foreign powers produced different reactions; however, too often, conquered populations shared an atavistic resignation, which is an unconditional surrender to the ruler in power. As a result of this history of conquest by foreign powers, the Calabrian region lacks the prerequisites for the construction of a culture of the State, especially as expressed through an ethos of shared values and justice for all. One symptom of this situation is the fact that a significant proportion of Calabrian families pay ‘protection money’ to the ‘Ndrangheta, but do not pay taxes to the State.

Why does this happen? The history of domination and the consequential root of a mentality of mistrust towards the state, which is perceived as alien and oppressive, has encouraged the spread of a culture of custody and protection via the mafia in order to ensure the survival of individuals, their families, and their businesses. This school of thought, labeled ‘amoral familism’ by Banfield (1958), has produced a backward society in southern Italy. It has also led to an extremist conception of family ties that adversely affects individuals’ ability to associate beyond the boundaries of the family and, thus, the collective interest.

Individuals typically base their actions on maximizing the short-term material advantages of their nuclear families, and they assume that all others will behave the same way. This explains why the codes that mark the life of the clan are not only symptoms of strength, but also expressions of the mafia culture and of the ways of thinking and acting in the context of the clan.

### **Proposals for action on mafia children following removals. Re-education projects**

The jointly gathered and stored data show that growing up in mafia families continually exposes children to the logics of domination and subjection, with implications for both emancipation and cognitive and emotional development. Here, pedagogy and rights merge into a single objective: the protection of children. This may extend to the decision to revoke parental responsibility in all cases in which the existence of a serious injury to the child, whose needs, desires, inclinations, and feelings are crushed by an adult world incapable caring for him or her, is established.

Italian law gives parents the opportunity and authority to fulfill their duties and fully carry out their responsibilities for their children. Parental power and authority are not to be used for their own personal interest or the interests of the family or clan; instead, they should be used to develop the family’s children. Parental authority is, therefore, power *for* the child, not power *over* the child. Indeed, such power does not create subjective rights for the parents, but gives them an *officium* or a *munus*—in which the power is not discretionary but instrumental—to be used for the purposes for which the power is given, which is to support an appropriate course of education for the child.

What happens, then, if the exercise of power results in injury to the child? What should the law do if the conduct of the parent denies the true meaning of the officium conferred by the law and natural law? Several pre-judgement measures have been designed to ensure the interests of the child in the event of danger; these involve the work of social services and the judiciary. The intervention of the Court in the education process is very marginal in terms of the physiology of the relationship between parents and their children. Furthermore, with regard to the particular assumptions of the differences among spouses regarding pedagogical choices, the law limits Court appeals to only the most serious cases.

The intervention of the Court, in fact, is an instrument of protection marked by the principle of minimal invasiveness in the sphere of autonomy which is the family, so much so that the Court is prevented from engaging, except in cases of ‘issues of particular importance.’ The law is not expected to provide the magistrate with power replacing that of a child’s parents; instead, it confers only the power to *mediate* the power of the parents. That said, it is natural that, in cases of intra-family pathologies, violence, abuse, and any kind of injury to a child’s mental or physical development, the intervention of the Court is not only relevant, but necessary. The State cannot fail to guard the rights of individuals, such as children, who do not have adequate means to protect themselves independently.

Thus, the limitation of parental rights has this principal purpose: to allow institutions to stop, even temporarily, a system of behavior prejudicial to the proper development of the personality of the child or continuous aggression by adults who cause (even unintentionally) irreparable damage to the child’s development.

In this context, the judgments on the children of the mafia are very important because they make it possible to intervene at the beginning of a child’s acquisition of the “Mafiosi” mentality. When these children are accused of bullying or vandalism, and their families do nothing, the Juvenile Court intervenes by taking the children away from their relatives and placing them in social services. Social services are indispensable to this decision because they provide necessary assistance, support, and supervision, integrating children into community structures outside of Calabria that are suitable to their needs. These community structures must include operators who are professionally qualified to treat the problems facing mafia children and provide real alternatives to the cultures from which these children come. In this context, social services manage the entire phase of the placement of a child outside his or her family of origin (i.e., away from Calabria) and coordinate rehabilitation projects with family home educators or foster families.

Such rehabilitation projects are essential for demonstrating the power of education. The objective of the Court, indeed, is to show these young children a world different from that in which they grew up. Thus, time must reverse its course: from future to past (Bertolini 1967). Only cultural contamination and an awareness of other worlds and different ways of life can give mafia children a different future, away from crime. If the center of a child’s culture is his or her family of origin and its rules, then children may never learn other ways of thinking or acting that oppose the rules and roles of their families of origin. Here, the complex relationship between law and education becomes evident: The law educates children who would otherwise simply join the law of blood, offering them new possibilities for the future.

### **Deconstruction of deviating training models through transformative learning.**

Offering these children new possibilities for the future implies that must be implemented strategies for deconstructing deviating training models introjected by families. This is what happens after removal. The theoretical framework on the basis of which rehabilitative projects are carried out after removal is transformative learning, that has the concept of experience as its premise. Experience underlies learning, and it is capable of inducing deconstructions and new constructions of the self and encouraging the processes of transformation that facilitate the departure of children belonging to mafia families from their contexts of origin.

If we accept the theory that cognition is a biological phenomenon (Bateson, 1973, 1980; Lakoff and Johnson, 1999), we can also assume that cognition “is not a representation of an

independently existing world, but rather a continual bringing forth of a world through the process of living” (Capra 2002, 36). This implies that any study of the mind and consciousness needs to incorporate the whole body experience in its field of investigation.

It follows that ‘transformative learning’ “as any irreversible (emergent) process of sufficiently deep creative change in the mental structure and consciousness of any living system” (Amend & Benne 2012). So, transformative learning is an evolutionary process, “an on-going process of creative emergence through which we become who we are: whole and connected to everything that is” (Amend & Benne 2012).

Two great academics of the phenomenon of experiential learning have worked to implement the transformative movement: Bertolini (1965) in Italy and Mezirow (1991; 1995) in the United States. Both researchers have claimed that every experience that crosses a human being’s path causes more or less significant change. By applying this principle, training models should be aimed at the rehabilitation of persons who, for whatever reason, have introjected internal dysfunctional models and are incapable of developing appropriate relationships with others or society in general.

## Conclusions

In this interpretation key rights to education, information, and the possession of a minimum income become pre-requisites of the democratic process and, thus, of citizenship. The international legal recognition of children’s rights makes these rights fundamental and, as such, guaranteed.

One very significant example of this international legal recognition is Art. 28 of the 1989 International Convention on the Rights of Children (which essentially incorporates Art. 26 of the Universal Declaration of Human Rights). This rule mandates state parties to recognize the rights of children to education and, in particular, to recognize the duty of the State to ensure the progressive exercise of this right on the basis of equal opportunity. Among other things, these rules require all states to take all measures necessary to guarantee these rights, including by offering financial assistance in cases of need. Because citizenship education is an integral part of human rights education and the core of any goals related to education and training aimed at building a universal and democratic culture, it must be guaranteed to those who are deprived.

This is the only way to give mafia children a different future and a chance in society: education in the culture of democracy and information and the dissemination of the principles according to which every person has the power and duty to achieve self-realization and contribute to the functioning of the system-state. This objective can be achieved by applying the transformative learning theory during the process of rehabilitating children who have been removed from mafia families.

From this perspective, educators must assume responsibility for setting objectives that explicitly include autonomous thinking and must recognize that accomplishing these objectives requires designing experiences to foster critical reflectivity and experience in discourse. Education that fosters critically reflective thought, imaginative problem posing, and discourse is learner-centered, participatory, and interactive, and it involves group deliberation and group problem solving. Instructional materials should reflect the real-life experiences of the learners and be designed to foster participation in small-group discussions to assess reasons, examine evidence, and arrive at reflective judgments. Learning takes place through the discovery and imaginative use of metaphors to solve and redefine problems.

To promote learning discovery, an educator often reframes learners’ questions in terms of the learners’ current levels of understanding. Learning contracts, group projects, role plays, case studies, and simulations are classroom methods associated with transformative education. The key idea of such education is to help learners actively engage in concepts presented in the contexts of their own lives and to collectively and critically assess the justification of new knowledge.

Together, learners undertake action research projects. They are frequently challenged to identify and examine assumptions, including their own. Methods that have been found useful in accomplishing these objectives include critical incidents, metaphor analyses, concept mapping,

consciousness raising, life histories, repertory grids, and participation in social action (Mezirow and Associates 1990).

In these terms, the removal from their families aims to trigger the creative process of the mind that stimulates adaptive capacity to a new environment, as well as resulting in new capacity for self-organization. The scientific basis of the perspective illustrated above is confirmed by the theories of Marturana and Varela (1980; 1987), compiled continuing the path based on the concept of "correlation of life forms", already beaten by Bateson (1973; 1980).

The concept of correlation of forms of life is connected to the notion of Self. This concept, also known as biological concept of Autopoiesis implies that living things are considered operationally closed systems, i.e. circular networks of production of components, which are produced processes through their interactions with the same network that produced them and specifies their limits, while at the same time open and regulated the exchange of material and energy with the outside. So living beings are a special type of machine (auto-poietic), which are distinguished from other (hetero-poietic) for their ability not so much self-regulation, because of self-production components for the specification, and the components are not parties but process.

If human beings can be regarded as "autopoietic machines" capable of continuously producing themselves, by means of continuous production and parts of its components, the removal becomes an event that re-write the story of boys otherwise destined to kill or be killed. The watershed event, the one that can lead to the appearance of new ideas and new answers, it is the expulsion from their families, which focuses on the fundamental question of the relationship. The fruitful relationship between educator and student can deconstruct negative educational patterns and replace them with new models capable of providing tools that enable such children to not be marginalized and delivered to a fate of delinquency.

The experience of removal active new cognitive processes, because - even if it is initially rejected by the young affected by the measure - still runs through his existence, transforming it. And, as argued Marturana, "to live is to know."

For humans, in fact, changing the configuration of the symbols in the mind amounts to build new mental models, new ideas, new identities.

This route can facilitate the achievement of a new culture of legality. However, it is necessary to educate and re-educate children through experiences and comparisons with worlds that are different from those learned during early ages, when they have no alternatives. This is why the removal of mafia children from their families results in pedagogical activity; more than anything else, this approach facilitates the teachings of Platonic Socrates: that the law teaches and improves the youth generation.

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# **An Examination of Cryptocurrency from Inception to Future State**

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**ABSTRACT:** Cryptocurrency, is it just a trend or is it the future of assets? It is a hot topic of conversation among individuals, as well as within companies. This paper will provide an overview of Cryptocurrency as well as discuss its inception, the current state, and the future outlook. As well, the paper will look at negative, neutral, and positive perceptions of Cryptocurrency from the perspective of individuals and organizations. The discussion will also look into Bitcoin, Ethereum, and Ripple, revealing how they differ from each other, even though all three are based on Blockchain Technology. Another section of the paper examines the comparison of Cryptocurrency to other assets. It will examine whether Cryptocurrency is similar to a monetary currency, such as the US Dollar, similar to common stock, such as shares in a public company or similar to money metals, such as Gold and Silver. These assets are all subject to market fluctuations, just like Cryptocurrency.

**KEYWORDS:** Cryptocurrency, Bitcoin, Ethereum, Ripple, Blockchain Technology, Satoshi Nakamoto

## **Introduction**

The focus of this paper will be a discussion of Cryptocurrency. It will provide an overview, as well as introduce Cryptocurrency. Details from its inception, the current state, and the future outlook will be presented. The paper will look at negative, neutral, and positive perceptions of Cryptocurrency from the perspective of different individuals and organizations. This paper adds to the current literature by providing an analysis of these perceptions.

Cryptocurrency is an important subject matter because as of March 2019, there are over 2100 Cryptocurrencies and the total value was greater than 140 billion US dollars (Coinmarketcap.com). Currently, Bitcoin, Ethereum and Ripple have the highest market value of all Cryptocurrencies. The discussion that follows covers these three Cryptocurrencies and includes the differences between them although all of them use Blockchain Technology.

Another section of the paper will compare Cryptocurrency to other types of assets. It will be compared to monetary currency, such as the US Dollar, money metals, such as Gold and Silver and common stock, such as shares in a public company.

## **Literature Review**

Cryptocurrency, what is it? Cryptocurrency is a medium of exchange, created and stored electronically in a Blockchain, using encryption techniques to control the creation of monetary units and to verify the transfer of funds. The Blockchain uses a decentralized ledger of all transactions across the peer-to-peer network. Using this technology, users can confirm transactions without the need for a central authority (Kramer 2019, 84). Cryptocurrency is a digital currency in which encryption techniques are used to regulate the generation of units of currency and to verify the transfer of funds, which operates independently of a central bank (Patrick Schueffel 2017, 14). Unlike financial institutions, Cryptocurrencies have no central monetary authority. No one controls Cryptocurrencies. The US Mint (controlled by the United States Government) prints US Dollars, and the Euro Mint (controlled by the European Central Bank) prints Euros.

How did Cryptocurrency start? In 2008, Satoshi Nakamoto proposed a combined digital asset and peer-to-peer payments system in a whitepaper (Satoshi Nakamoto 2008). On January 4, 2009, the first Bitcoin was mined. In May 2010, the purchase of two pizzas was made with 10,000 Bitcoins (Bitcoin 2010). The Blockchain Technology source code for mining Bitcoin was released on January 15, 2009. (Evans-Greenwood, Hillard, Harper, and Williams 2016, 3). Blockchain Technology is not Bitcoin; Bitcoin uses Blockchain Technology, as do other Cryptocurrencies. The current process for release of Cryptocurrency differs from the original release of Bitcoin in 2010. Currently, creators use

Initial Coin Offering (ICOs) to raise funds and to make individuals and organizations aware of their new Cryptocurrency. Cryptocurrency is big business. As of December 2017, the Initial Coin Offerings (ICOs) had surpassed a market value of close to a trillion US dollars (Liebau and Schueffel 2019, 3).

There were over 2100 Cryptocurrencies at the end of March 2019 (coinmarketcap.com). One has to ask why there is such a vast availability of Cryptocurrencies that have been created. What is the difference between them? This paper will examine the top three: Bitcoin, Ethereum, and Ripple. It will discuss their differences and the element that they have in common. Cryptocurrencies are similar to purchasing currency (comparable to converting US Dollars into another monetary currency); with Cryptocurrencies, a monetary currency is being exchanged for a Cryptocurrency.

The ability to predict the values of Bitcoin, Ethereum, Ripple or any other Cryptocurrency is like predicting the price of common stock on the stock market, or the value of Gold. Some predictions for Bitcoin have varied the value from a mere fifty dollars up to a whopping \$1,000,000 for each coin. (Falkvinge 2013) In five years, it will be intriguing to see how many Cryptocurrencies still exist. As well, it will be interesting to see the value of each coin and the total market value for all Cryptocurrencies. Some individuals believe Ethereum will overtake Bitcoin in market value.

It appears as though a market correction took place in January and February of 2018, based on the total market value of Cryptocurrencies. The total market value has been volatile. Cryptocurrencies total value as of November 27, 2017, was \$302,583,501,646. The total market value as of January 7, 2018, showed that it has increased to \$816,659,116,897 and on February 6, 2018, it fell to \$279,420,000,000. In March 2019, the total market value was worth more than 140 billion US dollars (coinmarketcap.com). This price volatility has heightened the discussion about the stability and obstacles of decentralized currencies. Believers claim that intelligent software to manage Cryptocurrencies will resolve these problems and that it is only a matter of time until stable, decentralized currency surfaces (Aizenman 2019).

Square Inc., a mobile payment processing organization, has fully embraced Cryptocurrency. Will other payment processing companies, such as PayPal, get involved with this current opportunity? Overstock.com is currently an e-commerce company that accepts Cryptocurrency as a method of payment for the products they sell. The CEO and Chairman of Overstock.com, Patrick Byrne, believes so strongly in Blockchain Technology that he is transforming the existing e-commerce company into a Blockchain Technology company. In January 2019, Overstock's tZERO officially launched a new security token trading platform (Nikhilesh De, 2019). This platform is geared to raise capital based funding on Blockchain Technology.

There are some advantages to Cryptocurrencies being utilized as a method of payment. It provides an opportunity for people and businesses in isolated regions to be able to conduct business internationally with ease. The use of Cryptocurrency to purchase items allows for better safety and consumer protection. As well, it assures that a payment can be made anonymously. Cash is currently the only other method of payment that provides this option.

### **Perceptions of Cryptocurrency**

Individuals and organizations are often skeptical of anything new. They look at the perceptions of leaders to determine their initial reaction. This is clearly the case with Cryptocurrency. In order to determine if Cryptocurrency is a trend or the future of assets, individuals and organizations are seeking the guidance of leaders by studying and analyzing their perceptions. This section will look some negative, neutral and positive perceptions of Cryptocurrency from different organizations and influential individuals.

Negative perceptions from two key leaders were shared in 2014. Warren Buffett, who is the Chairman and CEO of Berkshire Hathaway, showed his negativity when he commented, "Stay away from Bitcoin since it is a mirage" (Crippen, 2014). Warren Buffett did say he hopes Bitcoin will be a better way to transfer money; however, the process can be duplicated. He continued to say, "The idea that it has some huge intrinsic value is just a joke in my view" (Crippen, 2014). In January 2018, he had another interview with CNBC, and commented again about Cryptocurrencies and stated with confidence that they would come to a sour ending (Lovelace 2018).

Like Warren Buffett, Jamie Dimon, the Chairman, and CEO of JPMorgan Chase stated his negative comments on Bitcoin. Jamie Dimon mentioned, "Bitcoin is a terrible store of value." He continued his negative comments in November 2015, "Bitcoin will not survive." He did not stop there with his adverse remarks. In January 2016, he declared, "Bitcoin is going nowhere." In September 2017, he called Bitcoin a "fraud" and said Bitcoin would not end well. Although he is not a supporter of Bitcoin, it appears as though he is a fan of the technology behind it. In October 2018, Jamie Dimon mentioned that JPMorgan Chase would be launching a blockchain-based system due to the potential of Blockchain Technology. However, he stated that if individuals are foolish enough to buy Bitcoin, then they will reap what they sow (Cheng 2017). Jamie Dimon still has not endorsed Bitcoin, but he later stated that he regrets saying that Bitcoin was a fraud. He must have been aware that JPMorgan Chase was creating their unique Cryptocurrency called JPM Coin. Like Bitcoin, the JPM Coin is based on Blockchain Technology. This coin is only available for purchase by JPMorgan Chase clients. JPMorgan Chase clients will transfer dollars at the bank for these coins; after using the coins for payment on the blockchain, the bank disposes of the coins and gives clients back an equivalent number of dollars (Son 2019). One JPM Coin can be exchanged for one US Dollar, so its price should not rise or fall.

Not everyone feels as strongly about Cryptocurrency; some individuals and organizations have a more neutral perspective. The United States Federal Reserve Fed Chair, Janet Yellen, commented on Bitcoin stating that the US Federal Reserve has no intention nor the authority to regulate the currency. Bitcoin is not a US currency; it is a global currency. She pointed out how important it is to recognize that this is a payment innovation that is occurring outside of the banking industry (Janet Yellen, 2014). Janet Yellen's comments show that neither the US government nor any other government can regulate Bitcoin even though the price dropped dramatically in a short period. In 2014, Bitcoin fell from a high of \$1,151 to a low of \$418.78.

The Internal Revenue Service issued guidance on Cryptocurrency by publishing a notice (Notice 2014-21) that they are aware of virtual currencies and that they can be used to pay for goods and services, or held for investments. The Notice also states that it acts as a real currency and can be bought and exchanged for monetary currencies. The Notice explains that any sale or exchange of the virtual currency, to pay for goods or services, in a real-world economy transaction has tax consequences (I.R.S. 2014). The Notice further states that it does not have a legal tender status in any jurisdiction.

Christine Lagarde (2018, 7), the International Monetary Fund Managing Director, discussed digital currency at the Singapore Fintech Festival. In her statement she noted that digital currency is not yet accepted universally; however, it should be examined further. She felt it should be examined thoughtfully, carefully, and creatively. Christine Lagarde (2018, 7) continued to say that people need to embrace and be open to the changes in technology and adoption is needed.

Mark Cuban, owner of the Dallas Mavericks and "shark investor" on the series Shark Tank, has shifted his views from negative to positive about Bitcoin. In June 2017, he criticized Bitcoin and called it "a bubble"; however, he changed his mind in October 2018 by stating that Cryptocurrencies and Blockchain are the future (Partz 2018). In October 2018, Cuban also included a tip to invest up to 10% of individuals savings in Bitcoin or Ethereum in his video "Guide to Getting Rich," calling them "high-risk" assets (YouTube Video, 2018).

One of the strongest advocates of Cryptocurrency is Steve Wozniak, the co-founder of Apple Computers. On October 22, 2017, Steve Wozniak spoke at the Money20/20 conference. He shared his thoughts on Cryptocurrencies and Blockchain Technology. He asserted that Bitcoin is better than Gold and the US Dollar. His reasoning was the government could print more money, "There is a certain finite amount of Bitcoin that can ever exist." He also stated that Gold does not necessarily have a fixed supply; new ways can be found to mine it. Steve Wozniak also said, "Maybe there's a finite amount of gold in the world, but Bitcoin is even more mathematical and regulated, and nobody can change mathematics." He liked the introduction of smart contract platforms, like Ethereum. He also thought that this would be a similar scenario to when computers came out and would allow for

many new opportunities. He ended with "There is a lot more to this Cryptocurrency than just the Bitcoin" (Castor 2017).

Jack Dorsey is a computer programmer and Internet entrepreneur. He is also the co-founder and CEO of Twitter and Square. After reading Satoshi Nakamoto's whitepaper, he commented on it and shared that he thought it was beautiful and was one of the most original works in the past 20 years (Chang 2019). Jack Dorsey wants to be the leader of the crypto-payments revolution. He integrated Bitcoin with Square's Cash App. He believes that Cryptocurrency and artificial intelligence will have the most significant impact on Square (Chang 2019).

As a respected technology entrepreneur and investor, the CEO, and founder of SpaceX and Tesla, Elon Musk stated In February 2019 that Bitcoin's structure is brilliant and bypasses currency controls. He also noted that paper money is going away. As well, he thinks Cryptocurrency is a better system to transfer money than paper (Bambrough 2019). It is interesting to note that he is also the co-founder of PayPal.

The above perceptions of Cryptocurrency are from well-known individuals and organizations. Perceptions vary from person to person and organization to organization. The number of Cryptocurrencies has surpassed 2100 due to different preferences. Each Cryptocurrency has its specific area of specialization.

As of March 2019, Bitcoin is the largest Cryptocurrency based on market value. The second largest Cryptocurrency, in terms of market value, is Ethereum (also known as ether.) Ethereum is also built using Blockchain Technology. "Ethereum is a decentralized platform that runs smart contracts: applications that run exactly as programmed without any possibility of downtime, censorship, fraud or third-party interference" (Ethereum.org 2019). These smart contracts are similar to writing financial contracts with other users inside the system (Dannen 2017, 2) .

Another Cryptocurrency that has gained notoriety is Ripple. It is the third largest Cryptocurrency based on market value. Ripple uses an open-source technology, built on the principles of Blockchain with a growing set of validators. Ripple has no mining whatsoever. Instead, transactions are powered through a "centralized" Blockchain to make it more reliable and faster. (Ripple.com 2019) Ripple creates credit graphs that automate access to the issuance of cash and credit across participating network nodes (Swan, 2018, 24).

Bitcoin, Ethereum, and Ripple are competing to assist the world in ceasing to use cash as a method of payment. The desired outcome for Cryptocurrencies is to have more stability of value, as well as faster and less costly settlement fees. For these reasons, Cryptocurrency is gaining popularity as a method of payment. One can see that there are similarities between Cryptocurrency and monetary currency.

Cryptocurrency is similar to monetary currency because it is a medium of exchange for goods or services. Individuals and corporations such as Overstock.com accept Cryptocurrencies as a method of payment. In 2014, users started placing orders on Overstock.com's website and paying for their purchases with Bitcoin. (Chowdhry 2013).

Cryptocurrency also compares to a monetary currency because transactions are allowed 24 hours a day. Users of Bitcoins obtain a program called a Bitcoin wallet and one or more Bitcoin addresses. Bitcoins are stored in a Bitcoin wallet. Bitcoin wallets are needed for receiving and paying for goods and services using Bitcoins. The advocates of Bitcoin "Claim that it is the first truly global currency which does not discriminate its users based on citizenship or location, it is always running with no holidays, it is easy to secure with very low usage fees, it has no chargebacks, etc. On the other hand, its detractors claim that it is widely misused to buy illegal items and to launder large sums of money and that it is too easy to steal bitcoins from wallets via cyber attacks" (Ron & Shamir 2013, 8).

Monetary currency and Cryptocurrency both trade 24 hours a day, seven days a week. The difference with monetary currency trading is that the Forex trading hours are based on different regions and their time zones. For example, the Forex exchange in New York opens at 8:00 am and closes at 5:00 pm Eastern Time (forexmarkethours.com 2018). Cryptocurrency markets trade 24 hours a day, and neither the region nor the time zone matter. The majority of monetary currencies do not fluctuate as much as or as often as Cryptocurrencies.

Another payment method used in the past was Gold. Gold used to be the conventional currency. Listed below are a few similarities between money metals and Cryptocurrency. Bitcoin is similar to money metals in that there is a limited supply. Bitcoin is mined by using mathematics and has a maximum supply of 21 million coins. "The network is programmed to increase the money supply in a slowly increasing geometric series until the total number of bitcoins reaches an upper limit of about 21 million BTC's. Bitcoins are awarded to Bitcoin 'miners' for solving increasingly difficult proof-of-work problems which confirm transactions and prevent double spending" (Ron and Shamir 2013, 8). Like money metals, it has a cost to produce, including mining and labor. Cryptocurrencies, like money metals and monetary currencies, do not have a traditional corporate entity with financial statements while common stocks have entities that include these items.

In an interview conducted at the Future Investment Initiative in Riyadh, Saudi Arabia between Arjun Kharpal and Peter Thiel, who is the co-founder of PayPal, Thiel compared Bitcoin to Gold. He mentioned that people are "Underestimating Bitcoin and it has a great potential left" (Kharpal 2017). As the interview continued, Thiel stated that it is a reserve form of money like Gold and will store value. A similar opinion by Mark Cuban compares Gold and Cryptocurrencies and says both are the same thing by calling them "collectibles." Mark Cuban also addressed that both Gold and Bitcoin are based on supply and demand. However, he also stressed that Bitcoin is in a more favorable position due to its scarcity (Partz 2018).

This paper would not be complete if it failed to address the comparison between Cryptocurrency and common stock. There are several similarities between them, even though stocks have not, nor have they ever been, accepted as payment for purchasing goods or services.

Cryptocurrencies and common stocks are perceived to be similar because both can fluctuate in price. As with common stock, for public companies, each Cryptocurrency is different. The common stock is a security that represents ownership in a public company (known as owning shares). Common stocks can fluctuate on the various stock markets, such as the New York Stock Exchange (NYSE), NASDAQ or the Over the Counter Bulletin Boards (OTCBB). Cryptocurrencies trade on different exchanges such as Global Digital Asset Exchange (GDAX), and Gemini Trust Company, LLC (Gemini).

There are additional ways that Cryptocurrency can be compared to common stocks. Common stocks can split when the price per share increases dramatically. On August 1, 2017, Bitcoin split and that led to a Cryptocurrency called Bitcoin Cash. The Bitcoin split is also known as the Bitcoin Fork. (Smith, 2017). Another example of a fork occurs when a corporation spins out a portion of their company and creates another separate, independent company. They then give shareholders shares of this new company; this happened in September 1996 when AT&T spun out Lucent Technologies from its company and made it into a separate legal entity (Chavez 2000, 22).

Cryptocurrencies have initial coin offerings (ICOs) while common stocks have initial public offerings (IPOs). ICOs and IPOs are similar in that they each have an initial supply of common offerings. In December 2017, Chicago Mercantile Exchange (CME) Group and The Chicago Board Options Exchange (CBOE) have created a futures trading of Bitcoins. (Schulz, Riley, and Stoneman 2018, 7) As well, the NYSE has had different proposals to have Exchange-Traded Funds that follow Bitcoin (Brown 2019, 139-140).

## **Concluding Comments**

The paper discussed an overview of Cryptocurrency. It introduced Cryptocurrency and shared details from its inception, provided information on its current state, and forecasted the future outlook. The paper looked at negative, neutral, and positive perceptions of Cryptocurrency from the perspective of different individuals and organizations. It looked at Bitcoin, Ethereum, and Ripple, the three largest Cryptocurrencies in early 2019. Subsequently, the paper examined how Cryptocurrency has similar characteristics to the following assets: monetary currency, money metals, and common stock. Cryptocurrency can be comparable to any or all of these three assets. The paper also reviewed the total market value of all Cryptocurrency from November 2017 to March 2019. There is the potential for market manipulation based on perceptions offered by influential leaders. The price valuations of Cryptocurrencies

have seen volatility. Monetary currencies, money metals, and common stocks have had comparable speculative attacks.

Five years from now, popular opinion shows Cryptocurrency will still be around, and new ones will be created. Some of the existing Cryptocurrencies will merge, and others will disappear. Just as the stock markets rise and fall, so too will Cryptocurrencies. As with any investment opportunity, there needs to be awareness of all the risks and rewards. Caution needs to be used in order to avoid putting all assets in one basket.

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# Natural Disaster Mitigation at Ben Taub Hospital

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**ABSTRACT:** Ben Taub Hospital has garnered respect internationally as an exceptional acute care facility earning the Beacon Award for Excellence. Natural disasters impose substantial health burdens on affected populations and the capacity of healthcare facility capabilities. Natural disasters result in 68,000 deaths and affect 218,000,000 people worldwide annually. Ben Taub Hospital's preparedness level and disaster response efforts to Hurricane Harvey offer expertise resulting in best practices for healthcare organizations as they navigate the global disaster landscape.

