

# INTERNATIONAL ACADEMIC CONFERENCE ON SOCIAL SCIENCES

# INTERNATIONAL ACADEMIC CONFERENCE ON LAW, POLITICS & MANAGEMENT

THE INTERNATIONAL INSTITUTE  
FOR ACADEMIC DEVELOPMENT



## **THE 6<sup>th</sup> INTERNATIONAL ACADEMIC CONFERENCE ON SOCIAL SCIENCES**



## **THE 5<sup>th</sup> INTERNATIONAL ACADEMIC CONFERENCE ON LAW, POLITICS & MANAGEMENT**

## **JOINT CONFERENCE PROCEEDINGS**

**EDITOR – MALKHAZ NAKASHIDZE**

July 27-28, 2018 - PRAGUE, CZECHIA  
September 7-8 – ROME, ITALY

**The 6<sup>th</sup> INTERNATIONAL ACADEMIC CONFERENCE  
ON SOCIAL SCIENCES**

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ON LAW, POLITICS & MANAGEMENT**

September, 2018 - Rome, Italy

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Published by

**THE INTERNATIONAL INSTITUTE FOR ACADEMIC DEVELOPMENT**



**59 Rustaveli str. 6000 Batumi, Georgia**

E-mail: [info@academicinst.com](mailto:info@academicinst.com)

Website: <http://www.academicinst.com>

**ISBN 978-9941-8-0708-4 (PDF)**

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## Roots of German Environmentalism: Right Meets Left

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**Abstract:** *Due to the great success of the German Green Party, founded in 1980, popular perception holds that the German environmental movement has its origins on the left. But it is only in the post-World War II period that leftists have dominated the discourse. This paper explores the roots of German environmentalism: originally a reactionary stance defending the natural world against rapid industrialization in the 1800s and which continued in the “Wandervögel” movement of the early 1900s, a right-wing “hippy” phenomenon absorbed by the Nazis, who themselves implemented strong conservationist measures. It examines also Rudolf Steiner’s Anthroposophy movement and its close ties to the Third Reich, showing strong points of contact between left and right.*

### Introduction

When the Soviet Union fell, the classic political distinctions of left vs. right began to blur and reorder. Since the forces of capitalism and liberalism had apparently dealt a crushing blow to communism, this was the “end of history,” proclaimed American political scientist Francis Fukuyama in 1992, suggesting the end-point of mankind’s ideological evolution and the triumph of Western liberal democracy. Had not self-avowed communist countries like Vietnam and China adopted capitalist economies? As had satellites of the Soviet empire? Even so, the reordering was messy. Mafioso economies and new forms of totalitarianism arose, along with large-scale unemployment, social insecurity, and growing ethnic tensions. The worse atrocities since World War II accompanied the breakup of Yugoslavia. Battle lines were drawn right and left and back again through the years of Europe’s restructuring.

Because of Germany’s central position in Europe and its former role as the lightning rod of East-West tensions - the country provides a sharp lens to view the reorganization of left and right and even perhaps the dismantling altogether of this binary view of politics. This paper examines German environmentalism, an issue that arouses great passion in Germany and serves well to highlight the meeting of left and right. “Few things offend Germans more than being told that another country is doing more for the environment,” writes German historian Frank Uekötter. Being green is a matter of national identity, both left and right [1].

### 1. Methodology

To begin, it’s worthwhile to recall commentary provided by Italian political scientist Norberto Bobbio

in 1994 as he contemplated the aftermath of the Cold War and explained with nuance that the left and right distinction is indeed a useful notion. His short treatise, *Left & Right: The Significance of a Political Distinction*, became a bestseller in Italy, which is perhaps not surprising, since here the political pendulum has swung from left to right with astonishing speed and force.

Bobbio’s chief distinction between left and right rests on the idea of equality. The leftist aims to treat all people as equals in a social and political sense, while recognizing diversity, whereas the rightist believes in a natural human hierarchy that justifies unequal treatment. Moderates in both camps preserve this distinction of right and left through a contrasting view of equality. It’s at the extremist fringe, however, where they meet and share common ground. Both positions reject democracy. Maoists expound the absurd oxymoron totalitarian democracy, and Fascists equate democracy with mob rule and reject it.

While the extremist fringes may show common ground in stark relief, and therefore obliterate the left/right division, binarity holds true in the spacious width of the political center. So, the distinction is still a useful way to describe political phenomenon, bearing in mind that the continuous development of society will create new political problems and produce movements which cannot be categorized in the traditional terms between right and left. “The most interesting current example is that of the Greens,” writes Bobbio and asks: “Are the Greens on the left or the right?” Both it seems [2].

### 2. Historical Context

#### 2.1. The German Way



No other country has mainstreamed political environmentalism like Germany, which rarely has shown knee-jerk reactions to environmental catastrophe (an exception being the phasing out of its nuclear power plants in response to the 2011 Fukushima nuclear disaster). This contrasts to the North American experience, an “us versus them” political spectacle that characterizes nasty environmental debates over conservation, pollution, public health and energy. In Germany, the closed and centralized nature of politics since World War II has fostered a climate in which environmental concerns are typically raised at the state level first and thus marked by collaboration and inclusion due to local and multiple party representation. Also changing economic contexts play a role in issues becoming popular. For example, opposition to pollution has increased as wealth from heavy industrial output declines. This shows a balanced and sober approach to environmental problems.

Nature protection has a long history in Germany. Lyrical praise of the natural world in 19th century Romanticism set the stage for a kind of administrative paternalism, a lasting approach that saw militant conservationists as errant children who occasionally got carried away but deserved a listen. They filled important advisory roles or in some cases might man a government post and get international attention. In 1922, for example, the head of the Prussian State Office for the Protection of Natural Monuments was praised in the Soviet Union as an environmental “apostle” [1].

## 2.2. 19<sup>th</sup>-Century Environmentalism

Today’s German Green Party, founded in 1980, is generally perceived as left-wing. Yet the above example of Prussia clearly suggests right-wing environmentalism. German Romanticism, too, was marked by reactionary thought associated with the right. Backward-looking poets Eichendorff, Tieck and Schlegel idealized medieval Catholicism, and the Romantic writers Ernst Arndt and Wilhelm Riehl combined extreme nationalism with conservationism. Historian Peter Staudenmaier goes so far as to write, “At the very outset of the nineteenth century the deadly connection between love of land and militant racist nationalism was firmly set in place [3].

In 1867 German zoologist Ernst Haeckel coined the word “ecology” (*Oekologie*), defining it as the “science of relations between organisms and their surrounding environment.” To him, nature was the source of truth and its study ought to guide all hu-

man endeavor. As a popularizer of Darwin’s evolutionary theory, he developed a form of social Darwinism stressing the superiority of the Nordic race and the need for racial eugenics. He likened ‘primitive man’ to the higher vertebrates, concluding that they lacked a developed consciousness and the powers of reason [4]. An influential ideologue, Haeckel was involved with the nationalist, expansionist Pan-German League and, in his later years, joined the reactionary Thule Society, an organization identified as playing a key role in the establishment of the National Socialist movement. Along with his many students, this scientific pioneer influenced the thinking of the next generation by embedding concern for the natural world in a right-wing political framework [3].

## 2.3. *Wandervögel*

Haeckel’s theories and other right-wing ideas found a welcome home in a popular German youth movement of the first three decades of the 20th century, the so-called *Wandervögel*—a term that translates roughly to ‘wandering spirits.’ Aptly described as ‘right-wing hippies,’ the *Wandervögel* emphasized a back-to-the land philosophy and defended passionately the natural world against industrialization, as the Romantics had done in the 19th Century. They were an amorphous group of nature mystics, communitarians, and neo-Romantics, dreaming a romanticized German past and the future unity of all Germans. Historian Marion de Ras’ fascinating 2008 study, *Body, Femininity and Nationalism*, describes a movement ruled above all by sensuality, “a movement filled with lust” [5].

While it is not commonplace to associate a right-wing movement with sexual freedom, and it is seen instead as a left-wing proclivity, historian Dagmar Herzog has shown convincingly that the *Wandervögel* transitioned easily to join the ranks of the rising National Socialism movement in the 1920s and 30s. So long as there were no Jewish, Marxist, or pro-homosexual connotations, pleasurable (also pre-marital) sex is good for society, claimed Nazism, while at the same time portraying itself paradoxically as upright and traditional. “[N]o prior regime in history so systematically set itself the task of stimulating and validating especially young people’s desires—all the while denying precisely that that was what it was doing” [6].

While the *Wandervögel* had a deep sense of national pride, they opposed the foolish saber-rattling of the Wilhelmine era (1890 – 1918). To gain attention to its views, the movement held a festival in

Meissen Germany in 1913 to coincide with the nationwide celebrations of militarism marking the 100-year anniversary of Napoleon's defeat in the Battle of Leipzig. Organized by a publisher of proto-Nazi writings and attended by upwards of 3,500 *Wandervögel*, the festival offered them a communal experience in the wilderness, with camp-fire meals and songs to the accompaniment of lutes, guitars and fiddles. Speakers rhapsodized about how they saw themselves, as wandering scholars; and they spoke eloquently about the peace-loving virtues of the movement [7] [4].

Meanwhile, essays published in festival brochures opposed the false nationalism of the times. For example, a young female *Wandervogel* wrote that love-of-nation was a "healthy, strong force of nature ... but had degenerated [in Germany] into vainglorious boasting, superficial, jingoistic, dumb, and cowardly" [8]. Yet the most widely-read and discussed essay was an apocalyptic polemic addressing environmentalism; to accompany the founding of the German Green Party, the piece was republished in 1980. *Man and Earth* by philosopher Ludwig Klages is a passionate defense of the natural world and demands German pride-of-place: "In ancient German lands, an offense against a living tree was expiated by the shedding of the offender's blood . . . How many of the species of creatures that flourished in ancient Germanic lands have lasted into our century?" He asks his audience to "perish in battle" against dubious technological "progress." Two decades later (1933), the admiring National Socialist regime invited philosopher Klages to give a series of lectures in Berlin inaugurating its rise to power [3].

## 2.4. The Greens and the Third Reich

Associated much more famously to the Third Reich than Klages is the philosopher Martin Heidegger, who never once publicly regretted, much less renounced, his involvement with National Socialism. His fondness for Nazism has been thoroughly documented, and "he is now considered to be the interpreter of our time, not only in Italy, but also and especially in France by philosophers who claim to be on the left," observes Norberto Bobbio [2]. The Third Reich's emphasis on *das Volk*, its anti-Semitism and a deliberate conservationism attracted Heidegger to the movement. Like Klages, he believed that nature is not meant to serve humans, and a critique of anthropocentric humanism would then become a common theme among German Greens in the early 1980s when the party was just getting

started: the "Eco-Fascists" of the right fringe and the "Deep Ecologists" of the left shared this nature-centered attitude.

The Green Party's chief ideologue from the beginning was Rudolf Bahro, a former East German dissident who exited in 1985 because he felt the Greens were compromising their utopian principles. He represented the fundamentalist wing, the "Fundis," whose ultimate defeat in the 1990s to the realists, the "Realos," paved the way for full representation in parliament because the Realos were led by pragmatic career politicians willing to compromise, like Joschka Fischer and Otto Schily.

When Rudolf Bahro left, he told assembled delegates at a Green convention in Hamburg that there were structural similarities between the Green and Nazi movements that the Greens were not taking advantage of but should. He envisioned a spiritual society guided by *das Volk* and wanted them to envision themselves as Gods and Goddesses at the center of small communities inter-connected with the larger community and rooted to the land. One researcher commented that Bahro was developing a kind of spiritual fascism and seeking to rehabilitate National Socialism. Calling for a 'green Hitler' to rescue the environment, Bahro remarked shortly before his death in 1997 that "If someone comes to the German people and says, 'I am the man who will make the pine needles green again,' he will be given a chance" [3].

"Hitler at times could sound like a veritable Green utopian," writes historian Staudenmaier, commenting on Hitler's famous Table Talks, which included detailed remarks about alternative renewable energy sources such as wind, water, and tides. Even so, Hitler's chief concern was territorial conquest of *Lebensraum* ("Living Space") for the Germans, and he in fact "was not sympathetic to the 'green wing' of his party," concluded historian Anna Bramwell in *Ecology in the 20th Century* (1989), a follow up work to her pioneering 1985 *Blood and Soil: Walter Darré and Hitler's 'Green Party.'* Both these works showed that high-ranking Nazis strongly supported ecological measures, an analysis quite alarming to many Greens at the time. "The Green Party in today's Germany is popular among many disaffected intellectuals, because it appears to be pure and untainted by the past . . . So a link between today's fashionable green ideas and the Nazis can meet with displeasure or even vituperation [4] [9].

Environmental concerns comprised an important part of National Socialist doctrine, if not by Hitler himself. The ecological ideologues in the Third Reich included Heinrich Himmler and Alfred Rosenberg, who believed that the health of the *Volk* required an unspoiled environment protected by the state. It set aside nature preserves and enacted far reaching legislation to protect animal and plant species, reforest barren land, and block industrial development. These were unprecedented measures for any European nation [1].

Linking their concern for the environment to Third Reich doctrine, Nazi leaders justified the drive for *Lebensraum*. Perceived violations against German homeland would not go unchallenged. For example, when an outbreak of pine mites along the German-Polish border destroyed large tracts of forests in former German lands in 1937, the upper echelon considered this an act of war against the German people and further evidence that German soil had to be reclaimed [4]. When war began, a proclaimed sensitivity to the natural world accompanied the Third Reich's expansion to the East. In 1942, following the annexation of portions of Poland, Himmler released a decree entitled "On the Treatment of the Land in the Eastern Territories." He deemed it essential that the landscape be left pristine as possible to fortify the German *Volk* slated to settle the region [3] [10].

Third Reich Minister of Agriculture Richard Darré popularized the slogan 'Blood and Soil' and elevated it to a core tenet of Nazi doctrine. The *Volk* have a mystical relationship to the land and are bound spiritually to the soil, as the theory goes. By contrast, Jews are incapable of forming an authentic relationship with the land and are a stain on nature, according to Darré, one of the Nazis' leading race theorists. He referred to Jews as 'weeds' that threaten the environment and therefore *das Volk*. Mimicking Hitler, he called for them to be "uprooted" from the German body politic, and there is some evidence to suggest that he advocated a Final Solution as a cure for environmental ills, holding the Jews responsible for urban blight and dehumanizing mechanization [3].

Eco-Fascists have believed, too, that environmental destruction can be blamed on the Jews, an idea traced famously to Karl Marx, who wrote that Jews possessed a utilitarian spirit that advanced capitalism and thus destroyed nature. The Eco-Fascists called for a return to a kind of tribalism rooted in *Heimat* (hLomeland), in opposition to the cosmopo-

litanism represented by Jews. In the Eco-Fascist world view, pure, localized *Kultur* stands in contrast to decadent civilization [4].

According to Green founding member Jutta Dittfurth, views such as these were propagated at the *Lernwerkstatt*, an educational center and commune co-founded by abovementioned early Green ideologue Rudolf Bahro in 1989 near Trier. Lectures, workshops, and cultural events took place at the center, allegedly to awaken environmental awareness and German self-identity. Lecturers included former far-left agitators such as Rainer Langhans, who allegedly proclaimed, "spirituality in Germany is called Hitler" and "We must strive to understand Hitler's great vision, so we can be better Fascists." At the *Lernwerkstatt* the participants also learned practical matters, such as organic farming techniques and holistic nutrition. Considering all the positive talk about Hitler, they presumably learned also about organic agriculture in the Third Reich [11].

## 2.5. Anthroposophy and the Third Reich

The Nazis were the first to implement organic farming methods on a large, state-sponsored scale, and this substantial undertaking took shape at the behest of Richard Darré and his Ministry of Agriculture, which had the fourth largest budget in government. Meanwhile the Ministry of the Interior under Heinrich Himmler established experimental organic gardens to supply herbal medicines to SS troops. Referred to as *lebensgesetzliche Landbauweise*—farming according to the Laws of Life—these methods originated in Rudolf Steiner's Anthroposophy movement and enjoyed enthusiastic support from top Nazis, including Rudolf Hess, a devoted Anthroposophist. Third Reich luminaries frequented organic farms practicing Steiner's farming techniques, also termed "bio-dynamic," and in 1933 bio-dynamic growers formed the Reich League for Biodynamic Agriculture [12] [13].

Though Rudolf Steiner had died in 1925, his Anthroposophy movement continued to attract many followers promoting its core concepts of race and geography, and these resonated with the Blood and Soil ideology of the Nazi movement. Offering occultism and the mystical connection of man to earth, Anthroposophists also taught organic farming techniques that obviously ruled out pesticide use. But this prohibition brought them into conflict with chemical producers whose supporters among the Nazi leadership waged a successful campaign to

weaken the 'green wing' of the Nazi upper echelon. The exigencies of war then diminished the importance of the Anthroposophist's eco-utopian dreams, and when enthusiastic supporter Rudolf Hess flew to Great Britain in 1941 to seek a peace deal, his ill-fated stunt severely damaged the Nazi ecologists' cause [4] [12].

Today Anthroposophy is a well-known movement and bio-dynamic agricultural techniques are in widespread use, particularly in Germany, where practitioners produce a line of beauty products and naturopathic medicines under the name Weleda, a company founded by Rudolf Steiner in 1920. Additionally, the popular Demeter brand of organic foods was formed in 1927 as a cooperative of bio-dynamic farmers who enjoyed strong support from the 'green wing' of the Third Reich until it weakened as described above. Though Demeter disbanded in 1941 (and restarted following the war), it had been publishing monthly a journal that regularly praised the Third Reich and its love of soil and homeland [12].

Today, none would question Anthroposophy's 'green' bona fides, and there are dozens of Waldorf schools in Germany and throughout the world following principles of nature developed by Rudolf Steiner. Moreover, the movement has had powerful corporate benefactors such as Siemens and Bertelsman, as well as influential members in the German government, such as former Green Party member and Minister of the Interior, Otto Schily, a life-long leftist. Anthroposophists are generally apolitical though and prefer to live quiet lives dedicated to Steiner's spiritual teachings. During the war years, they had practiced peaceful and passive resistance to Nazi militarism and seldom were harassed, in particular because of strong support from Minister of Agriculture Richard Darré. Upon his release from prison following the war, Anthroposophists supported him and his family, showing their gratitude [4].

## Conclusion

While the support that Darré received is perhaps a small and insignificant detail of history, the fact that Anthroposophy found common ground with top ranking Third Reich ideologues, including Rudolf Hess, Hitler's long-time aide, illustrates that traditional distinctions of right and left may indeed dissolve depending on circumstance. The green movement associated today with the progressive Left can also share affinity with the hard Right. The history

of German environmentalism shows this phenomenon. Right meets left.

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## An Anthropological Lens on Media Narratives: The Case of Indo-Pak Kargil Conflict of 1999

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**Abstract:** *This paper explores the anthropological underpinnings in cultures of representations of the 'Other' in media reportage of India and Pakistan during the Kargil crisis in 1999. It looks at how the construction of narratives is founded upon the process of 'Othering' that leads to known and unknown slippages in forming the portrait of the 'Self' and the 'Other'. The focus is on understanding how the crisis offers a unique scenario where meaning-making guides political sentiments amidst frenzy and chaos leading to a scramble for construction of narratives in the everyday. The paper traces the journey of events and its representation through the development of the conflict. It focuses upon the shifts in interpretation during early period of crisis, the 'Outbreak' and marks the transition in Indo-Pak relations from perception of the threat from the 'Significant Other' to assertion of the 'Enemy' in conflict. The paper aims to understand how the process of construction of the 'Other' results in heightened social production of hate and theatricalization that has the potential to impact the geo-political discourse in South Asia.*

### Introduction

India and Pakistan have had a turbulent history full of mistrust, patch-work, disputes, violence and efforts to mend relations ever since both separated in the year 1947 into two new independent dominions of the erstwhile British India. The two states have struggled to keep diplomatic ties alive and have fought three wars with each other in 1947, 1965 and 1971, and a high intensity conflict in 1999. This has made cultural exchange for development of insights into each other's socio-political landscape a fragmented process. The hostility between the two has concretized to a scenario where both actively propagate a one-sided view of each other's political imaginations. Despite having recognition of a common socio-cultural fabric of rituals, practices, festivities, music and even sports, the perception about each other's nationhood vests in the political sentiments that manages to get prioritized significantly by both the states. Access to sensitive governmental decisions for their citizens in both states has largely been mediated by the reportage made available by a few national news agencies.

How do these political sentiments develop? What role does the media have in creating such under scrutinized, one-sided portraits of representations? This paper investigates how the discourse created by the media impacts the construction of the 'Significant Other'. It specifically looks at the media reportage of the controversial crisis which broke out as a high intensity conflict in the year 1999 in Kargil District of the province of Jammu &

Kashmir, one of the disputed territories between India and Pakistan. "Peace eludes Kashmir because a state-centric peace process is at odds with its plural social realities and multiple fault lines" [1]. The nature of this conflict presents a unique window for analysis of several contestations that were represented by the media reportage and shaped political sentiments. The obscure way in which this crisis broke out challenged the parameters of reportage at each and every stage of development. Was it a proxy war, skirmish or a full-fledged conventional war? What was the role of the militaries, the political leaderships, the non-state actors, the rogue sections of the society and the citizens in making, unmaking and remaking of this crisis? The reportage generated around this crisis shifts in multiple directions and these shifts are crucial to reflect upon the construction of a political discourse by the media.

This paper attempts to analyze how these facts, figures, rationale and sentiments are woven together in the form of narratives by the media. Separate incidents and incoherent facts are reconciled with statements by the 'power elite' to project an official narrative. These stories not just create perceptions, biases and beliefs about the 'Significant Other' but are used as a means to justify political decisions by mobilizing the sentiment of the masses. The crisis in Kargil still finds irreplaceable relevance in the matters of foreign relations of India and Pakistan. More importantly, the indelible imprint of the media reportage of this landmark period even today manages to drive the social, cultural and political hostility between the two nations. The paper, there-



fore, explores the writing of a political event by the media and the lop-sided meaning-making it facilitated. It seeks to unravel the nature of parallel construction of narratives in the reportage by the news agencies of the two states, contributing to the gradual process of 'Othering'. The aim is to understand how differently they tried to construct and articulate their sides of the story.

### **1. Engagement, Intersections & Commentary: A Note on the Approach & the Method**

Daily media reportage was analyzed by selecting articles from the ostensibly credible and globally recognized national newspapers of India and Pakistan – the Indian Express and Dawn respectively. The Indian Express, for more than 75 years, has been acknowledged for its excellence in journalism and a commitment to independence and fairness through multiple international awards. Some of the categories it has bagged laurels in include 'journalism in the public interest, journalism for tolerance' and so on. The Dawn, on the other hand, is a premiere newspaper that has been collaborating with many international agencies to give space to critical syndicated news in Pakistan since Independence. It has been known for questioning policies of the state and enabling crucial alternative debates to see the light of the mainstream.

Global acknowledgement for their credibility is important to keep in mind as these newspapers are representative of a threshold that political experts, analysts and strategists subscribe in order to validate the authenticity of the news. What is interesting from the viewpoint of analysis is that even the reportage that such reputed news agencies deliver highlights the extent to which the construction of the 'Significant Other' takes place. Such a process of Othering gets founded upon power relationships in which each participant defines both itself and the Other. "In this arena, two reciprocal social images interact, one is perceived in social terms as more powerful, the other as inferior" [2]. The prioritization of statements of the government officials, the unquestioned relaying of facts and figures from 'sources', the silences in giving space to alternative points of view, the underexplored disjuncture across multiple incidents – all point to how media reportage fumbles in critically questioning the official representation and knowingly or unknowingly feeding the same narrative. Many studies have posited the difference in national narratives that India and Pakistan uphold and propagate for events that are intersecting and actively engaging for both parties. Those narratives are the official positions

two countries take on innumerable issues to lobby for their vested interests at international platforms such as the United Nations. What has also been claimed is that the media often becomes a tool through which official messages are conveyed to the masses. "The propaganda model incorporates closely related factors such as the ability to complain about the media's treatment of news (that is, to produce "flak"), to provide "experts" to confirm the official slant on the news and fix the basic principles and ideologies that are taken for granted by media personnel and the elite but are often resisted by the general population" [3]. However, what requires a more critical investigation is the how the reportage of these hardline stances gets woven with subtle, soft and seamless depiction of the 'Other'. This paper attempts to go deeper into discourse analysis by examining these everyday descriptions that both the newspapers give of the crisis in Kargil. These everyday descriptions not only relay updates on a certain unfolding crisis, but actively construct an image of the 'Other' by reconciling interpretations of the past, the present and the future. Culpability of authorship gets recognized and corrected only when certain major details have been given out wrongly. There is no blame-worthiness that gets established when problematic descriptions of the 'Other' are done by repetitive telling of human stories. These subtle and problematic nuances escape the discerning eyes of the editors and experts and it is in these very subtle, everyday stories that lop-sided meaning-making takes place. The personal narratives of the storyteller reveal a "narrative identity" that situates them meaningfully in their culture, providing unity to their past, present, and anticipated future and it is through this unity that their words become etched in memory [4]. Such a consistent meaning-making crystallizes the representation of the 'Other' where larger political sentiment gets consolidated with minimal critical reflection. They create a culture of 'unknowing silences' in a sphere which is supposed to be vocalizing these aspects the most. This paper brings out these unquestionable, taken-for-granted representations by the media and how they get solidified through a process of 'Othering'.

The crisis in Kargil becomes interesting due to the consistent and pervasive nature of discrepancies and contestations through the period. From recognition of a 'threat' to complete denial of involvement, from twisted facts and figures of the victims, losses and the perpetrators to publicizing the incident as an act of aggression, there was very little that the two countries agreed upon. The incongruity and divergences were of a magnitude where one

could safely assume that there were two parallel versions running with highly distinct narratives. It is in the vestiges of these distinct narratives that this paper brings out the potential of everyday descryptions of the 'Other'. The aim is to bring to notice the impact that such media reportage has in feeding onto perceptions that are longstanding and evasive to a critical lens.

## **2. A Note on Indo-Pak History Leading Up to the Crisis in 1999**

India and Pakistan emerged as two new states on August 15 and 14, 1947 respectively, out of the vestiges of the erstwhile British India. This was a culmination of the nationalist movements which had been agitating against the colonial rule of the British, seeking complete independence from it. The decision of dividing the land into two dominions as per the Indian Independence Act 1947 of the British Parliament came at the behest of fractures within the nationalist movements. The division was based on religious lines, two new separate homes for the Hindu and Muslim populations of the region.

British India was earlier administrated through divisions into provinces along with sovereignty over the princely states in the region. The provinces of Bengal and Punjab were divided between the two new states, with the princely states given an option to remain independent, or either accede to India or Pakistan. In several territories, a referendum was conducted to determine which state it will be acceded to. The leaders of the two new states took different directions in terms of defining their new statehood. Pakistan was visualized as a home for Muslims of British India and India chose to not take up any official religion of the state given that many religious groups other than Hindus such as Christians and Sikhs also resided in their territory along with a sizeable Muslim population that chose to remain within India. The process of separation witnessed large scale violence on the lines of communal rioting, arson and looting, uprooting and displacement of families from their homes, separation within families and so on. It is in this context that the first war erupted between the two states on the contentious issue of accession of the princely state of Jammu & Kashmir in 1947.

The princely state was ruled by a Hindu ruler, Maharaja Hari Singh, a Hindu ruler with a majority Muslim population, who harbored a wish to remain independent of the two states. The region of Kashmir held most of the Muslim population of state,

whereas the region of Jammu, Leh and Ladakh in the state held groups of Hindus, Sikhs and Buddhists. The region was already witnessing strong agitations by local population against the rule of the Maharaja. In October, 1947, several Pashtun tribal fighters entered the princely state with the support of the newly created Pakistani armed forces with an aim to liberate the region from the rule of the Maharaja. Fearing a violent overthrow by the tribal fighters and Pakistani forces, the Maharaja signed the instrument of accession with India and the Indian Army entered the fray. As the hostilities rose between the two states, India took the issue to the United Nations Security Council (UNSC), which through negotiations brokered a series of resolutions calling for a ceasefire. UNSC Resolution Number 47 of April 21, 1948 called for complete withdrawal of tribesmen and armed forces of Pakistan, and substantial reduction of Indian troops to a minimum strength in the princely state. This was done in order to conduct a plebiscite in the region to determine the status of its accession under United Nations (UN) supervision. Due to several differences on interpretations of this resolution, both the states refused to withdraw their troops and till today both the countries continue to hold parts of the territories of Kashmir of the erstwhile princely state of Jammu & Kashmir, recognized as Indian and Pakistan Administered Kashmir respectively. While the rest of regions that both held were demarcated through an internationally recognized boundary, the boundary of administered territories in Kashmir was recognized to be de facto ceasefire line rather than a de jure demarcation.

The two wars before the crisis of 1999 led to separate challenges for both the countries. The war in 1965 was a result of the escalation of initial skirmishes at the western international border of the two states and parts of Jammu & Kashmir. Following large scale of violence, negotiations for a ceasefire ensured that the war came to an end. This was achieved by the erstwhile Soviet Union brokered Tashkent Declaration. Hostilities again escalated in 1971 when several movements for secession in East Pakistan emerged, leading to a wide influx of the civilians, nearly in millions, from East Pakistan to Indian held provinces. The Indian Army intervened, leading to the creation of a new state of Bangladesh in the Indian sub-continent. The Simla Agreement of 1972 was signed, calling for a complete ceasefire and peaceful dialogue between the two states to resolve all the pending issues. The Agreement converted the ceasefire line into a de facto boundary called the Line of Control (LOC), a mutual recognition of the de facto boundary, until the

final resolution of the dispute over Jammu & Kashmir could be worked around.

The province however continued to remain as a hotbed for violence, hostilities and a source of tensions between the two states. In the late 1980s, several insurgency movements emerged in the Indian Administered Kashmir, largely attributed to the claims of interference by the central government in the provincial elections. In the 1990s it emerged as an internal security issue for India with escalation of violence between the State forces and many internal and external groups, organizations and movements. The time witnessed cross-border infiltrations, with many foreign radical Islamic fighters and groups entering the fray, several of which were battle hardened fighters of the United States and Pakistan backed Afghan resistance against the Soviet occupation of Afghanistan. The month of January 1990 also witnessed a large-scale exodus of the Hindu (the Kashmiri Pundits) and Sikh families residing in Kashmir as the violence became communal in nature. The Indian state enacted several laws like the Armed Forces Special Powers Act (AFSPA) and deployed troops in the region to quell secessionist movements and counter infiltration.

The Indian government has always officially maintained the view that these infiltrators are terrorists that are backed by Pakistani forces at several levels to engage India in a proxy war. Pakistan denies this charge and maintains that these are organic movements calling for independence from India due to rampant occurrence of human rights violations by India in Kashmir. Cross-border skirmishes, both in Kashmir and elsewhere continue to remain a regular affair at the boundaries between the two states. The threat of hostility from each other has led to a continual arms race between the two. This race took a new dimension when India conducted its second series of nuclear test from May 11 to 13, 1998 and declared itself as a nuclear power, shortly followed by Pakistan on May 28 and 30, 1998. Both states have been able to successfully weaponize their nuclear capability since then and continue to upgrade their missile technologies for delivery of such weapons. The two signed the Lahore Declaration in February 21, 1999, calling for building mutual understanding, avoidance of any accidental use of nuclear weapons, and commitment towards nuclear non-proliferation.

The hostilities however again broke out between the two countries in the month of May, 1999 in the Kargil District of Jammu & Kashmir and this parti-

cular crisis is the focus area of this study, turning another chapter in the history of attempts towards peace into a violent confrontation.

### **3. Why to Study the 'Outbreak': Morality, Expediency & the In-Between(s)**

The crisis in Kargil for India began when its stationed forces discovered that several of the high Himalayan mountain peaks, falling on the Indian side of the LOC, have been captured by infiltrators threatening the National Highway 1D that was strategically vital for India to connect Kashmir to the region of Leh in the province of Jammu & Kashmir. It was later discovered that many regulars of the Pakistani Army were also involved in the offensive, disguised as infiltrators. Such a sudden and covert capture of peaks and ensuing violence between the two states facilitated the perception of violation of sovereignty and a threat to peace and security. The understanding of an existence marked by the fears around exposure and infringement reveals the role of othering in framing of such threats. It is the result of a longstanding engagement of tensions that lead to an 'outbreak'. This kind of an 'outbreak' divulges the significance of relations of mistrust [5]. It brings to the forefront the frenzy that influences the writing of history that is plagued by over-assertion of uncertainty, mistrust and despair. Media reportage in the moments of such a crisis is struck by the newness of understanding the moral and the expedient underpinnings of their daily engagement with an outbreak that came from nowhere. Dealing with an outbreak pushes the media personnel into an environment where whatever is happening has to be made 'sense' of with full coherence. There cannot be a scope of loose-ends. All news agencies want to be the first ones to cover, convey and take recognition for making 'sense' of the outbreak. This is where the boundaries get reconstituted with overwhelming and uncritical interpretations of events. Threat is framed not just by putting together certain on-ground incidents and occurrences but by also exploring with one's eyes patterns of intent, motive, behaviour and action. Improper justification for the analysis breaks the continuum of morality and expediency in reportage. Personal views, typifications and explanations get seamlessly woven into narratives that reduce the scope of multidimensional understandings of 'emergence' and 'destabilization' during the crisis. All exercises that attempt to bring reflexive arguments in the mainstream and challenge the taken-for-granted image-formations within media get pushed to the periphery and only get a slight chance for recovery in the aftermath of

the crisis. This paper, therefore, specifically looks at the period where reportage on both sides was disparate with no engagement with each other's understanding of a crisis in political discourse. It looks at newspaper articles from May 1, 1999 till May 28, 1999 – the date where public releases focused upon recognizing military action on both sides. The discourse analysis focuses upon ways in which the reportage on outbreak of 'Kargil' led to representations of the 'Other' being linked to the intent of the political personalities, religion, culture and the threat they all posed in combination with each other. Even if the enemy was to be found in one-sphere, one-individual and one-incident, every possible interpretation of unrelated phenomena was also fed to the masses by subtly interspersing them with facts and figures about the crisis. The primacy given to studying the 'Outbreak' period reveals interesting insights about how the threat is perceived, written and reinforced towards problematic political sentiments and representations. These sentiments drive the writing of a peculiar history that is not subjected to a discerning pair of eyes until the aftermath. The reach to such critical insight also reduces over a time and the masses are left with the interpretations and beliefs that were fed to them at the time of the crisis. What all deserved critical reflection and debates over morality and expediency in representations in media reportage? The paper, therefore, undertakes discourse analysis of the articles written in India and Pakistan during the outbreak that reveals the semblances in the framing of the 'Significant Other'.

In the following section, we focused upon the comparative analysis in the reportage before the crisis broke out in the month of May. These reports about Kashmir and about key political events in each other's countries reveal patterns of construction based on the already consolidated uncritical and non-engaging parallel portraits of the 'Self' and the 'Other'.

#### 4. Cultures of Representation: The Slippages in Painting the 'Other'

Words etched in the Indian Express on May 1, 1999 spell out the extent to which the rise of insurgency led to radical social control of the everyday life. It was a bold characterization that tinted the cultural fabric of a nation by appealing to the sensibilities of those advocating for better human rights in Kashmir.

*"After Harkat-ul-Mujahideen, another pro-Islamic militant outfit - Lashkar-e-Toiba (LeT) - has threatened action against women wearing skin-*

*tight clothes...Last year also, in the month of Ramadhan, the outfit imposed a ban on Cable television on the pretext that they were "showing obscene programmes which led Muslim youth astray"...The Millat cadres used to distribute burqas among the girls. However, for those who opposed purdah, the Millat workers used to throw colour on the face and body."* [6]

The cause and effect link that the report aims to draw is between the rise of insurgency, its militant character and social control through religious practices. However, by selecting only those events or incidents where violence in social control took place as opposed to attempts of resistance, the narrative tilts towards how oppressed the way of life in Kashmir is turning out to be. No emphasis is being given to academic conferences and seminars in universities that are trying to discuss the issue with a critical eye, often resisting the implications of such a control. Neither is the article focusing on the restrictions that the Indian side is imposing on the residents and tourists in terms of free movement and pursuit of activities like art, embroidery and weaving which is so intrinsic to the cultural fabric of Kashmir. By making it solely about the militancy, it overemphasises the control of one stakeholder as opposed to many other who are equally or more a part of such a cause and effect link. This is a culture of representation where the attention is drawn superlatively to one aspect, made to be the core of the problem. What one must notice is that such exclusivity in selection and emphasis over one core issue is different from narrowing down the circumference of analysis. Narrowing down entails that the writer acquaints the reader with many other issues and factors but explicitly states the one s/he is working upon. Not even mentioning the other issues and overemphasizing the role of one leads to a slippage where all the causes get attributed to the 'Other'. It feeds a culture of representation where one narrative after another numbs different voices and analytical lenses that have the capacity to completely change the characterization of the problem.

Another striking part about the article is the way in which Lashkar-e-Toiba's constitutive elements have been explained.

*"Lashkar-e-Toiba is considered the most formidable of all the outfits operating in the Valley. The outfit has a big presence of foreign militants in its ranks."* [6]

The phrase "big presence of foreign militants in its rank" is highly ambiguous. While it does tell us about the presence or involvement of foreign ele-



ments in these organisations it does not provide any detail of who these foreign militants are, where do they belong and what is the nature of relationship that they have with the social control being talked about in this article. By emphasising on “big” it paints a threatening image of the foreign ‘Other’. It leads the reader into a specific-kind of meaning-making where the ‘Other’ is comprehended to be an enemy, working against us in secret, the unknown. The purposeful ambiguity is leading to a typification where the vaguely used phrase ‘Foreign Other’ is leaning towards an interpretation of the ‘Pakistani Other’. Bringing engagement, alternative descriptions and peripheral events often disrupts the definitive explanation the reporter wants to draw towards a conclusion. This leads to certain elements being described in broad typified categories where they are presented as a given, left for the reader’s assumptions or internal conviction to come closer to the intended meaning. Such a deduction is so implicit that the follow-up stories and the way the narrative is built point to how the ‘Other’ is always Pakistan and its minions operating in secret, posing an imminent threat to the ostensibly called the ‘Indian way of life’. These slippages end up influencing the political sentiments that the Indian citizens carry about Pakistan. It reveals how the unrelated and underexplored descriptions in the text can make the readers interpret events as they deem appropriate. “The identity of the text can be incorporated into one’s own personal and communal identity through a mode of analogical transfer. This is the art of interpretation, the art of selfhood, the performance process of becoming a self in relationship to others” [7]. This kind of a culture of representation capitalises on ambiguity and vagueness as tools to enable analogical transfer. The reader goes into the past and tries to establish connections based on the feelings and sentiments some incidents would have evoked in him/her. Because the ambiguity evoked by the writer is appealing to the implicit meaning that the reader wants to draw, the attempt is to connect the identity of the text to the performance process of becoming a self in relationship to the ‘Other’. Such a slippage leads to an evasive culture of representation where nothing is being said and yet everything is being understood by the reader.

Coverage of a story like this propels other journalistic endeavours to make connections that they feel are relevant to their narrative. For instance, the article in the Indian Express on May 8, 1999 assumes that the anniversary of nuclear tests by India, an event of one-upmanship in the arms race bet-

ween the neighbours, necessarily invites a confrontation from the Pakistani side.

*“Nobody is predicting a happy first anniversary of the nuclear tests by the South Asian neighbours at the border, and aptly the nerves have already started cracking. Pakistan fired the first salvo today alleging its troops killed a large number of “intruders” when Indian troops attacked a post near the Siachen glacier sector of disputed Kashmir; and the Indian Defence Ministry lost no time to deny that Indian troops had attacked the mentioned Pakistani post in Siachen. A spokesman of the Ministry said Pakistani press reports that its army had repulsed a heavy Indian attack and inflicted heavy casualties were false and misleading.” [6]*

The idea that “nobody is predicting a happy anniversary” ambiguously displaces the reporter’s own expectation of confrontation to anonymity of the masses as if the public is articulating the threat of such a confrontation. Mentioning that “Pakistan fired the first salvo” is to stick to the narrative that the government officials are giving instead of engaging with the claims and the counter-claims of the Pakistan’s side. Pakistani officials had issued several statements that the Indian side was the one to begin with the intrusion across the Line of Control. However, the statement used in the news article was suffixed with just two words “false and misleading”. No attempt was made to provide substantial explanation and justification to disprove the claims of the Pakistani side with counter-facts from the Indian officials. The underlying assumption is that Pakistan is the first one raking up this issue given that it is the anniversary of the nuclear tests even though the statements by the officials have not a single mention of any such connection with the anniversary of the nuclear tests. Here, Pakistan is being painted as the aggressor instead of critically examining the possibility of transgression from the Indian side. The quotation mark on “intruders” is an attempt to characterize how the Pakistanis see the Indian side while swiftly moving to how this allegation is baseless, unfounded and/or an exaggeration. It attempts to downplay the claim of the ‘Other’ by asserting and affirming the official narrative of the Indian side without substantiation or proper utilization of Indian official’s statement. No name, no position and no counter-facts were presented in this article to back the Indian claim except for a conclusive remark denying the allegations. “This is not the closure of logical necessity; rather, stories come to an end through narrative necessity, through the completion of the events that are needed to tell the point of the story”



[7]. Such connections between the anniversary of the nuclear tests and the so-called offensive military action by the Pakistani side reveal a vague inevitability of the relationship between two events which is highly questionable. It characterizes the way in which the past is invoked to help with the narrative that paints the 'Other' conclusively as threatening and aggressive. Such a culture of representation leads to a meaning-making where unarticulated intent, causes, threats are also attributed to the 'Other'. It leads to a slippage where events are piled up one after another which may or may not have explicitly drawn connections. Representations that are based on 'the narrative necessity' instead of a 'logical necessity' end up painting the 'Other' with intensity that is far more damaging than one can imagine.

A similar representation can be noticed in the report of The Dawn on May 18, 1999. The article brings forth the perspective of the ruling class in Pakistan and how it feels about its well-acquired nuclear capabilities. While it does not specify the country against which such pride is being channelized but the indication is towards India by mentioning the names of India's missile tests.

*"Prime Minister Nawaz Sharif has said that enemy could not even think of attacking Pakistan as it has become strong enough after the nuclear tests. "Pakistan could meet all kinds of challenges after acquiring the nuclear capability", he said while speaking to the PML workers after inaugurating the newly established provincial secretariat of the party here on Tuesday. The Prime Minister announced that Pakistan was no more a weaker country in the region and had the capability to meet any threat and challenge in equal terms. "Pakistan tested first Ghouri and then Shaheen missiles to reply to Pirthvi and Agni missiles, however, it was not in the party programme of the PML", he said. [8]*

Here, India is being characterised as the strong neighbour, who poses an 'undefined' threat to Pakistan. Acquiring nuclear capability is projected as a means to ensure that any strategy of the enemy is deterred. The tilt is towards proving India as a restless, challenging neighbour with the intention of harming the Pakistani side. The glorified event is being articulated in comparison to the feat that India achieved with its Agni and Prithvi missiles. Even though the article could have capitalized a lot more on the peripheral characterization of Pakistan being the first Islamic country to have successfully acquired nuclear capabilities but the narrative, instead, focused on how the established prowess is

to be seen comparison to the Indian side. The entire approach is geared towards proving how Pakistan matches the 'Other' toe-to-toe, to ensure that in this game of one up-manship it is not far behind. By organizing historical events into a narrative unity, it allows the reporter to offer testimony of 'how Pakistan is' and 'how it wishes to mark its existence in the world'. This process of 'emplotment' refigures the experience of the reader and suggests prescriptions for constituting one's unified identity [7]. Emplotment displays a culture of representation where the aspects of one's own glorification, victory and exaltation is asserted vis-à-vis the 'Other'. The slippage here affects the way readers construct their own identity by restricting their sentiments and articulation to the already fed prescriptions.

That is, however, not the only way in which narrative construction can lead to representation of the 'Other'. Narratives also have the potential to hold multiple stories within them even if they are put together through a singular voice. "Narrative identity is an identity of plurality, of many stories. Just as it is possible to compose several plots on the subject of the same incidents...so it is always possible to weave different, even opposed, plots about lives" [7]. With the task of telling multiple stories in one news piece which can be comprehended by people in a simple manner, the reporters end up overemphasising the narration. This happens most often in the case of covering individuals and personalities whose intentions, actions, implications have to be drawn in one conclusion. This is a shift that one can see from the pattern of articulating the 'Other' in ambiguous terms to coming down to specifics and trying to weave multiple stories through an overdone form of narration. Such a narrative was observed in the report of the Indian Express on May 9, 1999 and the Dawn's report on May 14, 1999 about the arrest of Najam Sethi, the chief editor and publisher of The Friday Times based in Lahore, Pakistan.

*"The government statement said Sethi made a "very damaging" and "derogatory" speech against Pakistan during a recent visit to India. He presented a "dismal picture of Pakistan to create despondency and doubts in the minds of Pakistanis" at the behest of the Indian spy agency, said the statement...Pakistani High Commissioner in India, Qazi, however, said: "When the two countries are engaged in talks right now, for a Pakistani to point towards the systemic failure of his own society, how will they be received here? Najam is pronouncing a*

*doomsday scenario...it is a very disappointing performance," he added. [6]*

*"The petitioner stated that Article 199(3) did not deter the jurisdiction of the superior court from calling into question any illegal and mala fide arrest of a citizen made by the ISI. The petitioner further stated that the mode of arrest which was alleged to be harsh, improper and illegal could not be ignored while determining the legality or illegality of the detention of a citizen...The petitioner asked the apex court to ensure that her husband's life, integrity and physical well-being were not threatened. The court was asked to permit the family and counsels to meet him." [8]*

These two reports are trying to hint towards how the arrest of Najam Sethi is questionable on behalf of the state. However, what is interesting in these reports is the plurality in narrative. The Indian Express report is focusing on telling the story by painting the Pakistani government as an oppressive administration, protective about the image of the country and therefore, exercising extreme control in how it is represented at reputed platforms. The Dawn report instead is looking at how the petition is questioning the mode of arrest and humiliation of a respectable citizen at a public level, thereby questioning the intelligence agency and the rights they need to give to the citizenry. While the Indian Express report is reporting the statement of the high-commissioner clearly spelling out how he thinks Sethi is at the behest of an Indian spy agency, whereas there is no mention of such a statement in the Pakistani newspaper. Here, even if both the newspapers are presenting their criticism of what happened in the case of this journalist, the way in which it is being done is revealing a culture of representation where varied and sometimes even opposing stories are being woven into a narrative. The Indian Express painted the 'Other' as an oppressor of rights, actively curtailing journalistic liberty and the freedom to express as a citizen. The Dawn, on the other hand, by completely ignoring the events in India is focusing on the internal actions of the intelligence agency instead of outrightly pointing to the high commissioner's statements and the links being drawn to the Indian Spy agency. By not escalating the usual 'traitor' trope around such anti-national representation, the culture of representation here is getting linked to the culture of silence where non-engagement with the narrative of the 'Other' covers for the overall embarrassment that the media wants to avoid on behalf of the nation. These tangential instances are important from the viewpoint of analysis as they bring forth

how two nations want to be represented in the international arena during the time of the conflict. They feed into the slippages painted by both parties in cultures of representation of the 'Other'.

Discourse analysis that unravels cultures of representation and detects the process through which 'Othering' takes place is what is key to the anthropological lens in studying the role of media in such a political crisis. Applying such a lens requires us to go beyond the discussions over whether images that are constructed by the media are morally just or to assess whether there is a scope for alternative political commentaries on the crisis of Kargil. Therefore, an exploration into analogical transfer, exclusivity in selection of stories, narrative necessity, silence and non-engagement provides the process through which media ends up constructing the 'Other' at the brink of the 'outbreak' of a crisis. When certain incidents are written about in obscure ways and when the frequency of reportage around it them is far lesser, then the abovementioned process of construction is even more evident. Just as the crisis builds up and more and more incidents are required to be covered, the nature of construction of the 'Other' changes. The cultures of representation we see in the initial period of the crisis are driven by journalists working with content in several imaginative ways. Through these imaginative ways, the selfhood of the writer takes primacy and the outcome of it can be seen in ambiguity, choice of descriptions, themes of analysis and boundaries of engagement. Such a construction changes its course when the content starts to get pumped in at a much faster rate. When there is an upsurge in facts, figures, statements, commentaries and live updates from the ground, the way in which the 'Other' narratives are woven change significantly. In the next section, the paper explores how the slippages in cultures of representation in the initial period undergo changes when the 'crisis' becomes a 'conflict' and the 'Other' becomes the 'Enemy'. It looks at the ways in which the construction of the narratives defines how the conflict is subsequently interpreted and remembered in the political discourse of India and Pakistan.

## **5. Analyzing the Transitions in Construction: The 'Conflict' and the 'Enemy'**

The period from May 18-20, 1999 marks a point where the newspapers on both sides began to report about the unusually large scale of military activity. On May 18, 1999 the Indian Express reported about the military operation that had been underway in the Kargil district near the Line of Control, Jammu

& Kashmir. The report suggested that the operation of the India Army had been underway for the last ten days to tackle unidentified infiltrators that had taken the strategic high ground at the top of the Himalayan mountain ridges towering over the district and National Highway 1D. It was accompanied by involvement of cross-border firing between the two states.

*Heavily-armed infiltrators estimated at over a 100 by the Army and between 200-300 by other reports had under the cover of artillery fire taken over heights in the Batalik ridge complex, north of Drass and the Mushko valley since May 7. In the biggest operation launched by the Army's 15 Corps, the infiltrators had been cleared from most areas... The toll in the encounter which has involved artillery guns, paratroopers, mortars and three Brigades of the Army has gone up to nearly 50. "We estimate that 30-40 infiltrators have either been killed or wounded. The Army has lost 10 soldiers," said P P S Bindera, who is Maj Gen (General Staff) at the HQs of the Northern Command at Udhampur.*

*He said there was no indication that Pakistani Army regulars had come into the Kargil LoC sector. Such reports are not correct, he added."* [6]

The nature of the event itself present several problematic issues from the perspective of reportage. Firstly, the event is clearly more than a skirmish but too less than full scale military counter-insurgency operation. This complicates the way in which the intensity of the crisis can be perceived and interpreted. Secondly, since the event location is in a fairly inaccessible area near the LOC the reportage reaches the public almost ten days later than the event. This delay challenges whether the reportage still holds weight or not or whether the on-ground crisis has subsided or escalated. Thirdly, as largely the source of information are the Army officials, local officials, local residents, the ability to determine whether the statements taken are accurate or not gets heavily weakened. It leads the reporter to selectively emphasise upon facets of the events that they interpret to be important for conveyance. Even though the infiltration is a noteworthy element in the news, the infiltrators' identity is being clarified as devoid of the Pakistani Army or even supported by them. Complicity or involvement of Pakistan is such a 'given' in this writing and the larger political discourse that intentionality, logic and politics of such an act is left unexplored for a reader beyond the statements reported. This kind of an under exploration unknowingly gives weight to the state-

ments mentioned in the article and weaves narratives after narratives that rely on the official accounts of those in power. The debate that is likely to bring any critical point of view forward gets effaced and agreements, disagreements, denials and assertions between those in power become the foundational stone of interpretation of on-ground events.

Same is the case with the reportage in The Dawn on May 20, 1999.

*"India and Pakistan exchanged artillery and mortar fire across the Line of Control on Thursday, Indian army officials said..."*

*Kargil, located 220km northeast of Srinagar, has been at the centre of an 11-day gunbattle between the two countries in which dozens of soldiers have died...*

*A Pakistan foreign office spokesman accused New Delhi of "unwarranted military action" in Kashmir, and said it was contrary to bilateral agreements to promote peace...*

*Foreign office spokesman Tariq Altaf... said the Indian military violations behind "the bogey of infiltrators would bode ill for the efforts to improve the atmosphere since February this year"...*

*However, the spokesman averred: "On our part we remain committed to the dialogue process," and said "we believe that Pakistan and India should, as agreed in the Lahore Declaration, intensify efforts to resolve all outstanding dispute, particularly the core dispute of Kashmir."*

*The spokesman emphasized: "I would like to dispel the impression that progress in promoting peace and security in the region is somehow possible without a just and final settlement of the Kashmir dispute, as stipulated in Article 6 of the Simla Agreement" of June-July 1972. "The Kashmiris must be given their right to self-determination in accordance with the United Nations resolutions," the spokes-man re-asserted..."*

The article attempts to juxtapose the Indian official account with the Pakistani account of the exchange of artillery fire in the Kargil sector. It reflects lack of primary investigation conducted by the newspaper. This becomes visible when one looks at phrases like "dozens of soldiers have died", without specifying the numbers of the dead or in putting forth the statement of the Pakistani spokesperson that "India is indulging violations... that are resulting in loss of lives and property of the innocent civilians", without evaluating the nature of these losses by itself independently as well.

The larger point that this article is able to reflect through this comparative is that the Pakistani position is clear, that the enemy is using “bogey infiltrators” as a ploy to gain advantage in Kargil. The ‘Other’ is being constructed as a strawman to shoot so that it can gain an advantage over Pakistan. The quoted statements of the official, which are repeating the same point at frequent interval in the article lay emphasis on the fact that India is not adhering to the commitments of the peace agreements between the two states. That it is an aggressor that intends to put these commitments aside, unlike Pakistan that is committed to the dialogue process, especially on the Kashmir dispute as per international and bilateral agreements and standards of International Law. That it is important that India’s beliefs to bypass bilateral agreements and the UN must be “dispelled”. That unlike India, it is Pakistan that is the believer in the peaceful international order, champion of human rights, of especially the right of the Kashmiri people to “self-determination”. These kinds of unverified, unevaluated statements assert enormous power and the more they are expanded upon in daily reportage the more they have the capability to encourage social production of hate. When social production of hate becomes a recurrent affair, the images of the perpetrator and the victim get reversed depending upon how the memory for certain events is being used to substantiate an argument [9]. The article fails to examine how Kashmir remains a “dispute” between the two states.

These two reports by the Indian Express and the Dawn reveal how the nature of the ‘Other’ as an aggressor is almost a ‘given’, despite ambiguity in accurately describing the events. So is the blatant disregard of the ‘Other’ towards human life, while continuing to obliterate and brush over such violations by their own forces in their respective countries. Subject to such social production of hate, the ‘Other’ is being portrayed as a vengeful ‘enemy’, unlike the self that is merely reacting to the situation.

Such hate in construction of the ‘Other’ gets reflected not only in how the reportage uses certain assumptions to describe the ‘Enemy’ but also in how two or more unrelated events are woven together to appropriate the sentiments generated out of one and channelize them for the construction of another. The Indian Express article of May 22, 1999 exemplifies this channelling of hate from one event to another in circulation.

*“Life in the Valley remained paralysed on Friday due to a bandh call given by the All Party Hurriyat Conference (APHC) on the ninth death anniversary of Mirwaiz Moulvi Farooq...”*

*On this day in 1990, unidentified gunmen had killed Moulvi Farooq at his Nageen residence. Meanwhile, troops have made "satisfactory" progress in cutting off infiltrators who sneaked into 'unheld areas' in Kargil and Drass sectors of Jammu and Kashmir under heavy shelling by Pakistani troops from across the border on May 9...” [6]*

While the article attempts to give a stock of the situation in the valley, but by putting two different news events in the context of the same article it is painting a grim image of the situation in Kashmir. The bandh due to death anniversary of a separatist leader as well as the Army’s tussle to regain control of the ridges in Kargil portray an image that normalcy remains disrupted in both the hinterland and the border. Such reportage indicates that not only is the journalist willing to go beyond the official line to paint a different view of the ‘Other’ but is also willing to put all events that are attached to the territory as being perpetrated by the ‘Other’. As the crisis on the ground in subsequent days builds-up, the intensity of such a construction becomes even more intensified. The Indian Express report of May 26, 1999 revealed such an intensity.

*“Two fighter aircraft of the Pakistan Air Force flew over the Mushko Valley and Drass sector on Tuesday even as the stage was set for the Indian Air Force with its fleet of fighter aircraft and helicopters to expunge the well-entrenched infiltrators at higher stretches of the Srinagar-Kargil national highway...”*

*According to official sources, "If only ground troops are used, the infiltrators may take weeks to clear out and inflict heavy casualties on the troops climbing the steep and barren slopes. The nod for air strikes has come from highest quarters in Delhi".*

*On the infiltrators' side, the casualties are estimated at over 100. The bodies of these likely Taliban Afghans and some regular Pakistani soldiers killed or lying wounded atop the heights have been buried under stones by the surviving infiltrators.*

*The Army officers in the field described the situation as grim, with infiltrators targeting the highway with 120 mm artillery guns brought in from across the Line of Control (LoC). They are also directing the artillery fire from Pakistani guns*



*deployed in Pakistan occupied Kashmir (POK). Dressed in black salwar-kameez, khaki and white suits, the infiltrators are wearing red patkas, sources said."* [6]

As it became apparent that the situation was not under control, contrary to the claim of the Indian Army officials earlier, the escalation of response began to take place. While one response is that of the Armed forces to the crisis, the other escalation becomes evident even in the nature of the reportage. That is escalation of defining the interest of the self vis-à-vis the 'Other'. Usage of the "stage" makes the conflict look like a 'spectacle'. Such statements definitely give a picture of the 'spectacle' being part of strategic planning of military action. "For although war has traditionally been associated with pageantry, parades, intimidation, and demonstrations of all kinds, never before perhaps has what I would call "theatricalization" played such an integral role in the strategic planning itself" [10]. The grimness stems from identification of the infiltrators as Taliban Afghans and Pakistani regulars. Therefore, even in escalation, the self is only responding to the emerging crisis, while the 'Other' continues to perpetuate the conflict. The reportage during escalation becomes celebratory, riddled with pride over prowess in the battlefield in its tone, readily fuelled by political rhetoric from the 'power elite'. Each micro game of one up-manship against the other in the writing becomes a worthy plot to further the 'theatricalization' where each loss on the battle field is a "heavy blow", no matter the scale. The following series of reports on India using air power, and Pakistan eventually downing the Indian aircrafts reflect the same.

*"The Indian Air Force today rewrote its operational doctrine when it launched "Operation Vijay" by conducting two rounds of combat air strikes in support of the Army's counter-infiltration operations in the high-altitude Drass and Kargil sectors...*

*This is the first time that air power has been used in internal security operations and also the first time since 1971 that combat aircraft took part in actions in areas contiguous to Pakistan.*

*South Block sources said the wait for the right opportunity was justified, since it was only after "contingency plans for all eventualities were in place" was government sanction sought. The decision to use air power was then referred to and cleared by the Cabinet Committee on Security (CCS)..."* – *The Indian Express*, May 27, 1999 [6].

*"Prime Minister Nawaz Sharif said he had talked to his Indian counterpart Atal Behari Vajpayee on Friday and warned him against the dangers of sabre rattling and urged him to resolve the Kashmir issue through talks*

*"Today I talked to Mr Vajpayee and asked him how long the air strikes will continue and told him that if more planes will come, their fate will not be different from the two which were downed yesterday", he added."* – *The Dawn*, May 28, 1999 [8].

*"The Indian military continued its airstrikes on positions held by infiltrators in the Kargil sector on Thursday, but suffered a heavy blow when it lost two aircraft and had two 'missing' airmen..."* – *The Indian Express*, May 28, 1999 [6].

In the report by Dawn on May 28, 1999, we see that the statement by the Prime Minister has been paraphrased as a summary and then substantiated through his official statement. Usage of the phrase "dangers of sabre rattling" reveals how uncommon words whose meaning is suited most to specified contexts such as cavalry sword-based battle are being weaved into the narrative to stoke the political imagination of a reader. Furthermore, such repetition of the articulated intent and voice singularly reveals how much the accusatory, threat-oriented statements are being given primacy in reportage as opposed to supplementing these elements with more details of on-ground situation. The decision to use air power by India is now being justified through the grim escalation of the conflict is now being articulated as the "right opportunity" arising after all contingency plans for consequences were sought. From denials, disagreements and refutations, the reportage in two countries is finally addressing similar incidents and events except that the construction of narratives is appealing to a more intensified painting of the 'Other'. The social production of hate and the theatricalization of conflict as a spectacle has managed to transition through the journey of seeing the 'Other' as threat from now calling the 'Other' as the 'Enemy'.

In the next section, we look at how incoherence is dealt with in reportage and how it introduces the threshold where multiple interpretations topple over to etch the 'Enemy' through a scramble for construction.

## **5. The Scramble for Construction: Making Sense of the 'Incoherent'**

The unfolding in the crisis in Kargil presented challenges at various level for ordinary reportage to



flow. The challenge not only of access to the real field of action, officials, main or peripheral sources and alternative voices, but also of the nature of the conflict itself. The incoherence that develops due to the looming threat of war creates conditions for scramble for construction. The reporter attempts to make sense by utilizing his/her own sensibilities and strategies. Even when facts, characterization or concepts are blurred, what remains important for the reporter is the event and its emerging relevance. It is a scramble for facts, figures, inputs or interpretations to break a story, give an explanation to the crisis at hand. For instance, The Indian Express reporting about the number of infiltrators in Kargil continued to shift its reportage, which was not only based on its own account but also of its own primary investigation through its 'sources'.

"Heavily-armed infiltrators estimated at over a 100 by the Army and between 200-300 by other reports..." – The Indian Express, May 18, 1999 [6]

"With Bindera putting the number of infiltrators in the recently-discovered ingress into the Mushko Valley at "50 to 100", the Army now officially estimates the total number of infiltrators -- to have come in since May 7 -- to be between 150 and 200..." – The Indian Express, May 20, 1999 [6]

Sometimes a different account was presented even when the reportage was of the same dates. It reflects how the editorial process at play glossed over these finer details while churning out content.

"The estimated 300-400 infiltrators are on a suicidal mission and are refusing to leave their positions in the Kargil LoC sector even as the Army claims to have inflicted casualties of 21 killed and 78 wounded on them..." – The Indian Express, May 20, 1999 [6]

"The Army for the first time today acknowledged the presence of about 600 infiltrators inside Indian territory and another 400 across the Line of Control, and said a four-pronged attack was under way to recover the higher ridgelines in the Batalik, Kaksar, Drass and Mushkoh areas..." – The Indian Express, May 26, 1999 [6]

Specifically, in the report of the May 26, 1999, usage of the word "acknowledgement" reflects an opening up of a channel of communication between the reporters and the officials, rather than actual conveyance of bits and pieces of information by various officers or sources about the crisis. Scram-

ble to report utilizing other reports or 'sources' becomes more important and forthcoming to substantiate the sentiment for the 'Other'. It is in this light that the admission is of not just merely a few but rather roughly over a thousand infiltrators, engaged in the conflict with India. It reflects a situation where the officials were attempting to themselves make sense of the crisis, consistently maintaining that everything is under control, till the time it the outbreak converted into a conflict. It is when things got out of hand that the recognition for it being more than a routine cross-border skirmish with Pakistan became prominent in the reportage. The challenge of understanding is getting reflected in the very process of defining the threat posed by the crisis – the transitioning from being the "biggest-ever infiltration" to the "heaviest offensive" action launched by the 'Other'. The scramble not only leads a diversity of versions of facts and figures of the crisis, but also for a lucid concept like the motive of the 'Other'.

"Pakistan, it seems, has achieved two main motives through the skirmish -- firstly, they have opened a new front for Indian troops in Kashmir and secondly, it has managed to divert Army troops from Kashmir, where the infiltrators were finding it difficult to sneak in from." – The Indian Express, May 23, 1999. [6]

"The army feels Pakistan's motive is to use the heights to push infiltrators into the Valley, cut off Ladakh from Srinagar, divert attention from anti-militancy operations and publicise the Kashmir issue in international fora, thereby perpetuating the 'flashpoint' theory". – The Indian Express, May 26, 1999. [6]

This presentation of different motives in reportage brings to attention how the 'Other' is being fed with strategic theories by the experts of the implied 'sinister nature' of offense. The scramble creates narratives that are largely indeterminable by primary data. The 'Other' is being relegated now from the threatening 'enemy' to an 'isolated entity' through which all kinds of venomous portraits can be created. The agency of the 'Other' is subsumed by the self which is then reflected in on-ground actions of diverting troop attention, scuttling elections, cutting off regional inter-connectivity and publicizing the Kashmir issue before the international community. The scramble for reportage constructs motives, each as believable as the other from one's own definition of indiscernible inte-

rests. As hypothetically sinister and worrisome as they may be, they continue to etch the characterization of the 'Other' as an 'Enemy'.

The contradictions and contrasts sometimes swung between confirmations and denial by those on-ground, resulting in channeling of hate through ambiguity, confusion and rumor.

"The Chorbitla sector lies between Batalik region and Siachen Glacier. The other area of ingress is the Turtuk sector where the 200-km stretch of unheld territory on both sides of the LoC ends. Both Turtuk and Chorbitalie adjacent to each other," well-placed sources said...

The Northern Command did not confirm infiltration into the Chorbitla and the Turtuk sectors. "There were rumours that there is a build-up of infiltrators across the two sectors but the Army has not found any infiltrator inside the two sectors," said PPS Bindera, who is Maj Gen (General Staff) at the Northern Command HQs at Udhampur." – The Indian Express, May 23, 1999.

The report above is clear in pointing out how a rumor has the potential to circulate the image of 'hate', even if the nullification of its existence is laid out properly. The room for believing that it might be true depends upon how the memory of connected traumatic events from the past is being lived and relived. It is useful, therefore, to evaluate how and under what conditions do such stereotypes come to acquire a lethal quality in the process of 'Othering' [9].

An anthropological lens, therefore, is important in unpacking the superficially strung-together accounts that appear to be coherent. Comparative analysis of vast amount of data reveals that reportage on the same subject, while attempting to sensibly present each narrative, led to an incomplete characterization of on-ground situation. The completeness is only a façade which calls for more clarifications, justifications and explanations.

## 7. Concluding Remarks

The entrenchment of political sentiments of the 'Other' which the self finds itself in confrontation with is a process of construction, embedded in meaning-making that integrates the past, the present and anticipated future through media reportage. Through the making, unmaking and remaking of the 'Other', the Self subjectively churns interpret-

tations to suit the typifications and the demands of the confrontational relationship. In every engagement with the 'Other', narratives are founded upon assertions, assumptions and the taken-for-granted image of the 'Other' through which social production of hate is reinforced.

The history of India and Pakistan, on an official level, in reportage, as well as in public memory has remained in the shackles of peace and hostility. It is in this historical context that specific crisis like the conflict of Kargil in 1999 plays a key role in revealing the anthropological insights into the process of construction of the 'Other'. A narrative necessity propels the side-lining of a critical eye which effaces the potential of multiple voices and alternative interpretations coming to the forefront. By actively using ambiguous, unspecified descriptions, the media reportage uses analogical transfer to implicitly convey its hints, indications and directions towards the 'Significant Other'. Studying the 'outbreak' brings to light insights that not just reveal the typical difference in perspectives between the reportage of the two countries, but an underlying phenomenon of construction in representations of the 'Other'. As the events in Kargil unfold before the eyes of the reporter, so does the process of application of the gaze in selection, rejection, emphasis and application of facts, figures, events, sources or interpretations. This amalgamation and chaotic frenzy results in construction of narratives that make sense based on what is 'given', what is 'obvious' to the eyes and what they want the public to feel and believe about the 'Other'. Comparative discourse analysis unpacks not just the parallel political commentary that gets generated by the two newspapers at the time of uncertainty and crisis, but the unique commonality of the process of constructing the 'Other', continually stirring the sentiment with a 'new rigor'. This new rigor marks the transition from subtle transgressions in representation of the Other to full-fledged declarations of the threat of the 'Enemy'. This process of continual 'Othering', effaces inconsistencies and contradictions with one's own self. Incoherent events are made sense of by emphasizing the motives, schemes, actions and intentions of the 'Other', a conclusion which is being called forth by the demand of the plot chosen in the narrative. The construction is revealed both in the process of descriptions of the narrative, as well as in the process of arranging the matter for telling the narrative. The process of selection, rejection and emphasis is applied not only to what is being said,

but also what can be chosen to say, what is available to say, or even what is not important to say.

It is in this phenomenon of construction while addressing the crisis in Kargil, that The Indian Express and The Dawn created distinctly their own 'Others', two different perspectives on the issue. What an anthropological lens reveals, here, is the process of entrenchment of these perspectives in political sentiments that further isolate the process of engagement between the two countries. The precarious nature of the crisis, its twists and turns, its continual emergence further unpacks the puzzle that gets created before the reporter, where the reliance on the 'given' logic, the typifications become commonplace to furnish the narratives that are demanded by the profession of journalism. The reinforcement of these constructed narratives into active political discourse and public memory creates further conditions of the 'givens', generating future interplay of typifications that make the process of peacebuilding, dialogue and inter socio-cultural exchange difficult. It is in this light that this anthropological insight becomes important to enrich debate on construction of narratives by the media to discuss and reflect upon the role of the media in war and peacebuilding.

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## Language and Hermeneutics in John Dewey's Theory of Inquiry

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**Abstract:** After defining hermeneutics as the systematic and justified revelation of a meaning, I will try to demonstrate in my paper that John Dewey's theory of inquiry is a type of hermeneutics. I consider that Dewey's hermeneutics is highly comprehensive, since it also examines the meanings which man creates when interpreting nature. In order to prove it, I will analyse the novel *Baltagul* [*The Hatchet*] written by a famous Romanian writer, Mihail Sadoveanu, trying to show that both the main character, Vitoria Lipan, in her detective investigations, and the hermeneut, who – at a different level – looks for the hidden meaning of the novel, follow the same Deweyan "pattern of inquiry".

1. John Dewey – a great American philosopher – developed a special *logic*, which he named *the theory of inquiry* [1]. According to Dewey, sciences are systems of related meanings obtained through inquiry. An *inquiry* follows a certain pattern, by transforming, in a controlled way, an indeterminate, confusing situation into a determinate one, which, thus, gets meaning [2]. A problematic situation can be clarified only if it is transposed linguistically in our mind. Still, how can we get, by means of inquiry, to the individual meaning of a concrete situation, by using the meanings already acquired in a certain field? Dewey states that *individual meaning* can be obtained as a result of articulating a *judgment*, which arises from a chain of *logical propositions*. They can be either (i) *existential propositions* (which extract the relevant data from concrete situations) or (ii) *conceptual propositions* (which direct inquiries towards the best way to solve the given situations). These propositions collaborate [3]. The *existential* ones are similar to the workers who (selectively) excavate ancient objects from ruins. The *conceptual* ones are like the archeologists who establish the meaning of the objects found by the workers.

2. In Dewey's case, naturalism had a great influence on his way of understanding things; thanks to the principle of the continuum of nature and, then, thanks to the principle of continuity of research (as *inquiry*, be it *common sense* or *science*), we are presented with a unitary and coherent manner of seeing the world. Starting from unicellular organisms to human beings, we encounter "indeterminate situations", which have to become determinate in order to ensure the survival of the individual (either simple or complex). As regards human beings, indeterminate situations are all those issues that they have to face in life, and

which they try to solve. Dewey developed this theory with a view to helping all those who are willing to correctly think and solve problems, since thinking correctly "makes all the difference".

Thus, according to Dewey, the theory of inquiry is a kind of "hermeneutics of the real". I will offer here a simple and common example (provided by Dewey, in fact). If I grope in a dark room and I stumble against something, I do not realize, at first, what exactly was placed in my way. Consequently, I face a *problematic situation*. I come up with all sorts of *hypotheses* (in Dewey's terms, they are called *ideas*, as "plans of action"). Only when I turn on the light, do I really see what the obstacle was. It is that moment in which I *understand*, meaning that "the whole situation makes sense" [4].

3. My opinion is that Dewey's *theory of inquiry* (i) is a *special hermeneutics*, and (ii) can also be *the basis of an integral hermeneutics*. In order to improve it, I conjugated Dewey's conception with two other hermeneutical conceptions, elaborated by R.G. Collingwood and by Eugenio Coseriu.

3.1. For a better understanding of the concept of "integral hermeneutics", I will provide the following example. Let us imagine that in front of us there is a flat stone which has some scratches on its surface.

(1) Eugenio Coseriu is interested in that stone only if its scratches represent a written text in a language he knows. This is the very point from where the interpretation, namely the quest for the meaning of that inscription (be it lacunar or not) may start. The instruments of analysis are offered to us, in this case, by *the text linguistics* (as a hermeneutics of sense), as Coseriu theorized and applied it in many of his contributions [5].



(2) R.G. Collingwood is interested in that stone only if it was handled by man, even if the respective scratches have nothing to do with a written message. What is important here is that man used the stone for a certain purpose, as a tool, etc. A hermeneut has to determine in this case – by means of very exact questions – the purpose (How did the man use the stone precisely? Was it for a good purpose or not?). Although the object subject to interpretation does no longer belong to language proper, we are still in the realm of culture (as well as of civilization), or (according to Kant) in the world of freedom and finality [6].

(3) John Dewey has the most comprehensive conception, since he goes beyond the frame of culture towards nature. A scratched stone may interest him even if it was not touched by man. According to him, a stone, if it is known as such, gets *significance*; however, if it is scratched and if we want to find out the source of the scratches, then we actually search for a *meaning*: the scratches may have been caused, for instance, by the sliding of a glacier down a mountain slope [7]. The respective meaning (provided there is no apprehension already) is obtained by means of inquiry.

Dewey's hermeneutics (as "theory of inquiry") can be applied to natural phenomena, but also, up to a point, to human (cultural) actions and even to texts/discourses (as concrete speech acts). Collingwood's hermeneutics (as a "logic of question and answer") can be applied both when researching historical events and archeological vestiges, and when interpreting texts (especially philosophical ones). Coseriu studies only *language*, but, in the same time, *all the language*, that is why his hermeneutics (out of which his text linguistics is only a part) is applicable (in principle) to any type of text and to any linguistic unit.

Since language (whose primary finality, as one of its universals, is *semanticity*) represents both one of the cultural forms, and the basis or the condition of culture itself, we should not commit the error to think that language has little importance in man's world. In reality, the problem of knowledge and of "the content of consciousness" is always closely linked to language. Even in the case of natural phenomena recently researched, we actually do not "discover" meanings already existing in nature (as the Ancient Greeks used to believe), but we confer (new) meanings to the respective phenomena. Thus (according to Dewey), we permanently move in an "ocean of meanings".

**3.2.** Each of these hermeneutics/theories excels in the area delimited as field of research. Harmoniously conjugated, thanks to the common parts of interference, which allow flowing from one territory to another, I believe the three hermeneutics have the ability to form a *sui generis* integral hermeneutics. The definition of *integral hermeneutics*, which I propose here, is a comprehensive one, valid, actually, for any type of hermeneutics; I thus find it reasonable to define hermeneutics as *the systematic and justified revelation of a (meaningful) content* [8]. The difference between the various types of hermeneutics lies in the way in which we conceive the respective "content", namely the type of "meaning".