**KEYWORDS:** Ben Taub, Emergency Management, Disaster Response, Hurricane Harvey

## Introduction

The hurricane season of 2017 was the most costly in U.S. history, with estimates of damage north of \$250 billion. Three hurricanes in particular: Harvey, which hit southwest Texas, Irma, which hit Florida, and Maria, which devastated Puerto Rico wrought massive damage. Each of these three storms also brought unique emergency preparedness and disaster recovery challenges for facility managers (Zimmerman 2018). Preparing hospitals and healthcare facilities for disasters is a national level priority (Toner 2017). In this case study, the author will focus on a Ben Taub hospital's level of planning, specifically for patient evacuations before Hurricane Harvey.

## Problem

The media claims that Ben Taub hospital treated storm victims initially, but their preparedness level for potential evacuation placed themselves and their patients at risk (Fink & Blinder 2017). McGlown, O'Connor, & Shewchuk (2017) make the claim that a basic problem in healthcare disaster planning is unfunded mandates. "The costs of planning are borne by specific institutions, but benefits are distributed widely across other organizations and the general public and may not be realized for years, or decades" (McGlown, O'Connor, & Shewchuk 2017). The hospital's leadership should ensure that current and incoming patients are properly cared for as well as informing the public authorities about planning efforts the hospital have put into action. It is important for hospital leadership to also inform public authorities what the facility cannot accomplish due to lack of funding or resources (McGlown, O'Connor, & Shewchuk 2017). Ben Taub Hospital, who is a part of the Texas Medical Center that has spent billions on preparing for natural disasters such as Hurricane Harvey, was portrayed to be ill-prepared to evacuate its patients in a timely manner by multiple media authorities. This case study attempts to find a better understanding of why this financially prepared institution did not evacuate before the major flooding from Hurricane Harvey that left 350 patients at risk.

Ben Taub Hospital is a part of the healthcare network known as the Texas Medical Center and with 440 beds; Ben Taub is the largest hospital in the System. Ben Taub serves as a teaching hospital, and is one of only two, Level I trauma centers in the area (Patient Safety Monitor Journal 2018). The issue in responding to Hurricane Harvey was the flooding. "At one point, we didn't know if we were going to be able to save the hospital," says the Ben Taub Hospital Facilities Director (Patient Safety Monitor Journal 2018). Although over the last few years, Ben Taub Hospital's Emergency Operations Plan has been updated a multitude of times after storms, the facility was yet inundated by floodwaters for more than five days during Harvey (Patient Safety Monitor Journal 2018).

## Background

Natural disasters are known to cause devastation to communities and their resources and an essential resource needed for any disaster is medical capability. The World Health Organization states that dozens of hospitals and health facilities each year are impacted by floods, hurricanes, cyclones,

earthquakes, and other natural hazards because safety measures were not integrated into their design, location or construction (World Health Organization 2009). Some media authorities claimed that Ben Taub Hospital's staff and patients had consequently become victims themselves of the effects caused by natural disasters and the lack of preparation. "Water rose in the basement of Ben Taub Hospital, a major county trauma center in the vast Texas Medical Center campus that had spent billions of dollars on flood protections after being devastated in Tropical Storm Allison in 2001" (Fink & Blinder 2017). Hospital officials announced they were evacuating, but hours later, a hospital spokesman said it had not yet begun because the hospital was surrounded by water and rescuers could not reach its 350 patients (Fink & Blinder 2017). The next afternoon, a call went out on local radio for a vendor to provide food for the Ben Taub hospital (Fink & Blinder 2017).

### **Description**

The response to Hurricane Harvey wreaked havoc over the state of Texas and created a medically vulnerable in regard to whether Ben Taub Hospital did enough to prepare for the disaster and its ability to move their patients out of Harvey's path. Water poured into Houston hospitals, ambulances were caught in roiling floodwaters, and medical transport helicopters were grounded by high winds. In this disaster, Houston's world-renowned healthcare infrastructure found itself struggling to treat storm victims while becoming a victim itself. "Officials announced an evacuation Sunday, but hours later, a hospital spokesman said it had not yet begun because the hospital was surrounded by water and rescuers could not reach its 350 patients" (Fink & Blinder 2017). After the extreme flooding brought on by Hurricane Katrina in 2005, dozens of hospital and nursing home patients died, and doctors awaiting rescue at one stranded and powerless hospital became so desperate, they intentionally hastened the deaths of their patients (Fink & Blinder 2017). The Texas Department of State Health Services (DSHS) reported that Hurricane Harvey had caused 82 deaths in Texas as of August 2017 with property damage that could total \$180 billion (Morris, Miner, Rodriguez, Stancil, Wiltz-Beckham & Chorba 2017). Houston alone received 45 inches of rain from August 24 to September 1, 2017, with flooding that forced 39,000 people from their homes and shelters (Morris, Miner, Rodriguez, Stancil, Wiltz-Beckham & Chorba 2017). Houston's metro area has a patient population of 6.6 million residents and Hurricane Harvey affected 13 million people across 5 states (Amadeo, 2018).

### **Hospital Evacuation Decision Guide**

When faced with a potential/evolving threat to patient and staff safety, hospital leadership must consider whether to evacuate. Per the U.S. Department of Health and Human Services Agency for Healthcare Research and Quality (2018), this decision has two possible outcomes: wait and reassess or start evacuation as the hospital may choose to wait and reassess if there is not a compelling reason to evacuate. The decision should be deferred and reconsidered at a later point, at which time the situation could significantly improve (i.e., no threat to patient/staff safety), significantly worsen (i.e., immediate threat to patient/staff safety), or not change significantly and require further careful assessment (Agency for Healthcare Research and Quality, 2018). Notable mentions are the Three Mile Island incident that took place in Pennsylvania, the Northridge earthquake that took place in California, and Hurricane Katrina that happened in Louisiana as all three of these disasters included decision teams that deferred the evacuation decision for a lengthy period of time (Agency for Healthcare Research and Quality, 2018). For starting the evacuation, the factors that should be considered in the pre-event evacuation decision are the same for post-event evacuations (Agency for Healthcare Research and Quality, 2018). "Actual post-event evacuations are often delayed as long as possible and are sometimes unavoidable due to loss of critical resources (Agency for Healthcare Research and Quality, 2018).

Table 1. Pre-Event Evacuation Considerations

Factor	Issues to Consider	Implications
<b>Event Characteristics</b>		
Arrival	<p>When is the event expected to "hit" the hospital? The metropolitan area?</p> <p>How variable is the time the event is expected to "hit"?</p>	<p>The amount of time until the event "hits," combined with the anticipated time to evacuate patients, determines how long an evacuation decision can be deferred.</p>
Magnitude	<p>What is the expected strength of the event?</p> <p>How likely is the event to gain or lose strength before it reaches the hospital? The metropolitan area?</p>	<p>The magnitude of the event forewarns the potential damage to a facility and utilities, which could cut off the supply of key resources, or otherwise limit the ability to shelter-in-place and care for patients.</p>
Area impacted	<p>How large is the geographic area to be affected by the event?</p> <p>How many vulnerable health care facilities are in this geographic area?</p>	<p>Competition for resources needed to evacuate patients (especially vehicles) increases when more facilities evacuate simultaneously.</p>
Duration	<p>How long is the event expected to last?</p> <p>How variable is the expected duration of the event?</p>	<p>The duration of the event will affect how long hospitals have to shelter-in-place or operate on backup, alternative, or less predictable sources of key resources.</p>
<b>Anticipated Effect of the Event on Key Resources Needed to Care for Patients</b>		
Water source	<p>Is the main city water supply in jeopardy? Already non-functional?</p> <p>Is there a backup water supply (well, nearby building with intact water mains)?</p> <p>If not, how soon will city water return?</p>	<p>Water loss of unknown duration (more than 1-2 days) is almost always cause for evacuation.</p>
Heat source	<p>Is the heat source in jeopardy (steam, water for boilers, etc.)? Already non-functional?</p> <p>Is there a backup (intact nearby building that still has</p>	<p>Loss of heat, especially during a northern winter, is almost always a cause for evacuation—often within 12 hours.</p>

	<p>power/heat)?</p> <p>If not, will the building be too cold for patient safety before adequate heat returns?</p>	
Electricity	<p>Is power in jeopardy? Just for the hospital or a wider area?</p> <p>Are backup generators functional? How long can they run without refueling? Is refueling possible (e.g., intake not under water)?</p> <p>Can some sections/wings be shut down to reduce fuel consumption and stretch fuel supplies?</p>	Loss of electricity endangers ventilated patients, among others, and may affect the sequence in which patients are evacuated.
Building structural integrity	<p>Is the building obviously/visibly unsafe? All of it or only portions (e.g., can people be consolidated in safer sections)?</p> <p>Was there a water tower on the roof, and is it intact?</p> <p>Is a building engineer needed to determine structural integrity/safety?</p>	<p>Earthquakes or explosions may cause rooftop water towers to fail, flooding the building.</p> <p>Safety/integrity may not be obvious to untrained occupants.</p>
<b>Anticipated Effect of the Event on the Surrounding Environment and Community That Could Affect an Evacuation Decision</b>		
Road conditions	<p>Are any major routes from the hospital to potential receiving care sites closed?</p> <p>Is traffic at gridlock on major routes from the hospital to potential receiving care sites?</p> <p>Are access routes to the hospital cut off?</p>	<p>There may be a limited window of opportunity to carry out a ground-based evacuation.</p> <p>Increased use of helicopters to evacuate patients may be required.</p> <p>Staff may not be able to get to the hospital to relieve existing staff or assist in the evacuation.</p>
Community/building security	<p>Have any nearby areas experienced increases in disorder or looting?</p> <p>Are local law enforcement agencies understaffed due to self-evacuations or significant additional responsibilities?</p> <p>Are additional private security officers available to secure the hospital?</p>	If patient and staff safety cannot be assured, evacuation will be necessary.

<p>Evacuation status of other nearby health care facilities</p>	<p>Are other hospitals or other health care facilities already evacuating or planning to evacuate, or have they decided to shelter-in-place?</p>	<p>If other hospitals or health care facilities are evacuating:</p> <p>the competition for ambulances, wheelchair vans, and buses may be substantially increased.</p> <p>the hospital may be asked to accept additional patients.</p> <p>patients may have to be relocated to facilities further away than anticipated.</p>
<p>State/county/local evacuation order</p>	<p>Have evacuation orders been issued in areas that are closer to the event?</p> <p>Have any public or private statements been issued regarding the possibility of an evacuation order?</p> <p>Have any other incidents occurred that increase the likelihood that an evacuation order will be issued?</p>	<p>You may have no choice but to evacuate.</p>
<p>Availability of local emergency response agencies</p>	<p>Are local emergency response agencies understaffed (or otherwise unavailable) due to self-evacuations or additional responsibilities?</p>	<p>Unavailability of local fire agencies increases the risk of sheltering-in-place.</p>

*Note.* Agency for Healthcare Research and Quality (2018).

Some of the possible paths are determining the following:

- a) There is an immediate threat to patients and ordering an immediate post-event evacuation.
- b) Monitoring a potential/evolving threat to patient safety during a wait-and-reassess period, and then ultimately not evacuating the hospital.
- c) Monitoring a potential/evolving threat to patient safety during a wait-and-reassess period, and then deciding to evacuate the hospital. (Agency for Healthcare Research and Quality, 2018)

The flowchart below describes the decision process for an Advanced Warning Event like Hurricane Harvey.

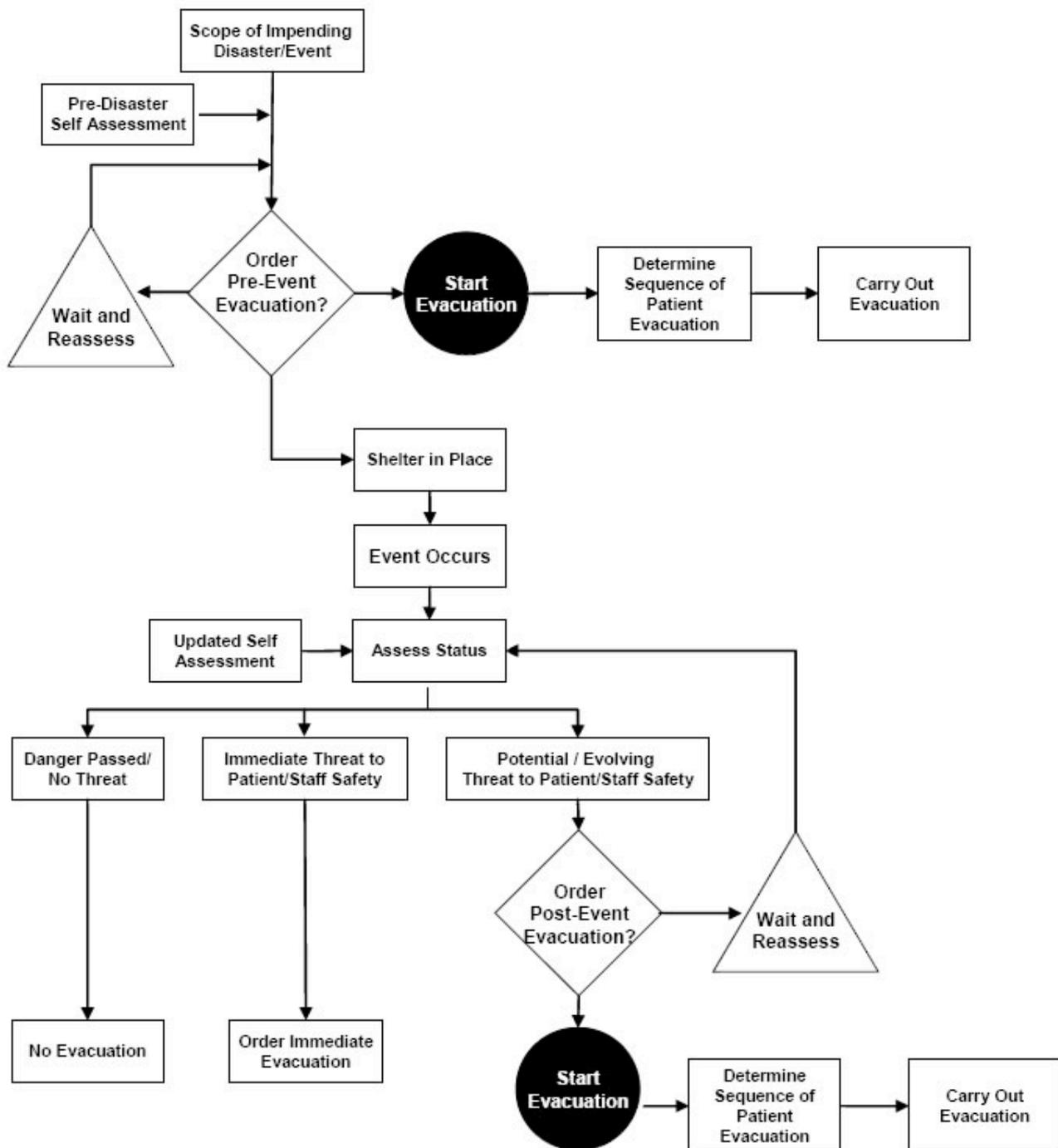


Figure 1. Flowchart for an Advanced Warning Event. Reprinted from Agency for Healthcare Research and Quality, 2018, Hospital Evacuation Decision Guide. Retrieved from: <https://www.ahrq.gov/research/shuttered/hospevac4.html>

### Healthcare Preparedness

Disasters are diverse events such as storms, droughts, wildfires, floods, earthquakes, chemical and industrial accidents, burns, mass shootings and bombings, and epidemics occur nearly every day in the United States, and the frequency is increasing (Toner 2017). Sickened or injured people require a well-prepared healthcare system and the number of people killed by disasters depends not only on the severity of the event itself but also on our ability to respond effectively and treat the ill or injured (Toner 2017). Whether it is a natural disaster like an earthquake and hurricane or a manmade disaster like terrorism, healthcare preparedness reduces risk (Toner 2017).

Risk = Threat × Vulnerability × Consequence; therefore, even if we are not successful in reducing the threat of disasters or our vulnerability to them, we can reduce our nation's risk by mitigating the consequences—by preparing health facilities to treat the sick (Toner 2017). Healthcare preparedness is focused on saving lives and reducing the long-term health consequences of disasters (Toner 2017).

### **Unexpected Issues**

Ben Taub leadership stated that as Harvey approached, everyone knew their jobs and that emergency systems were checked and supplies were bolstered, including sandbags (Patient Safety Monitor Journal, 2018). Ben Taub maintains a supply of sandbags as standard procedure, but extra pallets were brought in before the storm as a precaution. The hospital had a pipe burst in the basement of the facility, which caused contamination of the hospital's food supply, the closure of its pharmacy, and damaged medical supplies (Deam 2017). At that point, Ben Taub called to evacuate their nearly 350 patients; this captured national news, and it was noted that evacuations were slow (Deam 2017). There were three documented attempts of unsuccessful critical patient relocations due to rising waters around the Texas Medical Center. You can expect to encounter wind and rain, and you expect leaks, and that is exactly what we got,” says Ben Taub’s facility manager. He also stated that the facility got leaks from places he never thought possible (Zimmerman 2018). As the storm raged from Hurricane Harvey, a 6-inch pipe suffered a 30-foot gash, unleashing a rush of stormwater into the facility’s basement and if the team didn’t stop this, they were going to lose the hospital (Zimmerman 2018).

### **Preventing Evacuation**

The Agency for Healthcare Research and Quality (2018) assumes that hospitals will be in one of three conditions following the event: No threat to patient/staff safety, Immediate threat to patient/staff safety, or Potential/evolving threat to patient/staff safety. In regard of no threat to patient/staff safety, it is immediately clear that the hospital did not suffer any significant damage that would cause decision teams to order an evacuation (Agency for Healthcare Research and Quality, 2018). “This is the usual outcome for hospitals that experience minor earthquakes or that shelter-in-place throughout a hurricane and suffer little or no significant damage” (Agency for Healthcare Research and Quality, 2018). The immediate threat to patient/staff safety is at the other extreme in which the event clearly causes an immediate life-threatening risk to patients and staff, and the hospital must be rapidly evacuated (Agency for Healthcare Research and Quality, 2018). The potentially evolving threat to patient and staff safety is the situation that is between the two previous mentioned extremes when it is not immediately obvious whether or not the hospital should be evacuated (Agency for Healthcare Research and Quality, 2018). “Hurricane Katrina illustrated this situation; many decision teams chose to shelter-in-place, only to find that catastrophic damage from the subsequent flood necessitated evacuation” (Agency for Healthcare Research and Quality, 2018). A careful assessment of the risks posed to the hospital's water, sewer, electricity, and heat supply, as well as the overall building integrity is required in order to decide whether an evacuation should be ordered, or if the decision should be deferred and the situation reassessed (Agency for Healthcare Research and Quality, 2018). Ben Taub was faced with a similar situation as Hurricane Harvey was rapidly approaching.

Ben Taub’s Facility Manager stated that the mood on his team was darkening rapidly as flooding began from a 6-inch pipe burst, but he lined up his team, gave them a pep talk, and the ideas started flowing (Zimmerman 2018). He called Houston’s non-emergency 311 number and was amazed when he got a call back from a city official 15 minutes later offering to help with some pumps (Zimmerman 2018). The Ben Taub Facilities Team was in the process of making canals with sandbags down the hallways to direct water to drains and as soon as the pumps started, the staff could tell that the water was receding (Zimmerman 2018). The hospital wasn’t out of danger yet as Ben Taub is located near a bayou and the pressure from the overflowing bayou on storm sewers caused another pipe in a different part of the facility to blow a cap (Zimmerman 2018). Shortly after the second burst, there were nearly six feet of water flooding into a mechanical room, coming dangerously close to swamping some vital electrical and telecommunications equipment; had this equipment been drenched, the hospital would have had to been evacuated (Zimmerman 2018). The

Ben Taub Facilities Team quickly found a 2x6 board and used that as a temporary cap while one of the team members literally went swimming to find the blown-off cap (Zimmerman 2018). “Meanwhile, as they re-secured the pipe cap, other members of the team grabbed an electric concrete drill – fully aware of the hazard of using electricity around flooding water – to drill holes in a cinder block wall and “vent” the water” (Zimmerman 2018). The facility manager stated, “Our guys were all standing in a line, holding up the extension cord and we were just hoping no one dropped their part of the cord” (Zimmerman 2018). The facilities staff stopped the flooding before major equipment damage occurred. Their efforts were successful and soon the water started to recede and could be controlled more effectively; saving the sensitive electrical and telecommunications equipment and the possibility of evacuating the hospital was avoided (Zimmerman 2018).

### **Recovery**

With the major issues under control, Ben Taub Facility Manager began thinking about recovery and noted that constant contact with disaster recovery and plumbing contractors was essential (Zimmerman, 2018). Having those two companies ready to get there as soon as the storm ended was a key takeaway for any facility hoping for business continuity (Zimmerman 2018). The facilities team used infrared moisture meters to identify leaks and other areas affected as well as began replacing drywall and sheetrock immediately and it took about three weeks for full recovery meaning that every patient room was back online and operations were back to fully normal” (Zimmerman 2018). The chief operating officer at Harris Health System in Houston, Dr. Ericka Brown, requested consideration in repositioning emergency food and medical items closer to the hospital and to review the physical location of critical equipment and systems to ensure their continued operation in a natural disaster (Patient Safety Monitor Journal, 2018). She also noted the importance of making sure you take care of your staff after the storm (Patient Safety Monitor Journal, 2018). There were more than 400 employees from Harris Health System that had homes significantly damaged or destroyed in the flood caused by Harvey. Ben Taub Leadership, understanding that so many workers were impacted by the floodwaters, decided that response and recovery after the storm meant helping staff members as well (Patient Safety Monitor Journal, 2018).

### **Lessons Learned**

Even as hurricane veterans, the Ben Taub Facilities Team learned some valuable lessons from this storm and they recommended having tools on hand to be able to direct water out of the building (Zimmerman, 2018). The facility manager recommended having a more robust staff with more trades on hand for the ride-out team, including plumbers and electricians to manage things like generators and transfer switches (Zimmerman, 2018). Ben Taub Leadership recognized awareness as a significant lesson learned as staff can be heroes and victims; therefore, the need of managing staff expectations for a five-day ride experience is critical to mitigating burnout and fatigue during and after the disaster (Patient Safety Monitor Journal, 2018). “One gap in the coordination of care surfaced with retail pharmacies, with many unable to maintain operations during and following the storm. A possible solution may include integrating continuity of operation planning and personnel resourcing between hospital facilities and pharmacy locations” (Phillips, Schwartz, McKeon & Boom, 2017).

### **Recommended Actions**

The Harris County Office of Homeland Security & Emergency Management released its Hurricane Harvey After Action Report on 1 June 2018. This document reviews the county’s overall response efforts and was developed with the input and collaboration of numerous local, state, federal, private and nonprofits organizations working at the Emergency Operations Center during the Harvey activation (Harris County Emergency Management, 2018). The Hurricane Harvey after action report provides an analysis of areas for improvement noting that some items can be fixed quickly, while others will require a major long-term investment of time and money (Harris County Emergency Management, 2018). The report identifies some primary areas for improvement that include:

- Developing a countywide Continuity of Operations Plan
- Training nontraditional support personnel who may be involved in disaster response operations
- Transitioning from response to recovery operations in the Emergency Operations Center
- Working with the city of Houston to address the current Donations Management strategy. (Harris County Emergency Management, 2018)

## Conclusion

Hurricane Harvey is the most destructive storm in U.S. history, causing an estimated \$125 billion of damage. The storm dumped about 50 inches of rain on the Houston area in seven days, more than the average annual rainfall for most U.S. cities. As a result, Houston experienced some of the worst urban flooding since New Orleans after Hurricane Katrina in 2005 (Zimmerman 2018). Nevertheless, despite major improvements to ensure continuity of operations, challenges remained during Harvey. “One challenge was a lack of advanced planning for dialysis patients, whose usual facilities became inoperable during and immediately following the storm” (Phillips, Schwartz, McKeon & Boom 2017). Another challenge that was noted was in regard to social media. This form of communication was generally helpful such as postings about the availability of facilities; at times it rapidly propagated misinformation (Phillips, Schwartz, McKeon & Boom 2017). “For example, social media reported that the Houston Methodist Hospital in the TMC had flooded, when in fact it remained operational throughout the storm; conversely, social media was utilized quickly to correct the misinformation.” (Phillips, Schwartz, McKeon & Boom 2017). In pursuing aspirations of becoming a high-reliability organization demands that health care facilities continue to learn from failures and embody a commitment to resiliency. Preparation, planning, and response of the Ben Taub Hospital and the subsequent outcome of Harvey are expressions of this commitment.

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# Mediation as an Alternative Solution to the Felony of Battery and Other Violences

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**ABSTRACT:** In most cases, the interest in starting the mediation procedure is given precisely by the existing harm, in cases where the perpetrator provides the injured party with the necessary money to cover the damage or to cover the moral damage suffered by the victim. The lack of interest in mediating the conflict can come from the absence of injury, which is already recovered either during the investigation or at a different time before the mediation. In this situation, where there is no harm to be recovered, mediation is harder to accomplish, but not impossible and material damage can be claimed and offered for the purpose of causing moral damage, thus reaching a settlement. At the same time, the interest in mediation comes mostly from the defendant, from his desire not to go to court, or from the desire to stop the criminal proceedings. According to Art. 23 of the New Criminal Procedure Code of Romania, mediation may intervene "in the criminal proceedings on civil claims, the defendant, the injured party and the civilly liable party, are able to enter into a transaction or mediation agreement, under the conditions laid down by law."

**KEYWORDS:** mediation, felony of battery and other violences, procedure, agreement

## Introduction

This introduction aims to outline a credible idea about the history and the circumstances of the emergence of the mediation concept. Mediation has always played an important role in the smooth running of both the legal process, in the sense that we know today, and in the good course and possible misunderstandings of the day-to-day disputes, starting with the days of ancient Greece and Rome. Although historians report the emergence of mediation during Phoenician trade, there are scientific papers that refer to a form of mediation since prehistoric times. In the prehistoric tribes, when two or more members of the tribe had a dispute over food or weapons, the tribe leader adopted a peaceful resolution approach of the conflict, the reason being a simple one: one of the parties in the conflict was dying, and one man down would be an additional danger to the tribe (Chirică and Boghian 2003).

In the Middle Ages, some countries banned the practice of mediation, while others permitted mediation only by central authorities. On the other hand, certain African tribes, as well as the Indian villages in America and Canada, felt that the wisest of the villagers was the most capable to mediate and resolve a conflict, the elderly being generally considered the wisest men of the village.

We note that mediation is a means of solving conflicts that date back long before the emergence of writing, and it may go even further in stating that mediation, in a primary form, of course, dates before man could even become aware of and admit to its existence, being considered today, the embryo of today's diplomacy.

The development of mediation as described above to its present form was determined by the countries' political and demographic development, the king or the wise men having ceased in being able to listen and also address each dispute or litigation that was brought to their attention. To facilitate this, once with the Code of Hammurabi and the accession to the Magna Carta, the existence of a clear legislation became extremely necessary, thus also official positions being established with the role of settling these disputes. In the view of the great *Confucius* (Confucius 1943), most conflicts come from a moral constraint, not a legal one. However, in the view of the great Confucius, most conflicts come from a moral constraint, not a legal one. However, in the Confucianism view, reaching the stage of a trial was considered to be only a concern for one's own interest at the expense of a general interest pertaining to society.

The coercive force was also rejected by the Buddhists, according to whom the settlement of misunderstandings and disputes should be made through compromise. Even today, although the

word of the law can not be questioned, China has a strong focus on conciliation, mediation and self-determination as ways of settling disputes.

Another country where the culture of mediation has been and is still highly developed is Japan. In Japan, there are a relatively small number of lawyers in relation to the country's population, and this is due to the country's longstanding tradition of mediation. In today's Japan, mediation is seen as an integrated part of business culture, where "Shokai-sha" and "Chukai-sha" have as their primary objective to facilitate these types of relationships (Hodgson, Sano, Graham 2008, 38).

In some African countries, the tradition of the "head master" has been preserved so far that any person may request an informal meeting of his community, a district's or village's residents, for a discussion in order to settle such a dispute. In this case, the role of the mediator is occupied by the most respected member of the respective community.

The Islamic world does not fall under either, with a strong and long-standing tradition of reconciliation and mediation, these being preferred dispute settlement approaches. This is ensured by the so-called "quadis". These "quadis" specialize in preserving or establishing social harmony by reaching a solution agreed by both parties involved in a possible dispute.

The West also has a long history of mediation. Ever since the Middle Ages churches were used by refugees as a place of refuge, and clergy were often considered the "connecting bridge" between fugitives and authorities basically militating for a non-invasive peaceful solution tolerated by both sides.

Returning to our days, the reputation of mediation arose once with the international treaties. Organizations such as the League of Nations or the United Nations have introduced provisions on mediation in their norms, thus, emerging with the ratification of these treaties by several states, which we now regard as the International Law.

A form as near as possible to nowadays was emerged in the United States in the 1970s, named ADR - Alternative Dispute Resolution, as a result of the increasing losses of money and human resources in the litigation process. The origins of A.D.R originated in the "Harvard Negotiation Project" (Ury and Fischer 1981, 93), made known to the general public in 1981. It was based on four essential principles, these being presented as success rules by its initiators. The first principle refers to separating people from the problem. This principle assumes that, after knowing the problem as a whole, the mediator proceeds to detach the parties from each other, the authors of the work William Ury and Roger Fischer considering that, after consuming the triggering act, the real problem lies in the person with whom an individual is in dispute.