I have placed John Dewey's logic (seen as "the theory of inquiry") at the base of the whole project since the American philosopher's conception offers a truly integrative vision. Dewey does not seem to differentiate between solving a (real) problematic situation and revealing the meaning of a difficult (literary) text. In order to solve a (concrete) intricate situation, to get to its meaning, we need, first of all, to transpose it linguistically in our mind.

**4.** If the hermeneutics I promote is really an *integral hermeneutics*, then it should (even more) be applied successfully in the case of the analysis of literary texts as well, since we are convinced (according to G. Vico, W. von Humboldt and E. Coseriu) that *logos poietikos* (as artistic literature) represents the field of all the possibilities/virtualities of human language in general. With a view to demonstrating this idea, I have chosen, as a case in point, Mihail Sadoveanu's novel *Baltagul* (*The Hatchet*), published in 1930. This short Romanian novel illustrates the merits of the integral hermeneutics in almost all respects. At times, one gets the impression that this text was especially created to follow John Dewey's conception about what an *inquiry* is.

**4.1.** The plot of the novel is the following: Nechifor Lipan, a shepherd, had left far away from home, to the region of Dorna, to buy some hundreds of sheep, but he never came back. His wife, Vitoria, extremely worried, suspects that he was murdered in order to be robbed. After having waited for him for a while, she sets off in quest of her husband, retracing his route, as if she were a real detective. During her investigations, she discovers Nechifor's corpse in a ravine. With great skill, she reconstitutes the way in which the murder was committed, and she finally exposes the killer (Calistrat Bogza),



as well as his accomplice (Ilie Cuțui). Here is the reconstruction of the murder, in her words: “Some might say that he was coming down the mountain. But I know better: he was going up it. And he was not alone! He had the dog with him. And there were two men besides. One of them had spurred on his horse towards the top, to see whether any one was in sight. The second walked behind Lipan, leading his horse by the halter. And it was not yet night. Only darkish. Some think that such deeds are done in the night, but I know that this was done while there was still daylight, towards sunset. When the man on the hill top signalled to show that no one was about and his companion need have no fear, the man who walked let go of his horse’s reins and drew the hatchet from under his left arm. Advancing stealthily along the path in his leather sandals, he came right behind Nechifor Lipan. He struck him just one blow – but a mighty one as would have cleft a tree trunk. Lipan threw up his hands, not having even the time to shout; he just fell forward, his face in the horse’s mane. Turning the hatchet, the man pushed the horse with it into the ravine. It was then the dog sprang at him. He kicked it in the jaw. The horse had been frightened and when it was pushed, it rolled down the slope. The dog went that way too. At first it had barked furiously, and the man had tried to hit it with his hatchet but the mastiff had leapt aside and gone slithering down the ravine after its master. That was all. The man who had remained behind mounted his horse and hastened to join the man at the top of the mountain, and they were gone. Nobody has discovered them to this day.” [9].

**4.2.** As a matter of fact, the opinion that *anything can be interpreted* does not belong only to philosophers. In order to remark such a thing, one does not necessarily need to be a philosopher or a scientist. Common people, endowed with the capacity to observe nature, can also express reflections which are convenient to semiotics and/or hermeneutics, as David, the wise Jewish merchant, does while counseling the heroine of Sadoveanu’s novel. Mr. David does not know what happened with Nechifor Lipan, since he did not accompany him during his trip, but he assures Vitoria that, provided she interprets correctly the signs of nature, she will eventually reach her husband: “No, I don’t know, for I wasn’t with him, but, as a sensible man, I have to admit *everything in this world has a name, a voice and some peculiar sign*. Here, on the slope to the left, there are seven log-houses covered with snow. And smoke issues from the seven chimneys. They don’t shout but *they speak*. To begin with,

they give you a figure: seven. In the second place they *tell* you that it’s winter and the husbandmen are in their homes, preparing their corn mush and melting down their bacon. If there was no smoke coming from one chimney, there would be *a different story to tell*. So *everything in this world tells us something*. Have you ever heard of a murder which has not been spoken about abroad, and a corpse that has not been discovered? Vultures and ravens *point out* the body struck down by robbers. And the waters cast up their drowned. If he be in a well, a drought will *reveal* him to someone. If he be buried, the wolf will unearth him. So *everything speaks*. That’s how God has ordained it.” [10].

Undoubtedly, there is a major difference between (i) to remark (and to know empirically) such things and (ii) to develop a theory which offers the justifications and the principles that we need for correctly interpreting both difficult texts and intricate situations. The integral hermeneutics could be a solution for an efficient approach of the whole domain (possibly) subject to interpretation.

**4.3.** Let us examine carefully the story of Sadoveanu’s *The Hatchet* and see the extent at which Vitoria Lipan follows what Dewey calls “the pattern of an inquiry”. First of all, the heroine has to confront a “problematic situation”, a feeling of anxiety and confusion. This is exactly what is indicated in the aforementioned novel: “She had gradually drawn away from the world and had retired within herself. [...] And yet she would find a way – her *mind* would plan and his [Gheorghică’s] arm carry out her plan. Her whole being was beginning to concentrate on these, as yet *confused*, plans whence light must issue. That was what one might call a *problem* – a word and a notion which were absolutely unknown to this woman of the mountains.” [11].

Next, a hypothesis (an *idea*) has to be launched in order to orient the inquiry in a certain direction, but not before having in mind (according to Dewey) a *suggestion* (that is vague meaning). Sadoveanu shows us how such a hypothesis is born in Vitoria’s mind: “So far nobody had brought her any *light* in that place of darkness they called Dorna. Although the icons knew, they were silent. And of the men she had spoken to, the servant of the King had alone breathed the *truth*. That truth was within herself but she did not dare stir it up. *Evil men had killed Nechifor*.” [12].

We cannot extend too much the analysis at this point. One of the greatest contributions that Dewey brings in his treatise (*Logic. The Theory of Inquiry*, 1938) is to reveal the way in which the interrelated system of *meanings* (of knowledge) or the “rational discourse” is (or can be) oriented to the individual, concrete situations. Thus, he makes an original classification of the types and subtypes of logical propositions (ranging from *particular* and *singular* propositions to *generic* and *universal* propositions), starting from criteria different from those of traditional logic. Obviously, the respective propositions refer mainly to the scientific inquiry, but, up to a point, they are valid for the common sense as well.

Vitoria’s judgments (rendered in the third person, by means of “internal focalization”) sometimes highlight such propositions, which are very similar to the universal and generic ones from Dewey’s classification: “No news had come from him, not even news about his death. And that meant that the robbers had pitched him into a well. If things were thus, nobody could discover the man’s corpse without a light from On High. So Saint Ann in the Bistrița monastery was still the mainstay of her hope. It was the Saint’s will that *understanding* should come to her today. And after this *understanding*, the Saint somehow would determine which way they should take, and where to direct their search.” [13]. “Understanding” has here precisely the meaning looked for, which has the effect of a revelation: “Although she now *knew* that Nechifor Lipan was dead and felt a poignant sorrow, she seemed to have emerged from *darkness*.” [14].

What is more, Dewey’s logic pays great attention to *natural signs* and to their relation, as well as to the way in which inferences occur with their help. *The Hatchet* also abounds in references to these natural signs, which, if correctly related to Vitoria’s inferences, help solve the problem that bothers her.

**4.4.** One has to determine the extent to which the “presuppositions” theorized by Collingwood (in his book *An Essay of Metaphysics*) can be invoked in this discussion, since the world in which Vitoria Lipan lives is one in which people are guided by various beliefs and “absolute” convictions (a world in which Christianity coexists with reminiscences of Paganism). On the other hand, Vitoria often gives the impression that she reconstructs Nechifor Lipan’s thoughts. She knows her husband so well that she guesses what he could or could not have done (that is why she sometimes pretends to have talked with the dead).

**4.5.** So far, we have had in mind a “hermeneutics of the real”. Vitoria did not evaluate a text, by looking for its meanings, but a real problematic situation whose meaning she tried to discover, in order for her and for the dead’s soul to find their inner peace. Undoubtedly, so that she could think over the whole situation, the heroine needed to represent it linguistically (that is discursively) in her mind. This was the only way to solve it. We can now move beyond the happening proper to the meaning (or meanings) of the novel itself, while its quest and revelation is the task of text linguistics. We should no longer insist on the fact that this search is also an inquiry and that it is conducted (or should be conducted) – at least for a hermeneut/literary critic – with scientific means. A hermeneut should justify the identified meaning, to prove the way in which the meaning is articulated. In the case of a text (as the Sadovenian novel analysed here), the logic of question and answer is inevitably applied by a literary critic.

Of all the hermeneutic analyses devoted to *The Hatchet*, the most interesting and convincing interpretation (in my opinion) and, at the same time, an excellent application of text linguistics (similar to Coseriu’s hermeneutics of sense) is the analysis made by Alexandru Paleologu in a book about Sadoveanu’s works. After having remarked that the theme of the novel *The Hatchet* is love (“a novel [...] of a woman’s burning and crazy love”), Paleologu demonstrates by means of numerous arguments (which I will not resume here) that the story is built on a mythical scenario (which has little in common with the ballad *Miorița*) of an Egyptian origin: *the myth of Isis and Osiris* (also mentioned or suggested by Sadoveanu in other literary works). There are a lot of correspondences: Nechifor is Osiris, the one killed by Seth (=Bogza) and thrown in the Nile (that is in the ravine); Vitoria, the one who looks for him, is Isis; Gheorghiuță, their son, is Horus; Lupu, the dog, is Anubis; the descent into the ravine is a “descent into the Inferno” meant to initiate, etc.

The proofs that Al. Paleologu brings to support his thesis reveal exactly how the respective meaning is gradually articulated, on different levels. In this regard, he notes: “The active substratum of the novel, which sends us further, beyond the narration proper, is this ‘virile initiation’ of Gheorghiuță. *The meaning of the book* is to be found here; in fact, we believe that it was written envisaging this very crucial moment.” [15].

Finally, concerning his own “hypothesis” (as an *idea* – “plan of action”), which generated the investigation in question, the Romanian essayist states the following (in complete accordance with Dewey’s theory): “We reckon that deciphering the Isis – Osiris theme in *The Hatchet* is convincing enough. [...] If ‘the penny hadn’t dropped’, as the saying goes, it would have surely ‘dropped’ to someone else one day.” [16].

5. This movement of translation from logic (as the theory of inquiry) to hermeneutics was possible thanks to the major interest that Dewey manifested for language in general and for meaning in particular. For this very reason, I am convinced that Dewey’s logic can be considered not only a hermeneutics like many others, but also the basis of an integral hermeneutics, which is worth being developed and applied.

## References

- [1] Mention must be made that attending this conference (IACSS 2018) was possible thanks to a grant offered by “Alexandru Ioan Cuza” University of Iasi, as a result of my winning the competition 3MT (Three Minutes Thesis presentation), which took place in the respective university on the 9<sup>th</sup> of March 2018.
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- [9] M. Sadoveanu, *The Hatchet. A Short Story*, Translated from the Rumanian by Eugenia Farca, “The Book” Publishing House, Bucharest, 1955, p. 188.
- [10] Ibid., pp. 81-82; here and in what follows, the italics are mine.
- [11] Ibid., p. 50.
- [12] Ibid., p. 61.
- [13] Ibid., p. 63.
- [14] Ibid., p. 64.
- [15] A. Paleologu, *Treptele lumii sau calea către sine a lui Mihail Sadoveanu*, Editura Cartea Românească, București, 1978, p. 110 (the quotations are reproduced in my translation).
- [16] Ibid., p. 150.

## Smart TVs: What Do They Know (and Tell) about Us?

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**Abstract;** Nowadays, we are witnessing a serious gain in the popularity of the Smart TVs. A triumphalist language referring to their benefits can be noticed in mass media, revealing the hype in their adoption. Multiple advantages are perceived by the consumers, and work as positive drivers in the Smart TVs market. Yet, there is little awareness regarding their privacy and security – such concerns are expressed by academia and the experts in the Internet of Things field, but usually ignored by buyers, sellers and manufacturers. The amount of data collected by these personal and familial computers and transmitted to the manufacturers and other third parties, without an explicit user consent, is impressive. For example, according to [1], Smart TVs store and transmit viewing information that can be used to determine every show watched by the user, through Automatic Content Recognition technology. This situation is potentially dangerous in the future, as Smart TVs are intended to become the command centers of a smart home. Therefore, the purpose of this paper is to overview the privacy and security policies published by selected Smart TVs’ manufactures, in order to provide a consistent inventory of collected data sets, to assess the dangers on privacy, personal freedom and autonomy, and to draw some conclusion regarding the recommended future actions for Smart TVs buyers, manufacturers and sellers.

### Introduction

The Smart TV sets of the present are real computers, specialized in entertaining the users in their own homes. Smart TVs are equipped with operating systems, have a permanent Internet connection and combine various other technologies beside the traditional cable and satellite communication, in order to provide the viewer new and exciting experiences. In addition to receiving broadcasted transmissions, various features that permit new uses are presented by the literature, such as: on-demand content, Internet browsing, and 3D displays [2], online interactive media, over-the-top content, location-based services [3], voice or gesture-controlled interaction (e.g. searching for a movie by saying a line from it or adjusting the volume by hand) [4], sending and receiving emails [5] and socializing with peers, in real time or asynchronously, while watching TV or playing video games [6]. The need for seamless identification of the person who sits in front of the TV, in order to offer more personalized content and apps to the viewer, is affirmed in [2], together with the description of a “practical and highly effective solution” based on face-recognition. A very daring use is presented in [7]. The authors suggest using wearable EEG equipment to establish a brain-TV connection, with the goal to make an emotional interaction between user and Smart TV. In this scenario, the device can recognize fear and relaxation, in order to show a proper reaction in response to the viewer’s mood. According to [8], the manufacturers’ declared intention is to transform the TVs in home-auto-

mation hubs, able to monitor, command and control the other Internet connected objects in the household: washing machines and dryers, refrigerators, ovens, robotic vacuum cleaners, air conditioners, home-security systems, wireless routers, speakers, projectors, smart LED light bulbs etc.

While the features offered by manufacturers are multiplying, a steady increase in the number of purchased Smart TVs can also be noticed. According to [9], by the end of 2017 there were 20.35 billion devices connected in IoT. The installed base of IoT devices is forecast to add up to approximately 31 billion worldwide in 2020, with an estimated market value of 8.9 trillion U.S. dollars. Cisco mentions an average of 3.4 IoT devices per capita by 2020, an average of 2.2 being already registered in 2015. Another estimate by [10] states that the global IoT market will grow from 157 billion U.S. dollars in 2016 to 457 billion U.S. dollars by 2020, being dominated by three sub-sectors: smart cities (26%), industrial IoT (24%), and connected health (20%), followed by smart homes (14%), connected cars (7%), smart utilities (4%), and wearables (3%). In [11] is stated that 70% of TVs sold in 2017 were Smart TVs, with a number of 70 million being sold in U.S.A. only [4]. Bitdefender, a Romanian security company, presents in a recent study (May 2018) that Smart TVs are on the fourth place in the hierarchy of preferences of urban households, after smartphones, laptops and tablets. 4 out of 10 Smart TVs owners affirm the use of the device for accessing the Internet. [12] TVs are not only used at home, but also in companies, in meeting rooms, reception desks and



common areas, in hospital rooms and in public spaces.

### 1. Smart TVs related privacy concerns

As previously shown, the Smart TVs present a large variety of features that allow a palette of interesting new uses, and the traditional role of the TV is changing. Many of the new ways of entertainment are possible only based on rich data collection. But usually, people don't associate the TV set with computing technology, or buy the TVs because they need new ones, not necessarily for the smart functions, and are not aware about the data being collected and the risks associated with this process. In [13], Goodin stresses that TVs are used by a fundamentally different demographic than computers. People who use TVs don't know or care about security and privacy, they aren't used to getting security prompts from their TVs, and don't have the discipline of installing security updates. In addition, the Bitdefender study presented in [12] shows very clearly that less than one third of the Smart TVs buyers use a security solution. Also, half of the subjects say they never updated the operating system of the TV, mentioning reasons as lack of time (40%), lack of proper knowledge (23%), or simply not understanding the necessity for the update. Moreover, viewers accept the default security and privacy settings and authentication methods, making the devices vulnerable ... by-default. The settings modification is difficult in itself, due to the facts that the set up procedures need time and effort, the options regarding the privacy and security are buried deep in menus, and the user interface can be confusing and annoying even for the experienced IT&C users.

In combination, the big amount of sensitive and valuable personal data collected for the delivery of smart features, users' excessive trust, lack of privacy awareness and security knowledge, the inherent and insufficient studied vulnerabilities of the Smart TV' young technology, and the big number of units sold generate serious security and privacy concerns, expressed in academic literature, mass-media and security companies' reports and presented below.

#### 1.1 Cyber-attacks on Smart TVs – from proof-of-concept to real-world epidemics

After many years in which it was perceived as safe, TV entertainment is no more free of threats. The increase in number of connected devices, usually

designed for a comfortable use and not necessarily for a secure one, creates an attractive attack surface for hackers. The IoT devices are easier to be hacked, especially due to the fact that, in the same category, they have the same operating system, same (or none) installed security measures, and users who treat them in a very similar way.

Concerns related to the ways in which Smart TVs could affect security and privacy are expressed by the important security solutions providers around the world. In [14], a Kaspersky representative is quoted, affirming that manufacturers could learn a lot about consumers from the data that transits through Smart TVs, and third parties would be very interested in getting access to this data. In [15], ESET warns that, by gaining control over a Smart TV, cybercriminals can not only attack other devices on the user's home network but also spy on individuals to gather sensitive and personal data. Android ransomware is also mentioned, with the observation that TV ransomware is potentially harmful than its computer homologous, because it can physically destroy the TV set, without any possibility to be recovered. Bitdefender presents an impressive inventory of possible attacks, such as personal data theft, privacy invasion or cross-border IT attacks, ransomware, spying via microphone or camera, and compromised Smart TVs used as unaware packets generators in Distributed Denial of Services (DDoS) attacks [12]. Their most recent "catch", described in [16], is the Hide'n'Seek botnet. The malware infected by far 90000 IoT devices and is able to steal personal photos or videos with the intention of blackmailing the user. A security consultant, Rafael Scheel, presents in [13] a new type of attack, which uses terrestrial radio signals, and gives the hackers the possibility to control a large variety of Smart TVs without the need to be in their physical proximity. Furthermore, the device can be used to attack other devices in the home network or, again, to spy on the user. Reversing firmwares and rooting Smart TV's by online communities as Samygo are also largely mentioned in general and specialized media.

In addition, academic literature presents numerous real and proof-of-concept attacks. In [17], the Smart TVs' vulnerability to software-based attacks is demonstrated. The authors show that the virulence and incidence of this type of attacks are even bigger than in the case of computers, being augmented by the reduced frequency of security updates and the impossibility for the end users to examine if the TV set, which is a closed system, is

vulnerable or if it has been compromised. They installed a permanent backdoor on the TV, giving the remote attacker full control while being invisible to the user and transforming the device into a surveillance machine. In [18], the authors notice that many Hybrid Broadcast Broadband TV (HbbTV) applications transmit more information than they really need to work properly, and it is possible for neighbors and broadcasting stations to track users even on an encrypted Wi-Fi network. According to hbbtv.org, more than 44 million devices use the HbbTV standard worldwide, which is an important potential attack base. [5], [19] and [20] identify as vulnerable the applications running on Smart TVs, the update mechanisms, the ports, interfaces and peripherals. In [5] and [20], a consistent set of Smart TV specific attacks is listed: fake analytics (e. g. falsifying the numbers of viewers for a show, in order to influence its continuation), content attacks (modification of the content accessed by the Smart TV, with the goal to upload malicious applications), fake news ticker replacing the actual ribbon at the bottom of the screen, cryptocurrency mining using the TV's computing power, arbitrary video display hijacking the user's screen, native APIs spying the user, network pivoting for attacking the user's LAN, unauthenticated/authenticated request forgery (possibility to use Smart TVs to interact with websites such that they will leave comments or simulate clicks on ads), social engineering/phishing using Smart TVs screens (make the user perform dangerous actions by posing as the television system), ransomware and DDoS.

Regarding the financial losses generated by home appliances attacks, [21] presents that 87 percent of the victims spent often substantial money to respond (42 percent of the victims in the survey spent between \$1,000 and \$5,000). The results of this particular study confirm the general trend of monetization noticed nowadays in hacking communities. In [21], it is also presented that insurers are developing new cyber insurance coverages for individuals that can pay for expenses related to cyberattacks on home computers, home systems, and appliances and other connected devices, cyber extortion, data breach and online fraud.

### **1.2 Data collected by Smart TVs – real honeypots for many interested parties**

Smart TVs have multiple channels and sensors that collect, store and process impressive amounts of data and are designed to permit data oversharing by

default. An U.S. study presented in [4] identified the visual sensors data – personal photos, videos, collected or uploaded at home - as the most sensitive. The same study draws some alarming conclusions: people don't understand where the data are stored and processed (local, on a remote server) and who might have access on it; some of respondents believe that their data are strongly protected by legal norms and unlikely to be shared or used by third parties without their explicit consent; the task of managing the personal data with full responsibility is a difficult or even an impossible task for some users. In the context of digital forensics, [22] demonstrated that a Smart TV contain different kinds of digital traces which can be relevant for investigations, such as, pictures, connected devices, visited websites, etc. – those data are also at risk, taking into consideration the attacks discussed before. Also, the solution of recognizing faces of people in front of the TV promoted in [2] is an attempt to privacy.

The potential dangers resulting from the abusive collection of data include mass aggregation of personally identifiable information in databases, invasive targeted advertising, loss of autonomy via marketing profiles, etc. In a smart home environment, Smart TVs may transmit data over wireless networks, which are again improperly protected. A variety of data are exchanged between devices, and important data can leak if an unauthorized device accesses the smart home environment. And, as the Smart TVs are easy targets, with not even basic security measures put in place, they will be more and more interesting for cybercriminals.

### **2. An analysis of the main Smart TV manufacturers' privacy policies**

In order to provide a consistent inventory of collected data sets, and to assess the dangers on users' privacy, some privacy policies published by selected Smart TVs' manufactures were overviewed. Using emag.ro, the largest and oldest e-commerce site in Romania, we selected the six most popular Smart TV brands. We searched for the privacy/confidentiality terms and conditions elaborated by the manufacturers, we identified with enough difficulty six dense documents (with a concentration varying from approximately 4000 to more than around 11000 words), and performed a very careful reading of terms published in [23], [24], [25], [26], [27] and [28]. We noticed that the policies are not necessarily aligned worldwide, different versions being used for different regions, due to the different

legal frameworks – for example, the General Data Protection Regulation Act, introduced in European Union since May 2018, function as a factor for the adaptation of the E.U. applicable policies. When the differences were significant, we chose the most comprehensive document. Only two out of the six policies discuss separately about the data collected through Smart TVs [27] or Internet-enabled products [28], the others contain the general and usual terms and conditions. Due to the fact that for LG we were able to identify only a quite old privacy policy with the last update on September 16, 2014 and referring exclusively to the company's site, with no mention about data collected by TVs [24], and for the Romanian manufacturer Horizon only a short confidentiality policy regarding the collection of personal data by e-mail [23], we considered them irrelevant and, as a result, they were excluded from our analysis.

The main categories of data collected were synthesized as it follows:

- Data about location – postcode or physical location of the device or information about nearby Wi-Fi access point;
- Data about device - model, operating system version, configurations and settings, MAC and IP address, other identifiers;
- Content - watched, purchased, downloaded, or streamed content or channel zap behavior; time and date of a “click” in the Smart TV menu or other;
- Data collected by applications - applications installed or application click behavior (1 mention in 6 policies);
- Browsing data - HTTP client request information or time and location of the activities or visited URLs;
- Viewing history - information about the networks, channels, websites visited and programs viewed on the Smart TV and the amount of time spent viewing them (through Automatic Content Recognition, video snippets, TV tuner information) (1 mention in 6 policies);
- Voice Service Interactions - voice commands and associated text obtained through Natural Language Processing techniques, pictures, other inputs, music played; also, how, when and for how long the Voice Service-enabled devices are used or voice recordings (2 mentions in 6 policies).

Beside this types which are presented in the four in-depth read policies, in some cases data as the interests and preferences mentioned by the user during setup, the query terms used in Search

facilities, the clicks on the buttons “Like,” “Dislike,” “Watch Now,” and other are mentioned. Of course, all the manufacturers collect identification data such as name and email address, contact information, shipping and billing address(es), and credit card information, and other data consciously transmitted by the users when filling the forms, participating in various advertisement campaigns, free prize draws etc.

In all the cases, the declared purposes for data use are:

- service provision - providing the user the requested functionalities and features, but also customized content, personalized services based on his or her past activities and advertising;
- product and service development;
- marketing (personalization, targeting, profiling);
- security assurance;
- fraud prevention and investigation.

Measures put in place by the manufacturers regarding the personal data of the user are referred as administrative, technical, and physical safeguards designed to protect the personal information against accidental, unlawful or unauthorized destruction, interference, loss, alteration, access, disclosure, or use. In [25], it is mentioned that the measures take into account the state of the art of the technology, the costs, the nature of the data and the associated risks. A warning that there is no complete secure system out there and the security of the user's personal information cannot be guaranteed is also formulated. [28] and [26] explicitly discuss the role based access to personal data of the users in their companies (only the personnel who need to work with the information in order to fulfill their jobs tasks has access to the data). Also, the possibilities for the user to change the privacy choices in Settings menu, with the notice that the availability or quality of the service may be affected, to deactivate or uninstall the applications, or even to disconnect the Smart TV from the Internet are mentioned. SSL encryption is explicitly mentioned in two policies ([25] and [28]), but only with reference to payment data.

It is also clearly stated that third parties collect various information as IP address and device identifiers, the requested transactions, and the use of various applications and services. Manufacturers don't consider themselves as responsible for the use of these information, warning that the particular terms and conditions of the partners must be reviewed by the user. In [28], this is formulated in a very

straightforward way: „you should not expect any information that you make available to others via Sony Europe’s online services to be kept private or confidential”.

### 3. Recommended solutions

On the background of little-to-none privacy and security awareness of the user, an intervention through stronger policies is needed because in time privacy and security issues may become harder to address. The industry should adjust itself to the privacy and security concerns, and buyers have to be well and fair informed about all the problems related to Smart TVs use, in a more active, visible and result-oriented manner, as building or maintaining habits of ignoring the importance of data stored and transferred through TVs use is not desirable. In this spirit, user experience with the new features, user behavior, and awareness regarding the privacy risk need to be studied and improved. Raising awareness is not enough, calls to actions made by media and security companies are also necessary. Users can start with simple steps, like changing the default password, periodically updating the operating systems, and installing a tool for home network security. Many security tools that offer anti-virus, anti-phishing and anti-ransomware protection [15] are available on the market and some of them are free, e.g. Bitdefender Home scanner or ESET Smart TV Security. Behavior based technologies should be introduced, in order to minimize the risks.

In order to prevent fake news delivery in such a wide-audience medium as television, the available content should be able to prove its integrity (via hash functions, digital signature, and digital certificates). The availability of the content should be permanent, and, on the other side of the story, the content uploaded by the user should be kept confidential, through encryption and better mechanism for access control. The authentication of a device (via recognized certificates) and the non-repudiation are also necessary. In short, Smart TVs need to prove at least the assurance of data and information security triad: confidentiality, integrity, and availability.

### Conclusions

After reading the privacy policies published by the four main Smart TV’ manufacturers, we can make the following observations:

- not all companies consider that the use of Smart TV needs a separate document that explain the data privacy;
- the published terms and conditions don’t make an easy reading, especially for non-IT users;
- the manufacturers collect data regarding the device settings and configuration, identity and location, identification and financial data of the user, data about the user behavior while watching TV and using the installed applications, search terms, voice recordings etc.;
- the manufacturers offer proper protection for the above-mentioned data categories, recognizing that, by anonymizing them, they can build user profiles and use them in targeted marketing campaigns;
- it is the sole responsibility of the users to inform themselves about the data collected by third parties while watching TV or using various applications;
- it is important for the users to read the privacy policies and to be aware about personal data collected, stored, processed and transferred by the manufacturers of TV sets, television stations and other parties – this could prove difficult if the policy is not available at all or within immediate reach or in the appropriate language and wording.

The E.U General Data Protection Regulation is of real help in raising the involvement of manufacturers and the awareness of the users, but a lot more work is needed to be done in assuring the personal privacy of the viewers.

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## Family Names and Custom of Folk Law Connected with Them in Georgia

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**Abstract:** *A family name, as a social unit, is discussed in the ethnohistorical context in relation with the social unions, large family divisions and the system of relatives. In Georgia people over centuries had family names. Georgians in parallel with basic family names carried informal hereditary names, the names of the family divisions. They were alternatives of the family names in the informal situation. The anthropological research of family names, along with many other customs, reveals the aspects of folk law. Today it is used rarely, but the practice of using the folk law is noticed. The material fixed in the field states that the people observe the obligations, which were transferred to them from their ancestors in the oral form. The article presents analysis of the cases of tabooed relations caused by folk law and connected with the families in one of the historical-ethnographic regions of the present-day Georgia – Samegrelo.*

### Introduction

Surname, as a social unit, is discussed from the ethnohistorical aspect in relation with social unions, divisions of big families and the system of relationship. People in Georgia had their names within centuries. Surname is an official and hereditary title, which is added to personal name. However, for the Georgian reality it is not a characteristic phenomenon only for the family – this primary social cell. It is a title of some ten and often thousand families of the social unit; it is the title of that social unit, which thinks their surname originates from one personality and have common self-consciousness on relationship” [1]

While researching the Georgian surnames is revealed religious, cultural and social condition, aspects of law and many other customs characteristic to the nation. Thus, by researching the surnames the anthropologists can give answers to many questions. Practice of using the folk law is rarely, but still noticed in Georgia even today on the part of separate families or family divisions. The present article presents analysis of the cases of tabooed relations caused by folk law and connected with the families in one of the historical-ethnographic regions of Georgia – Samegrelo. Urgency of the issue is in revealing existence of the fact in modern times and apprehension of the problem. Within the present research our task was to historically determine influence of folk law in regulating the relations among the families in Georgia on the basis of ethnographic material; also to determine influence of the folk law on the present-day relations.

The area of work was Samegrelo, one of the historical-ethnographic regions of Georgia. I tried to write down the material nearly in all the regions of Samegrelo and to compare these materials with one another. The period of work involved almost one year. In my research I used the method of interviews and observation. I received verbal information directly in the process of interviews. An interview was semi-formalized, and in some cases – even non-formalized. I was concentrated on one topic, but sometimes I was writing down the material on several issues. I also used biographical method and the method of documents and secondary analysis.

### Influence of the folk law connected with prohibition of wedding among the families

Georgians in parallel with basic family names carried informal hereditary names, the names of the family divisions. They were alternatives of the family names in the informal situation. Proceeding from this, it becomes quite clear that historically Georgians had two hereditary names: “basic family name” and “informal family name, the so-called “branch family name”, which proceeded from the name of common ancestor and approximately was limited with 4-6 generations. In all the historical-ethnographic regions of Georgia caused different names attached to this social unit, the family-branch. The ethnographic material shows that the titles of family-branches are still preserved by today. People, in parallel to their official hereditary names, also know the title of their family-branch. They observe obligations imposed on them by their ancestors. These obligations often follow from folk

law and are transferred by oral knowledge from one generation to another. To make it clear what we imply in the family-branch, first of all we discuss titles (“Dino”, “Turi”. “Gamnarki”), then – one of the forms of the folk law and the obligations imposed by this law among the families or family-branches, which were mostly connected with prohibition of wedding. It imposed different obligations to different families or family divisions by force of the customary law or due to having a common sanctuary. These obligations are observed in Samegrelo even today, which are transferred to generations mostly in the form of legends.

In one of the historical-ethnographic regions of Georgia – Samegrelo, as well as all over Georgia, the system of relationship existed, expressed in families. In their turn, the families were also divided and formed a big circle of relatives, settled in one district or one village. Each family, divisions of family was united by the name of their common ancestor. The system like this is mentioned under the name of Patronym in the scientific literature. But in all historical-ethnographic regions of Georgia it has its own name such as “Nogro”, “Mamani”. “Komoba” etc. [2, 3, 4] The terms “Dino”, “Turi”, “Gamnarki” in the Megrelian language are expressions of just this institution.

Georgian scholar D.Chitanava mentions that “Dino” in Samegrelo is the term denoting patronymy. “Dino” implies those, who “left”, “are separated” from a big family, those of one “ziskhiri do khorts” (blood and flesh), one “gamnarki”, which unites 4-5 generations and rarely a unit of 6-7 generations separated from one big family; a unit of descendants (relatives) both of side and direct ascending line, which are settled side by side on the lands of their fathers and grandfathers (direct ancestors), possess their definite signs and proceeding from this form a settlement of certain type. In result of enlargement of “Dinos” a bigger social unit is formed, which is known under the title of “Turi” [5] As for the term “Turi”, in the Megrelian-Georgian Dictionary it is explained as the family, unity by blood relationship [6]

Georgian scholar P. Tskhadaya considers division of numerous families into “Turi” to be an ordinary phenomenon. He writes that “Turi” means 5-6 generations and is divided into smaller units – “Gamnakari”. “Gamnakari” (“nakari”) involves 2-3 generations [7, 8]. In the present-day situation, in Samegrelo region the term “Dino” is forgotten. Meaning of the term “Turi” is changed. “Turi”

today is used by Megrelians to call the representative of another family, but the one close to the family and also a relative. As the name for a family-branch, i.e. a family division, in highland Samegrelo mostly used the above-mentioned term “Gamnarki”. “Gamnarki” is informal hereditary name.

From the ethnographic material it becomes clear that during the increase of surnames new surnames were formed from a branch family name – “gamnarki” in parallel. However, mostly gamnarki’s name did not have legal significance. The difference between surname and “gamnarki” is that surname is a big social unit, which is fixed in legal documents. Branch of family names is a small social unit. It is noticed nowhere. Gamnarki’s names know the people who live with them in one area, for example village, district etc. Today most people know their branch of surname’s name, or gamnarki’s name in Samegrelo. The material fixed in the field states that the members of “Gamnarki” observe the obligations, which were transferred to them from their ancestors in the oral form. For example, the largest surname is Kvaratskhelia in Samegrelo. People who have this family name are from Jgali. Kvaratskhelia’s gamnarki are Kakutsia, Jobolia, Poloki, Pachu, Bukhuia, Dzaguebi, Guchebi, Maguebi in Jgali. People differ their close and far relatives from this informal family names. Ethnographic material shows that the representatives of the Kvaratskhelia and Changelia families do not marry each other. They do not remember the reason of this prohibition, but the narrators say these two families had bad relations between one another and they never marry each other in any way.

While study of Georgian family names along with many other customs, reveals the aspects of folk law. In Georgia, as well as in other countries, in the procedure of litigation the custom law was used also in the late Middle Ages. In some historico-ethnographic regions, in parallel with the state law, the folk law was used almost till the present-day time. Today it is used rarely, but the practice of using the folk law by separate families and divisions of families is noticed. In Samegrelo region litigation has specific name proceeding from the local language – Megrelian. It is “Ginochama” and means “transfer to the icon”. This provided punishment of the guilty for definite criminal activity. In Samegrelo, family shrine exist, where the “Ginochama” was being conducted.



Among the families are fixed taboo relations, the reason of which proceeds from the custom of “transfer to the icon” and has a special term “Vashiners”. Taboo relationships obviously show marriage prohibition. Even though Georgian relative circle is so large and marriage is not happened between mother, father and grandparent’s surnames, they do not get married to unknown people, who have not seen ever and these people have different surnames. They have obligation to fulfil the taboo relationships which are connected with marriage as a legend from their ancestors. Mainly, unkindred surnames do not get married because of “transfer to the icon” or “ginochama” which happened years or centuries ago. For example, people named Ghvindjilia do not get married to people named Lukava, because they are transferred to the icon. They coursed to each other. By their faith, if they get married, trouble will occur.

One of the villages – in Obuji, there was a dispute in court on the case of theft between Kakacha and Shengelaia. Nevertheless, Kakachiawas transferred to the icon and folk law was executed. Verdict was prohibition of marriage. Since then, people with these surnames have not married.

According to the legend, two brothers whose surname were Arkania were married women whose surname were Bullia and Gogokhia. Brothers were hunters. One forest called Chvinare they have golden deer as friend. The brothers feed an animal covertly. They had vowed that nobody heard about deer. Curious wives decided to follow their husbands and saw where they went every day. One day deer saw the hidden women. It became angry and stampeded. The deer cursed the women and they both turn into rock. The brothers cursed wives too. They said that Arkania never married to Bulia and Gogokhia. In Georgia every Bulia, Gogokhia and Arkania know about legend. They do not married to each other. They say that they are brothers and sisters. It is possible that these three surnames have the same origin or they really were transferred to the icon for any real reason. This prohibition reached to the 21th century. There are a lot of similar occasions. People say that to these surnames must not get married because of taboo. Marriage is “vashiners” or it is not allowed. If couple get married they will be punished by supernatural power, which examples are so many.

## Conclusion

All things considered, despite the modern situation in Georgia (migration from village to city), people, specific surnames, or branch of family names (gamnarki) still protect folk law verdict, which was adjudged years or centuries ago. Often this behavior ensured with legend. For example in Arkania’s branch family names Bobolia, Baghiria and Qocholia do not married to Kakubava and Jobava, whose are from today occupied Apkhazia. They have common family shrine. Every five year after Kakubava and Jobava’s bearer come bull to Arkania’s village Muzhava in Samegrelo. According to the legend Arkania’s ancestor save Kakubava and Jobava’s ancestors. This is the reason of coming the bull to Muzhava.

Nowadays, in Samegrelo branch of the family names are not lost. Almost everyone know there “gamnarchi’s” name. Nevertheless, new branch separation from big surnames are not done. It accounts for modern life and migration processes. People leave villages for cities. Representatives of one family do not settle compactly any longer. Therefore there is no need to differentiate definite social group by the name “Gamnakari”. No common family lands and forests exist either. But, it should be mentioned that the relatives, who left their native village have the obligation of support to one another. In cases of deaths or weddings mostly of their relatives they give material support to these families.

As for the folk law, obligations and prohibitions stated by the folk law in Samegrelo were of great importance. This is proved by many facts connected with prohibition of wedding. Proceeding from this it becomes clear that in one of the historical-ethnographic regions of Georgia, Samegrelo, the obligations connected with prohibition of wedding determined by folk law are still preserved and the families observe them.

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## Migration and Psychological Connection of the Population to their Former Place of Residence

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**Abstract:** *The migration processes caused by different reasons in different epochs played an important role in formation of the history of Georgia. The present work discusses the field ethnographic material obtained among the population, which due to ecological factors migrated from the highland region of Georgia – Svaneti to the lowlands. The population that migrated from the highland region to lowland found quite a new residential environment, which along with sharply differentiated geographical location, differed with the ethnic variety of the population. The migrated population gradually became a member of a new multi-ethnic society, though they have not broken their psychological connection with their former dwelling place – mountains. This connection is especially clearly seen in folk belief-images. In subconscious of the population the main place is occupied by the place of their former settlement and sacral centers connected with it.*

### Introduction

Processes of migration and the transformations resulted after them represent the most topical issue for modern Georgia and the world. Topic concerns migration of the population from highland zone of Georgia, Svaneti to the lowlands in last quarter of XX century. Migrated population continues to live in the multiethnic society of the lowland in terms sharply different from the highland conditions. It becomes a member of this society and establishes some relations with it.

Migration, principle of collective settlement and psychological-mental relation of the migrant population with their first dwelling stressed numerous yet-unstudied nuances of Svaneti history, and we'll discuss some of them here. Housing environment, the eco-migrants met, differs from that traditional ethnographic environment of the highland, in which Svan eco-migrants lived. Some elements of traditional life and culture in different ethnographic parts of Georgia were established for centuries in compliance with geographic environment. Life in highlands and lowlands is different. In the process of migration of highland population to the lowlands and their adaptation, numerous cultural elements changed, and a great part of them even fully disappeared, because in new geographic environment there no longer was any need for their existence. Besides this, in the background of transformation in geographic environment and migration, can be changed understanding of different elements of traditional culture of Svaneti.

### 1. Research object and methodology

For proper scientific research of essential importance is method and methodology of ethnological research. The study is based on an ethnographic materials gathered among migrants living in Tchivtchavi village, Kvemo (Lower) Kartli region of Georgia.

Before starting the field works, first stage of research was so-called "office work" which means to familiarize and process scientific sources, literature and archive funds concerning the topic of research. Then was made questionnaire aimed to answer following research question: How influenced psychological-mental connections of the migrated people with their former place of residence to organize sacral space in a new settlement place? Directly in the field work the method of important and universal research for apprehension and fixation of the primary ethnographic material is the method of observation. In order to observe ethnographic processes inside the focus groups, it was planned to live directly in an eco-migrant family during the field works.

The method enables the researcher to fix those events and facts, a direct witness of which the researcher becomes. In its turn, the method of observation differs according to the form of organization, the researcher's involvement, the form of relation, frequency and duration. The method of observation we used for study of the research issue implies non-formalized, open and according to the researcher's involvement – participant observation.

Along with the method of observation, for determination of importance of gathering the primary ethnographic material, it is important to use the method of questioning. From two forms of questioning – interview and questionnaire, our priority was the method of interview with pre-selected focus groups.

For analysis of socio-historical data and explanation of separate phenomena, of great importance is also the method of close description and visual anthropology, which enabled me to show the written material obtained in the field visually – by photos and video material.

Ethnographic material obtained in the field, naturally, is not yet ethnological science. It is the construction material for the work of scientific value. The last stage of research was to compare and analyse the field ethnographic materials and scientific literature.

## **2. Migration from Svaneti to the lowland in last quarter of XX century**

In last quarter of XX century mass migration processes start from the highland part of Georgia – Svaneti, the main factors of which are considered to be ecological catastrophes. “1987 turned out to be tragic for Svaneti. In a month’s time avalanche, landslide and flood destroyed approximately, 2.000 houses; Died 87 victims; The general reason of human losses and demolition was that people ignored ancestral rules of treating nature properly: woods were cut, lands were cultivated, and houses were built where one must not do that. Left without a roof over their head, they were resettled in Kvemo (Lower) Kartli regions, in East Georgia. That’s how it appeared Svans settlements in the regions of Bolnisi (280 families), Dmanisi (800 families), Gardabani (350 families), Sagaredjo (55 families), Tetrtskaro (800 families). In the latter migrants from Lentekhi region prevailed. At the same time, to West Georgia (Ozurgeti, Khoni, Khobi) moved 140 families. Later, new migrants joined to upper region settlements dwellers” [1]

Besides ecological factors, the reason of large-scale migration of the population was lack of land. This is also proved by the research conducted by us in the period of field work. Population migrated also from those villages of Svaneti that did not experience the natural disasters. However, migrants are mostly mentioned with the status of eco-migrants. The state was interested in settling the migrants in

that part of the lowland of Georgia, where the Georgian population was in ethnic minority. One of such main centers was Kvemo (Lower) Kartli, where numerous compact settlements appeared. Refugee Svans from Abkhazia and Kodori Gorge also settled in places designated for eco-migrant Svans.

There are two case of settlement in new places. One part of migrant population settled in abandoned villages while another part of migrants settled places organized especially for eco-migrants. Some migrants from Svaneti settled the villages of kvemo (Lower) Kartli where lived Christian Greeks before. Greeks settled in some part of Georgia from the north-east part of Turkey after the Russo-Turkish War (1928-1929). The reason of Christian Greeks migration from Turkey to Kvemo (Lower) Kartli region of Georgia was persecution of Christian religion [2] Greeks settled compactly and built houses and orthodox Christian churches. Over time, great part of Christian Greeks migrated from Georgia and then Svan migrants settled in their abandoned villages. It was the case when migrant Svans shared old houses and some Christian shrines as well.

## **3. Organizing sacral space in Tchivtchavi village**

Migrants try to observe the principle of settlement, which existed in Svaneti traditional life. Svaneti is one of the highest mountainous part of west Georgia. It is situated on the southern slopes of the central Caucasus mountains. In the historical geographical view, Svaneti is divided into two parts: kvemo (Lower) Svaneti and Zemo (Upper) Svaneti. In the mountains people united into communities (in Georgian language – “Temi”) and families, as usually each community or family having their own shrines, which was some sacral center in their consciousness and around which folk holidays was conducted. In Svaneti traditional life communities are located around the shrine which is considered as strongest sacral centre.

The type of settlement becomes mixed among the migrated. In the Tchivtchavi village settled eco-migrants from Kvemo (Lower) Svaneti. They tried to match the new housing and sacral environment to the principles existing in the first dwelling. Naturally, sharply different terms of highlands and lowlands restrict him and in this process, numerous interesting nuances are outlined that generate the need for new understanding of many issues.



After the settlement of migrant population in Tchivtchavi village, they gathered to discuss which shrines would be build for celebration common community, village or family folk holidays. Migrants from one community wanted to be selected shrine that was considered the most powerful sacral center in their former place of residence. According to the vast majority of votes in almost every case there were build or restored shrines of the archangels. Before the collecting material resources necessary for building new churches, migrants from different villages and communities had built small shrines are called in Svan language "Vitin". Over these small shrines is celebrating folk holidays.

Despite these folk shrines, there was build one church of archangels in Tchivtchavi village, Where occurs only orthodox services of worship according to Typicon. Organizing sacral space among the migrants includes two important parts: shrines withhold folk rituals around them and typical Christian orthodox church where priest does his job.

Some scholars consider that shrines and ritual practice of Svaneti life originates from the Christian traditions. It is interesting that migrants met old, abandoned Christian churches or ruins of shrines in Tchivtchavi village. They consider it their obligation to restore the shrines, to take care of them with reverence, though it is interesting that in most cases the migrants do not continue to hold folk holidays and rituals around these shrines. Next to the old shrines they start to build new ones. At the same time, the migrants try to build separately those shrines of their villages or their families, which were considered to be the strongest sacral centers in the places of their old settlement. The person, knowing traditional construction technologies, usually builds these shrines exactly by the architectural nuances preserved in the first dwelling. Despite this, these new shrines still fail to replace old ones being in mentality of the migrants, which is clearly reflected in their emotional sentiments. When a migrated Svan wants to bless or curse anyone, in his mind appears the shrine, which was the strongest in former place of residence and he blesses or curses necessarily in its name. On the example of Svaneti traditional life in the process of researching and clarifying the essence of these features special contribution was done by outstanding Georgian ethnologist Vera Bardavelidze. In her published works and archive materials the talk is on many sacral centers and beliefs connected with them [3,4]

#### 4. Migration and psychological-mental changes

When people migrate from one place or culture to another they carry their psychological-mental connection with their former place of residence with them. Each personality, as a member of society and definite collective, apprehends his own self as a part of concrete environment. He is connected with this environment with his psychological-mental ideas that is conditioned by different factors. Migration and intercultural contacts results in both cultural and psychological changes. At the cultural level, collective activities and social institutions become altered, and at the psychological level, there are changes in an individual's daily behavioral repertoire and sometimes in experienced stress [5] Concept "we" and "they" appears in person's subconsciousness. Other markers of ethic self-consciousness also appear. In their turn, similar markers appear within one ethnos, also in local ethnic groups living in various geographic areas. Respectively, in any space of the world, during internal and external processes caused by different reasons, the migrants are followed by their psychological-mental connection with their first dwelling. This universal phenomenon is shown with various forms all around the world. there are interesting opinions in literature about different kind of internal and external migrations and psychological-mental connection of population with first dwelling. For example, the case of countryman Coffee Stall, that is a gathering place for countrymen in Turkey, could be considered as one particular case of psychological-mental demand of migrant people to have "we" environment around them [6]. On the other hand, when individuals are forced to break connection with their first dwelling and do not have ability to find "we" environment around them, this could be main factor of contribution some kind of diseases caused by psychological-mental reasons. As it is shown on the example of Immigrants from the Former Soviet Union to Israel, Migration and new environment with new economical cultural and social conditions makes risk factors of psychological distress [7]. When individuals migrate, they do not leave their beliefs or idioms of distress behind, no matter what the circumstance of their migration. Their beliefs influence their idioms of distress, which influence how they express symptoms and their help-seeking behavior [8] Thus, migration and psychological connection of the population with their former place of residence could be expressed and explained by various ways and reasons.

## Conclusion

Migration and psychological connection of personality with former place of residence is universal phenomenon having many aspects and forms of expression. Observation each concrete case can explain many interesting nuances that generate the need new understanding of many issues. Study of the migrated population's psychological-mental connection with former place of residence can be considered as one methodological approach in

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- order to reveal initial origin and sense of some cultural elements. There are different reasons in literature about origination of Svan highlanders belief and ideas. In our concrete case, research showed that sacral center and beliefs connected with it, being in the former place of residence, had concrete features causing its existence. Organizing sacral space in new settlement place showed, that in Svan folk belief coexist archaic and Christian elements.
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## The Qur'an as a Source of History: A New Approach to the Dating the Qur'anic Passages

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**Abstract:** *In this paper, we will introduce a method that we try to develop to detect the Qur'anic chronology in a way that is not speculative. For this we will use a method that matches the chronological knowledge we have and the expression patterns contained in the Qur'anic passages. In fact, it is argued that we can more accurately detect the chronology of expressions rather than the chronology data of passages on the basis of this method. Because the data concerning the history of Qur'anic passages are insufficient and controversial. We can be closer to the truth if we test the contradictions and alliances of the narrations and the evaluations at the level that the narrators and evaluators never planned, that is, at the level of expression. Then we can use the history of different expression patterns to determine the history of any passage that brings them together.*

This paper aims to introduce a method that we have developed to determine the chronology of the Qur'anic surahs, passages and verses. This method which we name as “the use of Qur'anic expression patterns in illuminating the chronology of the Qur'an”, have already been applied for two surahs before. We published them as essays before. One of the works is related to the chronology of the surah al-Muzzammil and the other is the Surah al-Fatiha. [1]. We can say that we have come a long way in developing the method. Here we will talk about the fundamentals of the method and introduce the basic elements and concepts of it. In doing so, we are considering using the datum of the work we have done for the Surah al-Fatiha as an example. Thus we hope to provide a concrete material for the listeners.

Contemporary historians have discussed the period that the Qur'an was revealed in with different political and cultural motivations. When they talked about this matter, they noticed a very important point: The Qur'an is the most authentic historical source that has reached us in its period. This finding is not a subjective view defended only by the Muslim scholars. Non-Muslim researchers also accept this fact to a great extent except the ones highly skeptical. [2]. Therefore, the contemporary historians studying early Islam thought that it was necessary to support and test other historical materials with the Qur'an. However, there is a serious obstacle in practice of this approach. That is, the textual structure of the Qur'an does not reflect the chronology of events. As is known, the Qur'an was revealed in pieces in a period of 23 years and later it took the form of a book. We are aware of the fact that the chronological order of the verses was not taken into account during the compilation process. It is not regarded as a classification axis in textualization process. Even within

the surahs, which are the main sections of the Qur'an, there are many passages revealed at different periods. This is a handicap for history researchers and means that the Qur'an does not provide any ready-made information as a source of history. The problem in chronological information given by a historical source can cause several serious mistakes. In addition, the chronology of the Qur'anic surahs and verses is significant for Islamic sciences such as classical tafsir and fiqh as well. In classical books we find many lists of independent chronology narratives as well as of chronological order of the surahs. Consequently, we can see that the chronology problem is an important field of study in Qur'anic studies in the classic and modern period.

We find the lists of Meccan-Medinan surahs in the books written in tafsir and some historical sources. These lists give the chronological order of the surahs. [3]. The criterion of the lists is not given. But there is a settled claim that this science is based on the reports. Moreover, basing the lists on the early companions of the Prophet and some later Muslim scholars may give us the feeling that we are faced with the datum based on the witnessings of the revelation period. But we cannot assume that these lists were entirely created by testimony. It is possible that there are evaluations based on Qur'anic content in these materials. The lists may contain some non-report materials; but they might, in fact, be evaluations perceived as if reports coming from the revelation period. Besides these lists, there are also narrations about singular surahs, passages and verses. These narrations are found in the related sections of the Usul-al-Tafsir books[4].

On the other hand, it is also necessary to mention the lists of modern Western and eastern researchers. These are studies provided from the lists of tafsir

sources and individual chronology datum and especially the use of *sīrah* sources with a critical approach. As Nöldeke does, they usually subject the surahs to a chronological order and, at most, classify the Meccan surahs into periods. [5]. Besides, there are such scholars as Mawlana Muhammad Ali who tried to divide the Medinan surahs into periods. In addition, Muhammad Ali tried to clarify the dating of the Meccan and Medinan periods by dividing them into certain years. [6] There are those who make datings in the level of passages like Hirschfeld [7] as well as more detailed and mathematical calculations such as performed by Mehdi Bâzergân. [8] It is evident that Bâzergân took the Western criticisms into account to a great extent. However, these lists include subjectivity and speculations and even ideological preferences. Although they contain many justified evaluations, these are not enough to achieve a stability in this field. They are, in fact, in controversy in some significant matters even if they seem to agree in a very general frame. What's more, these evaluations have not emerged as a search of method that will at least isolate the issue from subjectivity. Even those who want to reach a top level with interesting calculations such as Bâzergân seem to be unable to skip this level of personal evaluation. Here, then, the following conclusion can be reached: Although the Qur'an is a source of history, it has not yet been fully established as a convenient source of history. Can a method be developed that will enable us to identify the Qur'anic chronology and overcome subjective evaluations?

To answer this question, we need to determine the basic principles that will shape our approach. Before establishing a method, it is best to clarify what you need and what the main goal is. Thus, the approach will reveal our way and we can concrete our method. What we need firstly in dating the Qur'anic passages is to abstain from subjective evaluations and anticipations that are effective on us. Up to now, thematic analyzes, traditional chronological datum, information from political sources have not been able to provide a level of objectivity that can finish the disputes. In fact, they can even be the source of the conflicts. We must determine the truth without prejudice. Therefore, the method we choose should have a concrete objective support point that enables it. What could be this point of support?

We offer to take Qur'anic text itself into account in order to get rid of all these sorts of disadvantages. For the Qur'anic text is both a concrete object and the most reliable and compromised historical source. Let's deal this point a little further. We believe that taking the structure of the Qur'anic language as a

starting point is the best way. What I mean is that there are chronological traces in the structure of the text. We know that the Qur'an was revealed over various events in 23 years. Moreover, the Qur'an built the Muslim community by managing the political and cultural life of them. The Qur'an has the most important role in the struggle of the Muslims against their enemies. This is an adventure that extends from an initial weakness point to the highest success. So, in a changing and transforming strategy within 23 years, it is possible to see the concrete traces reflected in the language of the Qur'an. If we can follow the traces properly, we can achieve some illuminative results about the chronological order. We can ask a question to make the matter a little more concrete: What are these traces? How can they be recognized? What is the difference between thematic analysis to identify the Qur'anic chronology and between our suggestion?

The chronological traces reflected in the text of the Qur'an might be forms of speech that point to a chronological development in the Qur'anic discourse structure. I draw your attention that this is something different from the thematic elements of the Qur'an. In fact we are talking about the literal structure which has a close interest to the themes in the Qur'an, but more concrete and followable. Of course, we talk about the characteristic patterns of the Qur'anic language, not every word of it. It will be understood better when given examples. It is appropriate for us to define it as "expression pattern". At this point we need to clarify what the expression pattern is. The expression pattern is a composition of words which, we think, is repeated in various places of the Qur'an, consisting of at least two words and giving a sense that it has its own characteristics. Not all the expression patterns are useful to our method. If an expression pattern appears in every period of the 23-year revelation period according to our current chronology. The political and social struggle of the Qur'anic revelation reflected to its expressions. The expression patterns entered and exited to the Qur'an at different intervals throughout the 23 years of its history. Some of these expression patterns have also gained continuity. It is possible to analyze these expression patterns throughout the Qur'anic text and to follow them by way of chronological datum. This follow-up can ensure that we are able to identify what is consistent within the chronological data regardless of subjective preferences and news. Here the following critique question can be asked: All very well but, what we are looking for is the chronology in which the expression patterns have taken their shape, isn't it? So, Isn't it a tautology to explain an unknown with another unknown connected to it? That



is, the confusion in the chronology narratives will naturally create a confusion in the Qur'anic expression patterns. At this point, it will be enlightening to explain the basis on which the method is settled. We will not use the present chronology narratives as directly informative datum. We will take all the chronology narratives and evaluations into account. We will take the certain datum, reconciled evaluations and reviews that are close to each other as a starting point. Let's try to concrete the analysis.

Let us now consider that we are talking about the chronology of a Qur'anic passage. how will we detect the chronological period of this passage using these expression patterns? First of all, we determine the expression patterns in that Qur'anic passage. The expression patterns in the language of the Qur'an came to the agenda within 23 years; they were used and then might be abandoned. Here we are actually talking about the diachronic transformation of the concepts within a language. But we are dealing with this matter in terms of expression patterns rather than the conceptual plane. In other words, we will rather follow the Qur'anic language in terms of style. We can say that different patterns are active at different time intervals. Then, the chronology of a passage must be the interval in which the chronologies of the expression patterns it contains coincide. So we can assume that the given passage has some expression patterns that are exactly effective in that interval of Qur'anic language. That is, there are expression patterns coming up or being off the agenda during the revelation process. Then, let's imagine that we

take a photo at any point about these expression patterns. Here the Qur'anic passages show which patterns are on the agenda at that moment like photographs actually taken. Therefore, when we witness that passage, the expression patterns in it are still alive. So, how will we detect the date of the expression?

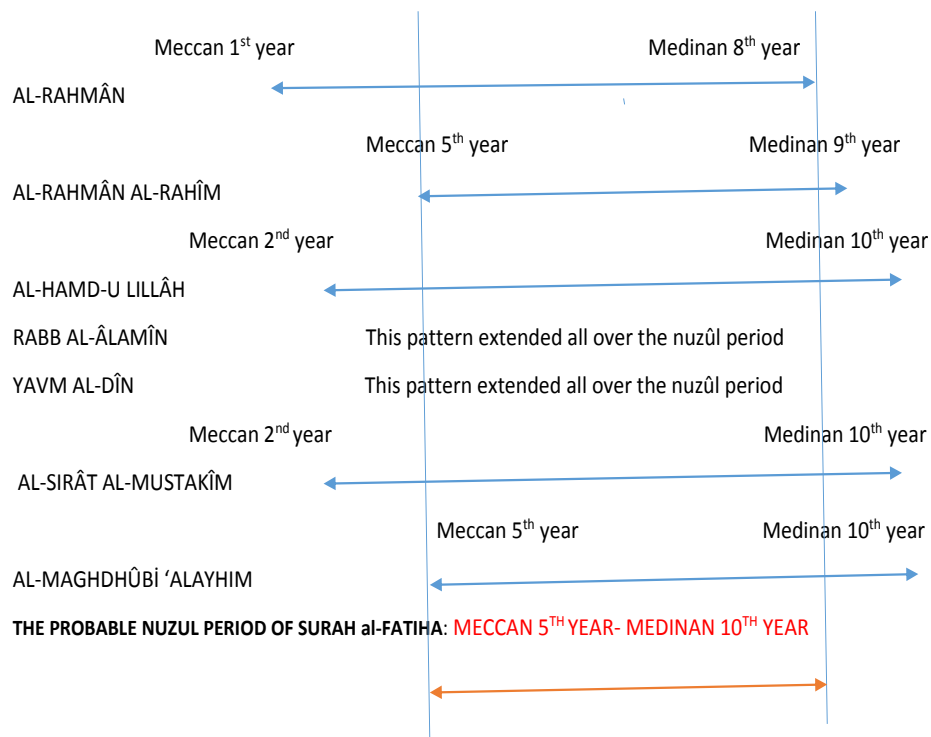
We deal the expression patterns of the passage one by one. We identify the other verses or passages that these patterns are in. We take the chronology datum and assessments related to the passages into account. At the end, we determine the widest chronological time interval for each expression pattern beginning from the first one. This chronological time interval is restricted with the two views that make it the earliest and latest dating for the use in the Quran. At this stage, a wide time interval is determined for the first pattern. If the two views at the beginning and at the end of the group are too far away from the group, they can be removed and identified in a narrow but more speculative second stage. This process is performed for the expression patterns of the passage respectively and the notes are taken. We are finally at the stage of determining the dating interval of our passage. So we take the dating intervals determined for all expression patterns into account. We designate the dating interval in which all of these expression patterns are in effect in the Qur'anic language as a coincidence stage. The narrow dating interval we have obtained is the dating interval of the Qur'anic passage.

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**APPENDIX: THE EXPRESSION PATTERNS OF SURAH AL-FATIHA AND ITS PROBABLE CHRONOLOGICAL PERIOD**



## How to read scriptural texts?

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**Abstract:** *It is known that throughout the history, the Qur'anic text has been exposed to different reading styles. Every religious sect or ideology has had their own understanding and interpretation of the texts. As a result of subjective readings and comprehension, the readings of the scriptures might end up with a love-hate discourse and lead to massive events. So, is it possible to approach the texts with a method and perspective that transcends the subjective interpretation efforts? What are these tools? First of all, in terms of the Qur'an, it is the sum of the revelations coming from an Arabic-speaking society about 14 centuries ago. This "Arabic" qualification provides important donations related to the formation process of the revelation. It is therefore necessary to take this fact into account during the interpretation process of these texts. The contextual information is one of the most important tools for setting forth the right interpretation.*

### Introduction

Scriptures are the texts revealed in a certain time and place. These texts bear the cultural and spiritual traces of the society from which they come. The interpretation process of the sacred texts has never been at a certain period; it has continued for ages. Because holy books are not addicted to their time alone, they send messages throughout the ages. Throughout history all members of the sacred books have tried to contact with the sacred books in the context they are in. This fact is the same in Christianity, Judaism and Islam. Because people demand their beliefs from these sacred books and they want to find what they need.

It is known that in the historical process, the Qur'an is exposed to different reading styles. It can be said that every denomination or ideology entered into the effort of understanding and interpreting the text in the direction of their own opinions. The result of subjective reading and comprehension can turn the sacred text language into love-hate speech and lead to mass events. It is possible to observe this situation especially in the formation of the first sects. They usually endeavor to prove that their views are in accordance with the revelations. Because it is perhaps the only way to claim to be a part of the religious system and to protect this place.[1] These kinds of approach are not only seen in Muslims' approach to their books. A similar attitude is seen in the interpretations of other religious traditions. Because of similar concerns, Bible commentators, like Muslim ones, have resorted to comments that could be considered interesting because of similar problems. For example, considering the words of Jesus about being worried for the future in

Matt 6:25, it is claimed that it is allowable to open saving accounts at the banks.[2]

In fact, there is a strong relationship between interpretation and textualization. In fact, the textualization accelerated the viewing of the Qur'an as a reference text. Hence, every tradition and form of thought has attempted to seek references from the Qur'an through implications in order to ground their own thinking. Therefore, it is important how to protect the sacred texts from arbitrary interpretations. Is it possible to approach the texts with a method and perspective that transcends the subjective interpretation efforts? What are these tools?

There must be some premise to understand the texts. In particular, there are two bases on which understanding and interpreting the Qur'an is grounded. The first is to determine the meanings of the expressions of the Qur'anic text. This will present to the reader what is "meaning" from the first hand. The second can be stated as the area where the Qur'an does not say at the literal level, but possible interpretations can be made after the determination of "meaning". The possible interpretations mentioned should be appropriate to the utterances given at the literal level.

It would be useful to give some examples for a better understanding of the subject. In the various verses of the Qur'an, it is said for the polytheists that " Kill them wherever you find" (2: 191, 4: 89). Here, we witness different kinds of interpretations not taking the first contexts of the verses into account today. It's already known how some radical groups understand and act considering these verses. On the other hand, the verses that claim that the judgment belongs to Allah are interpreted in a very

different way in which the present democratic systems are excluded (12: 40, 67, 28: 70,88, 40: 12). However, these verses are not relevant to such comments. The verses that give judgment are related to the Hereafter and the pagans. It is necessary to say that these forms of interpretation are a common attitude and it is possible to give more examples in this context. When looked at the explanations and comments made, it is seen that the wording-meaning relation is broken and some thoughts which are not meant in the text are attributed to the Qur'an. It is understandable that believers try to make their lives meaningful by establishing a relationship between their own experiences and their sacred texts. It can be said that this is the most basic separating character of these texts. The main problem is the validity and objectivity of these interpretations.

These texts can not be read and interpreted as the books having infinite meanings. At least there are some rules governing interpretation. Some tools in order to avoid subjective interpretations in the tradition of Islamic thought take attention. So much so that in the Islamic literature the occasions of revelations appear as the primary discipline in this context. It is very important to have knowledge about the occasions of revelations to understand of the Qur'an beyond its literal meaning. This discipline is necessary to know which events the verses are about in order to comprehend the essence of the message. Because the text does not tell us about the events themselves, but it is only the expression of the events experienced during the revelation period. In the traditional tafsir literature, tafsir activity has some rules. In this kind of interpretation, there are certain preconditions for preventing arbitrariness. It is important to limit the interpretations in the context of its aim of revelation. Because having a single understanding of texts will mean narrowing the meaning of the text. Texts are generally open to multiple readings but that does not mean that it has no limitation. This is also true for the Qur'anic language. Consequently, even if the sacred texts differ greatly from other texts, it is necessary to consider the following points in the interpretation process. A number of commenting tools must be considered in order to be able to make more objective and accountable comments and to prevent the interpreter from arbitrary comments. These are; **Knowledge of Occasions of Revelations (Asbab an-Nuzul) and Context:** These are indispensable elements for an interpreter as they show the events about which the verses were revealed. To know the reasons of the revelations of the verses is a significant factor to understand its meaning.

**Consideration of the characteristics of the Arabic language:** The revelation of the Qur'an in Arabic means that this text carries traces of Arabic language and culture. Therefore, the interpreter needs to interpret the text by taking the rules of grammar and spoken Arabic into account. This will prevent overinterpretation.

**Examples of past narrative material and authentic interpretation:** The Qur'an is a book that has been interpreted since the time of the prophet. The most important data confirming this is many tafsir works that have reached today. It should be applied to the historical narrative material as much as possible, since the first narratives provide important material in understanding the true meaning. It is significant to consider the testimony and the experience that the companions of the Prophet witnessed to get the meaning. The next step is the question of what kind of reflection it might have on Muslims.

If it is desired to bring references from the Qur'an on a contemporary issue, the interpretation must be compatible with the aim that the verse is revealed. It must be interpreted in a way that reflects the essence of the verse. These considerations will reduce the arbitrariness and subjectivity of interpretation to some extent.

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## Transformative Power of Ideas: The Emergence of the Indian Archaeologist

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**Abstract:** *This essay looks at the emergence of the Indian archaeologist in the context of colonial India in the nineteenth and early twentieth centuries. It studies this development as a product of the pursuit of uncovering Indian history by the colonial state to help it administer an alien land and its unknown peoples. The setting up of archaeology departments in the nineteenth century was accompanied by a deep engagement with Indians and their 'nativity'. Such a characterization implied that Indians were ignorant of their historical heritage and their skills were limited to the arena of textual and linguistic scholarship only. But in their endeavor of restoring Indian history 'back' to the Indians, the latter were able to adapt their European training to express their own aspirations of a regional identity- one that was rooted in a distinct and glorious Indian past.*

### Introduction

The study of Indian history is deeply entrenched within its rich corpus of historical texts, monuments and archaeological buildings. The fact that India had an irrefutable history was proven by the discovery of the Harappan Valley Civilization in 1924, which secured its place as a home of significant historical and cultural heritage. The colonial government in India, as an imperial agent of the British empire, was curating India as its administrative dominion and by the latter half of the nineteenth century was seeking to familiarize itself with the customs and culture of an unknown people. The discovery, or rather the recovery of Indian history was significant in educating British officers to administer more efficiently and set up judicial infrastructure. The study of Indian classical texts, and subsequently a study of Indian architecture and archaeology became the conduits for the same. By knowing Indians, rules and regulations could be framed keeping in mind their sensibilities and cultural practices. The development of archaeology therefore, became intrinsically linked to the colonial enterprise in India.

This essay focusses on the specific interaction between Indians and the colonial state in the context of the development of archaeology in India. The first section highlights how the state came to realize the need for this discipline by the late eighteenth century and the measures they took in that direction. The second section deals with the how the state perceived Indians with respect to their historical heritage by the late nineteenth century. It further looks at the state of Indian scholarship, the nature of engagement between Indian scholars and the state and their contributions towards the discipline. The final section looks at the emergence of twentieth century

Indian archaeologists independent and parallel with their engagement with the state, along with private bodies geared towards supporting historical research. It studies their work in the archaeological sphere with the purpose of establishing distinct regional identity reflected through its ancient history. Since the purpose of this essay is to look at the emergence of the archaeological sensibility within Indians vis-à-vis the colonial perception, it looks at the development of the same beyond the scope of their integration within the government.

### 2. The Indian Picturesque and the Development of Archaeology in India

The beginning of archaeology and monument preservation in India by the British started with an aesthetic fascination for the Indian landscape. By the late nineteenth century, Britain had steeped into a Victorian fascination for the 'picturesque' reflective in the beginnings of oil paintings in the late eighteenth century, and nineteenth century production of lithographs and later photography of Indian monuments. Some of the most famous oil paintings depicting this aspect were through the works of William Hodges and the uncle-nephew duo of Thomas and William Daniell. Incorporating western painting techniques to depict Indian monuments set within natural landscapes, like Hodges' *Select Views in India* (1786) and Daniells' *Oriental Scenery* (1795-1808), these painters were able to bring to English audiences a romanticized notion of Indian history [19]. Derived from the Romantic tradition, the picturesque comprised of a desirable aesthetic association with rugged natural terrain and the wilderness of untamed lands. In the Indian landscape, the historical ruins of ancient temples and abandoned architectural wonders incited a sense of nostalgia for a gone era

and the exotic natural beauty that the unknown geographical topography of the country accorded.

The British appreciation for Indian historical buildings, its ruins and antiquities were closely linked with how they saw historical Indian society and its contemporary counterpart. Narratives of the unchanging stagnant Indian past helped reinforce the view that the key to understanding nineteenth century Indians lay in their ancient and medieval histories. Ironically, while on the one hand colonial administrators emphasized on the static nature of Indian society, their study of its monuments showcased a narrative of Indian degeneration from its glorious ancient past. They argued that while Indian customs and traditions were rooted in unchanging societal norms, the contrast between its exquisite ancient architectural structures and Mughal ruins reflected a story of decline and destruction. Ideological arguments justifying the need for British intervention in taking care of Indian historical buildings and antiquities were put forth, and these ranged from the merits of colonial administration to the inadequacy and corruption of Indians.

Such artistic exploration helped them to lay out and ascertain the geography of the land that they were trying to understand. Scholars like Alexander Cunningham, who were interested in understanding Indian society through its classical texts found in these artistic landscapes an opportunity to attempt to map actual historical structures and their archaeological and architectural value. As visual depictions of these landscapes fueled the European imagination, descriptions of their historical buildings in classical texts encouraged them to evaluate and document how these structures could be located within Indian history. Moreover, they correlated the historical importance of these structures with how they were mentioned in these texts. For instance, Cunningham relied extensively on the accounts of Chinese travelers Faxian and Xuanzang from fourth and sixth century AD respectively [20]. Their elaboration on Buddhist architecture was reflective in his own active excavations, surveys and voluminous publications on the theme, like his three seminal books on Buddhist architecture including books titled - *The Bhilsa Topes* (1854), *The Stupa of Bharhut* (1879) and *Mahabodhi* (1892). To correlate the textual descriptions of historical structures and to understand their actual existence in Indian history required a different methodological inquiry that paintings could no longer afford to provide. The development of the disciplines of archaeology and architecture in the nineteenth century were able to provide an empirical and focused lens to this study.

Thus, we see that colonial reconstruction of Indian history had initially become dependent on Indian classical texts as their understanding relied on actual material proof than the physical testimonies of their Indian subordinates. A concentrated effort towards translation of Indian classical texts had begun from the 1770s, with many British officers stationed in India learning Persian and Sanskrit and using them to translate texts like the documents of the Mughal court (where Persian was still the official language) and brahmanical texts like the *dharamshastras*. They did this to remove their dependence on Indian intermediaries to help them arbitrate on judicial matters and to interpret Indian customs and traditions. A crucial aspect of the colonial interpretation of Indian history was that they understood it to be stagnant and unchanging. Therefore, the knowledge reflective in classical texts could be seen as symbolic of the actual practices and customs that were still prevalent in the country. However, as archaeology and architectural studies afforded a more concentrated study of Indian 'material remains', focus shifted on their study. No longer were these historical buildings viewed and appreciated merely for the aesthetic exotic beauty that they represented, rather the intricate architectural styles were complicit in a past that had to be decoded. They were concrete evidence of a historical past that had taken place and could be located both temporally and spatially. And this understanding helped them to be understood as even more reliable proof than the classical textual accounts that they had been initially located from. As a result, the shift from using merely textual sources as the prime basis of historical exploration to actual material evidence in the form of archaeological finds took shape in this period. In comparison to texts, that were dependent on correctly copied documents and varied scope of interpretation, the historical monument was much harder to refute. The act of 'seeing' became the act of 'knowing' [19].

But how was the development of archaeology being institutionalized in nineteenth century colonial India? Was it relegated to the domain of private surveyors and archaeologists like in Greece and Crete or taken up as a government responsibility? The answer, as we shall see, was a grudgingly moralistic one. The conservation of monuments and archaeology in India has remained a state-driven endeavor from its inception in the nineteenth century till date [5]. Upinder Singh argues that 'archaeology was not a high priority of the British Government in India' [21]. Financial resources were few and were sparingly allotted to what the government considered to be crucial for gathering information about

Indian people and the regions they wished to acquire. Archaeology did not offer any financial returns, nor did it seem that excavating ancient ruins would lead to any substantive result in helping them achieve their goal of expansion and governance. However, development and study of archaeology and architecture in the country came to be regarded as crucial tools for the state to understand Indian past and to establish control over its society by means of 'protecting' its cultural heritage (for this purpose, they also passed the important Ancient Monuments Preservation Act of 1904, the first comprehensive legislation on the theme in India).

Secondly, it was realized that these disciplines would not be able to develop as extensively without the aid of the government to direct it. As a result, initial forays into understanding monuments preservation and protection of historical heritage was carried out through government officials on the state payroll. These 'experts' pursued their work in the spheres of archaeology, architecture and the translation of classical Indian texts in Sanskrit and Persian in addition to their responsibilities as officers of other departments. For instance, Alexander Cunningham (1814-93), the first Director General of the Archaeological Survey of India (ASI) came to India in 1833 and served as a military engineer with the Bengal Engineers. He shuffled his military duties with his antiquarian interests from 1833 to 1861. His contribution in Indian archaeology was largely accorded to his interest in numismatics, epigraphy and history that was encouraged by James Prinsep, the noted numismatic expert and antiquarian. Other notable British officers like Colin Mackenzie who conducted a twenty-year project in Southern India in addition to his post of the first surveyor general of Madras, and James Fergusson who came to India as an indigo planter, juggled their administrative duties with their keen interest in antiquities and Indian monuments.