A second principle refers to identifying the interests and not the positions of the parties. In particular, the mediator must fully understand the interests of the parties, whether they are obvious or not. The third principle refers to the mediator's identification of options for the reciprocal winnings of the parties, the aim being to have both sides' in a win-win situation, the last principle referring to the objective criteria of mediation.

This study was of such high accuracy and of so resounding success that in 1998, mediation was officially recognized in the United States through the "Alternative Dispute Resolution Law" which officially introduced for the first time a neutral third party, someone other than the judge, for dispute settlement.

In conclusion, we can admit that mediation has always existed for people, its role being similar to today's.

### **Criminal reconciliation and the mediation agreement in criminal matters. Observations and specific conditions**

In order to better understand mediation in criminal matters, we will discuss about both the conditions of reconciliation and the terms of the mediation agreement in the following, thus observing the difference between the two institutions both in terms of the validity conditions in the criminal proceedings, and in terms of incidents in criminal proceedings.

According to art. 16 of the Criminal Procedure Code, the criminal action cannot be put into motion, and if it has been put into motion, it can no longer be exercised, if the parties have reconciled or a mediation agreement was concluded according to the law. Thus, both reconciliation and mediation are two distinct institutions that lead to the termination of the criminal trial. According to the same article, reconciliation and mediation are different institutions with different legal regimes and laws, their similarity being the effect they have in the criminal proceedings, namely the termination of the criminal proceedings.

Mediation in criminal cases is considered an attempt of restorative justice, in particular with the aim of repairing the crime of an offense to the victim or community receiving “what is proper” in accordance with good moral practice (Dănilăuț 2014, 156-157).

The mediation agreement, considered by the doctrine as the formal outcome of mediation, plays an extremely important role in criminal proceedings, mediators' practice and in the judicial practice, generating at a certain moment pertinent solutions that will support and simplify the work of mediators, lawyers and magistrates (Constantinescu and Buzatu 2014, 397).

### **The Reconciliation**

Well-known to law practitioners, reconciliation is an institution that was also applicable in the former criminal legislation. Under the new legislation, reconciliation must meet certain special conditions to be valid. For example, reconciliation cannot intervene in the case of the offenses on which *ex-officio* prosecution operates; it removes the criminal liability and stops the civil action only if the reconciliation is total, unconditional, absolute, express and direct between the suspect and the injured person. The High Court of Cassation and Justice stipulates in its decision no. 27/2006 that: “*Termination of the criminal inquiry for offenses for which the conciliation of the parties removes the criminal liability may be ordered by the court only when it directly observes the consent between the defendant and the injured person to fully, unconditionally and definitively settle, expressly presented during the hearing of these parties, personally or by specially mandated persons, or by authentic documents*” (The Decision no. 27/2006 of the High Court of Cassation and Justice).

Another essential condition of the reconciliation is that it only takes effect if it is made until the court's appeal has been read. In the case of individuals without legal competence, the reconciliation is done exclusively by their legal representatives, and in the case of persons with limited capacity, only with the consent of the persons expressly provided by the law. Legal persons can also benefit from the prerogatives of reconciliation, which can bring about reconciliation through a legal or conventional representative.

Regarding the unconstitutionality of the reconciliation, on the possibility of concluding it until the court's appeal has been read, my opinion is that as long as the parties in the cases, where reconciliation is allowed, have the possibility of mediation, free and unlimited access to justice, and equality before the law is covered because the parties still have the option of removing the criminal responsibility through a mediation agreement, what is achievable for the offenses where reconciliation of the parties is also allowed, the effects of the mediation agreement being exactly the same as those of reconciliation: Termination of the criminal inquiry. Otherwise, until the court has been notified, the involved parties have both the right of reconciliation and the right to conclude a mediation agreement. Upon notification of the court, the possibility of reconciliation disappears, leaving only the possibility of mediation, therefore only through the intermediary of a person authorized as a mediator.

In this respect, there is a presumption that the legislator wanted to establish an authorized procedure that would protect the injured parties during the trial, precisely at the moments when the tensions between the defendant and the injured person are increasing. From a psychological point of view, it is very well known that defendants, during the proceedings before the court, exert enormous pressure on injured persons to achieve reconciliation. It is precisely for this reason that I consider that criminal mediation has been established as the only option after the court has been notified, namely that the negotiation of an amicable solution to the criminal conflict takes place in an organized and authorized, neutral and independent framework, without threats or hindering

factors, without the pressure exerted by the defendants on the victims, in an atmosphere that ensures a friendly, sustainable and fully satisfactory solution for each of the parties involved in the criminal conflict.

### ***Criminal mediation***

As previously mentioned, the mediation agreement is the cause that leads to the termination of the criminal inquiry, according to art. 16 N.C.P.P., totally different from reconciliation. The difference to the institution of reconciliation arises from the fact that the mediation agreement comes as a result of an extensive mediation process, which is carried out according to Law 192/2006 - Mediation Law, based on clearly stipulated mediation procedures.

By reading the Mediation Law no. 192/2006, we identify the procedural conditions of mediation, as follows:

- a. Criminal mediation may only be carried out by a mediator authorized under the same law;
- b. Criminal mediation can only be conducted in the context of a professional procedure that begins by requesting mediation through the mediation preparation contract, sending an invitation to mediation, discussing mediation with all persons involved in the criminal conflict, signing the mediation contract, drawing up the minutes of closure of the mediation and, subsequently, in the event of an agreement, the mediation agreement.
- c. Criminal mediation can only be carried out with due respect for the rights of the persons involved. The right to legal assistance or the assistance of an interpreter is guaranteed by law, and where it is mandatory, but has not been called into question, and the mediation took place without the presence of the interpreter or legal assistance, it automatically cancels the mediation act and implicitly all mediation proceedings performed by the mediator.
- d. Following mediation, the mediator is required to transmit the minutes of mediation and the mediation agreement to the judicial body where the case is located.

The mediation agreement is in fact reaching a private understanding between the defendant / suspect and the injured person. With the help of Law no. 255/19.07.2013 on the implementation of Law no. 135/2010 on the Code of Criminal Procedure and on amending and supplementing those normative acts containing criminal procedural provisions, it can be observed that the amendments made to the Mediation Law in the criminal provisions chapter, the lawmaker has always replaced the word “*reconciliation*” with the word “*settlement*” as an amicable solution to the conflict. Thus, according to art. 69 of the Mediation Law, “*Criminal mediation is closed by resolving the conflict and concluding a settlement*” (Art. 69 from the Law 192/2006 on the mediation and organization of the mediator profession, published in the Official Gazette, Part I, no. 441 of 21 May 2006, as subsequently amended and supplemented). Also, art. 69, par. 2, this time, states that “*if the parties to the conflict have not reached a settlement*”. Article 70, paragraph 4, “*there is no settlement reached*”. We see thus that the legislature put great emphasis on taking meaning of the word “*settlement*”.

In this respect, we note that the purpose of mediation is not a reconciliation between the parties, and the mediation agreement is not a reconciliation in the criminal sense but a private amicable settlement to a particular conflict. The mediator has the position of a facilitator of the settlement between the parties but does not play the role of peace-maker, after the mediation has ended, the parties are not obliged to recognize a “reconciliation” in the literal sense. Settlements can take various forms, may be conditional, may have various stipulations in content, may contain any kind of understanding between the parties if the understanding is within the legal and moral framework. In other words, the mediation agreement is a private contract between persons in the criminal conflict, a contract subject to the rules of civil contracts.

Recognized as a civil contract between the parties, the mediation contract has the effect of terminating the criminal proceedings, but is not subject to any condition of validity (N.C.P.P, Art. 159) as opposed to reconciliation, as it is conditioned by the New Criminal Procedure Code.

### ***Mediation Agreement***

The Mediation Agreement is considered to be the expression of the settlement of the issues that are the subject of the mediation process, explicitly transposed and outlined for both parties. Regarding the Mediation Agreement from a legal point of view, this is a contract between the parties, which has value when the mediation procedure is followed.

In the case of mediation, there is a bilateral, consensual and sinalagmatic contract, meaning that it is concluded between two or more parties, explicitly giving their consent to it and containing mutual obligations.

In terms of the legal effect that this type of agreement has, it being a private agreement, which shall take effect at the time of its signature, its effects are “*ad probationem*,” not “*ad validitatem*.” It should be noted that summarizing the terms of the agreement in the presence of all the participants as well as its signing by each of them is considered to be extremely necessary.

During a civil litigation in court, the mediation agreement reached during this procedure may be subject to review by the court in the council chamber by a request for judicial observance of the understanding between the parties therein.

In the field of family law, the mediation agreement concerning the decision to end the marriage, the management of the spouses' property and its liquidation, establishing the minor's domicile, where applicable, as well as other details regarding the visiting program, establishing the maintenance obligation of the minor concerned, may intervene at any time, even if the court has already delivered a judgement in regards to the matter.

In the field of criminal law, the mediation agreement carries several traits. According to art. 318 of the Criminal Procedure Code, the mediation agreement concluded between the parties leads to the termination of the criminal proceedings for certain offenses, which are followed after the victim's prior complaint. If the trial is in the criminal investigation phase, after the criminal case has been opened, the mediation agreement concluded with the mediator will be filed with the case prosecutor, who can decide the waiver of the criminal prosecution.

At the same time, during the criminal trial, if the mediation agreement is reached during this stage, it will be a useful tool for the judge who can order the waiver of the punishment or its postponement, the conditional suspension of the execution of the punishment or may retain in the defendant's favor mitigating circumstances. With respect to the civil claims, the civil party, the defendant and the civilly liable party may conclude a transaction or a mediation agreement under the conditions laid down by the legislation in force. In this respect, the defendant may admit, with the consent of the civilly responsible party, all or part of the claims that the civil party has. In the event of the defendant's acknowledgment of the civil claims, the court will oblige compensation to the extent of recognition.

### **The Mediation Procedure**

#### ***Opening of the Procedure***

In the case of the common assault offense, as presented in the Criminal Code, mediation can intervene at any time between the two parties. For this reason, the mere manifestation of will on behalf of all the parties involved is a sufficient condition for making the first step towards amicable settlement, alternative to the criminal trial. In this regard, the parties involved must go to a mediation office and undertake a mediation agreement with the respective mediation office.

The mediator must be impartial, and he must be chosen in mutual agreement by the parties. Any doubt about the impartiality of the mediator can be removed by randomly choosing a mediator from the mediators' official table. It should be noted that the mediation process is an alternative solution to the criminal trial, eliminating any further possibility to follow the natural course of a criminal trial.

### ***Conducting the Mediation***

Here begins the hardest part for a mediator. He must first listen to the versions of the parties. A first appearance places the two parties at the negotiating table, simultaneously, the mediator listening to the parties' statements. This stage is of a very high importance, the mediator being able to pin-point an image of the parties' personalities, frustrations and their needs in relation to the cause subject to mediation. This is not to be neglected, given that the mediator can prepare, based on this step, a technique of approaching the parties in the individual discussion phase.

At the same time, this stage is also the stage where strong contradictions between the aggressor and the victim arise, the mediator having to pose a strong ability to control the possible escalation of the discussion, even postponing the discussion or canceling the meeting.

### ***Individual Discussions***

The next stage of the mediation process is to conduct a private discussion with each of the parties. Each of the parties involved informs the mediator of their requirements for the conclusion of the mediation agreement and the wishes they have towards the other party. Please note that these requirements must be rational, relevant and achievable in relation to the other parties. The mediator has the duty to make known to the parties, during the individual discussions, the possibility or, as the case may be, the impossibility of their requirements being achieved by the other party, but only in the light of their reasonableness in relation to normal. Once the stage of the individual discussions has been completed, the mediator has to inform the parties of the requirements they have, discussing on this occasion these requirements with each of the parties.

### ***The Negotiation***

The next step is to negotiate the conditions of the parties involved. They can make references to the quantum of requirements, when there are money-implied requirements, or to certain actions or inactions that each of them should obey. At this point, the mediator must take into account the financial power that the parties have, the right to enjoy reasonable conditions of survival or other fundamental rights that they have, the mediator being the guarantor of the fact that none of the rights and freedoms of the parties will not be violated with the signing of the Mediation Agreement. Any mediation agreement that disregards the rights, interests or freedoms of individuals directly involved in the conflict entails the absolute nullity of the agreement. According to Art. 52, par. 2 (Art. 52, alin. 2 from the Law 192/2006 on the mediation and organization of the mediator profession, published in the Official Gazette, Part I, no. 441 of 21 May 2006, as subsequently amended and supplemented), the understanding of the parties involved should not include provisions that bring or might be prejudicial to law and order.

There are cases where neither party agrees with the requirements of the other party, in which case the mediator must resume the individual discussion procedure in order to find with them a solution suitable for concluding this type of agreement.

### ***Closing the Agreement***

Once you determine the terms and conditions of the agreement, the mediator will read all these conditions in the presence of the parties, ensuring that they fully understand what they mean and, at the same time, their imperative nature. Once the parties have been informed of the above, they must sign each of them by hand, that moment being considered as the moment from which the mediation agreement takes effect. The lawyers of the parties may participate in any of the following stages only in the interest of the client they assist.

The purpose of the mediation process must not always be marked by the agreement between the parties, either wholly or in part. It may be terminated either by denunciation of mediation by either party or both, or by the observance of mediation failure, made by the mediator, provided the latter finds that no agreement can be reached between the parties. Coming back to the agreement reached between the parties case, it should be noted that mediation is aimed at finding a viable and valid solution by the parties with satisfactory results for both sides.

Neither party may be compelled or forced to agree a solution imposed in any circumstances by the mediator, by a third party or by any other participant in the mediation process. Any solution that results in the Mediation Agreement must express absolutely and completely the exclusive will of the parties, which must be explicit, contain sufficient data for the obligations assumed to produce the legal effects desired by the parties involved.

Also, all parties involved in the conflict must be present in the mediation process, with the mediator being obliged to ask the parties involved who are exactly the persons involved in the mediation case and to invite them all to mediation, and he has to inform the parties which calls for mediation that the mediation process will only take place in the presence of all the people involved. This is due to the impartiality of the mediator in relation to the cause, the presence of all persons being necessary for knowing all the data of the conflict. It should be noted that the mediator is not responsible if the parties were in bad faith and did not notify him of the involvement of all persons in the conflict that is the object of the mediation cause who have or could have rights and obligations related to that conflict.

The mediation agreement is valid and also viable and takes effect from the moment of contracting between the parties "*solo consensusum*." Its drafting by the mediator is optional, the parties having the power of decision if the agreement is written by the mediator, or is not written at all. If the mediation takes place during a judicial process, the mediation agreement will be submitted to the court, which has the duty to decide, at the request of the parties, in accordance with the provisions of art. 438-441 of Law 134/2010.

### **The Felony of Battery and Other Violences – Art. 193 Criminal Code**

As provided in Chapter II - Offenses against body or health integrity, Art. 193 alin. 1 defines the offense of battery or other violences as "Hitting or any acts of violence causing physical suffering". The punishment for this crime is imprisonment from 3 months to 2 years or a fine. Alin. 2 mentions the situation in which the punishment's limits are increased, from 6 months to 5 years or a fine if there have been committed "Deeds that cause traumatic injuries or affect the health of a person, the severity of which is assessed by days of medical care of up to 90 days."

#### ***Analysis on the the Felony of Battery and Other Violences***

The special legal object of this felony is represented by those social relations regarding the protection of the body and health integrity of every person, as a fundamental right provided by the Constitution. As the material object of the offense, we find the body of the victim against whom the offense was directed, which of course is seen in its physical and mental integrity.

The active subject can be considered to be any natural person who fulfills all the legal requirements for criminal liability, and the passive subject, in the case of the simple form of the offense may be any natural person. In the case of a qualified passive subject, it must be a family member to fulfill that quality.

The material element of the offense is realized by strike or any other act of violence that causes physical suffering, by the term of striking meaning the act of aggression consisting in the mechanical action of touching, compressing or sudden and violent striking of the contact surface by the perpetrator body or an object, whatever it may be the case. The immediate consequence is the provocation of physical suffering to the victim, this suffering being presumed in the case of the victim and having to be proved in the case of other types of violence.

The attempt, though possible, is not incriminated, since it does not meet the condition of the material element of the offense, the law punishing only the consumed form of the felony, a form that occurs only when the victim is hit or when, through an act of violence he suffers physical suffering. The continued form of the offense occurs when the perpetrator applies strikes or other forms of violence to a person, under different circumstances but on the basis of the same criminal resolution. Criminal participation is possible in the case of this crime in all three forms provided by law: co-author, instigation or complicity.

### ***Mediation in the Event of Battery or Other Violences***

In most cases, the interest in initiating the mediation procedure is offered precisely by the existing damage, in cases where the perpetrator provides the injured party with the necessary money to cover the damage or to cover the moral damage suffered by the victim. The lack of interest in mediating the conflict may come from the absence of damage, which is already recovered either during the investigation or at a different time before the mediation. In this situation, where there is no harm to be recovered, mediation is harder to accomplish, but not impossible, and material damage can be claimed and offered for the purpose of causing moral damage, thus reaching a settlement. At the same time, the interest in mediation comes mostly from the defendant, from his desire not to go to court, or from the desire to stop the criminal proceedings.

According to Art. 23 of the New Code of Criminal Procedure, mediation may intervene "in the criminal proceedings on civil claims, the defendant, the injured party and the civilly liable party being able to enter into a transaction or mediation agreement, under the conditions stipulated by the law."

In conclusion, we can admit that mediation in criminal matters and, implicitly, in the case of offenses of battery and other violences is a necessity for the defendant, who can redeem the deed without judicial implications, being beneficial to both parties involved in the conflict.

### **Conclusions**

The necessity of an alternative solution of the criminal lawsuits in the Romanian courts was undoubtedly given to the first level of jurisdiction by the need for a regulation that would align Romania with the other European states. Aligning national and European legislation is a first important step towards a European Romania.

In my opinion, Romania is in a continuous phase of transformation, a phase that began with the fall of the Communist regime in 1989. The efforts made by the legislator over the 30 years of democracy materialized in small but secure steps, suggesting a legally promising trajectory.

In the field of criminal mediation, another issue that I would like to mention, the need for regulation in this regard was also due to the over-agglomeration of the detention facilities, which was the solution that involved the least material investment and which, in my opinion, will steadily cover most of the criminal litigation and not only, providing, with this coverage, extremely useful precedent jurisprudence for practitioners.

We can admit, therefore, that mediation is a successful tool, currently in the initial stages, but promising to evolve and allow for an amicable settlement of possible conflicts.

Meanwhile, mediation also plays an important role in educating the Romanians' civic spirit, giving them the opportunity to polish their spirit and civic instinct, leading to the evolution of society at a higher rank.

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# Meditative Cognitive Therapies: A Literature Review

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**ABSTRACT:** Yoga has existed for centuries in the East, beginning in India, as a religious practice of meditation and mindfulness. In the West, however, yoga is more often a popular exercise-based practice with little to no emphasis on its religious or spiritual foundations. Curiously, the mindfulness aspect of yoga has become increasingly popular within the United States, particularly as a method for therapeutic treatments, such as Mindfulness-Based Cognitive Therapies (MBCT), Dialectical Behavior Therapy (DBT), and Acceptance and Commitment Therapy (ACT). These therapies have been useful for patients in the early stages of psychiatric disorders (e.g. Generalized Anxiety Disorder, Major Depressive Disorder, Type 1 Bipolar Disorder), as some patients can supplement their medication in exchange for these forms of therapy. This paper investigates the origins of yoga from a Hindu perspective, explaining how recent trends in the U.S. have extracted elements of the traditional practice while adding other elements with a Western influence. This paper also investigates current symptoms and treatments for psychiatric disorders and explores how mindfulness can play an important role in future forms of therapy.

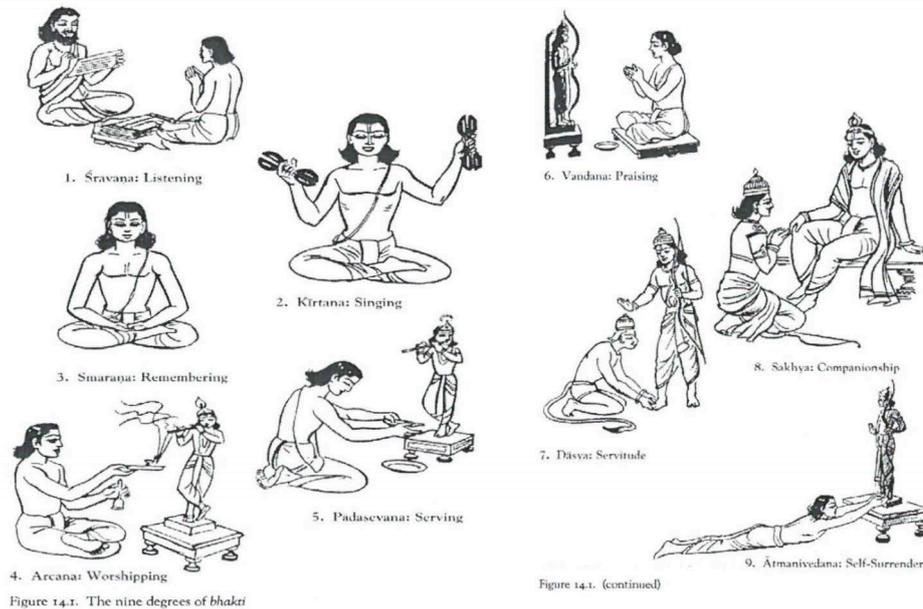
**KEYWORDS:** yoga, mindfulness, brain, cognition, therapy, anxiety, depression, bipolar, religion, exercise

## Section 1. Traditional Branches of Yoga

According to Klostermaier (2007), yoga was developed as a pathway between the physical and spiritual worlds. Those who practiced yoga did so with the intent of achieving a higher state of mind and a closer relationship to the Gods. There are four main branches of yoga, which are divided into the purposes of their use. *Raja* (translating from Sanskrit to English: king) yoga, is defined as the royal path to meditation (Klostermaier, 2007). The purpose of *Raja* yoga is to quiet the mind and to concentrate in order to attain a higher state of being. Traditional ways of practicing *Raja* yoga are to focus on a mantra (Sanskrit: मन्त्र), physical object, or a concept. Those who practice *Raja* yoga hope to possess a mental connection between their physical world and the spiritual. Within this connection, they hope to cleanse their physical bodies of sin, sickness, and suffering, while bringing in peace, happiness, blessings, and health into their bodies.

Klostermaier further describes the second branch of yoga, *Jnana*, which is the yoga of knowledge. *Jnana* yoga is more of a lifestyle in the sense that this form of yoga is the search for truth and the ability to discern reality from illusion. This knowledge is not to be confused with the intellectual type. It is important to note that the religious practice of *Jnana* yoga is not only a physical practice but a way of life, in the hopes of becoming a more wholesome, spiritual being (Klostermaier, 2007). Belief systems within *Jnana* yoga consist of the idea that everything is interconnected and shares one soul, including the Gods. *Jnana* yoga practices within meditation consist of possessing an awareness of what is perceived as permanent and temporary.

*Bhakti* yoga, the third branch, is about devotion (*Bhakti* directly translates into devotion). This practice consists of devotees releasing their emotions and undivided attention into a divine being. Figure 1.1 show the nine degrees of *bhakti* and depicts how devotees of the Hindu religion should act toward Gods as part of a daily practice (Klostermaier 2007). Providing companionship, listening, singing, self-surrender, and servitude are some examples of this daily practice, and these offerings are intended to reciprocate blessings back to worshippers.

*Figure 1.1. The Nine Steps of Bhakti Yoga Practice*

*Source: Klostermaier 2007*

The nine degrees of *bhakti* are very meditative in themselves, as daily offerings are to be made to divine beings. These offerings must be washed daily, fed, praised, thought of, sung to, all during one's daily practice. *Bhakti* is the idea of giving oneself to the divine being and sacrificing in order to attain fulfillment (Klostermaier 2007). *Bhakti* must also be done with joy, as it must come from the heart and the devotee must enjoy their practice in order for the praise to be deemed as genuine. *Bhakti* practiced under a negative mindset is deemed as less meaningful than engaging in *bhakti* out of joy.

Though the practice of *bhakti* yoga is generally seen as surrendering to a divine being, *bhakti* also teaches others to surrender to other people around them and to respect and praise them. This is due to the belief that all living things are interconnected, and deserve praise, respect, and never-ending love from each other. Those who practice *bhakti* may also experience *Narada*, which is the pain one feels when they are separated from someone they love (Klostermaier 2007). The love a devotee experiences with a divine being is supposed to be one towards a mother or father, and they are supposed to care for this divine being as they would for someone for whom they have intense amounts of affection. *Bhakti* is deeply respected and celebrated in Hindu religion, as the initial devotion is supposed to progress into a constant state of joy to the devotee!

The fourth branch of yoga is Karma yoga, which pertains to the practice of giving to other people and divine beings, with no expectation of receiving in return. This also connects to the belief, which is common across many yoga practices, that all beings are interconnected and share energies. According to karma yoga, when one offers their love and support to another being, they are also doing so to themselves (Klostermaier 2007). This is one of the many reasons why Hinduism in its ideology can be defined as an ethno science. Hindu cultures teach their devotees how to live within the world, and how to think about specific entities (i.e. plants, food, animals, love, fulfillment). These views within the religion greatly shape the traditional practice of yoga and aid in creating a society that is based upon very similar values. This is important when thinking about how Eastern traditions view yoga as a native science, a way of life, and a path to good health.

### ***The Introduction of Practices of Yoga to the West***

There are clear differences between yoga in its traditional practice and the way yoga is practiced in much of the Western world. With that said, it is important to note that this paper refers to the “Western world” by focusing on the U.S. The practice of yoga in the U.S., perhaps in particular, is deemed as something that is less of a lifestyle, and more of a workout. Elizabeth De Michelis, the author of *A History of Modern Yoga* (2004), refers to this mode of practice as “modern yoga”. When asking the question of when “modern yoga” began in the West, De Michelis suggests that 1849 is an important year. This is when the influential writer Henry David Thoreau mentions yoga in a letter to a friend, saying, “I would fain practice the yoga faithfully. To some extent, and at rare intervals, even I am a yogi”. This shows an acceptance (in whatever form that may be) of yoga, *without* the widespread modification of traditional practices.

De Michelis describes how important religious figures, such as Swami Vivekananda, a spokesperson for Vedanta and author of texts such as *Raja Yoga* (1896), *Karma Yoga* (1921), *Jnana Yoga* (1899), and many other pivotal texts to the understanding of yoga, played a major role in the introduction of yoga into Western societies. In 1893, Swami Vivekananda introduced the practice to the Chicago Parliament of Religions, as well as some other institutions of Hindu thought that he created. With the intent of spreading the idea of yoga to places near and far, the response he received from people was all he needed in order to create a cloud of popularity around his ideas.

At the same time, Swami Vivekananda knew that the traditions of yoga would have to be reshaped in order to be approachable to a general Western audience, and with his creation of *Raja Yoga*, he did just that. While continuing research on the origins of yoga, and reflecting upon traditional, religious texts, Swami Vivekananda found a way to translate the knowledge he had to his Western audiences, thus catering to the mindset of a Western audience. Vivekananda sought those in both the East and West for their opinions and guidance and went to his successors in hopes of writing a book that would make everyone involved satisfied.

#### ***A. The Instruction of Yoga in the West***

With the intermingling of traditional and modern views, and an acceptance of which aspects of yoga felt most comfortable to Westerners, De Michelis reviews how a fusion of different forms of yoga entered the U.S. As a result, she observes, this has created different teachings of yoga, different followings of yoga, and different lineations of yoga.

It appears that the most popular type of yoga that has emerged into Western society is *asana*, as popular yoga classes consist of different postures/ways to balance the body. Though this idea can be argued, the second most popular limb that has emerged into the West is pranayama, as the structure of a standard yoga class will end in a brief meditation. It is hard to decipher why it is that these two limbs of yoga have become most popular, but my theory for the *asana* limb is that yoga was transformed into a form of exercise, which is more accepted when envisioning a Westernized practice (based on societal norms). Pranayama is the backbone of yoga in Eastern societies, so it is not surprising that this limb would cross over into the West. It is also rather interesting to analyze how yoga has changed so greatly. One Western form of yoga, Modern Postural Yoga is particularly popular (DeMichelis 2004). Modern Postural Yoga focuses on asanas, the poses that can strengthen different parts of the body, or can improve flexibility (touching upon gymnastics). An *asana* is a comfortable, seated position. There are many poses, however, that are called asanas, such as savasana, or adho mukha svanasana. These do not fit under the definition of *asana*, but in modern yoga are considered to be such.

In addition to the transformation of the definition of *asana*, the names of modern yogic asanas are “translated” into English, so that it is easier for practitioners to identify the poses. Savasana popularly translates to “corpse pose”, and adho mukha svanasana translates to the well-known, “downward facing dog.” Some instructors make the choice to introduce their students to the traditional Sanskrit terms, while others decide to teach solely based upon the English terminologies. Some instructors also teach a mixture of the languages, which connects back to the scenarios described previously. Modern yoga has successfully taken off in Western societies, particularly as it has been adopted as a form of exercise and became a major cultural trend. *Yoga Journal* is a good example of

this phenomenon, as the traditional practice of yoga has been completely transformed into something else to meet the Western gaze.

## Section 2. Common Psychological Disorders and Biological Treatments

Mindfulness therapy is a relatively new approach towards patients suffering from generalized anxiety (McIndoo, File, Preddy, Clark, & Hopko 2016), major depressive disorder, and type I bipolar disorder (Deckersbach, Hölzel, Eisner, Lazar, & Nierenberg 2014). For this reason, I have decided to discuss these three neurological disorders. Though the neurological bases of these contemporary psychological disorders are somewhat understood, treatments that are available contain many side effects and do not quite address the symptoms patients experience in their daily lives.