As the nineteenth century wore on, a more concrete solution was required to tackle the large-scale conduction of archaeological activities. Cunningham recognized that a systematic and detailed survey of the country's regions could not be achieved without a dedicated government body to aid it. The recognized importance of the discipline of archaeology would require the deployment of government resources that could not be met by mere leisure-time pursuits. For this purpose, the ASI was set up by the government in 1861 and Cunningham appointed its first Archaeological Surveyor. The state was defining its priorities towards the development of Indian archaeology as a dual means of knowing the Indian

past, and through that enterprise, to restore Indian history to Indians themselves. The latter aspect drew strongly from how the colonial government viewed Indians and their relationship with their history, their 'native skills' and their ability to be trained into European archaeology.

### 3. 'Native Destruction' and the Indian Scholar

As the archaeological project expanded in nineteenth century India through surveys, excavations and discoveries of historical monuments, questions emerged: who will take care of these 'historical remains'? And more importantly, why were they not being taken care of the first place? The state argued that Indians were responsible for much of the danger that Indian archaeological finds and monuments were in and it would have to step in to prevent them from doing so. Their understanding of the danger that they saw them in were entrenched in how they viewed Indians and their relationship with their historical remains. Colonial scholars came to evaluate historical monuments and antiquities based on their perceived architectural and technical worth, and a direct correlation was made between these and their Indian identities.

Therefore, we see that the colonial argument towards protection of archaeological finds rested on two characterizations of Indians: the lack of a civic ideal towards their historical heritage and destructive tendencies resulting from religious iconoclasm. The lack of a civic sense to protect their historical buildings or 'Indian insufficiency' as Michael S. Dodson argues became the first facet of the state's protection argument. Speaking in the context of nineteenth century-early twentieth century Jaunpur and the pictorial representation of its historical ruins, Dodson argues [10]:

There is a specific historicity being invoked in these picturesque depictions of India.... It is a historicity that invokes not simply the insufficiency of human activity in the face of time and nature but specifically, through the presentation of this strange and new context to a European audience, of *Indian insufficiency*. The ruination of architecture and the apparent inability or unwillingness of local Indian inhabitants to repair the important structures of the past are utilized in these paintings to construct a narrative of decivilization and the death in India of the human drive to discipline the natural world through architecture. (emphasis mine)

The British argued that the inability of Indians to

recognize that they had in their possession a repository of Indian historical remains that were immensely valuable necessitated that their custodianship be relegated to more knowledgeable hands. Furthermore, they argued that Indians were loyal to their religious associations and therefore, did not pay heed to any historical monument or antiquities that they did not associate with their religious faith [1]. Such an impression persisted as late as the early twentieth century, when John Marshall, the then Director General of the ASI accused Sultan Jahan Begum, the ruler of Bhopal, of not paying adequate attention to the repair and maintenance of the invaluable Buddhist Sanchi stupa, due to her Muslim faith [11]. The reasoning behind Indian insufficiency therefore, was embedded in a characterization of Indian society through its religious identity. This characterization was more a result of the colonial attempt to understand and rigidly define the Indian past that spilled onto their treatment of Indian monuments as well.

The colonial characterization of Indians with respect to their treatment of 'historical remains' portrays a passive image of Indian involvement. It raised the question: where was the Indian placed within this emergence of Indian archaeology and preservation practice? Was he, as Bernard Cohn suggests, a bystander to a solely British driven project [3]? Or was he an active participant within these developments? Lauren Benton argues that the formation of the colonial state in India as a 'state' was in actuality very different from its empirical existence [9]. What she hints towards is that the process of state formation was as much a work in progress in India in the eighteenth and nineteenth centuries as was their agenda to bring significant changes to the country. The colonial government, in the process of setting up its administrative and judicial apparatus, was as dependent on the help and cooperation of their Indian subjects as they believed they were to them. They worked as translators, interpreters and even adjudicators as the British grappled with notions of legal plurality in the country that they felt ill-equipped to handle [8]. The local *adalats* of the nineteenth century, therefore featured Hindu *pan-dits*, Muslim *maulvis* and other community representatives who could help British judges make sense of legal customs unknown to them. As the British realized of their absolute dependence on the native intermediaries, projects toward large-scale translation of Indian classical texts began to take place in the nineteenth century. The individuals selected for the task were Indians from learned Brahmanical castes, as well as those knowledgeable in Persian and Hindustani as well [13]. Indian involvement,

therefore, was a feature of all major projects of the government in the late eighteenth-early nineteenth centuries, including in the archaeological sphere. Such an interdependence highlights the contradictions that were inherent in this process of knowledge production. The colonial state tried to extricate themselves from Indians by distancing themselves and putting forward arguments of racial superiority and the distrust they had towards them. But they were ultimately dependent on these very Indian publics to carry out that task for them.

Colin Mackenzie was able to achieve his vast amount of documentation as the Madras Surveyor through the help of his Indian assistants- Telugu brahmins Kaveli Venkata Boria, his brother Kaveli Venkata Lakshmaiah, his peon Krishnaji and a Jain scholar Dharmiah. Mackenzie, by his own admission, owed the success of procuring and translating his extensive collection of native manuscripts to Boria, whom he described as having 'quickest genius and disposition, possessing that conciliatory turn of mind' [7]. Boria until his death in 1803, was instrumental in collecting and translating vernacular and classical manuscripts for Mackenzie due to his fluency in Sanskrit, Persian, Hindustani and English, in addition to Telugu and Tamil. After his death, his work was given over to his brother Lakshmaiah, who is credited with producing excellent reports from his interviews with Indian locals and procuring lesser-known and rare manuscripts through tact and negotiation [3]. So, while Mackenzie was highly interested in the histories, ethnographies and customs of the Indian region, he was crippled by his inability to understand any local languages or customs. His identity as a 'white man' made him an outsider, and in caste-conscious precincts of South India, it was only through the efforts of his Indian assistants that he was able to produce his body of work. Post Mackenzie's death, Lakshmaiah asked to be placed at the head of his establishment so that he could continue to carry on Mackenzie's work. However, when the proposal was put forward to James Prinsep, the head of the Committee on Papers of the Asiatic Society of Bengal at the time, he was refused on the grounds that his qualifications, or that of any 'native' were not equal to the task [3].

Lakshmaiah's story was not a new one. To trust that Indians, irrespective of their linguistic and textual skill, could be left unassisted and without a European head to look over their work was unthinkable. Their skills as language experts and interpreters could only be enhanced and brought to acceptable standards by co-opting them in a European mode of training. Cunningham argued that epigraphy was



one area within which the Indian could be trained and put to use. Their inherited linguistic skills would be ideal if properly trained to carry out good historical research in an empirical and scientific manner [19]. Such European training had another profound effect: it generated a body of scholars that were scientifically trained on one hand and were able to present and interpret Indian texts with the depth of knowledge that only a native insider could. A good example of the same was the noted textual scholar Ram Raz. A native of Mysore, he worked his way up the ranks from the Madras Native Regiment to becoming a member of the Royal Asiatic Society of Great Britain and Ireland. He had a very strong hold on being able to co-relate various pieces of text and extrapolating them to produce an authoritative body of texts. His most noted work was the *Essay on the Architecture of the Hindus* that was published posthumously in 1833. His attention to detail and his methodology was so apparently and impressive that the author to the preface of his book commented that [15]:

His translation was in every respect so correct, and the notes and illustrations accompanying it exhibited so eminent a degree of knowledge in the several languages from which the terms and phrases used in the original were borrowed...and at the same time displayed so much talent in the elucidation of the various parts of the subject...to give rise to considerable doubt of its being the *unassisted performance of a Hindu*. (emphasis mine)

Clearly Ram Raz was able to break to an extent the shackles of inadequacy and distrust that accompanied his eighteenth-century counterparts. What was remarkable about his work was how he was able to collect various pieces of ancient treatises on Hindu architecture like the *Mansara*, canonical texts like the *Shilpa Shastras* and a fifteenth century Tamil text *Iru-Samayan-Villacham* and co-relate them with actual prevalent artisanal practices in South India. Tapati Guha-Thakurta suggests that Ram Raz's success in 'producing what no European scholar could have' lay in his identity as a district insider [19]. During the process of gathering his material he was able to see that many South Indian craftsmen and artisans still employed the same methods to repair old buildings and temples in their region as enshrined in the ancient architectural treatises. However, while they were conversant in their applications of the work, they did not understand its theoretical portions. The texts had belonged to the small corpus of South Indian *pandits* and brahmins who could read and understand the

theoretical basis of the work but could not make sense of the technical and practical aspects of it. The 'native scholar' of architecture, such as Ram Raz, became a crucial interlink between transmitting both parts of this knowledge to these caste-differentiated societal groups [19]. In this manner, not only was Ram Raz able to produce authoritative works that could be understood and appreciated by his European overlords but go beyond that and contribute in native spheres of knowledge that no European at the time could.

Ram Raz, despite his undeniable and unique contribution to Indian architectural and textual studies, was still confined to the nascent role of the 'native textual scholar'. His skills lay in interpreting ancient Indian texts and relating them with the existing body of knowledge. A deeper Indian involvement and interest in Indian historical structures and antiquities came later in the nineteenth-century. The most notable example of the same is the Bengali scholar Raja Rajendralal Mitra. What demarcated Mitra from his predecessors and many of his contemporaries was that he was able to model himself as the Indian counterpart to the European scholar. Like Cunningham, his interest in Indian art and architecture was an extension to the discovery of the Indian past and like him he too placed the supremacy of the inscription over all else. Indian historical architecture in his view, was the gateway to rectify or complete the narrative of Indian history [16]. He, like any European scholar worth his salt, was entrenched in many aspects of knowledge production. Other than his comprehensive works on the historical architecture of Orissa and Bodh Gaya, he was author to extensive Sanskrit translated works like *Notices of Sanskrit Manuscripts vols. 1-9* (1870-1888), *Catalogues of Sanskrit Manuscripts in the Library of the Asiatic Society* (1877) and many other like the *Chanddogya Upanishad* published under the Bibliotheca Indica series of the Asiatic Society from 1854-1886. The production of reliable archival work, museumisation of important historical antiquities and artefacts for proper preservation and public display and the construction of empirically accurate historical narratives of Indian history based on scientific inquiry formed the crux of his work ethos.

One can argue that the key to Mitra's success was his immense public visibility and the fact that he adopted not only the same approach to thought and technique as his European counterparts, but also a similar apparatus for functioning. Like the British archaeologists in the nineteenth-century, Mitra too had his own set of 'native assistants' - his own *pandit* Ramanath Tarkaratna, Indian molders and draftsmen

from the Government School of Art and other assistants to help him gather manuscript material from across the country. The biggest stamp of European approval came from none other than Max Mueller, who called Mitra ‘completely above the prejudices of his class, freed from the erroneous views of the history and literature of India that every Brahman is brought up, and thoroughly imbued with those principles of criticism which men like Colebrook, Lassen and Burnouf have followed in their researches into the literary treasures of the country’ [19]. However, the same mindset that imbued in Mitra a scientific approach towards Indian monuments, also demarcated in him the differences that he saw with respect to the interpretations put forward by European scholars.

Mitra and his European counterparts saw in Indian historical architecture a reflection of the glory and decline of Indian civilization. Forms of architecture like the ones found in Orissa and Bodh Gaya symbolized the highpoint of the civilization, whereas other less appreciated Mughal examples demonstrated a successive decline. British scholars of Indian historical architecture like James Fergusson emphasized that the high points of Indian architecture found its roots in Greek and Bactrian influences [3]. This is precisely where Mitra differed from his European colleagues. He argued that the beauty of these historical buildings was intrinsic to the indigenous historical craftsmanship of the region. He based his arguments by comparing them with the ancient treatises and texts on architecture that he studied and emphasized that the architectural highlights of Indian history were devoid of foreign influence [16]. Such an interpretation of Indian architectural history was seen by Fergusson as a direct attack on his body of work. In a focused work, he produced his well-known *Archaeology in India With Especial Reference to the Works of Babu Rajendralala Mitra* (1884). The work was not only meant to be an academic response to Mitra’s assertions, but they uncovered a strong racial bias towards Mitra’s very scholarship by lieu of him being an Indian. In the introduction to his work, Fergusson writes [6]:

The real interest...of the volume...will probably be found to reside, not in the analysis of archaeological works of Babu Rajendralala Mitra, but, in these days of discussions on the Ilbert Bills, in the question as to *whether the natives of India are to be treated as equal to Europeans in all respects*. Under present circumstances it cannot fail to interest many to dissect the writings of one of the most prominent members of the native community, that we may lay

bare and understand his motives and modes of action, and thus ascertain how far Europeans were justified in refusing to submit to the jurisdiction of natives in criminal actions. (emphasis mine)

By suggesting that Mitra was disagreeing with him due to his ‘native’ bias and not on the merits of his argument, Fergusson was making a politically charged statement. Mitra’s own public profile was able to provide the space for such an assertion. Other than his work as an independent antiquarian, textual scholar and President of the Asiatic Society of Bengal, he was also an active member of the British Indian Association (BIA). As a part of the BIA, he spoke on a variety of politically relevant topics of the time, from the education and Permanent settlement question to the Ilbert Bill, which he described as ‘notorious’ [17]. However, Fergusson’s accusations reflect his racial understanding of educated and competent Indian scholars more than they reflect on Mitra’s original motives. They are however, reflective of the social strains that Indian scholars of the time had to overcome to be considered at par with their Euro-pean counterparts. Their recognized ability to be able to decipher and contribute to the reconstruction of the historical narrative of their own country was seen through the lens of European training. This training would help them overcome their supposed lack of history and the inadequacy of their historical texts.

Tracing the trajectories of influential Indian scholars like Boria, Ram Raz and Mitra may give the impression that Indian involvement in the archaeology and monument project was a strongly-fought and rare occurrence. However, aside from the notable contributions of these gentlemen, Indians were seen to be a part of every aspect of the archaeology and preservation project. Cunningham himself often acknowledged his office of Indian assistants, *munshis*, draftsmen and photographers who helped him assemble casts, carry out preservation work and documentation. The folklore and memories of the Indian laborers involved in their repair gave him an insight into the mound sites, local monuments and possible buried objects [19]. Mitra and Ram Raz, while exemplary and unique in their own right, paved way for a future set of highly trained Indian archaeologists like Rakhal Das Banerji, Daya Ram Sahni and Akshay Kumar Maitra who left their indelible mark on Indian archaeology by excavating sites like Mohenjodaro and Harappa in the early decades of the twentieth century.

#### 4. Indian Archaeologists and Regional Nationalism

So far, one gets the sense that colonial engagement with the potential of Indians to become successful archaeologists was based on an 'othering'. This othering pitted European sensibilities against an Indian incapability to understand or investigate history through empirical and scientific means. Their own destructive tendencies and disregard for their 'historical remains' posed them as potential danger to their archaeological heritage. However, in the early decades of the twentieth century, the task of protecting Indian historical heritage and developing archaeology was characterized a 'British' responsibility. This was primarily due to the Viceroyalty of George Nathaniel Curzon (1899-1905), who took a prime interest in how Indian antiquities were discovered and preserved. An ardent advocate for preserving the rich cultural architectural heritage of the country, he drew attention to the vandalism committed by British officers in the course of previous archaeological excavations with antiquities removed from their place of discovery and carted off to museums and exhibitions outside India [4]. He argued that if the British officer and the British archaeologist were not examples of conduct, how could they hope to teach their less-'enlightened' Indian subordinates to treat the past with the reverence it deserved? Curzon's belief in the redemption of the British officer did not extend to Europeans of other nationalities. His distrust of French and German scholars was well known, and he would often cite examples of 'banditry' and looting of Indian antiquities that were lying in French and German museums [11]. He therefore, urged the ASI to recruit 'natural-born' British subjects and to train them with imperial interests in mind.

Such a stance indicated that the Indian government was envisioning the development of Indian archaeology as a 'British responsibility'. They would carry out their duty to protect Indian historical heritage by wrestling it from all other forces that may have the potential to damage it, even if, ironically, they were Indians themselves. Nevertheless, the number of Indians being recruited in the ASI increased manifold in the twentieth century. A crucial development in this process was that Indian recruits being picked were trained not only in classical Indian languages as before, but in ancient Indian history and epigraphy. Rakhaldas Banerji is an exemplary example of this category of archaeological scholars in the early twentieth century. He is representative of the coming-of-age of the Indian

archaeologist, wherein the newly-trained group of scholars had to prove themselves to be beyond their 'native limitations'. In a way, Banerji took forward the quest for establishing the Indian scholar as modernized, competent and enterprising as Rajendralal Mitra had in previous years. A resident of Murshidabad in Bengal, he did his BA in history honours from Presidency College in Calcutta from 1903-07 and his MA from University of Calcutta in 1910. It was his keen interest in the many medieval monuments in the district and antiquities housed in the Indian Museum, that propelled him to take up archaeology as a full-time profession. Like many others being recruited, languages were still seen as the prime forte of Indian scholars working with the ASI, but Banerji was able to combine these skills with a keen eye for deciphering Indian history through archaeological remains [12]. His stint at the Indian Museum with mentor Theodor Bloch, superintendent of the Eastern Circle of the ASI, helped him familiarize himself with the many archaeological exhibits housed there and the periods they belonged to. He was able to interpret Sanskrit inscriptions housed there due to his graduate training with renowned Sanskrit scholar Haraprasad Sastri. His academic potential was evident, and he went on to contribute two essays to the *Epigraphica Indica* series of ASI in 1907 (one on the Patiakella grant of Maharaja Sivaraja on a copper plate, and a stone epitaph denoting the Mundesvari inscription of the reign of Udayasena). The ASI was not blind to the young scholar's skills, and Banerji ended up having an illustrious career with the Survey, culminating in his excavation of the fabled Harappan city of Mohenjodaro in 1922 [12].

Such a recognition of 'native' archaeologists by the colonial government would have been difficult to imagine fifty years prior, but Banerji's career went much beyond his acceptance as a modern archaeologist and historian. As Sanjukta Datta suggests, the participation of Indians in archaeology was developing beyond the official sphere in a quest for unearthing regional histories [18]. As the colonial quest to uncover Indian history 'for Indians' progressed, Indian archaeologists engaging in excavations, surveys and study of ancient Indian texts were very aware of a glorious national past that they had lost. This past was represented through archaeological remains of historical monuments, artefacts recovered from excavation sites and accounts of different travelers recounting magnificent historical cities in detail. They asserted that not only did India have a past that was at par with the world, but that its development was indigenous to the country. It was a strong re-engagement with Mitra's belief that

acclaimed Indian architectural heritage was independent of Greek and Bactrian influences. It was deeply rooted within Indian artisanal traditions and craftsmanship, reflective of a rich regional past. Indian archaeologists in the early twentieth century, thus, wished to represent Indian archaeological finds as symbols of regional identity, and by extension, proof of an indigenous national past that they could take pride in [18].

A strong impetus of such a sentiment was seen in Bengal from the late nineteenth and early decades of the twentieth century. Bengali history was deeply influenced by a rich corpus of Bengali literature and art. Calcutta, as a colonial capital of India in its heyday (the capital was shifted from Calcutta to Delhi in 1911) was home to some of the prime antiquarian organizations of the country- the Asiatic Society of Bengal, headquarters of the Eastern Circle of the ASI and most significantly, the Indian Museum. As a center of colonial activity, Bengalis were assimilated into the administrative and scholarly culture encouraged by the state at an accelerated pace compared to other parts of the country. The emergence of the Bengali *bhadralok* or the educated middle class, who became a part of the bureaucratic apparatus and a colonial urban culture, soon struggled with their aspirations to maintain their Indian identity [14]. However, prior to the culmination of this struggle in mass-led movements for nationalism and independence, the Bengali intelligentsia were penning their thoughts on Bengali culture and history through private channels. These included setting up of societies and organizations dedicated to fostering a literary culture based on archaeological writings, historical novels, and poetry. Two of the most significant of these emerged in the late nineteenth century- the Bangiya Sahitya Parishad and the Varendra Research Society. The Parishad had been set up in 1893 for not only the 'study and development of the Bengali language and literature as its main objective but also...cultural, historical, archaeological, sociological and other scientific studies and researches with special reference to Bengal within the scope of its investigation' [2]. It had been established with the aid of wealthy Bengali patrons like Maharaja Benoy Krishna Deb Bahadur of Sovabazar, and authoritative scholars like Haraprasad Sastri. Sastri's association with the Parishad indicates how serious it was in pursuing archaeological research in Bengal. It established its own quarterly research journal- the *Sahitya Parishad Patrika*- and shaped its publications to be writings of a historical nature. Moreover, the Parishad's scope of work expanded to collecting and studying rare manuscripts, coins, inscriptions, scul-

ptures and seals, which were ultimately housed in its museum that was opened in 1912. The Varendra Research Society was set up in Rajshahi in north Bengal in 1910 by a member of the region's Dighapatiya royal family- Kumar Sarat Kumar Ray and leading Rajshahi historian Akshay Kumar Maitra. Like the Parishad, the Society was dedicated to studying Bengali history through extensive archaeological explorations funded primarily through Indian endeavor. It too, established a museum of its own to house the various antiquities that it unearthed through its excavations in Rajshahi and the museum was opened to the public formally in 1919 [18].

The emergence of these institutions, primarily funded and run by Indians is of considerable significance. Firstly, they marked a sharp departure from the colonial assertion that Indians did not care for their history. John Marshall had gone as far as to indicate that Indians were genetically devoid of skills possessed by Europeans [11] (which did not stop him from recruiting and working with numerous Indians like Rakhaldas, Daya Ram Sahni and Maulvi Nur Baksh who were appointed at important positions in the ASI's regional offices). These societies were backed by wealthy patrons who were committed to supporting archaeological activities in Bengal, and by extension pursue a national history. The Parishad for instance, showcased a portion of their collection of copper and stone inscriptions, terracotta and metal sculptures, old illustrations, ancient manuscripts and photographs of old historical sites and temples at 1906-07 session of the Indian National Congress held in Calcutta. Secondly, these organizations were conducting their work not as an alternative to government activities but ran parallel to them. The government too recognized, that their endeavor of archaeological discovery and preservation of antiquities would have a deeper reach if provincial bodies were allowed to conduct independent work. The Ancient Monuments Preservation Act passed in 1904 had already given provincial governments greater powers for listing and protecting historical monuments and antiquities. Recognizing private bodies that were doing impactful work in the area was the next step. The work of the Varendra Research Society had gathered so much momentum within less than two decades of its inception, that the Bengal government started giving it an annual grant of 1,200 rupees in 1917. Thirdly, it offered the new generation of Indian archaeologists to explore their curiosity of Indian history without being bound by the European or colonial characterization of the same [18&19]. Rakhaldas for instance, was a bilingual writer who wrote extensively in both English and Bengali. In addition to his



work with the ASI, he contributed extensively to the Parishad's museum collection by procuring artefacts, listing them and organizing their exhibitions. His association with the museum in turn helped him with his own writings like *The Origin of the Bengali Script* published in Bengali in 1919. He also remained closely associated with the Varendra Research Society by accompanying its members on exploratory tours of Rajshahi. He explored the boundaries of Bengali history by authoring his magnum opus- the two volume *Bangalar Itihas* (1915), that dealt with the Bengal's history from prehistoric times to the end of British rule. He also authored historical novels in Bengali, like *Sasanka* (1914), *Dharmapala* (1915) and *Moyukh* (1916), all of which dealt with themes of ancient Bengali history [19]. Thus, Indian archaeologists of the early twentieth century were not only interested but were actively engaging with the Indian past even beyond the scope of their government duties. In this manner, the arena of archaeology in India was expanding in different areas of the country by Indians themselves. This expansion was propelled by the belief that the pursuit of the Indian past would enable Indians to reclaim their regional identity that was distinct from Europe and a source of pride. However, the recovered historical identity was also reinforced on the idea that the most glorious portions of the Indian past were in its pre-historic and ancient periods. Thus, the scholars of both the Bangiya Sahitya Parishad and the Varendra Research Society focused on deciphering scripts, coins and inscriptions from a noticeably 'Hindu' period of Bengali history, before the period of Mughal decline [18&22]. In this manner, they were differentiating a more 'superior' part of Indian history from subsequent phases that deteriorated due to the introduction of 'foreign' influences. Like Curzon, who argued for rescuing the Indian past from his predecessors and connecting the subcontinent's history with the world, Indian archaeologists of the early twentieth century were asserting for characterizing Indian history in isolated pockets, away from the colonial gaze [14].

## Conclusion

The position of archaeology in twenty-first century India continues to be primarily under the ambit of government responsibility. However, the critical difference between the ASI of colonial and independent India is that it no longer reflects the aspirations of an alien state attempting to acquaint the citizens of the country with their own history. However, Indians still share a conflicted relationship with their historical heritage and public education in this sphere still remains a priority of preservationist

bodies. Additionally, public-led bodies like the Indian National Trust for Art and Heritage (INTACH) and the Aga Khan Trust for Culture have emerged to aid and provide alternative channels for historical heritage conservation and maintenance. Challenges relating to archaeological development persist but have changed form. The discovery and preservation of 'archaeological remains' struggles to reconcile with the demands of urban planning and economic growth. But what emerges through this struggle is a deep engagement with recognizing archaeology as a means of remembering and re-establishing an Indian historical identity. An identity that is distinct, a source of pride and marks India's place in the pantheon of rich histories across the world.

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## Recall and Preference for Applying Occluded Chinese Character on the Label of Bottled Water

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**Abstract:** *This research applies two virtual brand names, 愛(Love) and 迎(Welcome) to a water bottle label, occluding their right sides and turning them left 35 degrees for partial occlusion yielding eight experimental stimuli. Participants' response data are examined using the Friedman Test. "Impression" test results show a significant difference between participants for water bottle brand 愛(Love). Characters occluded on the lower-right side through a 35-degree left turn impress most. Overall, the 迎(Welcome) brand doesn't impress many. As for "preference" test, characters occluded on the right side are most preferred. Participants don't have a particular preference for stimulus, and characters occluded on the lower-left side through a 35-degree left turn are least preferred. These findings suggest that recall is affected by differences in position of occlusion and position order. Occluding a character through a 35-degree left turn can indeed increase impression and recall when designing water bottle labels.*

### Introduction

Objects with distinctive characteristics draw viewers' attention [1] and are memorable [2]. Therefore, in graphic design, product and packaging design, and other types of visual design, designers often deliberately occlude a word or phrase to attract people to examine the design for the missing piece of information and increase the impression of the design [3]. The present study presented two hypotheses. First, occluded Chinese characters on water bottle labels are memorable because of their uniqueness. Second, consumers prefer water bottle labels with occluded Chinese characters to those with nonoccluded Chinese characters, because of the uniqueness of the occluded characters. The objective of this study was to determine whether applying incomplete Chinese characters on packaging labels increases consumers' impression on and preference for the product. Herein, "incomplete Chinese characters" refers to Chinese characters with some strokes occluded, obscuring a portion of the characters to the readers [4].

### 1.1 Cognition and memory

Memory is critical for learning and can be categorized into immediate memory, short-term memory, and long-term memory. Without rehearsal, immediate memory, which is also called temporary memory [5], lasts approximately 15 to 30 seconds. Short-term memory capacity is referred to as "memory span." The average span of short-term memory is approximately  $7 + 2$  bits of information, which is why memory span is referred to as seven, plus or minus two [6]. Long-term memory stores

information such as creative ideas, insights, and values [7]. Psychological experiments (Wundt, W., 1832–1920) are frequently used to study human memory. Memory can be measured directly or indirectly. For direct memory measurement, two frequently used methods are recognition and recall, which may be evaluated to measure the conscious memory or the explicit memory. Recognition involves re-identifying or relearning familiar matters [8]. Studies on recognition include those of Doane [9] and Squire and Kandel [10]. The recall methods involve free recall, sequential recall, ordered recall, and cued recall. In studies of free recall, participants may be asked to write down as many items as they remember from a previously viewed set of items. In assessments of sequential recall, participants may be asked to list test items in the correct order. For ordered recall, participants are asked to remember test items according to the items' original sequence. Finally, in studies of cued recall, participants receive cues to stimulate memory retrieval [11]. In the present study, methods of sequential recall and cued recall were adopted.

Tarr, Bulthoff, Zabinski, and Blanz [12] identified two types of visual recognition systems: the viewed-based approach [13] and the structural-description approach. The viewed-based approach involves recognition based on visual characteristics, and the structural-description approach involves recognition based on the levels of elements [14] [15] [16]. In this study, recognition was stimulated based on the visual features and styles of Chinese characters.

## 1.2 Features of Chinese characters

Most Chinese characters comprise one radical and one or more additional components in precise arrangements [17]. Wang and Fan [18] suggested that before recognizing a complete Chinese character, readers can capture key information from its radical or other components. Recognizing a critical component of a character is cognitively simpler than recognizing a complete character, thus reducing the cognitive complexity.

From the font design perspective, the arrangement of Chinese character radicals and components can be classified into the following nine groups (Wu, and Chiu, [19]; Cheng [20]: 1) Characters that cannot be disassembled (e.g., 米 [mi]); 2) characters composed of one left-side and one right-side component (e.g., 張 [zhang]); 3) characters comprising one left-side component and two right-side components, where the right-side components are vertically aligned (e.g., 結 [jie]); 4) characters comprising one right-side component and two left-side components, where the two left-side components are vertically aligned (e.g., 部 [bu]); 5) characters composed of two components: one top and one bottom (e.g., 歪 [wai]); 6) characters composed of two top components and one bottom component, with the two top components aligned horizontally (e.g., 留 [liu]); 7) characters composed of one top component and two horizontally aligned bottom components (e.g., 露 [lu]); 8) characters composed of three vertically aligned components (e.g., 葉 [ye]); and 9) characters composed of three horizontally aligned components (e.g., 遨 [ao]). Cheng (1974) discussed principles of font design for Chinese characters. First, the proportions of Chinese character components are determined based on the position of the radical. For example, if the radical is on the left side of a character, then the remaining part(s) are on the right, forming a left-right relation. Examples of this construction include 張, 結, and 遨. If the radical occupies the right side of a character, then the remaining part(s) are on the left. An example of this construction is 部. For characters with radicals in the top area, the additional part(s) are positioned on the bottom, and these components form a top-bottom relation, which is exemplified in 露 and 葉. Conversely, if the radical is situated at the bottom of a character, then the additional part(s) are positioned on top of the radical, exemplified in 歪 and 留.

## 1.3 Occlusion of Chinese characters

Tseng et al. [21] examined Chinese character occlusion based on two aspects of Chinese characters: Every character conveys information, and every character involves some redundancy. The researchers progressively omitted the strokes of characters in a sentence and observed readers to determine the maximum level of stroke omission that did not affect sentence readability. Their study demonstrated that when fewer strokes of characters were omitted, a higher number of participants read the sentence correctly. In other words, omission of strokes was negatively associated with sentence readability. Tseng et al. [21] also demonstrated that when restoring the strokes of characters, the strokes that remained in their original shapes can be restored most easily, and the first few character strokes were easier to restore than the last few strokes. These findings are consistent with the findings of ShanNon [22].

Using the stroke reduction approach, Yan et al. [23] investigated the effect of stroke order on Chinese character readability. The study demonstrated that initial strokes of Chinese characters and the final letters of English words were critical to uninhibited readability. These findings are consistent with the findings of Huey [24] and Rayner and Kaiser [25], who revealed that strokes comprising the upper part of Chinese characters and initial strokes of Chinese characters are more critical for recognition than lower-part components. Additionally, the researchers determined that Romanized words are easier to recognize based on initial than subsequent letters.

Flore D'Arcais [26] revealed that strokes in the upper left corner of a character contribute most to character recognition. This finding is consistent with that of Saito [27], who demonstrated that the strokes that are written first in a character were more critical to word recognition than later strokes. Tsao and Liao [28] occluded parts of characters composed of three components arranged either horizontally (left, middle, and right) or vertically (top, middle, and bottom), and thereby revealed that radicals or the initial strokes were most crucial to recognition of occluded characters, followed by the nonradical but key components, regardless of whether one or both sides of the characters were occluded. The researchers also determined that readers more quickly and accurately recognized characters with occluded right-side and bottom components (including the upper right and lower right).



## 1.4 Features of Chinese characters in package design

Typographic designers and packaging designers often manipulate the style and form of letters and words to add meaning to a text [29]. Communication between a package or graphic design and viewers is nonverbal; meanings are conveyed through texts, graphics, and colors [30] [31]. Font selection is critical for brand recognition [32]. Moreover, font and semantic clues affect brand awareness and user memory [33]. Doyle and Bottomley [33] suggested that fonts can elicit unique associations, and precise alignment between a font's semantic implications and the overall message of an advertisement enhances the memorability of the advertisement.

## 2. Method

### 2.1 Experimental design

This study hypothesized that occluded characters are relatively easy to recall and that they incite viewer preference because of their uniqueness. Two experiments were conducted in which water bottle labels were used to test the hypotheses. The researcher chose the Chinese characters 愛 (*ai*, meaning "love") and 迎 (*ying*, meaning "welcome") to serve as names for two fictitious bottled water brands. For each brand, four sample label designs were created: one sample featured the brand name Chinese character with the right side occluded; one sample featured the character rotated 35 degrees counterclockwise with the lower-right or the lower-left portion of the character occluded; and the other two samples displayed the brand name character intact (not occluded). An experiment was conducted using an experimental psychology approach. In total, 64 individuals participated in the experiments. Half of the sample group participated in Experiment 1, and the other half participated in Experiment 2. Experiment 1 tested whether occlusion of a Chinese character could enhance viewers' impression of a design. The participants were asked to recall the most impressive label of the labels they had been presented with. In Experiment 2, the effect of Chinese character occlusion on viewer preference was examined. In the experiment, participants were asked to describe the features of labels on the water bottles located at different positions on the screen, indicate their preference among the labels, and answer related questions. Data collected from the two experiments were analyzed using the nonparametric Friedman test, and information









collected from the interviews was analyzed qualitatively.

### 2.2 Participants

This study recruited 64 participants, aged 19 to 66 years. The participants were equally divided into two groups ( $n = 32$  each). One group participated in Experiment 1, and the other in Experiment 2. The average age of participants in the Experiment 1 group was 30.84 years,  $SD=16.72$ . For the group that participated in Experiment 2, the average age was 22 years,  $SD=2.78$ .

### 2.3 Stimuli

The stimuli were designed based on the research of Wu & Liu [34]. Two high-frequency Chinese characters were chosen: 愛, which involves a top-bottom structure, and 迎, which features a left-right structure. These Chinese characters were used to name two fictitious bottled water brands. Brand 愛 was coded as LS, and brand 迎 was coded as WS. These two characters were manipulated as follows to create the experimental brand-name-design samples. For one sample, the right side of the brand name Chinese character was occluded (LS2 and WS4 in Figure 1).

			
LS1-愛 (Intact)	LS2-愛 (Right-side occlusion)	LS3-愛 (Lower- right-side occlusion)	LS4-愛 (Intact)
			
WS1-迎 (Intact)	WS2-迎 (Lower-left- side occlusion)	WS3-迎 (Intact)	WS4-迎 (Right- side occlusion)

**Figure 1. Recognition and recall test samples:  
Water bottle labels**

In another sample, the character was rotated 35 degrees counterclockwise and the lower-right (LS3) or lower-left (WS2) portion of the character was occluded. In the other two samples for each character, the brand name character was presented intact (not occluded; LS1, LS4, WS1, and WS3). A total of eight samples were created, with four for

each brand (Figure 1). In Experiment 1, samples were presented individually on slides against a black background. Eight slides were presented in total, and the sequence of presentation is depicted in Figure 1 (from left to right). In Experiment 2, images of four bottles were presented together on the slide. As represented in Figure 1, Slide 1 demonstrated LS1, LS2, LS3, and LS4, positioned from left to right in that order, and Slide 2 was used for WS1, WS2, WS3, and WS4 (positioned from left to right in that order). Two slides were used, and their backgrounds were black.

## 2.4 Experimental instruments

A computer (IBM) and a 17" monitor (34 cm [W] × 27.2 cm [H]) with a resolution of 1024 × 768 pixels were used in the two experiments. Each participant was seated 45 cm from the computer monitor at a viewing angle of 15 degrees. PowerPoint was used to display the samples. A timer was used to track viewing time.

## 2.5 Experimental procedure

Experiment 1: Participants were seated at a computer desk, 45 cm from the computer monitor. Slides displaying water bottle labels (sample slides) were presented sequentially to the participants (Figure 1) for 4 seconds each, with a blank slide between the sample slides for buffering and visual preparation. After viewing the four sample slides, the participants were asked to recall the most impressive label and to explain why they considered it the most memorable. Answers were recorded by the experimenter. Subsequently, the sample labels for the other brand were presented in the same test and the data were collected. The order in which the two brands were presented was changed for the next participant. Each sample was randomly on one monitor screen.

In Experiment 2, each participant was asked to view four images of bottled water displayed on the same slide for 6 seconds. Afterward, a blank slide was displayed, and the participants were asked to 1) answer whether they could recognize the large character from each water bottle label, 2) recall and describe the features of the character as presented on each water bottle label and according to the sequence of presentation, and 3) indicate their preferred label and explain their preference. The results were recorded by the experimenter. Thereafter, another slide presenting samples for the other brand was displayed, and the same test procedure was conducted. The order in which the two

brands were presented was changed for the next participant. In each experiment, 32 individuals participated, and participants completed the test separately using the same computer in the same laboratory. Each participant received a small gift for completing the experiment.

## 3. Results and Discussion

### 3.1 Experiment 1

Recall memory (level of impression) experiment: The nonparametric Friedman test was conducted on the data for participants' impressions of the 愛-labeled bottles. The result indicated that the participants' impressions of the four bottles differ-red significantly ( $\chi^2[3] = 19.25$ ,  $p < 0.001$ ). Wilcoxon test results suggested that the descending order of samples according to level of impression strength was LS3 (mean rank = 2.94) > LS1 (mean rank = 2.81) > LS2 (mean rank = 2.25) > LS4 (mean rank = 2.00). In other words, LS3 (the character counterclockwise rotated and with the lower-right portion occluded) was the most impressive among the four samples. For the 迎-labeled bottles, the results suggested that the participants had non-significant difference in their depth of impressions about the four bottles ( $\chi^2[3] = 1.75$ ,  $p > 0.05$ ).

Participants' feedback is summarized subsequently. In LS3, the character was rotated 35 degrees counterclockwise and the lower-right portion of the character was occluded. In addition, the character was positioned in the middle of the label but slightly higher than the characters of other samples. This lively but discordant look of LS3 made LS3 unique and memorable among the samples. The characters in LS1 and LS4 were both intact (i.e., no occlusion), and LS1 was presented before LS4 in the sequence.

For the labels featuring 迎, some participants stated that they could not recognize the character in sample WS2, which was rotated 35 degrees and in which the lower-left portion of the character was occluded. Therefore, their level of impression about WS2 was low. However, other participants suggested that because the WS2 character was more difficult to recognize, it was more impressive. For WS4, in which the right portion of the character was occluded, participants suggested that the occlusion did not affect character recognition, and that the character was prettier in WS4 than it was in WS1 or WS3. The results further revealed that some participants preferred WS1, and others preferred

WS3 or WS4. Consequently, no significant difference in participant preference was identified among the four samples. Additionally, although the characters were intact in both WS1 and WS3, WS1 scored higher for strength of impression among the participants, which may have been due to the presentation sequence.

### 3.2 Experiment 2

For the愛-labeled bottles, a significant difference was identified among the participants' preferences for the samples ( $\chi^2[3] = 32.25$ ,  $p < 0.001$ ). Wilcoxon test results revealed three clusters: LS2 (mean rank = 0.66) > LS1 (mean rank = 0.25) and LS3 (mean rank = 0.09) > LS4 (0.00). Therefore, LS2 was most preferred by the participants. For the迎-labeled bottles, the preference experiment result suggested that WS2 was the least preferred, but otherwise no significant difference existed regarding the preferability of WS1, WS3, and WS4 ( $\chi^2[3] = 11.28$ ,  $p < 0.05$ ). For the愛-labeled bottles, LS2 was the most preferred because it appeared to be prettier and more stylish than the others. For LS3, the participants suggested that the character looked strange because it was too occluded. Additionally, the characters in LS1 and LS4 were intact (without occlusion) and therefore appeared to be monotonous.

Among the迎-labeled bottles, WS2 was the least preferred. The WS2 character was rotated 35 degrees counterclockwise and the lower-left portion was occluded. Because the radical of 迎 is on the left, the experimental manipulation rendered the character difficult to recognize. The characters in WS1 and WS3 were intact and therefore considered too ordinary. Although they were clearly recognized, they did not exhibit memorable qualities. The character in WS4 was occluded on the right side; it was recognizable but not preferred by many of the participants. Possible reasons for this result are that WS4 was presented last in the sequence, and participants did not regard the configuration of the character as attractive. No significant difference was identified in the preferability of the three samples.

In sum, for labels with the character愛, significant differences were identified in the strength of impression and preferability, but for labels with the character迎, no significant difference was identified for either quality. These findings may be attributed to the following factors: 1) The test samples were arranged in different positions or orders

on the screen; 2)愛 and 迎 involve different structures; and 3) specific occluded positions may affect character recognition. Semantic and orthographic clues may also have affected participants' impressions and preferences. Some participants' preferences for LS1 may have been based on the common belief that the character 愛 (love) should always be displayed intact. Regarding the character 迎, although its connotation is positive, rotation of the character and occlusion of some strokes may have prevented readers from recognizing the character, resulting in a negative impression. These factors may explain why sample WS2 was the least preferred.

### 3.3 Descriptions of the water bottle labels

In Experiment 2, most participants correctly described the two brands (from LS1 to LS4 and from WS1 to WS4) in terms of the features of each water bottle label. In participants' descriptions of sample features, (see Table 1), they all recalled LS3, WS1, and WS2. In other words, no participants expressed any impression of these samples. In the designs for both LS3 and WS2, the characters were rotated 35 degrees counterclockwise and some strokes were occluded. These samples were memorable to participants because of the originality of the characters. This result is consistent with the findings of Lee, Ho, and Chu [1] and Maki [2]. WS1 may have scored high for recall because it was presented first. By contrast, LS4 did not leave a deep impression on participants. The characters in both LS4 and LS1 were intact, but LS4 was positioned last in the sequence, which may have contributed to the weak impressions of the label among the participants.

**Table 1. Frequency and rate of recall and correct recall**

Samples	LS1	LS2	LS3	LS4
Frequency of recall (by describing the character features)	30 (93%)	26 (81%)	32 (100%)	25 (78%)
Frequency of correct recall	30 (100%)	23 (88%)	29 (90%)	19 (76%)
Samples	WS1	WS2	WS3	WS4
Frequency of recall (by describing the character features)	32 (100%)	32 (100%)	31 (96%)	31 (96%)
Frequency of correct recall	32 (100%)	29 (90%)	27 (87%)	25 (80%)

Note: For the second and fifth rows, the number in front of the parentheses refers to the number of times the sample was recalled. This number was calculated by deducting the number of times the sample was not recalled or did not make an impression from the total number of participants. The percentages in these rows were calculated by dividing the number of times a sample was recalled by the total number of participants. In the third and sixth rows, the number in front of the parentheses represents the number of times the sample was correctly recalled. This number was calculated by deducting the number of times the sample was incorrectly described from the total number of participants who recalled the sample. The percentages in these rows were calculated by dividing the number of time a sample was correctly recalled by the total number of participants who recalled the sample.

Only WS1 was fully and correctly described by the participants, possibly because the characters in these samples were both intact without occlusion and were presented first. The correct description rates for LS4 and WS4 were the lowest among the samples. Although the characters in LS4 and LS1 were both intact, the correct description rate for LS4 (76%) was lower than that for LS1 (100%). This difference may be attributed to the effects of the sample position and presentation sequence. In WS4, the right sight of the character 迎 was occluded. Compared with the WS2 character, which was rotated and had some strokes covered, the WS4 character should have been more easily recognized. Surprisingly, the rate of correct recall for WS4 was the lowest among the samples. This result may have occurred because WS4 was the last item in the sample sequence on the slide. All four samples were presented on the same slide, and they were arranged from left to right. Because people tend to scan visual information from left to right, an object on the far left, compared with the rest, is likely to create a relatively strong impression, corresponding with a high rate of correct recall.

## Conclusion

This study tested the effects of character occlusion and rotation on participants' memory recall and preference for packaging designs. Distinctive features, including rotation and a large font size, critically affected the memorability of the designs. Character position and order, the structures of the characters, and whether occlusion of certain parts of the character influenced character recognition also affected participants' recall of the samples. Not all

partially occluded characters were preferred, especially when occlusion inhibited word recognition. In the designs where the characters were rotated 35 degrees and the right sides were occluded (including upper- and lower-right occlusions), the occlusion did not affect character recognition, and may have served as a memorable qualities that strengthened participants' impressions of the samples. The findings of this study may serve as references in design-related fields such as advertising, exhibition and display, and packaging.

Most participants in this study had design backgrounds. In subsequent studies, researchers may treat participants' educational background as an independent variable and examine whether educational background affects impression or preference. Moreover, the related study will improve the problem caused of sample order in the future. The association between memory recall and preference may also be investigated using more advanced technology to collect data and to compare the results with the findings of the present study.

## Acknowledgments

I am grateful to the Ministry of Science and Technology for providing a Ministry of Science and Technology Research Grant for this project (grant number: MOST 106-2410-H-130-042-)

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## Proposing the Creative Design Process for the Science gifted students - Design thinking centered on Emotional intelligence Development

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**Abstract:** *This study is intended to improve awareness towards value and necessity for design thinking through analysis on case of creative design process for the science gifted students. Through the theoretical investigation into design thinking studies, this research would suggest a direction to develop the instructional model of creative design process. This research developed the education program based on the design thinking that could help the science-gifted students cultivate the creativity, supplementing the insufficient social and emotional characteristics of them.*

### Introduction

This study is intended to improve awareness towards value and necessity for design thinking through analysis on case of creative design process for the science gifted students. Rather than an organic growth between instructor and learner, many classrooms have grown more instructor-centered and the current design education in Korea tends to emphasize technical elements of expression, which diminishes opportunities for creative thoughts and genuine meaningful connection to the subject

### 1. Characteristics of Science gifted learners and Emotional intelligence

Walberg(1982) reviewed 771 high school students, he identified three groups: students who won competitive awards in science, students who won awards in the arts, and average group. The scientists were more concerned with things and ideas rather than with people and feelings. For example, the science award winners reported more difficulty making friends after changing schools and they did not date much.

According to Goleman(1995) author of *Emotional Intelligence*, emotional Intelligence is the capability to control emotional impulse, to understand other's feelings, and to handle relationships well. Goleman emphasized that good emotional balance and management will influence how sensible we behave and how successful we become.

In the case of the Science gifted education, importance of emotional intelligence is becoming more and more significant. Firstly, the ability of communication skill to comprehend, embrace, and accept others' feeling, and problem solving to communicate their arguments convincingly in one of the core competencies required for 21<sup>st</sup> century talent. In

general, the propensity of individual scientists is easy to be personal and independent. However, joint thinking and collaboration are far more emphasized in this field. Secondly, several studies shown that people with high emotional intelligence have the ability to control stress cope positively. Excessive stress from students due to psychological anxiety, obsession with perfectionism and excessive competition is one of the serious problems of current gifted education.

### 2. Method

The method is designed cultivating science gifted students with design thinking to understand how to keep the balance between art and science, validity and reliability, intuition and analysis, exploration and utilization. Through the theoretical investigation into design thinking studies, this research would suggest a direction to develop the instructional model of creative design process which could be adapted to the science gifted students from the design point of view and helping them to enhance emotional intelligence.

- Researching theoretical background of design thinking and emotional intelligence
- Designing a project that helps students recognize and sensitivity to others' needs and feelings

### 3. Curriculum of design thinking in D. School

The term design is actively used in various fields because the difficult problems that are difficult to solve with conventional scientific approaches, namely wicked problems, exist in our society and future society. (Buchanan,1992) Tim Brown of IDEO has mentioned that design thinking is "a discipline that uses the designer's sensibility and methods to match people's needs with what is technologically feasible and what a viable business

strategy can convert into consumer value and market opportunity. Design thinking is a concept widely known as a strong method to achieve innovation in business and education. For example, several major universities including d.school of Stanford University and the media lab of MIT are already introduced for case studies of how the design education program converges various field of studies such as design, business, humanities and engineering. It contains not only education, technology, and management innovation, but also human-centered thinking. It represents a problem-solving process exploring creative and innovative solutions by taking multi-disciplinary approach to complex social issues. Particularly, it is analogous to the scientific method of hypotheses that build models or theories and continue to interact through feedback mechanism. Design thinking course created by D.School at Stanford University, made up of five stages: empathize, define, prototype, and test. 'Empathize' stage realizes human centric value. In this stage, methodologies such as, ethnographic study applies through interview, observation. 'Define' stage identifies the problem and set a goal to solve the problem. 'Ideate' stage for extracting ideas needed to seek solutions to problems. In this process, students need to share various ideas freely and it has to be visualized by using brain such as, brain storming, SCAMPER, TRIZ and so on. Finally, refine the implementation of ideas through prototype and evaluate to improve idea through feedback.

#### 4. The instructional model of creative design process

The study of gifted education in the past was focused on the cognitive aspects of gifted and accelerated research. However, the current education, which is in the process of the fourth industrial revolution, needs to be further refined along with changing societies and technologies, and to respond to actual demands in the educational field. Given the characteristics and needs of future society, education argues that learning should focus on learning rather than teaching, emphasizing core competencies rather than knowledge, and focusing on developing flexible education, autonomous behavior and learning, and significance of cooperation with others. From this point of view, design thinking can be used as a suitable methodology for developing future talent. In addition, design thinking can be proposed as a new methodology to cultivate communication and empathy abilities that are needed for the scientific gifted.

The instructional model of creative design process includes,

- Inducing to participate in intellectual, emotional, and social activities for cultivating integrated thinking power
- Developing communication skills and mindset through the team collaboration
- Practicing of visual thinking, using design elements leads to the experience of practical production and expression processes

Creative design process based on Design thinking

	1 Empathize	2 Define	3 Ideate	4 Prototype	5 Test
Instructional Stage	problem recognition stage	problem definition stage	problem resolution stage	model creation stage	evaluation improvement stage
Instructional Goal	divergent thinking intuitive thinking communication skill	Identify users needs convergent thinking logical thinking	Idea Generation divergent thinking emergent thinking convergent thinking visual thinking	Making Prototypes convergent thinking logical thinking	Feedback Integrative thinking analytical thinking
Instructional Method	Observation Interview Gathering data	Personas Storytelling Empathy map	Brainstorming TRIZ SCAMPER	Working Mock-up Rough prototyping (Creative creation workshop)*	Usability testing Checklist Storyboard

Fig.1 Creative design process based on Design thinking

**\*Prototype:** Creative creation workshop (Maker-space) is opened for STEAM education at Korea Science Academy of KAIST. Students will experience new tools and technology, such as 3D pens and printing in the Model creation stage.

#### Conclusion

This study is significant that attempts to develop a creative design process based on design thinking for the science gifted. Design thinking should be achieved with integration of logical and intuitive thinking through the empathy for others. It has been visualized in many ways; most involve a user centered, empathy-driven approach aimed at creating solutions through gaining insight into people's needs. The aim is to expand not merely going through the steps of the process but to develop mindset change experiences such as empathy development, participation in team collaborations, commitment to action-oriented problem solving and understanding that failure and persistence to try again after failure are necessary and productive aspects of success. As the great invention does not come out at once, science gifted learners need to cultivate the attitude through the instructional model of creative design process based on design thinking. Furthermore, through the practical application of this study, we hope to enhance the personality and creativity education of the science gifted through education of communication and consideration that started from human - centered empathy.



### **Learning mindset from Design thinking**

-Learn from failure

Learn how to overcome failure through repeated courage without fear of failure

-Visualize and make it

Instead of keep thinking in mind, create a prototype model, and visualize it

-Creative confidence

Everyone has creativity. Have creative confidence.

-Embrace Ambiguity

Enjoy ambiguity because we can always develop good ideas through improvement

-Experience Optimism

Develop flexible thinking and optimistic attitudes to challenge the problem again

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## Motivation to learn Chemistry in massive open online courses

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**Abstract:** *One of the key factors for any educational proposal to achieve success lies in the motivation of students. The disposition that the students have before the learning is fundamental to be able to obtain the objectives. MOOC (Massive Open Online Course) has emerged strongly in the context of university education. The use of MOOC offers time in the classroom that can be used to do active learning activities in which teachers' role is essential, and students can review learning materials at their own pace. The objective of this paper was to evaluate a course about concepts. The use of a MOOC named Introduction to Chemistry: Reactions. It is a course for students with limited background in chemistry; basic concepts involved in chemical reactions, stoichiometry, the periodic table, periodic trends, nomenclature. The evaluation of the proposal was made by students of Electrical Engineers at University of Malaga, with satisfactory results.*

### Introduction

Although MOOCs are a novelty way of the transmission of information, in many respects MOOCs tend to represent a highly traditional portrait of education, in which a teacher or professor delivers lecture-based material to an audience of students. This portrait of a "typical course" is hardly unusual in most universities, as can be seen by attending a standard introductory-level course in calculus, or chemistry. At the same time, this traditional portrait has been challenged in numerous respects by various communities in the learning sciences over the past two decades [1].

MOOCs have received a lot of media attention recently [2] and yet many are skeptical of the values behind them and possible detrimental consequences [3], as well as the quality of online learning provided and whether it deserves credentialing [4]. It would be more accurate to say there is no unified "ultimate goal" for MOOCs, and one cannot generalize across institutions [5, 6] or even courses, [7, 8].

On the other hand, when discussing the benefits and draws of MOOCs, it is important to clarify one's perspective. In this work, we want to improve the learning of chemistry, and because of that the use of MOOC will be taken from the perspective of a learner, and we will evaluate the pedagogical approaches of the MOOCs. Our objective here is to evaluate MOOCs as stand-alone courses.

The majority of MOOCs involve original videos [9, 7]. These online lectures allows students to watch videos multiple times and at their own pace.

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### 1. Methodology

This study was created as a descriptive study in which the survey technique was used. The study was carried out during the course 2017/18. The sample consisted of 17 volunteer students from a class, at the first course of Mechanical Engineering Degree at University of Málaga, during the second semester; introductory chemistry course. The students came from a variety of socioeconomic and cultural backgrounds. The student attitudes towards taking chemistry were varied. But the vast majority of them did not love chemistry, and they were there simply because they needed to pass the exams to obtain the degree. Each student made one questionnaire about the utility of the use of MOOC in order to make easy the compression of the subject. Students' responses were analysed using a Likert scale. The scale of the test was a five point Likert type scale with a range of five options. The positive items range from 1= Certainly Disagree to 5 = Certainly Agree.

Students were surveyed anonymously at the end of the course and asked to agree/disagree with statements regarding their attitude toward various aspects of the MOOC model.

Students were offered a Likert-type scale of 1 through 5, corresponding to the following:

- 1—Strongly disagree
- 2—Disagree
- 3—Neutral: neither agree nor disagree

4—Agree

5—Strongly agree

The data collected was entered into Excel to facilitate analysis.

The questions of the questionnaire are shown in Table 1.

**Table 1. Questionnaire**

1	Have you done online training activities before?
2	How many online activities have you done?
3	Is the Chemistry MOOC the first one that you did it?
4	How many MOOCs have you enrolled?
5	Why have you enrolled in this MOOC?
6	Have the objectives that have been proposed with this course been achieved?
7	Are the objectives of the course coherent with respect to the contents?
8	Did you like the presentation of the contents in the course?
9	Have these contents been good enough and rigorous?
10	Have the contents been presented good?
11	Do you consider the presented materials "useful"?
12	Have you reached the contents with the depth you expected?
13	Do you consider that the evaluation is in accordance with the materials and length of the MOOC?
14	How do you assess the use of MOOC as a source of self-learning?
15	Would you take a MOOC again?
16	What advantages do MOOCs offer from your point of view?
17	What disadvantages do MOOCs offer from your point of view?
18	Do the different resources offered facilitate the understanding of the information?
19	Indicate how many hours per module you have dedicated to the MOOC
20	Would you recommend the MOOC to a friend, partner, family ...?
21	Indicate the degree of general satisfaction with the MOOC

## 2. Ethical guidelines and limitations of data

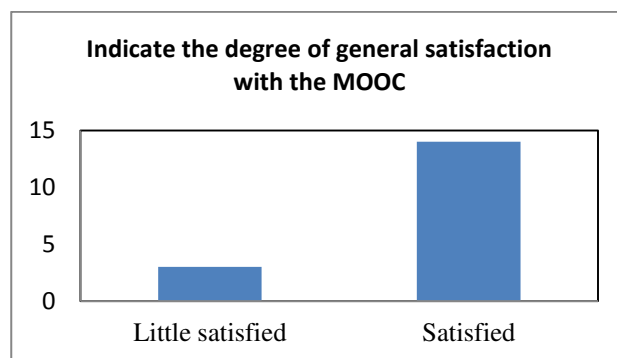
Students were informed that completion of the survey was confidential, was not a requirement of the course, that data collected would be used to improve the course for students in the future, and that data collected might be used for publication purposes. Students were encouraged to respond to every statement they felt comfortable responding to, and that responses to all statements were not strictly required. The students were allowed to complete the survey without the instructor present and surveys were collected by an assistant. No personally identifying information was collected on students, other than, perhaps, that any handwritten comments were read without a third party compiling and typing them first.

## 3. Results and discussion

This work is based on a quasi-experimental design that compared student learning.

The result was obtained from the administered survey to the 17 enrolled students in the fall of 2018 for the purpose of understanding their opinions about the Chemistry MOOC.

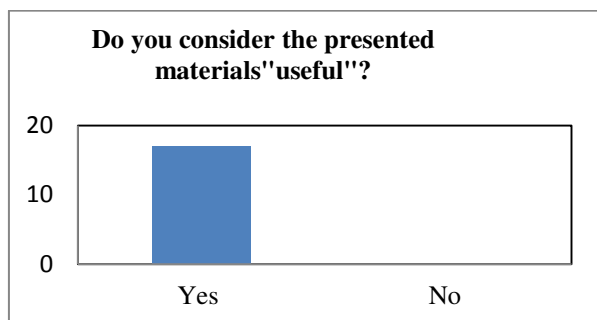
Students were asked whether hearing initially about the "MOOC" approach made the course seem more or less appealing.



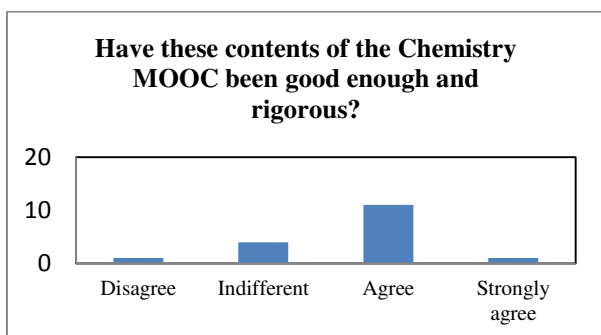
**Figure 1. Degree of satisfaction with Chemistry MOOC**

The students were asked about the degree of satisfaction with the MOOC. All of them are more or less satisfied. That information indicates that the MOOC works as the researchers were interested.

The students were asked about if they considered the Chemistry MOOC a material useful to improve their learning on Chemistry easily.



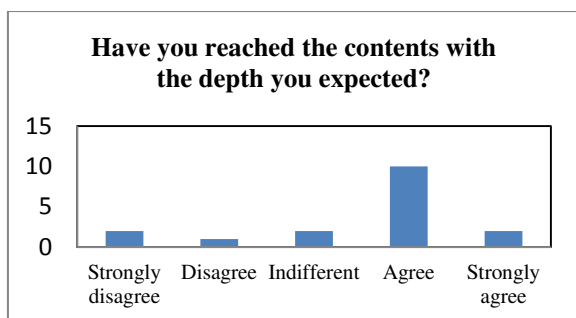
**Figure 2. The MOOC material is useful.**  
All of them answered that the material was totally useful.



**Figure 3. The Chemistry MOOC contents are rigorous and good enough**

Besides, students were asked about the contents of the course, if the contents were rigorous and adequate to the subject Chemistry at the University. A 6% of the students, one student, answered that they disagree with the statement; a 24% of the students thought in an indifferent way; 71% of the student agreed, 12 students.

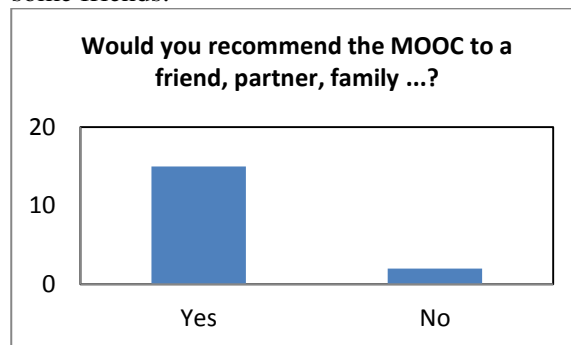
Out of the 12 students whose interests in this course were not influenced when they first heard of the flipped approach, 5 ended up preferring or strongly preferring the traditional approach at the time of the survey, while 4 switched to preferring the flipped approach.



**Figure 4. The contents of the Chemistry MOOC were the expected**

12 of all 17 answered the questioner thought that the contents of the course are appropriate. 2 of them answered in an indifferent way, although 3 students disagree with that question.

Finally the students were asked about if they would enroll again in the Chemistry MOOC and besides, if they would recommend enrolling on the course to some friends.



**Figure 5. Number of recommendation Chemistry MOOC**

15 of all 17 agreed with the statement of recommend the MOOC to friends, partner, family....

## Conclusions

General Chemistry MOOC produced interesting results as evidenced by a survey given to students at the end of the course. However, students also reported using the MOOC multiple times throughout the course, not only for class preparation, but also for aid in completing homework, test preparation, reinforcing concepts, and clarifying concepts. Students also found the activities that replaced the pure lecture time—quiz questions and interactive problem solving, for example—were helpful in preparing them for homework and course assessments, as well as making class time more engaging. A majority of students found the MOOC model more effective for them, while a minority was neutral on its effectiveness, and a much smaller minority indicated it was less effective for them. The Chemistry MOOC will continue to be used for the foreseeable future.

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## The Relationship between the Individual Innovativeness and Academic Self-Efficacy of Pre-Service Teachers

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**Abstract:** *The aim of this study was to investigate what the relationship between individual innovativeness and academic self-efficacy of pre-service teachers. The group of the research consists of 427 pre-service teachers chosen from education faculties in Turkey. Status of the participants to level of individual innovativeness was found medium level. Male pre-service teachers' levels of individual innovativeness were found to be higher than that of female pre-service teachers. Freshman pre-service teachers' levels of individual innovativeness were found to be higher than that of senior pre-service teachers. It was found out that there was a positive significant relationship between the pre-service teachers' levels of individual innovativeness and their levels of academic self-efficacy. Individual innovativeness in pre-service teachers, can explain the 31 % of academic self-efficacy level.*

### Introduction

Developments in science and technology make it necessary for individuals to develop themselves. Today, in most of the developed countries, the duration of compulsory education is around 12 years and university education is encouraged. Although this educational process which has reached sixteen years is enough to start many professions, individuals need to improve and renew themselves in formal or informal ways in order to succeed in that job and get a place in the society. For this reason, individuals need to learn to learn and be open to lifelong learning. Today, thousands of academic articles are written every day, and since it is not possible to memorize this information, it becomes important to learn how to access and use this information and how to generate new information. Individuals with such qualifications are thought to be able to adapt to innovations. Researchers stated that individuals need to regard innovation as a necessity and renew themselves constantly in order to keep up with developments [1].

Although it is thought that innovations may become widespread to the extent that they can provide benefit for individuals, researcher [2] addresses innovation in five dimensions as relative advantage, compatibility, complexity, trialability, and observability. In other words, acceptance of an innovation cannot be just explained by its usefulness. In addition to providing benefits for acceptance of an innovation, it must also be compatible with the existing structure. Innovations that are dangerous or costly for trying, and whose results cannot be observed are impossible to be accepted by large masses.

Classifying individuals as innovative or non-innovative will not be a very accurate classification. According to what researchers [3] reported, Rogers stated that innovativeness is distributed normally in a society and in terms of their characteristics; individuals take place in five different categories as Innovators, Early Adopters, Early Majority, Late Majority and Laggards.

A researcher stated that it is necessary to train pre-service teachers who are innovative and able to adapt to innovations [4]. It is thought that there is a relationship between the ability of individuals to adapt to innovations and their self-efficacy. Self-efficacy is the belief in the capacity of the individual to organize necessary activities to demonstrate a certain performance [5]. In this context, academic self-efficacy can be explained as the level of perception of a learner about achieving an academic task. In this respect, it is thought that the high or low academic self-efficacy of pre-service teachers may be related to their adaptation to innovations.

The purpose of this research is to determine whether there is a relationship between the innovativeness levels of the pre-service teachers and their academic self-efficacy, and if yes, the direction and the level of this relationship. Within the scope of this overall objective, answers for the following questions were sought in the research:

1. What are the individual innovativeness characteristics and academic self-efficacy levels of pre-service teachers?
2. Do the individual innovativeness characteristics and academic self-efficacy levels of pre-service teachers differ by gender?

3. Is there a significant relationship between the individual innovativeness characteristics and academic self-efficacy levels of pre-service teachers?

## 1. Method

There is information about the research model, participants, data collection tools and data analysis in this section

### 1.1. Research model

This study aimed at determining the individual innovativeness and academic self-efficacy levels of pre-service teachers and the relationship between them is in correlational survey research model. The existing situation is tried to be described as it is in the correlational survey research model.

### 1.2. Participants

427 pre-service teachers, studying at different departments of faculties of Education, including Computer Education and Instructional Technologies, Pre-school Education, Special Education and Psychological Counseling and Guidance in Turkey in the spring semester of 2017-2018 academic year, participated in the research. The general characteristics of the participants are given in Table 1.

**Table 1. General characteristics of the pre-service teachers**

Characteristics	Options	Frequency	%
Gender	Female	260	61
	Male	167	39
Grade Levels	1	112	26
	2	102	24
	3	81	19
	4	132	31

When Table 1 is examined, it is seen that the majority of the pre-service teachers participating in the research were women (61%). It has been determined that most of the four-year training pre-service teachers were in the last grade by 31%, while 19% of them were in the third grade.

### 1.3. Data Collection Tools

Data were collected by combining three different data collection tools from participants in the study.

**1.3.1. Personal Information Form.** Information about the gender, the grade they are in and the

department of study of the pre-service teachers were collected in the personal information form, prepared by the researcher.

**1.3.2. Individual Innovativeness (II) Scale.** Originally developed by some researchers [6], this scale was transformed into the Turkish language and culture, and validity and reliability analyzes were conducted by researcher [3]. It was determined that the internal consistency coefficient of this adapted scale was 0.82 and the test-retest reliability was 0.87. The scale consisting of 20 items is of a five-point likert type. Those who score above 68 are considered highly innovative, while the ones who score below 64 are considered as low in innovation. According to the scores calculated on the scale, the individuals can be classified in five different groups. If the calculated score is over 80 points, they are classified as "Innovators", between 69 and 80 points are "Early Adaptors", between 57 and 68 points are "Early Majority", between 46 and 56 points are "Late Majority" and below 46 points are classified as "Laggards".

**1.3.3. Academic Self-Efficacy (AS-E) Scale.** Originally developed in German by two researchers [7], this scale was translated into Turkish language and culture, and validity and reliability analyzes were conducted by researchers [8]. It was determined that the Cronbach alpha reliability value of this adapted scale was 0.79. The scale consisting of 7 items is a four-point likert type and consists of one factor.

### 1.4. Data Analysis

The data obtained within the scope of the research were first transferred into the computer environment by the researcher, and the data that were not properly marked in the scale forms were excluded from the analysis process. Descriptive statistics were first made in responding to the research questions. It was determined that the obtained data showed normal distribution. Independent sample t-test was applied to determine whether individual innovativeness and academic self-efficacy variables differ by gender; and one-way analysis of variance (ANOVA) was conducted to determine whether there were any differences according to the level of the grade in which training was done. The Pearson Correlation analysis was used to determine the relationship between individual innovativeness and academic self-efficacy levels of the pre-service teachers. The level of significance was accepted as .05 in interpreting the results of the research.

## 2. Findings

### 2.1. Findings Related to II and AS-E Characteristics of Pre-service Teachers

Descriptive statistical values related to individual innovativeness and academic self-efficacy of pre-service teachers was examined in the study. The obtained findings are presented in Table 2.

**Table 2. Findings related to II and AS-E characteristics of pre-service teachers**

Variables	N	Mean	Sd
Individual Innovativeness	427	64.65	9.46
Academic Self-Efficacy	427	20.02	3.84

It can be said that the individual innovativeness status of the pre-service teachers is in the category of "Early Majority" because the average of the individual innovativeness scores of the pre-service teachers participating in the research are in the range of 57-68 points. The average score of academic self-efficacy levels of the pre-service teachers participating in the survey was found 20.02 and the standard deviation was 3.84.

### 2.2. Comparison of II and AS-E Levels of Pre-service Teachers by Gender

Independent sample t-test was conducted to determine whether individual innovativeness and academic self-efficacy levels of the pre-service teachers differed according to gender. The result of the analysis is given in Table 3.

**Table 3. Analysis of II and AS-E levels of pre-service teachers by gender**

Variables	Options	Mean	Sd	t	p
Individual Innovative	Female	63.77	9.22	2.43	.02
	Male	66.03	9.68		
Academic Self-Effic.	Female	19.97	3.64	.35	.72
	Male	20.1	4.1		
		1	5		

As a result of the research, it was found that the individual innovativeness levels of the male pre-service teachers were higher than the individual innovativeness levels of the female pre-service teachers ( $t = 2.43$ ;  $p < .05$ ). As a result of the research, it was found that the academic self-efficacy levels of female and male pre-service teachers did

not differ in a statistically significant way from each other ( $t = 0.353$ ,  $p > .05$ ).

### 2.3. Comparison of II and AS-E Levels of Pre-service Teachers According to Grade Levels They Study In

Individual innovativeness and academic self-efficacy scores of the pre-service teachers according to the grade levels in which they study in are given in Table 4.

**Table 4. Individual II and AS-E scores of pre-service teachers according to grade levels they study in**

Variables	Grade L	N	Mean	Sd
Individual Innovativeness	1	112	67.15	9.26
	2	102	63.92	11.01
	3	81	63.52	8.80
	4	132	63.79	8.38
Academic Self-Efficacy	1	112	20.46	4.06
	2	102	20.33	3.91
	3	81	19.58	3.75
	4	132	19.69	3.65

The arithmetic mean of the individual innovativeness scores of the pre-service teachers studying in the first grade is 67; and the arithmetic average of the individual innovativeness scores of the pre-service teachers studying in the upper classes has been found around 63. The arithmetic mean of the academic self-efficacy scores of the pre-service teachers studying in all grades is around 19-20. One-way analysis of variance was conducted to determine whether the individual innovativeness and academic self-efficacy levels of the pre-service teachers differed according to the grade levels they are studying in or not. The results of the analysis are given in Table 5.

**Table 5. Analysis of II and AS-E levels of pre-service teachers according to grade levels they are studying in**

Variables	F	p	Difference
Individual Innovativeness	3.63	.01	1-2; 1-3; 1-4
Academic Self-Efficacy	1.39	.25	-

When Table 5 is examined, it can be seen that the individual innovativeness levels of the pre-service teachers differ according to the grade levels they are studying in ( $F_{[3-423]} = 3.63$ ,  $p < 0.05$ ). Scheffe test was conducted to determine which grade level the variance originated from. As a result of the analysis, it has been found that the individual innovativeness levels of the pre-service teachers studying in the first grade are higher than the levels of pre-service



teachers studying in upper grades. When Table 5 is examined, it can be seen that the academic self-efficacy levels of the pre-service teachers did not differ according to the grade levels they are studying in ( $F_{[3-423]} = 1.39, p > 0.05$ ).

### 3.4. Findings Related to the Relationship between II and AS-E Levels of Pre-service Teachers

Pearson's correlation coefficient is calculated to see whether there is a significant relationship between the individual innovativeness and academic self-efficacy levels of pre-service teachers, and to determine its direction and strength if there is a relationship. The findings are given in Table 6.

**Table 6. The Relationship between II and AS-E levels of pre-service teachers**

Academic Self-Efficacy		
Individual Innovativeness	Corr.	.56
	P	.00*
	N	427

\*  $p < .01$

It is seen that there is a positive, moderate and significant relationship between the individual innovativeness and the academic self-efficacy levels of the pre-service teachers participating in the research ( $r = .56, p < .01$ ). It can be said that as the individual innovativeness levels of the pre-service teachers increase, the individual self-efficacy levels of the pre-service teachers also increase. When the coefficient of determination ( $r^2 = .31$ ) is taken into consideration, it can be said that 31% of the total variance in the individual innovativeness levels of the pre-service teachers is originated from the academic self-efficacy.

## 4. Discussion, Conclusions and Recommendations

In this research, it is aimed to examine the individual innovativeness and academic self-efficacy levels of pre-service teachers, and to determine the relationship of individual innovativeness with individual academic self-efficacy as well. In the study, the individual innovativeness levels of the pre-service teachers were found to be at a normal distribution and were parallel to Rogers (1995) opinion. It has also been determined that the individual innovativeness levels of the pre-service teachers are in the "Early Majority" category. In various studies carried out on pre-service teachers, individual innovativeness levels of the pre-service teachers were found to be similar [3, 4, 9, 10, 11, and 12]. The academic self-efficacy levels of the pre-

service teachers participating in the research were found to be high. When the literature is scanned, there are studies in which pre-service teachers find their academic self-efficacy at a high level [8, 13, and 14].

In the research, it was found that the individual innovativeness levels of the male pre-service teachers were higher than that of the female teacher candidates. In some studies in the literature, women were found to be more innovative than men [15], whereas in some studies, the innovativeness levels of pre-service teachers do not differ by gender [4, 9, 16], and there are findings showing that men are more innovative than women in some studies. These findings suggest that the situation changes according to the sampling of the research.

There is no significant difference between the academic self-efficacy levels of the male pre-service teachers and the academic self-efficacy levels of the female pre-service teachers in the research. Researchers [17] found that male students had higher levels of self-efficacy than female students in their study carried out on university students.

In the research, it was found that the individual innovativeness level of the pre-service teachers who are studying in the first grade is higher than that of the teacher candidates who are studying in the upper grades. In some studies, researcher found that the innovativeness levels of pre-service teachers do not differ by grade level they study in [15, 18]. Studies can be designed in order to determine the causes of pre-service teachers studying in the first grade and having a higher individual innovativeness than the teacher candidates studying in the upper grades. There was no significant difference between the academic self-efficacy levels of the pre-service teachers according to the grade they study in.