### B. Generalized Anxiety Disorder

According to the *DSM 5* (American Psychiatric Association, 2013), those with generalized anxiety disorder (GAD) display excessive anxiety and worry, difficulty concentrating, irritability, muscle tension, and disturbances in sleep patterns. This disorder affects about 0.9% of adolescents and 2.9% of adults in the United States. Females are twice as likely to be affected by the disorder than males, and some with this disorder can experience somatic symptoms, such as sweating, nausea, and diarrhea. Not only does anxiety make for challenging social situations, but it can lead to increased self-doubt. Between a lack of sleep, constant feelings of doubt/fear, and tension throughout the body, as the *DSM* describes, those diagnosed with GAD live a life of constant discomfort (American Psychiatric Association, 2013). There are many other disorders that fall under the category of anxiety in the *DSM*, such as social anxiety disorder, agoraphobia, separation anxiety disorder, etc.

The current forms of medical treatment for GAD include selective serotonin reuptake inhibitors (SSRIs) such as sertraline, escitalopram, citalopram, and fluoxetine (Walker 2013). Potential side effects for these SSRIs include anxiety, restlessness, thoughts of self-harm, muscle twitching, seizures, hallucinations, and *many* other intense after effects. Another form of treatment for generalized anxiety disorder is anxiolytic drugs, which increase the production of GABA (Gamma-aminobutyric acid), thus reducing increased excitatory brain activity (Pastore et al. 2018). An example of a popular anxiolytic drug is Xanax (alprazolam), which is intended to produce the effect of relaxation via the slowing down of neurotransmitter flow. Though some of these medications can be helpful to those suffering from anxiety, the efficacy of these drugs is questionable, given the number of side effects they can also result in for patients. An example of this lies within what is referred to as substance/medication-induced anxiety disorder, which is a disorder that can be developed through the usage of sedatives, and hypnotic or anxiolytic drugs (Markota & Morgan 2017). The fact that drugs meant to treat anxiety can *develop* anxiety disorders reveals our need for further research in medicinal approaches to neurological disorders.

### C. Major Depressive Disorder

Affecting approximately 7% of individuals in the United States, major depressive disorder (MDD) interferes with the daily processes of life for all, making it challenging to carry out tasks as simple as getting out of bed (American Psychiatric Association, 2013). Individuals between the ages of 18-29 years old make up three times more of this diagnosed population than those 60 years or older. According to the *DSM*, the diagnostic criteria are as follows: depressed mood for most of the day, feelings of emptiness or sadness, lack of pleasure in almost all to all activities, a change in body weight greater than 5%, insomnia/hypersomnia, fatigue, loss of energy, and other symptoms that are representative of a major depressive episode. Individuals with MDD experience daily feelings of worthlessness or excessive guilt, and also psychomotor agitation (e.g. inability to sit still, pulling of the skin, pacing). Suicidal thoughts are also very common but can vary significantly in the type of thoughts, i.e. not wishing to wake up this morning to feeling happier if dead.

The current treatments in terms of medicine that are available for those with MDD tend to overlap with anxiety medications; SSRIs being an example of this. As previously mentioned, sertraline is an SSRI that is used for the treatment of obsessive-compulsive disorder, post-traumatic

stress disorder, panic disorder, social anxiety disorder, as well as major depressive disorder (Walker, 2013). A popular brand of sertraline is Zoloft, which increases the production of serotonin in the body as an attempt to alleviate feelings of depression. Side effects of this drug are anxiety, restlessness, muscle spasms, eye pain, thoughts of hurting oneself and others, etc. Side effects that are deemed as "less serious" are sexual problems, weight loss, mild diarrhea, and vomiting.

Another form of treatment for MDD that is also used for generalized anxiety disorder is escitalopram (Zhong, Haddjeri, & Sánchez 2012). A popular brand within this type of SSRI is Lexapro, with side effects such as fever, muscle spasms, fast/uneven heartbeat, seizures, thoughts of hurting oneself and others, confusion, anxiety, and many others. For a person diagnosed with MDD, they are experiencing burdening symptoms every day of their life. Moreover with current treatments that are available, even more negative symptoms may be added to the patient's concerns, while only moderately alleviating feelings of restlessness and inadequacy.

#### *D. Bipolar Disorder (Type I)*

From a 12-month prevalence estimate in the continental United States, 0.6% of individuals have bipolar I disorder (BD-I) (American Psychiatric Association 2013). With respect to symptoms and side effects, the diagnostic criteria for type I is divided into three sections: manic episode, hypomanic episode, and major depressive episode. Potential symptoms for manic episodes include inflated self-esteem or grandiosity, distractibility, decreased need for sleep, and being more talkative than usual or having the pressure to keep talking. For hypomanic episodes, one diagnostic criterion is "a distinct period of abnormally and persistently elevated, expansive, or irritable mood and abnormally and persistently increased activity or energy, lasting at least 4 consecutive days and present most of the day, nearly every day" (American Psychiatric Association 2013). The difference between manic and hypomanic symptoms is that for manic, the disturbances in mood are severe enough to cause marked impairments in social functioning, while for hypomanic this is not the case (American Psychiatric Association 2013). Within major depressive disorder, the same criteria apply as explained in the previous subsection.

Current medicinal treatments available for BD-I are SSRIs, antipsychotics, and anticonvulsants. It is particularly interesting that a medication intended for those who experience epileptic episodes (anticonvulsants) would also be administered to those with bipolar disorder, as the symptoms are not the same. This is reflective of the lack of targeted care the pharmaceutical industry possesses for understanding the functions of neurotransmitters, and neurological disorders for that matter.

An example of an anticonvulsant is carbamazepine. Carbamazepine is used to treat seizures, nerve pain, and bipolar disorder and is a sodium ion blocker that prevents the sustained, unnatural firing of action potentials, which is one of the understood sources of epileptic episodes (Ambrosio et al., 2002). Side effects of this drug include blurred vision, chest pains, memory problems, muscle spasms, fever, fainting, etc. Given the complexity of bipolar I disorder, as there are often other neurological disorders connected to it (major depressive disorder, mania, and hypomania), finding medications for treating these symptoms is even harder than treatment for a single disorder. Drugs are administered to patients for treatment, but the mechanism of action for all is still misunderstood.

### **Section 3. Mindfulness-Based Treatments**

#### *E. Mindfulness-Based Cognitive Therapy: MBCT*

Combining components of traditional yogic practices (as described above), Mindfulness-Based Cognitive Therapy (MBCT) consists of 8 consecutive weekly sessions (Segal, Williams, & Teasdale 2002) with different themes. MBCT can be described as a multi-faceted approach to strengthening a duality in thought processes within the "doing mode" which can be described as understanding how one may tend to react/feel in a situation versus how they should, in a healthy manner feel/react to that same situation at play (Sipe & Eisendrath 2012). The first session consists of the "Raisin Exercise" (Segal, Williams, & Teasdale 2002) which asks the patient to hold a raisin in their hands, focus on the feeling of it in great detail, and to also take a bite out of the raisin and slowly chew it. This allows the patient to strengthen their awareness within the mode of processing that may not usually focus on the intricate details, a mode of thinking

described as “autopilot mode”. An example of “autopilot mode” would be driving to a frequently visited location, as one’s mind may wander during that drive without focusing on the process of driving the vehicle.

Exercises such as the raisin exercise present are a form of neural training, which allows patients to differentiate how they want to react in a situation versus how they should react. The following 7 sessions focus on similar exercises and prepare the patient to engage in more traditional modes of mindfulness, such as focusing on breath (embodying pranayama yoga) and interacting with longer versions of seated meditation. MBCT can especially help those with MDD and GAD as patients can tend to experience negative feedback loops in their thought processes (ex: “I’m not worthy enough”, “Everyone hates me”, “I will be running through this experience in my mind for a while”) and the exercises can help patients to break out of these loops while introducing different ways of processing information.

#### *F. Acceptance and Commitment Therapy (ACT)*

Acceptance and Commitment Therapy (ACT) is separated into six processes: acceptance, defusion, and contact with the present moment, self as context, values and committed action (Fletcher & Hayes, 2005). One pinnacle of ACT is the fact that patients are urged to embrace events as they arise without the inclination of altering them (acceptance). De-fusion is an attempt to “change the functions of private experiences, even when they have the same form, frequency or situational sensitivity” (Fletcher & Hayes, 2005). Defusion tactics include repeating a word many times in order to change the relationship of the word to the patient. Interestingly enough, this exercise relates to Buddhist chanting or the chanting of mantras within Hinduism. The next process, contact with the present moment allows the patient to interact with their internal and external worlds. This will help the patient to reflect on their experience as it is, almost as an outside observer looking at themselves, which prepares the patient for the next process entitled self as context (Fletcher & Hayes 2005).

Self as context relates to Buddhist ideology as it allows the patient to think of themselves as a transcending concept. This process is utilized in an effort to separate the self from their thoughts and feelings (ex: I hate myself) by imagining themselves as an entity. The second to last process, values, allows the patient to evaluate what is important to them/what they prioritize in life in order to shift their energy towards those focal points, and committed action discusses goal-oriented strategies for the short and long-term in order to maintain a perspective of working on oneself. ACT can be used for workplace trainings/mediations, patients with MDD, GAD, Obsessive Compulsive Disorder, chronic pain and addiction.

#### *G. Dialectical Behavior Therapy (DBT)*

Dialectical Behavior Therapy (DBT), initially geared towards patients with borderline personality disorder (BPD) is an evidence-based treatment that is comprised of five functions of treatment (Chapman 2006). These five functions of treatment also include weekly therapy sessions (1-on-1), weekly group meetings (4-10 patients), and therapist consultation team meetings. The first two functions are entitled: enhancing capabilities and generalizing capabilities. These functions serve to strengthen emotional regulation, including tolerating distress and surviving crises which can then be applied to situations that relate to real-life events. The third function entitled improving motivation and reducing dysfunctional behaviors aims to correct/change behaviors within patients that can negatively affect one’s quality of life, taking place during individual therapy sessions (Chapman 2006).

The fourth function entitled enhancing and maintaining therapist capabilities and motivation focuses on the therapist’s well-being by creating therapist consultation team meetings. These meetings include DBT-practicing therapists that get together to discuss strategies for reducing the likelihood of “therapist burnout” (Chapman 2006) by providing support and words of encouragement. This function differs from the other available mindfulness-based forms of treatment as there is a component that solely focuses on the therapist and their state of mind. Emphasizing this form of self-care for the therapist not only benefits themselves, but also exemplifies a healthy approach that the patient can look up to. The final function of treatment, structuring the environment, consists of the therapist and

patient working on ways to re-evaluate unhealthy relationships/social circles that may promote relapse (ex: patients suffering from addiction).

DBT incorporates a variety of mindfulness-based techniques as acceptance of the patient and an emphasis on emotional regulation are included within the practice. DBT also focuses on reflecting on current reactions towards situations and learning how to combat those initial impulses with new coping strategies.

## Conclusion

The concoction of traditional yogic practices in the West had led to a positive increase in popularity. This popularity has allowed people to reflect on their personal experiences with the practice and to consider the integration of mindfulness within the field of psychology. Mindfulness-based therapies such as MBCT, DBT and ACT show promising effects for those with certain psychiatric disorders, for example MDD, GAD and BP-I (Farb et al., 2018; Sado et al., 2018; Deckersbach et al. 2014). Though these therapies already exist and current studies suggest the effects they have on patients from a qualitative perspective (Fard et al., 2018; Segal et al. 2019), more research is required within the field of neuroscience to assess how the physiology of the brain may be affected from mindfulness-based practices via quantitative measures (Gard et al. 2015; Lee et al. 2015; Braboszcz et al. 2015).

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# Scurvy and Flu in 1900: The Truth Lost in Evidence

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**ABSTRACT:** In the last third of the 19th century, the germ theory of infection had been reliably proved and widely accepted, new principles of microbiological research were laid down and many infectious diseases explained. But medicine was not ready yet to explain all the illnesses. Despite the thorough work of many scientists, substantial facts were still unknown – e.g. existence of most viruses, autoimmunity processes or micronutrients. The effort to explain all the diseases with existent knowledge gave rise to half-true concepts and mistakes. This paper deals with two interesting mistakes, found in the textbook of pathological anatomy and medical microbiology by Hlava and Obrzut, published in 1900-1901 in Austria-Hungary: the concept of scurvy as an infection caused by *Bacillus scorbuti*, and the causative role of the so-called „Pfeiffer’s bacillus“ - *Bacillus influenzae*, presently *Haemophilus influenzae*, in the flu. These were not only theories but expert opinions based on the results of scientific research. Unfortunately, the methods were imperfect and performed/interpreted properly either, so they didn’t allow the scientists to realize the erroneousess of their conclusions. The real causes of the diseases mentioned above were proven much later.

**KEYWORDS:** history, medicine, microbiology, scurvy, flu

## Introduction

The year 1900 was not only the beginning of an era of revolutionary changes. The century that had just ended, yet comprised an essential turnover of western civilization. Europe was repeatedly destroyed by wars that determined its organization for a long time. The population however increased twofold and its mentality changed fundamentally.

It shifted from absolutism to democracy, to the process of formation of national identities and to autonomy inside the centuries-old monarchies. Major progress took place in the gender issue (Lenderova 2016). Secularization became evident in all the fields of public life, mainly in education. The switch to secular education was associated with a change of goals of the students and thus their field preferences, forming of new specialties and an increase of educational requirements (Charle 2004).

An enormous advance of science came in the second half of the 19<sup>th</sup> century. Charles Darwin disproved the doctrine of creation by the work *On the origin of species* (Darwin 1859), which was one of the most dramatic moments of the 19<sup>th</sup> century, followed by tens of years of stormy discussions (Komarek 2002). Rudolf Virchow refuted the theory of abiogenesis and laid the foundations of modern biology (Virchow 1858) which persist up to now. The only exception was the era of comrade Lepeshinskaya (1954), who attempted to substitute science by pseudoscience in the 1950s.

After centuries of humoralism, miasmas, iatrochemistry, iatrophysics, and other theoretical schools, scientific i.e. evidence-based medicine came to dominate. Works of Louis Pasteur, Edwin Klebs, Robert Koch, Joseph Lister, and many others gave birth to microbiology and the modern concept of infection (Temkin 1953). An essential question was formulated soon after that: Which illnesses are actually infectious? A precise answer has not been given to date.

The effort to answer the questions was enormous, but there were many methodological problems to overcome – e.g. the principle of causality, as the case of anthrax shows. The first proved infectious agent *Bacillus anthracis* was discovered by Casimir Davaine (Davaine 1863), who described it, but was not able to prove its causal relationship with anthrax. He observed the illness even in animals, which were given a solution removed from bacteria. Robert Koch sorted this problem out in 1876 by the discovery of spores and methodically consistent revision of Davaine’s work, which provided conclusive evidence of its correctness (Carter 1985).

Diseases with epidemic occurrence were the first candidates for research of possible infectious etiology. It was confirmed in some of them, whereas disproved in others. Nevertheless, in the beginning, the results were often ambiguous.

## Methods

This paper is based on an analysis of the content of the textbook of pathological anatomy and medical microbiology „Vseobecna a specialni pathologiccka anatomie“, written by respectable pathologists Jaroslav Hlava and Ondrej Obrzut and published in Prague (Austria-Hungary) in 1900-1901 (Hlava& Obrzut 1900-1901). It has been digitized by the National Medical Library and is openly available at the website [kramerius.medvik.cz](http://kramerius.medvik.cz).

This publication meets the criteria of the then scientific standards, however, contains several interesting mistakes. These mistakes are not of dogmatic nature: they are expert opinions based on scientific research.

## Scurvy epidemics

The concept of scurvy as an infection is one of the most interesting mistakes in the history of medicine. Yet we can find it in this book, on pages 131 and 132,

“Scorbut (Scurvy). This term is used for an illness that occurs sometimes endemically (in prisons) or epidemically (on marine ships), characteristic by hemorrhagic to ulcerative gingivitis, intermuscular hemorrhage and internal hemorrhage of the abdominal organs, which result in anemia. Some authors consider scurvy as an illness from poor nutrition (lack of vegetables and fresh meat) and other hygienic deficiencies, whilst others perceive it as an infectious disease, arising from the gingiva and spreading to the whole body. Babes discovered thin bacilli – which caused a hemorrhagic process in dogs – *Bacillus scorbuti*, not only in hemorrhagic gingivitis, but also in blood and internal organs, and he assumes this species probably causes scurvy. It is natural that other microbes are also found in bloodstream and organs (streptococci, staphylococci) because secondary sepsis can arise from gingivitis by settling of pathogenic bacteria. But the findings of Babes still need confirmation.”

This text shows that pathologists of the 19<sup>th</sup> century knew scurvy very well, but they were not sure about its cause. The cited article about infectious cause of scurvy is probably „Ueber einen die Gingivitis und Hemorrhagien verursachenden *Bacillus* bei Skorbut.“, published in *Deutsche Medicinische Wochenschrift* in 1893 (Babes 1893). There he described his experience with diagnostics and treatment of scurvy. He analyzed tissues of ill persons, made attempts to induce experimental scurvy in animals, and also proposed the principle of development of scurvy.

He interpreted bleeding found in animals who were injected suspension of putrid tissues and infectious liquids, as a proof of successful induction of scurvy. As he concludes, the symptoms of scurvy are a consequence of the actions of toxins (probably exotoxins).

But although the article is quite extensive (11 pages), Babes didn't really provide conclusive evidence that he isolated and identified a microbe, which has an important role in the pathogenesis of scurvy. He described its microscopic features in an uncertain way, isolation process remains unclear, passaging on animals produced a different culture and the situation gives a chaotic impression.

One of the interesting aspects of this paper is the absence of respect to Koch's postulates. But was it a mistake?

### A. *The Pioneers of Microbiology*

Professor Victor Babes was a respected Romanian microbiologist, a member of the generation of scientists who set up the principles of medical microbiology, struggling with an enormous volume of unclear and uncertain findings. And the development of other modern branches of science (e.g. pathologic physiology) which could have helped to resolve the problems, was also in its infancy.

Despite the pioneering era, this paper suffers from several significant imperfections. When describing the bacteria, Babes did not mention the source of bacteria (tissue or culture), which makes any interpretation impossible. Animal experiments are described in a superficial way, so they could not be repeated. The description of aerobic cultivation is confusing, whereas anaerobic cultivation (if it was performed) is not described at all.

Babes complained of difficulties in cultivation, mainly numerous colonies of *Streptococci*, which impede the growth of other microbes. He did not name other species, which is natural – the

microbiome of the oral cavity was then neither identified nor taxonomically organized. E.g. members of the *Neisseria* species have been (except the primary pathogens *N. gonorrhoeae* and *N. meningitidis*) discovered in the 2<sup>nd</sup> half of the 20<sup>th</sup> century (Knapp 1988).

Moreover, the microscopic appearance of *Bacillus scorbuti* suggests that Babes probably worked with a mixed culture.

“Bacilli obtained from gums and tissues of rabbits are oblong, curved, sharpened at the ends, sized approximately 0,3  $\mu\text{m}$  in width and 3  $\mu\text{m}$  in length, but twice longer rods and wavy fibers can be also found. They are somewhat thinner and significantly longer than cholera bacilli and show a remarkable dissimilarity in length and width. The youngest individuals look like diplobacteria.” (Babes 1893)

The cited finding practically fits the description of normal mixed culture obtained from an oral swab. It remains unclear what Babes really observed, but modern medical microbiology, despite the frequent use of the term “pleomorphic bacteria”, would not mention the existence of a species with morphology varying between diplococci, curved rods, and fibers of non-uniform width.

A contemporary microbiologist would probably ask about Gram-staining appearance because the different color would warn Babes about probable heterogeneity of the culture. The paper states that they were Gram-negative, but we cannot rely on that. Results of Gram staining vary significantly after the applied method, and besides, the bacteria were cultivated in a non-standard way that could have changed their appearance significantly.

The key to the failure of this paper might be the criteria of positivity of the experiments, which were too loose. Symptoms assessed as experimentally induced scurvy were actually nonspecific changes associated with severe systemic infection and/or reaction to alien tissue. Internal bleeding occurs frequently during septic shock due to thrombocytopenia (Bedet et al. 2018).

Even the bacteria, cultivated from the bloodstream and tissues of the animals, would not necessarily stem from the inoculate. They might represent contamination or secondary infection.

### B. A Chance for Success?

Immaturity of the methods was the essential negative factor. Cultivation media used in this research (broth, agar, gelatine, glycerine agar, and sugar agar) were up-to-date but actually poor and barely helpful for proper cultivation.

Furthermore, as the text shows, Babes probably performed only aerobic cultivation and his methods of inoculation to media will probably remain a mystery. Superficial inoculation on solid cultivation media (which is now standard) was not matter-of-course. E.g. Robert Koch preferred mixing the inoculate with warm gelatine (Buxton 2005).

But an assumption of clear and uniform rules dominating the emerging microbiology would be completely wrong. Due to lack of evidence and general “youth” of the science, every scientist created his methods himself. This can be illustrated by the huge differences of cultivation of some bacteria, as we will see in the case of *Haemophilus influenzae*. Some scientists cultivated it successfully in the 1890s, others failed even in the 1910s (Svestka 1918).

But these “first steps” had to be done and their authors should not be criticized. Knowledge and experience that new microbiologist gains during a few months now were beyond the borders of fantasy the 19<sup>th</sup> century. Bacteriology served only for research and examination of serious cases. Neither methods allowing successful cultivation and identification of hundreds of species, nor routine diagnostic facilities then existed. Medical microbiology was practiced in institutes of pathology and only in the 1950s separate institutes of medical microbiology were commonly established (Wagner 2003, 81).

Assessment of the oral flora in such conditions must have been very difficult. It is highly varied and physicians spent tens of years searching for the key to its interpretation. In some points, they are still not of one mind. Expert opinions about pathogenic potential of various bacteria differ mostly, but the reason is not lack of data: pressure on rational indication of antibiotic treatment is the rub today (Cordoba & Llor 2019).

### C. *Why Respect Koch's Postulates?*

Koch's postulates were a mainstay in the development of medical microbiology and infectology. They offered a simple tool to determine causality of infectious diseases. But even Koch himself knew that they were not completely correct. They didn't take into account cases of asymptomatic carrying, the immunological reaction of the organism, microbes that are difficult to cultivate, and other aspects. Despite the benefit for bacteriology, they delayed the development of virology by tens of years (Antonelli & Cutler 2016).

Koch formulated them first in 1882 when he discovered the cause of tuberculosis – *Mycobacterium tuberculosis*. He was invited to a gathering of the Berlin Physiological Society to present his findings. To persuade the audience about the causal relationship between *Mycobacterium tuberculosis* and tuberculosis, he declared the first version of four postulates. By a quirk of fate, this bacterium does not conform to them (Susser & Stein 2009, 112). We can cite the postulates in a later version: (Antonelli & Cutler 2016).

1. An alien structure must be exhibited in all cases.
2. The structure must be shown to be a living organism and must be distinguishable from all other micro-organisms.
3. The distribution of micro-organisms must correlate with and explain the disease phenomena.
4. The micro-organism must be cultivated outside the diseased animal and isolated from all disease products which could be causally significant.
5. The pure isolated micro-organism must be inoculated into test animals and these animals must then display the same symptoms as the original diseased animal.

Koch himself considered most important part of his postulates the requirement of obtaining a pure culture from the infectious focus and development of the illness after inoculation of the culture to animals (of the same species, if possible) (Carter 1985).

This wording shed an unpleasant light on Babes's paper, but without justification. Koch came down from the demanding version of postulates in 1890. The new version was formulated at the 10<sup>th</sup> International Medical Congress in Berlin as follows:

“However, if it can be proved: first that the parasite occurs in every case of the disease in question, and under circumstances which can account for the pathological changes and clinical course of the disease; secondly, that it occurs in no other disease as a fortuitous and nonpathogenic parasite; and thirdly, that it, after being fully isolated from the body and repeatedly grown in pure culture, can induce the disease anew; then the occurrence of the parasite in the disease can no longer be accidental, but in this case no other relation between it and the disease except that the parasite is the cause of the disease can be considered.” (Rivers, 1937; Susser & Stein, 2009)

### D. *The History of Scurvy*

Today we are sure that scurvy is a vitamin C (ascorbic acid) deficiency. But the concept of nutritional deficiency emerged relatively late – for night-blindness in the 17<sup>th</sup> century and for other diseases since the 19<sup>th</sup> century (McDowell 2013).

The origin of scurvy was probably associated with agriculture, that enabled the human race to migrate to regions that would not provide enough food year-round. Dried grains of cereals can be stored for a long time, which taught people how to overcome long winters in the moderate zone. But they also caused the problems with vitamin C, because they contain only very little amounts of this substance.

Just like many other diseases, scurvy had been discovered and forgotten repeatedly. Ancient Egyptians knew – The Ebers Papyrus (1500 BC) mentions the disease and its treatment by onion (Mayberry 2004). Greek physicians knew scurvy, but they were not able to treat it, and medieval Europe inherited this attitude. Written evidence of scurvy can be found only since the 13<sup>th</sup> century, firstly in connection with the 7<sup>th</sup> Crusade (Mayberry 2004).

During this Crusade, French troops arrived in Egypt, where they got stuck in the delta of Nile. The soldiers had an unbalanced diet, eating practically only eels, fished out from the Nile. But those

eels lived mainly on the dead bodies of the soldiers that were still flowing on the river (Clemetson 2018, 9). The soldiers contracted an illness, which is today considered as scurvy. Bishops and cardinals blamed “sinful life”, but Jean de Joinville, a secular author, found a possible natural cause: an infection spread by eels (Mitchell 2004, 186). That means the concept of infectious scurvy was not new in the 19<sup>th</sup> century.

The golden age of scurvy was associated with the expansion of seafaring. Vasco da Gama, Ferdinand Magellan, and many others encountered this disease, which became the leading cause of death on the sea between 1500 and 1800.

Various experts announced that scurvy can be prevented by a diet rich of fresh meat, fruits, and herbs. But this knowledge had not been implemented into practice for a long time. James Lind published his revolutionary work about scurvy in 1753 and despite the fact that there was practically nothing new, it was the key to the acceptance of the nutritional theory of scurvy (Anon 2019).

But it was not only the sea, where scurvy used to kill. Many casualties of the American Civil War were not killed on the battlefields, but died from an illness, including scurvy. The general public was informed by leaflets how to support their soldiers, e.g. young women were asked to send onions to their loved ones instead of love letters (Mayberry 2004).

The discovery of the cause of the illness beri-beri (1897 Christiaan Eijkman) and the development of modern chemistry led to the opening of a new branch of medicine, which is dedicated to nutrients. Nutritional deficiencies were the real causes of many diseases of “epidemic occurrence” and they still are. They occur due to poverty and newly due to westernization and alcoholism (Schweich, De Voeght, Sacré, Bernard, & Michels 2018).

In 1928, when Albert Szent-György discovered vitamin C, the discussions about scurvy ended once forever. But in the early 1920s, we can still meet the interpretation of scurvy as an infectious disease (Pesic 1920, 1921).

### **The Flu and *Haemophilus influenzae***

It is worth heading back to the textbook and read the chapter dealing with the flu. On pages 126 and 127 we find this:

„Influenza (Flu.) *Bacillus influenzae*, discovered by Pfeiffer, is the smallest known bacillus, which can be seen in couples or clusters, its sporulation is not known and in Gram staining is negative; grows only on agar plates spread with blood in body temperature; it is pathogenic only for primates; causes the flu with high probability. Influenza is an epidemic disease characteristic by catarrhal inflammation of the nasopharyngeal mucosa and trachea, descending in some cases to the bronchi or even lungs, where dense lobular or lobar croupous pneumonia arises. Thus the flu is a local process, which causes toxemia; in other cases, a systemic bacteriemia occurs, as *Bacilli influenzae* have been discovered in bloodstream, spleen, and meninx in cases of hemorrhagic encephalitis and ulcerative endocarditis. Sometimes infection by *B. influenzae* comes together with streptococci or pneumococci, local or systemic.”

The history of interpretation of *Haemophilus influenzae* (HAIN, formerly named *Bacillus influenzae* or *Bacillus Pfeifferi*) as a causal agent of the flu is closely related to Richard Pfeiffer. He discovered this bacterium in 1892 and went defending it for tens of years, but in the end, he finally had to retreat.

#### *E. History*

The flu is one of the diseases that we can trace back to the antiquity. In the 19<sup>th</sup> century, it underwent substantial changes, mainly in Europe. The increase of population that occurred chiefly in cities, facilitated its spread by personal contact. Another important factor was the boom of railways that connected distant parts of Europe, enabled sick persons to travel fast and thus contributed to the quick spread of the flu on a global scale (Kempinska-Mirosławska & Wozniak-Kosek 2013).

The pandemic known as the Russian flu occurred in Europe in 1889 – 1892 (1894). From the contemporary point of view, it doesn't seem to be serious – we have witnessed pandemics of the Swine flu and SARS, we know several past pandemics, e.g. the Spanish flu that devastated the world

during the World War I and a long time after its ending. These New Age plagues can make us think that the Russian flu was just a mild cold, but it was not.

And in this very time, the German physician Richard Pfeiffer made one of the successes of his life: the discovery of the influenza agent.

He published his findings first as a short text (some kind of preliminary notice) named „Vorläufige Mittheilungen über die Erreger der Influenza“ in the journal *Deutsche Medicinische Wochenschrift* in 1892 (Pfeiffer 1892). The complete paper was published as „Die Aetiologie der Influenza“ in the journal *Zeitschrift für Hygiene und Infektionskrankheiten* in 1893 (Pfeiffer 1893). He showed a high standard of expert and academic work, citing his colleagues and describing quite exactly all the methods and results. His findings seem really convincing and it is no wonder that they were accepted smoothly (Van Epps 2006).