Findings in the research revealed that there is a positive, moderate and meaningful relationship between the individual innovativeness and academic self-efficacy levels of pre-service teachers. In other words, it can be said that as the individual innovativeness levels of pre-service teachers increase, their academic self-efficacy levels also increase. Since the individual innovativeness characteristics of the pre-service teachers is found to be at a moderate level, training events can be organized in order to increase it. In this way, future generations can be enabled to be more innovative.

In this study, the data were collected in order to determine the own perceptions of pre-service teachers

related to determination of their innovativeness levels. Qualitative research models can be designed in order to determine the individual innovativeness levels of pre-service teachers. The result obtained from this study can be studied in terms of its relation with the academic self-efficacy. Researches to determine the individual innovativeness levels of teachers, who are important items of the education system, can be conducted.

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## Main Aspects of Georgian State Inclusive Vocational Education Policy Implementation

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**Abstract:** *Reform of Vocational Education in Georgia reached an active phase of development in 2012. Since 2013, for the purpose of enrolment in vocational programs the government has approved a new program, based on which a series of activities have been implemented for people with disabilities and people with special needs. During this period, five admissions were carried out. Students with disabilities and students with special needs together with other children attend classes and try to acquire the knowledge and skills relevant to the professions chosen by them and even to be employed. This article presents the current situation in the vocational education, activities that have been implemented, as well as problems and challenges caused by indicated innovations and our vision how to solve these problems and how to overcome the challenges that inclusive vocational education policy makers and implementers face in Georgia. It also presents some successful examples, brought by this innovation to our country's reality.*

### Introduction

The vocational education reform in Georgia entered the active phase in the end of 2012. And from 2013 for the purpose of studying on the professional programs the state approved a new program, on the basis of which a wide range of activities were implemented for the teaching of persons with special needs and disabilities. It is undisputable and welcomed that according to the strategy of the Ministry of Education and Science of Georgia of 2014 ("strategic directions of the development of education and science system") and the strategy of the vocational education reform (2013-2020), one of the important activities of the current reforms in the educational system of Georgia represents the introduction of the inclusive vocational education in the system. The mentioned approach means the development of equal opportunities of the vocational education for the persons with special educational needs and disabilities.

The mentioned initiative along with the Ministry of Education and Science of Georgia is implemented by the Ministry of Education and Research of Norway by intensive cooperation. Also it should be noted that it is precisely the obligation assumed by the state to promote the realization of the rights of education and labor for the persons with special educational needs and with restricted abilities (parliament of Georgia, 2013). [1]

### Vocational Education Strategy of the Ministry of Education and Science of Georgia

In 2013 the Ministry of Education and Science with support of the European Union and the partici-

pation of the parties interested, the strategy of the vocational education reform was developed (2013-2020). The implementation of the action plan had begun. Compared with previous years in 2014 the budget of the vocational education was doubled and it became possible to initiate the systemic changes. It became possible to receive the vocational education at the state educational institutions with full state funding.

The execution of the vocational training programs began for the convicts as well. In 2013-2014 academic year up to 100 beneficiaries received the vocational education and the relevant skills for the purpose of reintegration and resocialisation into the society.

For the purpose of connecting with the requirements of the labor market of the vocational education system, with the participation of the employers reprocessing of the professional standards begun by the methodology recommended by Technical Assistance project of the European Union.

In 2013 within the frames of the Technical Assistance project of the European Union the vision of the reform of the vocational educational programs was established which provides the development execution of the flexible, competency based, modular educational programs. By the resolution No. 244 of the government of Georgia of September 19, 2013 there was determined the rule for financing of the professional education and the amount of a voucher for one vocational student was calculated according to a specialty which significantly improved the situation in the mentioned direction.

The decision to be made regarding the determination of the admitting contingent occurs by the educational institution, which is also an effectual step taken towards the decentralization.

The people who are willing to obtain the vocational education have opportunity to pass the registration not only by going at place, informational centers, resource-centers and vocational educational institutions, but also via using of the informational technologies.

In order to reach the strategic goal set in the vocational education the successive continuation of the reform is essential for the ministry and to execute the approved action plan according to the following four main tasks:

- to increase the flexibility and attractiveness of the system;
- to focus on the requirements of the labor market of the vocational education system and promoting the social partnership;
- the institutional development of the vocational educational establishments;
- to ensure the equal accessibility to the professional education.

Today approximately 166 educational institutions are functioning in Georgia which implement the vocational educational programs. From these 166 institutions, 52 are the public institutions (vocational or community colleges, and higher educational institutions), there are also the institutions being under the joint private and state establishment, but in small quantities and the rest of them represent the Legal Entities of Private Law.

### **State Policy in Inclusive Vocational Education**

Fundamental principles of Vocational Education considers special education needs of students with disabilities in order to equip them with professional skills relevant to the labor market, taking into account individual capabilities, interest and needs of the students.

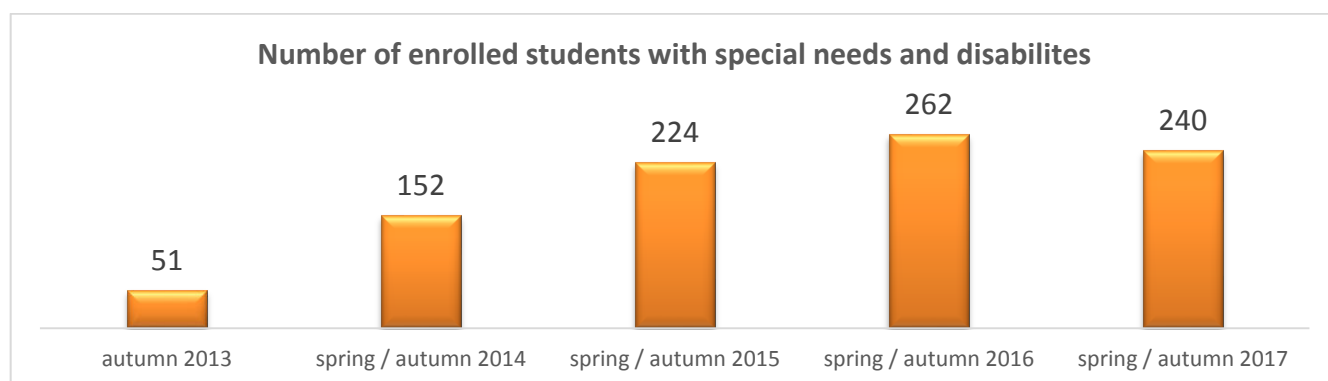
According to the order No. 152/n of the minister of Education and Science of Georgia of September 27, 2013 – the engagement of the people with special educational needs and disabilities in the vocational educational system requires many below listed activities:

1. Attracting the people with special educational needs and disabilities;
2. Registering the applicants with special educational needs and disabilities on the vocational educational programs;
3. Professional testing of the applicants with special educational needs and disabilities and their enrolment on the vocational educational programs;
4. Teaching-studying of the students with special educational needs and disabilities on the vocational educational programs”.

Taking into account the individual capabilities of the people with special educational needs and disabilities, for the purpose of their studying on the vocational educational programs, the educational requirements are established by the multidisciplinary groups after which the people with special educational needs and disabilities are granted with the right of enrolment on the vocational educational program by the exam of alternate format. For the purpose of the regulating the issue in the order of the minister of Education and Science of Georgia of September 27, 2013 “on approving the provision of conducting the professional testing”, the procedures for testing of the people with special educational needs and disabilities are established by the different regulations.

Hereby presented statistical data is derived from an annual report prepared by the Ministry of Education and Science, which clearly shows a positive trend in terms of engagement of the mentioned people in the educational processes. Diagram presents the quantitative data of admissions of the people with special educational needs and disabilities of 2013-2017.

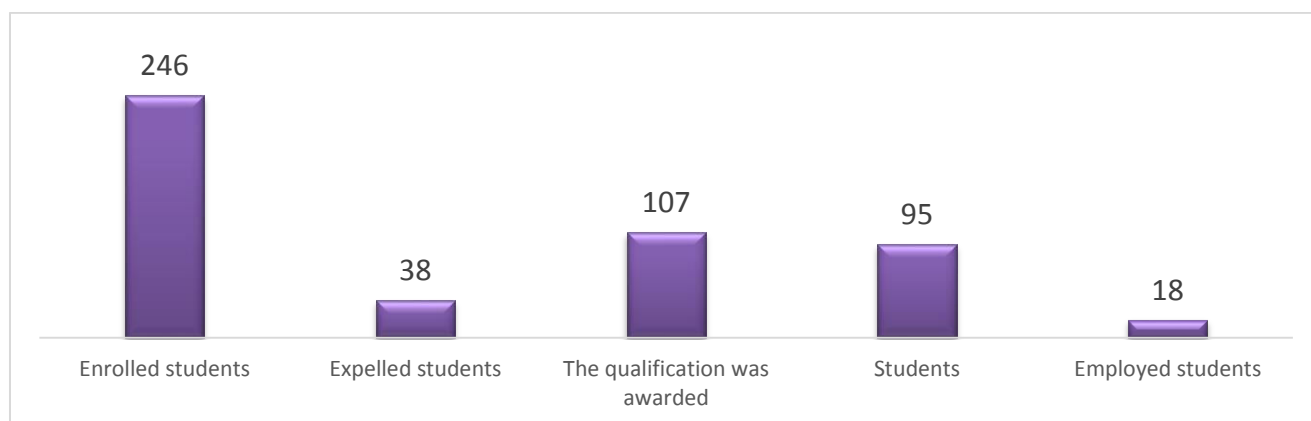


**Figure 1.**

From 2013 till 2017 the ones who desire to study have been increased. The mentioned dynamics indicates to awareness on the opportunities for the inclusive vocational education of the people with special educational needs and disabilities and their families, as well as on increasing of motivation and trust towards the vocational educational system. [2]

The data which enables us to analyze the situation of the aforementioned people at the vocational institutions after the enrolment is also interesting. At the end of the 2015 the 43% of total number of the enrolled people had completed the studying, and for that period 39% were still studying, 15% refused to continue the studying and relevantly the status was

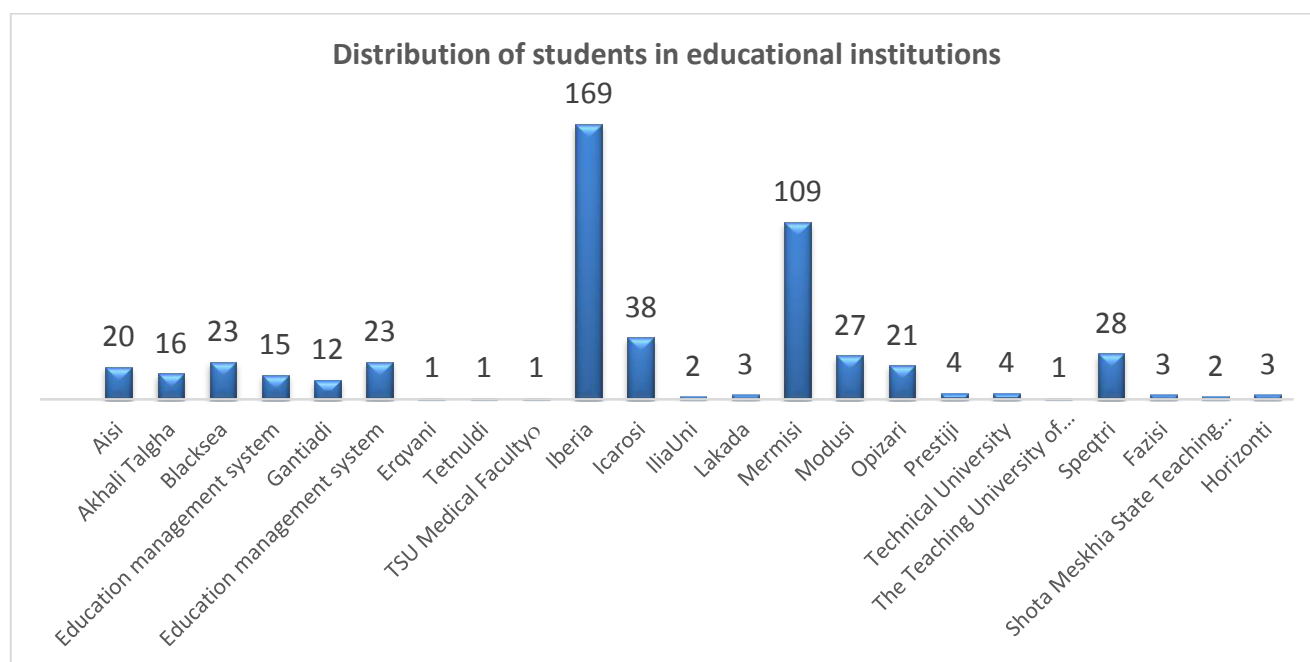
suspended, 17% were employed. As of today the mentioned data as the result of newly established program looks really impressive. But for the future we think that upon selecting the educational program for the ones, who desire to obtain the inclusive vocational education, the provision of such factors as the requirement of the labor market and by taking into needed. In the diagram given below in the quantitative account the professional orientation on precisely this section there is presented the status of the students requirement should be occurred and the consultation is enrolled in the end of 2015.

**Figure 2.**

The information given on the diagram is provided from 17 vocational educational institutions, the students are studying/were studying on 37 vocational educational programs. [3] As it is shown in the data of the Ministry of Education and Science, in the future the introduction of the inclusive vocational

education throughout Georgia are planned at all vocational educational institution. The diagram given below presents the distribution of the students at the institution implementing the vocational programs established by the state, where the people with special needs are studying.

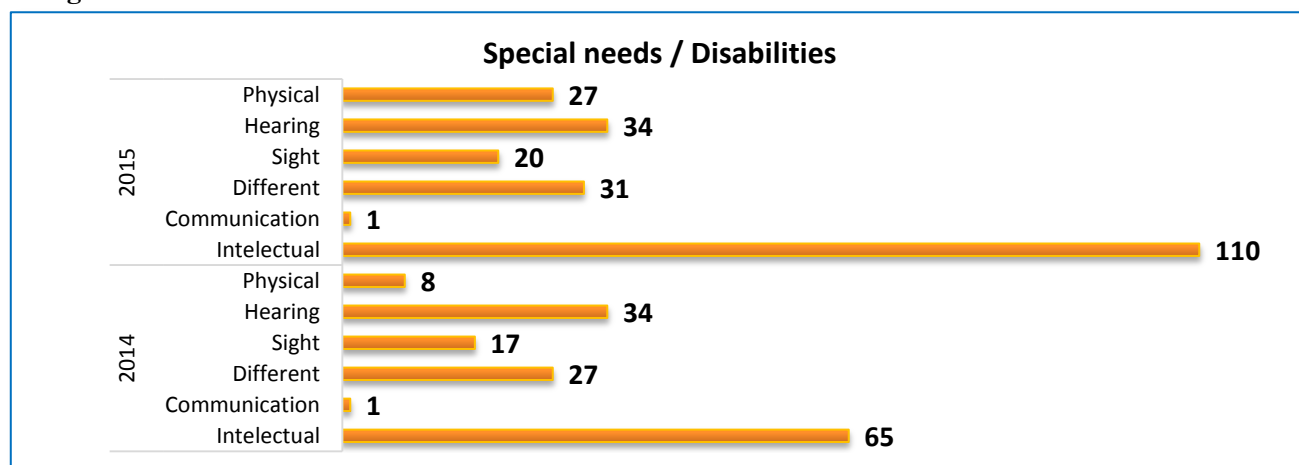
Figure 3.



Accordingly, we can conclude that from 2013 the target set by the Ministry of Education and Science was reached – notwithstanding the educational need or disabilities of a person to be delivered a qualitative vocational education to all, entered in more active phase and in our opinion it is being successfully implemented.

The statistical data given above clearly shows that the educational institutions have already implemented the admission for the fifth time and the results in these directions are increasing more and more. The needs of those educational students who are mastering the vocational education are also interesting. We present the data of 2014 and 2015 that we believe is really impressive.

Figure 4.

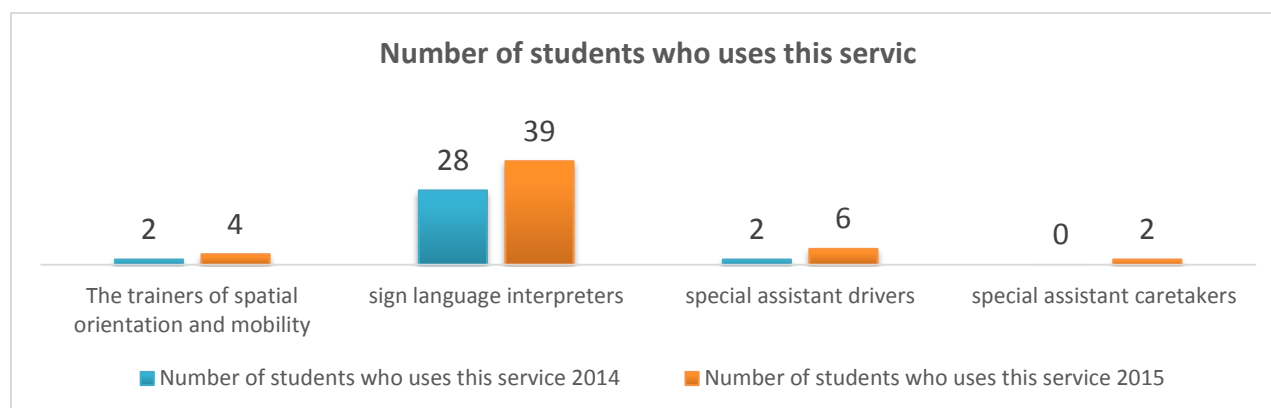


For the purpose of successful implementation of the project during 2014-2015 on behalf of the Ministry of Education and Science of Georgia several supporting services were financed in this direction. Including in the educational institutions there occurred the hiring of personnel and then their retraining under the order of a contest. And nowadays the mentioned specialists at the institutions

are rendering their help in many ways to the people with special educational needs and disabilities. The trainers of spatial orientation and mobility, sign language interpreters, special assistant caretakers, special assistant drivers were trained. Here we are presenting a diagram which shows us the quantitative distribution of these people. [5]

**Figure 5.**

And with the following diagram the quantitative distribution of those people who use the above mentioned services is given.

**Figure 6.**

Herewith it should be mentioned that the Ministry of Education and Science of Georgia in the event of alternate format (with adapted educational resources). [6]

In our opinion it is worth to be separately mentioned the circumstance that the vocational education of the students with special educational needs and disabilities are being entirely financed by the state.

### Introduction of Inclusive Vocational Education

From 2009 until today the Ministry of Education and Science and the National Center for Teacher Professional Development offer the teachers trainings concerning the issues of inclusive education at the general educational institutions. Engagement of pedagogues from the Vocational Education establishments started in 2015, due to the fact that inclusive

professional education model was introduced from February of 2013“. [7]

In 2015 there were conducted the trainings of the teachers in the direction of inclusive vocational education; the training course entitled: “individual approaches upon the education of the vocational students with special educational need and professional testing part I”. The training was undergone by up to 400 pedagogues from the vocational educational institutions established by the state. It should also be noted that the trainings dedicated to various issues of the inclusive education are necessary for other personnel of the vocational institutions and we believe that the activities towards the mentioned directions will be also implemented. [8]

One of the most important factors, which we also discussed above, is the attitude of the representatives of the labor market towards the mentioned people.

At this point the attitude of the Employers towards the employing the people with disabilities/special educational needs is also interesting. The vocational education of the people with special educational needs and disabilities would be assessed as the successful initiative in case if it would be followed by the employment of the graduates and the realization of the necessity for the students with special educational needs is ready to provide the studying material with professional skills. Accordingly, one of the most actual issues for the state is the support the employment of the students with special educational needs. For the purpose of supporting the professional educational programs of the graduates with special educational need and disabilities the Ministry deems important to work in several directions: “within the current initiative of the inclusive vocational education the Ministry of Education and Science of Georgia tries to create the precedents of employing the people with special education need and disabilities after obtaining the vocational education by them. However, in our opinion the creation of the system of employment for the people with disabilities goes beyond the direct competence of the Ministry of Education and Science of Georgia. The introduction of the sustainable mechanisms of the employment requires the determination of the state policy and distribution of the interdepartmental responsibilities.” [9] We also would like to note from our part that in order to resolve the issue the dynamic actions of those institutions in which the mentioned people are studying is no less important. Precisely it is the educational institution which should have the most tight, almost daily connection with employers. The identification, analysis of the requirement of the labor market correctly reflection in the process of teaching/learning and the professional consultation of the ones who desire to study adequately to the requirement of an employer. Exactly this is that main factor having no alternative which represents the most important challenge for the correct planning of the future of the students and especially of the people with special educational need.

As it is seen from the report of the Ministry of Education and Science “the Ministry of Education and Science of Georgia in the tight cooperation with the Ministry of Education and Research of Norway implements the project “introduction of the inclusive education in the vocational education and retraining system of Georgia” (2013-2016). One of the main tasks of the project is to increase the perspective of

employment after obtaining the professional education for the people with special educational need and disabilities. The thought out and accordingly the priority issue for the state is the cooperation with the employers, for the purpose of effective implementation of the aforementioned approach, the study of the attitude if the representatives of the labor market towards the people with special educational need and disabilities and the eagerness for cooperation with the mentioned persons.

### **Researches Performed in Inclusive Vocational Education**

The main purpose of the researches performed by the state and other international organizations in Georgia is to study the current situation in the country in connection with the issues of employment of the people with special educational need and disabilities. Also as the equally important topic there is determined the comparison of the current situation and the legislative base with the foreign expertise, analysis and to elaborate the relevant conclusions.

The aim of research of the attitudes of employers was to reveal those main challenges, supporting factors and preconditions which are outlined upon the employment of the people with special educational needs/disabilities.

It is interesting the circumstances revealed as a result of the research: the low level of awareness about the employment of the people with special education need/disabilities by employer is one of the main hindering factors. The majority of respondents have no information concerning the actual capabilities, qualification and skills of these people, who master them at the vocational institutions; we think that for the purpose of reaching the actual result in this direction it would be appropriate to engage an educational institution more actively, because precisely they have direct and permanent connection with the employer. There also should be noted that it is possible that nonexistence of the support from the part of the state, the lack of benefits, as well as lack of knowledge of the legislative base on the employers side, and the lack of information about the foreign expertise represent the hindering factors for the employment of the people with the special education need/disabilities; The interesting fact is that in the imagination of the majority of entrepreneurs the employment of the people with disabilities and with special educational need should not depend only on the good will of an employer and has to be regulated by the law. According to respondents, an employer suffers from a kind of fear in connection that a person with disa-



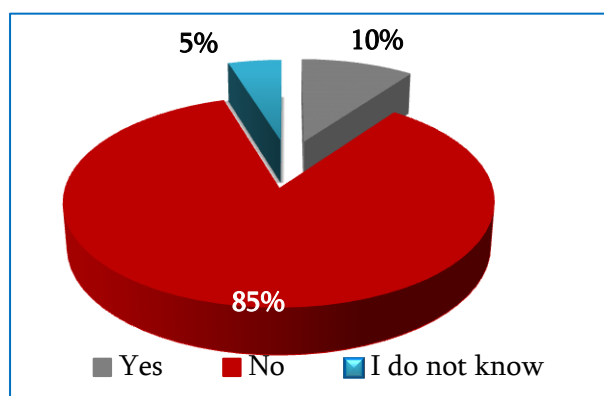
bility and special education need may be not able to provide a due competition in the terms of labor capacity of other employees. Based on this the admission of a person with disabilities/special educational need is connected with certain risks for the employer. [10]

I would like to draw your attention to the fact that the main researches are conducted in a centralized way, by the Ministry of Education and Science or other Ministry or on the initiative, organization or/and order of an institution existing under their subordination. It would be interesting if other people interested will be engaged in such researches, e.g. non-governmental organizations, the educational institutions implementing the vocational programs and other social partners. In my opinion the centralized planning and managing almost in all directions causes somewhat less flexibility and accordingly delays in time. The engagement of others in analyzing of the results and identifying the reasons, and especially the engagement of the vocational educational institutions would be much more useful for advancement.

It was also conducted an interesting research for the purpose of study the disposition of the employers towards the employment of the people with special needs, in December of 2014 by the Ministry of Education and Science – “the study of the dispositions of the employers regarding vocational education”. Out of the results of the research we would like to single out the answers of the respondents on several questions: 1. Do you have/had or not on practice/probation the student/graduate with special educational need and disabilities from vocational institution? and 2. In the future would you like to take on practice/probation a person with special education need and disabilities who is a student/graduate of a vocational institution or not?

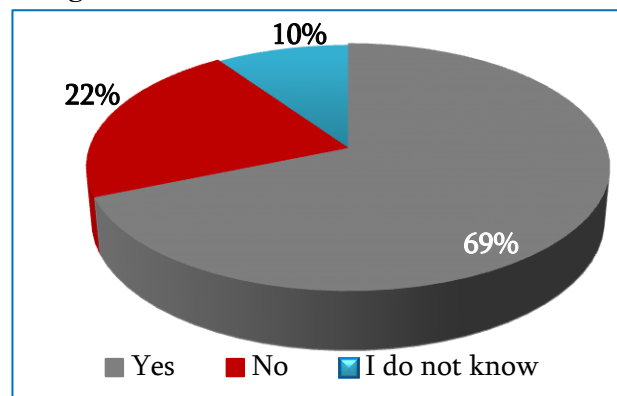
On the first question the answers were distributed in the following way:

**Figure 7.**



On the second question the answers were distributed in the following way:

**Figure 8.**



It is interesting that in the result of the research only every tenth company out the questioned companies had the students/graduates with disabilities and special educational needs on probation or practice. Although it should be said that in the future 2/3 out of questioned ones are thinking of their probation and practice. 22% of the respondents exclude their taking, the reason of which could be not only the conscious decision of the companies, but the profile of their work. [11]

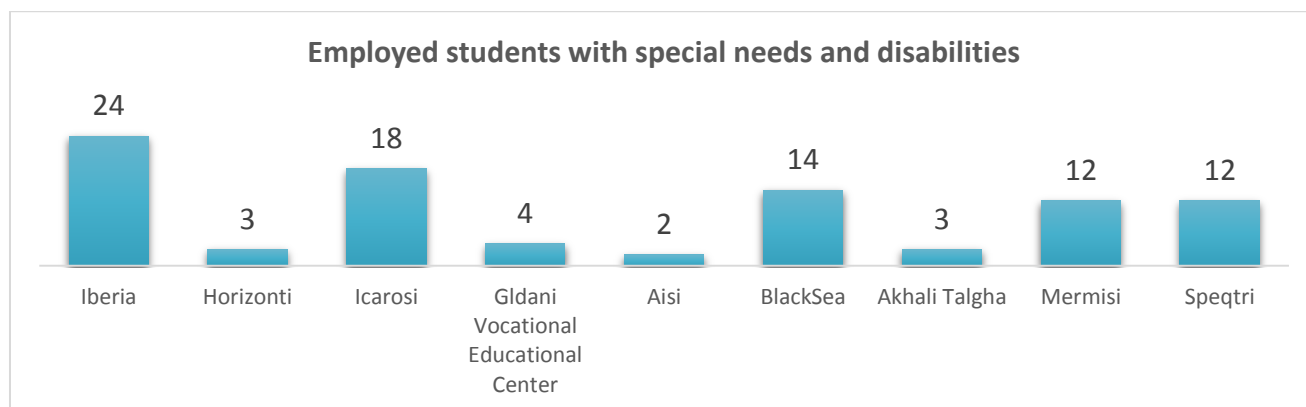
After the analysis of the results of the study by the Ministry of the Education and Science there was elaborated the following recommendations:

- “It is necessary to create the informational bases in all the cities and regions. The employer should be able to use these bases, to find the people with disabilities/special educational needs, to obtain the information about their competence and skills.
- The vocational institutions have to actively cooperate with the employers and to offer the qualified personnel to the employer, and they have to provide the employer with the information concerning the skills and competence of the persons with disabilities and special educational need. The information exchange should have the massive and systemic nature.
- There should be studied the employment market and actual needs, and the existing deficit. The education and formation of the people with disabilities and special education need has to be occurred with consideration if this deficit”.
- An entrepreneur from the side of the state has to get interested and encouraged. The state should establish the certain tax benefits to an entrepreneur.

#### **Employment of People with Special Needs and Disabilities**

Vocational student (with special needs and disabilities) employment index in 2013-2017 is very interesting. The information about the employed graduates has been provided by vocational educational institutions.

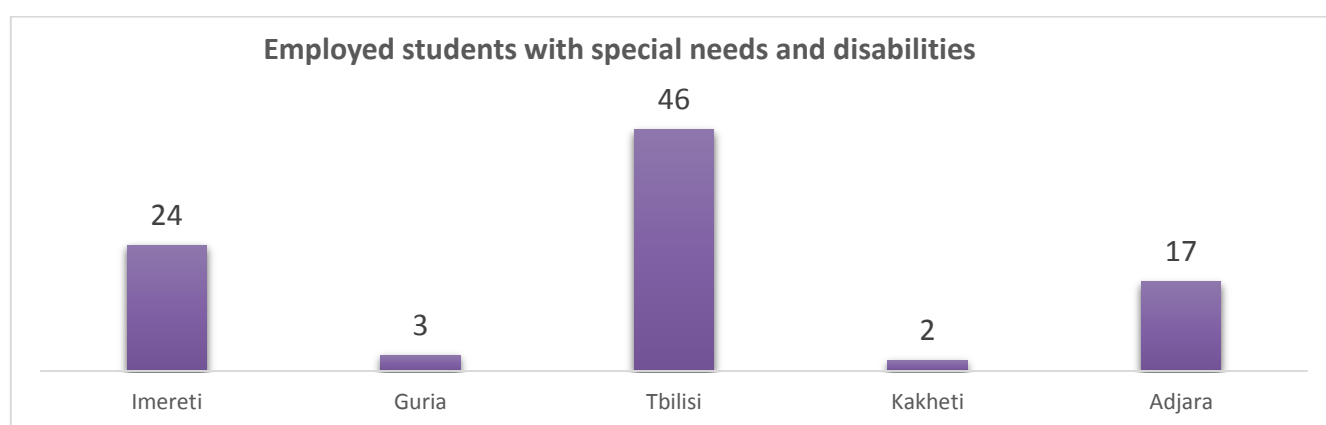
**Figure 9.**



It is also interesting what is the situation in the employment of students with special needs and disabilities in the regions of Georgia. The

employment facts are only in five region out of 11 regions. Unfortunately this index is very low.

**Figure 10.**



The government request the data from the vocational educational institutions about the employment of students. However, it should be noted that this information is not checked by the government. Unfortunately studies on the current situation of the employed students and their further development are not conducted.

There are no databases of people with special education needs and disabilities in the state. This is caused by the mental attitude of parents to this issue. Parents do not want to reveal that their children have special needs or disabilities. They try to hide such children from society. The government has to do lots of activities to break these stere-

otypes, so that parents could take steps to encourage children to socialize and promote their adaptation in social environment.

### **Successful Examples of the Introduction of Inclusive Vocational Education**

In spite of above described problems and challenges in the system of vocational education, it is important to pay the due to the successful cases of graduates from vocational institutions that have positive impact upon the institutions implementing the vocational programs and the entire society. Herewith I would like to present several successful examples which in my opinion will be interesting

and welcoming for all. Today we can boldly say that with the knowledge and skills obtained at the vocational institutions the graduates and the persons with disabilities and special educational needs among them, in the event of correctly chosen profession, would be given the opportunity to get employed at the enterprises or to establish an enterprise by themselves. There are several successful examples evidencing the abovementioned, however in the present article we will stop on two persons with special educational need, from which one of them established his personal enterprise and the other became pretty famous hotel cook. Here-with I would like to mention that for obvious reasons I will not identify these people.

One of them, a girl, was enrolled at N(N)LE vocational college in 2013 with major in III degree tour-operator. She was diagnosed with coordination impairment and she had difficulties in writing. As a result of the support of the pedagogues and employees of the college (term of studying 8 months) the abovementioned problems have significantly improved. The girls have passed the exams provided by the educational program with pretty good results and deserved positive assessment from the side of the employers on the training practice. Immediately after graduating the vocational college she was registered with the status of an individual entrepreneur. The functions of her enterprise were determined by the touristic service and nowadays she successfully works in the field of incoming tourism. The girl knows English language very well and accordingly she performs the function of a guide in her own enterprise as well. She made her choice with the recommendation and help of the employees of the vocational college and today we can say that she has become a successful entrepreneur. [12]

In 2014 among the enrolled students there was George who chose the profession of a cook. Diagnosis: "III degree bilateral sensorineural hearing loss". Within the studying period with the active help of a Sign Language Specialist and teachers he was able to finish the educational program with good result. The entrepreneurial practice he underwent at the hotel "Tbilisi Marriot", the mentioned establishment invited George to work for the position of a cook after graduation where he successfully implements the professional activity until today. [13]

### **Problems in Inclusive Vocational Education and Ways of Solving Them**

We think that the opinion given in the research requires more analysis and deepening. The teaching/employment of the people with special educational need and disability is a good example existing in Israel. Where for the purpose of sharing the expertise there even exist a special program for the workers of this field of education in various countries. Their expertise from this point is interesting in the issues of the employment of the mentioned persons. Different programs are created by the government of Israel in order to be occurred the development of the persons with special needs, to the level at which they will be able to be employed at various positions and to be able to maintain themselves. The process is so developed that the aforementioned people in number of cases are even provided with the accommodation and their parents are visiting them only on weekends. In 2014 within the project "creative thinking in the inclusive education" ("Mashav Center") organized by the embassy of Israel we, the employees of the system of the Ministry of Education and Science traveled to Israel, where during the three weeks we surveyed those institutions where there occurs the teaching, training/retraining, employment of the mentioned people and even providing some of them with the accommodations. The main thing that we saw within this project is the diagnosing the knowledge, capabilities and skills of the people with special educational needs from a "school desk" for the purpose of opportunity of their supposed employment. Their view from the point of the employers is also important. Precisely the tight connection with the employers and study of the needs in the terms of their required personnel ensures the employment of the mentioned people in the future for the positions relevant to their knowledge and skills.

Out of the recommendation of the Ministry of Education and Science there is also interesting the following opinion – "to take care of the adaptation to the physical environment and the dislocation of the people with disabilities/special educational needs, and the transportation designated for them - is a very important issue, because without the adapted environment it would be practically impossible for the people with disabilities/special educational needs to fully reveal their own capabilities and qualifications; also the employer in his/her turn, would be limited upon the making a choice during the admission to work of the people with disabilities/special educational needs.

It is important that the state represents the main addressee for the advice and recommendations to the employers.” [14]

In my opinion the recommendations of the Ministry are interesting and something to be thought about, however perhaps we have to think over other problems as well. Despite the conducted important events for the purpose of introduction of the inclusive education, the problems are outlined in this field as well, which are necessary to be resolved.

As we have already mentioned, upon the registration on the vocational educational programs, a person with special educational need and disabilities is given an opportunity to determine three educational programs interesting for him/her within one field of study. Upon trying a profession the ones who desire to study become engaged in the process of implementing the assignment under the indication of a teacher of the vocational education and fulfill the relevant instructions. After trying the professional programs determined preferentially, in order to make decision whether which program should an applicant study, are implemented the gathering of the persons – members of commission engaged into the process of the professional testing and discussing based on the forms of assessment. In order to make decision the feedback and choice of the applicant itself is important. And this means that the mentioned person, practically as a result of the single try he/she makes a final decision.

There are important several circumstances: 1. Single try by the person upon selecting a profession for establishing his/her capabilities could not be enough. The establishing of the capabilities of the person must be occurred from the “school desk” i.e. from the general educational institution. 2. A center for career planning should exist at any vocational educational institution, which will work with special attention with the persons with disabilities and special educational need. The career centers has to actively participate in the selection of the profession by these persons and they should be preliminary aware whether what opportunities exist on the labor market for those persons, who have special educational needs and where will be more adequate to employ them.

Accordingly, the commission should take decision on the basis of deep analysis of the skills and capabilities of the person, as well as there should be provided the recommendations of the career planning center which in its turn should be based on the requirements of the labor market.

And as of today we have the following task – the basis of enrollment of a person with special educational need at this or that program is hi/her and more his/her parent’s desire. And this factor reduces too much the chance of employment of the aforementioned persons. There are also frequent the cases when a person with special educational need suspends or completely annuls the student status due to the reason that it is difficult for them to study on the selected professional educational program.

Before the registration and during the registration there should be drawn more attention to the persons with special educational needs/disabilities from the point of measures to be taken towards professional orientation, in order to avoid for the persons with special educational needs/disabilities to select and offer the profession that is irrelevant for them. During the selection of the profession for these persons there should be even more considered without taking account the capabilities and pre-professional skills. During the professional consultations besides the interest of such persons there also should be considered whether how big is the chance to get employed after completing the selected professional program. The Ministry of Education and Science of Georgia deems the development of the professional orientation mechanism as one of the challenges, however at this stage for the purpose of development the professional orientation mechanism the distinctly formulated action plan, in our opinion, is under the process of elaboration.

The Ministry of Education and Science of Georgia in the report of 2015 on the inclusive professional education identifies the challenges existing in the system from the point of inclusive education by itself, which afterwards are expressed in the provisions:

- The documents regulating the professional education is not fully giving the opportunity to implement the learning process according to the individual needs of the student and to perform the teaching-learning process by the individual plans;

- The engagement of the students with special needs and disabilities on the professional educational programs requires the flexibility of the academic process from the side of the teachers and the use of the individual approaches.

- Due to the yet scarce experience in the inclusive professional education the teachers encounter the number of difficulties in the process of flexibly planning-implementation of the learning process.

It is worth to note the circumstance that the representative of this field from the Ministry of Education and Science are in the research process of the analysis of the completed work, identification of the problems, and their solving and they are permanently implementing this activity and are not satisfied with one-time made documents.

As for professional orientation, work on the analysis of professions and professions guide is started. In 2018, the 10 most demanded professions by the people with disabilities will be analyzed. This guide will help professional orientation of disabled applicants and maximize informed professional choice. At the same time, the work is carried out with vocational education specialists to enhance professional orientation procedures. However, we think that this can not solve all the problems we have identified.

## Conclusion

Progress achieved in Inclusive Vocation Education is impressive, nevertheless remaining challenge is the professional orientation/consultation to which there should be paid a special attention. And the aim lies in the following: the persons with disabilities and special needs should feel themselves as independent and full members of the society. And in order to reach the aforementioned goal without effective professional orientation system which in its turn should permanently react according to the quickly changeable requirements and approaches of the labor market is practically impossible.

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## The Concept of Civilization in the 20th Century Islamic Thought

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**Abstract:** *The scientific and social developments that the West has put forth in the 19th century mean that they are, in fact, the forerunners of the birth of a new civilization. On the basis of the new civilization that emerged with the Enlightenment, it can be said that there is a concept of science and philosophy taking the man and his mind to the center and placing the man himself in the center of the universe. The 19<sup>th</sup> century Western thought, which disregards religion and spirituality in understanding and describing humanity, nature, society and, in short, the whole universe, has led to accusations against Muslims on many religious and social issues. In fact, the target of these accusations is Islamic civilization. In this context, it is seen that the concept of "civilization" appears to be the foreground among the issues discussed by the thinkers of both sides. This study will examine the perception of the civilization of Islamic thought that began to revive in the 20th century with the pressure and drive of the western civilization after the period of long stagnation and decline. The position of Islamic civilization in the face of the perception of civilization of Muslim thinkers and Western civilization at that period will be put forth.*

### Introduction

During the history of humanity, civilizations emerged like living organisms and they lost their sovereignty after a period of reign [1] Islamic civilization has also taken its place on the history scene as a universal civilization. Like every civilization, Islamic civilization is the common property of mankind; there are important contributions to the emergence of Western civilization, as it is nourished by other civilizations in its development. In the 19th century, the intensification of the intervention of the West led to a different direction. The process of invasion and domination of the West was not only decisive in economic, political and military fields, but also brought many changes directly affecting the relation of Muslims with all aspects of life.[2] Western world has strengthened its superiority in every field against the Islamic world and the Ottoman Empire.[3]

The western civilization with its positive character has not only appeared as an alternative to Islamic civilization based on revelation but also an important rival threatening it at the same time.

In addition, a great many refutations were written on these subjects. Within the framework of the "clash of civilizations" between the Westerners and Muslims in the 19th and 20th centuries, Muslim thinkers have put efforts to reject the accusations of the Westerners, underscoring the supremacy of Islam and its civilization. They argued that the current situation of the Muslims did not reflect the real face of Islam and defended that the Islamic

civilization ruling the world for centuries after the ancient Greek civilization is superior to the others.

Muslim thinkers have tried to explain the individual and social structure of religion in a way that modern people can understand. The motivating factor for them is that some Orientalists and Western Muslim intellectuals criticize the concepts and institutions of Islam besides the belief system and to show Islam as outdated according to Western norms. Muslim thinkers have tried to give the aims and wisdom of Islam's judgments and regulations against the criticism directed towards Islam, which comes from the ideals of modern science and philosophy (Bulut, 2018).[4]

### The Concept of Civilization in the 20th Century Islamic Thought

In the 19th and 20th centuries, within the framework of the "clash of civilizations" between Westerners and Muslims, Muslim thinkers tried to put forward the superiority of Islam and its civilization and refused the accusations of the Westerners. However, against the developments of Western civilization in scientific and social fields, Muslims were inadequate in producing an alternative. This situation also caused the concept of 'civilization' to come to the forefront in the context of the responses to the accusations. So, it was emphasized that Muslims do not reflect the true face of religion in their current situation. Thus it was tried to put forward the superiority of Islamic civilization, which proved itself to be dominant over the others after the ancient Greek civilization.

After the Enlightenment and Industrial Revolution, the westernization of the Muslim countries, along with the progress made in the fields of science, technology, economics and military, the attacks and

missionary activities initiated by anti-Islamic anti-Muslims were a challenge for Muslims. According to Watt, threats and challenges to Islamic civilization can be called "*the third wave of Hellenism*".[5]

Against this challenge, the scientific and cultural situation of Muslim societies was not capable of responding to the threats, especially in the recent period, despite the existence of a small number of individual efforts that closely followed the scientific developments in the West. Muslim societies having adopted a solid madrasa dogmatism as a result of the weakening of the education system, were discouraged, worn out, and gone round in circles. The madrasas, which are strictly attached to the stereotype thoughts, was far from reproducing the classical knowledge and producing new ideas. [6] This negative situation put a block to follow the scientific and philosophical developments in the West.[7]

Muslims could not immediately notice the innovations beginning to appear in the West from the beginning of the new era and they could not correctly perceive and interpret it as they realized. When they realized the seriousness of the situation, there were already gaps that are difficult to fill. The intellectual and economic transformation of the West that began in the 17th century appeared in Muslim world almost in the 19<sup>th</sup> century.[8]

The intellectual transformation process in the West (Enlightenment) represents a modern understanding and orientation that emphasizes human reason against traditional religious understandings. This way of thinking has changed people, transforming life and social organization. Thus, instead of the idea of a God-centered universe, it created a sense of science and philosophy that centered on man and mind. [9]

This understanding of the structure, method and object of knowledge is generally called 'positivism'. Positivism has argued that human and world-related approaches should be 'human-centered' by refusing to be 'God-centered', seeing man as the sole proprietor of the universe. Because, according to positivists, God-centered understanding has prevented people from realizing themselves and the events around them throughout the history. Metaphysical systems or supernatural beliefs are unacceptable in determining the situation of people. The mind is the only way to deliver human intelligence. The science produced by the human mind realizes the progress of mankind. The mysteries remaining unsolved in the past are no more secret thanks to the successes of human mind. The belief systems formed by

unreasonable interpretations of religious teachings and clerics would naturally conflict with the progress of science. The active use of human mind and scientific method is sufficient to progress. Since human beings have the ability to analyze scientific / positivist literatures, science will take the place of religion in the age of progress, and all religions will cease to exist as historical categories. People enlightened by scientific development and knowledge will evolve into rational-secular regimes from political, social and economic orders. Thus, it has been emphasized that religion has been tried to be dismantled from all aspects for the sake of science, science belongs to mind and religion to the conscience. Religion has no right to intervene in the fields of mind. [10]

In this context, it has been suggested that with other religions, Islamic religion is an obstacle to progress and that Muslims have no successes to which they can praise, so they do not offer hope for the future. For this reason, Muslims have been suggested to get rid of the prang, which is Islam, and to throw away these heavy chains that have been hit on their minds. These allegations, put forward by Renan, have led to great reactions in the Islamic world. The following order was rejected by many thinkers such as Jamaledin Afghani Muhammad Abduh, Ziya Pasha, Ali Ferruh, Nâmık Kemâl, Atâullah Bâyezidof, Emîr Ali, Celâl Nuri, Rashid Riza, Mehmet Akif.

As in the positivist approach, there is little chance of success if the behavioral models of a society are attempted to be reformed on the basis of consciousness and moral justice. In fact, scientific knowledge cannot give moral norm despite its great prestige. Scientific knowledge can reveal that many traditional beliefs and practices are wrong, but cannot replace them with the new ones having the same functions. According to Erol Güngör, those who want to reform the behavioral models of society cannot provide any constructive solution, but even demolition. [11]

Positivism has produced a great influence in the Islamic world due to its emphasis on progress. Some Muslim intellectuals trying to follow the Western world and making contact with modern trends have tied the reason for their civilization backwardness as not to have a scientific mind. They believed that the adoption of methods and insights specific to positive sciences would be a suitable way to solve the problems they are trying to produce. So while positivism for European culture is one of the consequences of the philosophy of Enlightenment, it is considered a point of movement for

progress and development for Islamic geography. [12]

It can be said that the reason for the acceptance of positivism in the Islamic world, which is trying to eliminate all religions epistemologically and methodologically, is the inadequacy in practical concerns and background knowledge. [13] In fact, it seems that the theological, epistemic, ethical, or methodological background of positivism was not handled by an analytical analysis at that time.

On the other hand, the technological and cultural developments in the West have created a potential for benefiting from this culture in the eyes of Muslim societies, creating an attractive effect. One of the significant factors of the sprout of the Islam is that the society is ready for the innovations. [14] The reason of why the Muslims cannot protect their traditional structure is that they cannot develop the understanding of modernization and that the positivist science has undisputed superiority. Moreover, Islam having references that promote scientific productivity, facilitated the settlement of positivist understanding. [15]

The political, social and cultural influences on Muslim societies have caused an awakening and mobility in the Islamic world, which has long been in a scientific and intellectual stagnation. Within this awakening different ideas, methods and attitudes appeared in Muslim societies.

In the nineteenth and twentieth centuries, new quests have emerged to rehabilitate Islam as a whole and to rationalize and liberate Muslims from Western exploitation, imitation and superstition. In this context, the movement of Islamism emerged [16] with its political, intellectual and scientific studies, offerings and solutions. [17]

The foundation of this thought is based on Shah Veliyyullah Dihlawi (d. 1762), who tried to solve social problems by restoring the purity and dynamism of the first age of Islam in the face of stagnation, turmoil and deterioration reaching the summit with Mongol invasion. [18] In the period when Muslims in India had political, social, moral and religious confusion, Dihlawi tried to turn Islamic understanding into its origins. [19] He emphasized the necessity of renewing in all areas of social life, and has become a model for many actions after him. These movements have not only contributed to the awakening of the Islamic consciousness under the Indian subcontinent, but also the inspiration for the modernization needed. [20] In this process, Jamaledin Afghani (d. 1897) and Muhammad

Abduh (d. 1905) are considered as the pioneers of the modernism.

These movements characterize Muslims trying to find solutions to the problems they face against Western civilization and turning to new quests. They have put different religious understandings in political and socio-cultural areas. These thinkers saw the necessity of reforming the religious area. The main objective of this religious renewal movement among Muslims is the necessity of rooting out some ideas that are rooted among the people and distorting the nature of Islam. [21]

With the first quarter of the 20<sup>th</sup> century the intellectuals thought that there is something to be taken absolutely from the West and that this is a precondition for the continuation of the political and religious existence of the Turks. However, the issue of what to take from Western civilization was controversial. The answers to this question reveal the difference between Turkism, Islamism and Westernism. [22]

Abduh, as a founder of Islamic modernism, interpreted the Islamic tradition and teaching from the aspects of the reform movements and created a substantial intellectual movement in the 19th and 20th centuries. His work contributed to the enrichment of religious views and ideas. [23]

In resisting the colonialism of the West, opposing bid'ahs, advocating the defense of the freedom of mind reflects the rationalistic and modernist features of his movement. The main purpose of the movement was to revive religious consciousness. The motive that will guide this revival is the original spirit of Islam. According to him, Islam is compatible with the most advanced scientific ideas of the time. [24] His understanding of reform is not only to idealize glorious past, but also to reinterpret and organize Islamic ideals in a way that can respond to the political, social and scientific challenges of Western modern and secular life. [25]

Starting with Afghani and developed by such thinkers (Abduh, Moses Carullah (d. 1949), Farid Vecdi and Mohammad Iqbal (d. 1938)), the Modernist movement in the Muslim world has found an echo in Turkey. Three different reactions and different worlds of thought among Muslims (İşcan, 2001, p. 62) arose against the challenge of the West:

One of these reactions is the one refusing to enter into any relation with the western world. According to this understanding, Islam does not need the

Western philosophy. Because the philosophical principles have nothing to do with faith and Islam so this will not be of any benefit for Islam.[26] Şeyhülislâm Mustafa Sabri Efendi (d., 1954) can be seen as the representative of this understanding. These thinkers, did not welcome the Westernization in any way. The idea of Ottomanism for the Islamists who also stand on the idea of the Islamic Union seemed necessary for the life of the Ottoman Empire.” [27]

Another reaction, called modern Islam, has attempted to strengthen the religion by counter-discourse and to respond to this challenge by accepting the supremacy of the West in all respects. This approach aims to acquire the modern science and technique of the West without breaking away from the scientific tradition, preserving the Islamic identity, in an effort to synthesize Western civilization and Islamic civilization. [28] In any case, the "modernist Islamists" who turned their eyes to contemporary civilization were in search of establishing a harmony between the requirements of the century and Islamic belief. Working day and night, while emphasizing the West's improved technique, they emphasized not to lose spirituality or to fall into imitation.

This synthesizer approach, represented by Filibeli Ahmed Hilmi (d. 1914), Said Halim Pasha (d. 1921), Mehmed Akif Ersoy (d. 1936), Elmalılı Hamdi Yazır (d. 1942) and İzmirli İsmail Hakkı said that there was a need for innovation but that it had to be done on historic foundations. Otherwise, they argued that society would not be able to preserve its existence by moving away from its own. [29] The basic validation mechanism of this thinking is mind-revelation harmony and revelation-mind non-contradiction. This modernist movement has led to the idea of "modernist Turkish Islamism".

The last one is a movement with a secular character, which espouses and advocates Western thoughts under the influence of positivism. This understanding has argued that civilization should be Europeanized by taking everything that exists in this civilization. [30] It was the task to try to adapt it instead of imitating the West. [31]

The basic idea of the innovation movements which emerged in political and cultural centers such as India, Egypt and Istanbul in this period is to rebuild the Islamic thought according to the needs of the day by returning to the Qur'an and the Sunnah thus to solve the problems on the agenda. Military and political failures in this century have led scholars to

investigate the causes of the tension that started in the Islamic world, focusing on the negativities, especially the education system. [32]

It is important to note that there can be more than one civilization at the same time and one of them has become a dominant one and the others have an alternative way of life in the form of alternative lifestyles. Civilizations are thought to be occasionally having ups and downs rather than totally disappear. It has become a widespread belief that the Islamic civilization has inherited the possibility of re-rising after the limitations it faces.[33]

20<sup>th</sup> century Muslim thinkers adopted a reactionary approach to the Western civilization instead of proposing a new one. On the basis of this reflex was the financial, cultural and scientific conditions that the Muslims were in.

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## The Relationship Between Citizenship Education and Religious Education in Turkey

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**Abstract:** *The meaning of citizenship concept is variable depending on the type of governance and cultural diversity of the states. The understanding of citizenship makes an influence on the structure of the citizenship education, qualifications and attitudes in schools. The perception of the citizen and citizenship concepts determines contents and methods of education for citizenship. The changes in perception of the citizenship in recent years indicate a transition from the traditional minimal approach to citizenship education to the holistic approach. The religious education which is an important part of values and moral education in schools has an important place in the citizenship education which is dealt with in a more and more holistic manner centered the individual ability and tendencies of social thought. Training methods applied in this course and the values trying to teach the students are supporting the participation of students as effective citizens in the society they live.*

### Introduction

The religious education which is an important part of values and moral education in schools has an important place in the citizenship education which is dealt with in a more and more holistic manner centered the individual ability and tendencies of social thought. Training methods applied in this course and the values trying to teach the students are supporting the participation of students as effective citizens in the society they live.

The methods applied in religious education and the values aimed to be gained students in religious courses supports individuals to be an efficient citizen for their society. In this paper the relation between democratic citizenship and religious education is explained and evaluated in line with the religious courses in Turkey.

### 1. Citizenship education and religious teaching

With the changes in perception of citizenship in global world, fundamental developments have occurred in education paradigm. Education is no more considered only learning “knowing” or “doing” but also learning “living together in harmony”. As a result of Multicultural society, citizenship education is on the top agenda of governments, especially in Europe. [1]

Societies continue their existence in constant change in pluralistic structures. These different qualities influence social dynamics and the individuals acquire various behaviors through formal or informal education. These behaviors are of great importance both for adults in terms of communication and interaction with each other and as a role model for

children. These behaviours primarily take place in the family and then in the school and social environment. Learning that takes place in family and social environment is mostly informal and uncontrolled. However, the schools, as part of their social and political duties, raise adults that will suit the characteristics of the society in which the individual is living and The compulsory religious and moral education the citizens' expectations. in schools in Turkey, in a sense, has equal content with citizenship education. [2]

Political and social aims of education include preparing individuals to be effective citizen for the current political system and to socialize them by teaching basic social values. It should be the schools' responsibility to teach not only intellectual and economic aims but also to the social values. To realize this, all courses at schools especially religious courses that teach in such areas as moral values, religious development and reasoning life have important roles. For this reason, religious courses have always been associated with producing respectful, sensible, good citizens and this relation has been used many times as an argument to legitimize the religious courses. [3] The developments in globalization, democracy and human rights have broadened the dimensions of the moral-based relation between citizenship education and religious education. This relation is evaluated in such areas as human rights, participatory democracy, efficiency, toleration and social consciousness. [4] Reference books for schools published by European council in 2007 handle religion in detail as a cultural phenomenon in society and discuss how to teach religion to strengthen democratic citizenship. In addition, European council sees reli-

gious education as a subtitle of Democratic Citizenship Education Project.

The relationship between RE and citizenship education has been much debated from the perspectives of both content and methodology. Civic responsibility and moral development are two obvious areas of mutual interest. The Islamic approach to moral development discussed above suggests that classical Islam may make a contribution to the nature and methodology of citizenship education and pupils' moral development not only for Muslim students but as a methodology whose appeal reaches far beyond the Muslim school. [5]

## **2. Religious course programs and democratic citizenship education in coursebooks in Turkey**

Religious course programs in Turkey have always been associated with such inter-disciplines as human rights and citizenship, personalized education, psychological counseling and guidance and health culture. The concepts and values that are aimed to give students for every grade are specified. Especially remarkable parts of these concepts and values consist of ideas that define "good citizen" and "good citizen's characteristics". [6]

In today's Turkey, students should take 9-year compulsory religious course from 4<sup>th</sup> grade to 12<sup>th</sup>. As a result, these courses become a crucial tool to meet the expectations about citizenship education. When the teaching programs, course books and other teaching materials are examined, it is clearly seen that these expectations are met. These expectations are about religion and morals so it is an important field of study.

New teaching programs' basic aim is to make students know and use their rights, know their responsibilities and be sensitive about problems around them. The main aim of the program is to provide religion help to create global peace and tolerant society. It also helps students to learn their own traditions and customs as well as learning others' tradition and customs in a tolerant environment. [7]

When Turkish education system is examined in a holistic approach, it is seen that religious courses have important roles in giving students moral values that compose the concept of citizenship. In democratic societies, religion supports individuals to improve religious skills so that they can reflect these skills to social life. Because democratic citizenship is not only living as we wish but also

setting a harmony with social values and our desires. In this context, religious teaching and citizenship education have the leading role to form an inclusive "WE ALL" consciousness.[8]

In new teaching programs religious courses try to associate with student-centered education process and democratic values such as responsibility, cooperation, globalization, respect to ideas, and respect to human dignity in a holistic way. The approach that focuses on student-centered education, tolerance in teaching different religions and sects, freedom of religion and conscience, associating religious issues with daily life indicates that new teaching programs take democratic citizenship education into consideration.

When the teaching areas of Moral/Moral Values are examined, it is also clearly seen that there are subjects to show personal and social harms of such topics as alcohol use, gambling, finding out others' defects, having doubtful ideas about other people, by attaching these subjects to daily life.

Basic approaches of the programs are in line with the modern educational developments. At this point, to produce students that are in harmony with society and ready to embrace differences it is aimed that students do not take ready information but structure it in their minds. In this context it is essential to adopt approaches that will enable us to produce citizen profile that is respectful to human, ideas, freedom, moral and cultural heritage. Student-centered and inclusive programs aim to give students citizenship consciousness in an over-sectarian and interreligious way. [9]

## **Conclusion**

The purpose of the last two centuries' citizenship education in Turkey, continuing the existence of nation-states. Today, democratic citizenship education has become an agenda of the public and academic sphere with an increasing interest, thus giving more importance to the quality of citizenship education. Therefore, contemporary concepts such as multiculturalism, pluralism, diversity and tolerance have begun to take the place of traditional society. In this context, the relationship between religious education and citizenship education should be examined in all dimensions. Because citizenship education in religious education programs in Turkey as a direct or indirect interests, there are many considerations.

The qualities of the ideal citizen in the Turkish education program are manifested in three dimensions. One is related to ethnicity, the other is religious faith, and the third one is related to political attitude. Turkish identity stands out as ethnic origin. Turkishness in this sense represents citizenship, not an ethnic origin. Therefore, ethnic differences are not considered in the program at all. As a religious belief, Islam stands out with its root values.

The values that are foreseen for an ideal citizen in programs have undergone into a change that symbolizes a shift from nation state to democratic state. New doors have been opening for democratic citizenship day by day.

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## Sectarian Relations Between the Ottoman Empire and Iran During the Nader Shah Period

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**Abstract:** *Nader Shah became the new ruler of Iran on March 16, 1736. He said to those who wanted to make him a king in the Mugan Desert (Mugan Plain): "You will accept the caliphate of the first four caliphs." Then he made an offer to them and said: "The Shiite belief put into practice with Shah Ismail has created uneasiness among Muslims; you will adopt the Ja'far al-Sadiq sect instead. "According to him, the Ja'far al-Sadiq sect is a sect of the Sunnites. This proposal of Nader Shah, whether forced or not, was accepted by those present and recorded into a document. He then issued a declaration to comply with the decisions taken in the Mugan. He declared to them that they have accepted the first four caliphs, and then say to them: "Ja'afarism and Hanafism are similar denominations. Avoid behaviors that will cause a problem between the Sunnis and the Shiites. Do not insult the first three caliphs, and respect their names. Nader Shah has sent emirates to the clergy in the country for the implementation of these conditions. Nader Shah had put an emphasis in order to prevent the sectarian problem in his country. He wanted the Shiite-Sunni conflict, which has become chronic, to be ended. As a result, he sent a delegation to the Ottoman State. One of the four conditions he proposed in his proposal was as follows: "The Ja'fari Sect will be recognized by the Ottoman State. A place of worship will be allocated to Ja'farites in Mecca." However, the Ottoman government did not accept this proposal. Nader Shah's efforts softened the problems between the Ottomans and Iran, even though they could not prevent sectarian discussions. Nader Shah, unlike the Safavid rulers, earned great respect because of his obedience to the treaties and his promises. His pursuit of reconciliation was an important attempt to remove the discomfort between the two communities.*

### Introduction

Nader Shah was the new ruler of Iran on March 16, 1736. He said to those who want to make him a king in Mugan Desert (Mugan Plain): "You will accept the caliphate of the first four caliphs." Then he made an offer to them and said: "The Shiite belief which put into practice with Shah Ismail has created uneasiness among Muslims; you will adopt the Ja'far al-Sadiq sect instead." According to him, the Ja'far al-Sadiq sect is a sect of the Sunnite.

Nader Shah started with questioning the authority of the Shiite scholars and intimidating them. He gathered them in Qazvin and asked them where they had spent their incomes of foundations. They said that they allocated these funds to their own needs, the expenses of the mosques, and the masters. Then, he spoke to them: "God is not pleased with what you do. Because of this, the country has been struggling with catastrophes for the past 50 years. Soldiers came and rescued the country from this bad run. Henceforth, the foundation income belongs to them." Clerics (ulama) were very uncomfortable with this practice of cutting off its own life-giving vessels. But they did not have the courage to confront him. [1]

This proposal of Nader Shah, whether forced or not, has been accepted by those present and written in a document. He then issued a declaration to comply with the decisions taken at Mugan. They have declared to them that they have accepted the first four caliphs, and then they say to them: "Ja'farism and Hanafism are similar sects; Avoid behaviors that will cause problem between the Sunnites and the Shiites. Do not insult the first three caliphs and respect their names. Nader Shah has sent emirates to the clergy (ulama) in the country for the implementation of these conditions. In addition to, he has declared that "who do not obey these conditions will be punished."

### The Approval of Ja'farite As The Fifth Right Sect

Nader Shah had put such a insistence in order to prevent the sectarian problem in his country. He wanted the Shiite-Sunni conflict to be removed from the problem between the two communities, which had become a gangrene. As a result, he sent a delegation to the Ottoman State to accept the Ottomans peace offer, which was in a state of war with Austria and Russia. His proposal had the following conditions:

1-Iran will be allowed to send a pilgrimage order every year through Syria.

2- The Ja'fari denomination from the Ahl-i Sunnah will be recognized by the Ottoman government. A rukn (place of worship) will be allocated in Makkah.

3- In Istanbul and Isfahan there will be mutual ambassadors.

4- The prisoners will be released mutually.[2]

Eight separate meetings were held between the two countries' delegations on this issue. Negotiations, which began in August 1736, were completed by a contract signed on September 24, 1736. The Ottoman government accepted all conditions except the second. In this regard, The Government declared that they would consult the ulama (clerical) on the recognition of Ja'farite as the fifth sect. Ultimately, this proposal was rejected by the Ottoman government on the grounds that it carried some judicial (shari) problems. Moreover, the Iranian rulers were asked to choose the Najaf road for pilgrim's orders instead of Syria, and not to use the title of "amir pilgrimage (hajj)" if they wanted to go to Syria. Their request about a special place of worship in the Kaaba has been rejected. However, it was decided to send two Ottoman scholars to Iran to negotiate with Iranian clerics about these issues.[3]

The issue of the approval of Ja'farite as the fifth right sect, which the Nader Shah desired so much, was thus rejected by the Ottoman rulers. However, his insistence on this subject continued increasingly. In the letters he wrote, he even said that he would do battle on this matter. The Ottoman administrators stated that their wishes were not possible in terms of the Ahl-i Sunnah's belief. They issued a judgment(fatwa) that if Iranians insist on this issue, they will fight with them.[4]

Nader Shah was victorious in Afghanistan, India, and Turkistan expeditions in 1740, just after the negotiations. However, despite his insistence the situation regarding the recognition of Ja'farite was not changed. Therefore, the hostility between the two countries has increased rather than decreased. After a while, Nader Shah attacked on Kars and Baghdad, and tried to do different oppression tests, but the situation not changed.[5] Since his proposals were not accepted, he decided to address the matter unilaterally. He decided to bring Muslim scholars from different regions together in Najaf in late 1743 and discuss the matter with them. He wanted to give messages to both sides in a way that was appropriate for the intended purpose. He

visited important places of spiritual value, for both Sunnis and Shiites.

Before starting the meeting in Najaf, Nader Shah visited Musa Kazim's tomb in Kâzimeyn on October 2, 1743, and then visited the tomb of Imam Azam Abu Hanife. Then, he stopped at Kerbalâ and passed from there to Najaf. In Najaf, he covered Al-i's tomb with gold. On December 12, 1743 negotiations began.[6]

Participants were a Sunni Shafi'i judge (mufti) of Ardalan, about seventy Iranian Shi'ite Scholars, seven Hanefite scholars from Bukhara, seven Hanefite scholars from Afghanistan. The president of the meeting was the historian Abdullah b. Hussain al-Suwaidi, who was appointed by Ahmed Pasha, the governor of Baghdad.

Scholars from Afghanistan, Belh, Bukhara, Turan, Najaf, Hille, and Baghdad invited by Nader Shah to gather in Najaf reached a certain agreement as a result of the discussions they did to resolve conflicts between Muslims. Thereupon, Nader Shah published a long edict with the approval of all the participating parties. Apart from the Shi'ites, the Sunni scholars who attended the meeting constituted the most remarkable aspect of this meeting as they accepted Ja'farite as a true sect.

It is clearly stated in the historical edict published at the end of the Najaf Conference organized by the Nader Shah that insulting the Prophet's friends and the Rafidism is abandoned and that it is Shah Ismail who led the cause of corruption among Muslims. According to Nader Shah, Muslims walked in a solid way in unity and made the same worship until Shah Ismail emerged. Besides, in this edict, it was demanded that the five different issues agreed upon at the end of the conference be resolved immediately. Allāme-i ulama Molla Ali Akbar and other higher religious scholars prepared a common text for this and declared that they removed all the suspects. Nader Shah also stated that he was determined to report these decisions to the Ottoman Sultan and to conclude them as he desired.[7]

Nader Shah, through this policy he tried to follow, received great support from Sunni citizens in Iran and other Sunni groups such as Uzbek and Turkmen who formed the army. However, Shiite clerics (ulama), who gradually became influential in the country administration, was very uncomfortable in this situation. They could not express their thoughts, because they had no power opposite to him. In spite of the fact that he had already returned with plenty of fortune from the expedition of India,



he had confiscated most of the ulama's foundations and land. In this way, they intimidated the scholars who supported the Safawids and made them lose power. It is expressed that the Shiite clerics who disturbed by Nadir Shah policies influenced his murder.[8]

We tried to summarize the efforts of the Nader Shah to reconcile the sects which was trying to practice. It has always been debated how realistic these policies are. However, we can say that Nader Shah is, in fact, a well-intentioned to "make Ja'farite the fifth Sunni sect and to combine Shiites with Sunnis". In fact, he was often accused of being contrary to Shi'i ideas.[9] He organized the Najaf Meeting with the intent of compromising at all costs.[10] This is also evidenced by his inconsistency with standard Shiism. However, dealing with matters only in terms of fikh (Islamic jurisprudence) and ignoring the belief and the historical dimension underlying the problem causes such formations to fail.

These efforts of Nader Shah were not a proposal that both groups needed but a unilateral decision taken politically.[11] It is a bit difficult to achieve permanent results with such a non-philosophical technique. According to the records of Abdullah al-Suwaidi, concerning the decisions taken, we have confronted with a Shi'ite scholar profil who abandoned all their different faiths. However, such a situation was not the case. Knowledge about the debate between Bahri'l-ulûm Hadi Hodja, leader of the Transoxiana delegation and Mollabashi Ali Ekber, Iranian chief mufti (judge), reveals the entire shallowness of the event more clearly.

Mollabashi, the chief representative of the Shiite wing, put forward such assertions in his expressions of Sunni jurists:

1 - Shi'i clerics never speak badly about the Prophet's friends.

2- Shi'i clerics abandoned their views about some of Prophet's friends that they were unbelievers and cruel.

3-They also abandoned the idea that Ali was superior to Abubakr.

4-All Shiites in their own period adopted the Asharite belief. Shiites are not opposed to the "ijma". Shiites rejected "mut'a" (temporary marriage).[12]

When we look at the expressions of Mollabashi Ali Ekber, it is quite natural that different opinions are formed in our minds. For the Shiites to renounce their thoughts in the way that "Ali is superior to Abu Bakr" means rejecting basic Shiite claims. In

this case, there is no Shiism anyway. Therefore, it should be more logical to think that Mollabashi's declaration of such ideas is a necessity arising from the determination of Nader Shah. The fact that he thinks that all the Shiites are like him does not seem very relevant to the truth. These expressions must be considered as ideas expressed in order to keep up with the moderate relations.

Another aspect that should be discussed is that Shah Ismail is to be responsible for all the claims of Shia. In fact, it is known that these allegations were not originally introduced by Shah Ismail, but were ideas that came together with the formation of Shia centuries ago. The signing of Shah Ismail must be a peaceful political decision that means rejecting the ruthless Shi'ite practices against the Sunni.

Unlike the Safavid rulers, Nader Shah had earned great respect on all sides because he respected the agreements and the promises he gave.[13] As for Ottoman Sultan Mahmut I, who saw himself as the caliph of the Muslims, it is not an expected attitude in terms of politics that he responded positively to the proposals of Nader Shah. If he did, his charisma would be lost in the face of Nader Shah, which provided unity and integrity among Muslims.[14] However, the Ottoman sultans and viziers at that time did despise the ambassadors of the European states. However, they showed great interest in the deputies of the Turkish rulers in Iran, which shows that the efforts of Nader Shah are not completely unrequited in the Ottoman Empire.[15]

## Conclusion

For all these reasons we must state: the effort of the Nader Shah to impose Ja'farites as the fifth Sunni sect with some positive consequences did not make much contribution to sectarian peace. Both the Shiite Iranians and the Sunni Ottomans were not ready for such a situation mentally. The best result they could reach in the direction of their religious and sectarian perceptions was not to understand each other, but to avoid insults against each other. Such a possibility did not arise because the search for reconciliation did not come from the public or the clerics who guided them.[16]

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## Terrorism and human trafficking in North America

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**Abstract:** *The probability of an association between human traffickers and international terrorists has been a concern for US authorities for more than half a century. The argument of the vulnerability to the entry of terrorists into the country has been used to justify the increase in the budget allocated to protect the southwestern border of the United States. This paper, based in interviews with 141 human smugglers from Mexico, examines if there are links between Mexican human traffickers and international terrorists and what is the nature of these ties. Data collected in this research indicates that it is unlikely that alliances between Mexican human smugglers and foreign terrorist groups could be established so that members of terrorist organizations could enter surreptitiously into the United States. The control exercised by the drug cartels over much of the Mexican geography constitutes an obstacle and not an opportunity for the passage of international terrorists.*

### Introduction

The expansion of transnational organized crime has been described as a major threat to national security as its activities extend from human trafficking to terrorism. In a book published in 1997 U.S. Senator John Kerry pointed out that after the end of the Cold War and the fall of the Soviet Union the world was facing a monolithic global threat of more serious, uncertain and challenging nature: transnational organized crime (Kerry [18, p. 20]).

In order to combat this threat, on November 15<sup>th</sup> 2000 was signed in Palermo the United Nations Convention against transnational organized crime and the Protocols against the smuggling of migrants and trafficking in persons, in order to increase communication and cooperation between national authorities. The preamble of the Convention against organized crime emphasizes the presence of terrorists and human smugglers, who take advantage of open borders, free trade and technology, to harm society. Also, the preamble to the Protocol against the smuggling of migrants expressed deep concern about the involvement of organized crime in human smuggling and other criminal activities.

Human trafficking and terrorism are seen as two related activities because the first funds the last and facilitates the clandestine transportation of terrorists (Perrin [25, p. 142]). Accordingly, it is believed that both activities should be combated with the same instruments. This idea is anchored in the following axiom: transnational criminal organizations are becoming more powerful and diversified, and cover a wide range of activities that expand from human trafficking to terrorism. However, the empirical evidence supporting this thesis is weak and tenuous at best, is based on isolated intelligence accounts. For example, two months before the September

11th attacks, a CIA report warned of a possible link between human smugglers and terrorists groups (9/11 Commission [24, p. 61]). Likewise, investigations of the Madrid attacks on March 11<sup>th</sup> 2004, revealed that the affiliated group of Al Qaeda linked to these attacks had operated a network of human trafficking and falsification of documents (Kyle and Koslowsky [19, p. 12]; Perrin [25, p. 143]). However, empirical studies on human smuggling tend to emphasize that this activity is not terrorism-related (Zhang [36]; Spener [32]; Sanchez [28]).

The hypothesis of the relationship between human trafficking and terrorism has led to a fortification and militarization of the borders. The number of agents installed on the US southwestern border to prevent the entry of terrorists and weapons of mass destruction has increased dramatically and hundreds of kilometers of walls have been built. This article, based on qualitative interviews with 141 human smugglers aims to examine the links between terrorism and human trafficking in North America. We first examine the literature on the relationship between terrorism and human trafficking, and then go on to describe the methodology and scrutinize interviewees opinions, ideas and knowledge about the smuggling of foreign terrorists towards the US southwestern border.

### 1. Human trafficking and terrorism: The empirical evidence.

The possible association between human trafficking and terrorism has been a concern for US authorities from the mid-1950s (Spener [32, p. 104]; Massey [22]; Adamson [2, p. 195]; Correa Cabrera [5, p. 209]). Accordingly, the apprehension of irregular immigrants trying to entry illegally into the United

States is seen as a necessary strategy for defending national security (Hiemstra [7, p. 304]).

Migrant smugglers and human traffickers are seen as a risk to US national security by its possible ties to terrorist organizations (House Committee on Homeland Security [8, p. 28]; General Accounting Office [6]; UNODC [34, p. 10]; Kerry [18, p. 20]). Connections of human smugglers to fraudulent document vendors and corrupt government officials is seen as a major risk to aid terrorist travel (9/11 Commission [24, p. 61]). Immigration appears linked to terrorism not because labor migrants are terrorist, but because the major terrorist attacks in North America and Western Europe have been perpetrated by migrants (Leiken [21, p. 6]; Schoenholtz [29, p. 173]). Likewise, human trafficking is referred to as a potential source of funding for terrorist organizations (Van liempt Tuesday and Sersli [35, p. 1032]; Kerry [18, p. 144]).

The hypothesis of the links between human trafficking and terrorism emphasizes that human trafficking and migrant smuggling are operated by transnational criminal organizations that generate economies of scale integrating different illicit activities (Sheinis [30, p. 75]; Cornell [4, p. 48]). By contrast, the hypothesis of the lack of connections between human trafficking and terrorism points out that human smuggling is not operated by organized crime (Spener [32 & 33]; Sanchez [28]; Izcarra Palacios [12]). Human smugglers and terrorist are diametrically different social entities with opposed and conflicting agendas; therefore, it is unlikely that they could collaborate (Zhang [36, pp. 128-135]). Human smugglers seek a profit quietly without drawing attention from the public or authorities; on the contrary, terrorist organizations pursue political objectives and seek to publicize their acts, and their targets are chosen to draw the most attention (Andreas [3, p. 786]). Therefore, as Zhang [36, p. 134] has pointed out ideological and operational differences determines that any connection between them “is likely to be coincidental rather than deliberate, and the extent of the collusion is likely to be limited”.