#### F. Difficult Cultivation

Pfeiffer, as well as Babes, had to overcome problems with the cultivation of his microbe, as the text of 1892 shows. *Haemophilus* grew on his cultivation media in tiny colonies and Pfeiffer had to use a magnifying glass to see them. His cultures always lost viability quickly – not surprisingly, as this species is really demanding and delicate.

In the cited textbook the cultivation is described as successful only on agar spread with blood. *Haemophilus influenzae* really needs two “growth factors” – factor X (hemin) and factor V (NAD<sup>+</sup> - nicotine adenine diamide). These substances are present in erythrocytes, but HAIN has no hemolysin to break them. That is the cause of the phenomenon named satellitism – growth around the colonies of *Staphylococcus aureus*, which is a potent source of various types of hemolysins and thus creates a suitable environment for HAIN. But Grassberger described this phenomenon only a few years after Pfeiffer’s discovery (Norskov-Lauritsen 2014).

Pfeiffer did not mention blood in his 1892 article, only sugar agar. But the blood must have been present, otherwise, HAIN would not grow. The 1893 paper determines clearly the close relationship of this bacterium to blood (Salfellner 2017, 16). Its pleasure in blood was later the reason for its actual name.

A modern microbiologist would probably ask how come HAIN grew on blood without the presence of *Staphylococci*. The key to success could have been proper smearing of blood on the surface of agar that disrupted the membranes of the erythrocytes.

#### G. Toxic Fashion

The last decade of the 19<sup>th</sup> century attributed many diseases to the toxic activity of microbes, which was evident also in the previous topic. Thus arose one of the mistakes, mentioned in the textbook. The flu is described as a local process with systemic symptoms caused by toxemia and occasionally bacteriemia. But it actually is a systemic viral disease with various organ manifestation.

The symptoms are caused by the direct action of the virus, but also by immune reaction of the host organism and by bacterial superinfection that occurs regularly. The participation of bacterial superinfection in the symptoms is so significant that formerly it was considered as mandatory synergy (Rivers 1937).

The “fashion” of toxins is still actual, although we now possess many detailed data about them. In bacteria, we can divide them into exotoxins and endotoxins. Exotoxic action is not substantial in *Haemophilus influenzae* (Musher 1996), but endotoxic action is very important. And Richard Pfeiffer was one of the scientists who contributed to the discovery of endotoxins.

The cell wall of most Gram-negative bacteria contains lipopolysaccharide (LPS) – “classic endotoxin”, one of the principal factors of pathogenicity. *Haemophilus* species (just as *Neisseria*, *Bordetella*, and *Branhamella*) contains another substance, named lipooligosaccharide. Its appearance and function are similar to LPS. It is a mediator of inflammation, protects the bacterium from external agents and provides adhesion to the host cell. (Musher, 1996; Preston, Mandrell, Gibson, & Apicella 1996).

Despite the erroneous association between the flu and HAIN that Pfeiffer proposed, his view of pathogenicity of this bacterium was not just a blind attempt. The endotoxin theory is the very proof of

the complexity of his approach. But the 1892 flu article does not mention endotoxins yet. According to (Rietschel & Cavaillon 2003) he started working on this topic during the experiments with *Vibrio cholerae*. After all, his paper about *Vibrio* sp. is really the first one that formulates the endotoxin theory (Pfeiffer 1892).

#### *H. Mistake with Long-term Sequelae*

The name of *Haemophilus influenzae* is very confusing for medical students, but it is just a memorial of fallibility, which is true for each one of us. And this bacterium is a good candidate for this situation.

Today we are able to distinguish viral infection from bacterial, but in the 19<sup>th</sup> century the viruses attacking respiratory system were not known yet and there were no reliable methods to distinguish between the flu, primary respiratory infection caused by *Haemophilus* infection and flu with a secondary infection with *Haemophilus* species.

*Haemophilus* sp. is a regular constituent of the microbiome of the upper respiratory tract, but some types and especially under certain conditions can be strongly pathogenic, not only in the upper respiratory tract: invasive infections such as pneumonia, meningitis or epiglottitis represent a significant cause of sepsis and an immediate life threat for the patient.

In the 1892 text, Pfeiffer states that in 31 patients with flu a pure massive culture of *Haemophilus influenzae* was obtained, whereas in a considerable number of controls with other diagnoses (bronchial catarrh, pneumonia or TB) it was absent. But the absence of *Haemophilus influenzae* in the specimens of bronchitis or pneumonia can be surely considered as a false negative result. Under the use of modern methods, HAIN is one of the most frequent isolates (Park et al. 2016). The same is valid in pneumonia (Park et al. 2016).

But the success of cultivation depends on the specimens and it is not easy to get a valid specimen from cases of pneumonia. A substantial part of sputum specimens is free from pathogenic bacteria (Cukic & Hadzic 2016) and blood cultures had a primitive form with lower effectivity. Successful blood cultivation also depends on the physician's ability to assess the right moment of sampling, i.e. predict bacteriemia (Dreyer 2012). The 19<sup>th</sup> century offered much worse conditions for these methods.

But it was not possible to avoid the fact that HAIN was gradually detected in unexpected specimens – liquids and swabs of patients suffering from different diseases (not the flu) and even in healthy people (Davis 1907).

#### *I. The Inevitable End of Bacillus influenzae*

One of the most important factors for a long life for this mistake was the difficulty of its cultivation. When the Russian flu pandemics ended, the topic was forgotten for some time but emerged once again with the Spanish flu. And the microbiological findings were not as uniform as described by Pfeiffer. HAIN was not even dominant in the specimens, there was a wide variety of other pathogens like pneumococci, staphylococci or *Branhamella catarrhalis* (Selter 1918). Pfeiffer's supporters believed that the absence of HAIN is a consequence of wrong cultivation methods, as they knew that it is not easy to gain a culture of this species. The debate escalated into a real battle that didn't finish even after the decline of the pandemic (Salfellner 2017, 16).

As long as it was possible to interpret negative results as false negative due to wrong methods, there was still a reason to defend HAIN and Pfeiffer really did, supported by many experts (Salfellner 2017, 16). But since the year 1924, when Oswald Avery discovered the unique cultivation medium named "chocolate agar", which is a reliable tool for the cultivation of HAIN, it became unavoidable to admit that in many specimens of patients suffering from the flu it is just not present (Barry 2005, 295).

The real cause of the flu, the Influenza Virus, was discovered in 1931 by Richard Shope. This success was possible only thanks to modern filters. They enabled scientists to prove that liquids, infected by the flu, remain infectious after the elimination of all the bacteria (Van Epps 2006).

#### **Conclusions: The Era of Mistakes**

This kind of mistakes was quite common in the pioneering era of medical microbiology. E.g. typhus fever was a complete mystery even in the 1910s, as we can verify in the Czech annotation of the paper by

Markus Rabinowitch (Rabinowitsch 1911). Some famous scientists thought that the cause of typhus fever was a bacterium of the *Micrococcus* species (which is actually a harmless inhabitant of human and animal skin and mucous membranes). Others blamed protozoa, spirochetes, diplococci or rods. But there were also experts who admitted that they had never found any microbe in the victims (which was the only correct result with the then methods).

Later research showed that the causal agent of typhus fever *Rickettsia prowazekii* is a tiny bacterium demanding intracellular environment, the closest relative of mitochondriae (Andersson et al. 1998), which cannot be detected by classic bacteriological methods.

Henrique da Rocha Lima discovered this microbe in 1916, but it was not named after him. Many scientists sacrificed their own lives to this research and two of them (Howard Taylor Ricketts and Stanislaus von Prowazek) were awarded the taxonomic tribute (Bernardes Filho & Avelleira 2015).

Mistakes, presented in this paper, were evidence-based bias. They emerged due to the immaturity of the methods, an incorrect application and/or interpretation of their results. Despite the overwhelming amount of data that provides modern science, mistakes still occur and they probably will always do. Precise work, the strict keeping of all the rules, humility and openness can be the key to avoid as many mistakes as possible.

## Acknowledgments

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## Abbreviations:

LPS = lipopolysaccharide

HAIN = *Haemophilus influenzae*

sp. = species

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# Pranayama Yoga: Measuring Brainwaves via EEG

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**ABSTRACT:** Differences in baseline electroencephalogram (EEG) activity have been found among long-time practitioners of meditation (3+ years) in comparison to novice meditators (<1 year). In the current study, 10 participants (5 experienced meditators; 5 novices) engaged in a series of weekly, 20-minute Open Heart Meditation (OHM) practices; 5 control participants (all novices) engaged in a 20-minute reading/study session. EEG activity was measured in all participants during the first and final sessions. While the differences did not reach statistical significance, there were differences in the expected direction, suggesting an increase in baseline mean frequency of EEG measurements within the beta range for experienced meditators in comparison to novices and controls, suggesting an increase in neurological engagement during meditation. These findings suggest that there are potential neurological gains of certain meditative practices, which should lead to further investigation into the merits of meditative practice as a form of therapy.

**KEYWORDS:** EEG, electroencephalogram, brain, yoga, mindfulness, alpha, beta, meditation, OHM

## Introduction

As meditative practices have become more prominent within mainstream health-related practices in the United States, research on the neurological effects of meditative practices has also increased in frequency and findings. Using electroencephalography, magnetic resonance imaging (MRI) and functional magnetic resonance imaging (fMRI), scientists have been able to, often in real-time, measure neurological activity during meditation sessions over prolonged periods of time (e.g., Gard et al., 2014; Grant, Courtemanche, Duerden, Duncan, & Rainville 2010; Jadhav, Manthalkar, & Joshi 2017). Recent research has also suggested that individuals may benefit from neurological changes after initiating a meditation practice; benefits include increases in cortical thickness within advanced meditators and greater caudate connectivity (Gard et al. 2015; Lazar et al. 2005). This paper continues this research by further investigating the neurological effects of a series of meditation sessions via electroencephalogram (EEG).

## Methods

### *Participants and Study Design*

Inclusion criteria for sampling were: (a) being a novice practitioner of meditation (have meditated less than 5 times, or have never successfully completed a 10 minute meditation sequence), or (b) being an experienced practitioner (those who have two or more years of on-or-off meditation, retreat attendees welcomed) (c) committing to at least 3 weeks of Pranayama yoga sessions. An email to the campus community recruited those who were interested in participating.

This criteria was used because prior studies have shown that differences in brainwave activity are more apparent between novice and experienced meditator groups (Gard et al. 2015; Lutz, Greischar, Rawlings, Ricard, & Davidson 2004; Lutz et al. 2009). The final sample included 10 novice practitioners (randomly assigned to meditation or control group) and 5 experienced practitioners of meditation (all assigned to meditation group).

### *Procedures<sup>1</sup>*

To obtain baseline measures of brain activity and heart-rate, EEG and pulse tests were administered to all participants during the first and third meditation or control sessions. Participants in the meditation conditions participated in a weekly, 20-minute one-on-one meditation session (with the researcher, a certified yoga-instructor). The three sessions were spaced throughout the week with

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<sup>1</sup> The study protocol was reviewed and approved by the Bard College at Simon's Rock Institutional Review Board.

respect to the participants' convenience, and sessions were developed using techniques outlined in Deckersbach, Hölzel, Eisner, Lazar & Nierenberg's (2014) text, *Mindfulness-based cognitive therapy for bipolar disorder*.

Themes for meditation sequences were created by the researcher and centered around resilience-building and practicing empathy. In the first session, entitled *Intense Feelings in Stressful Situations*, participants were asked to visualize a time that brought immense amounts of stress to them, so much that they felt it in their body. They were then asked to exaggerate this feeling and think of it in so much detail that they were almost recreating that moment. After this, they were asked to sit with those feelings for a couple of minutes, and then visualize feelings of warmth targeting the areas of stress in their body. Breath was a tool that was used to "exhale negative feelings". This exercise was intended to teach participants how to manage feelings in intense situations.

In the second session, entitled *Extending Kindness*, participants were asked to think of someone who has been important in their lives, and to visualize the details of their appearance, mannerisms, and personality. After getting a precise image of this person in their mind, they were asked to think of a time where they made this person overwhelmed with happiness, laughter, or tears. They were asked to focus on this moment, and to then think about the things they have done in their lives to help that person. This exercise was intended to remind participants about empathetic feelings and to appreciate themselves for having the ability to help others.

The third session, entitled *Self-care; Personal Assessment*, engaged participants in an activity that involved their taking time to evaluate their current state of mind, and how they have been feeling overall for the week. They were then asked to reflect on stressful things in their lives (e.g. work-related or personal) and to welcome those things while maintaining a relaxed state of mindfulness. Participants were asked to go into the details of their bodily processes and to "thank" different organs for supporting them when they may not be tending to their bodies as much as they need to (i.e. during stressful times). Participants were also asked to tell themselves that they deserve a meditative practice, as a treat to themselves. This exercise was intended to expand upon self-love, self-appreciation, and care for functioning bodily processes. Participants in the control group did not engage in meditation sessions and were asked to simply work on homework, study, or read. These participants were given all the same assessments as the meditation group (EEG and pulse).

### *Measurements and Assessments*

Alpha and beta waves were measured via electroencephalogram (EEG) – the brand of the device was iWorx Systems Inc., model 214. The software used for analysis was LabScribe v2. Five electrode stickers were placed on the skull regions just above specified locations in the frontal, parietal and temporal regions of participants (2 on the left and right parietal and temporal regions, and 1 on the frontal regions). Participants wore the 5 electrodes for a total of 2 sessions (the 1st and 3rd), each running for a duration of 20 minutes each (for an overall total of 40 minutes of EEG readings). Using the EEG on participants is non-invasive and the electrode stickers enable the attachment of the sensor electrodes.

The heart rate of all participants was measured via radial or carotid pulse. Within the meditation and control groups, pulse was assessed at the start and end of first and third sessions to analyze changes in heart rate from the start to the end of each session and across the three-week program.

The EEG data were analyzed using SPSS and the VassarStats.net online website. To compare the effects of meditation/yoga on experienced/novice participants, there were three between-subjects conditions: (1) Novice Meditators - Exposed to Meditation Sessions; Group, Experienced Mediators - Exposed to Meditation Sessions; , and (3) Control Group (all novices and who were not exposed to any meditation/yoga during the study). All three groups of participants' brain wave frequencies were measured on two occasions: during the first session of yoga/meditation (or control) and during the third session of yoga/meditation (or control). Thus, the Session 1-to-Session 3 change in EEG measurements variable was a within-subjects variable. All brainwave

frequencies were compared across experimental conditions and across sessions using MANOVA analyses. Thus, means were obtained for the frequencies of brain waves—in the alpha and beta waves—two times for each participant: sessions 1 and 3.

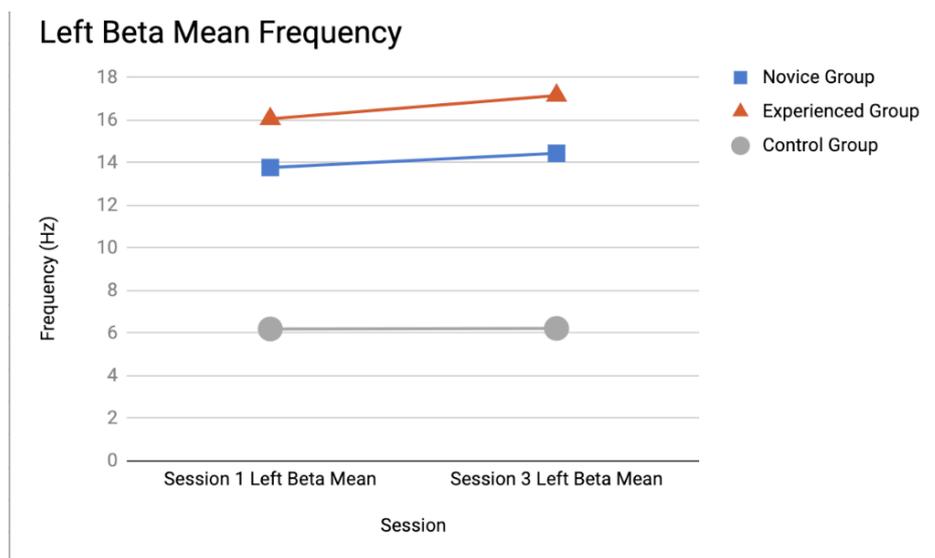
## Results

### *Left Beta Waves*

As shown in *Figure 1* below, the mean frequencies of beta waves in the left region of the brain were highest for experienced meditators in the experimental (meditation/control) condition, next highest for novices in the experimental condition, and lowest for those in the control condition. These between-subject means differed significantly,  $F(2,12) = 13.67$ ,  $p = .001$ ; the experienced meditators exposed to meditation in the study had the highest left hemisphere mean beta wave frequency; the novice meditators exposed to meditation had the next highest (and not significantly different from that of the experienced meditators); the control participants had the lowest mean left hemisphere beta wave frequency.

Also, the interaction of condition by session was statistically significant,  $F(2,12) = 5.18$ ,  $p = .02$ . What appears to be happening is that both novice and experienced experimental groups increased in left beta wave activity, while the control group did not change.

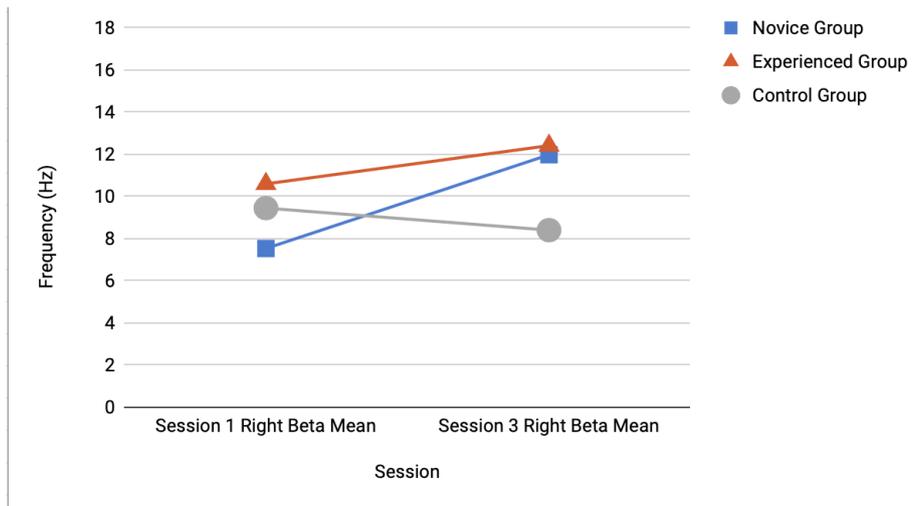
Figure 1. Left Hemisphere Mean Frequency Beta Waves



### *Right Beta Waves*

As shown in *Figure 2*, on the next page, a very different pattern of mean frequencies emerged in the measurements of of beta waves in the right hemisphere of the brain, and the overall differences were not differ statistically,  $F < 1$ . The interaction of session by condition (novice, experienced/meditation, novice/meditation) were, however statistically significant,  $F(2,12) = 4.14$ ,  $p < .05$ . Interpretation of this interaction effect suggests that the novice group increased in right hemisphere beta wave activity, the experienced group increased moderately, and the control group decreased slightly.

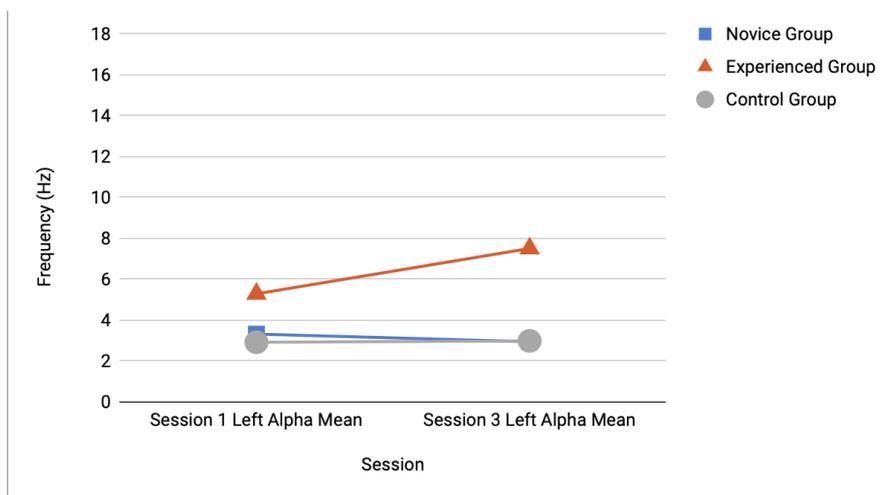
Figure 2. Right Hemisphere Mean Frequency Beta Waves



*Left Alpha Waves*

As shown in Figure 3 below, the mean frequencies of alpha waves in the left region of the brain were highest for experienced meditators in the experimental (meditation/control) condition, with both the novice and control groups displaying lower mean left hemisphere alpha wave activity. These differences were statistically significant,  $F(2,12) = 6.23, p < .02$ . Also, the interaction of condition by session was marginally significant,  $F(2,12) = 3.25, p < .10$ . Review of the means suggests that the experienced experimental group increased in left alpha wave activity, while the novice and control group did not change.

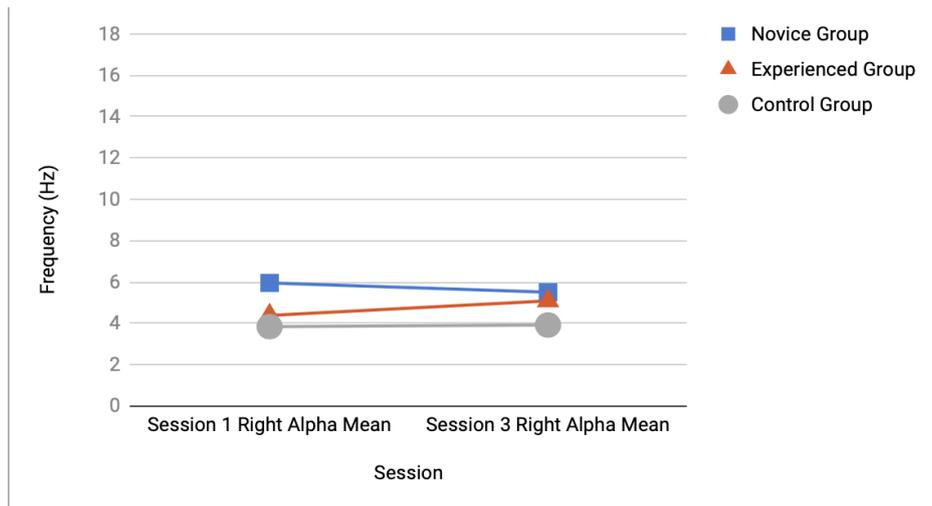
Figure 3. Left Hemisphere Mean Frequency Alpha Waves



*Right Alpha Waves*

As shown in Figure 4 below, the mean frequencies of alpha waves in the right region of the brain were highest for experienced meditators in the experimental (meditation/control) condition, next highest for novices in the experimental condition, and lowest for those in the control condition. However, these means did not differ statistically,  $F(2,12) = 1.38, p = .29$ . Comparisons of means during session 1 and session 3, and the interaction of session by condition were also not significant,  $F < 1$ . Although the graph may suggest an interaction effect, the variability within the groups clearly overrode any statistical reliability of the differences.

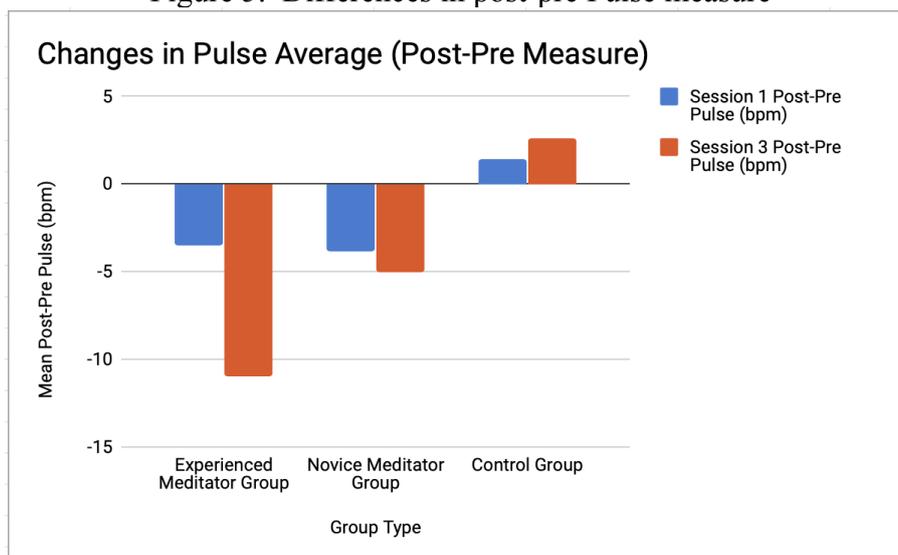
Figure 4. Right Hemisphere Mean Frequency Alpha Waves



*Pulse*

Changes in participants' heart rate are shown in Figure 5 below. This bar graph shows a difference between the average post- and pre-session pulse values for experienced, novice, and control groups for sessions 1 and 3. The mean change in pre-post pulse rates for sessions 1 and 3 within the experienced group are -3.5 bpm and -11 bpm, respectively (meaning that these participants' pulse rates decreased, on average 3.5 bpm in their first session, and 11 bpm in their third session). The mean post-pre pulse values for session 1 and 3 within the novice group are -3.8 bpm and -5 bpm, respectively. The mean post-pre values for session 1 and 3 within the control group are increases of 1.4 bpm and 2.6 bpm, respectively. This suggests that within the control group, participants' heart rate increased between sessions 1 and 3, and for the experimental groups--those exposed to yoga/meditation--their heart rate decreased between the start and end of each sessions, and this decrease generally was greater after three sessions than on the first session.

Figure 5. Differences in post-pre Pulse measure



**Discussion and Conclusion**

The results are consistent with the predictions on which this study was based. Focusing on the EEG data, *novice meditators* who were exposed to a three-week meditation session reported, on average,

an increase in beta wave activity, slightly in the left hemisphere, and especially in the right hemisphere. There was no significant or visible change, on average, in alpha wave activity for in either hemisphere for these participants. The *experienced meditators*, over the three weeks meditation exercise, showed slight increases in beta wave activity in both hemispheres, but also increases in alpha wave activity in the right hemisphere (no change in alpha wave activity in the left hemisphere). As expected, the *control group participants* (who did reading/homework, not meditation) basically demonstrated no change in EEG activity, on average, between the three sessions.

Despite the small sample size in this study, these data are, we hope, valuable in that they provide support to other studies which have found that experienced meditators show differences in brain activity in comparison to those in novice meditator groups (Tang, Hölzel, & Posner 2015; Lee et al. 2015). As noted above, the change in mean frequencies of brain activity in the alpha wave ranges appeared also to support the predictions, but only for the experienced meditators, and only in the right hemisphere.

In the future, we hope to expand this small-sample study to a larger, more robust, sample of participants. Future research might also explore the benefits that pranayama yoga may have for those who face neurological difficulties, as well as physiological challenges, and those who have difficulties maintaining psychological well-being (e.g. anxiety, depression, lack of mental compartmentalization, low resilience). Previous studies show beneficial effects of yoga & meditation practices in those suffering from these disorders (Deckersbach et al. 2014; Gard et al. 2015; Jadhav et al. 2017; Lee et al. 2015), but there is still much to learn about how these benefits occur and for whom. In addition to these findings, prolonged meditation practitioners have displayed alterations in the physiology of their brain (Gard et al. 2014; Gard et al. 2015; Grant et al. 2010). Research in this area has the potential to reveal many more discoveries about the effects of meditation on the mind.

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# Adoption System in Some States in the EU and America

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**ABSTRACT:** In this material we will highlight the distinct adoption elements of the world's states, such as the US, Germany, Great Britain, Italy, France. In order to really know the evolution of our adoption system, it is necessary to compare us with other states to see the differences and similarities between them. The favor for adoption is the favor for the child and for the adopter. The importance for adoption is the importance for the children and for adopter. Therefore, the best interest of the child must be the most important thing in the institution of adoption. The national laws of the world's states have different mechanisms for implementing the adoption procedure. These differences are given by family traditions, culture, habits, religious concepts, social and political context, and last but not least their history. There are states that do not admit adoption with a adopter of race, religion different from that of the child. With the development of the adoption system, borders have been opened, adopting between races, international adoptions or same-sex adoptions.

**KEYWORDS:** adoption, adopted child, adopter, child's best interest, adoption procedure

## **Introduction**

Adoption in Europe has a recent history, while it was introduced in the USA in the middle of the nineteenth century. In 1851, the state of adoption was adopted in Massachusetts, inspired by English law. In the United Kingdom, adoption laws were adopted 75 years later. In Europe, the first forms of adoption were identified in the French Civil Code in 1804, which retained certain elements of the fact that adoption is a contract between the adopter and the adopter, it has effects on: the maintenance obligation, the name, the inheritance, etc. Some states require the adoption of adopters in that country during the process of international adoption, such as Spain, Greece. In other countries, only children with special needs, disabilities or more brothers can be adopted internationally.

As regards the selection and evaluation of adopters, certain social services are responsible in countries such as Denmark, Maureen Britannia, Irlanda, in other countries these responsibilities lie with the private organs involved in adoption. In Italy, the decision of evaluation/attestation of potential adopters rests with the court system of evolving social services. Consent to adoption can be considered from the age of 12 in Denmark and Netherlands, at 14 years in Germany.

It is listened to in Italy and the child carries less than 12 years of age depending on his / her discerning ability. Regarding people who can adopt. In Italy, they can admit married people for at least 3 years, and can also accept their own people. With respect to couples of same-sex couples in Great Britain, Netherlands is accepted, but in Austria, only one of the same-sex couple can be adopted by Germany. The Czech Republic, Denmark, Italy accepts married couples.

Individuals who are alone can adopt in the majority of the states listed above. In Ireland, the married person may adopt only with the consent of the other spouse, if they live separately in Germany, the married person can only accept one of the spouses is declared legally incapable of admitting to have under 21 years of age. The majority of the legal provisions on the admission process are significant. Stage on the child's fit with the adoptive family in several places: Italia, Great Britain, Germany. The child's shelter varies from 3 months in the UK, the Czech Republic six months in Irland and 3 years in Italy in the case of single people.

## **Adoption in the USA and the European Union**

In the US, no institution can separate the rights and obligations of the family towards the child. In the last period, legislation has made it possible for other institutions to intervene in protecting and defending the rights and interests of the child, in addition to the family. At the beginning of the sec. It was the

seventeenth if it was the admission institution. At that time legal procedures were not yet stable, there were not a number of social workers, nor were the criteria for the choice of potential adopters identified. During that period American society empowered the family with the obligation and responsibility to raise and educate the child. On November 19, 1997, former US President Bill Clinton signed The Adoption of the Family Act. That law has replaced the “foster care” children, by which it became the best solution for children in difficulty. Easy, easy adoption became a measure that allowed children to have a home. Since 1998, the US has begun accession to the Haga Convention on International Adoption. The conditions were:

1. The adoptive parent must be at least 10 years older than the adopter;
2. Can be adopted an unmarried minor child;
3. The child aged 12 years must consent to adoption;
4. Can adopt married / unmarried adults.

In *New York*, consent must be given to the natural parents, the person or the caretaker who holds the custody. The criteria for choosing an admittance team are:

5. Age;
6. Geografic area;
7. Marital status;
8. Level of education;
9. Religion.

There are many adoption done in *California*. The law allows the private admission to take place through an attorney. The lawyer is the intermediary between future parents and natal mother. In the past, it was difficult for a single copist to adopt a child, the consequences being the issues that they invite during the growth. Keeping the secret about adoption was a problem, but at the time of the matter it became necessary to make public information about adoption for medical and genetic reasons In Germany, the law on adoption is laid down in the Civil Code. For a child to be adopted in Germany, both the adoptive parents and the biological parents of the child must agree. In Germany, an adoption can only be brokered by specific organizations, such as child protection offices and accredited adoption agencies. In Germany, in principle, only married couples can adopt a child. In exceptional cases, a single person can adopt a child (Zanzu.de n.d.).

The *German* law claims that the adoptors are married. The child to be adopted must be 8 weeks old, as well as the adult and the majority, although it is morally justifiable. In order for a child to be admitted to Germany, a public notary must be filed and the lawful agreement between the child (for example, if he is over 14 years old) should be the legal representative of the child (if at least 14 years old) and the parents biological. In the case of a married person, the husband's consent is not required and his consent is consented to by a notarized act which is valid even though he is admitted by the judicial establishment. The request for admission is processed at an admission service or a youth office where the solicitor is domiciled or by a recognized professional (Lupaşcu, 2005). The adoption procedure for a German child is very difficult, so many German citizens have turned their attention to other states to end their admission. In France, the number of international adoptions has increased 4-fold in 24 years, according to the law (Academia.edu 2019). Adoption in France was recognized before the revolution. General Assembly in 1791 issued a decree with the purpose of including in civil laws those referring to adoption.

*France* in 1905 joined the Haga Convention. Napoleon's code was the one to stall the conditions, effects, forms of adoption. With the adhesion of France to the Haga Convention, the institution of admission has moved from contract to judicial. The judge verifies that admission is in accordance with the law with well-grounded reasons, the child's best interests and fundamental rights are respected.

In France:

1. A child may be abstained from the age of 3 months to 15 years;
2. The child is entrusted with placement for a period of at least 6 months;
3. Children in the signatory countries of the Haga Convention;

4. In France the adoption is baptized and is recognized after a judge pronounces adoption;
5. A couple wishing to adopt must be married for at least 2 years;
6. The single person who wants to adopt must be at least 28 years of age;
7. Parents must be at least 15 years older than the child;
8. The process of international admission in France is slow and stretches over a period of several years.

In *Italy*, the local courts of minors are in charge of the judiciary, administrative and public services and administrative bodies. At the level of the justice ministry, a database of information on child abducts and potential abductors was organized.

In Italy:

1. The adoptable child must be under the age of 18;
2. Adoptive parents must be at least 18 years of age and not older than 45 years of age;
3. Age conditions are imposed for the child's condition similar to those of a normal family;
4. In Italy adopt of married couples of at least 3 years;
5. Couples who adopt must stay in Italy (in the context of international admission);
6. Wives that wish to admit shall submit the request of the juvenile court and their availability for admission;
7. The minor who has reached the age of 14 years must express his / her consent to adoption;
8. Admission to Italy 3 years and costing EUR 5,000 (2006);
9. The child is entrusted to parents for a period of 1 year;
10. The court will monitor the child's care through social welfare services. The evaluation was finalized in 120 days with the possibility of extension for further 120 days.
11. Adopted child is originally at the age of 25 years. Instability is the only way to authorize access to information;
12. Italia adhered to the Haga Convention in the year 1998 (Commissione per le Adozioni Internazionali 2019).

In *Britain*, this measure of child protection after the First World War was adopted. The main goal was not to create a family for a child, but to find a child for a family that is not a child. The main body in the adoption process are the agencies authorized for adoption. Authorized agencies are the voluntary companies that make part of the social services of the local authorities. At the decision-making level, the responsible structures are independent of the admissibility of the agency and the judicial instability.

In Great Britain:

1. I can do the people who have more than 21 years, married to be alone;
2. The age difference between the child and the admissions family must not be over 45;
3. Married couples must agree together;
4. Persons who wish to admit small children of one year are subject to a number of restrictive conditions on admission, one of which is aged between 26-35 years;
5. Very few children are admitted to Great Britain, and a statistic indicates that in the year 2005 some 40-50% of the children were adopted. The Government of the Kingdom of Great Britain has made a statement and a White Paper on Adoption, which includes proposals for England and Wales to support the increase in the number of admissions.

## Conclusions

Starting from the premise that the family is the basis of society, I want to add that a family without children is a family without a future, it is a family without a past and without a present. His Majesty the child, as someone said, is the being that brings light and removes the darkness within a family. That is why everything related to the protection and promotion of the rights of the child must be taken by the state institutions in the most serious way possible, by involving them as actively as possible and by working together. Social changes have largely led to changes in the vision of adoption in many

countries in the world, and this is encouraging (Avram 2001) because with the evolution of society, adoption of the child.

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# **Criminological Analysis of the Antisocial Personality of the Terrorist**

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**ABSTRACT:** This article describes the causal link between the antisocial personality of the terrorist and the suicidal behavior that preceded the passage to the criminal act. People with antisocial personality disorder are characterized as aggressive, irresponsible, cynical, impulsive, empathy-free, have a criminal behavior and know the experience of professional failure. From a psychoanalytic point of view, the terrorist has a devalued Superego, the ego is influenced by the drive of destruction, and can no longer censor the morbid demands of Id. Anticipating the sanction and assessing the consequences of the criminal act lead to the inhibition of the aggressive personality, the passage to the act being stopped by the moral barrier, by the censorship of the overwhelm in the case of a social being. The concept of radicalization is presented in comparison with the failure of social integration programs. Radicalization is preceded by suicidal behavior.

**KEYWORDS:** antisocial personality disorder, suicidal behavior, radicalization, Superego, passage to the act

## **Introduction**

Radicalization is a process of behavioral transformation whereby the person discovers the aggressive motivation to passage to the act, the reason to disturb social order through terror, a process by which the person finds the inner force to use violent means against the victims who are not part of the terrorist group, which do not have the same political, cultural and religious objectives; violence can also be directed against symbolic goals (Bertjan Doosje, Fathali M Moghaddam, Arie W Kruglanski, Arjan de Wolf, Liesbeth Mann and Allard R Feddes, 2016). The purpose of radicalization is to produce arguments and justifications for committing antisocial deeds causing terror to members of societies who do not share the radical ideas of the terrorist group. The terrorist assault becomes a success for criminal groups if it causes as many victims as possible, as well as material damage, social tensions and economic decline in the segments of society.

Through radicalization, ideas of a religious nature or an ideology are expressed through intense expression of the apology of a totalitarian, anarchist, undemocratic, intolerant regime. More than 95% of terrorist attacks were organized, coordinated and executed in a group, collectively by a terrorist group. Within the group, it is easier to prepare for the attack, and at the same time within the group you develop and keep your motivational energy to commit the attack, which can sometimes be a suicide attempt (Bertjan Doosje, Fathali M Moghaddam, Arie W Kruglanski, Arjan de Wolf, Liesbeth Mann and Allard R Feddes, 2016). The individual who is radicalized must constantly keep at the intellectual and emotional level the radical ideas that have caused his behavioral change, as well as the power to act unconditionally, according to the group's decisions. Members of the terrorist groups are encouraged to resist all existential challenges that could detract from their general purpose, religious fanaticism of leaders has a significant influence in many situations. Feelings of injustice, negative social experiences, discrimination and insults are always remembered by group leaders. The radicalized individual who is part of a military organized terrorist group is considered a soldier fighting in a holy war; he has no pity on the collateral victims because the war must be won by any means.

## **Psychoanalytic aspects**

Superego is censorship, Superego is the inhibition, but at the same time Superego is born, it develops only from the relation of the Ego to the world, its freedom of manifestation, but also from the contamination of perceptions with the gross being of reality. Being influenced by the Superego authentic-presence position, the Ego-Id becomes the intermediary of the Moral Being, and at the same time a messenger of inner values sent to investigate the bonds of being with the reality of the world, provocative alterity. Ego-Id is cast into the existence of the bodily world and strives to maintain a balance between the sometimes excessive requirements of the Id, the demands of the

social world generated by intramundal relations, and the requirements of the Superego (the plans of the moral being); these demands are sometimes torture, their fulfillment or failure to suffer the Ego, reveal the weaknesses of the personality and push the individual to anger and exhaustion. The Superego limits freedom and inhibits the requirements of the Ego-Id; In the case of the antisocial personality, which turns into a delinquent personality, sometimes the Superego is handcuffed, is closed in a state of concealment, the inhibitions and the moral court are asleep and pushed to the limit of absence, to the underground edge of the unconscious. In order to feel free to escape conditions and prejudices, the Ego must eliminate the tension caused by the censorship of the Superego; morality as an expression of the Superego's identity is held in the shadow of the unconscious, it is not activated, so the fear of rules and consequences disappears into the abyss of the perpetrator's mind without disturbing the privacy of the Ego; the state of anguish is replaced by a temporary state of well-being, of spiritual freshness; anxiety and depression sometimes crack a malignant layer over the soul's rooms, shut the individual's being, and this break of the Ego-Id that claims its freedom and the joy of living represents for a short time the saving solution. An individual with an antisocial personality is emotionally unstable, egocentric, aggressive, without too much affection for the fellow, his mood changing frequently; well-being is short-lived, invariant and degrading. The destruction drive separates the Ego from reality and thus a psychic cleavage occurs, the relationship with the outside world being affected by the uncontrollable demands of the Id, as the Ego may be affected by psychoses (Freud, 2014).

The superstition of the radical person who becomes the adept of the ideology of terrorism is killed by the criminal ego penetrated by fanaticism; the moral court no longer controls the personality of the person; through aggressive behavior, the Ego reveals his voluntary slavery to the claims and pleasures of the Id. The joy of killing, committing a suicide terrorist attack, causing the death of some people, regardless of their social condition, age, sex, religion, is the satisfaction of the demands of the vindictive Id, the death drive acts to get rid the Ego of the terrible feeling of guilt, a self-destructive feeling (New Zealand Theorist draws cold blood on innocent victims - women, children, old people, men - without remorse and no inhibition, no shaking his hand, skillfully using guns and chargers, sometimes chaotic shooting in the victims already death, aggression discharged laughs and is surprised to survive the massacre). Analyzing the personality of the human being can be said that the evolution of being is related to the evolution of the Superego; matter, the being of the Id is the dark side of the person who pushes the Ego to death; the Id wants to satisfy its immediate instincts, sometimes irrespective of the consequences; the destruction drive push the interests of the Ego just now into the unconscious of the pleasures exhausted by temporary acts; through the censorship of Id's pulses, only the Superego can give the Ego the positivity of the existential project and the path to a spiritual evolution; the lack of inhibition of the Ego influenced by the destruction drive kills the Superego and at the same time kills the whole being. Victims of terrorism exist because they appear as objects of the terrorist attack, an attack produced by the perpetrator's ego.

The criminal ego of a terrorist justifies his suicidal behavior only if he succeeds in committing the moment of terror and deliberately killing as many victims as possible. From a psychoanalytic point of view, radicalization involves a radical transformation of the Ego. If until the time of radicalization the individual respected the criminal law of society and did not kill, it means that the process of radicalization decisively transforms the personality, and the genesis of aggressive compassion becomes the genesis of the justification of the terrorist act. Terror leads to chaos, social disorder, economic crises, crimes against humanity, which means that the terrorist act will always have a non-human nature. In the "Ego and Id" (1923), Freud cites G. Groddek (*Das Buch vom Es*, Internationaler Psychoanalytischer Verlag, 1923) "Our ego behaves alive in an essentially passive manner, because, after its expression, we are experiencing unknown forces that can not be mastered."

### **Preventing radicalization**

In order to prevent radicalization, vulnerable persons to radicalization must be identified; it is necessary to intervene with experienced competent officials, governmental agencies preparing courses and broadly explain the complexity and danger of radicalization; developing good practice guides to prevent and stop radicalization; promoting an ideology of violence, radicalization attracts adherents and takes place at the same time as the trigger event that removes the individual from social normality; the trigger event is sometimes influenced by life problems, negative social factors, family factors, physical health problems of the individual, or the suffering of the members of the family to which he belongs; the trigger event radically transforms the life of the individual, there is a behavior change, the attitude aggressiveness and the first elements of the suicidal behavior appear; Superego as a moral instance is kept in the darkness, personality is changing, there is a negative metamorphosis of the Ego; the religious factor and fundamentalism become important and have priority over routine and common cultural activities; the pleasure of discovering the ideologies of violence appears; rumors and emotional instability occur; the struggle for an ideal society and extremist ideas are obsessive concerns in this period; there is an interest in discovering how terrorist groups operate and the first attempts to benefit from the experience of radicalization; radicalization is a complex process and takes place in several stages, so the intervention of deradicalization through special procedures is important to happen as soon as possible; radicalization takes place in the space of a society and uses the contemporary means of communication to spread the doctrine of violence; the institutions of the national state and international institutions must take measures to prevent the recruitment of young people into terrorist organizations; access to radicalization should not be easy; the consequences of a criminal sanction (both for the perpetrator and for the closure of the closest) and the vigilance of the competent institutions fighting terrorism must become obstacles for those who want to enter the process of radicalization; if the recruits make a great effort in the radicalization process, then there is also the opportunity to intervene the process of deradicalization to determine the adherent to reject extremist ideologies and to abandon integration into the terrorist network; at the same time, effective local policies on the social reintegration of those who accept deradicalization must have positive effects; the prevention of radicalization is much more effective than the process of deradicalization of members of terrorist organizations and of the families they support.

The adept of violent radicalization can be described as an individual dissatisfied with his existential, marginalized, and unfairly excluded social strategies; its relations are unstable and short-lived; is easily influenced and conflicts with the authorities; dominated by the pulse of destruction, revenge, and sometimes greed; reacts instinctively and has affective, emotional instability; is considered the victim of the current social system; is aggressive, encompassed by religious fanaticism, without respect for social norms and without fear of legal consequences; is tired of the uncertainty about his role in social life; is not able to engage in the realization of a positive social, family, and economic project; he loses his job quickly because of divergences and religious problems; exaggerates the importance of the religious factor for the failure of social life; always finds religious arguments against a new job.

### **Theoretical aspects regarding the personality of members of terrorist groups**

When individuals act in a group, their behavioral reactions are relatively stable, the attitudes imposed by a number of factors become similar, with the motivational inner force being generated by the extreme ideology. The organization, leadership and supervision of the terrorist group is carried out by a leader who, through authority, power and prestige, manages to dominate and exert influence on members (Tănăsescu 2012a). Within terrorist groups there are pre-established bodies that institutionalize leadership; the leader is at the same time through the leadership activities he carries out and the members' preference. For the purpose of achieving the overall goal, the leader plans and structures members' activities, his actions are based on an aggressive ideal, on the idea of eliminating the unequal distribution of power between and within countries as this will impose a new order justified by a new religion. The will to overthrow the hierarchy of social forces has a

mystical, religious character, the motive motif identifies itself with a fighting ideal the fanaticism of members of the terrorist group allows them to be involved in suicide attempts. Active violence and unconditional obedience to the behavioral rules imposed by the group they belong to express the solidarity of the members and at the same time the effectiveness in making the most terrible terrorist attacks. The personality of the terrorist is characterized by aggressive behavior towards the dominant social structures, to the administrative and government apparatus; the terrorist engages in anti-social, destructive actions to provoke the state of terror, imbalance and political, social, economic instability. The aggressiveness of the perpetrator becomes a weapon and a form of manifestation for the realization of the extremist ideals within the fanatic groups, the purpose of the passage to the criminal acts being to frighten the population, to achieve as many collateral victims as possible, to interrupt the social activities and to destroy the perception ordinary people about the security that state structures provide.

The moral judgments of a community about the inappropriate individual reflect the contradiction between the social behavioral ideal and the concrete social reality opposite the realization of an existential commitment. The social order is characterized by unequal manifestations, by antagonisms, by the faculty of the human being to progress as a result of the preservation of human order, to accumulate certain virtues that are balanced with the degrading aspects of some of the behaviors. Good morals stimulate individual acts, although civilization has profound contradictions (Tănăsescu 2012b). The synthesis of social relationships encourages individual traits, certain psychological determinations that impose behavioral particularities. This behavioral specificity is a long-term process, which involves the development of the individual's adaptation capacities to environmental conditions as a result of learning and acquiring social rules and norms. The multiple influences that the social, political, cultural and religious environmental factors have on the individual acquire a causal dominant nature, the social framework being mobile, changing, requiring a constant effort to adapt the individual (Tănăsescu, 2012c).

## Conclusions

Right-wing extremism and terrorism appear to be men's concerns, but lately we also find examples of women involved in the phenomenon of violent radicalization. Women who followed men in radicalization and terrorism radically make their children more radical, and urge them to accept the message of extremist ideologies related to terrorism. The process of deradicalization has to promote a positive speech, and it must intervene as soon as possible in children's education, to discourage any form of violence and involvement in terrorist actions.

From a criminological point of view, radicalization already means the beginning of the act. The terrorist assassination by killing victims is the killer moment of terror, but the criminal idea has formed in the personality of the terrorist since radicalization. Radicalization happens and develops in a social space within a community. Radicalization is linked to the social, political, cultural, economic and religious life of the day, and the terrorist fighter violently opposes these realities. Radicalization promotes a violent, extreme ideology, and those who adopt it disagree with the social system and the values of the communities in which they live. Sometimes the radicalization process is successful because the terrorist fighter very easily accepts the ideology of the terrorist group, and the proposed criminal behavior fits its antisocial personality.

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# Some Aspects of Criminal Participation

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**ABSTRACT:** In the social life, human activity may be performed by one person, but in some other people can contribute to the same activity. If this human activity is characterized by committing an act provided by the Criminal Law, and other persons are contributing to this deed, we are in the presence of participation to the commission of an offense under Criminal Law. In other words, we have a plurality of people who commit a crime stipulated by the criminal law. So who directly commits the deed directly is the author and the others are participants. In order to be in the presence of a criminal participation, it is not enough that other people participate, but the participants need to be animated by a common will, together with the author, to commit the crime provided by the Criminal Law. Another condition is that the crime provided by the Criminal Law has been committed by a larger number of persons than necessary, according to the nature of the act otherwise we will have either a plurality constituted either by natural plurality. The Romanian Criminal Law incriminates this form of plurality of offenders (also called occasional) in Title II, Chapter 6, entitled "The Author and the Participants."

**KEYWORDS:** accomplice, author, co-author, criminal participation, instigator

## Introduction

The plurality of subjects active in criminal matters should be analyzed in relation to a specific criminal offense prescribed by law, concerned with a specific offense. In other words, in terms of plurality of offenders (criminals), the idea of plurality on the perpetrator, and the idea of unity concerns the deed (offense) (Molnar 2001, 8).

The plurality of offenders (*concursum plurium ad idem delictum*) involves actual contributions, belonging to several persons acting with a common will to perpetrating the deed acts provided for by the criminal law. The plurality of offenders changes into a plurality of offenders if it acts with the form of guilt required by law for the existence of the offence.

The Romanian legislator no longer relates to the offense, but to the deed, so within the holding not only his own, but also the improper form is included (Lefterache 2016, 395).

## Criminal shareholding. Notion

Criminal participation or occasional plurality of criminals means the situation in which the common will of more persons committing a deed provided by criminal law commission of a criminal law has contributed more than one person to the nature of that act or according to the will of the legislator (Mitrache and Mitrache 2014, 364).

The need to sanction participants in committing an act provided by criminal law has been explained by the elaboration of several theories, such as the causal theory, the corruption theory, and the theory of participation in an illicit deed. So, according to doctrine (Streteanu and Nițu 2018, 218), it is provided that according to causal theory, sanctioning the instigator and the complicit would be justified by the fact that their actions or inactions are causal in relation to the result produced.

The illicit nature of the act of the instigator and the complicit derives directly from the damage to the social value that it has caused or supported. From this perspective, the author's conduct appears as the means by which the participant's causal contribution is channeling a greater distance from this contribution of the produced result, with the consequence of lower sanctionability.

From the perspective of the theory of corruption (the theory of participation in imputability), they start from the idea that the participant must be sanctioned because he is the one who corrupted the author, making him violate the legal order.

Neither this theory is supported by current legislation. The penalty applied to the instigator depends primarily on his behavior, not on the degree of imputation of the author, or on the extent to

which he was previously socially integrated, and the extent to which the instigator influenced him negatively.

The theory of participation in an illicit deed enjoys the greatest audience in the doctrine. According to this theory, the basis of sanctioning the instigator and the complicit is given by his involvement in committing an illicit deed by another person. Thus, the participant does not realize the typical nature of a deed described in the special part of the penal code or in the special legislation, does not violate the prohibition established by the norm of incrimination, but the prohibition to determine the commission of a typical act or to support its commission, as established by Art. 47 and 48 of the Criminal Code.

Thus, the illicit behavior of the instigator or complicity is determined first and foremost by the illicit act to which they contribute. Thus, a justifiable cause of the author's deed, removing the illicit nature, also produces its effects on the participants. Similarly, in the case of offences with a special subject, it is possible to retain the participation in those who do not have the quality required by the rule of criminality, because they do not realize the content of this rule, but the one which defines complicity or instigation.

### **Conditions for the existence of criminal participation**

- a) A crime prescribed by criminal law must be committed;
- b) The act is to be committed in cooperation by two or more persons;
- c) All participants should be animated by a common will to commit the crime prescribed by the criminal law;
- d) The act committed to fulfill the features and content of the offence for at least one of the participants;

In order to fulfill the condition of committing an act provided by criminal law, it is sufficient to commit any of the acts that the law punishes as a crime committed or attempted, as well as participation in their committing as coauthor, instigator or accomplice according to art. 174 Criminal Code (Lefterache 2016, 403).

For the second condition for the cooperation of two or more persons to commit the offense provided by the criminal law, it is sufficient for one of these persons to fulfill the conditions for being an active subject of the offense and to act intentionally.

Concerning the third condition, the participants are animated by a common will to commit the act provided by the criminal law, it is of the essence of the criminal participation.

The existence and character of criminal participation are determined by the existence of a dual psychological link between the participants. On the one hand, there is a common will to cooperate in committing the same act provided by the criminal law, and on the other hand there is the common goal or result pursued by the participants in committing the deed. Of the two psychical ties, only the first is essential for the existence of the participation, because without the common will to cooperate in committing the deed, criminal participation cannot exist.

Finally, for the fourth condition to be also fulfilled, the contribution of participants to the committing of the deed has criminal relevance only in the situation when the deed is an offense for one of the participants.

### **The modalities of criminal participation**

The modalities resulting from the legal regulation of criminal participation are as follows (Grădinaru 2017, 64):

1) By mental attitude:

- a) Own or perfect participation - all participants contribute to committing the offense with the same guilt.
- b) Improper or imperfect participation - some participants act intentionally and others, whether guilty or without guilt.

2) By nature of the contribution:

a) Authored and co-authored - the contribution consists in direct and direct execution of the act, namely committing the acts that constitute the material element of the objective side of the offense.

b) Instigation-the contribution consists in determining another person (transmitting the judgment) to the offense.

c) Complicity-aiding or facilitating the commission of the offense

3) According to the importance of the contribution:

a) The main share is characterized by direct and direct execution of the acts of execution, being specific to the authors and co-authors

b) Secondary participation is characterized by contributions that do not consist of acts of direct and direct execution. This contribution is specific to instigators or accomplices. It should be noted that the activity of instigators is more important than that of accomplices.

4) According to the moment when they contributed:

a) A previous contribution is made before the perpetuation of the act by the author. Only the instigator and the accomplice can have contributions prior to the act.

b) Concurrent contribution is made during the commission of the offense. Concomitant constraints may have concomitant co-authors or accomplices.

### **Author and Co-author**

The *author* is the person who directly commits an act provided for by the criminal law (art. 46 par. (1) Criminal Code).

According to the norm of incrimination, the author commits acts of execution. Without the author we cannot talk about the other forms of participation. The author is the main executor of the deed stipulated by the criminal law, but in some situations he acts together with other participants who have secondary contributions. Whether the perpetrator commits the offense by himself, or takes it alongside an instigator or an accomplice, an author's activity has a necessary character, without which the perpetration of the crime (its existence) is unthinkable (Molnar 2001, 72).

From the legal regulation, namely from the title of chapter 6, "The Author and the Participants", it is pointed out that the author is not a participant in the commission of the offense.

In the case of his own criminal participation, the perpetrator carries out the deed only with a direct or indirect intent or with *praterintentia*, and in the case of an improper criminal participation, the author commits the act guilty or not guilty (Udroiu 2017, 274).

The *co-author* is the person who commits the same act as provided by the criminal law directly (Article 46, paragraph 2)

In order to be co-authored, certain conditions must be met:

a) Indivisible unit of actions of several perpetrators

b) Subjective cooperation of the perpetrators. If the norm of criminality requires a certain quality of the author, it is necessary for the coauthor to have this quality.

However, the actions of the co-authors must not necessarily be identical to those of the author, it is important that the unity of the actions be indivisible (for example: if two persons, following an agreement commit a robbery offense, but only one of them exerts violence, and the second one steals the goods, we will be in the presence of a crime committed in the form of a co-authoring).

### *Offenses that cannot be committed in the form of a co-authoring*

According to the material element of the offense, the offenses that involve inaction (own omissive offenses) cannot be committed in the co-authoring, when the obligation to perform an action, an activity to shift out of passivity, is personal (eg.) If the obligation is imposed on a collective body, in case of failure to fulfill this obligation, the members of the collective will be co-authors of the deed (Mitrache and Mitrache 2014, 370).

No offense involving a qualifying subject (manager, official) can be committed unless the perpetrators have the quality required by law.

*Co-authoring* is also not possible for offenses committed in his own person (false testimony)

Offenses that do not allow co-authoring, as a form of criminal participation, however, allow for other forms of participation-instigation and complicity, which otherwise do not know constraints.

### **Instigation**

According to Article 47 of the Penal Code, the instigator is the person who deliberately causes another person to commit a crime prescribed by the criminal law. The instigator's activity precedes the phases of the author's crime, for the instigation consists in the fact that the author of the criminal idea conveys the idea to another person, under the conditions and means that make that person acquire and execute it.

#### *Conditions for the existence of the instigation*

a) There is an activity of determining when committing an act provided by the criminal law.

Instigation can be done by any means, regardless of whether they are licit or illicit.

b) The determination is made intentionally

The intent that characterizes the activity of the instigator usually takes the form of direct intent, but the hypothesis of instigating acts committed with potential intent is also excluded. Given the adventitious nature of the instigation, in order for this form to be retained, the determining activity must produce effects, that is, effectively lead to the commission of the typical deed in which it was instigated in consumed form or at least in the form of the incriminated attempt.

### **Complicity**

According to Article 48C, the accomplice is the person who intentionally facilitates or assists in any way the commission of a criminal law act or promises, before or during the commission of the deed, that he will receive, acquire or transform the goods, or that he will help the perpetrator to hinder or punish the prosecution, trial, or execution of the punishment, even if the promise is not fulfilled after the act has been committed (Udroiu 2017, 281).

#### *Forms of complicity*

Depending on the nature of the acts of relief or assistance, the complicity may be *material* or *moral*. In the *material complicity*, the activity of facilitating or helping consists in the material support of the author. Eg: the complete delivery of the gun of the perpetrator to kill the rival that the perpetrator actually uses the material provided by the accomplice.

In *moral complicity*, helping or facilitating activity consists of a moral support, a psychological support of the author, in order to strengthen his / her criminal rehabilitation. Eg: the compliments give assurances to the perpetrator that he / she will provide his / her stall to deposit the stolen goods.

### **Improper participation**

*Improper participation* can arise through intention-guilt or intentional-no guilt.

The intention-fault mode provides that the co-author, the instigator and the accomplice shall be punished with the punishment stipulated for the intentional act, and the author shall be punished with the punishment stipulated by the law for the culpable deed. Where the law does not provide for the sanction of fault, the perpetrator will be acquitted.

*The mode of intention-lack of guilt* presupposes that the author of the deed is in any of the cases of impropriety at the time of the act, in which case he will be acquitted and the instigator or the accomplice will be punished with the punishment provided by the law for the fifth offense.