Academic work based on secondary sources (official reports and unpublished police reports) and conversations with experts from the departments of Justice and police, conclude that terrorist groups are involved in migrant smuggling and human trafficking (Kaizen and Nonneman [17, p. 131]; Cornell [4, p. 48]; Shelley [31, p. 70]; Sheinis [30, p. 73]; Perrin [25, p. 142]). However, intelligence community reports point at “possible ties” not at demonstrated connections between human smuggling

and terrorism. As it was pointed out by the 9/11 Commission [24, p. 61]: “In July 2001, the CIA warned of a possible link between human smugglers and terrorist groups, including Hamas, Hezbollah, and Egyptian Islamic Jihad”. The existence of reports pointing to the participation of the Mara Salvatrucha (MS-13) in human trafficking activities and the association of people in this organization with members of Al-Qaeda (Cornell [4, p. 50]), or indicating that Hezbollah and the Mexican drug cartels have had contacts to exchange information (Sheinis [30, p. 72]; Shelley [31, p. 72]), or the existence of networks which transport migrants from the Middle East (Miró and Curtis [23, p. 28]; 9/11 Commission [24, p. 67]; Zhang [36, p. 130]) emphasize the hypothesis of the connection between terrorism and human trafficking and migrant smuggling. However, as Zhang [36, p. 134] has pointed out the nexus between human smuggling and terrorism “is at best a tenuous one”. There is not solid empirical evidence that associates human smuggling with terrorism (Legrain [20, p. 29]; Rosenblum et al. [27, p. 26]; Izcarra Palacios [14]).

Studies which do not derive their conclusions from official documents, but from primary sources (i.e.: interviews with human smugglers), describe intelligence community reports as speculative (Spener [33, p. 162]; Izcarra Palacios [14]; Zhang, 2007: 132). Moreover, these studies present human smugglers as ordinary people who make a living by helping migrants to reach the United States (Zhang [36]; Spener [32]; Sanchez [28]; Izcarra Palacios [11, 12 & 15]).

## 2. Methodology

A qualitative methodology was used given the nature of the study. Data were collected by means of in-depth interview with an open-ended questionnaire. Contact with interviewees was made via social networks and snowballing in different Mexican states: Tamaulipas, Nuevo León, San Luis Potosí, Veracruz, Mexico City, the State of Mexico, and Chiapas.

Fieldwork was conducted between 2011 and 2017, and 141 human smugglers ranging from 21 to 48 years were interviewed. All had considerable experience in the business of human smuggling, ranging from 4 to 21 years. Respondents had 0–17 years of schooling, and the age at which they started working as human smugglers ranged from 15 to 45 years old (see table 1).

Table 1: Characteristics of the interviewees

	Average	Min.	Max.

Age	36.9	21	48
Number of years involved in human smuggling	9.6	4	21
Years of schooling	5.6	0	17
Age when started working as human smugglers	27.4	15	45
Source: Compiled by the authors from data recorded in the interviews.			

The cases discussed represent principally the south-east of the US. Texas, California, Florida, Louisiana, Virginia, North Carolina, South Carolina and Arizona were the states where most Mexican human smugglers operated (see Table 2).

Table 2: States in the US where Mexican human smugglers operated		
	n	%
Texas	87	61.7
California	14	9.9
Florida	14	9.9
Louisiana	7	5.0
Virginia	7	5.0
North Carolina	6	4.3
South Carolina	5	3.5
Arizona	4	2.8
Oklahoma	4	2.8
Colorado	3	2.1
New Mexico	3	2.1
Missouri	2	1.4
Oregon	2	1.4
Georgia	1	0.7
Idaho	1	0.7
Iowa	1	0.7
Kansas	1	0.7
New Orleans	1	0.7
New York	1	0.7
Canada	3	2.1
Total	141	100.0
Source: Compiled by the authors from data recorded in the interviews.		
Percentages sum up more than 100 because some smugglers transported migrants to several states		

The methodological rigor of this study is anchored in the following elements: (1) the recording and literal transcription of all qualitative material, (2) the use of a guide that included a few minimum information requirements, (3) the selection of informants willing to talk extensively about their experiences, (4) the continuation of data gathering to the point of saturation, (5) prolonged residence in the field, (6) guaranteed anonymity regarding the

information collected, and (7) the selection of a large number of locations for fieldwork.

### 3. Respondents' narratives whether they have smuggled or seen terrorists being smuggled.

After the September 11 attacks the crime of trafficking in persons was added to the list of crimes associated with national security. The correlation between human trafficking and terrorism was made more than merely theoretical in the National Security Presidential Directive 22, signed on December 16, 2002 (Rizer and Glaser [26, p. 70]). In 2004, under the Intelligence Reform and Terrorism Prevention Act, was established the Human Smuggling and Trafficking Center in order to study the links between human trafficking and terrorism (General Accounting Office [6, p. 12]; Aboso [1, p. 46]). Accordingly, the Trafficking Victims Protection Reauthorization Act of 2005 appointed to an interagency task force to monitor and combat trafficking with a mandate to implement research initiatives to analyze "the interrelationship between trafficking in persons and terrorism, including the use of profits from trafficking in persons to finance terrorism" (Public Law 109-164, Sec. 104 (a)(4)). However, there are no data that support the thesis that through the border between Mexico and the United States have been introduced weapons of mass destruction, or have entered terrorists (Rosenblum et al., [27, p. 26]).

Human smugglers interviewed had been involved in the business of human smuggling for a decade (see table 1). However, they had a lack of knowledge about the smuggling of terrorists across the US southwestern border. None of the interviewees pointed out that human smuggling networks transported terrorists. First, none of them said to have helped terrorists enter the US. Secondly, none of them had witnessed the crossing of terrorists to the US. Finally, none of them had heard about human trafficking networks transporting terrorists to the US (see table 3).

Table 3.: Participation of the interviewees in the irregular crossing of terrorists across the US southwestern border.		
	Yes	No
The interviewee said that he helped terrorists crossing the US southwestern border	0	141
The interviewee said that he had witnessed terrorists crossing the US southwestern border	0	141
The interviewee said that he had heard	0	140



some rumors about human smuggling networks crossing terrorists through the US southwestern border		
Source: Compiled by the authors from data recorded in the interviews.		

#### 4. Interviewees' views about terrorist crossings through the US southwestern border.

Interviewees' responses to the question if they thought feasible that across the US southwestern border terrorists could be smuggled, emphasized their lack of knowledge about this topic. Respondents used three lines of argumentation to describe the possible relationship between human smuggling and terrorism:

I. / 40 % of the interviewees did not believe that terrorists were smuggled to the United States through the Mexican border because they had never seen or heard of human smugglers carrying terrorists.

II. / Half of the interviewees thought that terrorists could enter the United States through the southwestern border because it was very porous.

III. / 10 % of the interviewees claimed that terrorists could enter the United States by making use of channels and strategies different from those used by labor migrants (see table 4).

Table 4: Arguments expressed by respondents about the links between terrorism and human smuggling.			
Argument.		n	%
They think that terrorists are not smuggled in the US.	They had never witnessed the crossing of terrorists.	32	22.7
	They didn't have an extensive knowledge of the border.	16	11.3
	US Government blames Mexico for all of their problems	3	2.1
	Terrorists can't cross through territories controlled by the drug cartels.	5	3.5
	Simple networks	39	27.6
	Complex networks	17	12.1
	Total	56	39.7
They believe that terrorists could be	If illegal immigrants can pass also can terrorists.	50	35.5
	If weapons and drugs are smuggled also terrorists can be smuggled.	7	5.0

smuggled in the US.	Human smugglers are unaware of the intentions of their clients.	11	7.8
	Terrorists can enter the US because of corruption.	3	2.1
	Simple networks	37	26.3
	Complex networks	34	24.1
	Total	71	50.4
They say that terrorists enter the US through other channels	Terrorists cross by international airports.	11	7.8
	Terrorists pass through the border customs.	3	2.1
	Simple networks	4	2.8
	Complex networks	10	7.1
	Total	14	9.9
Source: Compiled by the authors from data recorded in the interviews.			

#### 4.1. Arguments against the thesis of the smuggling of terrorists across the border between Mexico and the United States.

Near 40 % of respondents thought that terrorists could not enter the United States through the US southwestern border (see table 4). 22.7 % of the respondents did not believe that terrorists could enter the United States across the southwestern border because during his long experience as human smugglers they had never witnessed the passage or detention of terrorists. Some pointed out that the places where the terrorists came were located far away from Mexico. They thought that was unlikely that people from Middle East, who did not speak Spanish, could contact with human smugglers in Mexico to enter US territory. Others indicated that migrants smuggled to the United States were pacific people in search for better economic opportunities not terrorist looking to cause harm.

On the other hand, 11.3 % of the interviewees did not think that terrorists were smuggled to the United States, but claimed that they could not offer a reliable response because his knowledge of the border was limited. Human smuggling networks can be grouped into two types: simple and complex. Those networks composed of one cell led by a human smuggler are defined as simple, while those consisting of one or more lines, with two or more cells per line, are defined as complex. In the simplest networks, the human smuggler is the leader; in the more complex ones, the leader is the patron who manages the network, and the migrant smugglers are salaried workers (Izcara Palacios &

Yamamoto [16]; Izcara Palacios [11 & 12]). Most interviewees pointing out that their knowledge of the border was limited, argued that they were involved in simple networks that helped his countermen to reach the north, and were not professional smugglers working full time in this activity. They crossed the border one or a very few times per year (Izcara Palacios [9, p. 48]). Therefore, they emphasized that terrorist would never request their services.

The involvement of Mexican drug cartels in human smuggling and the links between drug trafficking and terrorism, has been used as an argument to associate human smuggling and terrorism (Kaizen and Nonneman [17]; Cornell [4]; Shelley [31]; Sheinis [30]; Perrin [25]). On the contrary, an argument that was repeated in some of the interviews was that by the territories controlled by drug cartels it was not possible to smuggle terrorists to the United States because these organizations would never allow the passage of dangerous people from overseas (Izcara Palacios [13]). According to respondents, the presence of terrorists in the territories controlled by Mexican drug cartels would be seen for the latter not as an opportunity to obtain mutual benefits; but as a form of unwanted competition. As a 35 years old human smuggler from Guanajuato (Mexico) interviewed in July 2016 pointed out: "there is no way (that terrorists could cross through territories controlled by the drug cartels); delinquents control everything, and if they found Arabs I think that in the first place they would be kidnapped"; or as it was emphasized by a 33 years old human smuggler from Nuevo Leon (Mexico) interviewed in March 2015: "I think that it is not possible (that terrorist enter the US crossing through Mexico) .... Here there is a lot of violence, everything is controlled by the delinquents, and people who is not from Mexico or Central America they cannot pass".

Three interviewees said that the argument of the U.S. Government linking human smuggling with terrorism was not credible (see table 4). For them this argument was unfounded and only reflected a pejorative view of Mexico from the U.S. Government.

Views of human smugglers operating simple networks differed from those operating complex networks. The former were more likely to think that through Mexico could not cross terrorists.

#### **4.2. Arguments supporting the thesis pointing to the smuggling of terrorists across the border between Mexico and the United States.**

Government reports (9/11 Commission [24, p. 61]; House Committee on Homeland Security [8, p. 28]) and academic studies (Sheinis [30, p. 73]; Shelley [31, p. 3]) point out that human smuggling should be considered a serious threat to the United States, since Mexican human smugglers and terrorists could collude. Human smuggling is a profit-driven industry. Therefore, human smugglers would have no problem in transporting terrorists for a profit.

Half of the respondents were unaware of the passage of terrorists to the United States through the border with Mexico; however, they presented arguments similar to those expressed by many in the intelligence community as well as in the news media (Zhang [36, p. 132]), to indicate that it was possible that terrorist could arrive to US territory using the networks of illicit service providers.

More than a third of the interviewees expressed the following argument: if undocumented migrants from Mexico and Central America could be smuggled into the United States without being detained by immigration authorities, the terrorists could also cross the border without being apprehended (see table 4). 5 % of respondents pointed out that if through the border crossed regularly weapons and drugs, also terrorists could cross. Some interviewees cited the failed operation "fast and furious" that was implemented from 2009 to 2011 by the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives allowing illegal gun sales to Mexican drug cartels in order to track the sellers and purchasers, but it was not reported to the Congress of the United States, and they insinuated that US authorities could do the same with the terrorists; interviewees argued that the US Government could allow terrorist enter the United States in order to track them (see table 4).

7.8 % of the interviewees pointed out that the border was crossed by people from different nationalities. Human smuggling networks, especially those more complex, do not know the people who is being smuggled. As a result, human smugglers could be helping terrorists without having knowledge of that. As can be seen from table 5, in the span of seven years, while the study was conducted, it was possible to appreciate that simple networks were declining while complex networks were growing. If we consider that smugglers in simple networks know closely the people they

transport, while smugglers in complex networks do not know the background of the people smuggled, we can conclude that the probability of Mexican human smuggling networks carrying terrorists without having knowledge of this phenomenon could have increased in the last years.

<b>Table 5: Classification of human smuggling networks studied.</b>					
Networks		2011	2012	2013	2014
Simple	n	23	36	8	7
	%	82.1	78.3	22.2	50.0
Complex	n	5	10	28	7
	%	17.9	21.7	77.8	50.0
Total	n	28	46	36	14
	%	19.9	32.6	25.6	9.9
Networks		2015	2016	2017	Total
Simple	n	3	3	0	80
	%	33.3	75.0	0.0	56.7
Complex	n	6	1	4	61
	%	66.6	25.0	100.0	43.3
Total	n	9	4	4	141
	%	6.4	2.8	2.8	100.0
Source: Compiled by the authors from data recorded in the interviews.					

Finally, three respondents (2.1 %) pointed out that corruption was the main weakness of US border security (Izcara Palacios [10]). Therefore, terrorists could take advantage of this situation to enter the United States.

Although half of respondents thought that it could be possible for terrorist to cross the border between Mexico and the United States using existing human smuggling networks, none offered substantial evidence to sustain this argument. The answers of the interviewees indicated that ties of mutual aid or contacts between Mexican human smuggling organizations and foreign terrorist groups had not been formed.

#### **4.3. The thesis of the different routes followed by labor migrants and terrorists.**

Near 10 % of the respondents thought it was possible for terrorists to enter the United States; but, interviewees did not think that terrorists used the same channels employed by labor migrants (see table 4). According to this argument, labor migrants and terrorists are different groups using different mechanisms and channels to enter the United States. The former, as they are poor, they are willing to suffer while they are being transported. On the contrary, in opinion of Mexican human smugglers, the latter have abundant economic

resources and are not able to suffer while crossing to US territory; therefore, they will use comfortable means of transportation. 7.8 % of respondents indicated that terrorists were travelling by plane and entered the United States through its international airports; while 2.1 % pointed out that terrorist could enter the US by land through the border customs by using fraudulent travel or identity documents.

#### **Conclusion**

The continuous growth in the budget allocated to protect the southwestern border of the United States has been justified through the argument of their vulnerability to the entry of terrorists into the country. In the last two decades the number of border patrol agents has increased six-fold and has been recruited military personnel to impede both the entry of terrorists and weapons of mass destruction. However, while terrorists or weapons of mass destruction have not been apprehended, each year hundreds of thousands of labor migrants who escape from poverty and look for better economic opportunities in the north, have been detained while trying to cross the border.

Data collected in this research indicates that it is unlikely that alliances between Mexican traffickers and foreign terrorist groups could be established, so that members of terrorist organizations could enter the United States. The control exercised by the drug cartels over much of the Mexican geography is more an obstacle than an opportunity for the passage of terrorists. Irregular migrants in transit through Mexico constitutes a copious source of revenue for the drug cartels. The former are allowed to pass through the territories occupied by criminal organizations upon the payment of a fee. These territories are constantly in dispute, so that migrants transiting by them are deeply scrutinized. People who could become a threat to the drug cartels hegemony (i.e.: those who do not fit the profile of non-violent labor migrants) are not allowed to transit for these territories. Therefore, terrorists would be at a serious risk if they try to reach the United States through territories dominated by Mexican drug cartels.

Interviewees did not give any reliable information about the links between human trafficking and terrorism. However, human smugglers involved in simple networks were more inclined to express arguments denying the existence of links between terrorism and human smuggling. By contrast, human smugglers involved in complex networks were more inclined to think that terrorist could

enter the United States using the same channels that labor migrants use (see annex).

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#### Annex: Information about the interviewees.

Case	Age	Years of experience as human smuggler	Type of network	Argument
1	39	4	Simple	1.3
2	38	11	Simple	1.3
3	45	21	Simple	1.1
4	35	6	Simple	1.2
5	39	10	Simple	2.4
6	40	11	Complex	3.1
7	44	4	Complex	2.2
8	33	7	Simple	1.1
9	46	5	Simple	2.2
10	39	8	Simple	1.1
11	45	5	Simple	1.1
12	43	14	Simple	2.1
13	40	5	Simple	3.1
14	28	4	Complex	2.2
15	21	4	Simple	2.2
16	37	16	Simple	2.1
17	39	5	Simple	2.1
18	37	7	Simple	2.1
19	30	6	Simple	2.1
20	25	5	Simple	2.1
21	39	10	Simple	2.1
22	30	4	Simple	1.1
23	29	6	Simple	2.1
24	45	11	Simple	2.1
25	32	8	Simple	2.1
26	40	16	Simple	3.2
27	36	5	Complex	3.2
28	38	7	Complex	2.3
29	35	6	Complex	2.3
30	41	7	Simple	1.1
31	25	6	Simple	2.3
32	45	17	Simple	2.1
33	41	11	Simple	2.1
34	33	10	Simple	1.1
35	39	12	Simple	2.3
36	45	20	Simple	2.3
37	37	11	Simple	2.1
38	35	15	Simple	2.1
39	41	11	Simple	2.1
40	48	14	Simple	1.1
41	35	11	Simple	2.1
42	30	4	Simple	2.1
43	32	12	Simple	1.1
44	35	7	Simple	2.1
45	40	12	Simple	1.1
46	40	17	Simple	1.2
47	37	10	Simple	1.2
48	45	12	Simple	1.1
49	39	10	Simple	2.1
50	28	8	Complex	1.1
51	41	10	Simple	2.1
52	38	8	Simple	1.2
53	36	6	Simple	2.1
54	30	5	Simple	2.1
55	40	10	Simple	1.1



56	43	15	Simple	1.1
57	39	10	Simple	2.1
58	35	10	Simple	2.3
59	45	9	Simple	1.1
60	40	8	Simple	2.1
61	34	8	Complex	1.4
62	45	10	Simple	1.1
63	36	4	Complex	2.1
64	37	5	Complex	2.1
65	35	15	Complex	3.1
66	32	7	Complex	1.1
67	40	12	Complex	1.1
68	38	9	Simple	2.1
69	36	11	Simple	1.2
70	42	9	Simple	1.2
71	32	6	Complex	1.2
72	35	7	Simple	1.1
73	41	6	Complex	2.1
74	37	8	Simple	1.2
75	36	9	Complex	2.1
76	40	16	Complex	3.1
77	35	16	Complex	1.1
78	37	8	Complex	3.1
79	32	9	Simple	3.1
80	28	10	Complex	2.1
81	23	7	Complex	2.1
82	35	8	Complex	2.1
83	40	16	Complex	1.2
84	36	9	Complex	2.2
85	38	8	Simple	3.1
86	27	7	Complex	2.1
87	42	20	Complex	2.1
88	37	15	Complex	2.3
89	30	7	Complex	2.1
90	32	10	Complex	3.1
91	35	7	Complex	1.2
92	31	11	Simple	1.1
93	37	7	Complex	2.1
94	40	12	Complex	2.1
95	25	6	Complex	2.2
96	38	9	Complex	2.1
97	36	13	Simple	2.1
98	41	8	Complex	3.1
99	33	12	Complex	3.2
100	25	7	Complex	2.1
101	35	15	Complex	2.2
102	42	9	Complex	1.2
103	42	9	Simple	2.1
104	28	5	Complex	2.1
105	35	13	Simple	1.1
106	29	4	Complex	3.1
107	36	7	Complex	1.1
108	39	11	Simple	1.2
109	37	6	Complex	1.3

110	37	7	Simple	1.2
111	40	5	Simple	1.1
112	34	4	Simple	1.1
113	39	10	Simple	1.4
114	45	17	Complex	2.1
115	39	8	Simple	2.4
116	32	12	Complex	2.1
117	45	15	Complex	2.4
118	38	17	Complex	2.1
119	35	6	Complex	2.1
120	39	6	Simple	1.2
121	30	5	Complex	2.1
122	35	10	Simple	2.1
123	41	9	Simple	1.1
124	36	12	Complex	1.4
125	40	20	Simple	1.1
126	42	18	Complex	1.1
127	33	8	Complex	1.4
128	42	15	Simple	1.2
129	39	16	Complex	3.1
130	35	8	Complex	1.1
131	36	5	Complex	2.1
132	41	15	Simple	1.1
133	38	5	Complex	2.1
134	35	8	Complex	1.4
135	43	9	Simple	2.3
136	42	10	Simple	1.2
137	38	6	Simple	1.1
138	39	12	Complex	2.3
139	36	7	Complex	1.1
140	40	12	Complex	2.3
141	39	9	Complex	2.3

Source: Compiled by the authors from data recorded in the interviews.

Argument:

- 1.1. Had never witnessed the crossing of terrorists.
- 1.2. Didn't have an extensive knowledge of the border.
- 1.3. US Government blames Mexico for all of their problems.
- 1.4. Terrorists can't cross through territories controlled by the drug cartels.
- 2.1. If illegal immigrants can pass also can terrorists.
- 2.2. If weapons and drugs are smuggled also terrorists can be smuggled.
- 2.3. Human smugglers are unaware of the intentions of their clients.
- 2.4. Terrorists can enter the US because of corruption.
- 3.1. Terrorists cross by international airports.
- 3.2. Terrorists pass through the border customs.

## The Transnational Legal Space as a Response to the Challenge of Multinational Corporate Accountability: A Study of Unethical Offshore Clinical Trials

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**Abstract:** *How can we, as an international community respond to the pervasive challenge of multinational corporate (MNC) accountability? This paper offers divergent thinking in response to this question, investigating the emergence of a transnational legal space as a model for MNC accountability. It does so through a study of unethical offshore clinical trials, a problem that requires immediate attention given the significant shift of clinical trials to developing countries, with 90% of US and Canadian clinical trials now being conducted offshore. This shift significantly reduces costs and expedites the time it takes pharmaceutical MNCs to get new drugs to the market. The ability of pharmaceutical MNCs to circumvent the considerable time lag in the expensive development pipeline can be largely attributed to the weaker regulatory regimes that exist in some developing countries. However, the exploitation of a weaker regulatory framework converts compliance costs borne by pharmaceutical MNCs to increased risk borne by the citizens of developing nations. The challenges to a subject of an unethical offshore clinical trial in seeking recourse are many and varied. This paper demonstrates how the activities of legislators, regulators, medical practitioners, legal practitioners, advocates, academics and journalists in seeking to address the problem of unethical offshore clinical trials may evidence more broadly the evolution of the transnational legal space to respond to the challenge of MNC accountability.*

### Introduction

Multinational corporations (MNCs) enjoy a position of ascendancy over other entities, including not only individuals but entire nation-states, and more particularly developing nation states. Gear and Weston [1] state that MNCs “exercise immense...influence over the material, economic and political lives of millions of human beings, and over the life chances of other species and ecosystems generally...” The excesses of this asymmetry, this power imbalance between MNCs and developing countries, take a number of forms but are often associated with exploitation of: the environment; the impoverished; and of underdeveloped legal, political and economic institutions.

How the international community responds to the excesses of this asymmetrical power relationship is a question that has been well traversed in academic literature. Yet the challenge of MNC accountability persists. It is incumbent upon lawmakers, advocates and academics to continue working towards achieving accountability for wrongdoings wherever they may occur.

Thinking divergently, and adopting an evolutionary and eclectic approach to law, we can discover fresh avenues for redress and new means to protect the

vulnerable against abuse. This requires a grasp on the complementarities between bodies of international law, the capacity to connect law with practice, and a willingness to step outside legal convention [2]. One means by which we can think about the development of laws to address transgressions by MNCs is by studying the emergence of what Battersby and Farrell have termed “the transnational legal space” [2].

This paper makes observations about movements within the transnational legal space in response to the challenges of MNC accountability. It does so by focusing on the pharmaceutical industry, which has seen the largest consistent profit growth of any industry since WWII [3]. For that reason, coupled with the important nature of its work, pharmaceutical MNCs deserve special attention in their interactions with the citizens of developing nations.

One such interaction that requires specific attention is clinical trials conducted by pharmaceutical companies in developing countries. With some sourcing stating that 90% of US and Canadian clinical trials now being conducted overseas [4] unethical offshore clinical trials provide a helpful lens through which we can identify developments within the transnational legal space.

In most developed countries there is an expectation that pharmaceutical companies conducting clinical trials be held accountable if they transgress acts, regulations, rules and codes designed to protect bodily integrity. If we are to accept that bodily integrity is a universal human right, we must expect that those who transgress that right, will be held accountable. Yet, there is growing evidence that pharmaceutical companies are conducting trials in developing countries in ways that do not uphold what is accepted as best ethical practice.

The very fact that wealthy developed nations attach value to the regulation of clinical trials tells us that the aims of short production times and low costs are only desirable to a point, wherein other considerations such as bodily integrity emerge supreme. Robust regulatory regimes seek to overcome the inherent and foreseeable risks associated with human clinical trials, which may result in serious bodily harm and fatality of the trial subjects.

The issue of unethical offshore clinical trials first came to light in the early 2000's with the Washington Post uncovering the unethical clinical trials carried out by Pfizer in Nigeria [5]. But the problem still persists in today's context. The unethical Human Papilloma Virus trials in India [6] the controversial Ebola vaccine trials across Africa [7] the disastrous polio vaccines in the Philippines [8] are all testament to why this is a current problem requiring immediate attention.

This paper first provides background to the challenge posed by MNCs to domestic and international legal frameworks. It then provides an overview of the corporatisation and offshoring of clinical trials, followed by the ethical issues that arise in these trials. This paper then highlights some of the obstacles posed to subjects of unethical offshore clinical trials in seeking legal recourse, followed by an analysis of opportunities presented by the transnational legal space.

## 1. The multinational corporation

The first known use of 'multinational corporation' (MNC) was by David Lilienthal at a conference at Carnegie Mellon University in 1960 [9]. Organisational forms of the MNC however, date back long before this, and on a broad interpretation of the term 'multi-national' (applying it to entities that traded beyond political borders) and ignoring the legal requirement involved in the establishment of a 'corporate entity', it could be argued that MNCs have

been in operation for over 2000 years [9]. On a narrow interpretation of the term, MNCs can be said to have emerged in the seventeenth century when first the Dutch and then British East India companies rose to prominence, gaining significant commercial, military and geostrategic power. What differentiates today's MNC from their earlier precursors is "their size, reach and sophistication of operations" [9]. The MNC could only claim to be a prominent fixture of the global political economy since World War II and more so over the past 50 years, "[p]ropelled by the ideological ascendancy of neoliberalism..." [1]. Wouters and Chane [10] report that "today, an estimated 100,000 multinational corporations (MNCs) account for about a quarter of the global gross domestic product (GDP) and generate a turnover which exceeds the public budget of many states". This growth can be attributed largely to the ways in which MNCs have benefited from the various forces of globalisation [11] including the creation of a free market economy, inventions facilitating transport and communication, the breakdown of state borders and the consequential ease with which people move across the globe. These and various other factors allow for MNCs to now manufacture and distribute products at significantly large and increasing rate throughout the world.

As a result of this growth, "the former international economy, with a political and diplomatic sphere and with a total and unique State power has been replaced by a multinational economy where MNCs play an increasingly decisive role..." [12]. MNCs have the ability to steer the direction of international activities with powerful lobbyist groups manoeuvring the hand of state governments.

### 1.1. Issues of exploitative behaviours by MNCs

Exploitation has been an identifiable and undeniable characteristic of the MNC since its first origins. An article published in the Guardian titled "The East India Company: The Original Corporate Raiders", describes the activities of the corporation formed for exploitation of trade with Asia and labels them as "the most supreme act of corporate violence in world history" [13]. Some argue that the activities of the MNC in current day context have a similar colonial flavour [14]. Suffice to say, exploitation by MNCs in the post-colonial context is pervasive throughout most industries. In the textiles industry, global movements against sweat-shops address the serious concerns around labour rights in the manufacturing of goods in developing countries. The horrific consequences of failing to provide safe

working conditions was brought home in 2012, where a fire in a Bangladeshi clothing factory saw the death of over 100 factory workers trapped in the building [15]. This was just one example of the poor working conditions in the clothing factories of Bangladesh, an industry which makes up 80% of the country's \$24 billion in annual exports [15]. One of the most commonly cited and tragic examples in the oil and gas industry was the Bhopal disaster in India, which resulted in the deaths of thousands of people, along with injuries of hundreds of thousands more and extensive environmental damage [1]. With respect to the environment, "MNCs have been increasingly accused of engaging in polluting or environmentally degrading activities through their subsidiaries, particularly in developing countries" [16]. In 2010, the British Petroleum oil spill, the biggest spill in the history of the petroleum industry, saw 4.1m barrels of oil released into the Gulf of Mexico over a period of 87 days causing massive environmental degradation and devastating local food supplies [17]. Anderson [16] considers that activities such as these create an "increasingly pervasive picture of the transnational corporation as the behemoth of modern life - large and powerful enough to control governments while engaging in big brother social control of consumers and unchecked exploitation of people in developing countries."

## 1.2 The challenge of MNC accountability

The challenge of securing accountability for human rights abuses by MNCs begins with the obstacles fundamentally posed by corporate accountability. The original purpose for establishing a corporation was to protect those who invest capital in a business venture from individual liability. This principle was enunciated in the 19<sup>th</sup> Century case of *Salomon v A Salomon & Co* (1897) but it is well known that the concept of a company as a separate legal entity has existed for many hundreds of years having being originally devised to encourage British shipping and trade ventures.

This feature of the corporation continued to be desirable over the successive centuries and remains so in today's free market economy because it allows shareholders to invest capital without the risk of losing their personal assets or otherwise being answerable to the company's creditors. In most Western countries, this principle, known as the 'corporate veil' has evolved as a cornerstone of corporations law. The effect of this limitation of liability

however, is that the risk that would normally be borne by the shareholders is instead borne by the creditors and in the hierarchy of creditors, it is those who are unsecured that suffer the greatest loss.

The operation of the 'corporate veil' and the protection it affords shareholders and, to a lesser extent, directors is exacerbated when it comes to a company that is multinational in nature. This is due to the MNC's ability to "...establish vast and complex networks of foreign subsidiaries- each existing as its own autonomous legal person but owned by the shareholders of the controlling parent company" [18].

### 1.2.1 Obstacles posed by domestic legal frameworks

In many respects it would be desirable for an aggrieved person be able to seek legal recourse domestically. The host state, where the activity is carried out (as opposed to the home state where the MNC is headquartered) holds actual physical and immediate jurisdictional powers over the MNC operating within its own borders. However, there is significant difficulty faced by developing nations in enacting and enforcing law that binds non-state actors. Ward [19] argues that it is the "simple lack of capacity" of host states to administer justice which "present(s) formidable obstacles..." However, as will be discussed, the problems posed by host states in holding MNCs to account can be not only a matter of inability but also that of unwillingness [2].

### 2.2.2 Obstacles posed by the international legal framework

Whether or not MNCs can be brought to account under the current international legal framework depends on whether the MNC is a subject of international law. This question cannot be answered easily because there is no agreement as to what constitutes 'legal personality' in the international legal system. This paper does not attempt to navigate the murky waters of the legal personality debate as others have done (see, for example, Durigbo [9]). The authors largely subscribe to the traditional perception of the international legal system, by which the state is the referent object and the state's duty is to refrain from breaching international law. While there exist exceptions to this state based paradigm in areas such as international criminal law to provide jurisdiction for individual responsibility, in general, international law, fails to cater for the accountability of non-state actors. A

caveat must however be issued to this general stance when it comes to the particularities of international human rights law. The international legal system does not provide redress for victims of human rights abuses via the means of legal forums in which complaints can be brought [2]. Salazar [20] affirms this, stating “international legal procedures whereby MNCs are held directly accountable for human rights violations are non-existent”. But the contemporary perspective, now generally accepted, is that the international legal system does not only impose negative duties upon states to prevent them from committing human rights abuses but also positive obligations; one of these being the duty to hold non-state actors accountable for violations of international law. Clapham and Rubio [21] note that this formulation of indirect accountability of non-state actors under the international legal system “is often overlooked as one considers the ability of the human rights regime to deal with corporate accountability”. However, there are many challenges that would need to be overcome in order to meet these duties, particularly in light of the challenges posed to host states in holding MNCs to account as mentioned.

## 2. The transnational legal space

The challenge of posed by MNCs to the current domestic and international legal frameworks requires us to think more holistically about law, as both codified norms and socially embedded practice. In doing so we can imagine that law does not ‘function’ in a neutral space but rather exists in creative tension with the complex environments in which it evolves [2]. We can think of law as being part of a larger social system, or social ecology [22] [23], the largest of which being the global social system that all of humankind inhabits. Documented or codified laws are formed through a process of argument, judgment, and interaction between a range of influencers and not only through acts of judicial decision-making [2]. Law is arguably an evolutionary process in which non-lawyers play an important role in fashioning norms [24].

From this viewpoint, it is possible to envisage the evolution of a transnational legal space [2] centralised in legal developments and comprised of agreements, multilateral and bilateral through the development of transnational tort litigation made possible through the extended extraterritorial reach of domestic civil laws. For a discussion on how movements within this space as characterised within traditional areas of law; transnational criminal laws,

investment laws and the extraterritorial operation of domestic laws see Battersby and Farrell [2].

The following paragraphs explore the potential response of the transnational legal space to the issue of unethical offshore clinical trials.

## 3. Study: unethical offshore clinical trials

Clinical trials are a series of tests required to be undertaken by a pharmaceutical company when bringing a new drug to market. Traditionally, clinical trials were conducted within academic institutions but the last 25 years has seen a movement of trials into the control of pharmaceutical industry. There are a number of cited catalysts for this shift but in essence the phenomenal growth of the global pharmaceutical industry has allowed it to assume a primary role in drug research and development [2].

### 3.1 The offshoring of clinical trials

Despite the obvious net profits being made by pharmaceutical companies from controlling the research and development process, the ‘development pipeline’ for new drugs is expensive and time consuming. There exists some discrepancy in the costs associated with bringing a drug to market but as an example, the standard figure for bringing a cancer drug to market, provided by the Tufts Centre for the Study of Drug Development is US \$2.7 billion [25]. Clinical trials conducted on human subjects are generally conducted in four phases, termed Phase I to IV. Of the phases, Phase III, the trial on a larger patient group to determine the short-term and long-term safety and efficacy balance of formulation of the active ingredient and the overall therapeutic value to the subject or patient, is the most expensive and time-consuming for pharmaceutical companies. This is due to its numerous components including recruitment, trial with monitoring and evaluation and follow up. A study [26] conducted into the key cost drivers of clinical trials in the US context found that the Phase III study cost ranged from \$11.5 million (dermatology) to \$52.9 million (pain and anaesthesia). The top three cost drivers of clinical trial expenditures were found to be clinical procedure costs (15%-22% of total), administrative staff costs (11%-29% of total), and site monitoring costs (9%-14% of total) [26].

The ability of pharmaceutical companies, as MNCs, to move with ease across national borders allows them to choose where their clinical trials are conducted. As a consequence, there has been a signi-



ficant shift to clinical trials being undertaken in offshore locations. The practice of conducting clinical trials in developing countries is not a new phenomenon [2]. What is new, however, is the intensification of this offshore practice. This is particularly so in the case of US pharmaceutical companies, following the relaxing of US laws in 1994 to legitimise foreign testing [27]. While the exact extent of the offshore movement remains unknown, recent studies found that 90 percent of new therapies approved in 2018 had testing outside of the US and Canada [4].

The key motivating factors behind this shift is the advantage of substantially decreased cost [27]; lack of regulation [28]; and access to a larger pool of human subjects [27]. This combination of the motivating factors not only enable “human testing (to) go forward quickly” but also for it to “come to conclusions that tend to support the readiness of a new drug for market” [28]. Consequently, the process of pushing a product on to the market is accelerated substantially. A tension therefore arises between pharmaceutical companies on the one hand, serving the financial interests of their major stakeholders and directors by obtaining speedy, favourable results and on the other, upholding the fundamental human rights of the subjects involved in the clinical trials. Bahir [29] observes that in this sense “clinical trials have become a lucrative business” with ethics often being “sidestepped in favour of profitability”.

### 3.2 Overview of ethics in medical research

The application of ethics is critical in medical research in order to deal with the moral dilemmas that arise from conflicting obligations of investigators to their trials subjects and the broader community [30]. Conducting clinical trials on human participants is an activity that requires great consideration from a moral and philosophical perspective. Ethical practice provides “a systematic approach” to the employment of the fundamental ethical principles: autonomy; beneficence; nonmaleficence; and justice in the decision making process [30]. The two significant considerations of ethics in clinical trials are *informed consent* and *standards of care*.

Nothing quite exemplifies the potential for abuse of the relationship between investigators and trial subjects like the medical experimentation that took place in Nazi Germany. Medical research under the Third Reich was characterised by euthanasia and egregious experiments, “epitomized by the Auschwitz twins experiments of Joseph Mengele” [31].

Early-mid 20<sup>th</sup> Century saw more disturbing clinical trials being undertaken in the US, the most infamous of these is the ‘Tuskegee Study’. This involved a clinical trial being conducted between 1932 and 1972 on men of African American descent to observe the progression of syphilis when left untreated in the human body. The 400 men recruited into the study were not told that they had syphilis and were further discouraged from seeking medical intervention so as not to compromise the results of the study [31]. The atrocities of medical research under the Third Reich, the Tuskegee Study and others motivated the creation of codes of conduct that provide the modern day touchstone for ethical standards. In particular, the *Nuremberg Code* is considered by some to be “a major turning point in the history of human experimentation...provid[ing] the first international framework for the protection of the human subject in clinical trials” [31]. Since this time, a number of instruments have been created that provide best practice guidelines on medical experimentation, the most prominent of these being: *The Declaration of Helsinki of the World Medical Association “Ethical Principles for Medical Research involving Human Subjects”*, *The World Health Organisation Good Clinical Practice Guidelines (1995)*, *The International Conference on Harmonisation Guidelines for Good Clinical Practice (2016)*, *The International Ethical Guidelines for Biomedical Research Involving Human Subjects (2016)*.

These regulatory instruments provide guidance on among other things, issues of informed consent, standards of care, withdrawal of treatment, post trial access to treatment and the role and responsibilities of regulatory authorities.

### 4.3 Ethical issues in offshore clinical trials

It is difficult to determine with certainty the extent to which offshore clinical trials meet the ethical standards as set out in the above stated regulatory instruments. A limited amount of investigative research has been undertaken on this topic with a number of advocacy organisations [32] [33] [34] identifying and investigating what have been termed “deficient regulatory environments” or “hot spots” for unethical clinical trials. These include Argentina, Ukraine, India, South Africa and Egypt, amongst others and the common characteristics include ethnically varied populations, lack of available health care, absence of accountable ethics committees, insufficient regulatory infrastructure,

corruption, poverty and medically naïve patients [35].

Global Health Organisation, Wemos in their report *Call for Ethical Clinical Trials in Developing Countries* [34] identify some of the more common examples of ethical issues in offshore clinical trials. These are summarised to include:

- lack of informed consent, where the subject is not fully aware of the nature of the trial or the risks involved. In some cases the subject may not even be aware that they are participating in a clinical trial;
- no continuation of treatment post trial;
- the experimental drug being tested against a placebo in circumstances where proven effective treatment is available; and
- lack of beneficence; whereby the trial subject does not benefit from their involvement.

The Washington Post's investigative series into pharmaceutical testing in developing countries titled "The Body Hunters: Exporting Human Experiments" [5] is the most well-known work in this field, primarily because Part 1 of the series, reported by Joe Stephens [36] uncovered the practices of Pfizer in conducting unethical medical experimentation in Kano, Nigeria.

Now, over 20 years later, the activities of Pfizer provide more of an historical context to this area of study. However, the numerous ways in which "Pfizer researchers departed from research practices understood to be customary within the pharmaceutical industry" [29] exemplify many of the current ethical issues in offshore clinical trials as identified by Wemos and others.

The facts of the event are summarised in Battersby and Farrell [2] as follows. In 1996, pharmaceutical corporation, Pfizer, hearing of an outbreak of meningitis in a small town in Nigeria, took the opportunity to test their drug Toxacin (also known as Trovan) on young children infected with the illness [37]. At this time, Trovan was prohibited from being tested in the United States, having presented serious side effects including liver damage and a degenerative bone condition [37]. It is alleged that Pfizer was aware of the status of Trovan at the time but despite this, recruited and tested the experimental drug on 200 Nigerian children. After conducting the trial for a period of two weeks, Pfizer left the site without any follow up treatment [37]. It has been reported that 11 children died as a con-

sequence of the trials and a significant percentage of the 200 were left severely debilitated [37].

One of the biggest criticisms of Pfizer's clinical trial was that the investigators did not obtain fully informed consent of the children's guardians. The Washington Post reported that while Pfizer claimed to have fully informed the parents of the subjects as to all aspects of these trials, they could not offer any signed consent forms to back this assertion [36]. Additionally, one of Pfizer's physicians, Scott Hopkins, admitted that the supposed consent forms were not fully translated by the local nurses, who gave a brief overview of the trials only [36]. Moreover, Stephens [36] reported that the patients were not made aware of the alternative proven treatment provided by the medical aid NGO, Médecins Sans Frontières (MSF), which had established itself at the hospital in Kano and were treating children with the FDA approved drug Ceftriaxone. Bahir [29] concludes from the Washington Post Investigative Report that due to the lack of information given to the subjects "many of the poorly educated participants were treated without realizing that they were guinea pigs."

A second concern was that Pfizer conducted the clinical trial by treating half the children with Trovan and the other half with Ceftriaxone [37]. It is alleged that only a small amount of Ceftriaxone was administered to the control group in order to "inflate the comparative effectiveness of Trovan" [37]. According to a spokesman for the manufacturer of Ceftriaxone, "clinical failures...and perhaps deaths of children could have resulted from the low dosing" [29].

The Washington Post Report [36] further claimed that Pfizer failed to respond to adverse reactions identified in subjects. An example of this, cited by Bahir [29] was the failure to react to the drastically deteriorating condition of a young girl following her first dose of Trovan, which resulted in her death three days later. Bahir [29] notes "Pfizer's records showed that despite her frozen eye and declining health after the first dose, the researchers continued to give her the same dose of the experimental antibiotic".

The activities of Pfizer in Nigeria attracted global attention to the ethical issues associated with conducting of clinical trials offshore. Annas [38] comments that the Washington Post "story created a sensation, especially with its lead, which described the slow death of a 10 year old girl known only as

Subject 6587-0069,” the researcher, in following the protocol laid out for trial of the drug, monitored her dying without modifying her treatment [38].

A more recent example of questionable ethics in offshore clinical trials is the Human Papilloma Virus (HPV) vaccination project in India, which came under international scrutiny in 2009 [39]. In this case, two Indian states undertook a research project where adolescent girls were vaccinated against HPV [39]. The pharmaceutical companies involved in this clinical trial were GlaxoSmithKline (GSK) and Merck, the project being “designed and executed by the Program for Appropriate Technology in Health (PATH)” and funded by the Bill and Melinda Gates Foundation [40]. In 2010, following widespread reporting of violations of ethical standards by PATH, the trial was suspended but only after 24,000 girls had been vaccinated. A parliamentary inquiry into the trials found that the “process of informed consent was inadequate”, in some circumstances, the school headmaster was found to have signed consent forms on behalf of the children [39]. Further, the monitoring system did not report all adverse events. The inquiry scathingly concluded that the trial’s “sole aim has been to promote the commercial interests of vaccine manufacturers who would have reaped the windfall profits had PATH been successful in getting the HPV vaccine included in the UIP universal immunization program of the Country” [39].

The two examples of unethical offshore clinical trials detailed above are particularly helpful in this analysis because they resulted in successful litigation for the plaintiffs. The particulars of the ensuing litigation against Pfizer, GSK and Merck will be discussed in further detail in the following sections.

#### **4. Obstacles posed to trial subjects in seeking legal recourse**

The regulatory framework for ethics in clinical trials are, as outlined above, comprehensive. However, as noted by Bahir [29] the voluntary nature of the guidelines, do not “compel companies to abide by the rules”, imposing only a moral obligation to do so. A subject of an unethical offshore clinical trial must seek legal recourse through domestic or international forums but as the proceedings paragraphs demonstrate, this is fraught with challenges.

#### **4.1 Obstacles posed by domestic legal frameworks**

While the international instruments are not themselves legally binding, Terwindt [40] notes that the guidelines have informed domestic legislation, citing the examples of the UK Regulations on Clinical Trials and the Indian Guidelines on Good Clinical Practice. They are also helpful to “inform the court about what can be considered to be acceptable corporate behaviour” [40].

This was the case with the litigation arising from the HPV trials in India. In 2013, a local women’s rights NGO filed a public interest petition in the Indian Supreme Court. The European Centre for Constitutional and Human Rights [5] was asked by the lawyers to submit an *amicus curiae* brief to the Court “outlining the legal framework on clinical trials in their respective home countries” [40]. The ECCHR saw an opportunity for the Indian Supreme Court “to clarify and enforce transnational obligations” of pharmaceutical companies conducting trials in developing countries. They note that there “is remarkably little case law on the responsibilities of those undertaking clinical trials... even less case law on the responsibilities in trials conducted in third countries (countries outside of the European Union)” [6]. Nwabueze [41] summarises the case law that does exist for the liability of investigators conducting trials offshore undertaking a systematic and thorough review of a number of causes of action. Nwabueze [41] concludes that “the law imposes a legal duty of care on an investigator for the benefit of a research subject” and further the subject may also be able to bring an action in other areas of private and public law including: an action in battery; constitutional law claims; unjust enrichment and breach of confidence.

The ECCHR [40] notes that “there is also remarkably little case law on the responsibilities of trial sponsors and what there is outlines the legal obligations of the investigators towards the trial participants and only in a few cases addresses the separate legal obligations of trial sponsors or the manufacturers of the tested drug or vaccine”. Mello and Joffe [42] agree, observing “courts have rarely considered the legal obligations that research sponsors owe to subjects”. Mello and Joffe [42] consider sponsor obligations to their subjects through an analysis of the US case of *Abney v Amgen*. In this case, the Court found that informed consent did not give rise to a contractual agreement between the sponsor and the subject. Terwindt [40] provides a

list of additional cases that have considered the responsibilities of the sponsor. The purpose of the ECCHR's amicus curiae brief therefore was "to fill the gap left by the lack of judicial precedents". In preparing the brief, the ECCHR drew upon "international treaties; international medical professional declarations; legislation and regulations from the EU, the UK, and the US; and jurisprudence on clinical trials, medical malpractice, and product liability" [40]. In their analysis of international medical guidelines and legislation from the EU, UK, and US, they found that "sponsors have the obligation to implement a proper monitoring system to verify that the research protocol is followed, that adverse events are properly reviewed and reported, and that all regulations are complied with" [6]. The ECCHR conducted an analysis of tort principles and found that drug manufacturers "owe a duty to take reasonable measures to ensure that the trial subjects have access to correct and sufficient information regarding the expected benefits and possible risks posed by the relevant drugs or vaccines. A duty of care can be imposed as the companies can foresee the risk of injury as well as the risk of inadequate informed consent. There is sufficient proximity between the companies and the trial subjects, because the companies develop and supply the investigational medicinal product" [6].

The result of the HPV case saw a progressive movement in regulating the practices of clinical trials in India. The ECCHR states "the Court has urged the Indian government to advance the regulatory framework on clinical trials and improve its system of approval of licenses" [6]. However, the ECCHR further recognise that the responsibilities and liability of pharmaceutical companies in conducting these clinical trials has not been resolved. Terwindt [40] attributes much of this to complexity of relationships between parties in clinical trials. The relationships are defined by a number of contractual arrangements including those between employment contracts, clinical trial agreements and informed consent forms between industry sponsors, contract research organisations, academic medical centres, the subject and the investigator [42]. Rawlinson and Yadavendu [43] note that "while responsibility for clinical trials, including the safety of its human subject, lies ultimately with the contractors (invariably, pharmaceutical companies), the complex lines of accountability within the industry make it difficult to locate ultimate responsibility for any adverse outcomes from the trials".

While it would in many respects be desirable for subjects to be able to seek legal recourse domestically, cases like that of India are rare. Terwindt [40] remarks "despite media and NGO reports of irregularities in clinical trials in countries outside the EU or the US, few cases have come under judicial scrutiny". According to Rawlinson [31] this is because "most...of the victims are marginalized groups, racially, ethnically and/or socio-economically defined, those for whom justice is often little more than a utopian hope". The introduction to this paper detailed the challenges faced by host states in enacting and enforcing laws that bind powerful MNCs. The relationship between pharmaceutical MNCs and developing country governments is complex. The fact that "a global pharmaceutical company can provide (strong) services to a (weak) state's people" [14] by injecting health care delivery systems with necessary capital and providing what would otherwise be unaffordable drugs and services is something that cannot be ignored. The incentives of gaining access to funds and medicinal products may have a significant negative impact on the desire of a nation to hold pharmaceutical companies accountable for their actions [2].

## 5.2. Obstacles posed by the international legal framework

As previously discussed, opportunities for legal recourse against an MNC are limited. The jurisdictional parameters of International Criminal Law are narrow with the International Criminal Court (ICC) prosecuting the most serious abuses of human rights: crime of genocide, war crimes and crimes against humanity. According to Schipper [44], it is unlikely that unethical offshore clinical trials would fall within these definitions, unless their participants were coerced to take part in them by force. Further, the ICC does not have jurisdiction over corporations [2].

International human rights law unlike international criminal law, does have subject matter jurisdiction [2]. There are various human rights standards pertaining to medical experimentation, the most prominent of these being; the Right to Freedom from Cruel, Inhuman and Degrading Treatment, the Right to Bodily Integrity and the Right to the Highest Attainable Standard of Health. These rights are reflected within various international legal instruments including the *Universal Declaration of Human Rights (UDHR)* the *International Covenant on Civil and Political Rights (ICCPR)*, the *International Covenant on Economic, Social and Cultural Rights*



(ICESCR), *The African Charter on Human and Peoples' Rights*, *The European Convention on Human Rights (ECHR)* and *The Convention on the Rights of the Child (CRC)* [2].

However, as mentioned, the international human rights law framework, as it currently stands, lacks the ability to hold non-state actors (such as pharmaceutical companies) directly accountable. In order for international human rights law to be given effect, it must be adopted into national legal codes and enforced through domestic courts [2], the associated challenges of domestic legal recourse having already been identified in this paper.

## 5. Opportunities provided by the transnational legal space.

In acknowledging the challenges posed to subjects of unethical offshore clinical trials, this paper is concerned with the development of a transnational model of MNC accountability, which would better address the ethics of clinical trials.

It is possible to conceive the transnational legal space as an expansive, coherent and evolving system, within which the law is interpreted, challenged, or upheld according to common principles recognised by legal practitioners and by those who govern sovereign nation states. This paper conceives the transnational legal space as being comprised of international and transnational laws, treaty law, national laws and legal systems, especially those with extraterritorial application. Replete with gaps and contradictions, deviations and disruptions, this space nonetheless evidences patterns of law formation and connection that imply the emergent scaffolding of new transnational legal frameworks, driven from within the international legal community collaborating with other actors. In order to explore this evolution, the transnational legal space could be defined by 'communities' comprised of key actors both internally and externally. In the context of responding to the issue of unethical offshore clinical trials, communities would include legislators, regulators, transnational tort litigators, medical practitioners, academics, investigative journalists, advocacy organisations, all of who are concerned with ethics in offshore clinical trials. Naturally, the concept of a transnational legal space does not operate in a vacuum, rather it is sensitive and responsive to the environment in which it is situated, characterised predominantly by the global political economy. The study of this evolution enables an assessment of the potential opportunities for

redress available to subjects of unethical offshore clinical trials.

## 6.1. Legal recourse and the transnational legal space

One of the more interesting aspects of the transnational legal space is the ability of a plaintiff to bring a claim in a foreign jurisdiction. A plaintiff would be incentivised to do this for a number of reasons including:

- the ability to levy execution of a court judgment with pharmaceutical companies being "likely to have more presence in their home countries in terms of money and property" [41].
- courts in developed countries, particularly in the US being willing to award sizeable amounts, in contrast to developing countries.
- cases having the chance of being adjudicated expeditiously. As an example, Nwabueze states that courts in Nigeria and other African states "are notoriously congested" [41].

As previously introduced in this paper, the Alien Torts Statute (ATS) [45] is a common means for bringing actions in the US context. The ATS was enacted as part of the *First Judiciary Act of 1789* and provides for district courts to "have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" [46]. The ATS "creates a specific statutory claim for human rights violations" [47]. Secondly, it operates extraterritorially and thirdly, it allows for foreign plaintiffs to bring claims in US domestic courts. The development of ATS litigation since the 1980's has expanded the jurisdiction of the ATS in four important ways. The first of these took place close to two hundred years following its enactment when the ATS was invoked in the landmark decision in *Filartiga v Pena Irala* [48]. This case confirmed that an action could be brought under the ATS for a violation of international customary law by a non-American citizen. The second expansion occurred in 1996, when the Second Circuit held in *Kadic v Karadzic* [49] that the ATS jurisdiction extends so far as to cover claims against non-state actors committing "international law violations that do not require state action or who act in concert with state officials" [47]. This case paved the way for the claims against corporations that followed. The third expansion was seen in the case of *Sosa v Alvarez-Machain* [50] in which the Supreme Court "decided that the ATS could support a private rights of action for vio-



lations of customary international law” albeit in a “restricted set of circumstances” [37].

The next development of the ATS happened to be on the subject matter of unethical offshore clinical trials. In 2002 an action was commenced against Pfizer in the Southern District of New York for Pfizer’s activities in Nigeria. The action, *Abdullahi v. Pfizer* [51] was brought by the parents of the Nigerian children under the Alien Torts Statute (ATS) “alleging that Pfizer’s experiments had violated international law because its doctors had failed to acquire informed consent from either the children or their parents” [37]. The case was dismissed on two occasions: initially, on the ground of *forum non-conveniens* and in the second because of the “plaintiff’s failure to identify any private right of action upon which to base ATS jurisdiction” [37]. However, in 2009, the Second Circuit, in a landmark decision, expanded the jurisdiction of the ATS by holding that “the prohibition in customary international law against non-consensual human medical experimentation can be enforced through the ATS” [37]. In 2007, there was an agreement between Pfizer and the Nigerian authorities to settle the criminal and civil charges for \$75 million [52]. The ruling in *Abdullahi v. Pfizer* was a remarkable achievement not only for the expansion of the ATS jurisdiction generally but particularly in the context of holding pharmaceutical companies to account for unethical clinical trials. According to Patterson [37], the Court’s interpretation of the ATS’ jurisdiction was significant because “it depended substantially on aspirational, non-binding sources of international law such as the ICCPR and UDHR... in finding a rule of customary international law”. This case exhibited a willingness of the Courts to ensure that MNCs would be held liable for human rights abuses. It was additionally significant because the Court held Pfizer to be a state actor, even though “Pfizer was not under the control of the Nigerian government or performing a function traditionally reserved to states” [37].

Despite the achievements of these decisions in holding non state actors to account for violations of international law, the Supreme Court decision of *Kiobel v Royal Dutch Petroleum* [53] is considered to have fatally curtailed the operation of the ATS by holding that corporations do not fall within its jurisdiction. Judge Leval’s dissenting judgment in *Kiobel* captures the serious implications of the majority decision to MNC accountability wherein he states “the majority opinion deals a substantial blow to international law...” [53] and has effectively

created a situation by which “one who earns profits from commercial exploitation of abuse of fundamental human rights can successfully shield those profits from victims’ claims for compensation...” [53].

Since the decision in *Kiobel*, new cases are being brought before US district courts in an attempt to reinstate the broad scope of the ATS’ jurisdiction [2]. One of the most topical of these is the litigation arising from the US government’s drug trials in Guatemala. A class action is currently on foot in the Baltimore Circuit Court *Estate of Alvarez v. The Johns Hopkins University* (Sept. 7, 2016) [54] wherein 842 individual plaintiffs have sued the The Rockefeller Foundation, The John Hopkins University and Bristol Myers under an ATS claim. The facts of the case arise from events in the 1940s, where subjects were deliberately infected with STDs including syphilis, gonorrhea and chancroid. Subjects were recruited from psychological institutes and prisons. Children were also recruited from state schools and orphanages but were not deliberately infected with the diseases. The purpose of the trials was to study ways to stop STDs from spreading [55]. The studies were uncovered in 2010 and “resulted in acknowledgement of major ethical transgressions and an official apology to Guatemala from Barack Obama and Secretary of State Clinton” [56]. The District Court has found that the ATS is applicable to the case in that it can address the customary international law prohibition on medical research on subjects without informed consent and that, based on the fact that there has been a divided opinion on the question in the Second Circuit, corporations can be held to account under the ATS.

The *Kiobel* decision also appears to have catalysed the development of transnational tort law made possible through the extended extraterritorial reach of domestic civil laws. This development is evidenced through the rise of transnational tort litigation, with advocacy organizations and tort lawyers experimenting with the jurisdictional boundaries of common tort law in an effort to attribute accountability to MNCs operating in developing countries. Meeran [57] notes that given the inability to bring human rights actions per se directly against MNCs, particularly since the curtailing of the ATS, plaintiff’s can seek redress on the basis of tort litigation. As previously discussed, the failure to meet ethical standards might also constitute a tortious action. The objectives of tort litigation are to “(i) provide a level of compensation to a victim which as much as possible reinstates the victim in the position that he

or she would have been in if the negligence had not occurred and (ii) act as a deterrent against future wrongdoing by the perpetrator and others generally” [57]. In these cases the plaintiff alleges “harm caused by negligence arising from a breach of ‘duty of care’” [57]. Meeran [57] notes that criticism of torts litigation is that it diminishes “the significance of the alleged misconduct and harm”, however, having “the advantage of relatively less complexity and more favourable law on jurisdiction, at least in the European Union” has made it a popular avenue of redress. Progressive movements also appear in transnational tort law in European jurisdictions. The recent Dutch case of *Friday Alfred Akpan v Royal Dutch Shell* [58] in finding that Dutch Royal Petroleum can be held accountable for human rights violations offshore, may set a precedent for transnational tort litigation. In the UK context, plaintiffs seeking compensation for injuries sustained in South Africa and inflicted by the Anglo-American mining company have brought class actions against these companies in the South African High Court and through the use of transnational tort litigation in the UK High Court (*Vava & Ors v Anglo American South Africa Ltd* [59]) [2]. Terwindt [40] notes, however the challenges associated with bringing actions through transnational tort litigation stating, “the practice of offshoring and outsourcing clinical trials can make it difficult for trial participants to hold foreign trial sponsors or manufacturers to account if their rights are infringed. They face obstacles such as the lack of publicly available evidence, costs of litigation, and cultural and logistical issues”. Consequently, it is not common for home states to hear cases against pharmaceutical companies brought by foreign plaintiffs [40].

Battersby and Farrell [2] discuss the extraterritorial application of the *Foreign Corrupt Practices Act* (FCPA) in holding MNCs to account. Almashat and Wolfe [60] of Public Citizen note that through the FCPA there has been “increased enforcement of drug company abuses abroad including kickbacks paid to clinical investigators to alter study results in favour of a drug”.

## 5.2. Broader accountability and non-legal actors in the transnational legal space

The above paragraphs have considered potential for the transnational legal space to offer means of legal recourse to subjects of unethical offshore clinical trials. However, the expensive, time consuming and uncertain nature of litigation demonstrates why the

development of the transnational legal space must not be confined by the legal realm [2]. In fact, the transnational legal space potentially provides for a broader spectrum of accountability, from prevention to deterrence. In the context of unethical offshore clinical trials, academics, journalists, development workers, medical practitioners and advocacy organisations are making important contributions. Investigative research is of critical importance in shedding light on the extent to which offshore clinical trials are being conducted unethically in developing countries. A number of advocacy organizations lobby their respective government bodies to seek better regulation and accountability including advocating for improved supervision at the European Union level to prevent unethically tested medicines to be marketed in Europe. SOMO’s Schipper [44] in her report for the European Parliament on *Clinical Trials in Developing Countries; How to Protect People against Unethical Practices?* makes a series of recommendations, all of which are within the realm of the European Union’s regulatory powers and include investigations, marketing authorization processes, clinical trial databases and penalties awarded against pharmaceutical companies. Almashat and Wolfe [60] propose a number of reform options including maintaining that the FDA should hold US-based pharmaceutical companies more accountable for violations of ethical standards. They further consider that making the clinical trial process as unprofitable as possible is the most appropriate solution and to achieve this, research should be shifted back to the National Institute of Health (NIH) and medical centres, with an increase in the NIH budget and incentives for centres to collaborate with the federal government as opposed to private industry. Almashat and Wolfe [60] have even proposed that there should be a moratorium on “Third World trials”. A group of medical practitioners have suggested further international collaboration between academic investigators including training programs through academic institutions accompanied by a mechanism for listing investigators who have undertaken the training or have been prohibited from conducting clinical trials [61].

## Conclusions

This paper has argued that it is incumbent on lawyers, advocates and academics to continue dialogue and seek action to ensure MNCs can be held accountable for exploitative activities in developing countries. While the challenges of MNC accountability are many and varied, this paper posits that in thinking divergently we can consider other means

for meeting these challenges. One means is by approaching global justice aims by first positing fields or spaces where laws intersect. This paper has demonstrated that the evolution of the transnational legal space has the potential to present avenues for redress, both legal and non-legal in working towards MNC accountability.

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## Values, Political Orientation and Attitudes towards Immigrants

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**Abstract:** *The role of values as determinants of individual attitudes towards immigration is becoming particularly salient in the context of the immigrant crisis in Europe in recent years. Research on the relationship between the values of Bulgarian citizens and their attitudes towards immigrants is currently lacking in Bulgarian scientific literature, despite the increased interest in the challenges posed by immigration. This publication presents the results of two studies designed to help fill this gap. Study 1 is a nationally representative sociological survey conducted by a team at the Institute for the Study of Societies and Knowledge, Bulgarian Academy of Sciences in the end of 2017. Study 2 examines the values of party members in Bulgaria, their ideological and political orientation, and their attitudes towards immigrants. It is ongoing at the time of this publication, so preliminary results of 60 in-depth interviews with members of left, right, nationalist and liberal political parties are presented. The main conclusions from the study of party members point to a strong dependence of attitudes towards immigrants on political affiliation and an insignificant one on individual values. The representative study largely confirms the hypotheses about the relationship between some of the value categories of Schwarz's theoretical model and attitudes towards immigrants.*

### Introduction

Immigrants' values play a significant role in the research on acculturation but the relationship between the values of host societies and the attitude towards immigration has received much less attention in research literature. Two main theoretic strands attempt to explain why individuals have positive or negative attitudes towards immigrant groups and immigration policies: "rational" theories that embrace material interests as a major source of attitudes towards immigrants, and "symbolic" theories that assume identities as such. Focusing on one or the other motivation base, those theories give rise to divergent hypotheses about the role of the factors in shaping public opinion at both the individual and social level, and the interaction between those factors. Individual differences in the tendency for social contact with external groups can be explained by many variables – previous contact with members of such groups, personal experiences, individual psychological features, etc. Among these, individual differences in basic value priorities seem to have the greatest importance [10]. A given value influences the attitudes towards an object if it has relevant consequences for the attainment of the motivational goals associated with the respective value [26]. In this sense, human values, whose motivational goals are supported or blocked by the arrival of immigrants, will influence the attitudes towards immigration [10].

In the first part of this publication I present in brief Schwarz's leading theoretical concept of the nature and structure of human values. Subject of the second part are some of the "symbolic" theories that focus on values as key determinants of attitudes towards immigrants, along with the manifold manifestations of ethnic exclusion. Both strands could contribute to the developing of a theoretical framework for the study of negative attitudes towards immigrants in Bulgaria. The third part summarizes the results of two recent empirical studies of the relationship between some of the values of the Schwarz theory model and the attitudes towards immigration in Bulgaria.

### 1. Values – nature, content and structure

#### 1.1. Nature and content

In the last century, a number of theorists in the fields of sociology, philosophy, psychology and anthropology have devoted a great deal of scientific work to exploring the role of values in the lives of individuals and societies, and highlighting the importance of value priorities in attitudes and behavioral decisions. Both Durkheim and Weber emphasize the importance of values for social and personal organization [39], [41]. At the very introduction of his founding study of values M. Rokeach contends that it would be difficult for him to point out a problem of potential interest for social scientists in which values are not deeply involved [21].

Another founder of the theoretical study of values, G. Allport, affirms that they are the dominant force in life, as they direct the whole life activity of the individual towards their realization [3]. Apart from being subjective expressions of individual or group aspirations and desires, values also function as objective norms and regulators of social behavior [40]. In this role, they form the nucleus of each culture [15].

Values are a significant category for the research fields of various scientific disciplines, and have many dimensions, but according to M. Paunov the leading and the most fundamental of them is that they provide the necessary axiological basis in each cognitive process and contain a criterion system for assessment of objects, people and events [45]. As aggregated standards, values are considered as the criteria individuals use to select and justify actions and to evaluate people (including themselves) and events [22].

Although there is a broad consensus on the key role of values in the social sphere, no such agreement has been achieved among researchers as to the meaning of the term, not only in the social sciences as a whole, but in any particular disciplines as well [36]. Given the large number of heterogeneous definitions of the notion of values, Schwartz attempts to point out those key characteristics that major researchers' definitions have in common [22], [3], [21], [25], [16], [17]:

- a. Values are convictions inextricably linked to affection and emotion;
- b. They are intended purposes that motivate action;
- c. Unlike norms and attitudes that usually refer to specific actions, objects, and situations, values are abstract and transcend specific situations;
- d. Values act as standards or criteria. They guide the choice or evaluation of actions, policies, people and events.
- e. They are ranked in relation to each other and build a hierarchical system of value priorities, which also distinguishes them from norms and attitudes;
- f. The relative importance of different values guides action. Every attitude or behavior usually affects more than one value. Compromise between rival values guides actions or behaviors.

The above features refer to all values. What distinguishes one value from another is the type of

purpose or motivation that the given value expresses.

## 1.2. Structure of values – Schwarz's theory of basic human values and the dynamic structure of value relations

Schwarz's theory of the universal content and structure of human values was proposed in 1987 [25] and quickly became the leading theoretical concept in the field of cross-cultural research and psychological research of values [20]. Both the theory itself and the methodology for the empirical study of values undergo several modifications [22], [23], [27], [24], [30]. The theory has been verified and confirmed in a large-scale cross-cultural value survey, conducted between 1988 and 2002, that covered over 64,000 people from 67 countries on all continents [29]. The study, which includes Bulgaria [38], provides evidence in favor of the author's claim that the human value system has universal content and structure in all individuals and cultures around the world, and people differ only in the relative importance they attach to each of the universal human values [29].

According to Schwartz, values are desirable, trans-situational goals that vary in importance and act as guiding principles in the lives of people or groups. This definition is close to the definitions of Kluckhohn and Rokeach [17], [21]. Schwartz considers values as cognitive representations of three types of universal human needs: biological needs, needs for coordination of social interaction, and requirements of public institutions for the preservation and welfare of the social group. The typology that Schwarz and Bilsky offer is based on these three types of universal human needs and hence – on the differences in the motivational content of the values. Thus, there are two fundamental types of relations between the different categories of motivation – mutual exclusion (conflict) and complementarity (compatibility) [22], [25]. The essence of Schwarz's theory is that the values form a circular motivational continuum. Individual value items occupy their positions on the circular continuum based on the two fundamental types of relationships – compatibility or conflict – between the motivations they express [24].

One of the most significant contributions of the Schwarz theory is that it differentiates two levels of analysis of the organization of values – individual and cultural, but within a single empirical instrument. The organization of values on an individual

level results mainly from the psychological dynamics of conflict and compatibility that the individual experiences in the pursuit of various goals in everyday life [22], [25]. On the other hand, the structure of the value system at a cultural level reflects the different models used by societies to solve problems stemming from the regulation of human activity [26].

The results from empirical studies, conducted by Schwartz, show that the content and structure of the value system at the individual level include 10 key value categories, with each of them combining values with the same motivational purpose [22], [26]. The following value categories have an empirically confirmed impact on attitudes towards immigration:

**Security** – the motivational objectives of such values are safety, harmony and stability of society, relationships and personality;

**Conformity** – values that limit actions, tendencies, and impulses that can upset or injure others and violate social expectations or norms (self-discipline, politeness, respect – respecting parents and the elderly);

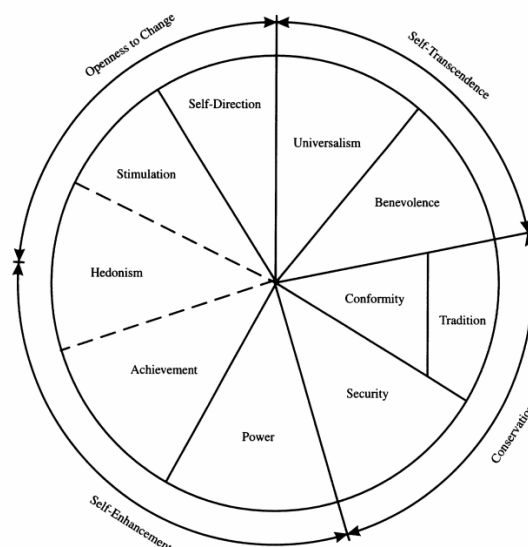
**Tradition** – the motivational goals of the values of the category Tradition are respect, dedication and acceptance of the customs and ideas that a culture or a religion impose on the individual (respect for tradition, modesty, moderation, acceptance of one's fate, etc.);

**Benevolence** – values aimed at the well-being of people with whom we have frequent personal contacts (generosity, devotion, responsiveness, responsibility, loyalty, true friendship, true love);

**Universalism** – values of understanding, tolerance and preservation of the well-being of all people and nature (social justice, equality, unity with nature, wisdom, environmental protection, a world at peace, etc.)

According to their purpose, these value categories are in a relationship of compatibility or conflict. Value categories are mutually complementary when the realization of one does not obstruct the realization of the other, i. e. when they have similar goals. Otherwise, they are conflicting. Schwarz presents these structural relations in a circular diagram that reflects the idea of the integral nature of the value system (Figure 1). The categories next to each

other are complementary, and those that are positioned opposite each other are conflicting [22].



**Figure 1. Structural relations among ten motivational types of values [47].**

The ten value categories can be organized into four higher-level value types:

- Self-transcendence** (universalism and benevolence) values that underline the acceptance of others as equals and concern for their well-being;
- Self-enhancement** (power and achievement) values that emphasize personal success and domination over others;
- Openness to change** (self-direction and stimulation) values that focus on independence of thought and action and positive attitude towards change;
- Conservation** (security, compliance and tradition) values with an emphasis on self-restraint and status quo preservation.

These four types in turn form two bipolar dimensions, which describe the conflicting relationship between them. The first dimension – Self-transcendence versus Self-enhancement, characterizes the attitude of the individual to other people. Here, values centered on accepting others as equals and caring for their well-being, oppose values that emphasize personal success and dominance over others.

The second dimension – openness to change vs. conservation – describes the attitude of the individual to risk. The opposition is between the values of independent thought and action and the desire for

change on one side, and the conservative values of self-restraint along with the maintenance of tradition and stability, on the other. The hedonism value category includes elements from both openness to change and self-enhancement [22], [26].

## **2. Symbolic theories about the impact of values on attitudes to immigration. Ethnic exclusionism**

A number of recent studies have shown that in a given country cultural and value-based predispositions are stronger predictors of hostility towards immigrants than socio-economic conditions [32], [33]. As mentioned in the introductory words, there are two main theoretical trends about the sources of negative attitudes towards migrants:

- “rational” theories focusing on material interests as the prime source of hostility;
- “symbolic” theories that assume identities as such.

In both types of theories the perception of threat is a precondition for hostility towards immigrants. The difference is in the nature of this threat and in its roots – whether it originates from objective socio-economic conditions or from cultural and psychological predispositions [33].

### **2.1. Material interests**

In interest-based theories of immigration ethnic competition for scarce resources is the motivational basis for opposing immigration. From this perspective, antagonism to immigrants is based on the threat they pose to the material well-being of the individual. Political debate in the public domain usually focuses on this issue, weighing the threat to jobs and salaries against the need for people to do dangerous or hard work. The debate on material costs and benefits also concerns the alleged influence of immigration on crime, schools and social programs [33].

### **2.2. Identities**

In most modern societies the nation is subject to strong attachment, so groups believed to be threatening its identity often causes hostility. Immigrants are by definition outsiders in contexts where national identity is the basis of self-categorization and emotional attachment [33]. According to the theory of social identity, the innate tendency to in-group favoritism is more intense when the group in question has a great emotional significance.

**2.2.1. Symbolic politics theory.** Symbolic politics theory emphasizes the power of values and identities in public opinion formation, claiming that the role of these “ideal interests” is often more important than the influence of the material factor. In the case of immigration, beliefs concerning the nation and its culture are particularly salient. According to this theoretical paradigm, people develop latent political values in their early socialization. These values are activated in adulthood at certain times under the influence of political symbols [12], [31]. Political symbols trigger an emotional response of individuals to immigrants and immigration policies instead of stimulating a rational response [13]. Concerning European countries, [7] found that the messages of political parties have a statistically significant effect on the development of individual immigration attitudes. There is evidence that for Europeans, in some cases, this effect is stronger than economic dissatisfaction [33]. It has been empirically found that in European countries political ideology has had a stronger impact on immigration attitudes of people over time, and that anti-immigrant sentiment is more prevalent in areas expressing support for right-wing extremist parties. Moreover, in European countries the symbolic predispositions that arise in terms of cultural values along with the overestimation of the number of immigrants in a given country predict immigration attitudes better than economic problems [32], [33]. Thus, viewed through the prism of symbolic policy theory, political ideologies play a more prominent role in Europe when political parties express negative views about immigrants, reflecting a symbolic process that activates the latent political values of local citizens with respect to foreigners and immigration as a whole [37].

At the same time, cultural values and beliefs can also inspire pro-immigrant attitudes. Haubert and Fussell, for example, argue that the cosmopolitan worldview, which is most common among people with higher education who have lived abroad and deny ethnocentrism, largely explains pro-immigrant sentiments [14].