### **Conclusions**

It should be borne in mind that the role of criminal law is to regulate and sanction by law those situations that reflect an objective reality and pose a threat to society. At the same time, it is necessary to discipline the addressees of the criminal law, in order to prevent and discourage the commission of crimes and, moreover, participation in the commission of such deeds. Thus, by criminalizing the participation in the

commission of a crime, it is attempted to discourage the persons from participating in some antisocial deeds. Thus, the legislator refers to committing an act provided by the criminal law and not to an offense, thus including improper participation. There are few situations when major people use minors who are not criminally responsible for committing crimes. In some instances, instigators or accomplices are punished more severely as the perpetrator of the deed, because in the individualization of punishment, the contribution of each person to the deed will be taken into account, and the personal circumstances of each participant also.

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# Preventive Measures in the Criminal Procedural System in Romania

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**ABSTRACT:** Preventive measures are those measures ordered by the judicial bodies in order to ensure the proper conduct of the process and the participation of suspects or defendants in the judicial proceedings. Preventive measures shall also be ordered against persons committing criminal offences and where it is desirable that such persons do not influence witnesses or injured persons, experts or other participants in the criminal proceedings. The Code of Criminal Procedure in Romania regulates five preventive measures: taking in custody, judicial control, judicial control on bail, house arrest and pre-trial arrest. The present work aims to address preventive measures from a theoretical perspective, and we will analyze the conditions of ordering such preventive measures, remedies that may be formulated against these measures, the possibilities for revocation or termination of such measures in certain situations, but also the actual content of such measures.

**KEYWORDS:** conditions, duration, preventive measures, purpose, revocation, termination

## Introduction

Preventive measures are compulsion measures that may be taken by the judicial bodies in order to ensure the proper conduct of the criminal process, in order to prevent the abstraction of the suspect or defendant from prosecution or from judgment or in order to prevent the committing of new offences. The Code of Criminal Procedure in Romania governs a number of five preventive measures: taking in custody, judicial control, judicial control on bail, house arrest and pre-trial arrest. Of these, three are custodial preventive measures (taking in custody, house arrest, pre-trial arrest) and two are restrictive-rights preventive measures (judicial control and judicial control on bail). With regard to the purpose of the preventive measures, these apply in particular to natural persons, but where the criminal liability engagement for legal persons is possible, the Code of Criminal Procedure regulates measures which can also be taken against the latter (Code of Criminal Procedure commented, coord. Volonciu, 2017, 494).

## Purpose and general conditions for the application of preventive measures

According to art. 202 of the Code of Criminal Procedure: *“Preventive measures may be ordered if there is evidence or probable cause leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense”*. The purpose of the preventive measures is, in fact, the danger which must be mandatory prevented, the judicial bodies having the obligation to choose the most appropriate, necessary and appropriate measure for this purpose to be carried out to fulfilment. In order for a preventive measure to be ordered by the judicial bodies towards the suspect or the defendant, a number of conditions must be met, namely:

- a) There is evidence or a thorough indication that a person has committed a criminal offence. In relation to this condition, the following aspects are to be retained: Preventive measures may be ordered both against the suspect (taking in custody) and the defendant (any preventive measure); The evidence underlying the undertaking of a preventive measure towards a person must not be as strong as the evidence on which a conviction would be based, in the latter case being absolutely necessary for the evidence administered in question to lead the court to a conviction beyond any doubt that the deed was committed by the defendant with the guilt provided by the law and that there is no cause for removing the criminal liability; the need for

evidence to take a preventive measure is justified since the fulfilment of that condition avoids the arbitrariness of the judicial bodies in the ordering of those measures;

- b) The measure chosen is proportionate to the seriousness of the accusation. Regarding this condition the following clarifications are necessary: the criteria for assessing the seriousness of an act are not provided for by the criminal procedural law. However, it is obvious that this gravity must be objectively assessed, both in abstract, but especially in concrete terms. The seriousness of the act may be assessed by reference to the means used by the suspect or defendant, the result produced by the performance of the offence, but also aspects regarding the person of the suspect or defendant, referring specifically to the his/her criminal record.

The preventive measure must be necessary. With regard to the need to take, prolong or maintain a preventive measure towards a person, it is to be noted that it cannot and should not be deducted from the mere declaration by the judicial body of those purposes. The need to order a preventive measure must arise from the fear of the judicial body that the person who committed the offence may commit another, in this situation the risk being necessary to be prevented. Whenever the undertaking, extension or preservation of a preventive measure is ordered, it is necessary for the judicial body to ascertain whether or not there are any grounds preventing the initiation or the exercise of criminal proceedings.

## **Preventive measures seen in their specificity**

### ***1. Taking in custody***

The taking in custody is that custodial preventive measure which is ordered for a maximum period of 24 hours. Within the period of detention, the time required for the dispatching of the suspect or defendant at the headquarters of the judicial body may not be included.

The preventive measure of taking in custody shall be the only preventive measure which may be ordered only in the course of the prosecution, which may also be ordered by the criminal investigation body and shall be the only preventive measure which may be available to the suspect. The taking in custody shall not be confused with the apprehension and presentation of the perpetrator before the judicial bodies or the institution of the warrant for arrest.

The taking in custody may be ordered against a person where there is evidence that the person has committed an act provided for by the criminal law, where the measure is necessary and proportionate to the seriousness of the act and when there is no case of impeachment of the initiation of criminal proceedings. (Criminal action may not be initiated, and when it has already been initiated, may not be used if: a) the action in question does not exist; b) the action is not covered by the criminal law or was not committed with the guilt required by law; c) there is no evidence that a person committed the offense; d) there is a justifying or non-imputability cause; e) a prior complaint, an authorization or seizure of the body of competent jurisdiction or other requirement set by the law, required for the initiation of criminal action, is missing; f) amnesty or statute of limitations, or death of a natural-person suspect or defendant occurred or de-registration of a legal-entity suspect or defendant was ordered; g) a prior complaint was withdrawn, for offenses in relation to which its withdrawal removes criminal liability, reconciliation took place or a mediation agreement was concluded under the law; h) there is a non-penalty clause set by the law; i) double jeopardy (*res judicata*); j) a transfer of proceedings with a different country took place under the law). It is important to specify that the measure of taking in custody may be made ordered against a person also when there are reasonable indications that that person has committed an act provided for by the criminal law. The procedural-criminal law does not provide a definition of the notion of reasonable indications, but in order to edify ourselves we can make appeal to the case-law of the European Court of Human Rights. Thus, by the existence of reasonable indications we understand “The existence of data, information leading an objective and impartial observer [to the conclusion] that the person investigated may have committed the offence with which he/she is accused” (*Causes Gusyinski v. Russia, Tuncer and Durmuş v. Turkey, Jecius v. Lithuania*).

As we have indicated above, the taking in custody measure can only be ordered against the suspect or defendant. Thus, in order the taking in custody measure against a person to be ordered, it is necessary not only to initiate the prosecution but also the pursuing of the prosecution against the suspect to be ordered. If the judicial body decides to order a person's taking in custody, it has the obligation to examine him/her. The obligation of hearing a person does not imply the constraining of the person to give a statement in question as any person to whom an accusation is brought may prevail herself/himself of the right to silence, enshrined in the Romanian criminal procedure law at art. 83. The judicial bodies are obliged to proceed to the hearing of the person before ordering a preventive measure against the person.

The procedural act of ordering the taking in custody measure shall bear the name of order. The measure shall be enforceable from the moment the order is issued. It is to be noted that the order by which the taking in custody of a person is ordered must be reasoned. Unlike the other custodial preventive measures, in the case of taking in custody, the law does not require the judicial body to issue a mandate to execute the preventive measure. The taking in custody measure shall be communicated in writing to the person restrained by the communication of a copy of the order by which the taking in custody was ordered.

Against the order by which the taking in custody of the suspect or defendant was ordered, he/she may submit a complaint, remedy to be resolved by the prosecutor supervising the prosecution, and in the event that the prosecution is carried out in a compulsory way by the prosecutor, the body called to order the complaint lodged by the suspect or defendant shall be the hierarchically superior prosecutor.

## ***2. Judicial control***

**The judicial control** is a restrictive preventive measure of rights that may be ordered according to the procedural phase by the Prosecutor, the Judge for Rights and Liberties, the Preliminary Chamber Judge or by the court. It is to be noted that in the criminal prosecution phase, the prosecutor is the one who orders the measure of judicial control against the defendant but, as an exception, also the Judge for Rights and Liberties has this possibility when rejecting the proposal of the prosecutor of imposing a more severe preventive measure, reasonably appreciating that the measure of judicial control is necessary but also appropriate for the criminal process to be carried out under normal conditions.

In order the preventive measure of judicial control to be ordered against a defendant it is necessary the following conditions to be fulfilled:

- a) The existence of evidence based on which the reasonable suspicion to be drawn that a person has committed a criminal offence
- b) There are no cases of impeachment of the initiation of the criminal proceedings;
- c) The measure of the judicial control must be necessary and sufficient for the purpose pursued by its performance.

The judicial control may be ordered against a person based on an order issued by the prosecutor or by a resolution of the Judge for Rights and Liberties, the Preliminary Chamber Judge or by the court. The order or, where appropriate, the resolution shall be reasoned and communicated to the defendant against whom the measure of judicial review was ordered. The defendant may challenge the prosecutorial order issued by the prosecutor, the decision of the Judge for Rights and Liberties, of the Preliminary Chamber Judge or of the court.

While under judicial control, a defendant shall comply with the following obligations:

- a) to appear before the criminal investigation body, the Preliminary Chamber Judge or the court any time they are called;
- b) to inform forthwith the judicial bodies having ordered the measure or with which their case is pending on any change of domicile;
- c) to appear before the law enforcement body appointed to supervise them by the judicial bodies having ordered the measure, according to the supervision schedule prepared by the law enforcement body or whenever they are called.

Judicial bodies having ordered the measure may require that the defendant, during the judicial control, comply with one or more of the following obligations:

- a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;
- b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;
- c) to permanently wear an electronic surveillance system;
- d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly;
- e) not to practice a profession, craft or activity during the practice or performance of which they committed the act;
- f) to periodically provide information about their living means;
- g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;
- h) not to take part in sports or cultural events or to other public gatherings;
- i) not to drive specific vehicles established by the judicial bodies;
- j) not to hold, use or carry weapons;
- k) not to issue cheques (art. 215 of the Romanian Code of Criminal Procedure).

### **3. Judicial control on bail**

The judicial control on bail has the same content as the measure of judicial control, the major difference between these measures being that in the case of the judicial control on bail on the defendant is imposed the obligation to pay an amount by way of guaranteeing the participation of the defendant in the criminal proceedings and the fact that he/she will no longer commit other offences.

### **4. House arrest**

It is the custodial preventive measure consisting of the obligation imposed on the defendant not to leave for a specified period of time the property in which he/she resides without the permission of the judicial body which has ordered the measure or with which the cause is pending and to obey the restrictions set by it. House arrest may be ordered against the defendant only by the Judge for Rights and Liberties, the Preliminary Chamber Judge or by the court. It is to be noted that the measure of house arrest cannot be ordered against a person who has committed an offence on a family member or who has previously committed the offence of escape.

The measure of house arrest can only be taken if the following conditions are met:

- a) The defendant fled or went into hiding in order to avoid the criminal investigation or the trial, or made preparations of any nature whatsoever for such acts;
- b) The defendant tries to influence another participant in the commission of the offence, a witness or an expert to destroy, alter, conceal, or to steal physical evidence or to cause another person to adopt such a behaviour;
- c) A defendant exerts pressures on the victim or tries to reach a fraudulent agreement with him/her;
- d) There is reasonable suspicion that, after the initiation of the criminal action against him/her, the defendant committed a new offense with intent or is preparing to commit a new offense.

The measure of house arrest can also be ordered if the evidence generate reasonable suspicion that they committed an offense with direct intent against life, an offense having caused bodily harm or death of a person, an offense against national security as under the Criminal Code and other special laws, an offense of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or other securities, blackmail, rape,

deprivation of freedom, tax evasion, assault, judicial assault, the offense of corruption, an offense committed through electronic communication means or another offense for which the law requires a penalty of no less than 5 years of imprisonment and, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or on the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is decided that their deprivation of freedom is necessary in order to eliminate a threat to the public order (LegeAZ, Art. 223 Criminal Procedure Code).

### **5. Pre-trial arrest**

The pre-trial arrest is a custodial preventive measure which involves the deprivation of liberty of the defendant over a certain period of time and his/her placement in specially arranged places (police stations, correctional facilities). The measure of pre-trial arrest is the harshest of these measures, and this is the reason it has an exceptional character. The measure of preventive arrest may be taken, prolonged or maintained only by a judge. Regarding the conditions for ordering the pre-trial arrest measure, it must be noted that they are identical to those to be met for ordering the house-arrest measure.

### **Conclusions**

In the light of all the foregoing, we consider that the subject matter of the preventive measures is very well regulated, the Code of Criminal Procedure containing express provisions for the taking, extension, maintenance, revocation or termination of the law of such Measures.

Regarding the measure of preventive arrest, we consider that its character of exceptional measure must be respected and it is not sufficient for that character to be only theoretically stated. Even with an expedited reading of the judicial practice in this matter, we could note that the measure of preventive arrest has become a measure very facile ordered by the judicial bodies, the conditions laid down by art. 223 of the Code of Criminal Procedure being treated in an abstract and superficial manner. We believe that against the defendants who commit crimes the measure of judicial control should be most often applied, with the exception of those defendants who commit acts of violence and who pose a serious danger to public order. Precisely for stopping the performance of new offences by such persons the judicial control on bail has been regulated; the amount of bail money primarily aims at preventing new offences and ensuring the participation of the defendants in the criminal proceedings.

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# Law and Religion. The mystical link

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**ABSTRACT:** In history, between Law and Religion there existed an important connection because both have their origin in establishing some norms regulating the conduct of man in the society. Thus, if at the beginning, the religious and the legal norms were almost identical, over time these began to differentiate, preserving, however, a latent and permanent connection. In its evolution, law has always represented an assembly of behavioural rules in the social connections, whose main feature is the mandatory feature establish for all its members of a society. By studying religion, we can establish similar rules as the law ones, having as purpose the creation of a manner for preserving peace and understanding between individuals, without family links, rules which had to be complied with by all the participants in a social, economic or religious process.

**KEYWORDS:** evolution, law, norms, religion, rules

## Introduction

Around the year 1500 B.C., in the Middle East, king Thutmose III remained in history as the author of the rules established for the president of the Supreme Court Rekhmire of Egypt, from which it can be observed the clear connection between law and religion.

“Beware in the room of the chief judge; be aware of everything that takes place there. Behold, it is a support for the entire country; (...) Behold, he is not one of those who turn their faces to the clerks and councillors and neither one of those who becomes a brother to the entire world. (...)”

You must ensure yourself that you do everything according to the law; that you do everything according to the law (...) in this lies the safety of the clerk: to make things according to the law when analysing what the petitioner says (...) Taking sides is a shameful thing for the Gods. This is the teaching: you will act in the same manner with everybody, you will behold the one who is known to you as if he/she is unknown to you and the one who is close to you (...) in the same manner in which you hold the one who is far from you (...) The clerk who does this will richly prosper in his position. Do not be filled with anger towards a person who does not deserve this, but be filled with anger towards somebody who deserves the fury of anybody” (Danilet 2009, 119).

## Law and religion. The mystical connection

From the oldest times, in all the cultural and religious traditions, the judge was perceived as a person with a very high moral status, endowed with distinct qualities compared to the regular individuals, submitted to some more rigorous constraints compared to others and which must comply with a manner of living and certain more severe and more restrictive behavioural norms than the rest of the community.

Until this stage we can speak of a form making the laws sacred. Their sacred feature derives until this moment from the cult dedicated to the gods, who were considered the source itself of the laws, and from here also the mandatory feature of their application as divine commandments divine, *fast est*, allowed by the gods.

If the old Egyptian and Babylonian populations confused the law and the religious norms, both being considered the result of the divine will, the Romans managed to delineate the law norms regarding the name of *jus* and the religious ones with the term *fas*.

The delineation between *jus* and *fas* took place after the establishment of the Republic, in 509 B.C. As immediate consequence, the *Pontifex Maximus*, who was the leader of the pontiff’s college, named for life among his colleagues and endowed with the religious prerogatives of the former kinds, lost a great part of his tasks.

For the Romans, the law was considered “the art of good and of equity”, having a sense both moral, which related to religion, as well as judicial. Domitius Ulpianus, known in history with the

name of Ulpian, lived in ancient Rome during the period 170-223 A.D. Being considered one of the highest judicial authorities in that time, he identified the following basic principles of the law:

- To live in an honest manner,
- Not to harm another person,
- Give everybody what belongs to him/her.

“*Juris praecepta sunt haec: honeste vivere, alteram non laedere, suum cuique tribuere.*”

The law in the Antiquity comprised three parts: *praescriptio*, *rogatio* and *sanctio*. In *praescriptio* it was written down the name of the magistrate who drafted the law, the name of the commissions who voted the law, the date and place of voting. *Rogatio* comprised the text itself of the law, divided in chapters and paragraphs. *Sanctio* comprised the punishment which interfered in case of failing to comply with the dispositions from the *rogatio*. According to the nature of the sanction, the laws were classified in three categories:

- *leges perfectae*;
- *leges imperfectae*;
- *leges minus quam perfectae*.

The *leges perfectae* were those laws for whom the sanction foresaw that any document concluded with the breach of the dispositions from the *rogatio* was going to be annulled.

The *leges minus quam perfectae* were those laws which contained certain dispositions, based on which the document drafted by breaching the dispositions from the *rogatio* remained valid, but the author was going to be punished, usually, with a fine.

The *leges imperfectae* did not foresee any sanction for breaching the dispositions from the *rogatio*. Such as it can be observed, for the Romans, the laws comprised a religious aspect both as linguistic expression as well as with regard to their content.

The solemn agreements, named also *formal agreements*, represent the oldest category of agreements. In this category of agreements, it is included: religious agreements, agreements in the oral form, authentic agreements, agreements in a written form (*litteris*) (Molcut 2011, 162).

The agreement in the religious form (*sponsio religiosa*) is the oldest Roman agreement made up of a question and an answer, at the end this being concluded by repeating a religious oath.

The *iusiurandum liberti* agreement includes also a religious form, it having two successive oaths, the slave undertaking, through this, the obligation to provide the services to the master or to provide qualified services.

Later, in the Roman law, (...) the parties stated in front of the magistrate, within formalistic terms, the claims. These claims were underlined through a religious oath. In addition to the oath, the parties were obligated to make a bet and to deposit with the magistral pontiffs the money in the amount of 50 or 500 asses, whether the value of the claim's object was less or more than 1,000 asses. The *asse* was the old copper Roman coin. The one who lost the trial, lost also the money submitted with the title of bet (Ciucă 1998, 63).

Plato understood also that the truth is always represented by the good and beautiful. In the domain of the intelligible, above everything, is the idea of Good which, once seen, must be conceived as the reason for all that is law and beautiful (Platon, 2005, 107).

Plato's school of philosophy and teachings were dedicated by gaining the truth. All the *dialogues* from his works have the same purpose, that of reaching the truth.

If in *The republic*, Plato describes a city in which the laws are not necessary because the virtue belongs to each individual and he considers it enough in the human relations, in the *Laws* book, Plato renounces the ruling of the philosophers, this being replaced with the rule of the law. From here it is observed the necessity to establish some regulations under the judicial norms' form.

Between law and religion several types of relations can be distinguished. For example, the law and religion are conceptually related. Both subjects are based on the same fundamental concepts regarding the nature of the existence and of the order, of the person and of the

community, of the knowledge and of the truth. Both the law and religion conceive in an analogue manner the sin and the crime, the convention and the agreement, the salvation and the rehabilitation, the lawfulness and the justice, which inevitably combine in the mind of the legislator, judge or that of the juror.

Both the law and religion are based one on the concepts of the other in order to form their own doctrines. The judicial doctrine of the punishment according to the crime is based on the theological doctrine of the Purgatory and of the redemption (...) Both developed hermeneutic analogous methods, manners of interpreting doctrinarian text. Both developed logical methods, manners of deducing precepts from principles, to rational based on the analogy and the precedent. Both developed ethical methods, manners of translating the values and convictions of the most profound in the habits linked to a mandatory or recommended behaviour. Both developed judicial and rhetorical methods, manners of employing and presenting the arguments and information. Both developed methods of bringing proof and judging the litigations. Both developed methods of organising, systemising and teaching the necessary educational disciplines (...)

The law and religion are related from the professional point of view. In many early communities, and in certain groups also today, practicing law and religion is carried out by the same persons. With judicial and sacerdotal responsibilities is invested either the Church, or a person, chief of tribe, oracle, pontiff or rabbi. Even when these two professions are differentiated, they remain closely related. The professions are similar also in terms of form. Both require a profound education of the doctrine and maintain very high admission standards. Both developed professional ethical codes and authority internal structures in order to strengthen the position. Both are searching to promote collaboration, collegiality and the team spirit. Moreover, the professions function in parallel. There exist affinities between the mediation of the lawyer and the intermediation of the priest, between the delivery of the verdict by the Court and the arbitrage of the consistorial (...) Theoretically, both professions serve the society. Both try to be examples of the ideals of the calling and of the community. These, as in other forms of interaction, have brought the legal and religious domains and in reciprocal dependency. (Witte, 1995, 51 and the following)

## Conclusions

The genesis of the law is linked to the historical appearance of the state. At the same time with the human evolution, the people living in small nomadic groups gradually approached another lifestyle. Religion, which was a part of their life, became a mean of insuring the social, political, judicial and economic stability through rules.

The slow passing from one historical period to another the economic, social, political, judicial and religious managed to modernise the society and, in the end, determined the necessity to conceive a set of norms through which the human conduct was being regulated.

As we can observe both the law as well as the religion had in the centre the human being, and all the norms created are linked with it. These were two institutions which had at the foundation the conviction that for each individual the rules must be complied with no matter if they are of divine nature or created by a human. Both had as purpose the protection of man and the creation of instruments through which his positive actions were delimited from his negative ones.

The mystic link which appears from the feeling that the conduct rules represent the mandatory feature of some norms pre-established both by the Law as well as by Religion through the “DIVIN ORIGIN.”

“Science without religion is limp, religion without science is blind”

(Albert Einstein)

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# Emilio Uranga and the Communal Role of Melancholy in Postcolonial Korean Culture

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**ABSTRACT:** Melancholy has long been considered a negative state of being. However, negative interpretations fail to appreciate its positive potential. Melancholy and its effect can potentially benefit, not just an individual but a community. Changing attitudes towards the idea of melancholy in American culture may happen if the strategy of defining it is adapted. This paper focuses on how Emilio Uranga defines melancholy and how his philosophy can benefit a better understanding of melancholy in a communal dimension. The role of communal melancholy in Korean culture after colonialization exemplifies the way in which melancholy presupposes and manifests freedom and is a condition of authenticity.

**KEYWORDS:** communal melancholy, Emilio Uranga, Mexican philosophy, El Grupo de Hiperión, ontology, culture, postcolonial Korea, Gwangju, Kim Hak-muk

## Introduction

Melancholy is often characterized as a negative mental state to avoid. The word ‘melancholy’ is generally associated with subjective depression, indicative of loss. Why has the English language definition of melancholy remained elusive? Culturally waxing and waning, sometimes as a mark of genius by Aristotle and at other times a psychological complex by Freud, melancholy lacks complete definition.

In an article published in May of 2019, philosopher Mariana Alessandri claims cheerfulness is a culturally adopted attitude in American culture and “practicing the American virtue of cheerfulness... borders on psychosis” (Alessandri 2019). Her claim that Americans idealize a life filled with constant smiles and cheerfulness is in effect, constructing a cultural norm, attempting to avoid melancholy. She writes, “[c]heerfulness isn’t just an American phenomenon, but it is uniquely built into the nation’s identity as invincible, and it’s not clear that we are ready to part with it yet.” Social norms of constant cheerfulness in the United States advocate for a dissociation with the full spectrum of emotions. Many have become acclimated to fast-paced, goal oriented, satisfaction. The cheerfulness habit, proposed by Alessandri attempting to avoid melancholy does not only deny authentic emotion, but its avoidance denies contact with the innermost quality that makes a human, human.

Changing attitudes towards the idea of melancholy in American culture may happen if, we instead find a working definition of it. Melancholy needs clarification because the definition of it has historically remained vague. Melancholy is not indicative of loss, and its effect can have the potential benefit not just to an individual but to a community.

## Emilio Uranga

Order of which specific characteristics are necessary for the development of being is of primary concern in the study of ontology. Building from the concept of metaphysical *being*, the existential view centralizes the *quality* of being. The existential qualities of *being* are ordered as existence before essence, meaning that a human being first exists, and then is generally free to choose whom they become. Where ontology considers what conditions must be present for *being* to develop in the first place, existentialism is concerned with how that *being* is authentic.

It is necessary to appropriate the work of Emilio Uranga to show how his Mexican philosophy provides recognition of melancholy as a shared cultural trait. English-speaking cultures have not written much on Mexican existentialism, “much less reference..., the Sartrean-inspired works of Emilio Uranga” (Sánchez 2016, 2). It is unfortunate, in the English canonical philosophic tradition, Mexican philosophers are underrepresented, and certainly not from a lack of talent, as we will see in Uranga. Many English translations from French existentialists (Beauvoir and Sartre, for example) and plenty of German phenomenologists find coursework circulation in philosophy departments

across the United States. The few translations of Uranga's work available in English supply a more humanistic perspective in the history of philosophy for English readers. Uranga's Mexican existentialism enhances the European philosophical tradition by including melancholy, community and the necessity of it for human flourishing.

Philosophical discourse in Mexico City influenced by European works thrived in the late 1940s, el Grupo de Hiperión formed, developing a specific type of philosophy, seeking to define the Mexican philosophical tradition. In 1948, the El Instituto Francés de América Latina, hosted an existentialist conference in Mexico City. Emilio Uranga was the first presenter. Sartre's existentialism gives, Uranga lectures, "theory of social relations, a pedagogy, a theory of history, an ethics, and an idea of man..." (Sánchez 2016, 15-20). Mexican existentialism is concerned with human existence *in* an environment. Uranga tells his audience how Mexican existentialism differs from European existentialism. It is possible for "existentialism to give a foundation to a systematic description of human existence, but not of human existence in the abstract, but of a situated human existence, in a situation, of human existence framed in a determinate geographical *habitat*, in a social and cultural frame..." (Sánchez 2016, 21). The *sort* of philosophy Uranga presents is humanistic. His interpretation of specific Mexican *being*, when generally applied to *all* humankind brings about a particular philosophical worldview more inclusive than the European tradition alone. An *interpersonalismo* or inter-subjective approach is a distinguishing characteristic of Urangan philosophy (Sánchez 2016, 81). This feature is what creates the potentiality for recognizing communal melancholy through his explanation of melancholy. Its role in a communal sense should be explored to understand better how collective action begins.

In 1951, as a response to an essay from Samuel Ramos, Professor Emilio Uranga argued against a psychoanalytic assumption on Mexican character. His description of how we depend on our community combines features of existentialism and classical Aristotle. "Anyone who cannot form a community with others, or who does not need to because he is self-sufficient...is either a beast or a god" (Aristotle, 1253<sup>a</sup> 28-30). Human beings are vulnerably delicate, both emotionally and physically. "[T]he fundamental project of protecting a fragile being requires constructing the surrounding world as a practical system of resilient, elastic, and "soft" networks [*canals amortiguadores, elásticos, "algodonosos"*]" (Uranga 2017, 167). Networks described by Uranga interpreted as social movements add to the research on collective action.

Melancholy, "expresses the human condition most acutely" (Uranga 2017, 171). Uranga finds melancholy as a primary condition of *being* and irreducible. Uranga defines melancholy as an ontological property that is primary, meaning that freedom, dignity, and authenticity are all presupposed by melancholy. A human builds upon the foundation of melancholy and all authentic action springs from this originating source of *being*. As a trait all humans share, metaphysical melancholy gives us all a similar constitution of *being*.

It is beneficial to possess Uranga's account of melancholy while also considering his version of humanism. Melancholy presents us with a quality of being human that can lead to more qualities for the self and for others to cherish. Humanism is a philosophy concerned with the social realm by requiring an inward evaluation of self. In "The Mexican and Humanism" Uranga, again, puts priority in "the quality of being human" above the political. Acknowledging the inherent struggles in life, Uranga notes the importance of authenticity and humanism in political or social action in the following:

Being a Mexican, then does not mean, if one penetrates right into the marrow of his being, a particular nationality, but the quality of being human. In a certain way his libertarian efforts, like the Reform and the Revolution, are copies of a struggle for the human to which the Mexican finds himself committed, a struggle he takes up with such *originality*, that from this root other qualities sprout as general offshoots and not as tumours to be eradicated (Uranga 1965, 505).

Nationalism conflicts with humanism, Uranga claims. Attaching to nationalism denies the potential for full humanism (505). The non-political aspect of Uranga's humanism shows how it is possible to courageously care for collective action by aiming at an idea of salvation through communal melancholy.

### Examples of Communal Melancholy in Korea

There is a Korean word, *sinparam*, that expresses the pathos, the inner joy, of a person moved to action not by coercion but by his own volition. *Parma* is the sound of the wind; if a person is wafted along on this wind, songs burst from his lips and his legs dance with joy. A *sinparam* is a strange wind that billows in the hearts of people who have freed themselves from oppression, regained their freedom, and live in a society of mutual trust (Cumings 1997, 185).

Anne Anlin Cheng in *The Melancholy of Race: Psychoanalysis, Assimilation, and Hidden Grief* honors Theresa Hak Kyung Cha, a Korean American filmmaker, artist, and author. Tragically, in 1982, Cha was raped and murdered in New York at age thirty-one, only shortly after Tanam Press published her book. Cha was born in South Korea; her family desperately tried to seek safety during the Korean War (1950-1953). At age ten, her family immigrated into the United States. After high school, Cha graduated from Berkeley with a film degree and then studied film in Paris at the Centre d'Esudes Americaine du Cinema. Her work gained prominence, not only as a filmmaker but in other art mediums. Her family eventually presented the Art Museum at UC Berkeley with many of her artworks.