**2.2.2. Ethnic exclusionism and its many manifestations.** The influx and presence of immigrants from non-European ethnic groups give rise to heated debates in all European societies. The immigration crisis of the past few years has brought to the forefront certain phenomena that were muted in the postwar years of economic prosperity and a dominant liberal consensus in Western Europe. The perception of a threat to the culture, lifestyle, and

security of the indigenous peoples of Europe is bringing ethnic prejudices and discrimination against migrants and minorities back with renewed vigor into the public discourse and leading to the ethnization of European politics [44]. Social distance from immigrants is growing, and the meaning of the immigrant term itself is changing as it is increasingly associated with the negative images of the economic and illegal one, and even with the image of the terrorist [46].

Such phenomena can be defined as ethnic exclusionism – a generalized term covering multiple aspects related to the majority's desire to exclude minorities [9]. The following empirically established manifestations of ethnic exclusion can serve as a theoretical basis for studying the attitude of the majority towards immigrants and ethnic minorities in Bulgaria as well:

1. Ethnic prejudice and ethnocentrism. Documented in a number of classical studies, they are generalized unfavorable attitudes towards one or more ethnic groups [34], [1], [2];
2. Resistance to immigrants and the related debate on resistance to asylum seekers as a consequence of the growing number of people wishing to settle in Western European countries [18];
3. Resistance to multicultural society. In many European countries, politicians and citizens take a stand against multicultural society, highlighting the problems that arise as a result of the presence of minorities with different religions and cultures that would ultimately undermine the stability of traditional culture.
4. Limits to multicultural society. This position highlights the unfavorable consequences of the long-term immigration process and the public boundaries to which the admission of new minority groups may extend;
5. Ethnic distance [6]. This aspect refers to the presence of immigrants in European societies and denotes the process whereby the more minority groups approach the majority, the more the latter tries to keep them at a distance and to avoid real inter-ethnic contact;
6. Opposition to civil rights for legally resident migrants;
7. Support for repatriation policies for legally resident immigrants;
8. Insistence on conformity of migrants to law.

**2.2.3. Prejudice and immigration – symbolic racism and subtle prejudice.** The main argument of symbolic racism theory is that white people have

been socialized to have latent negative perceptions of racial minorities, and when confronted with certain politically charged symbols, their negative feelings come to the surface and make them oppose public policies that support immigrants [5].

The theory of subtle prejudice is based on a combination of feelings: a strong desire to defend traditional values, a tendency to exaggerate cultural differences between the majority and minority groups, and a cool to absent emotional reaction to minorities and immigrants [19]. The concept of subtle prejudice is opposite to that of blatant prejudice, the latter being open and filled with threat. Researchers find that subtle prejudice is a strong predictor of Europeans' negative attitudes towards immigrants [19].

### **3. Empirical research on the relation between values and attitudes towards immigrants in Bulgaria – hypotheses and method**

At the end of 2017 and the beginning of 2018, research teams from the Institute for the Study of Societies and Knowledge at the Bulgarian Academy of Sciences (ISSK – BAS) conducted two field empirical studies of the relationship between value orientation and attitudes towards immigrants:

**Study 1:** National Representative Empirical Sociological Study "Social Aspects of Modern Migration Processes", conducted by a team headed by Prof. A. Mantarova. The survey is representative of the Bulgarian adult population and was conducted with a two-stage nest sample of 800 people with the data used here being weighted by sex and age;

**Study 2:** "Values and ideo-political orientation – relations and dependencies" – an ongoing research project, aiming to establish through in-depth interviews with members of political parties in Bulgaria the dependence of their political orientation on their value priorities. The study employs an empirical toolbox integrating the PVQ 21 questionnaire [27] with questions about some of Hofstede's value categories and an original questionnaire on political values and ideological orientation. The project envisages the development of an empirical instrument to measure the Index of political values and political orientation (IPVPO).

The study consists of in-depth interviews with members of left, right, nationalist and liberal Bulgarian parties in 10 provinces of the country. It is



ongoing at the time of publication, which is why preliminary results of 60 interviews are presented.

The following research hypotheses on the relationship between values and attitudes towards immigrants were subjected to empirical testing during the two studies:

1. The values of self-transcendence (universalism and, to a lesser extent, benevolence) are related to higher levels of acceptance of immigrants and concern for their rights. People for whom these values are a priority also express fewer fears about the immigrants' presence and are less inclined to express ethnic prejudices, resistance to immigrants and ethnic distance;
2. The value categories of the conservation dimension (conformity, tradition and security) show a strong correlation with resistance to immigrants, fears of their presence and ethnic distance;
3. Unlike Western countries, in Bulgaria people of right-wing economic orientation are liberal in the social sphere and are expected to show greater acceptance and concern to immigrants;
4. Members of nationalist and left-wing parties will be more resentful against immigrants and more fearful of their presence, keeping them at a greater distance.

#### 4. Results

**Survey 1.** In order to establish whether there is a link between values and attitudes towards immigrants, the answers to questions on the value categories security, tradition, self-direction and universalism were compared with respondents' opinions on various issues concerning immigration.

The representative survey largely confirms the starting hypotheses for some of Schwarz's values. Bulgarian citizens, who attach great importance to security, are much more likely to show resistance to immigrants and ethnic distance. The more important security is as a value priority for them, the more respondents are inclined to support restrictive immigration policies of closed borders to prevent all immigrants for entering the country (Table 1), and less likely to accept an immigrant as a family member (Table 2).

**Table 1. Comparison Security – Resistance to immigrants. (Source: Own work)**

How important are in your life: Security and peaceful life? (Security)	NO immigrants should be admitted to the country	
	YES	NO
1 Very important	41,05%	58,95%
2	41,27%	58,73%
3	34,55%	65,45%
4	19,34%	80,66%
5 Not important at all	–	–

**Table 2. Comparison Security – Ethnic distance. (Source: Own work)**

How important are in your life: Security and peaceful life? (Security)	Would you accept an immigrant as a family member?	
	YES	NO
1 Very important	9,72%	90,28%
2	10,26%	89,74%
3	13,75%	86,25%
4	15,32%	84,68%
5 Not important at all	–	–

**Table 3. Comparison Tradition – acceptance of immigrants (Source: Own work)**

How important are in your life: Bulgarian traditions and culture? (Tradition)	Our country should accept all immigrants	
	YES	NO
1 Very important	10,02%	89,98%
2	12,99%	87,01%
3	12,25%	87,75%
4	23,85%	76,15%
5 Not important at all	24,85%	75,15%

**Table 4. Comparison Universalism – Ethnic distance. (Source: Own work)**

How important are in your life: Caring for others and the common good? (Universalism)	Would you agree to immigrants settling in your neighborhood?	
	YES	NO
1 Very important	29,71%	19,90%
2	20,24%	79,76%

3	17,68%	82,32%
4	9,24%	90,76%
5 Not important at all	6,28%	93,72%

**Table 5. Comparison Self-direction – Ethnic distance. (Source: Own work)**

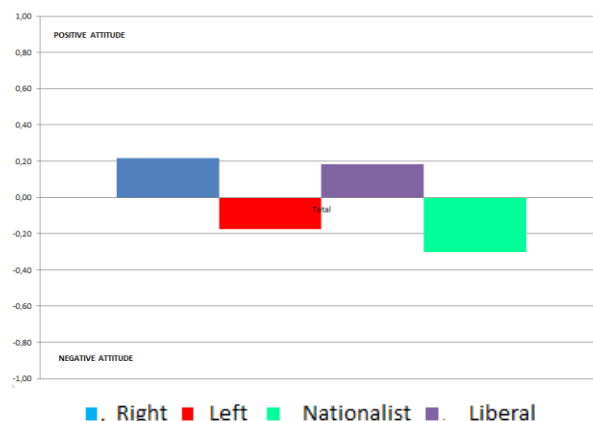
How much do you aim for: Creativity, originality, new ideas? (Self-direction)	Would you agree to immigrants settling in your neighborhood?	
	YES	NO
1 Very much	29,74%	70,26%
2	28,12%	71,88%
3	20,50%	79,50%
4	15,45%	84,55%
5 Not at all	12,31%	87,69%

Apparently, in Bulgaria people for whom creativity and freedom of thought are a value priority, express fewer fears about the presence of immigrants. It is no coincidence that this value category is part of the openness to change dimension that stands in opposition to the motivational content of the conservation dimension, the latter being associated with a negative attitude towards immigration.

The results of the study correspond with data obtained from a number of international surveys and fit into a common model of relations between values and attitudes towards immigrants where the conservative values of preservation (security, conformity and tradition) correlate negatively with acceptance of immigration, and the values of self-transcendence (universalism and benevolence) show a positive correlation across countries and contexts [11], [10], [35].

**Survey 2.** Several major topics were included in the survey questionnaire to find out how respondents assess immigration's impact on different spheres of public life. The hypothesized link between the individual values of party members and their attitudes towards immigrants receives little empirical support at this stage of the survey. The results give reason to assume that the political orientation and party affiliation of the respondents are a much more important factor determining their attitudes towards immigration compared to their values. The analysis of the data shows that members of the right and liberal parties express positive attitude towards immigrants, with weaker perceptions of threat.

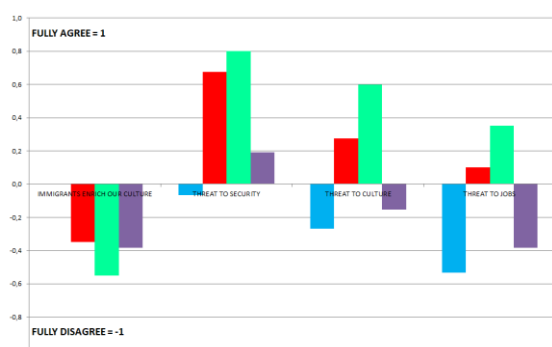
Nationalists and left party members express the most negative attitudes towards immigrants (Figure 2).



**Figure 2. Party affiliation and attitudes towards immigrants – summary results. (Source: own work)**

With the exception of right-wingers, all other party members consider immigrants to be above all a threat to security, then to culture, and the smallest percentage of respondents believe they are a threat to natives' jobs (Figure 3). Respondents highlighted three main arguments when they downplayed the threat to jobs: 1. "Today's immigrants are unskilled and cannot compete with Bulgarians on the labor market."; 2. "The immigrants' goal is to settle in Western Europe and they do not intend to stay here." and 3. "Bulgarian economy suffers from a lack of labor force and there is work for everyone who wants to work".

So far the only respondents who gave positive answers to the question of whether immigrants enrich our culture have been right-wing party members. As a whole, right-wingers' views on this issue have been balanced and their attitudes remain neutral. The strongest disagreement with this claim was made by representatives of the nationalist parties. The impact of a demographic factor, namely the age of the respondents, should also be noted – older adults showed a greater ethnic distance than young people, irrespective of their party affiliation. The exceptions here are the patriots, where anti-immigrant attitudes are ubiquitous.



**Figure 3. Party affiliation and attitudes towards immigrants – summary results.**  
(Source: own work)

The results at this stage of the study show clear dividing lines in the attitude towards immigrants based on party affiliation. However, the positions are not too far apart – in each of the parties there are both vehement opponents to immigration, and people for whom it is not such a serious problem.

## Conclusions

The two empirical studies are part of a complex research project developed by ISSK – BAS. Among the goals it puts forward is also the identification of factors determining the treatment of migrants in the context of increased migration processes. In the deepening process of personalizing politics, the role of old class and socio-economic differences as the main determinants of ideological and political orientation erodes, and the personality of the citizen with his values stands out in the foreground [8]. The results of the national representative empirical study confirm this thesis and underline the importance of some of the value categories of Schwarz's theoretical model in forming attitudes towards immigrants in Bulgarian society.

At the same time, interviews with members of Bulgarian political parties demonstrate the importance of ideological political orientation and party affiliation for shaping these attitudes. In accordance with symbolic policy theory, the image of an immigrant as a political symbol activates latent political values and creates opposite emotional attitudes among, from one side, right-wing and liberal parties who emphasize the need for humane treatment of immigrants and tend to downplay the threat to security and jobs in the country. On the other hand, among the left and patriotic organizations, this image gives rise to a sense of threat and the pursuit of ethnic exclusion.

The results confirm the position of values as a useful theoretical construction both in the scientific analysis and the development of value-based crisis management policies resulting from enhanced migration processes [43]. The multidisciplinary theoretical framework for comprehensive analysis of the attitude towards immigration, that both studies contributed to, will serve as a platform for further in-depth studies in this research area.

## 6. Acknowledgments

The author gratefully acknowledges the financial support of the project “Radicalization in Everyday Life: Factors and Mechanisms for Normalization of Radicalism and Violence among Youth”, funded by the Bulgarian National Science Fund, contract MU 05/3, 14.12.2016.

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## Human rights dialogue and reporting towards Albania

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**Abstract:** One of the main functions of many international and regional organizations is the protection of human rights and fundamental freedoms. Human right clauses are part of every agreement between the European Union and third countries. Today seems to be a concern the implementation of the human rights clauses and consequently, an enforcement mechanism it is required to be included in the agreement with third countries. An instrument of the Union external policy is the dialogue of the EU with third countries. European Union has adopted the Guidelines, providing the general framework for the EU action in the HR's area towards third countries. Human Rights Dialogues are one of the tools that the EU uses to implement its human rights policy and constitute an essential part of the EU's overall strategy towards non-EU countries. Political dialogue between EU and Albania started in 1991, and human rights are part of this dialogue, meanwhile the Copenhagen criteria are required to be met. The priority issues in each dialogue include the signing, ratification and implementation of international instruments, cooperation with international human rights mechanism, protection of the child's rights, women's rights, improving the prison and pre-trial detention system, freedom of expression, freedom of assembly and association, freedom of religion, vulnerable people's rights, property's rights, cultural rights, the rights of Roma people. Head of the EU Mission makes the assessment on human rights in Albania, drafts the local strategies for the implementation of guidelines and monitors the human rights situation, meanwhile the Working Group on Human Rights (COHOM) evaluates the progress done, deciding the continuity of HRD with Albania towards the full integration to EU. This article aims to give an overview of the importance of the EU Guidelines on HRD as an integral part of the HR Policy, the human rights position in the political dialogue with Albania and the role of the EU Heads of Mission in Albania on adopting and monitoring the implementation of the local strategies.

### Introduction

One of the main functions of many international and regional organizations is the protection of human rights and fundamental freedoms. The Treaty of European Union has promulgated the values of human rights and protection of minorities. Human right clauses are part of every agreement between the European Union and third countries. Today seems to be a concern the implementation of the human rights clauses and consequently, an enforcement mechanism it is required to be included in the agreement with third countries.

An instrument of the Union external policy is the dialogue of the EU with third countries. European Union has adopted the Guidelines, providing the general framework for the EU action in the HR's area towards third countries. Human Rights Dialogues are one of the tools that the EU uses to implement its human rights policy and constitute an essential part of the EU's overall strategy towards non-EU countries. They also allow the EU to raise individual cases of concern.[1] Political dialogue between EU and Albania started in 1991, and human

rights are part of this dialogue, meanwhile the Copenhagen criteria are required to be met. The priority

issues in each dialogue include the signing, ratification and implementation of international instruments, cooperation with international human rights mechanism, protection of the child's rights, women's rights, improving the prison and pre-trial detention system, freedom of expression, freedom of assembly and association, freedom of religion, vulnerable people's rights, property's rights, cultural rights, the rights of Roma people.

Head of the EU Mission makes the assessment on human rights in Albania, drafts the local strategies for the implementation of guidelines and monitors the human rights situation, meanwhile the Working Group on Human Rights (COHOM) evaluates the progress done, deciding the continuity of HRD with Albania towards the full integration to EU.

### 1. The importance of the EU Guidelines on HRD as an integral part of the Human Rights Policy

With the entry into force of the Lisbon Treaty on 1<sup>st</sup> December 2009 are promulgated the values of the Union as dignity, freedom, liberty, democracy, equality, rule of law, human rights and rights of minorities.[2] Under the article 21 the EU wants to bring the same values to its external relations. Common Foreign and Security Policy placed Human

Rights at the heart of this policy with the most important objective to “*develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms*”.[3] Integral part of the Human Rights Policy is a series of Guidelines on issues of importance to the EU, such as death penalty, torture, dialogue with third countries, children affected by armed conflict, human rights defenders, the rights of the child, violence against women, promoting compliance with international humanitarian law. The guidelines are considered as practical tools to help EU missions to implement a better external relation with third countries.[4] The European Union is engaged in HRD with third countries, which are an instrument of the EU external policy. [4]

Guidelines on Human Rights Dialogue as an instrument of external policy of EU were drafted during the Belgian Presidency on 25 June 2001 and adopted by the Council on 13 December 2001. The main aims of the HRD were to improve the HR situation in the country with which the dialogue is initiated; to keep open the channel of communication with regard to HR; to ensure consistency and coherence while keeping a flexible approach for the countries concerned; to identify the role played by this instrument in the global framework of CFSP and EU policy on HR; to define the conditions in which HRD made effective; to notify the third parties such as NGO, academic world, EP and third countries of this approach. [5] There are several types of HRD which are based on regional or bilateral treaties, agreements or conventions dealing systematically and exclusively with the issue of human rights; structured dialogue; *ad hoc* dialogues extending to CFSP related Human Rights; Dialogues in the framework of special relations with certain countries, concerning the issues of common interest; Dialogues of a number of Member States with third countries at national level. [4]

Usually the HRD are initiated under the decision of the EU representatives or under the request of a third country. HRD is and it will be in the future part of every meeting with third countries, EU missions, joint committee meeting, Presidency of the Council etc. In every HRD it is expected to identify the problems at an early stage which may lead to conflict in the future; to register the concerns on the HR issues in a country and improve the situation in that country and to discuss the issues on HR in multinational *fora* such as UN. [4]

The issues with priority for every HRD's agenda includes ratification and implementation of HR

Instruments, treatment of the detainees in the prisons, elimination of all forms of discrimination, children's rights, women's rights, property rights, increasing the role of civil society and the protection of HR Defenders, cooperation in the field of justice, rule of law and good governance. However, the issues of the HRD depend on a *case by case* basis.

Usually, when it is decided to enter on a HRD, the first requirements it is the defining of the practical aims which the EU seeks to achieve. Before entering in a HRD an assessment it is required and EU decides to establish the criteria for measuring the progress and also the criteria for a possible exit strategy.

[4] In every HRD, only if the assessment is a good one, then Working Group on Human Rights (COHOM) decide to initiate a HRD. In every agreement, human rights dialogues, political dialogue, human rights issues remain a key issue of discussion, if necessary at the highest level, but on the other hand there is a serious concern on the effective implementation of this instrument. One of the worst examples is the non-application of the human rights clause in case of grave human rights violations in agreements, although this clause is considered to be an essential element of the agreement and therefore legally binding. [6]

The European Parliament called for continued vigilance as regards respect for the human rights clauses in agreements signed by the EU, and for such clauses to be included systematically in future agreements. Parliament reiterated its call for the clause to be accompanied systematically by a genuine enforcement mechanism. [7]

Again in 2010, the European Parliament emphasized the importance and indispensability of human rights and democracy clauses in agreements between the EU and non-EU countries. The Resolution called for more effective implementation of the human rights clauses, including through the establishment of an enforcement mechanism linked to benchmarks to measure implementation of human rights obligations. [8] This concern remains nowadays in several agreements with EU and policies such as pre-accession policy with the Copenhagen criteria. Since 1995 the EU has sought to insert a human rights clause in its agreements with non-EU countries, but has existed and exist the concern of the missing enforcement mechanism clause to measure the effective implementation of the human rights obligations.

## 2. The human rights position in the political dialogue with Albania

## 2.1 Human rights dialogue and reporting before signing the SAA with Albania

The contractual relations of Albania with the Community and its Member States was based on the 1992 Trade, Commercial and Economic Co-operation Agreement, which on April 2009 was replaced by the Stabilization Association Agreement when entered into force. Albania was required to meet the criteria of Copenhagen in June 1993, where one of the most important requirements to be achieved was the human rights and respect for and protection of minorities.

Since 1991 exist a *political dialogue* at ministerial level between Albania and the EU. European Union has insured that HRD will be part of any kind of discussion with third country at every level, including political dialogue.

Inter-parliamentary meetings are held each year since 1993 between representatives of the European Parliament and the Parliament of Albania. Also, since 1992 the Commission has reported to the Council and Parliament for the progress made by the Western Balkans including Albania.

Trying to consolidate peace and stability in the region and to contribute to its economic renewal, the EU has intended to develop bilateral relations with the countries of the region within a framework which promotes democracy, the rule of law, higher standards of human and minority rights, transformation towards market economies and greater cooperation between those countries. Particular importance was attached to the principles of conditionality of the Stabilization and Association Process, which has governed the development of the Union's relations. [9]

In this context the Commission has presented a strategy paper entitled "*The application of conditionality to the development of relations between the EU and the countries concerned by the regional approach*", which was welcomed by General Affairs Council on 24 February 1997. [10]

On this basis, the EU has agreed to establish, in the framework of the regional approach, political and economic conditions as the basis for a coherent and transparent policy towards the development of bilateral relations in the fields of trade, of financial assistance and economic cooperation as well as of contractual relations, allowing for the necessary degree of flexibility. The EU strategy served as an incentive, and not an obstacle, to the countries

concerned to fulfill these conditions covering all countries in southeastern Europe without an Association Agreement (Bosnia and Herzegovina, Croatia, FRY, FYROM, and Albania). [11] The Council has monitored and evaluated the progress made in fulfilling the conditions required, using all mechanisms and taking into account the reports of international organizations, government, civil society etc. The application for a contractual relation is a process in evolution, where one of the most important conditions during the negotiation of the SAA was respecting of *human rights and minority rights*.

In 1999 the **Regional Approach** was developed into the EU **Stabilization and Association Process**. This process didn't a priori change the conditions applying to the development of bilateral relations in the field of trade or financial assistance and economic cooperation or for the start of negotiations on contractual relations. The conditions for the opening of negotiations were those laid down in the Council Conclusions of 29 April 1997.

Albania had been open to participate in some agreements and to fulfill the condition determined by the European institutions. [12] At the same time Albania had been one of the countries of the European Strategy for the south-east countries of 1997, but for Albania had been impossible to fulfill all the condition for the Stabilization Association Process. In accordance with conclusions of the adopted feasibility report, Albanian government was invited to present an assessment, including a time table on actions taken or envisaged in identified priority areas.

In the mean time, all existing instruments under the Trade and Cooperation Agreement and within Community assistance as well as the political dialogue had been actively used in order to support the ongoing process of stabilization and reform in the country.

During that period Albania had made progress in the fields of public order and economic, legal and institutional reform, on human rights and minority rights. [13]

In June 2000 in Feira the EU has confirmed that all the western countries are potential candidates for EU membership. Only in June 2001 are evaluated the results of the Albanian Government in the fulfilling of the determined conditions, preparing the situation for the adoption of the negotiating directives by the Council, and the launch of *negotiations for SAA*.

In this framework, after the Goteborg Summit, a Consultative Task Force with the representatives of Albanian state and those of EU was established. The task of this group was to make an assessment on Albania's possibilities to fulfill the obligations to the SAP. The main aim of this group was the increase of cooperation EU-Albania and to support the reforms in the framework of the preparation of SAA negotiations. Also, the group has adopted instructions and advices for all the problematic sectors as declared in the report of the Commission. The Task-Force has reported to the Council for every development achieved. Starting from 18 October 2001 until November 2004 nine meetings have been conducted. In the evaluation reports of recommendations, the Commission has taken into consideration political, economic and regional factors. Again, one of most important issues raised during the meetings was Human and Minority Rights. During the fourth meeting (November 2002) the negotiations for the SAA have been prepared. The long waited negotiations for the draft of SAA were opened by the end of January 2003. Justice and home affairs became the principal focus, followed by other matters related to democracy and civil society, human rights, functioning of democratic institutions, property issues, public administration etc. [14]

In June 2003 General Affairs and External Relations Council has adopted the Thessaloniki agenda for the Western Balkans, aiming to strength the SAP by introducing new instruments as the European Partnership. The first European Partnership with Albania was adopted by the Council in 2004. [15] In this framework, a *political dialogue* was developed between EU and Albania, on the complying the criteria of Copenhagen and the European Partnership priorities. One of the most important priorities remained the *human and minorities rights*. Albania adopted its Action Plan for the implementation of European Partnership priorities in September 2004 and provided the Commission with assessment on its progress in implementing the action plan. [16] During April 2004 and July 2005 five Consultative Task Force meetings have been held with Albania resulting in a set of agreed recommendation for Albanian Government, including human rights issues. The progress report of 2005, which was relied on the Albanian government contribution, European Parliament reports, assessment of several international organization and NGO, has accepted that exist a legal framework on human rights and fundamental freedoms, but further progress was required to reach international standards in human and minority rights

enforcements. [17] The same conclusion remained during 2006.

Human rights clause is part of every dialogue realized between EU and Albania since 1992 and at the same time each progress report of the Commission since 2002 has assessed the progress done on human rights issues. There are ratified and implemented a lot of international convention of United Nations and Council of Europe and the relevant legislation is approximated to the international instruments. An overall assessment on civil and political rights; on economic and social rights; cultural rights and minority rights is part of every progress report since March 2002 to 12 June 2006, time when was signed the SAA. [18] During that period NGO dialogue with Albania's government has remained weak.[18]

## 2.2 HRD and reporting after the signature of SAA with Albania

Negotiation, signing and implementation of the agreement is a process that will need persistent consolidation of reforms within the country in order to meet the criteria of becoming a Member State in EU.

The opening of the official negotiation for the Stability and Associate Agreement between the Republic of Albania and the member's states of EU and their finalization by signing this agreement is the first step towards the total membership of Albania to EU. The evaluation of the Albanian government's capabilities to meet successfully the official negotiation, the signing of SAA and the fulfillment of the respective engagements is a crucial criterion to advance further to the implementation of Stability and Associate Agreement.

On 30 January 2006 the Council has adopted the revised European Partnership for Albania. The Stabilization and Association Agreement between EU and Albania was signed in 12 June 2006. Meanwhile, the SAA had not enter into force was very necessary to implement, by means of an Interim Agreement, the provisions of the SAA on trade and trade-related matters, which entered into force on December 2006. [19]

Progress on these reform priorities is encouraged and monitored through political and economic dialogue with Albania. This dialogue is conducted through Ministerial Troika, joint committee and consultative task force (CTF) meetings at ministerial level and working party meetings at deputy minister



level. Two CTF and five working party meetings took place between October 2006 and October 2007. CTF meetings focused on political accession criteria and rule of law issues. Each CTF meeting resulted in jointly agreed recommendations for action by the Albanian authorities. [20] Human rights issues as part of political criteria, reported for 2007, has covered the ratification of HR instruments, promotion and enforcement of HR; progress in improving the prison and pre-trial detention system; progress on freedom of expression, freedom of assembly and association, freedom of religion; [20] progress on strengthening women's rights, children's rights, vulnerable people's rights, property's rights, cultural rights; [20] progress in improving the situation of the Roma etc. [20] During that period was ameliorated NGO dialogue with Albania's government, by involving civil society in the discussion of important new laws. [20]

In February 2008 the Council has adopted a new European Partnership with Albania. [21] Progress done during the period October 2007 to early October 2008 has been assessed on the basis of decisions taken, legislation adopted and the measures implemented. [22] During that period are ratified international convention on UN and CE level; Ombudsmen has contributed to the promotion and enforcement of HR [22]; further steps have been taken to prevent torture and ill-treatment of detainees; progress on access to justice and treatment of prisoners; limited progress on freedom of expression [22]; further progress on strengthening women's rights; little progress on establishing a proper legal definition of discrimination; progress on consolidating property rights, meanwhile the uncertainty persisted [22]; further progress on cultural rights and limited progress in terms of measures taken by the government to improve the situation of the Roma's people. [22]

The Stabilization and Association Agreement between Albania and the EU entered into force in the early April 2009 and by the end of April 2009 Albania has applied for the EU membership.

For the period October 2008-September 2009, progress on the reform was monitored through the SAA structures on the framework of political and economic dialogue between EU- Albania. The first SAA Council was held in May 2009 and six sub-committees have been held since November 2008, focusing on political accession criteria and rule of law issues. [23] During that period progress was made by Albania towards meeting the Copenhagen

political criteria, which required among others human rights and respect for and protection of minorities covering the ratification of most of the international and European HR instruments [23]; progress in establishing a probation service and in improving the prison and pre-trial detention system; little progress on completing the legal framework on the media; progress on the relation between government and civil society but the participation of civil society in policy making remain weak [23]; some progress has been made to protect women's rights but further efforts are needed to promote effectively the gender equality and the domestic violence remained a serious concern [23]; progress has continued in the area of children's rights; little progress in consolidating property rights requiring a wide ranging approach and the setting up of a comprehensive legal and institutional framework [23]; progress was continued on the protection of minority rights but not with their cultural rights. [23]

### **2.3. HRD and reporting after the entry into force of SAA with Albania**

#### **2.3.1 Political dialogue and reporting under the SAA with Albania**

On 26 February 2009 the EU ratified a Stabilization and Association Agreement with Albania, which is the most important document in the European process of integration and determines the contractual basis for the relation between EU and Albania. This Agreement is consequence of a positive evaluation of the assessment on Albania made by EU structures, which decided to develop a further political dialogue with this country. The full implementation of SAA will help Albania towards the full membership to the EU.

The most important objective as determined by Article 1 of the SAA is to support the efforts of Albania to strengthen democracy and the rule of law and to provide an appropriate framework for political dialogue, allowing the development of close relations between the Parties. One of the most important principles during the progressively implementation of SAA is the respect for the human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the ECHR, in the Helsinki Final Act and the Charter of Paris for a New Europe. [24] Article 8 of SAA provides that the political dialogue is intended to promote common views on the cooperation in the areas covered by the Common Foreign and Security Policy, including human rights. In this way a human rights clause is included in the



political dialogue between EU and Albania entailing significant new obligations and engagements for the country.

In this frame work, human rights, democracy and the rule of law are included in all the discussion or meetings and at all levels with Albania such as SAA Council, ministerial talks, joint committee meetings led by the Presidency of the Council of EU, heads of Missions or the Commission.

Human Right Dialogue with Albania, in the framework of political dialogue, consists:

- (a) On the improvement of the human rights situation in Albania;
- (b) On the continuity of the communication on human rights situation in Albania;
- (c) On the identification of the role played by the HRD in the amelioration of the HR situation in Albania;
- (d) On the identification of the conditions in which the HRD is made effective;
- (e) On the awareness of the civil society, academic world, third countries and EP on the Albania's approach on HR and the effectiveness of HRD in the country

(f) The objective of HRD remains the registering of the concerns on the human right's level in Albania, identifying and discussing several issues on human rights area according to international instruments ratified by Albania.

According to the article 6 of the SAA, the progress done should be evaluated after five years after the entry into force of the SAA and if it will be a good assessment, then it will be allowed to pass in the second stage, the full association.[24] This is the only clause, which control the implementation of the obligation under SAA. Remains a concern the missing of a clear binding provision covering the establishment of an enforcement mechanism to measure the effective implementation of HR obligations as part of the political dialogue.

The issues with priority to be discussed with Albania in the HRD are determined by the EU and the assessment will look at the government will towards:

**1. Observance of international HRL**, covering *Ratification of international HR instruments; Enforcement of ECtHR decisions; Promotion and enforcement of HR*

**2. Civil and Political Rights**, covering *Treatment of detainees in police stations; Prevention of torture and ill-treatment and the fight against impunity; Prison system; Access to justice; Freedom of expression; Freedom of assembly and association; Freedom of thought and religion*

**3. Economic and Social Rights**, covering *Women's rights and gender equality; Children's rights; Treatment of socially vulnerable and/or persons with disabilities; Anti-discrimination policies; Labor and trade union rights; Property rights*

**4. Respect for and protection of Minorities cultural rights**, covering protection of minorities

Albania has implemented its obligations under the SAA since the entry into force of the Interim Agreement. In this framework was established the Joint Committee which meeting are held in 2006, 2007 and 2008 and its Working Groups which meeting are held in 2007, 2008 and 2009. After the entry into force of the SAA there was a gradual transformation from the Joint Committee to the SAA Council. Since that time, the dialogue between EU and Albania realizes through the structures in the framework of SAA, such as Council, Committee, sub-committee, Parliamentary Committee, but the dialogue can be realized in another format such as meetings between senior officials representing Albania and the Presidency of the Council of EU or Commission; or using diplomatic channels through the contacts in third countries and within UN, OSCE, CE or international *fora*. [24] The meetings of the SAA Council took place in May 2009 and May 2010. The first meeting of the SAA Committee was held in March 2010 and the subcommittee meetings were held in 2009 and 2010. EU is represented by EU Troika, or the Head of Mission. The meetings are held in Albania and Brussels, meanwhile the dialogue is better to be held in the country concerned.

After the entry into force of the SAA, in the human right dialogues are involved ministries or institutions responsible for HR issues, government representative responsible on human rights, civil society, making a progress in this way.

Progressively, there are ratified other international human rights instruments and it has been played an active role in monitoring the human rights situation in the country, and has been contributed to enhance the accountability of state institutions. [25] Albania has reported regularly before the Comity of Ministers of the Council of Europe for the general measures undertaken in the cases when it is found a breach of the Convention by the ECtHR, except the indivi-

dual measures undertaken in each case to execute the final decision. Also, regularly the government has reported to the UN structures on the frame work of UN Convention in which Albania is a member. It was reported that the legal framework was in conformity with the European standards, but its implementation remained insufficient in a number of areas. There was identified progress in the field of civil and political rights but on the other hand access to justice for vulnerable groups were needed to be ensured, the treatment of mentally ill prisoners should be ameliorated [25]; further progress was evident in the field of economic and social rights but on the other hand the strategy on the gender equality and fighting domestic violence needed to be effectively implemented, in the property area a problem remained the legal uncertainty, overlapping of the legislation and the non enforcement of the court decisions concerning property issues [25]; there was found further progress on the protection of minorities, but further improvement in the implementation of the strategies and living conditions of Roma minority was required. [25]

### 2.3.2. Political dialogue and reporting after the EU membership application

The Stabilization Association Agreement entered into force on 1<sup>st</sup> April 2009 and on 28<sup>th</sup> April 2009 Albania has presented its application for membership of the EU, which was approved by the Council of EU on 16 November 2009. The Albanian government has presented the Commission's questionnaire on 14 April 2010 and the verification is made on the framework of preparing the Avis on Albania's EU membership application. The Commission has adopted the Opinion on 9 November 2010, listing twelve key priorities [25] to be addressed before accession negotiations can be opened, including the need to reinforce the protection of human rights, notably for women, children and Roma minority, the need to prepare, adopt and implement a national strategy and action plan on property rights, as well as the need to take additional measures to improve treatment of detainees in police stations, pre-trial detention and prisons. [26]

On January 2011 it was prepared an assessment covering all the key priorities and the Action Plan concerning the measures required to be taken in short- terms. During the drafting of the Action Plan, it was worked in close collaboration with the international organization and EU assistance missions that provided further comments during the consultative meeting.

On 29-30 March 2011, the draft Action Plan was discussed in a consultative meeting with the European Commission, representatives from the Parliamentary Committees for European Integration and on Foreign Affairs and the international organization. The feedback provided by the Commission prompted a revision of the draft Action Plan. [27] Civil Society has been part on the drafting and consulting the Action Plan. Also, the draft has been consulted with Albanian Parliament and with Parliamentary Committee for European Integration.[27]

During the period October 2010- October 2011 Albania has participated in the regular political dialogue between the EU and the country through the SAA structures, OSCE, Head of the Mission, CE and diplomatic channels in third countries. There was held a meeting of the SAA Committee and Council and subcommittee meetings were held during the reporting period. [28] Albania has made limited progress towards fulfilling the Copenhagen political criteria and particularly Human and minority rights remained an issue of serious concern. [29]

There has been limited progress towards the adoption of a coherent property reform strategy and action plan, meanwhile there was found a lack of coordination between institutions which hampers effective implementation of the policy and creates legal uncertainty and a systematic risk of corruption.[27] There has been partial progress on addressing the key priority on reinforcing the protection of human rights and the effective implementation of anti-discrimination policies.[28] Some progress has been made towards addressing the key priority on improving the treatment of detainees and application of recommendations of the Ombudsman in this field.[26]

On 12 October 2011 the European Commission concluded that, although progress was made during the last year in some of the 12 key priorities identified in the 2010 Opinion on the country's European Union membership application, conditions for opening of accession negotiations have not yet been met. [27] The fulfillment of the 12 Key priorities was remained a pre-condition for the candidate status and then to opening the accession negotiations with Albania. After the EC Opinion on Albania's application, the Ministry of Integration adopted the guidelines on the revising of the Action Plan addressing the 12 key priorities taking in consideration the Opinion given by European Commission. Revision of the Action Plan aims to involve the Parliament in the

process of revising and monitoring the Action Plan; review the activities through re-evaluation of each action plan and implement activities of 2011 Action Plan; ensuring a systematic approach in addressing each priority, envisaging not only legal measures but also adequate capacity to implement these measures in practice; determine indicators for implementation of the monitoring and evaluation for each activity envisaged; include in the Action Plan mid-term activities under some priorities; prioritize the activities by their importance; update deadlines for the implementation of the planned activities; involve civil society in the drafting the action plan and monitoring the implementation of the activities; improve the quality of the reporting on the implementation of the activities in short- term and midterm. [30]

Meanwhile, it was revised the Action Plan taking in consideration the over mentioned Guidelines. On 31 December 2011 it was appointed the new Ombudsman and it was revised the action plan covering property issues and human rights protection under the respective 10<sup>th</sup> and 11<sup>th</sup> key priority. Implementation of the activities previewed in the action plan shall be monitored monthly as suggested by European Commission, through the Committee on the European Integration, Council of SAA, Civil Society taking in consideration the reports prepared by the government faced with the reports of the international organizations, head of mission, civil society etc. In this manner can be identified the role of the human rights dialogue and how much the EU activities has contributed to the achieved progress on human rights area as part of CFSP.

### **2.3.3. Political dialogue and reporting after the EU candidate status to Albania**

After a continuous and regular political dialogue between EU and government of Albania, on 10 October 2012 the EU Commission has recommended to the Council that Albania be granted EU candidate status, subject to completions of key measures in certain areas. During that period, the Albanian government has shown concrete action on continued political will in the area of the EU- related reform. Both the majority and the opposition have joined forces to adopt a resolution of EU-integration. Referring to the progress report of 2012, there has been moderate progress in the field of human rights and the protection of minorities, finding progress towards the treatment of detainees, prison system and the freedom of assembly and association; little progress regarding access to justice; moderate progress in the area of anti-discrimination policies some progress in the field of freedom of expression, property rights, women's

rights and gender equality but uneven and limited progress in the area of children's rights, vulnerable persons with disabilities and protection of minorities and cultural rights. [31] Also, during 2013 referring to the progress report, Albania has undertaken some concrete steps to reinforce protection of human rights and to effectively implement anti-discrimination policies.[32] Progress has been regarding freedom of thought and expression, freedom of assembly and association, prevention of torture and ill-treatment; some positive steps regarding women's rights and gender equality, minority rights, labor and trade union rights; less progress on children's rights and property rights and enforcement of the judgment of the ECtHR on property rights and the right to a fair trial.[32] In November 2013 the EU and Albania hold the first meeting of the High Level Dialogue on key priorities, which has been followed by another one by early March 2014. In the framework of the High Level political dialogue, on 17 December 2013 the Council has concluded that the candidate status to Albania was conditioned by the continued implementation of anti-corruption and judicial reform strategies and of recently adopted relevant legislation as well as a continued trend of pro-active investigations and prosecutions, including in the area of organized crime. One of the key priorities has remained the effective measures to reinforce the protection of human rights, including living conditions of Roma community, and anti-discrimination policies, as well as implement property rights. The later assessment has been realized from the Commission reporting to the Council and European Parliament on the progress done from Albania, mainly towards the judicial reform, prevention and fight against corruption and organized crime. [33]

The reform process has been accompanied by the consolidated political dialogue between majority and opposition and the further progress has been related to the constructive work in the parliament and the establishment of a National Council for EU-integration, uniting all stakeholders and realize the consensus across Albanian society, involving in the process the expertise and energy of the Civil Society.[33] The EU delegation in Albania has monitored the human rights situation, maintaining an active dialogue with the Albanian authorities on human rights protection and cooperating with other relevant international organizations such as UN, OSCE and the Council of Europe. Also, the EU delegation during that time has maintained a permanent dialogue with Human Rights Defenders, encouraging the Albanian authorities to guarantee a favorable environment for them and to further involve civil society

in the policy-making process. As consequence of the reforms and the results, on 27 June 2014 the Council has granted the candidate status to Albania, recognizing the reform steps and encouraging to step up the pace of reforms. The reform process has been relied on a constructive and sustainable political dialogue between government and opposition contributing in the progress of the judicial reform, the fight against corruption and organized crime and take effective measures to reinforce the protection of human rights, including of Roma community, and anti-discrimination policies, as well as implement property rights. Referring to the progress report 2014, freedom of assembly and association, as well as freedom of thought, conscience and religion, has continued to be generally respected. Less progress has been found on the property right, where the strengthening security of legal ownership has been requested.[34] As consequence of the political dialogue and the smoothly implemented SAA, Albania realize to make progress regarding the human rights as one of the key priorities and in the area of judiciary. More progress requested on the Roma and Egyptian community's rights, on the preparation of a comprehensive legislation on minorities. Also, the protection of women against all forms of violence and concrete measures on child protection system have been requested to be considerably strengthened.[34] Candidate status does not mean that EU automatically start accession negotiations with Albania, which is a subsequent, separate step in the EU integration process, for which additional progress is required, in five key priorities raising the relationship between Albania and the EU to a higher level.[35] Albania now is invited to participate in the Council meetings, and has access to and cooperation with EU agencies. Council has called the Commission to monitor closely the above reform efforts by Albania and will assess the progress on the basis of the yearly commission report. The Council recalled that the decision to open accession negotiations with Albania will be subject to completion of national parliamentary procedures and enforcement by the European Council by the end of 2019, depending of the progress made, including further tangible and sustained results focusing in particular on the rule of law. [36]

In this status, Albania has continued to develop a political dialogue with EU, including human rights. According to the progress report 2015, the legal framework on human rights has been approximated to the international instruments, but the effective implementation has been limited and the mechanisms used to guarantee the enforcement of human rights has

been considered as insufficient. Enforcement of property rights has been remained a concern, where the process of property registering, restitution and compensation has been not completed and as consequence some further progress with the implementation of the 2012-2020 strategy on property rights has been requested.[37] Still, has been reported violation of the ECHR found in the judgments of ECtHR regarding property rights, fair trial, and missing of an effective remedy. The non-enforcement or delayed enforcement of the ECtHR final judgment was found as a continuous concern.[37] Roma and Egyptians has been faced with very difficult living conditions and frequent social exclusion and discrimination due to ineffective policy implementation and poor inter-institutional cooperation. Institutional mechanism to protect the right of the child has remained poor and the juvenile justice system has failed to comply with international standards.[37] Further concern has been considered the right to life and the prison system, meanwhile has been some progress on the freedom of expression comparing with the previous year.[37]

During 2015-2016, the political and human rights dialogue has been organized in a regular basis between EU and Albania. The same concern has remained in the area of human rights meanwhile a little progress has been reported.[38] As consequence of the political dialogue between majority and opposition has been realized the adoption of constitutional amendments and further legislation in the framework of the judicial reform. [38] Considering the progress done in the implementation of the SAA and fulfillment regarding the key priorities, in November 2016 the Commission recommended the opening of accession negotiations subject to credible and tangible progress in the implementation of the justice reform, in particular the re-evaluation of judges and prosecutors (vetting). On the judiciary area, the progress report 2018, states that *'Good progress was made, in particular through the continuation of the justice reform and the adoption of the full legal package. The new legislation tackles many shortcomings related to the justice system's lack of independence, efficiency and professionalism'*. [38] The EU human rights dialogue is established in accordance with the EU Guidelines on HRD, cooperating with representatives from relevant state departments and agencies such as ministries of justice and interior, police and prison authorities, ombudsmen, parliament. The monitoring of the situation on human rights depends on the constructive dialogue with the state authorities, but at the same time cooperating with international organizations



acting in Albania and focused on human rights and civil society. Regarding human rights has been noted that *'..the legal framework for the protection of human rights is broadly in line with European standards; the Ombudsman has been actively promoting the rights of vulnerable groups, including by submitting special reports and recommendations; the policy and legal framework on non-discrimination is broadly in line with European standards; important steps have been taken to improve the legal framework on the protection of minorities, as well child protection juvenile justice and property rights; as for the integration of Roma and Egyptians progress was achieved in early childhood and primary education, as well as access to healthcare and the labor market.'*[38] Apart such evaluation, some further progress has been requested in the area of property rights with the update of the current legislation and reinforcement of institutional coordination, meanwhile Albania should further consolidate the entrenchment of property rights, by advancing the revision of property deeds, implementation of the compensation scheme, and make the necessary progress on the digitalizing and mapping of property.[38] Also, the institutional mechanism to protect the rights of the child and to tackle gender-based violence has remained weak and some further improvements are requested.[38] In the coming year, Albania is requested to find a sustainable long-term housing and employment solution and tackle segregation in the education field for vulnerable groups, in particular for Roma and Egyptians.[38] Important attention has been paid to the role of the civil society as part of an inclusive policy dialogue, in the consultation in legislative and executive processes which needs to be more systematic, transparent and with adequate time frames at the central and local levels. Actually the role of the civil society in the consultative process has remained occasional.[38]

### **3. The role of the EU Heads of Mission in Albania on monitoring the implementation of human rights.**

The EU today holds regular dialogues with more than 40 non-EU countries, implementing the EU Guidelines on HRD. [26] The Heads of Mission in Albania participate in the Council of SAA and at the same time are present in every meeting in which the human rights are discussed. Also, they consult the government for every legal initiative on human rights issues; on drafting the strategies or action plans related to human rights issues; on the model of

reporting; on drafting the local strategies on implementing the EU Guidelines, etc.

In each dialogue realized in this framework the EU mission has involved officials responsible for human rights issue on a case by case basis. Human rights and protection of minorities play a central role in EU-Albania relations. There are signed and ratified several international instruments dealing with human rights; a lot of laws and sub legal acts are harmonized with those international instruments; the Albanian Constitution gives an important place to the ECHR putting in the same level as the most important law of the state guaranteeing the human rights.[39] In practice there are evidenced a lot of bad practices concerning the implementation of the legislation on human rights. The first decision of ECtHR against Albania was issued in 2004, but the breach existed since the political dialogue was started with Albania in 1993. During years, under the consultations with EU structures and the dialogue on human rights issues, the situation on the human rights gradually is ameliorated, but still remains a process in progress. As stated before some of human rights violated mostly and made limited progress are in the agenda for every dialogue, including particularly gender equality and domestic violence, child rights, freedom of expression and role of civil society, fight against discrimination, disability and social inclusion, living condition of Roma people etc. Since 2002 the European Commission reports on the human rights issues in Albania and made the recommendation and consultation for the standardization of the human rights concerned. In this framework, after been granted the EU candidate status, opening of the negotiations and later membership to EU it is a priority, the Heads of EU Missions intends to ameliorate the situation in different human rights area using an instrument such as the local strategies for the implementation of the EU Guidelines.

Taking in consideration that the role of civil society is very important on the active protection of human rights, not depended on state authorities and Human Rights Defenders maintain an active dialogue with EU Missions in Albania the EU Heads of Missions adopted on 7 April 2010 the Local strategy for the implementation of the EU Guidelines on Human Rights Defenders.

The goal of the EU Mission through the local strategy it is to monitor and verify regularly the true human rights situation in Albania; to maintain a permanent dialogue with human rights defenders on human right issues involving them in the drafting of



strategies, action plans guidelines and reports in several area of human rights; to provide support to human rights defenders. [40] A regular dialogue was held and continues nowadays between HRD and the Heads of EU Missions. Civil Society has been invited to draft this local strategy and to implement it. Civil society has participated actively in the drafting of the local strategy and since the local strategy is adopted civil society is involved in the implementation of this strategy. One meeting is held until now, where are invited all the actors of civil society in Albania.

Domestic violence remains a concern in the Albanian reality. Since the first report of the European Commission, the discrimination and violence against women in Albania it was considered a key priority. Since the 2002 under the recommendation of EU structures and UN structures are undertaken a lot of steps, but again this issue remains a priority. For this reason, EU expressed the clear political will to treat the subject of women's rights and to take long-term action. EU Head Mission to Albania on 3 June 2010 adopted the Local Strategy for the implementation of the EU Guidelines on violence against women and girls and combating all forms of discrimination against them, which was adopted in December 2008 by the Council of EU. This local strategy is in line with the fundamental priorities of Albania to meet the political criteria for EU accession. This local strategy in the first part analyses the most important challenges and the legal framework in the country concerning women's rights identifying the main challenges such as discrimination against women, domestic violence, trafficking of women and girls. The second part defines a set of actions aimed to fight against domestic violence and gender-based discrimination in Albania, to monitor the situation of women and girls in Albania cooperating with the Albanian authorities in the framework of political dialogue [41]

This local strategy is drafted in collaboration with actors of civil society, who will participate actively in the implementation of this strategy maintaining a regular dialogue with Human Rights Defenders and promoting their role in this direction. The implementation of the strategy regularly has been monitored by the EU Heads of Mission in Albania and the reports has been prepared in collaboration with the civil society organizations and shall be submitted by the EU Heads of Mission each year to the Council Working Party on Human Rights (COHOM), which regularly will evaluate the implementation of the local strategy. [41]

In 2014, the European Parliament and the Council adopted Regulation (EU) no. 235/2014, establishing a financing instrument for democracy and human rights worldwide for the period 2014-2020, aiming to support projects in the area of human rights, fundamental freedoms and democracy in non-EU countries. Civil Society is supported from this instrument, aiming to become an effective force for political reform and defense of human rights. Civil society has been involved in different projects under the instrument for Pre-accession Assistance (IPA), addressing various issues related to human rights. According to the EU Annual Report on Human Rights and Democratization, 2017, there are Euro 1,2 million given to the civil society, aiming to build the capacities of grassroots local organizations in addressing various issues related to human rights such as Roma inclusion, inclusive education, economic empowerment of women victims of domestic violence and trafficking, child protection, mainstreaming disability rights and access to health services for vulnerable groups, as well as monitoring respect of fundamental rights in detention centers, promoting restorative justice and victim offender mediation for juveniles.

EU head of the mission in Albania has invited civil society and international organization to public consultation meeting. As resulted from the EU Annual Report during 2017, Albania adopted new legal framework on the children's rights and the protection of minorities, but the institutional mechanisms remain weak and more efforts are needed to implement existing commitments; Social services for vulnerable groups and employment and living conditions for Roma and Egyptians need further improvements; and the enforcement of the property rights has to be ensured.[42]

According to the result of the progress report 2018 regarding human rights, dialogue continues in the technical and political level, maintaining a permanent dialogue with human right defenders in issues related to human rights and providing support to civil society organizations. On the specific issues of property rights, is organized from the Head of EU mission an activity in June 2018, inviting the international organizations and the owners' associations. There is no information on the assessment done from the civil society on the effective remedy presented from the government through the legal framework adopted since 2016 and there is no information how the opinion of the civil society is reflected on the assessment done from the EU regarding the property

law. Progress Report 2018, on the property rights, has stated that *'.. progress has yet to be made towards improving the legal framework for registration, expropriation and compensation. The 2012-2020 strategy on property rights has yet to be updated and institutional coordination should be improved. In relation to the Manushaqe Puto case, reflecting the effectiveness of compensation schemes, there are 89 cases are pending before the ECtHR. The Integrated Land Management Secretariat was established. Further progress is dependent on the budget allocation for integrated land management and on follow-up legislation. The Agency for the Treatment of Property has received 887 applications so far where 183 decisions have been executed for the evaluation of property.'*

During May another activity on the protection of the national minorities in Albania has been organized from the Head of the EU Mission, inviting representative of civil society interested in the minority's rights. Also, the specific issue of Roma integration remains topic of discussion in the activities of EU Mission in Albania during September 2018.[43]

## Conclusions

EU Treaty insured that the human rights issue will be incorporated into all meetings and discussions with non member countries. The dialogue it is one of the most important practical tool for the coordination with third countries. Head of EU Missions usually leads the dialogue with third countries, meanwhile expert on human rights issues are involved in EU delegations.

In each political dialogue between EU and third countries there is a human rights clause, meanwhile an enforcement mechanism is required to measure the implementation of the human rights obligations. Albania after started the dialogue with EU has undertaken measures to implement the human rights obligations. This process is developed during the launch of Regional Approach and in continuity during the EU Stabilization Association Process. Albania has implemented smoothly its obligations under SAA since the launch of the Interim Agreement. The SAA maintains a human rights clause meanwhile there is not a specific binding clause on the effective implementation through an enforcement mechanism.

Through the human rights dialogue with Albania, EU aims to improve the human rights situation in

Albania after registering and discussing all the concerns. This dialogue should not be a formal one to become effective and in the future should be realized only in Albania. On the case of Albania some progress is made, showing how much the EU activities has contributed to that progress and the will of the government to make progress. Starting the HRD, the Government of Albania has the will to improve the situation of human rights and has accepted that dialoging doesn't mean to negotiate the human rights.

In the dialogues should be involved, actively, the civil society with the human rights profile, the independent academics specialized on human rights and all the institutions dealing with human rights issues except the involvement of the ministries or institutions. Involving more actors in the dialogues and discussion it will be provided better results on the implementation of human rights obligations, but this needs the increasing of the funds in HRD.

The assessment should be realistic to achieve the HRD's goal. Usually the assessment is made relied on the reports of the government, civil society and international organization and that provided by the Head of the EU's Mission. Dialogue and collaboration with the civil society it is very important to make a realistic assessment. On the assessment relies the strategy and actions related to human rights issues. The strategy and the relevant actions need more coherence with the state policies and to address the weakness on human rights issues. Relied on the country specifics and the strategies will be realized the EU intervention on the improvement of the human rights situation in Albania. On HRD with Albania is applied the principle of reciprocity and it is very important for the future to determine the conditions for the continuity of HRD.

After a lot of dialogues between EU and Albania there are registered some concerns on human rights, which after been identified and discussed need the respective intervention through specific actions.

Albania in the coming year should improve institutional mechanisms for protecting children, protecting victims of domestic violence, and guarantee gender equality; step up efforts to establish solid anti-discrimination case-law; find a sustainable long-term housing, education and employment solution in particular for Roma and Egyptians; consolidate the entrenchment of property rights, notably by advancing the revision of property deeds, implementation of the compensation scheme, and make the necessary progress on the digitalizing and mapping of property. [44]

In continuity a real dialogue on human rights issues is recommended. Civil society should be involved in the drafting of the consulted action plan and also in the monitoring of its implementation. The report of the European Commission will be relied on the government's reports, Head of the EU's Mission, civil society and international organizations on the human rights area. Through this report the Commission will assess, the situation of human rights in Albania and will decide about the future relations between Albania and EU.

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## A summary of Albanian bankruptcy law and the connection with other domestic laws

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**Abstract:** *This article aims to give an overview of the Albanian Bankruptcy Law by highlighting the main moments: the new Bankruptcy Law introduces the main principles and the improvement of the bankruptcy procedure; the positions of the debtors; the reorganization procedure by defining the rights and obligations of the parties, on the other hand and the problems arising from the existing law in the comparative aspect with other domestic laws. This article is focusing more on the prospect of the legal framework provided by the legal system to address this delicate / problematic issue and to prevent / reduce bankruptcy as a phenomenon in general. The evolution of the Bankruptcy Law comes as a need and as a result of economic development, and therefore the need to adapt to the requirements of the modern times. Putting in another way, the bankruptcy procedure is an important part of any modern economic system, so a complexity of procedures that takes time to spit in our developing country as well. We also look back at the practice, which has shown us that previous legislation, with all the many defects that came into light, were not enough clear in answering many questions. We can notice this by bringing the fact that in the last decade there has been no any deposit requests for the commencement of bankruptcy proceedings. With the entry into force of the new Bankruptcy Law No.110/2016, a considerable number of companies are in bankruptcy proceedings before the Albanian courts.*

### Introduction

Crediting is a key feature of the modern market economy because the growth and expansion of the economy can be seriously damaged in its absence. However, when commercial companies or legal entities using credits are so overwhelmed that their ability to participate in an economic activity is seriously impaired or paralyzed, it is important to put in place legal mechanisms to solve the problem[12].

Thus, setting up a business, obtaining construction permits, ensuring electric energy, property ownership registration, getting a loan, protecting minority investors, tax payments, international cross-border trade, enforcement of contracts and last but not least important the bankruptcy procedure, are the basic parameters or indicators, according to which the World Bank annually issues a report ranking many countries for the progress made in these areas. Among them, the last element that deals with bankruptcy proceedings is one that is assessed to have made high progress, due to the special law "On Bankruptcy", as amended in 2016.

It is widely considered that a sound bankruptcy system serves as a very good filter that guarantees the efficient survival of a business or economic entity by redistributing resources that were ineffective. According to the 2017 report, a fast and inexpensive process results in a normal return of the debtor back to business life, which for the creditors tran-

slates getting their lawful shares [22]. Therefore, the clarity of the benefits that all parties have in a bankruptcy procedure makes it easier to secure more stable economic and businesses subjects, which undoubtedly produces equally stable economic growth. [22]

### 1. Methodology of the study

The research mainly focuses on five key issues related to initiating bankruptcy proceedings, protection of the creditors and their legal rankings, as well as debtor rescue alternatives, with particular regard to the reorganization plan.

We emphasize the fact that the constant legal changes for the proper implementation of this procedure did not have any positive effects in practice, and we also assess that the law no.110 / 2016 on bankruptcy has a number of provisions which remain problematic. These provisions relates to the competent Court judging bankruptcy, when referring to the main center of interest of the debtor, as a concept that brings much confusion in terms of interpretation and other provisions relating to the protection of creditors.

The methodology of the paper is based mainly on qualitative methods. Accordingly, empirical data, the laws enacted over the years as well as the new law no.110/2016 are analysed.



## 2. Bankruptcy subjects and the causes for initiating a bankruptcy proceeding

The legislators recently have given the right to request the initiation of bankruptcy proceedings to two subjects: to the creditor party and to the debtor. For the creditor, this comes as a right, while for the debtor it unfolds as a legal obligation. It should be said that, under the abrogated law, other than these two parties the bankruptcy proceeding was also initiated at the request of the tax authorities when the subject resulted with a loss balance for a period of three years.

According to the actual law in force, in article 15-17, the creditor must prove the existence of a matured and unpaid obligation (which proves that the debtor is in a state of insolvency.) With presenting evidences, the debtor may, object to this presumption if it establishes that it has solvency and that there is no matured and unpaid obligation to the creditor.

On the other hand, the debtor is obliged to submit the request for the initiation of bankruptcy proceedings within 60 days from the date it becomes unable to pay. In the case of commercial companies, this obligation goes to every member of the governing body, whereas in the case of a legal person, it is his or her obligation to file such a request in person. If these representatives do not submit a request for the initiation of bankruptcy proceedings, they will be personally liable to compensate the creditors for the damages suffered for that reason. The competent (bankruptcy) Court, may impose a sanction on the debtor or any member of the governing body that does not meet the obligation under this article, prohibiting them from the right to exercise any activity for a period of 1 to 5 years, depending on the gravity of the violation. If, after a general review of the documents, the debtor's insolvency is verified, the bankruptcy court declares the commencement of the proceedings within 5 days.

Referring to the decision of the Court of Appeal dated 28.10.2016, although the new law entered into force, conflicting interpretations are present in regards to the right to request the initiation of a bankruptcy proceeding. In this case, the Court of Judicial District of Tirana, by its Decision No. 352 dated 26.01.2016 rejected the request of Regional Tax Directorate of Big Taxpayers of Tirana as the requesting party for initiating the bankruptcy proceedings against the company "Dobrej" sh.p.k. as

ungrounded and not supported by evidence. However the Court of Appeal has changed this first-instance decision.[2] The arguments of this court are based on Law no. 8901, dated 23.05.2005 "On Bankruptcy", "Request for Initiating a Bankruptcy Procedure", provides that in case of legal entities, the bankruptcy procedure may also be initiated at the request of the tax authorities when for a period of 3-years the financial statements result with loss. Such provision has already been abolished, nevertheless the Court of Appeal has taken it into consideration.

There are many similar cases where the tax authorities are the requesting party and there is also uncertainty in regards to the determination of the 2 or 3 year period, for which the tax authorities may request the initiation of the procedure. In conclusion we can say that there is a need for a unified interpretation of this issue.

## 3. The Connection of the Law "On Bankruptcy" with other Laws

The protection of creditors, which is one of the main objectives of the bankruptcy procedure, is accomplished through a series of legal provisions, including other special laws, starting from the Civil Code, the Civil Procedure Code, the Commercial Law, the Family Code, and so on. Reflection on the coherence that must exist among them with regards to the question of bankruptcy, we draw a number of aspects for discussion.

The provisions of the Civil Procedure Code and other laws apply only to matters which are not provided in the special law on bankruptcy, as long as they do not conflict with it. These imply that we refer to this law in cases of normative conflict. In regards to the efficiency principle referring to Article 5, provides that the bankruptcy procedure should follow a due process within a quick and reasonable term. It shall not be suspended or terminated unless explicitly provided otherwise in the law. Whereas the decisions and orders of the bankruptcy Court are immediately enforced. According to the principle of transparency and information (Article 6), the bankruptcy procedure is public and the parties involved in the bankruptcy process have the right to be informed about the process.

## **The Law “On Bankruptcy” and the Civil Code**

From the very beginning, in the introductory part of the law we noticed the matching points with other laws. Consequently, in the explanation of the legal term of Article 3 that this law provides, "secured creditor" is the creditor with valid rights on properties secured with pledges, mortgages or any other form of guarantees recognized by the Civil Code or other specific laws on the debtor's properties. According to the Civil Code, Part IV, Title III, is provided that "the means to secure the execution of the obligation" may be: Criminal Condition (Articles 541-545), Personal Guarantee (Articles 585-600), Deposit and Privileges (Articles 601-607) .

Regarding the ranking of creditors' claims, there is a difference in the ranking that the Civil Code states in Article 605. According to the Law on Bankruptcy, the secured creditors have priority over the preferred creditors, unsecured creditors and concluding creditors. The law regulates the classification of creditors and their rights in Chapter II. If we analyse these articles, we realize that Article 38 of the Law on Bankruptcy establishes as preferred creditor those whose claims arise from the termination of employment contract up to 3 months prior to the filing of the request for bankruptcy, while Article 605 of the Civil Code provides that preference is given to credits deriving from salaries from employment or service relationships which are not more than 12 months. We are dealing here with two different provisions regarding the ranking of the preferred creditors. On the other hand, Article 607 of the Civil Code states: "This article does not apply to bankruptcy proceedings, regulated by special law". Nonetheless considering the fact that the Civil Code has gone through changes, it turned to be that the application of these norms does not constitute a problem as they exclude one another so that only one of them will be applied accordingly.

## **The Law “On Bankruptcy” and The Civil Procedure Code**

The request of the creditor to initiate bankruptcy proceedings is approved by the Court only if the creditor proves that the debtor is in a state of insolvency. Therefore, the creditor must prove the existence of a matured and unpaid obligation. According to the provisions of Article 517 of the Civil Procedure Code is specified that: "The bailiff, when initiating the execution process, sends to the debtor a notice to voluntarily execute the obligation

defined in the execution order, assigning for this purpose a deadline of 5 days, when its object is payment of expenses or obligation for paying for subsistence and 10 days in all other cases ".

According to the definition given to the bankruptcy estate amount by the Law on Bankruptcy Article 3 point 20, we see that the assets subject to Article 529 of the Civil Procedure Code are not part of the bankruptcy estate amount. According to this Article the properties of the debtor serving for personal and family use are exempted from seizure[3]. As prescribed in the Articles 69 and 70 of the Law on Bankruptcy, all the rights of normal creditors for execution of the debtor's property end with the opening of a bankruptcy proceeding. According to the Civil Procedure Code, the regular bailiff execution on the assets of a judged debtor (which has not been completed by the bailiff before the opening of the bankruptcy proceeding) becomes void and can not be continued. In this case, the bailiff must submit to the bankruptcy administrator the assets of the debtor or the revenue that is realized from the sale of these assets. A bankruptcy procedure may be initiated by a debtor in a state of insolvency or, as in most cases, the creditors of the debtor are the ones who request the initiation of a bankruptcy proceeding.

When the a debtor is obliged to many creditors, we notice that the bankruptcy procedure appears to be a more effective way of enforcing the rights of the creditors rather than the separate use provided by Part IV of the Civil Procedure Code, namely articles 510-617. Article 7 of the Law on Bankruptcy defines which can be included in the group of subjects against which a bankruptcy proceeding may be initiated. Whereas the notifications and announcements of bankruptcy court decisions (according to Article 12 of the Bankruptcy Law) are made in accordance with the provisions of the Civil Procedure Code (Articles 128-144 of the Civil Procedure Code).

## **The Law on Bankruptcy and The Family Code**

Article 68 of the Law on Bankruptcy provides that a debtor, a legal person, has the right to deduct from the bankruptcy estate amount the minimum of living expenses. This means, they must meet the basic needs of the debtor, of the minor children, of those under care or of those who attend the school up to 25 years old, etc. in accordance to the obligations arising from the legislation in power. This implies that for a special regulation, the provisions of the Family Code 2003, are considered. While the obligation for subsistence compensation between

the parents and children is found in Article 197 of this law. So, consequently we can say that the debtor has the right to request the exemption from the estate amount of bankruptcy the monetary value that is assigned for the minimum subsistence and for those expenses that are included in the obligation for food for minor and adult children.

### **The Law on Bankruptcy and the Law on Entrepreneurs and Companies**

According Law No.9901 dated. 14.04.2008 "On Entrepreneur and Companies, respectively articles 190-205, we find the regulation for the liquidation procedures of companies. Instead of the word "bankruptcy", this law uses the word "liquidation" and gives companies the opportunity to initiate the procedure to end their existence. When a debtor under this law submits a request for liquidation, and afterwards there is a request for initiating bankruptcy proceedings under the law on bankruptcy, then the procedure of the later law must be followed by interrupting the procedure of the earlier one. This is also supported from the Article 38, point 2 of the Civil Code where it is expressly stated: "When a person is in a state of insolvency, the provisions of the Law on Bankruptcy shall apply instead of those for liquidation." While in the Article 64 of the Law on Bankruptcy, we find the personal responsibility of a partner / shareholder as a result of failing to meet the obligations in the capacity of a member of the board of directors.

### **The Law on Bankruptcy and the Criminal Code**

Pursuant to the Law on Entrepreneur and Companies Article 13 states: "Persons who have been convicted by a final court decision for committing offenses provided for in Chapter III of the Special Part of the Criminal Code for a period of up to 5 years from the date of conviction, can not hold the function of the legal representative of a company, can not be a member of the board of directors or of the supervisory board, nor a representative of the shareholders in the general assembly." We find this in the Law on Bankruptcy, in Article 43 (d).

On the other hand, Article 65 present the obligation of the debtor to provide information and to cooperate by making public any situation related to the bankruptcy procedure. In addition, in the cases when the court decides pursuant to Article 60, it is prohibited the administration and disposition of property which pass into the management of the bankruptcy administrator. The common ground bet-

ween these laws is found in articles 193-196 of the Criminal Code where criminal offenses in the field of bankruptcy are stipulated. Namely article 193, of the Law No.7895 dated.27.01.1995 "Criminal Code of the Republic of Albania, sets the term 'provoked bankruptcy' – deliberate actions of putting a legal entity to bankruptcy is punishable by fine or imprisonment of up to three years. Article 194, provides the definition of the phrase: 'concealment of the state of bankruptcy' - the entry into commercial business relations with third parties, in order to hide the state of bankruptcy, is sentenced to a fine or up to five years of imprisonment. Article 195 deals with the concealment of property after bankruptcy, that is the hiding of assets after bankruptcy of a legal entity in order to avoid the consequences is punishable by a fine or imprisonment of up to seven years. Finally, Article 196 refers to the breach of obligations, that in the case of bankruptcy means the violation of obligations by a legal entity which as well constitutes criminal violation and is sentenced to a fine or imprisonment of up to two years.

### **Exceptions**

With regard to the group of subjects against which a bankruptcy proceeding may initiate, Article 7, paragraph 7 of the Bankruptcy Law provides: The law On Bankruptcy does not apply to insurance companies, banks, pension funds, securities investment funds and other financial institutions that take deposits from the public or other financial institutions. For these subjects the bankruptcy procedure is regulated by a special law. Therefore, Law No.9662 dated. 18.12.2006 "On Banks of the Republic of Albania applies to non-bank institutions, according to the provisions of the legislation on Banks in the Republic of Albania.

### **4. The competent bankruptcy court and its role in the process.**

Generally speaking, the competent authority for judging the bankruptcy procedure is the commercial section of the district court where the debtor has its headquarter or place of residence. With amendments to Law No. 9919, dated 19.05.2008, the request was submitted to the Secretariat of the commercial section of Tirana District Court. The role of the Court seemed to be active when we look at article 6 which provided that the Court with its initiative investigated all circumstances that have to do with bankruptcy proceedings (for example, the court on its own may decide to enforce preliminary

measures). Pursuant to Article 82, point 3 the Court with its initiative could take decisions for the removal of the obligation of the debtor not to leave and according to Article 83, the court with its initiative could decide to control the debtor's correspondence.

There have been numerous discussions and interpretations on this matter which is illustrated in particular in the case of the Albanian High Court No.142, dated, 05.03.2012 of the Regional Tax Directorate of Diber, which filed a lawsuit requesting the initiation of the bankruptcy procedure for Eljo & CO 2008 ltd, in the grounds of Article 104 of the Law No. 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania". The respondent party was a limited liability company operating in the District of Mat. The company's business operation object was the production, trading, assembly and export-import of chrome mineral.

The Directorate had requested the initiation of the bankruptcy procedure given that from the verifications of the specialized services of DRT Diber resulted that this entity for the last two years, 2009-2010, did not perform any kind of activity. The Court of Mat Judicial District found that it was not the competent Court to judge the dispute referring to the Law No. 8901, dated 23.05.2002 "On bankruptcy" regulating this matter in particular provides: *"The examination of the lawsuits must be completed within 30 days from the submission of the request to the Secretariat of commercial section of Tirana District Court,"* (Article 3 of the law). And ruled *"To declare not having the jurisdiction to judge this matter"*. [20]

The arguments of the Court of Mat were based on the provisions of the Civil Procedure Code and of Law No. 8901, dated 23.05.2002, "On Bankruptcy", amended in 2008, referring to Article 43 which states that when the defendant is a legal entity, the lawsuits are filed at the court of the district where the headquarter of the legal entity is situated, while Article 3 of Law No. 8901, dated 23.05.2002, stipulates that the examination of cases must be carried out within 30 days from the filing of the claim in the secretariat of the Commercial Section of Tirana District Court." Following the argument, Article 4, on territorial jurisdiction, stipulated that *the bankruptcy proceeding is examined and judged in the Commercial section of the district court where the debtor which is a legal entity has its residence or headquarters.*

The following provisions stated that, if a bankruptcy procedure request is addressed to some commercial sections of district courts, the direct responsible for the examination and adjudication of the bankruptcy procedure case is the commercial section of the district court where the initial request was filed.

In this case, the High Court ruling rejected the argumentation of the Court of Mat, which to its reasoning was taken in disregard of the law, and that the subject matter was within the competence of the Administrative Section of Mat District Court.

Article 14 of Law No. 8901, dated 23.05.2002, "On bankruptcy", has regulated the right of tax authorities to request the court to initiate bankruptcy proceedings. The right of the tax administration to request the initiation of a bankruptcy proceeding for a subject was also provided by the article 104 of the Law No. 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania", letter "ç" of point 1. Regarding the jurisdiction and the competence of the Bankruptcy Court, in addition to the general principles laid down in Articles 35, 42, 43 and following of Civil Procedure Code, the special rules are set in the provisions of Law No. 8901, dated 23.05.2002, "On Bankruptcy".

Article 4 of this law, in accordance with the general civil procedural principles, defines the territorial jurisdiction for the examination of the request for initiation of bankruptcy proceedings *in the commercial section of the district court where the debtor, which is a legal entity, has his place of residence or headquarters* ". The other points of this Article, as well as Articles 5 to 8 of this Law, reaffirm the aforementioned territorial competence and resolve the special situations of relocation of the headquarters of the legal entities, the procedure of appeal, etc. However, the lawmaker, by means of an amendment made with law no. 9919 of 19 May 2008, has decided to add the point 3, after point 2 of article 3 of Law No. 8901, dated 23.05.2002, "On bankruptcy", which states: *"The examination of the cases must be completed within 30 days from the submission of the request to the Secretariat of the commercial section of Tirana District Court"*.

The Civil College of the High Court finds that this change shows an obvious contradiction of its content, not only with the general procedural provisions on the territorial jurisdiction of the Civil Procedure Code but also with the exhaustive regulations of the special provisions on this matter also



of Articles 4 to 8 of the same Law, No. 8901, dated 23.05.2002, "On Bankruptcy." For this reason, the Civil College considered it to be the court's mission to examine and resolve the case even if during its examination finds that "the law is absent, incomplete, contradictory or unclear" (Article 1 of the Code of Civil Procedure), more so when it is estimated that the contradictions in the law are apparent.

All these provisions in coherence with each other adhere to the well-known principle of assigning the competent court to the residence of the defendant and, if he is a legal entity, at the place where its headquarter is located. Like in the Civil Procedure Code as well as in specific laws, for special and exceptional cases depending on the nature of the lawsuit or the claim being examined, the legislator also provides for specific remedies for the assignment of territorial competence. Therefore, as a conclusion, it should be noted the opinion of the High Court that if different laws, or within the same law, contain provisions that contrary to one another, provide for different solutions to the substantive or territorial jurisdiction for resolving disputes of the same nature, generally the court examining the case adheres to that regulation, which is in harmony with the spirit and the purpose of the special law, as well as with the general procedural principles, in order to provide effective and efficient remedies addressing courts and giving justice.

The conflict for the assignment of the competent court for bankruptcy proceedings has not ended yet because, according to the amended 2016 law, Article 9, the bankruptcy proceeding is reviewed and administered to the bankruptcy court where the debtor has the "primary center of interest". Definition which brings as much abusive interpretations and we can not say that the lawmaker has brought an improvement that solves the previous problem.

### **Protection of Creditors**

The legislator's main purpose in preparing bankruptcy law is to guarantee and protect creditors, who are of different categories and ranging. This is also illustrated in Articles 1 and 2 of the Law on Bankruptcy when it says that there are set mandatory, equal and fair rules laid down to facilitate the collective settlement and repayment of the debtor's obligations through reorganization of the activity or through liquidation of all assets and income distribution. For the accomplishment of this goal, there is a need for continuous coherence in time, in accordance with the Civil Code, the Civil

Procedure Code, the Commercial Law, etc., as we analyzed above.