Cheng is careful not to label *Dictée* an autobiographic account because the text features fragments of history that may or may not be Cha's own. "Clearly the text is preoccupied with history, specifically Korean national history and the contemporary legacy of that history to the West" (Cheng 2000, 142). Cha includes cursive handwriting, notes of correspondence, news articles, and a particular photograph evocative of invasion that will be especially important as we consider communal melancholy in postcolonial Korea.

The photograph is one that is not her own; Cha does not cite or reference it. Cheng finds that Cha's inclusion of the photo, without documentation, demonstrates a postmodernist critique of the long history of colonialization of Korea. The particular picture Cha employs in her book, creates a desire in the reader to know *more* about it. "We want to know that photo's referent. Cha's private notes tell us that the photo documents the 1919 Korean Independence Movement demonstration, where over two hundred students demonstrated for democracy and protested against the Japanese-installed Korean government" (143). Cha as a postmodernist artist purposefully confuses the context of the photograph, creating stress in the interpretation of its origin. Demonstrating a sense of stolen Korean opportunity without using statements in complete sentences. Cha writes the following:

The image. To appeal to the masses to congeal the information...The response is pre-coded to perform predictably however passively possible. First examine neutralized to achieve the no-response, to submit to the uni-directional correspondence (Cha 1982, 32-3).

The image from 1919, Cha uses is the same image General Chun distributed to crush Korean democratic spirits after the massacre on May 18, 1980, in Gwangju, South Korea. Chun intended to break the spirits of the people in Korea through controlling the media. This image was widely circulated in South Korea, while at the same time, nearly no news reports of the massacre were available, creating an authoritarian government almost overnight. "The black and white photo of that student demonstration and subsequent massacre is homeless because *that* "original" event was homelessness itself, a story lost in the intervening publicity surrounding it" (Cheng 2000, 145).

By the beginning of May 1980, Chun Doo-Hwan declared himself the leader of the Korean Central Intelligence Agency and did not vacate his position as the leader of the Defense Security Command. This political move into authoritarianism received the okay from the United States. General John Wickham, according to the author of *Korea's Place in the Sun: A Modern History*, gave favor to General Chun's coup d'etat (Cumings 1997, 376). Democratic protestors came together in cities across Korea. In the capital city, upwards of fifty thousand students and other citizens demonstrated against authoritarian rule. The reaction from General Chun was harsh, martial law was enacted, the universities closed, the legislature erased, all political assembly deemed illegal, and thousands of political leaders were arrested in the middle of the night May 17 1980. The final phase of his coup d'etat included General Chun appointing himself the chair of a special

national security group. With this power, Chun reacted to the protest at Gwangju by ordering the army to murder Korean citizens.

The massacre in Gwangju (sometimes spelled Kwangju) was not limited to arbitrarily killing citizens protesting martial law. The level of violence against approximately 500 Korean citizens on May 18, 1980, shook many into action in support of the cause to repeal the authoritarian rule. “Elite paratroopers, widely thought to have been on drugs, landed in the city and began the indiscriminate murder of students, women, children— anyone who got in their way.” Bayonets met the flesh of women, paratroopers ignited fuel against the faces of students (377).

The United States complicity supported the Chun led massacre at Gwangju. Ronald and Nancy Regan welcomed Chun and his wife at the White House less than eight months after the brutality of Gwangju (385). The same month, General Chun designated himself as the Korean leader of government (379). Chun forced nearly 40,000 teachers, students, organizers, journalists, and public servants into rural mountain locations. Physical and mental torture sometimes did not stop short of death and, many succumbed to the violence and died. The captors desired to hear the victims scream, according to an unnamed survivor:

Right before supper we were beaten out of our minds and at suppertime we were given three spoonfuls of barley rice. Even though we offered thanksgiving for this, we were beaten again. For one laugh—80 lashings. In the morning there is a marching song period which is called a screaming time but we were so hungry we couldn’t shout [so] then they beat us with clubs until we screamed. One friend of mine, Mr. Chai, could not scream because of a throat infection and therefore, he was beaten to death (379).

The underreported brutality imposed on the Korean people under authoritarian rule worsened the collective anguish. Hiding the massacre, making the Korean people believe their efforts are moot, caused a reaction among the people to reveal what happened in Gwangju. This truth created a collective feeling of melancholy.

Sometimes a word *han* is used to describe the sorrow of the Korean people. This word, according to Sandra So Hee Chi Kim, originated through colonialism but has evolved to create a new meaning. In her article “Korean Han and the Postcolonial Afterlives of “The Beauty of Sorrow” she shares the history of the word with the reader. Critics, writers, artists, and scholars “frequently characterize *han* as “the Korean ethos” and the soul of Korean art, literature and film.” Kim argues “its contemporary biologicistic-oriented meaning emerged first during the Japanese colonial period as a colonial stereotype.” She believes that reviewing the remnants of *han* demonstrates an understanding of how it was first imposed on Koreans and distributed as a colonial construct. Kim notes an evolution of the term, first inflicted on Koreans as a cultural interpellation by the colonizers and now viewed as a term of affinity, traveling “into a completely new context through the Korean diaspora. On Kim’s account, *han* is defined “as an affect that encapsulates the grief of historical memory—the memory of past collective trauma...attached to a nation” (Kim 2017, 253). The feeling Kim describes is similar to communal melancholy.

We will now apply Uranga’s philosophy to collective action in postcolonial Korea. Unfortunately, there is not much information in English describing the testimonies of the collective action taken by those affected by the Gwangju massacre. There is one video available with English subtitles describing how the collective action began in Korea in the 1980s as a result of Chun’s authoritarian rule. Democratic protestors tried to fight against the martial law, tried to spread the news of what happened in Gwangju, and tried to honor those killed protesting on behalf of their Korean culture.

Kim Hak-muk planned a student protest on the second anniversary of the Gwangju uprising with three other activists. None of the students broke the law; they only *planned* the event. All four served a year in prison. Three of the four suffered mental anguish and died. The only one to survive was a philosophy student, An Jae-hun. Hak-muk’s brother, Kim Jun-muk thinks no one remembers Hak-muk (Munhwa Broadcasting Corporation 2016).

Forbidding political expression and assembly under Chun authoritarian rule created a loophole. Professor Oh Seung-yong from Chonnam National University in Gwangju says, “the law

on campus stabilization prohibited all assembly and political expressions on campuses. People couldn't express their dissent without extreme methods like self-immolation. In order to say what was forbidden, extreme self-sacrifice was a pre-requisite" (Munhwa Broadcasting Corporation). A person at extreme perils may recognize their own melancholic metaphysical quality. The realization, coupled with humanism, can reach into a collective sense of communal melancholy.

In impossible situations, effecting a community, a human being can choose to act on behalf of others, exerting dignity and liberty, even if for only a moment. The Korean people were under a brutal regime and family, friends, neighbors, and posterity shared collective suffering. Nationalism played no part in the humanitarian concern exhibited through the examples that would eventually lead to democracy in 1987. It was not love of a country that motivated the Koreans to uprising, it was the love of their culture and community. If reminded of Emilio Uranga's words, it is possible to decipher the impetus for self-sacrifice.

This peculiar "courage" or "perceptivity" that causes him to open himself up to what is "unhappy" and "forsaken" in the human lot is the originating principle that lays him open to what is human to the more submerged area in which there has been prepared or brought into being a capacity for communication of feeling, by comparison, sympathy, or affinity with other people, and with all that tries to represent itself as human (Uranga 1965, 507).

## Conclusion

The examples used from Korea: Cha's photo and book, the 1919 Korean Independence Movement, the Gwangju student uprising, Mr. Chai's death, *han*, the extreme reaction to the massacre, and Kim Hak-muk's plan of political expression, all of these acts can serve as practical understanding of authentic freedom in actions, presupposed by melancholy. Some opposition may claim that use of Mexican philosophy, applied to Korean culture after colonialization conflates cultures and disciplines. Such positions are highly biased and fail to recognize the value of interdisciplinary approaches to understand the world better. Emilio Uranga's philosophy applied contextually shows the role of communal melancholy as a motivation for social action.

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# Authentic - False. Correlation between Graphics and Physico-Chemical Painting Techniques Expertise in Artwork Analysis

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**ABSTRACT:** Art is a specific human activity that aims at producing aesthetic values and using specific means of expression. Moreover, arts are distinguished by the material used (painting - color, sculpture – stone or wood, literature – words, music – sound or note), but they share the artistic image underlying the act of creation. Authentic - False in artworks should not only focus on the substrate, the paints, the background, the lacquer, but also on the technique used to verify that it corresponds to that of the painter. The resolution of these problems cannot be conceived without the use of laboratory techniques that reflect a predominant place in the observations of the person skilled in the art. Therefore, the identification of technical investigations should be carried out systematically for each expertise. These expertises can be simple, convenient and efficient. In this paper is presented an overview of trace evidence and chemical painting techniques used in artwork and the applicability of chromatography, spectroscopy, X-ray radiography, neutron autoradiography and conoscopic holography as a tool for investigations of the material composition of the paintings. X-ray radiography and neutron autoradiography, for example, are nondestructive techniques which enable determination the structure of the components and also the material composition. The applications of these techniques answer the questions when, where, or by whom such a painting was made.

**KEYWORDS:** analytical techniques, signatures authenticity, neutron autoradiography, X-ray radiography, trace evidence.

## Introduction

The signature first appeared on works of art during the Renaissance, when the artistic product changed from the collective result of some artisans into the product of individual creativity. The signature thus became the way of differentiating the artist's talent from his fellow colleagues. Sometimes the signature is part of the creation process, and the artist uses it as the end of a work, as a note that tells him that he no longer has to interfere with the work. In some cases, the signature also contains the date or location of the work, the name chosen by the artist, or any other information, even the paint used. As time passes, the signatures may blur or wipe, becoming visible only in ultraviolet light or even at the microscope. The signature can also be misleading. The mere existence, however convincing of a signature, does not mean that the work belongs to the artist. There are also cases in which the artist left the work unsigned, and then the owner applied a signature to highlight the paternity of the work. And there are, of course, cases of falsification of works of art when an artist makes a convincing copy of a work and signs it using the signature of the original author. Detecting false signatures can be done with the naked eye by an expert familiar with the artist, in general the falsified signature being more carefully executed than assuming the unintentional of a signature of its own name. Subsequent signatures can easily be identified with ultraviolet light, the newer pigment shining. There are, however, artists who have never signed a work, which can be a signature in itself. Finally, the best sign of a work is the work itself, the style, the ink, the themes etc., which are the elements that define the artist to an extent at least as great as his signature (Christie's 2018).

Proof of authenticity can be accomplished in several ways, including forensic expertise. In judicial proceeding, there are more and more cases of arrangement and implementation of: a) Graphical expertise that focus on establishing the authenticity of signatures on paintings or sculptures; b) Physico-chemical expertise on the composition, properties and age of the materials used for the performance of the artistic work; c) Traseological expertise covering an extended range of objectives that differ from the peculiarities of the investigated cases (Pășescu and Chende 2009, 110-111).

### Graphics expertise that focus on establishing the authenticity of signatures found on paintings or sculptures and physico-chemical expertise on the composition, properties and age of the materials used to perform the artistic work

A distinct place in order to identify or establish the origin of material evidence or traces of various materials is occupied by methods of spectral analysis. "The basis of those methods is the relationship between matter and radiation" (Stancu 2010, 7-9).

Electromagnetic radiation, either emitted or absorbed by a substance or element, is specific to each type of molecule or atom, their characteristics resulting from the wavelength of the radiation, the number, intensity, and grouping of the spectral lines. The electromagnetic radiation used in spectral analyzes includes a very wide range, including both visible and invisible radiation: X, ultraviolet and infrared radiation. Infrared radiation is widely used in the forensic search of documents because of the property they have to be absorbed by ink and opaque graphite and carbon layers or for pigments that are comprised of copying paper and pigments. Luminescence examination is among the methods currently used in forensic research, sometimes even on the spot, due to its simplicity, rapidity and sensitivity. The utility of the method also resides in the fact that it requires very small quantities or concentrations of the substance. Luminescence, in the form of photoluminescence phenomenon, is a light radiation emission by a body as a result of its excitement by another electromagnetic radiation, visible or invisible (ultraviolet or infrared). Parallel to the phenomenon of fluorescence as such, research also explores the phenomenon of extinction of fluorescence, which can be determined by the action of a certain body or substance or the action of infrared radiation and which is applicable to the investigation of documents. Luminescence analysis has been in use since the beginning of this century and finds its applicability in the investigation of forgery, document material (paper and ink) (Stancu 2010, 340-342; Stoian 2013, 375-393).

An example is the artwork of Maurice Utrillo. Utrillo often included the initial "V" for Valadon after Utrillo: "Maurice Utrillo V." (Figure 1.a). In many cases Utrillo included the year (Figure 1.b). and sometimes even the month. (Figure 1.c). Utrillo did sometimes use the shorter form "M. Utrillo" with no date, though the former example is the most common (Figure 1.d) (Utrillo Experts Authentication 2019).



Figure 1. Different Maurice Utrillo Signatures

A first examination was done with direct light. For a first observation, the reference element contained in the painting is not visible. A second examination was performed with dark light. This is done in ultraviolet light using a source emitting at 254 nm. (short wavelength) or 356 nm. (long wavelength). Many ultraviolet absorbers pigments and some of this energy disperse as viscous variable colour with higher wavelengths and low energy. The further the fluorescence continues, the ultraviolet emission disappears. Ultraviolet illumination at short or long wavelengths collects fluorescence in the visible spectrum. Some examples of fluorescent pigments: a) Aluminium Hydroxide - Clear Blue; b) Calcium (powder) - From red to brown; c) Calcium (silica) - Red-violet; d) Magnesium carbonate - Violet; e) Magnesium Oxide - Blue-Gray; f) Lead White - Red-Brown; g) Zinc Sulphide - Orange; h) Zinc White - Light Yellow.

Infrared analysis allows you to see the original design, the outlines, the first layers of paint, and sometimes to identify a repaired signature. Like ultraviolet, infrared emission can absorb some of the pigments. The luminescence can be seen through a suitable stop filter. For example: the yellow filter

shades yellow, the red and green filters scumble blue and purple; the blue filter shades blue and purple and scumble greenish-yellowish and red; the green filter shades green and yellow and scumble violet and red; the red tint shades red and yellow and scumble green, blue and purple.

From the infrared analysis of Maurice Utrillo's paintings we can see that the repaired layers absorb at wavelengths starting at 645nm, and the word (signature) on the picture becomes clearer at wavelengths of 745nm.

The ultraviolet and infrared examination did not give convincing results about authenticity and age, which is often the case with this type of examination. The fluorescence of the coating that has nothing to do with painting itself is almost always strong. Analysis of the colour shade in visible light and ultraviolet absorption are not always sufficient for identification.

### X-ray radiography

Another method of analysis is X-ray radiography that allow in-depth examination of the cloth and highlight the layers of paint (stratification). It is known that different metals, for example Lead, are opaque to the X-ray analysis. It will result that the area of the paint containing Lead will correspond to a black-silver stain. On the contrary, mixing paint of plant origin by X-ray analysis will correlate to a white (clear) area. According to the radiographic record, we can say that it has analogies with authentic x-ray.

In an X-ray analysis of Van Meegeren's painting, we can see that under the painting layer one can see a scene of a herd of horses (Figure 2).



Figure 2. The Woman taken in Adultery paint by Van Meegeren photographed to reveal the various paint-layers (Detection of the Fakes 2019)

Scripture materials are generally composed of dyes, pigments, solvents, resins, and other specialty materials. Ink analysis, for example, is currently limited to comparing the profile of organic dyes. However, this does not allow differentiation between inks with similar formulas and does not allow forensic experts to specify how long ink has been applied to a document. To distinguish inks, it is necessary to analyze their uncoloured components, namely: solvents, additives, fillers. They can be analyzed by direct thermal desorption of paper samples, followed by chemical analysis of volatile compounds desorbed by mass spectrometry gas chromatography. Moreover, the age of scriptural materials applied on the same type of paper with the same scriptural material can be investigated by LC-MS technique by quantifying the ink components and investigating their degradation products.

The Van Meegeren business is the most discussed case in the world of art lovers. I will make a brief introduction on this case and then introduce other authentic-false analysis techniques in his works.

In 1932, Van Meegeren moved with his wife to Italy. There he rented a furnished mansion called "Primavera", where he settled down. Here he set out the chemical and technical procedures that would be needed to create "perfect fake". He bought authentic 17<sup>th</sup>-century cloth and mixed his own paints from raw materials (such as lapis lazuli - blue precious stone, white lead, indigo and cinnabar - mercury sulphide), using old formulations to ensure that they were genuine. He also used badge hair brushes, similar to those of Vermeer, for which he was recognized for their use. He used a system to make the canvas look old, using phenol formaldehyde (Bakelite), in order for the paints to harden after application. This makes the

paintings look 300 years old. After finishing Van Meegeren's baking in an oven at 100° C to 120° C to cure the paint, then roll it over to a cylinder to form cracks. The next step was to wash the black ink cloth from India to fill cracks (Figure 3). Van Meegeren took six years to prepare this technique (Robert 2013; Wikipedia 2019).

A committee has examined eight paintings painted by Vermeer and Frans Hals, paintings that have been identified as forgeries. With the help of the commission, Dr. Coremans was able to determine the chemical composition of the paint used by Van Meegeren. He discovered that Van Meegeren prepared paints by mixing them with a plastic binder, Albertol which is a phenol resin. A bottle of this ingredient was found in his studio (Figure 4).

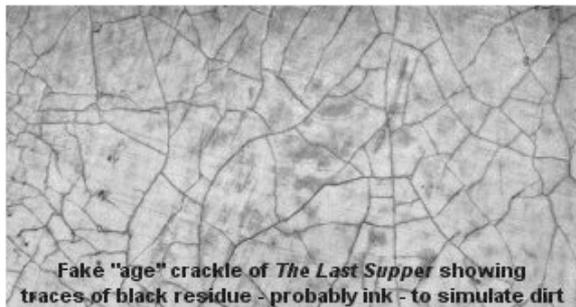


Figure 3. Fake Age Cracks



Figure 4. Evidence Against Han van Meegeren: A Collection of Pigments

This chemical component was introduced and manufactured in the 20<sup>th</sup>-century, proving that the "Vermeer" and "Frans Halses" fake works examined by the Commission were actually made by Van Meegeren. Other Commission findings have suggested that the dust from the cloth cracks was too homogeneous to be of natural origin. The problem found in cracks appeared to come from India ink, which was accumulated even in areas where physical dirt or dust would not have arrived.

The paint became so strong that neither strong acids nor strong bases attacked the surface when carrying out chemical analyzes, which led to a clear indication that the surface was not processed in a natural way. Thus, the results of the tests obtained by the Commission seem to confirm that the works were fakes created by Van Meegeren, but their authenticity has been debated by some experts until 1967 and 1977, when they used new investigative techniques to analyze the paintings.



Figure 5. Details about the “woman” characteristics of Vermeer’s paintings (Left) and Van Meegeren (right)

In 1977 another investigation was conducted by the forensic laboratories in the Netherlands using gas chromatography to officially confirm the origin of six Van Meegeren fakes, including “Emmaus” and “The Last Supper”, which was claimed to be genuine Vermeer. The 1946 commission’s conclusions were again reaffirmed and supported by the Dutch judiciary. According to expert Jonathan Lopez, the technical

failures of the image are largely due to the use of the new material counterfeiter, Bakelite, which would be resistant to the alcohol test that was used for false unfolded paintings whose paint was not allowed enough time to get strong. However, paints mixed with Bakelite have been much harder to achieve than traditional oil paints that are easy to mix, dry out slowly and allow the painter to take on shapes and shades of light. In order to better master the technique, Van Meegeren began to study architecture, making him a “strange perfectionist”. Fearing technical examinations, Van Meegeren painted images of 17<sup>th</sup>-century methods and materials and anticipated all the tests that could be used to discover his deeds. He used a cloth and pigments such as natural, cinnamon and white lead of the 17th century (Wikipedia 2019).

Details about the “woman” characteristics of Vermeer’s paintings (Woman in Blue Reading a Letter) and Van Meegeren (Woman Reading Music). By joining the images we can see that in an attempt to make the fake as credible as possible, Van Meegeren added a large pearl and a pearl necklace, both props are repeatedly represented by Vermeer. Although Van Meegeren’s modeling of the head is more subtle than that of Vermeer, it should be borne in mind that Van Meegeren had to mix the pigments with a synthetic, Bakelite, quick-drying, allowed to merge with its paints, this being done to hide that they were freshly dyed (Vermeer: Erroneous Attributions and Forgeries 2019).

Han Van Meegeren knew that Lead White was used during Vermeer's time but he had to get his stocks through trade by buying modern paint that have changed significantly since the 17<sup>th</sup>-century. During Vermeer's time, Dutch lead was extracted as ore from the Netherlands. However, by the 19th century, most Lead White was imported from Australia and the Americas. Dutch lead was extracted from ores containing high levels of silver and antimony trace elements, while the modern lead white used by Van Meegeren contained neither silver nor antimony. These elements are separated from lead during the modern melting process.

### **Neutron autoradiography**

Activation analysis is one of the most modern methods of research, characterized by both sensitivity and precision superior to other analytical methods. In addition, it has the advantage of being a non-destructive method, as with X-ray diffraction. Although seemingly simple, it is applied in practice with some difficulty requiring the use of top techniques. Activation analysis consists in irradiating an amount of analyte to obtain radioactive isotopes of the elements found in its mass. It is a method of qualitative and quantitative analysis - based on the property of radioactive isotopes. Activation analysis is a method of elementary investigation. After irradiation, the elements emit radiation with certain energies on which the radioactive isotopes formed can be identified and the percentage they are found in. Before the chemical analyzes used to identify forgery were destructive methods: small fragments of the investigated works were cut and analyzed; it was often not possible to conduct investigations to preserve the integrity of the object (Ainsworth et al. 1987, 13-18; Humelnicu 2017, 77-79).

In the Middle Ages, Lead White was used in painting and the impurities contained therein can provide information about the age of painting. Neutron activation analysis performed on 1800-1875 dye samples and nowadays shows that the concentrations of all elements in the Pb white are different. Until 1850, Cu, Ag, Hg and Mn concentrations were relatively high and constant, after which they dropped to about one tenth of the initial value. On the other hand, zinc and antimony concentrations increased sharply after 1940 (Table 1). As well as the applications of the technique there are: 1) Pigment analysis by activation technique and, 2) Neutron absorption radiography – autoradiography (Ainsworth et al. 1987, pp. 9-13).

Neutron irradiation of the whole painting uses a homogeneous stream of neutrons, followed by measurement of activity (Humelnicu 2017, 77-79; Neutron activation of paintings, 2019).

**X-rays show us the pigment position**  
**γ-rays gives us the pigment characteristics**

Table 1. Chemical Elements and Associated Pigments Most Frequently Observed in Autoradiography of Seventeenth-Century Dutch and Flemish Paintings

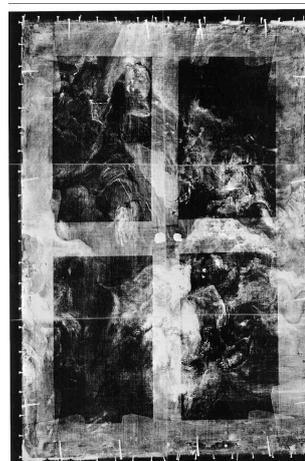
Chemical elements	Associated pigments	Radioactive isotope formed during activation and its half-life	Time period after activation during which best images in autoradiographs are produced
Manganese (Mn)	umber, dark, ocher	$^{56}\text{Mn}$ (2,6 hours)	0-24 hours
Copper (Cu)	malachite, azurite, verdigris	$^{66}\text{Cu}$ (5,1 minutes); $^{64}\text{Cu}$ (12,8 hours)	0-20 minutes 1-3 days
Sodium (Na)	glue, medium, canvas, ultramarine	$^{24}\text{Na}$ (15 hours)	1-3 days
Arsenic (As)	smalt, glass	$^{76}\text{As}$ (26,5 hours)	2-8 days
Phosphorus (P)	bone black	$^{32}\text{P}$ (14,3 days)	8-30 days
Mercury (Hg)	vermilion	$^{203}\text{Hg}$ (48 days)	> 25 days
Cobalt (Co)	smalt, glass	$^{60}\text{Co}$ (5,3 years)	> 25 days

Examples:

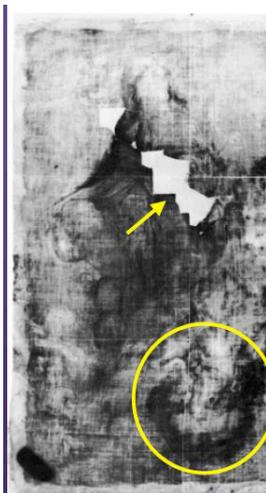
In Figure 6 is represented Anthony van Dyck, *Saint Rosalie praying for the Plague stricken of Palermo* Painting, 1624, which reveal Pigment Identification by Analysis of Time Dependence for Characteristic Activity



Original Painting

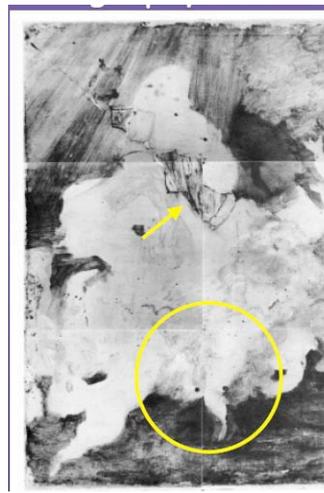


Radiograph



3<sup>rd</sup> autoradiograph

- 4 - 4,75 h (after irradi.);
- $^{54}\text{Mn}$ ,  $t_{1/2}$  - 2,6 hr;
- umber-  $\text{Fe}_2\text{O}_3$  +  $\text{MnO}$  + clay minerals;
- ground, preliminary sketch;
- exposure reveals Mn position, brushstrokes.



6<sup>th</sup> autoradiograph

- 2 - 4 d after irradi.;
- $^{64}\text{Cu}$ ,  $t_{1/2}$  - 12,8 hr;
- azurite -  $\text{CuCO}_3 \cdot \text{Cu}(\text{OH})_2$ ;
- $^{24}\text{Na}$ ,  $t_{1/2}$  - 15 hrs;
- ultramarine sodium aluminosilicate.

**8<sup>th</sup> autoradiograph**

8-20 d after irradi.;  
 -  $^{32}\text{P}$ ,  $t_{1/2} = 14,3$  d;  
 - bone black– C +  $\text{Ca}_3(\text{PO}_4)_2$ ;  
 - self portrait by Van Dyke under painting;  
 - compositional difference between portrait and St. Rosalie sketch;  
 - image separation possible



Sir Anthony van Dyck  
*Self Portrait*, 1622

Figure 6. Pigment Identification by Analysis of Time Dependence for Characteristic Activity 3<sup>rd</sup>, 6<sup>rd</sup>, 8<sup>rd</sup> Runs of Anthony van Dyck, Saint Rosalie Praying for the Plague Stricken of Palermo Painting, 1624 (Ainsworth et al. 1987, 13-18; Neutron activation of paintings 2019).

### Conoscopic holography

A new method for recording holograms using incoherent light is described. The method is based on optical propagation through birefringent crystals. Optical methods for the reconstruction of such a hologram are also presented (Sirat and Psaltis 1985, 4).

Francesco Dellavalle, electronics technician in Torino, the founder of FORINST (Forensic Instruments), has almost three decades of experience in 2D/3D dimensional and surface measurement systems that were not in contact with research and industry. In 1988 he approached the first morphological analyzes of graphs by optical microscopy and image processing. More passionate about the subject, in 2001 he is the creator of the “interferential method” (through conoscopic holography) in order to objectively apply the order of application of graphs intersecting with each other Thanks to an innovative technology (laser profiling based on conoscopic holography, which currently holds seventeen patents, six of which worldwide), three-dimensional scans of ancient documents, bas-reliefs, statues, papyruses, jewelery etc. can be created either to create a historical archiving, either to make measurements or three-dimensional true restorations on plastic or metal. The technique used is not invasive and does not affect objects in any way, both physically and chemically (Dellavalle 2003).

*The operating principle of “conoscopic holography” also called “interference method”*

Conoscopic Holography was introduced in 1985 at the California Institute of Technology by Professors Gabriel Sirat and Demetri Psaltis. As mentioned previously, conoscopic holography is a three-dimensional non-contact measurement technique that makes it possible to produce holograms. In synthesis is a simple implementation of a special polarized light interference process using a birefringent crystal (Sirat and Psaltis 1985, 4).

A distinction must be made:

- In the classical holography, each point of the object is interferometrically recorded as a Fresnel area plate in which the interference plane is formed between the object radius and the reference ray, using a coherent light source. The object’s and reference rays propagate at the same speed but follow different geometric paths.

- In the conoscopic holography, the radius of the object and the reference is replaced by the ordinary and extraordinary components of a single ray propagating in a birefringent center; anyway they have roughly the same geometric trajectory but different speeds. The two rays are of course coherent with each other and thus the technique allows the construction of holograms and light that is not coherent.

Conoscopic holography offers considerable advantages, unlike the classic one, if the target area is spatially limited (one point, a set of discrete points or a continuous line).

## Conclusions

The applications of these techniques answer the questions when, where, or by whom such a painting was made. The broad possibilities of technical-scientific investigation have made some authors claim that discovery of a fake in artwork - and in our opinion not only in this area - represents 1% intuition and 99 % laboratory work.

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