The new law provides for a significant extension of the on the classification of creditors, by determining a special committee with specific duties and functions. It determines how to dismiss and what is the responsibility of this committee, what are the expenses of the committee members, how to make the meeting of creditors, the criteria for the legality of this meeting, the determination of the right to vote, the rejection of the decisions, the information and their categories.

After the appointment of the temporary creditors' committee, the creditors' meeting may at any time replace or appoint a new creditors committee. The Creditors Committee should consist of at least 3 members up to a maximum of 5 members, having the right to vote. The members of the creditors' committee should support and supervise the activities of the bankruptcy administrator and the conduct of the debtor's activity. The creditors' meeting as a new and important institution is foreseen to be convened by the bankruptcy Court or bankruptcy or supervisory administrator. The administrator may convene a meeting of creditors, whenever it deems necessary for the proper functioning of the bankruptcy procedure.

The administrator should convene a meeting in cases where required by the creditors' committee, bankruptcy creditors, representing at least one fifth of the total value of the claims, except for the final claims or one or more bankruptcy creditors whose claim represents two-fifths of the total value of the claims, except for the final claims.

### **Creditors Ranking**

In general, for the bankruptcy procedure, the "Absolute Priority Rule", which is provided in Article 145, applies. According to this rule, payment of creditors' claims of a lower priority ranking may be made only after payment in full of the claims of all creditors of a higher priority ranking. Within each ranking, payments of each subdivision are made only after the highest subdivision is fully paid. When resources are insufficient to fully meet all claims of a subdivision, the claims of this subdivision are met proportionally.

We should recognize the reclassification that is made on the creditors ranking, as follows:



1. creditors of bankruptcy proceedings
2. creditors of bankruptcy:
3. I. secured creditors,
4. II. preferred creditors,
5. III. unsecured creditors,
6. IV. final creditors.

Among these categories we would like to emphasize the preferred creditors, who have a special balance, including:

- a) *Claims deriving from termination of the employment contract up to 3 months before filing a request for bankruptcy, including salaries and health reimbursements, maternity leave payments, which do not exceed the amount of 500,000 ALL;*
- b) *Claims for support and maintenance arising before the commencement of bankruptcy proceedings, when the debtor is a natural person;*
- c) *Claims of employees of the debtor for damage to health caused during work;*
- ç) *Claims of unfair actions resulting from damage caused to life or health by the debtor before the commencement of bankruptcy proceedings;*
- d) *Claims for unpaid taxes one year before filing a request for commencement of bankruptcy proceedings.*

### **Legality of creditors' meeting**

The creditors' meeting is legitimated to continue under the law only with the presence of at least 50% of the total claims in the first summon and 35% in the second. The creditors' meeting decision is considered valid if the majority in the value of claims of bankruptcy creditors with a right to vote, present in person or through attorney, vote in favor of the decision. Anyone who claims to be a creditor in a bankruptcy proceeding shall submit his claims in writing to the bankruptcy or supervisory administrator within the time limit set in the decision to initiate the bankruptcy proceedings. The claim filing contains its basis, the amount of the claim and, where applicable, the determination whether the claimant is an secured or preferential creditor. For the sole purpose of substantiating their claims, claims of creditors for liabilities not yet matured due to bankruptcy proceedings are considered to be matured.

The bankruptcy or supervisory administrator should review, check the authenticity, classify and register all creditor claims on a list. Registered claims are those certified in the procedure as well as those arising from the books and accounts of the debtor.

The list includes the identity of the creditor, the amount and the classification of the lawsuit as secured, preferred, unsecured or final. The claims the administrator suggests to be rejected are reflected in a separate list with a brief description of the reason for the refusal.

### **Ways of debtor rescue**

Ways or alternatives for the debtor's rescue during bankruptcy proceedings are mainly the sale or reorganization of the debtor entity. The second alternative is important for handling and analyzing in detail, as it involves a long process that coincides with the "recovery" of the debtor. This process starts with reporting meetings on the financial situation, voting on starting a reorganization plan, etc. In the reporting meeting, the administrator analyzes in perspective the maintenance of the debtor's activity as a whole or in part, to indicate any possibility of drafting a reorganization plan and to describe how each of the solutions may affect the creditors. (Article 94)

Thus, if the reporting meeting decides the reorganization, a reorganization plan may be required to administrator, to be filed this plan to the bankruptcy court, and its publishing no later than 1 month before the date of the discussion meeting and the voting of the plan. Upon making this decision, the bankruptcy court sets the date for the meeting's discussion and voting, which is held no later than 60 days after the reporting meeting. If in the decision of the reporting meeting is set the beginning of liquidation of the bankruptcy estate, the bankruptcy court asks the bankruptcy administrator to draft a plan for liquidation of the debtor's bankruptcy estate with content and time limits as regulated in this law, the part on liquidation. The liquidation plan includes the sale of an activity or of one or more activities, while maintaining their going concern, as far as possible.

### **Reorganization Plan**

Solving the problem of on the assets distribution and the ways in which it is accomplished is provided in Articles 93-95 of the law where, as we have stated, the reporting meeting of the creditors is done, and decisions are made for the reorganization and/or liquidation of the assets of the debtor. Subsequently, pursuant to Article 104, the date of the meeting for discussion and voting of the plan is determined, a date determined by the bankruptcy court or by its delegation by the bankruptcy admini-

nistrator. This meeting requires quorum criteria, otherwise it is considered null and void. So when is the meeting valid? When are present participating or represented creditors who own at least 50% of the total amount of claims.

Meeting is considered valid, even when participating creditors who own or represent 50% of total claims minus secured and final claims. Discussion and voting of the plan by the party submitting the reorganization plan takes place 1 month before this meeting. If no one submits a reorganization plan within the time limit, the bankruptcy court automatically starts liquidation proceedings, unless the bankruptcy or supervisory administrator has been commissioned to file such a plan. In this case, the bankruptcy court summons the administrator to hear the reasons for the delay and / or approve an additional time of not more than 5 days for the submission or replaces the administrator. In the case of replacement, the new administrator shall have 10 days to submit a proposal. The administrator, who unjustifiably delays to submit a proposal, may be subject to administrative sanctions.

**Pursuant to Article 108, simple majority is considered** where, in any class, the majority of the claims of creditors present or represented by power of attorney vote in favor of the reorganization plan. Qualified majority is considered if the plan provides for a reduction of more than 50% of claims or a re-planning for more than five years, the affected class approves it with at least 65% of the claims. Special cases stipulate that if the plan foresees that a group of creditors within the same class shall be differently handled, those considered privileged to be treated separately should accept a special vote by a majority.

**The objection to the reorganization plan**, pursuant to Article 110, for violations of the provisions relating to the content of the plan, the formation of the majority or any of the formal procedural requirements laid down in the law and the impossibility of its implementation by the debtor, is made in writing and filed with the bankruptcy court along with all supporting documents and materials.

The court notifies the debtor, the bankruptcy or supervisory administrator, and the creditors who participated in the meeting for the objection, giving them a 10-day time limit for the submission of objections. The parties shall be heard by the bankruptcy court. If necessary, the bankruptcy court may exceptionally appoint an expert to assess the impos-

sibility of implementation of the plan. The bankruptcy court decides on the objection to the plan within 10 days of the end of the filing period of the objection/s.

**Monitoring the implementation of the plan and supervising expenditures** (Article 119) is made by the supervisory administrator who drafts an annual report on the progress of the plan's implementation and submits it to the bankruptcy court to consult with the creditors. If there is no supervisory administrator, this duty is charged to the debtor. Creditors and the bankruptcy court have the right to request, at any time, additional information on the progress of the plan. If the supervisory administrator ascertains that the claims have not been paid or can not be paid, he or she immediately informs the bankruptcy court and makes a declaration of non-compliance according to the plan. Any creditor, who is aware of a significant failure to fulfill the plan's conditions, may file a related statement to the court. The bankruptcy court's finding of the existence of default leads to the initiation of liquidation proceedings. A special appeal can be made against this decision.

**The purpose of the accelerated reorganization** is to give the debtor the opportunity to overcome an unavoidable situation of insolvency by means of an agreement between the debtor and his creditors drawn up outside the insolvency court and approved by that court in an accelerated procedure ( Article 122). It is objectively foreseeable that it will not be able to timely pay liabilities over a period of 6 months or less (Article 123, p.2).

If the accelerated reorganization plan is not approved, the bankruptcy court announces the commencement of the usual bankruptcy procedure unless the debtor proves that he is not insolvent and the inevitable state of insolvency no longer exists. Under Article 135, the debtor may request liquidation at any time during the bankruptcy proceedings. The debtor should submit a request for the start of liquidation immediately after finding that the reorganization plan can not be realized.

**Whereas, in Article 137, the law provides for some rules on assets liquidation actions. For example**, a trade activity is transferred by maintaining a going concern of business, as appropriate, as a whole or in separate units, as far as possible. In the event of a transfer of business activity to the whole or to the units, the contracts in which the debtor is a party are transferred along with the acti-

vity, without the consent of the other contracting party. In the event of partly liquidation, the sale of the assets is carried out by auction, in accordance with the relevant provisions of the Civil Procedure Code. In any case, the purchase of the entire business activity, units or personal assets by persons related to the debtor is done with the authorization by the bankruptcy court. Liquidation plan is drafted by the bankruptcy administrator within 20 days from the day when the meeting has decided to liquidate the debtor. The bankruptcy court decides on the final content of the liquidation plan within 5 days after its final submission.

Liquidation plan is executed within 3 months from the beginning of liquidation (Article 140). In special cases, the bankruptcy court may extend the process for another 3 months if the bankruptcy administrator provides objective and sufficient explanations. Whereas, every 2 months, the bankruptcy administrator drafts and makes available to the parties a report on the progress of the liquidation.

## Conclusions

### *In the end we can draw these conclusions:*

From this study we conclude that this law needs to recognize and treat the property and contractual rights of other persons who have legal relations with the debtor in a state of insolvency. According to the Law on Bankruptcy, the most important principle is the principle of enforceable legislation which provides: As far as this procedure is concerned, the Law on Bankruptcy applies to all other laws and the provisions of these laws will be applicable to the bankruptcy procedure, as long as they do not contradict the provisions of this law. The Law on Bankruptcy guarantees protection of the personal interests of creditors in the process of bankruptcy, also removes from the commercial circulation not successful civil entities. So, we see the Law on Bankruptcy as an economic protection of the subjects involved in the flow of goods and services. In this sense, for a more just and efficient implementation, in order to simultaneously assist the state's economy, it should be applied in accordance with other laws.

There are various types of formal bankruptcy procedures that exist around the world. But, in general, they tend to be divided into liquidation / bankruptcy procedures, on the one hand, and restructuring / rescue / reorganization procedures, on the other.

The first essentially involves, for the most part, the process leading to the end of a company's life, as its assets are sold and its creditors are paid from the asset earnings. Creditors will only be paid part of what the debt if they receive anything at all after paying liquidation costs. Usually a court order for liquidation / bankruptcy is required.

This kind of final procedures is designed to facilitate the continuation of the company or its business through a restructuring process. This may include a variety of strategies, such as infusion of new finance, sales of the company's business shares and settlement of some or all of the company's debts. Often the courts will be involved in some way in the process, but a number of jurisdictions have reorganization procedures that do not require, necessarily any judicial involvement. In this paper we discussed the most important procedural issues related to the current law on bankruptcy, which as we have analyzed, has gone through obvious improvements in terms of the protection of creditors and the ranking of preference, but on the other hand, there are inaccuracies and ambiguities that do not put to an end to the discussions and interpretations.

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## The European Union Membership Question after Secession from a Member State

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**Abstract:** *Some member states of the European Union have been challenged by separatist movements for quite a long time, with serious developments in recent years, such as referenda and street demonstrations. If these separatist movements are successful, there will be significant consequences for both sides. This article explores the issue of EU membership for newly independent states that separate from existing member states. It is argued that membership will not be granted automatically; rather, they will have to apply for membership, according to rules governing law of state succession.*

### Introduction

The idea of independence has always attracted peoples without a state of their own. Dividing existing states by promoting the idea of independence for ethnic groups has long been a *modus operandi* of Europeans in the least developed parts of the world. Now, however, this pattern has apparently spread to the European continent. Scots in Britain and Catalans in Spain have struggled for independence since the Middle Ages. As it seems, it is a perpetual struggle. In addition, though not as strong as the independence demands of Catalans and Scots, some fractions in Northern Italy, particularly among Lombards and Venetians, Flemings in Belgium, Basques in Spain and the Irish in Northern Ireland, have long demanded secession. Thus, it should not be surprising that new states could emerge in Europe. But what will the consequences of this trend and new states for Europe be, particularly for the European Union (EU)? Undoubtedly, the most controversial issue is the legal status of these new states in the EU. Will they be granted EU membership automatically or will they have to apply as newcomers? Furthermore, the Brexit referendum and subsequent process has already made the situation much more complicated. This article addresses these questions carefully, given that the subject is multidimensional with several layers: both international and European Union law will certainly play vital roles along with the domestic laws and administrative structures of the states concerned – although the latter will not be discussed in this article. The best way to deal with these issues is to summarize the events, taking place in Europe before giving brief explanations in light of the relevant legal principles.

This article discusses the matter in two main parts: first, it outlines separatist movements in EU member states, particularly focusing on Catalans and Basques in Spain, Scots in the UK, the Flemish in Belgium, and Lombards and Venetians in Italy; second, it discusses the development of international and EU law regarding self-determination, secession and succession.

### Separatist Movements in the EU

Globally, only 20 countries are considered ethnically homogeneous while slightly more than 40% have five or more minority groups. One of the most important reasons for this is that the winners of the two world wars ignored ethnic minorities while drawing state borders. Nowadays, however, some of these minority groups demand independence or greater autonomy [1]. EU member states include 276 separate regions, including countries, states, regions and communities, with serious separatist movements in several countries, such as Catalonia and Scotland. In addition, there are various fractions in the Basque Country, Northern Ireland, Lombardy, Veneto and Flanders demanding independence. Their main motivations are economic imbalances and/or cultural differences. For example, some incline to separatism because they are richer than other regions, so they question why they are forced to support poorer regions within the country [2].

Catalonia has recently become the most well-supported separatist region in Europe, with 92% of Catalans, pushed by economic and cultural factors, voting for independence in a referendum on October 1, 2017, with a 43% turnout. To understand this desire, it is first necessary to look at the region's economic power. Catalonia, which has 7.45 million people (16% of Spain's population),



accounts for 20% of the country's GDP with a €215.6bn economy, produces more than a quarter of its total exports with €65.2bn and attracts nearly a quarter of foreign tourists coming to Spain. In addition, at 13.2%, unemployment is lower in Catalonia than the Spanish average (17.2%) and wealth is more equally distributed than in other regions of Spain [3]. Moreover, Catalonia accounts for a fifth of Spain's tax revenues [4]. These tax revenues have constantly been larger than what Catalonia has received in central government funding. In fact, it has been seen by Spain's central government as an important source for subsidizing the country's poorer regions. While this tax revenue contribution was not a problem for Catalans when Spain's economy was growing, Europe's financial crisis changed the situation for Catalans [5]. In 2012, to reduce Catalonia's tax revenue contribution to Spain's central government, Artur Mas, President of the Generalitat of Catalonia, wanted to negotiate with the central government. When the Prime Minister rejected this demand, the desire for independence grew again in Catalonia, [6] leading to the 2017 independence referendum. Cultural differences were also important for Catalans while demanding independence as they have a separate language and identity from other Spaniards. They also never forget how harshly these were suppressed by Franco's fascist regime. Thus, when Spain's central government inclined to tighten its control over Catalonia, they feared that it would harm their culture as Franco did [7].

The independence demand is not as powerful in the Basque Country as in Catalonia, although the terrorist organization ETA (*Euskadi Ta Askatasuna*) killed more than 800 people between 1968 and 2011 with the target of ensuring Basque independence. ETA applied a Latin American guerrilla model of using violence to provoke state retaliation to generate a mass uprising [8]. However, after achieving nothing from Spain, ETA declared a definitive cessation of its armed activity in 2011 [9], before eventually disarming in April 2017 [10]. An opinion poll conducted after Catalonia's independence referendum showed that support for independence is not still very high among Basques, with only 23% in favor. However, the same poll also revealed that 44% want greater autonomy [11], indicating that this is still the most preferred choice among Basques. Their motivation for demanding greater autonomy rather than independence is that, according to the 1978 constitution of Spain, the Basque region collects its own taxes and then sends only a portion of it to the central government [12]. This supports what Jaime Mayor Oreja, former Interior Minister of Spain (1996-2001), who is a

Basque, stated once: "Our Basque provinces have much more autonomy than American states ... Many regions of Spain have degrees of autonomy, but no place has more than the Basque Country. And for most Basques, to be an autonomous region that is part of Spain is fine" [13].

In Scotland, one of the UK's autonomous regions, independence demands have always been very powerful. Many Scots have long been troubled by continued British domination for 300 years [14]. Scotland held an independence referendum on September 18, 2014, with 55.3% voting against an independent Scottish state and 44.7% in favor. During the referendum campaigns of both sides, economic reasons came to the forefront. While those who said "No" claimed that Scotland's economy would be seriously harmed by independence since its economy, especially its banking system, strongly depends on Britain [15], those who supported independence argued that Scotland has been unable to exploit its economic potential fully because of London-based economic policy making [16]. Following the UK's referendum vote on June 23, 2016, to leave the EU (known as Brexit), the leader of Scotland's ruling Scottish National Party's and First Minister, Nicola Sturgeon, announced a year later that, since remaining in the EU suits Scottish interests, particularly economic ones, a second referendum for independence should be held after the Brexit negotiations finish [17]. Undoubtedly, as the Britain-EU exit deal approaches, Scotland's agenda will become busier with a new referendum on independence. The situation in Northern Ireland is different from Scotland.

Although Brexit has also brought the issue of unification with the Republic of Ireland back onto the agenda in Northern Ireland [18], where the Irish Republican Army used violence until July 2005 in its campaign to unify Ireland, independence demands are not so strong as in Scotland. For example, an opinion poll conducted by Ipsos Mori in the first months of 2017 found that only 22% of people in Northern Ireland support unification while 63% want to stay in the UK [19], mainly because its Protestant population is larger than that of Catholics.

There are several regionalist political parties in Italy, of which the Northern League is the most powerful in terms of gathering support and shaping political debates [20]. The Northern League, or more fully the Northern League for the Independence of Padania, was established in 1991 with the participation of several regional parties from northern Italy (such as Lombardy, Piedmont, Ligu-

ria, Emilia-Romagna and Tuscany) to make rich northern regions of Italy independent under the name of Padania. However, because independence was not strongly supported by the region's citizens, the Northern League abandoned this aim and has made it a political priority recently to gain greater autonomy for the rich northern regions. Thus, its most important autonomy demand from Rome is that tax revenues produced in the northern regions remain there. This policy has particularly contributed to the Northern League becoming the strongest political party in northern Italy. Critically, the current presidents of Lombardy and Veneto are both from the Northern League [21]. Significantly influenced by the referendum in Catalonia, residents of both Lombardy and Veneto, which together produce 30% of Italy's GDP, voted on October 22, 2017, to demand greater autonomy from the central government. The most important reason for holding referenda in both regions was the huge gap of €54bn in Lombardy and €18bn in Veneto between the amount of taxes paid to Rome and central state public spending in these regions [22]. Unsurprisingly, almost all voters supported greater autonomy: in Lombardy it was 95% on a 40% turnout and 98% in Veneto on a 58% turnout [23]. Although the referendums were non-binding, it is argued that separatism will strengthen in both regions if Rome ignores the results [24].

Belgium is regionally divided into three parts: Dutch-speaking Flanders in the north, French-speaking Wallonia in the south and the Brussels-Capital Region in the center. After the Second World War, while Flanders managed to create a developed modern industrial economy that has made it one of Europe's richest regions, Wallonia faced sharp economic decline because of reduced coal and steel production [25]. In 2016, Flanders accounted for 58% of Belgium's GDP while Wallonia's contribution was only 23%. In addition, Flanders produced 83% of the country's exports [26]. Since the Second World War, Belgium's constitution has been amended six times to provide more powers to the regions, especially as result of the demands of Flemings, who have not wanted to support Walloons. After more than 500 days of continued political crisis between 2010 and 2011, the sixth reform package, which among other things introduced more fiscal autonomy for the regions, has satisfied Flanders for now. Thus, Belgium has become a quasi-federalist country with the central government in Brussels having almost no powers over the regions, according to Barbara Loyer. Besides, as Loyer underlines, the N-VA (the New Flemish Alliance) has taken a significant opportunity to influence politics by entering the recent

coalition government in Brussels [27]. This has made demands for independence less popular in Flanders [28], with only 20% of Flemings currently favoring independence according to a latest opinion poll conducted in 2014 [29]. However, the N-VA, which still supports an independent Flanders that would join the EU as a separate state, will most likely return the independence issue to Belgium's political agenda before the 2019 elections since it wants to gain the votes of nationalist Flemish independence seekers [30].

## **Development of the Principles of International Law and the Regulations of EU Law regarding Newly Independent States' EU Membership**

### *General Perspective*

The foundation of modern international law was established in 17th century by the famous Dutch jurist Hugo Grotius, known as the father of international law; until recently, merely a century ago, international law was much simpler in its structural context, with states being its only subject while its areas of concern were fairly limited. In contrast, international law today has become much more complicated in its structural base. Although states have remained its main subject, there are now other subjects, the most important of which being inter-governmental organizations. Furthermore, areas of international law have expanded from conventional fields, such as sources, subjects, the law of the sea, the law of diplomacy, etc., to completely new ones, including the law of institutions, international environmental law and international economic law. Even in conventional areas, new topics have inevitably arisen due to rapid changes in international law, particularly after the Second World War. For example, regarding the law of the sea, which is one of the oldest subjects of international law, new maritime areas, such as exclusive economic zone or archipelagic waters, have been created next to the traditional ones. The topics of international law are also related to other topics, including specific topics within scientific fields, such as history, geography, economy and politics, which make modern international law much more complicated.

It is thus interesting to consider the development of EU law regarding these issues. The original nucleus of the EU was the European Coal and Steel Community, established in 1952 for 50 years by six European powers. Two other organizations, the European Economic Community and European Atomic Energy Community, established by the same states in 1958, eventually formed one entity.

Although these remained simple regional organizations regulated by international law, their supranational character made a significant difference since this principle gave them the right to form their own legal rules, most of which were directly binding on their members, which was extremely unusual for an international organization. Because of this phenomenon, the EU has become distinct from other international organizations in having its own laws with a multi-layered structure. In short, international law and EU law are now completely distinct fields, regulated by their own rules [31]. Of course, this does not mean that they are not interrelated; rather, it implies that the subject at hand has both an international law dimension and an EU law dimension.

### *International Law Perspective*

Every nation dreams to have a state of its own since states are the main subjects of international law, although becoming one is not an easy task. Nevertheless, it would be a wise idea to start with the definition of a state in international law, since international law is a state-centered law. The commonest definition of state in international law doctrine is the phrase in Article 1 of the 1933 Convention on Rights and Duties of the States (the so-called Montevideo Convention): “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.” Although these four criteria have long been criticized as ineffective in today’s context, they are undeniably the most affluent and accepted ones. Some claim that there should be other criteria for an entity to be considered a state [32], such as self-determination, recognition by other states or membership of the United Nations (UN). However, as Lowe argues, “while the four criteria (of Montevideo Convention for the definition of state) have been added to, no-one has suggested that any of them is dispensable” [33].

The idea of self-determination cannot be discussed without considering the concept of secession. Self-determination, at least in one respect, can be defined as considering the desires of the peoples as a constituent of a state [34]. Self-determination can be traced back to the Declaration of Independence of the United States in 1776, although it has gradually evolved [35]. Its significant role in the decolonization movement throughout the 1960s makes it undisputedly a legal principle in that context; that is, the freedom of dependent peoples under colonial oppression.

Secession is an ambiguous notion, with no authoritative definition in international law [36]. Thürer and Burri define it as follows: “The unilateral withdrawal from a State of a constituent part, with its territory and its population, constitutes secession *stricto sensu*” [37]. Two states, one of which is the existing or seceded state while the other is the newly formed one, come into existence at the end of the process. The next step in analyzing secession would be to inquire that whether the secessionist part or nation should be recognized by the mother state from which it gained independence. Thus, although secession is a unilateral process, which distinguishes it from mutually agreed dismemberment or dissolution, it requires the recognition of the mother state, unless the secessionist territory and nation is being seriously oppressed by the latter [38]. As Crawford points out most secessionist movements and claims since 1945 have been unsuccessful due to the opposition by the mother state [39]. Finally, it should be noted that secession outside the colonial context can have two different and conflicting meanings depending on perspective and stance: that is, it is either an expression of an inherent right to be free from oppression or it is an act of treason [40].

Inevitably, secessionist movements are always controversial in terms of international law. In most cases, the political precedent of self-determination has been relied on, particularly in the context of colonial independence under the United Nations from the end of the 1950s and throughout the 1960s, as mentioned above. Although there has been progress since the inception of modern international law, international law remains undeniably state-based law. Thus, territorial integrity plays a vital role as a precedent in international law, though secession is not prohibited completely. The difference between them is thin, although the balance tilts towards territorial integrity rather than secession.

Another aspect of international law that requires discussion is the law of state succession, which is one of its most complicated and uncertain subjects [41]. It is generally defined as “the replacement of one state by another in the responsibility for the international relations of territory” (1978 Vienna Convention on Succession of States in Respect of Treaties art. 2/1(b); 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts art. 2/1(a)). Thus, it is directly related to transferring territory from one state to another [42]. This transfer can result from states’ dismemberment or dissolution, unification, abso-

rption, secession, etc. State succession mainly concerns treaties, debts, properties and archives, all of which are the subject material of the two universal treaties on the law of state succession. However, only one is in force today with limited states parties to it. In short, there are no widely accepted and respected customary rules of international law regarding state succession.

One of the fundamental issues regarding state succession is successor states' membership of international organizations. For example, after Pakistan gained its independence from India, it created a problem as to whether Pakistan would be accepted automatically as a member state or should file an application for UN membership. Ultimately, it was decided that, as a general principle, a territory that breaks off from a UN member state does not inherit the latter's treaty rights and obligations. Therefore, Pakistan was not automatically granted UN membership [43]. This was the first instance where the UN faced the membership issue following state succession. Subsequent state succession incidents required different solutions in the UN [44], with many examples of dissolution or dismemberment in the final decade of the twentieth century. After the collapse of the Union of Soviet Socialist Republics (USSR), Yugoslavia and Czechoslovakia in the 1990s, only Russia preserved its UN seat as the continuing state of the USSR [45] whereas other successor states had to file applications to become UN member states [46]. Thus, it is hard to identify a uniform rule concerning membership of international organizations in the event of state succession. Nevertheless, although the rules of international law regarding state succession are ambiguous, newcomer states can certainly submit membership requests to the international organizations that they wish to participate in.

### *The EU Law Perspective*

After this general analysis of international law parameters, it is time to study the consequences under the EU law of nations within EU member states gaining independence. Up to 2009, when the Treaty of Lisbon entered into force, there was no regulation relating to withdrawal of EU membership. Hence, it is the first time that withdrawal is regulated by Article 50 of the Treaty of Lisbon. Other than that, there is no regulation concerning dissolution, dismemberment or territorial separation of a member state. The doctrine rightly pointed out that there should be no automatic membership [47] so the newcomer states should apply for EU membership.

The admission requirements in Article 49 of the Treaty of Lisbon can be separated into two main groups: substantive requirements and formal requirements. It is interesting to note that, to become an EU member, a state should be recognized by all the current members since the Council must reach a unanimous decision and in the end accession treaty must be ratified by all the member states [48]. Hence, it is highly possible that, if a nation gained independence from an existing member state against the wishes of the latter, this would never be recognized by the mother state. This implies that, in this situation, there would be no way for a newly independent state to become an EU member state.

Before concluding, it is necessary to consider the viability for the EU to have such small states as members following the break-up of a former member state. Some argue that such divisions would be useful for handling matters and passing regulations at the EU level because they believe majority decisions can be reached much more easily than previously [49]. However, it is hard to demonstrate, at least for now, that this line of thinking is right. Given that the procedure to become an EU member state after separating from an existing one would be highly risky, the question above remains theoretical and technical.

### **Conclusion**

It is the end of an era. For a long time, the European approach to the territorial problems in so-called third world states has been fueling the fire. Now, however, groups within several EU member states, such as Catalans and Scots, are strongly inclined to become independent, so fortunes have changed.

Separatist movements in EU member states may be successful, allowing these nations to become independent states, but only if the mother state approves their independence. However, the problem does not end here; rather, the real problem will start since their legal status before the EU will be unclear. Certainly, they will not be directly regarded as member states, but will have to apply for membership. This will be the uncertain part since unanimity in the Council is required to start membership negotiations. The mother States may well not accept their membership application without pressure from various EU organs and/or other member states, which is a most unlikely scenario. In particular, because of the delicate nature of Brexit for most member states, Scotland would also be disqualified as a member state, even though the UK will not be a member state itself by the time Scotland might apply.



If the fundamental principles of the EU and the territorial integrity of member states juxtaposed against each other, this process may easily create an existential crisis for the EU. Thus, the matter should be dealt with utmost delicacy. But, if it happens, this time the bells will toll for Europe.

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## Why Israeli center parties are flash parties?

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**Abstract:** *This study examines the disappearance of center parties within different types of political systems in the State of Israel, and compares the disappearance of center parties in a period of a single-dominant-multi-party system (1949-1977) to center parties in a period in which changes to the party system brought about a two-bloc system (1977-1996), A diverse multi-party system - 1996 onward. In a two-bloc multi-party system the two biggest parties occupy the center of the political map and do not leave room for center parties. In a two-bloc multi-party system, the formation of a national unity government would bring about the disappearance of the center parties. In a two-bloc multi-party system, center parties joining either a right-wing or left-wing coalition would weaken and disappear. A multi-party system, which is dynamic and adapts itself to changing circumstances, makes it difficult for center parties to survive.*

### The Israeli political system

The political party map in Israel is composed of left-wing parties, right-wing parties, center parties and religious parties. Over the years the focus of the division between "left" and "right" has changed. The distinction is no longer based on socioeconomic outlooks, as is common in western democracies, but rather on issues of foreign affairs and security. Currently, the left identifies with dovish views on foreign affairs and security matters, while the right-wing parties identify with hawkish stances on those issues. Between these two ends of the political spectrum are the center parties, which over the years have tried to be the balancing factor between the right and the left. (The religious parties are not connected to the ideological continuum of right and left).

In European countries, the center parties have survived the test of time while in Israel most of the center parties were small and did not manage to survive more than one or two parliamentary terms. This gives rise to the question as to the causes of the disappearance of Israeli center parties.

Why Do the center parties disappear in Israel??

Is there a connection between the structure of the party system and the formation and disappearance of Israeli center parties?

### The characteristics of center parties

Researchers are divided on the matter of the very existence of the center parties. Arian<sup>[1]</sup> presents the problematic nature of the terms "right" and "left," claiming that the discussion of this continuum ascribes each side one-dimensionality and a rigid continuum structure. The terms are not understood

by the voting public and most voters place more importance on the image of the leadership, rather than on the ideological spectrum. Arian further opines that this spectrum is artificial, but is used by both voters and researchers, for purposes of convenience. The conclusion indicated by his research is that the political center is affected by the same problems. Sartory<sup>[2]</sup>, unlike Arian, states that there is a political center, but it is a function of its placement, rather than its ideology. He proposes that the center is dependent on the width of the political vacuum; a narrow vacuum will not allow a party to occupy the center, but in a spacious vacuum, the center area becomes more substantial. Sartory ascribes a wide range of attributes to the center, including fairness, a balance of "for" and "against," and moderation, but also abstention from deep thinking, the adoption of hesitant positions of inaction, and uncertainty.

Smith<sup>[3]</sup>, who researched the liberal parties in Western Europe, which are situated in the political center, found that they sometimes belong to the left, sometimes to the right and sometimes hover uncomfortably between the right and the left. Hazan<sup>[4]</sup>, Neuberger<sup>[5]</sup> and Knoller<sup>[6]</sup> concur that the center parties are an inseparable part of the Israeli political parties system.

Duverger<sup>[7]</sup> also concurs that there are center parties, but opines that every center can be divided in two - a center-left and a center-right - such that the center is doomed to being torn apart and to self-destructing. Neuberger agrees that the center parties are divided on various issues, sometimes siding with the right and sometimes with the left.

The discussion of center parties requires a distinction between center parties and parties that call themselves center parties. Von Beyme<sup>[8]</sup> claims that

there is no significance to the name a party gives itself. Historic parties such as the ruling party in Greece (EDIK) and the UCD party in Portugal are proof of this.

The center parties can be characterized by three criteria:

A. The history of the party - the background and circumstances that led to its establishment; whether the party was founded and focused on the center between the right and left, such as the Third Way party.

B. The willingness of the party to join a coalition led by either the left or the right<sup>[9]</sup>

C. A centrist ideology between those of the left and right parties on the main issue on the political agenda. This criterion is particularly important in a multi-party system in which parties sometimes support leftist socioeconomic ideologies but side with the right on foreign affairs issues, and vice versa<sup>[10]</sup>

### **The center parties in Israel**

Twelve centrist political parties have formed in Israel since the establishment of the state in 1948. These parties differ from one another in their type of leadership, the extent of their congruence with social rifts and their party ideology.

### **Type of leadership**

The personality party is led by a recognized public figure, in most cases someone with charisma, and supporters join the party for reasons of esteem or admiration for the leader Duverger<sup>[11]</sup>; Neuberger.<sup>[12]</sup> The party has no ideology and its platform is vague due to the desire to appeal to a large number of potential voters. The leader has substantial power, both formal and informal. He molds the party, chooses the party leadership and opposes the institutionalization and strengthening of the party mechanism, which could reduce his power. The leader appears in the mass media on behalf of the party, while his colleagues in the leadership are hardly recognized by the public. The election propaganda focuses on the leader, his qualifications, past success and political successes - such as David Ben Gurion, who founded the Rafi party (Hebrew acronym of the Israeli Workers Party) - success in military positions - such as Moshe Dayan, who was the IDF chief of staff and later funded the Telem party (Hebrew acronym Movement for National Renewal); or Ezer Weizman, who was an Israel Air Force commander who led the IAF to victory in the

Six Day War. There were also economic successes, such as those of Yigal Horowitz, who found the Ometz (Courage) party and Moshe Kahlon, who founded the Kulanu (All of Us) party. The rise in the power of the media added a new type of leader - a talented journalist who moderated a popular television program; Yair Lapid, a journalist and television presenter, founded Yesh Atid (There is a Future) .

Unlike personality parties, a "star party" is a party whose leadership is composed of a number of stellar personalities; leaders who are familiar to the public thanks to their political, military or socioeconomic experience. The leaders set up the party, even though they do not agree among themselves on substantive issues that split society. The leaders have a common interest - to influence or change the regime.<sup>[13]</sup> . The party is characterized by factions, with each "star" being surrounded by his friends, most of whom are socially similar, who zealously protect the group and the status of their "star" in the party elite. Each "star" makes sure that no other "star" outshines him. Due to this fact and the fact that all the "stars" have no common ideology, the party is plagued by internal, personal or ideological struggles. The Dash (Democratic List for Change) and the Center Party were founded as star parties.

### **Congruence with the prominence of social rifts**

Western democracies have experienced a change in voter patterns, with a shift from support for parties that rely on social rifts to support for parties based on their involvement in principle issues, such as migrant laborers, nuclear arms proliferation, etc. In Israel the vote is based on both major issues and on the rift on which the party relies <sup>[14]</sup> (Arian and Shamir, 1999). In the early years of the state, the rift between the workers movement and the middle class was quite influential, but was weakened due to changes in the social structure. This rift regained its strength, however, in the late 1990s and early 2000s. The Progressive party, the Liberal party, the Independent Liberals and Shinui (Change) were the parties based on social status that represented the interests of the middle class.

### **Party ideology**

Ideology can be defined as "worldview, beliefs and ideas that nurture parties" <sup>[15]</sup> (Goldberg, 1992). Leaders use ideologies to disguise aggressive struggles between one leader and another. The struggle between individuals becomes the struggle of a group for principles that are based on a worldview. All the center parties were devoid of ideology,

except for the Third Way, which was founded after the signing of the Oslo Accord in 1993. The party was founded in 1994 by residents of the Golan Heights, out of a fear that the Oslo Accord, signed with the Palestinians, would lead to an agreement with Syria and to the return of the Golan Heights to the Syrians. The party transmitted a clear and unequivocal message - the importance of Israel's retention of the Golan Heights.

### **The party system**

Israel is a parliamentary democracy. The state is headed by a president, who represents the people. The president is elected by the legislative assembly and his powers are limited. The house of elected representatives, called the Knesset, is a single body, composed of 120 Knesset members. The government is a coalition of the parties represented in the Knesset. The electoral process is by proportional representation - based on rigid lists, and is suitable for a heterogeneous society. The entire country is a single electoral district and the parties earn representation in the Knesset only if they garner at least 3.25% of the vote.

As noted, this electoral system, which is suitable for a heterogeneous society, enables any ideological, socioeconomic or religious group to contend for a place in the government. This system turns the political system into a multi-party system. The Israeli electoral system has undergone changes from a multi-party system with a dominant party to a two-bloc multi-party system, and to a diverse multi-party system.

### **Center parties in a multi-party system with a dominant party (1949-1977)**

Three center parties developed in this system: the Progressive party and the Independent Liberals, both of which survived for many years, and Rafi, whose disappearance stemmed from the interests of the political leadership.

From the establishment of the State of Israel until the change in government in 1977, Mapai (Land of Israel Workers Party), headed the ruling coalition. During that period Mapai was the dominant party that was identified with the process of the establishment of the state<sup>[16]</sup>. The immigrant Holocaust survivors who came from Europe and the immigrants who came from Asian and African countries supported the party and its leader, David Ben Gurion, who had headed the process of the establishment of the state. Mapai was the mainstay of every coalition, and no party in the opposition

could compete against it. Mapai's socialist values were the values of that generation - values that included socialist ideology, and in practice that ideology was realized in the establishment of kibbutzim that maintained an egalitarian social and economic structure, cooperative moshav shitufi farming communities, cooperative factories and support for the Histadrut Labor Federation. During this period of Mapai's dominance, stable center parties were formed. One of these was the Progressive party, which garnered between four and five Knesset seats in every election and was a constant coalition partner. In 1961 this party joined forces with the General Zionists party, to form the Liberal party. That union lasted only four years. The General Zionists then joined the Herut party, which was definitely a right-wing party. In 1965 the opponents to that union founded a new party called the Independent Liberals, which was a partner in all the coalitions headed by Mapai in the following 12 years.

The discussion of the survival of the two parties - the Progressive party and the Independent Liberals - connects the political stability of these center parties to the party system structure. As noted, Mapai was the dominant party. Throughout all those years there was no doubt as to which party would form the ruling coalition. Middle class voters, who supported the foreign and defense policies of Ben Gurion, but opposed the socialist values represented by his party, voted for these two center parties, which represented the liberal values supported by this class, in the clear knowledge - based on past experience - that these parties would join a Mapai coalition.

### **The Rafi party (1965-1968)**

The Rafi party was a personality party - characterized as a party headed by a knowledgeable, usually charismatic figure who gains public recognition thanks to his successes. Sometimes the leader is a military figure who is a decorated Israel Defense Forces hero, or a leader whose economic successes are exceptional. A personality party is a party devoid of ideology, with a vague platform due to the desire to appeal to a large number of potential voters. The leader has substantial power, both formal and informal. The election propaganda focuses on the leader's personal achievements, past successes and leadership qualifications. The leader appears in the mass media on behalf of the party, while his colleagues in the leadership are hardly recognized by the public.



The processes that led to Rafi's establishment are connected to inter-personal struggles, inter-generational struggles and ideological struggles in the upper echelons of Mapai. Ben Gurion headed the government from the establishment of the state until 1953, when he resigned from his position. Two years later, in 1955, he joined the government headed by Moshe Sharett and served as defense minister. In December of that year he was reelected as prime minister.

In 1963 he retired from the government and the Knesset. In June of that year his successor, Levi Eshkol, formed a government that was supposed to continue Ben Gurion's policies, but Eshkol quickly severed ties with Ben Gurion and gradually became his political enemy. In addition, an inter-generational struggle developed between two groups. One was the founders group, comprised of the veteran Mapai elite, including Levi Eshkol, Pinhas Sapir, Golda Meir, and the heads of the various authorities, national institutions and the Histadrut Labor Federation.<sup>[17]</sup> This group controlled the political appointments and prevented the advancement of the younger party members. The younger generation was supported by David Ben Gurion, who wanted to groom the future leadership of the state. That young group included Shimon Peres, Moshe Dayan, Aharon Yadlin, Asher Yadlin and Yosef Almog. The ideological struggles focused on Mapai's acceptance of Ahdut ha-Avoda (Labor Union), a left-wing socialist party, into Mapai's ranks. Eshkol supported the establishment of an alignment with Ahdut ha-Avoda and Ben Gurion opposed the joining of the two parties. The party committee voted in favor of the alignment, the first time the committee voted against the wishes of Ben Gurion, who subsequently left the party along with the leaders of the younger generation. Prior to the 1965 elections, for the sixth Knesset, Ben Gurion founded the Rafi party. Peres and Dayan, who had left Mapai along with Ben Gurion, joined the party leadership.

During the 1965 election campaign there were substantive changes in the party system, and the distinct beginnings of a process that would lead to a two-bloc system. The Gahal party was established on the right, as the union between the General Zionists and the Herut party, and Alignment formed on the left, with the union of Mapai and Ahdut ha-Avoda. Rafi was forced to position itself in the center of the political map. In its election propaganda, Rafi used the words, "neither right nor left"<sup>[18]</sup> and did not commit in advance to join either large party bloc following the elections. Rafi's

leaders promised to join the governing coalition only if its positions were in line with the party's. Rafi won only ten seats in the sixth Knesset, while Alignment won 45 seats. Alignment formed the coalition and Rafi remained in the opposition.

In May 1967 Egyptian President Abdul Nasser ordered the closure of the Straits of Tiran to ships flying the Israeli flag. Egypt and Syria deployed large military forces along Israel's borders and there was a sense of a threat to Israel's existence. The coalition parties pressured Prime Minister and Defense Minister Levi Eshkol, forcing him to expand the coalition and relinquish the defense portfolio. The coalition's favorite candidate for defense minister was Moshe Dayan, who had been the IDF chief of staff during the 1956 Sinai Campaign. Eshkol appointed Dayan to head the Ministry of Defense and Rafi joined the coalition. Ben Gurion, whose struggles against Eshkol's leadership led to Ben Gurion's departure from Mapai, refused to join the coalition. Rafi's joining the Alignment-led coalition was the smaller party's first step to joining Alignment, which had opposed the formation of Rafi in the first place. Peres said, "If our partnership in the government, for the strengthening of our resilience against the enemy, requires the entry of Rafi into a union with Mapai, we are prepared to do so unconditionally and to dissolve Rafi's organizational framework"<sup>[19]</sup>. At a conference held in Jerusalem, Dayan said that he was going to join forces with Mapai in order to oust Eshkol and Sapir, two of the leaders of the older generation in that party. An examination of the minutes of the meetings of the Rafi's central committee (Rafi archives) indicates no evidence of discussions held with respect to the union with Mapai. One can therefore conclude that Peres and Dayan led that process in order to return to positions of influence in the upper ranks of Mapai at a time when there was movement toward replacing the Mapai leadership, due to health concerns regarding Levi Eshkol and Golda Meir.

In 1968 Rafi joined Alignment, resulting in the dissolution of Rafi.

### **From dominance to opposition (1977-1981) Dash, the Democratic List for Change (1977-1979)**

The loss of dominance is a prolonged process and no single event can be pinpointed as its cause. The process of the erosion of Alignment's dominance began with the Yom Kippur War, which erupted on 6 October, 1973. The war began with an attack of the Arab countries, headed by Egypt and Syria. During the war, intelligence, military and political

failings came to light. After the war, the state leadership was blamed for the failures. Public pressure led to the establishment of a state commission of enquiry, followed by the resignations of Golda Meir from the Prime Minister's Office and Moshe Dayan from the Defense Ministry.

During this transition period, the Dash party was founded. This party was based on agreements between a number of political groups which, although they did not share a common ideology, did share common personality traits: ethnic background, age group, social status, military service and career patterns. Dash was a "star party," characterized by the leadership of several well-known public figures. Each star was surrounded by admirers who supported him and zealously protected his status within the party leadership. Two struggles unfolded in the party leadership - inter-personal struggles between the "stars" and ideological struggles between supporters of the right and supporters of the left. These ideological struggles in the party's senior ranks led to the establishment of Dash as a center party, and its ideology ranged between the ideology of the left and the ideology of the right.<sup>[20]</sup> Dash was composed of five groups and was headed by: Prof. Yigael Yadin, who had served as the IDF's second chief of staff and a world-renowned archaeologist; Amon Rubinstein, dean of the Faculty of Law at Tel Aviv University; Meir Amit, an IDF general and head of the Mossad and of the Terrorism Information Center; and Shmuel Tamir, a former member of the Herut party who had been ousted from the party and returned to it after founding a new party, and then left again to join Dash. Another group in the party's leadership was composed of the heads of the Oded movement, which had been founded by elitist intellectuals of Middle Eastern ethnic origin, who joined Dash in order to effect changes in the national priorities.

Dash's success in the 1977 elections was impressive, as the party won 15 Knesset seats and was slated as the party that would tip the scales for any coalition that would be formed. To the party's disappointment, Prime Minister-elect Menachem Begin managed to form a government without Dash and invited this party to join the coalition after the coalition agreements had been signed with other parties. A dispute erupted among Dash's senior leaders, between former Likud members Shmuel Tamir and his supporters, who demanded to join the right-wing coalition headed by Menachem Begin, and Rubinstein and his supporters, who opposed the union with Likud, as its ideological principles were opposed to their own. In a vote held by the Dash central committee, 68 members supported joining

the right-wing government, 45 opposed and 2 abstained.<sup>[21]</sup> The decision to join the right-wing government was the beginning of the demise of Dash, and within three years all this faction's members had resigned from the Knesset.

### **Two-bloc multi-party system (1981-1996)**

This system is characterized by a clear distinction between two blocs. Each bloc is a concentration of parties with similar ideologies.<sup>[22]</sup> Horowitz and Lisak<sup>[23]</sup> add that alongside the large parties there are satellite parties that regularly support one of the two large parties. In this system there are swing parties that try to make political gains by maneuvering between the two large parties. In this system three center parties sprouted in order to be able to tip the scales between the two large parties and to gain strength within the coalition, beyond their electoral strength, but none of the three managed to achieve its goal. They were all small parties: Telem won two Knesset seats; Yahad won three and Ometz won just one seat.

All three parties disappeared before the end of the parliamentary term.

### **Telem, the Movement for National Renewal (1981)**

Telem, the Movement for National Renewal, was founded in 1981 by Moshe Dayan, who served as the IDF chief of staff in the 1956 Sinai Campaign. Following his retirement from the IDF, Dayan joined Mapai and was among the young leadership. He served as a Knesset member and cabinet minister in the Mapai governments, but resigned along with Ben Gurion and was among the founders of Rafi. He served as defense minister during the 1967 Six Day War and the 1973 Yom Kippur War. Following that war he was forced to resign from his position due to the public protests in the wake of the failures during the war.

Dayan then distanced himself from decision-making circles in the Alignment party and publicly voiced stances contrary to those of the party. After the political upheaval in 1977 and the Likud's rise to power, Dayan was appointed minister of foreign affairs in the right-wing government headed by Menachem Begin. Dayan's party associates viewed him as a traitor who had crossed party lines.

During Dayan's term as minister of foreign affairs he participated in the peace negotiations between Israel and Egypt and succeeded in persuading Begin to return the Sinai Peninsula to Egypt. Dayan

was also instrumental in the five-year process of granting autonomy to the Palestinians. In preparation for the granting of autonomy, a committee was formed, but coalition considerations prompted Begin to reject Dayan's appointment as head of the committee, so he resigned from the Likud <sup>[24]</sup>.

Dayan found himself outside the political system. He could not return to the Alignment on the left and had resigned from the right. He therefore founded Telem, which was a personality party, in the run-up to the 1981 elections. A personality party's election propaganda does not highlight ideology, but rather the traits of the party leader, and Telem's platform stressed Dayan's success as chief of staff and defense minister.

As noted above, the results of that election led to the formation of a two-bloc system. The Likud won 48 seats and the Alignment won 47. Telem garnered just two seats. The negotiations for Telem's inclusion in the coalition failed. Begin managed to form a right-wing coalition and Dayan and his party were left in the opposition.

His attempts to return to the Alignment were blocked by his former friends, who held a grudge against him due to his joining a right-wing government.

Later that year Dayan died and the party leadership splintered and disappeared.

### **Yahad, the Movement for National Unity (1984-1986)**

Yahad was founded by Ezer Weizman, a former fighter pilot and commander of the Israel Air Force. Weizman gained acclaim for his actions in the Six Day War and became a public figure due to his charismatic personality. Following his retirement from the IAF he joined the Likud, a right-wing party, and was appointed minister of defense in the Begin government. Weizman, who supported negotiations with the Palestinians, left the Likud due to the stagnation of the peace process and the economic crisis - triple-digit annual inflation for which no suitable solution could be found. He decided to launch a center party. As noted above, he had left the Likud and the Alignment would not accept him into its leadership, due to his status in the Likud. The team that founded Yahad included senior IDF officers who had served alongside Weizman. They helped him to raise funds, organize branches throughout the country and run field activities..<sup>[25]</sup>. In interviews to the media Weizman said, "We are not in anyone's pocket. We will be the third power, in a good place in the center between right and

left."<sup>[26]</sup> The election results were disappointing; the party won only three Knesset seats. Ostensibly, a small party cannot influence the political system, but in a two-bloc system the election results turned Yahad into a swing party. It was impossible to form a coalition without Yahad's support. Weizman supported a national unity government that could overcome the security and economic problems facing Israeli society. A 97-member coalition was formed, and in a national unity government a party with three seats is no longer a swing party and cannot gain any power within the coalition beyond its electoral strength. Weizman was appointed minister without portfolio, joined the Alignment and two years after the founding of his party it was engulfed by the Alignment and disappeared.

### **Ometz, headed by Yigal Horowitz (1984-1986)**

Ometz was founded in the run-up to the 1984 elections, on the background of the economic crisis in the early 1980s. Yigal Horowitz was the minister of finance in the Begin government during the era of hyper-inflation. He resigned from that position over a disagreement with Begin regarding economic policy and founded Ometz as a single-issue party that focused on healing the economy. Horowitz's political expectations centered on his return to the government as finance minister. His election propaganda was essentially, "Give the treasury to Yigal Horowitz".<sup>[27]</sup> He won a single seat in the Knesset, but, as noted above, in 1984 a national unity government was formed. Horowitz joined the left camp and was appointed minister without portfolio. Two years later he crossed the party lines and joined the Likud, and his party disappeared. The national unity government formed in 1984 was based on coalition agreements that set down the ideology, the political procedures and the coalition gains of each of the blocs. The policy that was adopted in order to meet the demands of both the left and the right was a centrist policy, thus reducing the need for center parties. With the approach of the 1988 elections, no center parties were founded. After those elections, another national unity government was formed, and governed until 1990. The cooperation between the two large parties obviated the need for center parties, such that even in the 1992 elections no center parties evolved. The demand for center parties did increase as the electoral system underwent changes, becoming multi-party and diverse.

### **A diverse multi-party system - 1996 onward**

The 1996 elections altered the structure of the political system, due to a change in the method for

electing the head of the executive authority. From the 1949 elections until 1996 Israel's citizens chose candidates for the Knesset from a list compiled by each party. The head of the party that won the most Knesset representatives formed the government. In the May 1996 Knesset elections Israel's voters cast two ballots - one for the direct election of the prime minister and the other for a Knesset list. This new method changed the parliamentary system that had been in use since Israel's establishment, to a mixed system that consisted of parliamentary regime components and presidential regime components. The prime minister was elected directly by the people, but had to obtain the Knesset's trust and had to be a Knesset member. The new electoral method for the office of prime minister led the two candidates - Benjamin Netanyahu and Shimon Peres - to vie for the swing votes in the political center. The two large parties - Labor (formerly Alignment) and Likud - also leaned toward the center and adopted advocacy strategies aimed at the undecided voters.<sup>[28]</sup>

The opportunity given to the voters to split their ballots and to vote directly for a prime minister who would focus on foreign affairs and security issues contributed to the growth of the Third Way party and the sectorial parties that focused on domestic politics. This resulted in the development of a diverse multi-party system characterized by the decline of the electoral power of the large parties and their downgrading to medium-sized parties. The parties also underwent an ideological split due to struggles over the collective identity and the emergence of sectorial parties and small centrist parties, whose goal was to join the coalition and enjoy the benefits of being part of the government. The coalition is composed of several small parties whose political gains exceed their electoral strength. This phenomenon repeated itself in the 1999 elections, in which the two big parties - Labor and Likud - won a total of only 45 Knesset seats, while in the two-bloc system each had won over 40 Knesset seats.

### **The Third Way Party (1996-1999)**

In 1992 Labor won more Knesset seats than it had in many years (44 seats) and Yitzhak Rabin was elected prime minister. In 1993 Israel and the Palestinians signed the Oslo Accords, which included the mutual recognition between Israel and the PLO. The agreement that was signed addressed the establishment of an autonomous Palestinian authority in Judea and Samaria following democratic elections there and Israel's commitment to transfer the Gaza Strip to the Palestinians before those elections.

The residents of the Golan Heights, who feared that the Oslo Accords would lead to a similar agreement with Syria and the return of the Golan Heights to Syria, launched a campaign against any such Israeli withdrawal. At first an NGO was founded, calling itself the Third Way, indicating that it was a middle path between the left and right blocs. The Party Financing Law limits donations to political parties but does not apply to NGOs. Thus the Third Way managed to raise funds from Jews around the world. These donations financed billboards declaring "The people support the Golan," organized shuttle buses to the Golan Heights, solidarity rallies and other activities. The provisions of the Party Financing Law caused the Third Way to postpone the process of establishing a political party.

The political processes that unfolded in 1995 and 1996, however, prompted the organization to establish a political party. In November 1995 Prime Minister Yitzhak Rabin was assassinated by an Israeli citizen who identified with religious Zionism during a solidarity rally in support of the prime minister's peace plan. The assassination caused the deepening of the rift between the secular and the religious and between the political and right and left. The religious supported the right and the secular supported the left. Labor party leader Shimon Peres was chosen by his party to serve as prime minister. The Labor party garnered strong public support and Peres, who aspired to strengthen his party's position in the Knesset and to be elected prime minister in direct elections, decided to bring forward the elections for the Knesset and the premiership. Following the advancing of the elections, the Third Way leadership decided to register as a political party and run in the elections.

As an NGO, the Third Way had attracted a following from supporters of the right and supporters of the left who feared for the fate of the Golan Heights, but after the organization became a political party, many supporters deserted it, as they preferred to stay with one of the major parties - Labor, Likud and National Religious Party.<sup>[29]</sup>

Already during the Third Way's process of becoming a political party, personal struggles began between Dan Shomron - the head of the party's secretariat and the IDF's 13th chief of staff - and Avigdor Kahalani - the party's leader and a retired IDF brigadier general. Kahalani won a medal as an outstanding soldier following the 1967 Six Day War and a medal for heroism following the 1973 Yom Kippur War, for his determination in halting the advance of Syrian tanks on the Golan Heights. The power struggles and disputes over authority



and the party leadership were a continuation of the discordant relationship that had begun while these two men were in the IDF, when Chief of Staff Shomron refused to promote Kahalani, on the grounds that he was not worthy of promotion. The struggle between the two was decided when Kahalani was elected party chairman and Shomron resigned.<sup>[30]</sup> Preparations for the 1996 elections were made hastily. Kahalani held fund-raising events and recruited new members, set up branches and held campaign meetings. In the elections for prime minister, the Third Way remained neutral and did not recommend that its members vote for one candidate or the other. "Our support for one candidate or the other will undermine our chances for joining any possible coalition,"<sup>[31]</sup>

The Third Way was a single-issue party, focused solely on preserving the Golan Heights. Peres, the candidate for prime minister, in an attempt to prevent the flight of potential voters from the Third Way, announced throughout he promised to hold a referendum on any concessions on the Golan Heights before signing a peace agreement with the Syrians. This declaration essentially sidelined the importance of territory's main message - the preservation of the Golan Heights. The promise to hold a referendum led to the postponing of the debate on the Golan Heights and made the Third Way redundant. The party found itself in a quandary. As a single-issue party it had to change its message, which was catchy and easily attracted solidarity. Changing this message so close to the elections could hurt the party's credibility and affect the election results. Ultimately, the Third Way decided to change its main message and stress messages connected to national identity and the rift between the religious and secular sectors. "Between post-Zionism and extremism there is a third way. Between the uprooting of Jewish roots and religious coercion there is a third way, a third way in which religious and secular meet, through their desire to work together for a democratic Jewish state... religious and secular meet in the center."<sup>[32]</sup> The emphasis on the Jewish identity message helped the party garner support among religious circles that opposed the religious radicalization of the NRP, while steering clear of the main issue with which the Third Way identified - the preservation of the Golan Heights.

In the 1996 elections the Third Way one four seats. As noted above, before the elections the party had promised its voters it would join any coalition, whether right-wing or left-wing. In reference to the future government, Emanuel Zisman, a member of the party leadership, said, "Our objective is not to

be in the opposition, but rather to be a part of the government, to make a difference."<sup>[33]</sup>

Leaders tend to join the government for personal gain, such as power, prestige, material benefits and a sense of satisfaction, as well as an opportunity to have an impact on the national level. Leaders in ministerial positions gain acclaim in the mass media and become celebrities, a process that helps them perpetuate their leadership. Parties also benefit from being coalition partners - gaining greater accessibility to influential positions and public exposure, and basking in the coalition's achievements. A party's very inclusion in the coalition also contributes to its survival.

In 1996 Benjamin Netanyahu was elected prime minister. The coalition negotiations with the Third Way were short. As noted above, the party was anxious to join the coalition and therefore did not conduct tough negotiations. The party's achievements were minimal. Kahalani was appointed head of the Ministry of Internal Security and received promises for budget allocations for infrastructure and construction in the Golan Heights and the Jordan Valley, and for the appointment of "a person with suitable talents to an appropriate diplomatic position"<sup>[34]</sup> Even though Netanyahu did not fulfill his promises and did not honor the coalition agreement, the Third Way did not leave the government. The party's leaders had achieved their goals and reaped the benefits of coalition membership - public exposure and participation in decision making at the national level. Still, it is worth noting that a small center party that joins a coalition, whether left-wing or right-wing, is vulnerable on two fronts. First, the party could be identified with the failures of the main party that formed the coalition, and as time goes by the smaller party is identified more and more with the ideology of the larger one and loses its place in the center of the political map; and second, the slightest movement leftward or rightward could cause massive desertion by voters. The Third Way was vulnerable to both these risks. It became identified with the failures of Netanyahu as prime minister, and the party's voters blamed it for a rightward shift toward Likud's ideology and had to cope with the en masse desertion of party members who did not agree with the new stances.

Researchers claim that center parties can be divided into two categories: center-left and center-right. The Third Way, however was different, as most of its voters belonged to the center-left and only a small portion of the party's voters and executive committee belonged to the center-right. Executive committee member Prof. Alexander Lubotzky



stated that, "there was a measure of deception in the elections because the majority of our voters would have voted for Peres, whereas the party leadership voted mainly for Bibi. "It is possible that our true identity was exposed as right-wing impersonators".<sup>[35]</sup>). Backing for this claim can be found in remarks by Uri Heitner, a Golan Heights resident and Third Way executive committee member. "From my experience before the elections," said Heitner, "I know that most of the Third Way voters chose their prime minister first, mainly Peres, and added the Third Way in order to maintain a balance. For example, those who supported Peres but objected to a withdrawal from the Golan Heights".<sup>[36]</sup>

The participation in the right-wing coalition headed by Netanyahu put the leaders of the Third Way in a difficult position. Should they resign from the government on the background of the stagnation in the implementation of the peace agreements with the Palestinians? Such a resignation could prompt the center-right faction to leave the party and as a result lead to the downfall of the government. Or should the Third Way stay in the government, when staying could result in the desertion of the faction that identified with the center-left? Harel defined that situation with the following explanation: "We have a problem in that the public perceives us as largely responsible if Bibi holds on or if Bibi falls, and we are between a rock and a hard place".<sup>[37]</sup> They decided to stay in the government, even though an examination of the minutes of the Executive Committee meetings reveals harsh remarks against the prime minister, such as, "The lack of trust in Bibi has stuck to us"; "He is bluffing the whole world and even the ministers in his own party. There is a feeling that we are in an era of mistakes and bluffs. We are part of this picture, as partners in the government"; "Netanyahu doesn't know how to govern. The whole nation sees this and that image has stuck to us"; "Bibi has strung us along three times: on the poverty issue; on the unity government issue and the invitation to Barak and on various budgetary issues".<sup>[38]</sup> These remarks that were voiced by coalition partners, stating that this partnership was harming the party, begged an immediate conclusion - to leave the government. Even so, personal interests were serious considerations in the decision to remain in the coalition.

In order to decide on future policy, a survey was conducted to examine the public's support for the Third Way. In January 1998 just one percent of the public was found to support the party.<sup>[39]</sup> Survey interviewees also characterized the party's ideology as a center-right. Following a debate of the survey's results, no decision was made. Rather, Kahalani

made do with the statement, "Our mistakes are dwarfed by those of the large parties."<sup>[40]</sup> Support for Netanyahu's right-wing policies led to the resignation of members in the Golan Heights, most of whom identified with the center-left.

In the 1999 Knesset elections the Third Way did not pass the electoral threshold and disappeared.

### **The Center Party (1999-2001)**

The Center Party was founded in the run-up to the 1999 elections, as a stars party, following a long formation process. The party's founders were four celebrities: Roni Milo, Dan Meridor, Amnon Lipkin-Shahak and Yitzhak Mordechai.

Roni Milo represented Likud as a Knesset member from 1977-1993, when he was elected mayor of Tel Aviv. In 1998 he announced that after the end of his tenure as mayor, he would establish a new secular party that would run against Netanyahu for the direct election of the prime minister. Dan Meridor was a Knesset member from 1984-1998, also representing Likud, and during his last term was appointed minister of finance. He resigned in the wake of disagreements with Prime Minister Netanyahu and joined Milo's party. Amnon Lipkin-Shahak completed his term as IDF chief of staff in July 1998, negotiated with Labor over his offer to join that party, and then joined the race for the Prime Minister's Office. Yitzhak Mordechai was a Likud member who had served as minister of defense in Netanyahu's government and had considered resigning from Likud due to discordant relations with Netanyahu. Mordechai's resignation, which was supported by many Likud Central Committee members, harmed Netanyahu's position, which had already suffered from the resignations of Milo and Meridor. In order to dissuade Mordechai, Netanyahu promised him that he would remain in his post as minister of defense in the government Netanyahu would form after the elections. Mordechai did not believe this promise and met with Milo, Meridor and Lipkin-Shahak, in order to examine the possibility of a political partnership with them. Netanyahu found out about that meeting and ousted Mordechai from the Ministry of Defense.<sup>[41]</sup>

Mordechai joined the new party established by Milo - the Center Party. The first question that was raised was who would head the party, because in the past all four men had announced their intentions to run for the premiership and now they had to choose a single candidate to head the party and run for that position.

In order to avoid personal struggles, the four leaders decided to conduct a survey that would determine which of the four leaders had the greatest chances of attracting votes for the party. Lipkin-Shahak won first place, with Mordechai close behind him. Lipkin-Shahak stepped aside for Mordechai, in order to prevent the latter's resignation from the party. The candidates with the greatest chances of winning the elections were Ehud Barak and Benjamin Netanyahu. Mordechai backed out of the race under pressure from his colleagues in the party, in order not to split the votes from the left and center, and to unite in the campaign against Netanyahu.

Even before the elections a certain tension was evident in the new party. Mordechai met with Rabbi Ovadia Yosef, one of the founders of the Haredi ultra-Orthodox Shas party, and kissed his beard - behavior that was unacceptable in a party defined as secular. Mordechai's friends in the party's leadership rebuked him for his behavior, and the secular supporters of the party announce the withdrawal of their support. In the drafting of the party platform, Lipkin-Shahak supported Labor's policy, while Mordechai, Milo and Meridor, who, as noted above, were from the Likud's leadership, supported the right-wing policy. Ultimately a compromise platform was prepared. The disagreements prior to the elections proved that the four leaders had nothing in common apart from their bid to oust Netanyahu from his position as prime minister.

In the elections for prime minister, Labor leader Ehud Barak won. The projections based on the polls published on the eve of the elections indicated that the Center party should have won a significant number of seats, but it only won six Knesset seats. There was a tremendous sense of disappointment, and as usual in such cases everyone looked for someone to blame. At first there were accusations between the party's leaders, who did their best to conceal the tension between them from the public eye, but their mutual accusations soon became public knowledge.<sup>[42]</sup> The leaders did not hold joint meetings to coordinate their positions in preparation for the coalition negotiations. Each leader set his sights on a ministerial position, but Barak offered them only two cabinet positions. The party joined the coalition, with Mordechai serving as minister of transportation and Lipkin-Shahak as minister of tourism. A year after the elections, in 2000, Mordechai was accused of sexual harassment and resigned his position. After he was convicted he also resigned from the Knesset. In 2001 the party split. Three Knesset members, headed by Lipkin-Shahak, formed a new Knesset faction called the New Way.

The remaining three Center party representatives joined the Likud government headed by Ariel Sharon. Milo left Likud briefly to found the One Heart faction, and returned with it to Likud. The Center party disappeared.

### **The Shinui party (1999-2006)**

Shinui was founded as part of the Dash party in the run-up to the 1977 elections. As noted above, Rubinstein and his supporters left Dash when it entered the right-wing government led by Begin. Shinui ran in the 1981 elections as an independent party and won just two seats. In the elections for the 13th Knesset, in 1992, a new body formed in the political left, composed of Shinui, Ratz and Mapam, which joined forces and established Meretz, in a bid to prevent the splitting of the left-wing vote. Some of the party's veterans objected to the union and left the party. Toward the elections for the 15th Knesset, in 1999 the activists who had left Meretz founded a new-old party - Shinui. The party's council debated the central issue on which the party would focus during the election campaign. Focusing on the peace process, which is the main issue in every election campaign in Israel, would not help the party make any electoral gains, as most of the secular parties would be investing their energies in promoting that aspect of their platform. Shinui therefore decided to search for another issue that would arouse the public. A public opinion poll on the issues that the public would support revealed two main issues - the economy and anti-religious sentiments. It was clear to Shinui's leaders that one of these two issues would help the party recruit supporters, and the issue chosen was the separation of religion and state. Concurrently with drafting the party's platform, the leadership sought a charismatic leader who would attract voters. The leader chosen was Tommy Lapid, a well-known media personality. He was charismatic, opinionated and was a good public speaker. The struggle against religious coercion in Israel was the main issue in Shinui's election propaganda. Lapid, who was well acquainted with the advantages of the mass media, used harsh and crass language in criticizing the extortionate exploitation of the state coffers for religious needs, and accused the establishment of trampling the democratic values of the state.<sup>43]</sup>

Shinui won six Knesset seats, and in accordance with its anti-Haredi policy declined the offer of Prime Minister Ehud Barak to join the coalition if the Haredi Shas party would also be a partner. Barak preferred the support of Shas and Shinui was left in the opposition.

As noted above, Shinui's strategy with respect to the Haredi parties in the elections for the 15th Knesset netted the party six seats. In the election campaign for the 16th Knesset, in 2003, Shinui therefore became more radical in its positions toward the haredim and presented an even more extreme platform<sup>[44]</sup>. This radicalization was aimed at attracting votes from the new immigrants from the former Soviet Union, who faced many difficulties from the religious establishment in matters of conversion and marriage. The election results proved that Shinui's strategy was successful beyond the party's expectations and the party won 15 Knesset seats, making Shinui the third largest faction in the Knesset. The fact that Shinui had managed to deflect the public's attention from the security issue reinforces the statements of Giddens<sup>[45]</sup> and Inglehart<sup>[46]</sup>, who researched affluent western societies: social and economic changes indeed affect the transition from old politics, which focuses on nationalism, patriotism and tradition, to new politics, which addresses the environment, feminism, secularization and personal and cultural identity. Giddens even added that most of the supporters of those values, which he called the "third way," are identified with established echelons. Israeli society has undergone similar changes, although more slowly. The two big parties, Labor and Likud, failed in their attempts to achieve peace with the Palestinians, and in the absence of a peace agreement on the horizon, Israeli society was left in a situation of uncertainty. In this type of situation, there is a growing desire to live in the moment, with a high quality of life, devoid of religious coercion and the exploitation of the weak.

Prior to the 2003 elections, the electoral system was changed again. The two-ballot vote was cancelled and voting with one ballot for a party list was reinstated. The government is supposed to be formed by the head of the largest party in the Knesset. Likud won 38 seats and the party's leader, Ariel Sharon, formed a coalition with Shinui and without Shas.

The collapse of Shinui began with its loss of credibility<sup>[47]</sup>. Even though the party had promised its voters that it would not sit in a government with Haredim, Shinui remained in the government even after Sharon brought two Haredi parties - Agudath Israel and Degel Hatorah - into the government. As a reward for joining the government, the two parties received NIS 200 million in funding from the state budget. Shinui's leaders threatened to resign from the government and managed to obtain a special budget allocation of NIS 700 million for distribution to institutions at the discretion of Shinui's

leaders<sup>[48]</sup>. The ethical principles in which Shinui prided itself were becoming cracked. The special budget allocation turned Shinui into a party that accepted money in exchange for compromising its principles. This behavior was identical to that of the Haredi parties that Lapid accused of squeezing money out of the state budget. The media accused Shinui of political extortion and the squandering of public funds - the same accusations that Shinui had leveled against Shas.

In addition, the media publicized audio tapes of a Shinui cabinet minister asking a private investigator to find some negative information on another member of the Shinui leadership. The minister was sidelined from party activity, but the public had been exposed to ugly struggles at the top, struggles that until that point had been unknown to the public<sup>[48]</sup>. These struggles also affected the primaries for Shinui's Knesset list, and exacerbated the inter-generational struggle that led to the splitting of the party. Even though Lapid was elected to the top slot in the primaries, Ron Levintal, a member of the younger generation, was chosen for the No. 2 position. That choice resulted in the retirement of six of the party's founders, who started a new party. Lapid also resigned and joined the new party. One after the other additional Knesset 16th Knesset's term only two Knesset members remained in Shinui. In the elections for the 17th Knesset, in 2006, Shinui did not pass the electoral threshold.

### The Hatnuah party (2012-2014)

Between 2005 and 2012 the political system underwent further changes. Ariel Sharon, while still prime minister as head of Likud, left his party and founded Kadima.<sup>1</sup> Sharon was joined by Knesset members from the two big parties, Likud and Labor. Shortly thereafter Sharon suffered a cerebral hemorrhage from which he never regained consciousness, and Ehud Olmert took over as prime minister. Tzipi Livni replaced Olmert, when he was forced to resign on suspicions of accepting a bribe. In the elections to the 18th Knesset, in 2009, Kadima, led by Tzipi Livni, won 28 seats and was the largest party in the Knesset. Likud, headed by Netanyahu, won 27 seats, but Netanyahu became prime minister because he managed to form a government due to the strengthening of the right-wing bloc<sup>[50]</sup>. Kadima remained in the opposition. In 2012, in the run-up to the elections for the 19th Knesset, primaries were held and Livni was edged out by Shaul Mofaz. Livni resigned from the party

<sup>1</sup> This study does not discuss Kadima. Even though the party positioned itself in the political center, it does not fit the definition of a center party.

and subsequently from the Knesset, but founded a new party, Hatnuah<sup>2</sup> which ran in the elections for the 19th Knesset and won six seats. Hatnuah, headed by Livni, did not join Netanyahu's government. Instead Livni and her party joined Labor to create the Zionist Union.

### Summary and conclusions

This article examined the Israeli phenomenon of center parties, which are flash parties. Most researchers claim that this category of center parties does not even exist and stress that center parties are doomed to disintegrate and disappear because the alternately support policies of the right and the left.

The systemic factors that contribute to the disappearance of center parties

The attempt to assess the systemic factors behind the disappearance of the center parties is quite challenging, as it is difficult to isolate such factors from internal party factors. The systemic factors are essentially just one layer in an entire system of circumstances that are connected to the disappearance of the center parties.

A historical view reveals that the center parties survived during the era of a multi-party system with a dominant party. The Progressive party survived from 1948 until 1961, and the Independent Liberal party survived from 1965 to 1981. These two parties survived due to factors connected to the structure of the party system. In that system Mapai was the only dominant party, without which it was impossible to form a government. The voters for the Progressive party and for the Independent Liberal party supported the liberal ideas and the interests of the middle class represented by those parties, and in foreign affairs and security matters those voters supported Mapai. The coalition partnership between Mapai and the Progressive and Independent Liberal parties helped voters to continue supporting the two center parties.

In a two-bloc system center parties form in order to accumulate power and tip the scales. Center parties that do not tip the scales for one of the larger blocs join a right-wing bloc or a left-wing bloc and disappear. All the center parties in the two-bloc system - Dash, Yahad and Ometz - did not manage to function as scale tippers. The leaders of Dash compromised their principles, joined a right-wing government and caused the departure of their colleagues who identified with the center-left.

Gradually other Knesset members left the party and it disappeared. Weitzman joined a left-wing party even though he was among the founders of Likud, and Horowitz also joined the left-wing bloc. The union of a small party and a large party can lead to the large party taking control of the small party.<sup>[51]</sup> Yahad was absorbed by Labor and Ometz, which left the Labor bloc in 1984, joined Likud in 1988 and was absorbed by it.

In a multi-party two-bloc system, the greater the competition in the party system, the closer the two large parties that heads each bloc move toward the center and weaken the center parties. In the struggle between them, in order to win the elections the parties become all-encompassing, appealing to all sectors of the population and the ideological differences between the parties are minimized. The competition between the parties focuses on the swing votes in the center. In 1981 the two large parties one a combined total of 95 Knesset seats. Likud won 48 seats and Alignment won 47 seats. The Independent Liberals did not pass the electoral threshold and Telem won two seats, but disappeared by the end of the Knesset term. Similarly, in 1984 the balance of power between the two large parties was almost equal. Alignment won 44 seats and Likud won 41. The political center consisted of two parties; Yahad won three seats and Ometz won one. The equal power of the parties required the establishment of a national unity government in which the leaders of the two large parties took turns at being prime minister - two years for Alignment and two years for Likud. In a broad-based government small center parties lose their strength. In addition, the establishment of a national unity government requires agreement on joint policy, policy that is identified with neither the right nor the left. The policy that is set is a centrist policy. When the government implements a centrist policy, the center parties disappear. This is what happened between the 1988 elections and the 1992 elections.

Unlike the processes that occur in a multi-party system with a dominant party or a two-bloc multi-party system, there are different reasons for the disappearance of center parties in a diverse multi-party system. In this type of system there are medium or small parties whose strength in the coalition is greater than their electoral strength. The coalition is composed of a large number of parties and the resignation of one of the parties could bring down the government. Thus it would be reasonable to assume that in this type of system the center parties would survive for many years, but the reality is different. In this type of system too, the center parties disappear after one or two terms. The

<sup>2</sup>The Movement



causes for this do not lie in the structure of the system but rather in the internal party processes such as intergenerational struggles and inter-personal struggles. In Shinui, for example, there was a struggle between the generation of the founders, headed by Lapid, and the younger generation, headed by Levintal. In Kadima, on the other hand, the struggle was between Livni and Mofaz prior to the primaries for the party leadership. Mofaz's victory resulted in the resignation of Livni and her supporters. In the Third Way, the party's downfall stemmed from ideological differences between the supporters of the right and the supporters of the left, while the Center party disintegrated due to ideological struggles based on relations between the secular and religious members of the party.

In conclusion, this study reinforces the maxim that center parties are destined to disappear, but unlike researchers like Duverger<sup>[52]</sup>, Sartory<sup>[53]</sup>, Von Beyme<sup>[54]</sup>, the causes for the disappearance of center parties do not lie in their support for policies of the left or policies of the right, or from a lack of thorough consideration and the adoption of hesitant stances of inaction and insufficient knowledge. The findings of this study prove that there is a connection between the disappearance of center parties and the structure of the political system. It is worth noting that this finding does not hold true in a diverse multi-party system. The disappearance of center parties in such a system is similar to the disappearance of parties in any political system, and is connected to internal processes that cause the weakening and disappearance of parties.

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## The trust between the associates of a Romanian limited liability company

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**Abstract:** *As a legal entity, which is based on a contract, the company is established according to the will of the associates. In other words, associates agree to share certain goods to carry out a profitable economic activity and to share the profit. The limited liability company is one of the most often incorporated companies in Romania, enjoying the characteristics of both companies of persons and those of companies of capitals. The trust between associates is specific to companies of persons, a borrowed feature by the limited liability company. The article aims to emphasize the importance that the law assigns to trust among associates, on which they founded their will to set up the limited liability company. The analysis, without claiming to be exhaustive, encompasses the most important theoretical and practical aspects contained by the legal provisions and considers the relevant jurisprudence in this area.*

### Introduction

The Romanian legal framework allows the participant to the economic life to choose from various types of legal entities with the purpose of carrying out economic activities. The law regulates entities with no legal personality, like the sole trader, the individual enterprise, the family enterprise or the simple company and entities enjoying legal personality, such as the general partnership, the limited partnership, the joint-stock company, the limited liability company, the association or the economic business group.

Therefore, the participant chooses and makes the best decision for his purposes based on the characteristics of each entity. Choosing an entity with no legal personality gives a lot of responsibility to the individual owning the entity, since the liability for the business acts lays only on his personal patrimony, while setting up a legal entity with legal personality permits this entity to be part in the business environment, with all the consequences therein.

The decision to incorporate a limited liability company implies choosing at least another associate, unless the limited liability company has only one associate. This decision, as well as the understanding between the associates throughout the company's life has certain consequences on the company itself. The trust between the associates allows the company to exist and to engage in the business life. The decisions made by the limited liability company reflect the relationship between the associates and their intention to cooperate. The lack of trust and of such intention to cooperate, on the other hand, leads to the impossibility to make decisions and finally, to the end of the limited liability company.

Regarding the law governing such aspects, the Civil Code covers the general framework, while special legal acts address various entities. The legal act that is mostly envisaged is Companies Law no. 31/1990, which governs the five types of companies enjoying legal personality.

The repeal of the former Commercial Code in year 2011 by the new Civil Code did not left uncovered entities or legal provisions governing the various entities. This new Civil Code brings together the provisions of both civil and business law, becoming the common law for Romanian legal entities.

So, the new Romanian Civil Code, adopted relatively recently, brings the legal provisions of commercial law in line with the new economic and social realities in Romania, as well as with the European law in this field. Also, the Civil Code constitutes the common law for companies, but leaves the detailed regulation of companies and, implicitly, the rules for their incorporation in a distinct law, Companies Law respectively.

### 1. The limited liability company as a company of persons

The Companies Law stipulates five types of companies, all of them enjoying legal personality. The legal provisions detail the general partnership, the limited partnership, the joint-stock company, the limited partnership by shares and the limited liability company.

Based on their features, in accordance with their history and existence in the business environment, these companies are divided in companies of persons, namely the general partnership and the limited partnership and companies of capitals, namely the joint-stock company and the limited partnership by shares.

The limited liability company is the newest company in the Romanian legislation and it gathers characteristics from both types of companies, being considered a mixt form of company.

The way the legislation [1] regulates the limited liability company proves that most of its characteristics are those from the companies of persons (*intuitu personae*). For example, the limited liability company is set up by a limited number of associates, *i.e.* maximum fifty associates, indicating the fact that the associates must know and trust each other and their personal qualities.

On the other side, as its name shows, its associates have a limited liability for the company's debts, within their contributions to the share capital. This liability is a characteristic of the companies of capitals (*intuitu pecuniae*), namely of the joint-stock company, where the contribution to the share capital is a main element.

Therefore, although the limited liability company is a mixt form of company, the first element that should be considered when considering this type of company and which further leads its activity, is borrowed from the companies of persons and that is the trust between its associates.

## 2. The setting up of a limited liability company

According to the statistics of the National Trade Register [2], in the first five months of the year 2018, from a total of 61,017 registrations of legal entities, there were registered 37,750 limited liability companies, followed at a considerable difference by registrations of sole traders. The statistics indicate, thus, the highest preference for this type of company.

The company is the only one that may be set up by a sole shareholder, individual or legal entity, having Romanian or foreign citizenship or nationality. However, the limited liability company own by a sole shareholder cannot be itself the sole shareholder in another limited liability company.

The constitutive act includes the memorandum of association and the articles of association and there are some mandatory clauses provided by the legislation, like those regarding the company's corporate name, the duration, its registered office, the share capital, the number of shares and their value – which cannot be less than 10 lei or the competencies of the management bodies. The constitutive act must be signed in front of the notary

public if an immovable asset is brought as contribution to the share capital.

The identification data of the associates and their contributions are required not only at the incorporation, but any change of the associates and of the share capital's structure must be registered at the Trade Register. This importance given to the associates is the consequence of the fact that the limited liability company is based on the relationship between associates and its character of closed company.

Under criminal sanction, the legal provisions lay down that the limited liability company cannot issue negotiable securities, due to the fact that it is a company of persons and not of capital.

As concerns the incorporation of a limited liability company, the legal provisions stipulate that the minimum share capital is 200 lei (approximate 50 euro), hence so accessibly to everyone. Regardless the amount of the share capital, it must be fully subscribed at the incorporation date.

The Companies Law allows only the contribution in cash and the contribution in kind (in goods) to the share capital, forbidding thus the contribution of the associates in work.

As in the case of any type of company, the profit of a limited liability company is divided between shareholders under the form of dividends, which are also used to constitute the company's reserve fund. The shareholders are entitled to dividends in accordance with constitutive act and there are no provisions on this matter, they are entitled to dividends proportionally to participation quota to the share capital.

## 3. The management of a limited liability company

### 3.1. General Meeting of Shareholders

The general meeting of the shareholders is the decision body for this type of company. It is called at least once a year or as necessary by the company's directors or by a shareholder or a group of shareholders holding at least one quarter of the share capital. Moreover, if the directors fail to call the general meeting, the company's censors are obliged to call it. The call is made in accordance with the Companies Law, ten days prior the meeting and it must include the agenda.

Regarding the competences, the general meeting of associates approves the financial statements, allocates the profit, appoints and revokes the directors, the censors or the auditors, decides on the recovery of damages caused by directors and censors, in accordance with law and the companies' constitutive act.

For deliberating and decision-making process, the associates must attend the meeting, unless the constitutive act allows the vote by correspondence. The voting right is proportional to the contribution quota to the share capital, the decisions being made with absolute majority of associates and shares, unless the constitutive act does not stipulate otherwise. Consequently, a double majority is requested, namely of the associates and of the shares owned.

If the majority required by law is not met, at the second call the meeting shall decide on the same agenda regardless the number of participants or the shares represented, by majority of votes of those attending the meeting.

However, the *intuitu personae* character of the limited liability company demands that any amendment of the company's constitutive act must be made by decision of all shareholders, unless the law or the constitutive act does not require otherwise.

Nevertheless, in a case law [3] the court argues that the legal provisions stipulating that "in limited liability companies, it is necessary the vote of all shareholders for decisions having as object the amendment of the constitutive act, except the case the law or the constitutive act stipulate otherwise, must be corroborated with art. 188 para 3 which states that if at the first gathering the meeting cannot make a valid decision due to lack of necessary majority, at the second calling, the meeting may decide on the agenda regardless the number of shareholders and the part of the share capital represented in the meeting."

The Companies Law lays down some interdiction regarding the vote, like the case of the associate which cannot vote on the contracts concluded between him and the company.

The decisions of the general meeting are mandatory for all shareholders, even if they have not attended or they voted against them.

### 3.2. Directors

The limited liability company is managed by one or more directors, but the legal provisions applicable

to joint-stock company are not applicable for this type of company. This way, the Companies Law clearly delimits the differences between the two types of companies and their features.

The directors may be or not shareholders and they are appointed by the constitutive act or by decision of the general meeting. The revocation is made by absolute majority of shareholders and shares.

The Companies Law forbids the director to hold, without the approval of the general meeting, the capacity of director in other competing companies or having the same object of activity or to perform the same type of commerce or a competing one on his own or on the name of another individual or legal entity.

Also, if there are appointed more directors, they can work together or separately. Moreover, if the directors must work together, their decisions must be made in unanimity and in case of dispute, the shareholders make the decisions. Even more, if the constitutive act does not mention the way the directors exercise their mandate, each of them shall work individually.

Concerning their competences, the directors are in charge with all activities necessary to perform the company's object of activity, just like in any other type of company.

It is worth mentioning that the company is represented by the director appointed by the constitutive act or by decision of the general meeting, and if not stipulated, the company shall be represented by all directors.

### 3.3. Censors

The management control is made by the company's censors or auditors. The Companies Law provides that the companies whose financial statements are not subject to audit, the general meeting may appoint one or more censors or a financial audit.

However, the limited liability company having more than fifteen associates must appoint one or more censors, in odd number and at least one of them must be an expert accountant.

The financial auditor may be appointed by the general meeting, while the first one is appointed by the company's constitutive act.

#### 4. Transfer of shares in a limited liability company

The transfer of shares in a limited liability company is very close linked with the trust between shareholders.

Generally, this transfer may be made by acts between living individuals, by onerous title, but also by *mortis causa* acts because the shares are ownership titles and, therefore, they incorporate certain values.

However, being an *intuitu personae* company, the transfer of shares may be made only by observing the specific legal provisions.

Thus, in order to comply with the *intuitu personae* character of the company, the shares may be assigned only by the consent of all shareholders. As concerns the inheritance, the consent must be given whether the company should continue its existence with the successors of the deceased, considering that the transfer of the shares is operating anyway.

In a case law [4] the court emphasizes that “an assignment of shares is possible between the shareholders and persons outside the company but, due to the fact that such assignment may affect the *intuitu personae* character of the company, it is allowed if only approved by shareholders with the majority imposed by law and the company’s constitutive act.”

Between the shareholders, the transfer of shares does not require the consent of all of them, but the transfer, signed under private signature, must be notified to the company and for opposition purposes against third parties, it must be registered at the Trade Register.

#### 4. Withdrawal of the shareholder of a limited liability company

Any of the shareholders may decide to withdraw from the company, which shall continue its existence. If the number of shareholders is below two, the remaining shareholder should decide whether to continue the activity as a limited liability with a sole shareholder.

It must be noted that the conditions for withdrawal are drafted in the legislation considering the character of the company and are based on the trust that existed between shareholders from the incorporation moment and their further relationships.

The Companies Law stipulates the withdrawal in certain cases. Thus, the shareholder may withdraw under the conditions provided by the constitutive act. In this case, the withdrawal is made based on the request of the shareholder.

The agreement of all shareholders is another way to withdraw from the company, if in the constitutive act of the company has not been stipulated any case of withdrawal.

The last possibility to withdraw specified by the legislation is the judgement of the court, on solid grounds if no provision is described by the constitutive act and the agreement is not obtained from all the other shareholders.

In this sense, the court has decided [5] that “the withdrawal from a limited liability company is done in accordance with the constitutive act or by agreement of shareholders. But as long as the company’s memorandum and articles of association in litigation does not contain provisions on the shareholders’ withdrawal, this may operate by agreement of the other shareholder and if it lacks, by court decision.”

#### 5. Exclusion of the shareholder of a limited liability company

Having a personal character, this type of company depends on the relationships between the shareholders, their interaction and on their personal capacities.

Therefore, in cases where the shareholder does not comply with the obligations undertaken to the company or damages the company in any way (including by opposition of the shareholder’s personal creditor to the decision to extend the company’s duration), the law allows the possibility for the other shareholders to exclude that shareholder, by turning to the court of law.

This measure is seen as a sanction for the shareholder, but also as a remedy for saving the company’s existence [6].

The Companies Law lays down limited cases for this measure. Thus, in a limited liability company subject to this measure may be the shareholder which has not brought the contribution undertaken. In this case, that person may be held liable for damages caused to the company.

Also, it may be sanctioned in this way the shareholder who is also director of the company and has



committed fraud in the damage of the company or takes advantage of the company's signature or the share capital in his own benefit or for others. In this situation, the behavior of the shareholder shows bad faith and the company should be protected by this measure. A judgement [7] handed down in 2008 mentions that "the fraud may be considered, in principle, any intentional action or inaction committed by the shareholder-director". In another case law [8], the court states that "the law does not distinguish on the fraud dimension, the multitude of the fraudulent acts or the behavior of the guilty director after committing the fraud".

Even more, another court decision [9] argues that the notion of fraud includes "the competing activities performed by the shareholder through his own company. Thus, if the shareholder incorporates another company, having the same object of activity, performs the same activities, concludes contracts on the name of the new company instead of the old company, (the shareholder) performs a competing activity which has as result the fraud of the old company's interests."

In another case law [10], the court underlined the fact that a shareholder of a limited liability company cannot be excluded due to the fact he interfered without any right in the company's administration on the grounds that the law expressly stipulates this sanction only for the shareholders having joint and unlimited liability.

Moreover, the excluded shareholder has the right to an amount of money which represents the value of the quota from the company's patrimony established by agreement and by tribunal in case of conflict [11].

## 6. *Affectio societatis* in a limited liability company

Under the Romanian legislation, although not expressly stipulated, the existence of *affectio societatis* is undoubtedly a necessary condition for any type of company, including the limited liability company.

The court [11] argued that "*affectio societatis* is an element, a validity condition of the memorandum of association, so its absence does not lead automatically to the nullity of the company and, consequently to its dissolution, but, more likely to the exclusion or withdrawal of that shareholder or shareholders. If the company has the possibility from a financial point of view to achieve its object of activity, the dissatisfied shareholder may withdraw

or may be excluded from the company, allowing its further activity."

Also, another court decision [12] argues that "concerning the high number of commercial and criminal litigation existing between parties, such as results from the documents submitted to the file, the first court of law correctly appreciated that there are serious misunderstandings between shareholders and that those have led to the impossibility to achieve the company's object of activity, between shareholders missing collaboration due to lack of *affectio societatis*, having no relevance the guilt of one or any (of the shareholders) in causing these misunderstandings, being important only the effect of the misunderstandings, stopping the operation of the company respectively."

## Conclusion

Considering all the above, I am of the opinion that choosing this type of company implies choosing the right business partner. The relationships that exist between the associates from the beginning of the company's life are conducting its activity throughout its existence.

Although the Romanian legislation, in accordance with the European rules, allows the incorporation and functioning of the limited liability company with a sole associate – exceptional way from the association with the purpose to establish a legal entity, this type of company meets important characteristics of the companies of persons.

Its major feature taken from the companies of persons remains the trust between associates (shareholders).

As seen above, this mutual relationship of trust governs the way the shareholders make decision. Thus, except the cases stipulated by law or by constitutive act (another way for the shareholders to express their will and their trust in each other), the decisions in a limited liability company are made by a double majority, of shareholders and of shares in the share capital.

Even more, the nature of shares in a limited liability company is similar to that in the companies of persons, *i.e.* the general partnership or the limited partnership. Due to its *intuitu personae* character, in a limited liability company, the shares can be transfer in exceptional way and only in very restrictive conditions, because the transfer may undermine the trust between the associates. In a joint-stock company, the transfer of shares does not

imply an analysis of the personal factor since this type of company has an open character and the shares may even be negotiable.

The trust between shareholders governs the possibility to withdrawal and exclusion of one of them. However, the legal conditions are restrictive as well in this matter and there are reasonably stipulated by law, for example, objective reasons for excluding the shareholder.

I also consider that one of the advantages of the existing Romanian legislation is the fact that the legal provisions on the limited liability company are in line with the European rules and that the harmonization process has been considered in this area.

By borrowing features from the types of company already existing (the general partnership and the joint-stock company) and by being the newest form of company in Romanian legislation, the limited liability company offers certain advantages for its owners. This statement comes as well as a conclusion of the fact that, currently, this type of company is the most incorporated type of company enjoying legal personality, under Companies Law in Romania. Therefore, it may be concluded that, starting from the mutual trust between shareholders, the limited liability company aims to answer to the needs of both the shareholders and the business environment.

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## Forgiveness and Politics: A Comparison between Hannah Arendt and Martha Nussbaum

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**Abstract:** *The main twentieth-century political revaluation of forgiveness as well as the contemporary philosophical reflection about its possible use in politics have been proposed by two female voices: Arendt and Nussbaum. The revaluation of the political value of forgiveness is one of the most famous aspects of Arendt's philosophical thought. Yet her recovery of forgiveness is the result of an impervious path that starts exactly from the recognition of its impossibility. Even the outcome is not obvious: what is it possible to forgive? For Arendt, it is not a protest against the radical and voluntary evil, but 'only' a remedy to face the limits of human action. A weakened forgiveness? The perspective proposed by Nussbaum is different. Faced with the anger of contemporary society, Nussbaum meets forgiveness as a possible antidote, but she seems to liquidate it with the accusation of revealing "an excessively inquisitorial and rigorous mentality". Generosity as an alternative to forgiveness?*

### 1. Forgiveness and public sphere: an all female challenge

Forgiveness is a surprising concept because it always lives in the aporia and in contrasts. All twentieth-century philosophical reflection clearly shows this: from Hannah Arendt to Vladimir Jankélévitch, from Emmanuel Lévinas to Paul Ricoeur, from Jacques Derrida to Martha Nussbaum, forgiveness can only be faced plunging into the contradictions that inhabit it intimately.

How do forgiveness and unforgivable relate? Does radical evil represent an insurmountable limit, or the authentic challenge to which forgiveness can respond? What is forgiven? The actions or the agent? For what reason? To forget and cancel, or to start over and allow a new beginning for human freedom?

To understand if forgiveness can play a role in the political dimension, it is first of all necessary to ask whether it is a private act or a public possibility. On one hand, forgiveness keeps the evil received and done to the first person stuck; evil is committed first hand and there is no forgiveness without individual conscience. On the other hand, evil is committed in the human community and the subject of forgiveness and evil can be singular or plural, "I" or "we". The unforgivable evil is both in private life and in history and public life [1]. Forgiveness is never easy. Forgiveness granted too easily suspends difficulties and contradictions and focuses on the subject that forgives and on his supposed superiority, not on evil and suffering.

As Ricoeur points out, authentic forgiveness is, "difficult" because it takes seriously the tragic character of human action, it aims at the root of the acts, at the source of conflicts and wrongs that require forgiveness. The, "difficult forgive-ness" is conscious that forgiving is not a matter of "cancelling a debt on a table of accounts, at the level of an accounting balance"; it is rather a matter of "loosening knots": it means to remain in the contradictions, facing the other [2].

Such forgiveness can be born – or die – only in connection with empathy, the, "experience that confronts the existence of the other as other, with its uniqueness and difference" [3] and that, as Boella pointed out, it, "is an essential element of human cohabitation in its social, political and moral aspects" [4].

It is no coincidence, perhaps, that the main twentieth-century revaluation of forgiveness, as well as the contemporary philosophical reflection about its potentialities as antidote against today's, "age of anger"[5], have sprouted up from two female voices: Hannah Arendt and Martha Nussbaum.

The aim of this paper is, to analyze the path of life and thought that has led these two philosophers to reflect on the possible political value of forgiveness and to compare their limits and potentialities.

### 1. Arendt: agency is forgiving. A hard conquest

The revaluation of the political value of for-

givenness proposed by Arendt in, *The Human condition*, is one of the best-known aspects of her philosophical thought. The analysis of the articulations of *vita activa* leads Arendt to the revaluation of agency, because "a life without speech and without action [...] is literally dead to the world; it has ceased to be a human life because it is no longer lived among men" [6, p. 176], in the domain of plurality. But, agency is afflicted by, "the burden of irreversibility and unpredictability" [6, p. 233], which makes the man a prisoner of his actions.

If, "the remedy for unpredictability, for the chaotic uncertainty of the future, is contained in the faculty to make and keep promises", "the possible redemption from the predicament of irreversibility – of being unable to undo what one has done though one did not, and could not, have known what he was doing – is the faculty of forgiving" [6, p. 237]. Forgiveness is rehabilitated as a remedy to the irreversibility of action because it frees the present from the burden of the past and opens it up to the possibility of a new beginning for freedom.

For Arendt, "the experience of doing and forgiving is one, that is knowledge that whoever does must be ready to forgive and that whoever forgives actually does " [7]. It is only through this mutual liberation of individuals, who come into the world with the gift of freedom, that they can also remain free and in a position to manage a faculty as extraordinary as extraordinarily dangerous as freedom [8].

Yet, "the Arendtian itinerary towards forgiveness has not been linear at all" [9]; the relationship between the thought – and life – of Arendt and forgiveness has taken nothing for granted and the recovery of the forgiveness proposed in 1958 is the outcome of an imperious journey that starts, conversely, from the recognition of its impossibility.

The reflection on forgiveness takes roots in the tremendous human experience – at the same time intimate and common, private and public – represented by the Holocaust and the tragedy of the responsibility of the citizens who adhered to Nazism. Quoting Churchill's words, Arendt affirms, "everything I was sure or taught to be sure was impossible, has happened" [10]. The disenchanting philosophical awareness of the, "total collapse of all established moral standards in public and private life" [11, pp. 52, 61], that in

Nietzsche was still a premonition, have become for Arendt, a fact.

The question about forgiveness arises therefore, in face of the unforgivable evil; what happened with totalitarianism, "not only escaped the traditional instruments of historical understanding, but represented the unforgivable and the imprescriptible" [9], what should never have happened [11, pp. 55-56]. In the pages of the journal written between 1947 and 1950, forgiveness does not find any space of legitimate existence. At this stage Arendt states that if forgiveness means, "to renounce revenge, to be silent and go further" [12, pp. 9-10] due to the love of thy neighbor, if it is a way to "look away", it is therefore, a "fictitious procedure" useless from a political point of view. Paradoxically, vengeance would be better because forgiveness would be a "farewell", "while vengeance always remains with the other and, precisely, does not break the relationship" [13].

What leads Arendt from these statements to the decision to make forgiveness a pillar of her political theory?

Again, her thought is intertwined with life: these are the years of McCarthyism and these events touched Arendt's private life, because her husband had once been a militant of the German Communist Party working for the USSR. Arendt asks herself: is it really true that "once a communist, forever a communist"? Is there no escape from being slaves to our actions and past words?

From these questions sprouts a different possibility for forgiveness; Arendt begins to notice that forgiving does not mean keeping silent or forgetting, but opening up to the possibility of giving a new and different start to an action undertaken in the past, "forgiveness, mercy, reconciliation do not revoke anything, but prolong the action started, in a direction that was not inherent to it" [12, p. 271]. This is exactly the preparatory stage of the political concept of forgiveness.

If we were born to begin, if "the miracle that saves the world, [...] the fact of natality" represents, "the birth of the new men and the new beginning, the action they are capable of by virtue of being born" [6, p. 247], forgiveness grants the possibility of re-starting and recovering one's own humanity and ability to act.

From the smoking ruins of the Holocaust to 1958, the path is tortuous, arduous, deeply philosophical and at the same time human, and leads Arendt from anger and revenge to re-open a chance for forgiveness.

## 2. Arendt: a weakened forgiveness?

However, the outcome is not a foregone conclusion: what is forgiveness, so understood (as a remedy to the irreversibility of the action) addressed to? What is it really possible to forgive? Under what conditions?

Forgiveness is rehabilitated, because it is impossible to go back in time, because human agency cannot be annulled, "who acts never quite knows what he is doing" and "he always becomes 'guilty' of consequences he never intended or even foresaw, [...] no matter how disastrous and unexpected the consequences of his deed can never undo it" [6, p. 233]. For Arendt, however, there is no doubt that if forgiveness would free the present from the past, it would be useless from a political point of view, because we must not forget what happened.

Forgiving does not mean cancelling, justifying or forgetting [6, p. 237]. Forgiveness can and must be recovered in its political role only under specific conditions. Commenting on the Gospel passages in which Jesus speaks of forgiveness [Lk 5:21-24; Mk 11:25; Lk 17:3-4] Arendt outlines the proposed new conception. Forgiveness is not unconditional, it needs, first of all, a dialogue and the manifestation of a change of idea from those who have committed the wrong. Forgiveness can function only under the condition of plurality because, "no one can forgive himself", "forgiving and promising enacted in solitude or isolation remain without reality and can signify no more than a role played before one's self" [6, p. 237]; only those who have been wronged can forgive.

Finally, forgiveness is an act of freedom, an unordered and unpredictable hope, and for this reason Arendt assimilates it to the highest human activity – to the action itself – because, "it is the only reaction that acts in an unexpected way and thus retains, though being a reaction, of something of the original character of action. Forgiving, in other words, is the only reaction which does not merely re-act but acts anew and unexpectedly" [6, p. 241].

But, what do we forgive? What is the object of forgiveness? The person, the acts committed? On this aspect, Arendt initially oscillates. In *The Human Condition* she affirms that "what was done is forgiven for the sake of who did it" [6, p. 241], but a few years later she feels the need to clarify and distinguish this better. In a letter written in 1960 to Auden (a friend) she writes, "I was wrong when I said that we forgive for the sake of who did it. I may forgive somebody who betrayed me, but I am not going to condone betrayal *überhaupt*. I can forgive somebody without forgiving anything; if I forgive a 'thing' then only that I was wronged. But charity indeed forgives *überhaupt*, it forgives betrayal in the person who betrayed — on the ground, to be sure, of human sinfulness and its solidarity with the sinner" [14].

Forgiveness is not the love of thy neighbor: if love forgives everything (act and person), forgiveness is addressed only to the person and his humanity and not to the act, to the wrong done. The reason is clear: evil remains and must remain indelible, unforgettable, unjustifiable.

This notation also allows us to understand better the reasons behind the last and decisive condition: forgiveness can only be directed to involuntary evil.

For Arendt remains irrevocable that forgiveness, "does not apply to the extremity of crime and willed evil", "they will be taken care of by God in the Last Judgement" [6, p. 239-240]. Only the unintended consequences of action are forgiven. Actually, this limitation of the field of applicability of forgiveness is already evident in the definition with which Arendt begins the discussion of the topic: the faculty to forgive – says Arendt introducing the topic in *The Human Condition* – addresses to, "what one has done though one *did not, and could not, have known* what he was doing" [6, p. 237].

On the contrary, "men are unable to forgive what they cannot punish and that they are unable to punish what has turned out to be unforgivable", which we call, since Kant, "radical evil". About that, "all we know is that we can neither punish nor forgive such offences and that they therefore transcend the realm of human affairs and the potentialities of human power" [6, p. 241].

The unforgivable completely withdraws from the logic of forgiveness [9], precisely because, "in



the case of the evil without roots, there is not even a person who can be forgiven" [11]. Forgiveness cannot challenge the unforgivable because, for Arendt, in this case there is not even a person to forgive.

Therefore, for Arendt, forgiveness does not represent a contestation of radical and voluntary evil, but rather a remedy to the limits of action as it is placed in the plurality dimension. The polemical target of forgiveness is not the evil, but the limit of human agency, our impossibility to control and fully predict all the consequences of our actions. The real subject is not forgiveness but human agency, that must be lightened by the irreversible.

If, on the one hand, forgiveness is raised by Arendt to a dignity almost equal to that of acting – because it surprises, it is original, opens to the possibility of the new – on the other it seems to be the calculated and convenient re-action to free the action from the burden of irreversibility [1, p. 77].

A further objection is connected to the relationship between forgiveness and the unforgivable. Forgiveness cannot and must not be, for Arendt, a contestation of voluntary or radical evil: the recovery of the political value of forgiveness co-exists with the recognition of an inaccessible field, that of the unforgivable.

On the contrary, the twentieth-century philosophical reflection has underlined the genetic relationship between forgiveness and the unforgivable. According to Ricoeur the authentic forgiveness is the difficult one, which, "must first have run into the unpardonable, that is the infinite debt, the irreparable wrong" [15]. That is, the possibility of forgiveness coincides with its impossibility and forgiveness arises precisely from what is unforgivable [1, p. 50].

With Jankélévitch, we can say that forgiveness lives only in the contradictory relationship with evil, "forgiveness is strong like evil, but evil is strong like forgiveness" [16]. Derrida, as well, underlines that, "the pure forgiveness forgives only the unforgivable" [17].

Like Arendt, Jankélévitch also reflects on the experience of the Holocaust, and like Arendt considers it as an unforgettable and imprescriptible crime. But, if Arendt emerges from the contradiction represented by radical evil by

excluding it from the possibility of forgiveness, Jankélévitch finds exactly there the possibility of its rebirth: it is true that forgiveness dies in the concentration camps that forbid us to justify the gratuitous enormity of the evil done. Yet, forgiveness lives precisely because evil comes up to the unforgivable [1, p. 50]. In the Arendtian revaluation of forgiveness as a political corrective against the only involuntary evil, the doubt then insinuates itself of finding, at the end, with a too weak and weakened forgiveness.

### 3. Nussbaum: forgiveness? Inquisitorial

The perspective proposed by Martha Nussbaum in her recent, *Anger and Forgiveness: Resentment, Generosity, Justice* [18], appears at first sight diametrically opposed to that of Arendt. As with Arendt, even with Nussbaum the thought of forgiveness is intertwined with events of life, both private and public, but seems to lead to opposite outcomes.

Nussbaum reflects on forgiveness, starting from the observation that if we rely on the famous Hobsbawm's Martian, who sniffs the air of our planet for the first time and tries to understand it not from the written sources but from its sounds, its noises and silences, we could derive that ours is the, "age of anger" and forgiveness appears as the main candidate to replace it.

Specifically, Nussbaum states that the idea of reflecting on anger and forgiveness came after she wrote a commentary on the massacre of Muslims in Gujarat in 2002. Fifty Hindu pilgrims were burned on a train in a fire whose responsibility (never proven) had been attributed to Muslims; this event had been followed by a ferocious ethnic cleansing against the Muslim population that caused over two thousand deaths and was not promptly blocked by public authorities, leaving room for anger and revenge. Anger also directly affected her personal life, when in 1993, she was rejected by Harvard due to a sexist attitude.

Is anger a negative emotion? Can forgiveness be an antidote to anger?

Here the paths of the two philosophers immediately seem to diverge. Arendt, in the '50s said that, "better than vengeance and forgiveness is pure rage, or that in which the anger dissolves, the pure mourning" [12, p. 16], and even after the rehabilitation of forgiveness, she believed that

the courage that "manifests itself in the passionate involvement that takes the form of anger," was necessary in the public sphere and that, "anger and indignation" are necessary to describe the phenomena, the evil, because otherwise they would be described as if they were "on the moon, and not in the middle of a human society" [19].

On the contrary, Nussbaum aims to show precisely, "that anger is always normatively problematic, whether in the personal or in the public realm". If it is true that it has a possible circumscribed usefulness, "as a signal [...] that wrongdoing has taken place, as a source of motivations to address it, and as a deterrent to others" [18, pp. 5-6], it remains inadequate because it shifts the attention from what can be changed to what cannot be changed, from the future to the past.

Nussbaum then meets forgiveness as a possible antidote to it, but again seems to be moving away from Arendt, dismissing it with the accusation of revealing, "a mentality that is all too inquisitorial and disciplinary", which does not free itself from anger and proposes revenge desires in disguise.

Forgiveness is analyzed because it is, "one prominent candidate to replace anger as the central attitude in the area of wrongdoing" and because, "we live in what is often described as a 'culture of apology and forgiveness' [...]; forgiveness is 'a very 'in' topic, with many defenders in both politics and philosophy" [18, pp. 9-10]. The stated purpose of Nussbaum is to do as Nietzsche, that is to reconstruct a genealogy of forgiveness – to, "examine the Judeo-Christian tradition of transactional forgiveness in a Nietzschean spirit" – overcoming the habit of considering it an, "all-purpose term of commendation" [18, pp. 59-60]: it is a matter of trying to define it, to evaluate if and which aspects can survive and be a part of a moral philosophy aimed at supporting a liberal and democratic society.

For Nussbaum, there are two possible definitions of forgiveness: the transactional forgiveness (conditional) and the unconditional forgiveness, rooted in the Jewish and Christian traditions. However, they both have aspects that make forgiveness useless.

The transactional forgiveness is, "a two-person process involving a moderation of anger and a cessation of projects of revenge, in response to

the fulfilment of six conditions": acknowledging one's responsibility, condemning one's actions, expressing regret, promising to change and showing it in deeds, demonstrating to understand the damage done, explaining how one has come to do wrong and why one is now trustworthy [18, p. 57]. It is interesting to note that in reference to this definition of forgiveness, Nussbaum comments the same evangelical verses cited by Arendt in *The Human Condition*: "If your brother sins against you, rebuke him; and if he repents, forgive him. And if he sins against you seven times in a day, and seven times in a day returns to you saying, 'I repent', you shall forgive him" [Lk 17:3-4].

Arendt had emphasized the need for a dialogue, for repentance and commitment to change, as well as the emergence of forgiveness as a human act. Nussbaum, while seizing these aspects, insists on the character of transaction; such a pardon appears in Nussbaum as a *do ut des* and this is one of the underlying reasons for criticizing it.

For Arendt, forgiveness was a hope, for Nussbaum, on the contrary, it makes no allowance for spontaneity and generosity, as it is suspended between an initial inflexibility – the victim must have an apology and compensation – and an almost final duty (victim must forgive; the case of Jewish Teshuvah is emblematic) [18, pp. 60-66]. Forgiveness does not remove negative passions and it, "is violent toward the self", it is, "an elusive and usually quite temporary prize held out at the end of a traumatic and proof-unfriendly intrusive process of self-denigration" that seems to leave no room, "for personal dignity or self-respect". "Humility and lowness", "the attitudes of shame", "self-disgust" [18, pp. 71-74]: forgiveness requires and repropose, in the interpersonal relationships, the sense of one's own unworthiness, and at the same time does not overcome the errors of anger, nor the error of believing that the pain of the guilty repays damages ("payback error"), nor the one of thinking that of the offender's humiliation compensates for the status damage suffered by the victim ("status error").

Not even the second definition of forgiveness, that of an unconditional forgiveness, that finds its model in Jesus who gives his life and asks forgiveness for his executioners [Lk 23:33], is saved for Nussbaum by these potential contradictions. Unconditional forgiveness remains

directed to the past rather than to the future, "remains backward-looking and [...] it says nothing about constructing a productive future". Furthermore, except Jesus, it is not necessarily free from anger or, "from some type of payback wish" and it always risks to propose again the payback desire in disguise: the one who forgives could secretly think, "you ought to be grovelling, whether you are or not" or, "he or she may want through the forgiveness process itself to get a moral advantage and inflict a humiliation on the offender". Unconditional forgiveness, "might be accompanied by love and good projects – or it might not" [18, pp. 76-77].

In the public sphere, two possible destinies are usually reserved for forgiveness: either it is exalted with hosanna, as a virtue with great potential advantages, or it is criticized typically in the direction of greater interpersonal harshness, reaffirming the benefits of punishments that balance the accounts. On the other hand, Nussbaum criticizes forgiveness, "from the other side", stating that "forgiveness exhibits a mentality that is all too inquisitorial and disciplinary" [18, p. 10]. For Nussbaum there isn't any possible escape for forgiveness; we need to change the paradigm.

#### **4. Generosity as justice. A redefinition of forgiveness?**

Only, "unconditional love" that in the public sphere translates itself into, "generosity as justice" permits, "on moving beyond the whole drama of anger and forgiveness to forge attitudes that actually support trust and reconciliation" [18, p.13]. Unconditional love is different from transactional and unconditional forgiveness because, "there is no mention of waiving a prior anger" [18, p. 78].

To define it, Nussbaum refers to Jesus's parable of the Prodigal Son, or better, of the Merciful Father. What does the Father do? He sees his son coming from a great a distance, he recognizes him, he sees that the son he has believed to be dead is actually alive, he does not know what he is going to say, he feels a strong emotion, runs towards him, embraces him, does not ask him any questions; he simply loves him unconditionally. And even after the son expresses his repentance, the Father goes straight to celebrating. There is no statement of forgiveness, nor a request for contrition. There is no anger or resentment that is subsequently renounced, "there

is just love, silencing anger" [18, p. 85].

"What is so great about this father is precisely that he does not pause to calculate and decide, he just runs to him and kisses him. He has no thought for wrongs done to himself; his only thought is that his son is alive".

It is clear that, "this story concerns the depths and the unconditionality of parental love" [18, p. 82], but Nussbaum's challenge is equally clear: she wants to show how unconditional love redefined as generosity capable of generating justice is the true antidote to anger and the true alternative to forgiveness, not only in the sphere of intimate relationships but also in the, "middle Realm" [18, p. 138] and in the, "political Realm".

While in the critique of anger and forgiveness, Nussbaum's reasoning is cogent and persuasive, in the constructive part, while describing the proposal of unconditional love or generosity, Nussbaum proceeds more by successive exemplifications and sometimes overlaps and interchanges terms and concepts: love, generosity, clemency etc.

However, the recurring and defining elements of, "generosity as justice" are clearly identifiable. First of all, only generosity, for Nussbaum, is able to look at the person distinguishing him from his actions, "the idea is for all alike, offender, victim, and friends, to acknowledge a split between act and person, and to express closeness and inclusion toward the person, while casting stern disapproval upon the act" [18, p. 202]. The act is condemned, the person is not condemned.

Secondly, the distinctive characteristic of generosity as justice is looking backwards to look ahead. Being generous does not mean forgetting or erasing the past in relation to which one must assume responsibility and render justice. We could say that the recognition of the evil done and suffered is the only condition to which unconditional generosity does not escape. There must be a public recognition of illegality (X has done this and this is wrong).

But, generosity looks to the past and tries to understand the conditions at the base of the evil just to look forward. Its aim is to avoid and prevent future cases, "creating more propitious conditions for all" and to look at, "the offender, with sympathy, as someone who is more and

better than the crime, capable of good in future" [18, pp. 207-208].

To underline the difference between generosity and forgiveness, Nussbaum re-semantises generosity in terms of, "clemency": forgiveness is angry, clemency is not preceded by anger; forgiveness forgets, clemency insists on truth, forgiveness is asymmetric and requires humiliation, clemency emphasizes equality, equal humanity [18, pp. 209 ss.]. The chosen example is emblematic; according to Nussbaum, the process implemented by Mandela and the Truth and Reconciliation Commission in South Africa had nothing to do with forgiveness (although this term was often used by the same protagonists, e.g. Tutu), but rather with a form of unconditional generosity. It has not been a public trial of forgiveness because there was no request for humility or humiliation, nor for apologies as a precondition; the deposition of the voluntary witnesses was intended as a reconstruction of the truth and not as a confession before an authoritarian confessor, and it lacked the request for contrition or promises about the future. Only two aspects were present and necessary, "acknowledgment of wrongdoing and its seriousness, and a forward-looking effort of reconciliation" [18, p. 238].

The ideal of generosity is, therefore, configured as, "the proper combination of impartial justice, acknowledgment of wrongdoing, and empathetic generosity" [18, p. 173] aimed at reintegration.

Generosity, then, as an alternative to forgiveness? Yet, there are plenty of common elements between the generosity of Nussbaum and the Arendtian perspective of a political rehabilitation of forgiveness. As with Arendt, also for Nussbaum, it is necessary to look at the past, recognize and call the evil with its name, without justifying it. As with Arendt, it is necessary to distinguish the act from the person, condemning the first and not the second. For Arendt, forgiveness opens up the possibility of starting again to act; in the same way Nussbaum emphasizes the importance of looking forward, to rehabilitate and offer a new possibility.

Unlike Arendt, however, Nussbaum does not speak of an evil that cancels the person; for Nussbaum there is no unforgivable radical evil because generosity does not pose conditions.

Arendt struggled to accept the contradiction of evil and for this reason she had excluded the voluntary and radical evil from the field of action of forgiveness, weakening it. For Nussbaum, on the other hand, it makes no difference that evil is voluntary or involuntary, radical or non-radical, because what matters is, as for the Merciful Father, to look beyond. Replacing the concept of forgiveness, with that of unconditional generosity, Nussbaum shifts the focus from the evil to the person, to his humanity.

However, a doubt opens up: is this unconditional generosity really an alternative to forgiveness? Or rather is it a re-definition of forgiveness that grasps its authentic essence as a forgiveness that arises in the aporia of the unforgivable, accepts it and becomes an ally of a justice more just than retributive one?

Unconditional generosity regards the evil, even the unjustifiable, radical, voluntary one; it condemns it, without forgetting or erasing it, but at the same time immediately shifts the accent from the evil done to the person. Generosity distinguishes the person from his actions to restore life and trust both to those who have committed the evil and to those who have suffered it, overcoming every pain, resentment or anger, however disguised they are.

Nussbaum perhaps forgets that this is exactly the name of authentic forgiveness and not an alternative to it. This is the definition of forgiveness that, in the public sphere, can be allied with a fairer and more radical justice than merely the retributive one, a justice which makes up for the evil done, with the aim of restoring trust and the possibility to act for the human. Unconditional generosity is perhaps the name of a forgiveness that collaborates with justice in the recovery of the human: which reminds to justice that without the recovery of the human being it does not make sense either.

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## The Negative Impact of Executive Immunity in tackling Corruption in Contemporary Nigeria

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**Abstract:** *Granting immunity to some members of the executive arm of Government has been one of the fundamental provisions of the successful constitutions of Nigeria since independence. Under the applicable Constitution of the Federal Republic of Nigeria, 1999 (as amended), it is granted in section 308. While the proponents of the concept have argued for its retention in the Constitution, the antagonists of the concept have argued to the contrary; contending that that executive immunity has greatly impeded the fight against the menace of corruption in Nigerian politics and that the judiciary has been legally rendered impotent in tackling the menace. This paper critically examines the veracity or otherwise of this argument in contemporary Nigeria. The paper considers the meaning, historical background, nature and extent of the concept of executive immunity, its relationship with related concepts. The causes of corruption in Nigeria also form an important segment in this paper. Cases decided by the superior Courts of Nigeria and other jurisdictions will be relied upon for the purpose of achieving the general and the specific aims of this paper. The findings of this paper form the basis of the answer to the imperative question of whether or not executive immunity is the bane of corruption in Nigeria and necessary suggestions for way forward are proffered.*

### Introduction

There have been much arguments from all walks of life on whether immunity clause contained in the Nigerian *grundnorm* should continue to be retained or removed. The contentions on the retention or removal of the executive immunity clause in the Nigerian Constitution seems to have reached its apogee considering the negative impact the immunity clause may have caused in terms of the alleged abetting corruption of the beneficiaries of the immunity clause. This paper essentially is meant to examine the negative impact of executive immunity in tackling corruption in contemporary Nigeria. In other words, the word negative presupposes bad, harmful, damaging, undesirable and unfavourable. Therefore, the intention of the paper is to x-ray the damaging, unfavourable or undesirable effect of executive immunity in tackling corruption in Nigeria. To this end, the author examines the title of this paper under the following subheadings, namely, executive immunity, contemporary Nigeria, corruption, debate on retention or removal of executive immunity and whether or not executive immunity is the bane of corruption in Nigeria and the necessary suggestions are proffered.

### The Jurisprudence of Executive Immunity

Immunity has various meanings depending on the context of its use. Black's Law Dictionary [i] explains immunity to mean any exemption from a duty, liability or service of process; especially such

an exemption granted to a public official or government unit. The Black's Law Dictionary expounded immunity from various aspects covering absolute immunity, congressional immunity, constitutional immunity, consular immunity, diplomatic immunity, foreign immunity, judicial immunity, legislative immunity, qualified immunity, sovereign immunity, etcetera [1].

This paper specifically examines the provisions of Section 308 of the Constitution [ii] which provides for what has been popularly referred to as executive immunity. Meanwhile, before examining the concept of executive immunity in the context of Section 308 of the Constitution, it is apposite to examine the history of immunity in Nigeria. Nigeria was a former colony of the British government consequent upon the treaty of cession in 1861 which conceded the colony of Lagos to British Crown. This 1861 treaty of cession was entered into between King Olofinuwa of Lagos and the British Crown. Gradually, the entire territory which was later identified and known as Nigeria became a colony of Britain. The concept of sovereign immunity was one of the common law principles inherited by Nigeria as a former colony of Britain [iii]. Under the original monarchical government, the King is synonymous with the State and the doctrine of sovereign immunity provided absolute immunity for the monarch, wherein it was the rule that the "king can do no wrong" [iv]. In other words, a king can never be charged for violating any law and consequently the king is above the law.

Though this may not stand the test of time with the advent of parliamentary democracy even in Britain today [v]. Yet, the principle of sovereign immunity was inherited by the successive governments of Nigeria even after the independence. A comparative examination of the Constitution of the Federation of Nigeria, 1960 with the Constitution of the Federal Republic of Nigeria, 1963 [vi][7] seems to lend credence to the claim of inheritance of sovereign immunity.

The immunity enjoyed by the Queen constitutionally was provided for the President and the Governors under the 1963 Republican regime as epitomized in Section 161 of the Constitution [vii] which provided to wit:

a) no criminal proceedings shall be instituted or continued during his period of office against a person to whom this subsection applies; and  
b) such a person shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and  
c) no proceedings in which relief is claimed against such a person in his personal capacity shall be instituted or continued in any court during his period of office; but in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this subsection applies, his period of office shall be left out of account.

(2) Subsection (1) of this section applies to a person holding or required to perform the functions of the office of the President or of the Governor of a Region and in that subsection "period of office" means, in relation to such a person, the period during which he holds or is required to perform the functions of the office in question.

Similarly, though in a wider context, the 1979, 1989 and the current 1999 Constitutions made provisions for executive immunity in Sections 276, 320 and 308 respectively in exactly the same terms. Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides to wit:

(1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section -

(a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

(2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

(3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

The wisdom of executive immunity set out above lies in the fact that holders of the offices aforesaid should consider the business of governance as the ultimate and taking priority over all other matters of life including their personal interests should be sacrificed at the instance of rendering selfless service to the people as public officers in that office. The 7th Schedule to the Constitution provided for the Oath of Allegiance, Oath of Office of Governor of the President, Oath of Office of Governor of a State, Oath of Office of Vice-President, Deputy Governor, etc. to the effect, *inter alia*, that "I will not allow my personal interest to influence my official conduct or my official decisions, ...".

Where the holder of such an office commits himself or herself under oath to do, perform or discharge all that is required in the context of the oath, it behoves on the same constitution to provide a conducive atmosphere in all ramifications by ensuring that the attention or concentration of the office are not distracted by legal proceedings or otherwise, whatsoever. The drafter of the constitution may be justified by inserting the executive immunity clause in the constitution considering the magnitude of the assignments placed upon the office holders, the level of commitments and faithfulness expected of the said office holders via the various oath of offices in the course of discharging the responsibilities of the office.

The purport of the executive immunity is not a total or absolute defence on merit to the alleged offence but a suspension of the right of prosecution by the

state of the office holders to the extent that the affected public officers could be investigated while in the office but no criminal or civil proceedings could be instituted against them while occupying the office or performing the functions therein. The holders of the offices are immune from being prosecuted both in civil and criminal proceedings in their personal capacity [viii] and if any of such proceedings was instituted against the holder before assuming the office, same shall be discontinued [ix], shall not be arrested or imprisoned and no process of any court shall be issued against them.

However, the holders of the affected public offices are liable to be prosecuted as they leave the office. In other words, any time the holders of the office are out of the office, they are subject to be prosecuted for any alleged offences committed while in the office. The executive immunity is not an exoneration from criminal liability or responsibility for offences committed while in the office. The privilege does not extend or cover ex-President, ex-Vice-President, ex-Governor or ex-Deputy Governor [x]. In other words, it does not extend beyond the tenure of the office of the officers concerned. This was the ratio of the decisions in the cases of *Hassan v. Babangida Ali & Ors* [xi] and *Global Excellence Communications Ltd. V. Duke* [xii].

The protection from civil or criminal liability and all other privileges enjoyed by the designated public officials under Section 308 of the Constitution is not permanent as it lasts only as long as they remain in the office. The privileges of the office are not accorded to the holders of the office in their personal or individual rights but being enjoyed so long as they occupy the office. In the case of *Tinubu v. I.M.B* [9], the Supreme Court of Nigeria per Iguh delivering the lead judgment of the Court, interpreting the provisions of Section 308(1)(a) of the constitution asserted:

In my view, the immunity granted to the incumbent of the relevant office under Section 308(1)(a) of the constitution prescribes absolute prohibition on the courts from entertaining any proceedings, civil or criminal in respect of any claim or relief against a person to whom that section of the Constitution applies during the period he holds such office.

The executive immunity under consideration is conferred in order to protect the integrity and the dignity of the office and consequently, the person occupying the office or performing the duties and discharging the responsibilities of the office. In the

light of the foregoing, we shall examine later in this paper, whether it is necessary to retain the clause in order to protect an occupier of the office who does not value the integrity and dignity of the office by himself or herself, ensuring to maintain the integrity and dignity the office deserves.

It is worth noting that the executive immunity does not cover the official actions of the occupier or holder of the office and when such a holder is nominal party in the civil or criminal proceedings [2][4].

## 1. Contemporary Nigeria

The phrase contemporary Nigeria deserves a special attention in this paper. There is a necessity to make distinction between Nigeria of 1914 to 1954 when Nigeria was not only a colony of Britain but was administered based on the constitutions which Nigerians themselves were not the major drafters [xiii]. Secondly, Nigeria of 1960 -1963 wherein the Independence Constitution of 1960 which required assent of the Queen of England for every bill passed under the constitution to become law and valid for implementation cannot be considered to be same with the Nigeria of today [6]. In the same vein, Nigeria of 1963 wherein the 1963 Republican Constitution was patterned after the British parliamentary democracy with the Head of the State (President) and the Prime Minister (Head of Government) differently cannot be equated with the Nigeria of today [xiv]. The contemporary Nigeria is the Nigeria that began with the Constitution of the Federal Republic of Nigeria, 1979 and which currently applies the Constitution of the Federal Republic of Nigeria 1999 which is in *pari-materia* with that of 1979. Under the Constitution, the concept of sovereignty cannot by any stretch of imagination said to be the same, that is having the same meaning as under the 1960 and 1963 constitutions respectively. For instance, under Section 14(2)(a) of the Constitution, “sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority”. The sovereign power of governance lies with the people that determines those that governs them through periodic free and fair elections. The constitutional supremacy of the present regime is at variance with the parliamentary supremacy of the 1963 Republican Constitution wherein Parliament has unlimited and absolute powers to amend the constitution and enact or repeal any law in its absolute discretion [2].

The executive immunity which found its way into the constitution under the present regime of constitutional supremacy [2] may not produce same result or effect as if it were contained under a constitution that operates pure parliamentary democracy. It would amount to legislative immunity which is not the same with executive immunity. Could the powers exercised by the parliament under the parliamentary supremacy which attracts legislative immunity be equated with the powers exercised by the executive, that would have entitled the executive immunity as conferred under Section 308(1) & (3)? The answer is in the negative. Most of the time, the legislative immunity are not granted or provided for under the *grundnorm* but by an Act of the Parliament. The constitution did not provide for it, rather it allowed the National Assembly to make a law for its privileges. The contemporary Nigeria anchored on the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is at variance with the Nigeria hitherto 1979. Section 308 of the constitution is akin to section 276 of the Constitution of the Federal Republic of Nigeria, 1979 [2][15].

## 2. Corruption

The raging arguments over the contention whether the executive immunity under Section 308 of the Constitution should be retained or removed surrounds the cankerworm of corruption. Some protagonist of Section 308 contends that the immunity has not aided corruption in any way while on the other hand, the antagonists strongly maintained that the provision and continued retention of Section 308 of the Constitution has been the bane of corruption of the political office holders.

It is apposite under these circumstances to comprehend the word corruption. What does it mean and what are the likely causes considering the purport of Section 308 of the Constitution.

Black's Law dictionary defines corruption as Depravity, perversion or taint; an impairment of integrity, virtue or moral principle; especially the impairment of a public officer's duties by bribery. It is defined as "a fiduciary's or official use of a station or office to procure some benefits either personally or for someone else contrary to the rights of others; an act carried out with the intent of giving some advantage inconsistent with official duty or the rights of others [1].

The United States Vision 2010 Committee [16] defined corruption as "all those improper actions or transactions aimed at changing the normal course of events, judgments and positions of trust". It is worrisome that the committee further listed sixteen forms in which corruption manifests itself in Nigeria, namely, advance fee fraud (also known as 419), bribery, extortion, nepotism, favouritism, inflation of contracts, falsification of accounts, perversion of justice by organs administering justice, tax evasion, smuggling and racketeering, money laundering, hoarding, adulteration of market goods and denting of measures to reduce their contents with a view giving advantage to the vendor, abuse of office, foreign exchange swindling and drug trafficking, heinous economic crimes against the state (most of the time in collusion with multinational companies and foreigners), examination malpractices and election malpractices [16].

"Corruption indicates impurity or debasement and when found in the criminal law, it means depravity or gross impropriety"[17].

Generally, corruption is a crime and a crime is committed against the state. Corruption as a crime has negatively affected the development of this nation in various perspectives. This calls for a special attention especially those high profile corruption committed by those occupying the political offices saddled with the responsibility of maintaining the security and welfare of the people which is the primary purpose of government [2]. From the meaning of corruption, the list of items or uses that amounts to corruption or corrupt practices may be endless. In the case of Nigeria and in addition to the US Committee for the Report aforesaid and for the purpose of this discourse, it (corruption) can be a dishonest and unacceptable behavior of people occupying public offices [18]. It includes improper behavior of public office holders such as enriching themselves, friends and loved ones to the detriment of the general populace [18].

Merriam Webster [19] defines corruption as inducement offered to someone which is wrong, improper or unlawful means such as bribery. By the Nigerian experience, it has been a common phenomenon wherein public officers divert monies that are meant for governmental or public projects to develop their personal properties. It has also been contended by Ogundiya [20] that since the return to civilian rule in 1999, corruption has proved to be an impediment to Nigeria's development. Uwak, et al



commenting on the foregoing asserted that “the resultant effect of this is seen in weak institutions and the decay in social and political spheres in Nigeria’s national life” [18].

The cankerworm of corruption the world over and in Nigeria has “the concomitant effect of exacerbating poverty and has been held responsible for underdevelopment, increase in the cost of goods and services, the production of substandard goods and services as well as the systematic destruction of the society ...” [16]. It is glaring what the vice of corruption has done to this nation and consequent upon that many are of the opinions that the government of Nigeria has not been serious and sincere enough though several attempts have been made to fight the scourge of corruption in this nation. The regime of Obasanjo enacted Independent Corrupt Practices and Other Offences Commission (ICPC), thereafter, the Economic and Financial Crimes Commission (EFCC) was established, yet the menace of corruption persist.

What then is the cause of this devastating crime of corruption that seems to have defied all possible solutions in Nigeria?

Sociologically, it has been opined that the cause of corruption revolves around poverty, greed, opportunity, unemployment and the general perception of corruption in the country(s) concerned, particularly the body language of the leaders [18]. In Nigeria, the factors identified to have encouraged corruption are, *inter alia*, bad leadership, military rule, lack of strong legal framework, lack of upright judicial system, inequality in the society, jumbo pay for politicians, the granting of executive immunity to political office holders, extreme and excessive materialism, weak ethical environment, erosion of moral values and lust for power [18]. The factor of executive immunity is in the heart of the matter of corruption to the extent that it deals with the leadership of the nation and they are trustees haven been entrusted with the wealth and resources of the nation. Many scholars and reasonable commentators have argued that granting some categories of public office holders immunity obviously just as we have in Section 308 of the Constitution from prosecution while the government says it is fighting corruption is ironical [16].

### 3. Debate on retention or removal of the Immunity Clause

The arguments proffered for the retention of the executive immunity clause centers on the fact that it is not a new phenomenon considering its antiquity from the ancient feudal structure of England which later became a common law principle [14]. However, it has been contended in this paper that the above contention cannot stand the test of time considering the fact that what operated as sovereign immunity then is completely at variance with the concept of executive immunity as spelt out in Section 308 of the Constitution. At best, the then sovereign immunity operated as legislative or parliamentary immunity which deals with the power of law making. The then court was also known as the King’s Court and not the Constitutional Court as provided for in Section 6 of the Constitution. The Court under the constitution cannot be taken to be the President’s or the Governor’s Court. The doctrine of separation of powers entrenched in Sections 4, 5 and 6 of the constitution clearly stipulates the functions of each arm of government and each arm is entitled to operate and apply the law. None is above the law, hence, the provision of executive immunity in the *grundnorm* is an aberration. Apart from promoting corruption it is an agent of injustice. Hence, it has been asserted “Now, from the legal standpoint, the issue of immunity is actually detestable to modern legal civilization, as the origin of such immunity can be traced back to the era of absolute monarchs, who were believed could no do wrong – well, we all know better [21].

The provision is to enable the incumbent political public office holders have a completely free hand and mind to perform his duties without unnecessary encumbrances of litigation both in civil and criminal proceedings in his personal capacity [8].

Furthermore, considering the contents of the oath of offices taken by the affected public office holder as contained in the 7th Schedule of the Constitution and its importance, the executive immunity is necessary. The provision of executive immunity is predicated upon the fact that the holders of the public offices are men or women of integrity and dignity. Where the holders of the affected public offices do not value or respect the integrity and dignity of the office, the oath of the office taken and the investigation revealed corrupt practices of any sort, the immunity be rendered otiose. Should the system be justified where the holders of public



office is patently corrupt and could not be prosecuted on ground of immunity?\_The answer Is in the negative.

The system should be more justified practically in a situation where the public office holders may be prosecuted and there is no evidence of corruption than where there is ample evidence of corruption but could not be prosecuted due to the technicality of law in terms of ouster of jurisdiction. For instance, the experiences of Diepreye Alamiesigha of Bayelsa State where on Thursday 15th September, 2005, a petition was addressed to the Economic and Financial Crimes Commission (EFCC) by some citizens of Bayelsa State against the Governor, revealing that some members of his family had looted from the Bayelsa State treasury specific sums of money in dollars, pounds and naira [22] respectively and yet could not be prosecuted.

Secondly, the Governor of Delta State, James Onanefe Ibori was another case in point. He was accused of stealing funds worth two hundred and ninety million pounds by Economic and Financial Crimes Commission, but could not be prosecuted or tried while he was in the office because of the executive immunity clause he enjoyed constitutionally. This was even in the face of the fact that the United Kingdom Court froze James Ibori's assets worth thirty five million dollars.

Lastly, when James Ibori was tried in December, 2008 by the Federal High Court sitting in Asaba of 170 charges after he had left the office, he was cleared of the alleged money laundering for lack of evidence [23]. Justice delayed is justice denied syndrome was fully manifested in James Ibori's case.

However, with the intervention of the United Kingdom Court, James Ibori was arrested in May 2010 at Dubai and extradited to the United Kingdom, tried for alleged corruption charges. James Ibori was sentenced to 13 years of imprisonment in the United Kingdom court after pleading guilty to the charges of financial misappropriation [24].

In the same vein, the former governor of Gombe state, Danjuma Goje who was alleged of mismanagement and diversion of over fifty two billion naira belonging to Gombe state was not arrested and/or tried while in the office as the Governor obviously because of the immunity clause. The Economic and Financial Crimes Commission

(EFCC) invited him (Danjuma Goje) but he failed to submit himself to the commission and eventually declared wanted. Up till now, he has escaped justice because of the immunity clause.

The supreme court in the case of *Abacha v. Federal Republic of Nigeria* [25] stated that the provisions of Section 308 of the Constitution was to clearly suspend right of action and that such right could be resumed after the tenure of office of the officials. From the practical reality, most of the times, the zeal to prosecute dies down completely when the holder of the office had left office. Furthermore, the evidence with which to prosecute the charges would have disappeared while the witnesses would have lost interest because of the technicality of the law. Hope and confidence in justice would have been lost. The common adage to hit an iron when it is hot in order to get the best out of it would have applied in such circumstances.

The justice of executive immunity under Section 308 of the Constitution has been attacked pursuant to the court's decision in the case of *Olabisi Onabanjo v. Concord Press of Nigeria* [26] where the Defendant challenged the libel suit filed by the Plaintiff on the ground that he was excluded from being sued during his term of office as the governor of Ogun State. Unexpectedly, the court per Kolawole J. (as he then was) held that even though a governor could not be sued, he was not precluded from instituting and maintaining an action in court. See also the cases of *Aper Aku v. Plateau Publishing Company Ltd* [27] and *Chief D.S.P Alamiesigha v. Teiwa & ors* [28]. With utmost respect, can the decisions in the above case be the intention of Section 308 of the Constitution, wherein those who cannot be prosecuted under the immunity clause would be at legal liberty to institute an action in libel suits or enforce other rights against other persons while in the office? Falana [29] contended that the doctrine of equality before the law of all persons renders it unjust to allow public officers covered by the immunity clause to institute civil suits when their opponents are precluded from suing them by issuing or serving court processes on them. The injustice in the discriminatory practice becomes apparent when it is realized that the defendants cannot appeal against the cases if they are decided in favour of the public officers.

#### 4. Whether Executive Immunity is the bane of Corruption in Nigeria

Fabamise [16] in his argument on immunity clause and the fight against corruption stated that “however, experience has shown that it is not only protected officers that are corrupt in Nigeria. There have been cases of corrupt practices carried out by officials who are not protected by the immunity clause ...”. To begin with, there is an admission or a concession from the above that protected officials are corrupt. The question is what is or has been the potent rationale for demanding the removal of the immunity clause from the Nigerian *grundnorm*? In order to do justice to the poser, it is incumbent to briefly examine some of the persons as well as the reasons proffered for the removal of the immunity clause from the Nigerian *grundnorm*. The former President of Nigeria, Chief Olusegun Obasanjo had called on the delegates during the national political reform conference to delete the immunity clause from the constitution when he said; “I believe that it is stupidity to keep the clause. As soon as you are caught committing an offence while in office, you should be charged for that offence at once” [8]. He was the President of Nigeria for two terms (8 years). The teaching profession adage says “experience is the best teacher”. The elder statesman would have spoken from practical experience. He was instrumental to the enactment of the Independent Corrupt Practices and Other Offences Commission (ICPC) Act and the Economic and Financial Crimes Commission (EFCC).

Those influenced by sentiments may dismiss his call with a wave of hand contending that it was because he was no longer the president. The writer is of the firm view that if Nigeria must reach its promised land of handling the cankerworm of corruption in this nation, then we must be willing and prepared to drop mere sentiments and face the reality of the problem. We must confront the challenge of corruption with utmost determination and sincerity of purpose. Chief Olusegun Obasanjo spoke out of what he saw, heard and experienced. The former chairman of Economic and Financial Crimes Commission (EFCC), Alhaji Nuhu Ribadu remarked that “unless we remove the immunity clause, it will be difficult to address the problem of corruption in Nigeria” [51]. Alhaji Nuhu Ribadu was not a former president of Nigeria but by reason of the position he had held in Nigeria, having led an organization principally set up to fight against corruption, he saw, heard and interacted personally with the holders of the protected public offices

under Section 308 of the Constitution. Another former president of Nigeria, Late Alhaji Musa Yar’adua was reported to have addressed the representative of multi-national corporations called Partnership against Corruption Initiative in Davos, Switzerland when he emerged as president said “one of the raging debates in Nigeria today is the issue of constitutional immunity from prosecution conferred on the President, Vice-President, Governors and Deputy Governors. I have confidence that the next constitutional amendment will strip these public officials of the immunity and I am personally in support of that. Nobody in Nigeria deserves the right to be protected by law when looting public funds” [8]. In the same vein, former Secretary General of the Commonwealth, Chief Emeka Anyaoku voiced out his own believe to wit: “when immunity clause is removed, all forms of corruption will drastically reduce in Nigeria. Since the immunity comes from the top, the other people will follow suit” [8]. To him, the President and the Governors should not have any immunity from criminal offences. they should only have immunity for civil offences (sic) because constant law suits on civil offences (sic) will distort the day-to-day running of the country”

The National Judicial Council (NJC) led by the Chief Justice of Nigeria (Rtd), Justice Muhammed Uwais has urged for the withdrawal of immunity from prosecution enjoyed by specified officers in the state. In a memorandum submitted on behalf of the National Judicial Council to the Joint Assembly Committee on the Review of the Constitution, the NJC Deputy Chairman, Justice Alfa Belgore recommended that the immunity be limited to civil suits against the public officers in their private capacity [8].

#### 5. Imaginary Scale of Justice

Placing the debate on whether to retain or remove the immunity clause from the Nigerian *grundnorm* vis-a-vis whether the immunity of the affected political office holders is the bane of corruption in Nigeria on an imaginary scale of justice revealed some hard facts which the people of Nigeria must be prepared to accept.

On comparative basis, the corruption of the protected officials under the immunity clause affects on macro basis the economy of Nigeria far greater than the corruption of the non-protected officials under the immunity clause. Furthermore, the holders of the protected offices under the immunity clause are

the trustees of the Nigerian resources in all ramifications. They are expected to manage and administer the Nigerian resources for the benefits of every Nigerian. The corruption of those protected officials are more devastating to the Nigerian economy. Section 16(1) of the Constitution provides that:

“the state shall within the context of the ideals and objectives for which provisions are made in this constitution –

(a)harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;

(b)control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;

(c)without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

(d)without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

(2)The State shall direct its policy towards ensuring:

(a)the promotion of a planned and balanced economic development;

(b)that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(c)that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and

(d)that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

The word “state” in Section 16(1) of the constitution is represented by the protected officials under the immunity clause in Section 308 of the constitution. The acts of corruption on the part of the protected public officials are more grievous to the extent that it amounts to a breach of trust and the intentional violation of the oaths of office.

It is the corruption of the protected officials under the immunity clause without prosecution or trial that cause the ripple effect of the corruption of the non-protected public officers. The purport of the reasonable call of all the responsible Nigerians,

non-Nigerians and corporate organizations for the removal of the immunity clause from the Nigerian *grundnorm* is not only a pointer but a complete admission that the executive immunity clause in the Nigerian *grundnorm* is the bane of corruption in Nigeria. There is no wisdom for the officials vested with the power to administer and manage the resources as spelt out in Section 16(1) of the Constitution to be protected by the concept of immunity under the same constitution when they are patently found corrupt with the management of the resources while in office.

## 6.Conclusion and Recommendation

Considering the issues raised by the writer in this paper, there is a fundamental problem with the insertion of the executive immunity clause in the Nigerian *grundnorm*. It is observed that even in other jurisdictions where the immunity clause is part of the legal system, it is provided via an Act of Parliament and not entrenched in the *grundnorm* as it is stated in the Nigerian constitution. For instance, both the United States of America and Canada does not provide for immunity in their constitution whatsoever.

Having placed the debate on an imaginary scale of justice, the weight of evidence of the argument is in favour of removal of the immunity clause from the Nigerian Constitution. This is the justice of the matter flowing from the momentum of the argument cum the practical reality. The best international practices attest to the above finding.

The immunity clause promotes gross inequality before the law, thereby placing some persons on the pedestal of being above the common law of the land. This is an affront against the ideals and principles of democracy. Corollary, it promotes corruption and impunity in governance. Hence, it has been opined that immunity clause is the engine and life wire of corruption in Nigeria.

Consequently, it is recommended that the executive immunity clause under Section 308 of the constitution be removed with the utmost urgency it demands and deserves. Executive immunity should be left in the realm of legislations where it is considered necessary but not to cover any form of criminal proceedings against public officers whatsoever.

The legislation should make a provision for time lag within which public officers found culpable of corruption be prosecuted while in office.

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## Redefining the concept of peace in the light of changing security dimensions: insights from post-war Sri Lanka

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**Abstract:** *Security is an indivisible subject from political discourse because it has been a concern of primary importance. The definition of security has however been subject to redefinition depending on the threat perceptions of the given era. Today the concept of security fails to be confined to its traditional definitions and demands a more diverse definition encompassing manifold security threats of the contemporary world. So does the concept of peace which are inseparable concepts in international relations. Whereas the classical definition of peace would conclude that a physically secure context to be peaceful, modern definition demands equilibrium between the absence of both traditional and non-traditional security threats in addition to an array of other qualities of good governance. Experts on peace studies have already theorized, concepts such as positive peace which is holistic and sustainable beyond negative peace. This research testifies the above fact using the experience of Sri Lanka by assessing its post-war situation for the achievement of holistic and sustainable peace.*

### Introduction

Peace is often understood or misinterpreted as synonymous with cessation of conflict and violence. Often with the end of war or large scale violence it is expected that peace is established almost involuntarily. On the other hand peace is an ambiguous term that encompasses a whole range of meanings and has highly subjective connotations (Höglund and Kovacs 2010). There has been no consensus on what exact attributes should be present for a post-war society to be deemed peaceful. It is however when peace supersedes this classical boundary of cessation of violence it assumes a holistic definition that strikes a balance between the cessation of violence which is the immediate victory and ensuring of socio, economic and cultural wellbeing of the society which makes that victory holistic and sustainable.

### 1. Methodology

This research is entirely based on secondary data collected through academic journals, previously conducted research, books and other web based academic publications. Since only secondary data will be analysed using content analysis the research assumes a qualitative approach. The above mentioned objectives will be achieved in the light of several peace theories and concepts, notably Johan Galtung's theory of Negative and Positive Peace as well as Conflict and Peace Triangle.

### 2. Traditional definitions of peace

Peace is not a word that can be easily defined as it looks like. Despite being over used in the international relations the word peace is yet to find its most comprehensive definition that may fit to all situations that demand it. The part of the conundrum arises as peace embodies a whole range of connotations and is highly subjective in meaning. For much of history however the cause of peace has predominantly been a religious concern (Cortright 2008). As peace research developed consequently, an important task in peace research has always been the exploration of the concept of peace (Galtung 1981). Many peace researchers have thus attempted to define peace but the most common of these scholarly definitions focus mainly on peace in terms of war. That is peace has often been conceptualized in international relations as the absence of war. Peace is seen as the direct opposite of war treating war and peace as a dichotomy, which come as dual terms and which only exists when the other is absent. Throughout history and in a majority of research war and peace have thus been treated as mutually exclusive.

In international relations peace is an ambiguous term and can have enigmatic meanings. It bears mostly positive connotations and is used as a key legitimization tool (Kühn 2012). But for many the word peace is a binary which has acquired two distinct meanings. To some it simply means the 'absence of war' and to some peace exceeds beyond that frontier. It was Johan Galtung the pioneer in peace studies who conceptualized these two approaches of understanding peace as negative and po-



sitive peace. According to Galtung, understanding peace as absence or end of war was negative peace whereas positive peace encompasses a broader meaning beyond mere absence of war to include more positive features in a post-conflict society such as justice, equality, human rights and development. However as Diehl notes, positive peace is a minority among scholars and scholarly studies usually define peace as the absence of war. Even the global peace index, Diehl points out, is only taking into account the attributes of negative peace such as homicide rate, access to small arms and military expenditure. In his study, he shows how the focus on negative peace has overshadowed positive peace while he also makes an interesting observation that 67.7% of the pre-1945 Nobel Peace Laureates have been nominated for their contribution to negative peace when only an insignificant 16.1% of positive peace attempts have been recognized as worthy of a Nobel price (Diehl 2016).

Some others who advocate negative peace do so in the broader global context of nuclear deterrence since it has prevented major scale war, especially as it has kept the peace in Europe for more than 70 years since the World War II (Ekins 1983). Prof. Matsuo Masatsugu also points out this idea as he states how in the early days peace was misunderstood to be the opposite of war partially because contemporary peace studies were motivated by 'the reflection of tragedies of the World War II' and the understanding of the vulnerability of human survival in a total nuclear war between the superpowers (Masatsugu n. d.).

But that is not the only loophole of negative peace. In the no-war-is-peace definition of negative peace, war and peace serve as mutually exclusive zero-sum entities. Where peace prevails there is no chance for war and at times of war there is no hope for peace. But there is actually a situation between these two extreme ends what Masatsugu calls a 'gray zone' (Masatsugu n. d.), or an absurd situation as Diehl terms it (Diehl 2016).

Diehl also refers to domestic level explanation through Gambia which is considered a state with an autocratic rule with human right violations, a very low GDP rank of 182nd and with only about 31 % having access to electricity. Yet, according to the definition of negative peace, Gambia shall be a peaceful country along with countries like Norway and Sweden due to the absence of a direct conflict despite the high gap in human security when compared to these Scandinavian countries.

### 3. Fostering positive peace

Therefore it is much clear that the gap between the two types of peace is unnecessarily wide (Höglund & Kovacs 2010). By advocating only negative peace and seeking to end only negative peace both scholars and policy makers seem to forget the significance of positive peace and by only being concerned of negative peace it falls short of positive peace (Höglund & Kovacs 2010). To rectify this biased definition of peace, the scholars have only lately moved beyond the conventional absence of war definition of peace, notably as beckoned by Galtung. As a result positive peace as acquired space and attention in peace studies as a more comprehensive way to understand the complex realities of the highly subjective phenomenon of peace. If the real meaning of peace supersedes one dimensional negative peace of mere absence of war what should a multi-dimensional notion of positive peace include? According to Doyle and Sambanis, peace should take the shape of positive peace inclusive of political and societal reforms at large (Doyle & Sambanis 2005). Diehl presents a comprehensive list of what he calls the 'four related core characteristics of positive peace'. The list includes absence of major territorial claims; institutions for conflict management; high levels of functional interdependence and; satisfaction with the status quo. According to this list for a post-conflict society to be branded 'peaceful' mere absence of war does not suffice but requires further political and institutional reforms as Doyle and Sambanis demand and most importantly the satisfaction of people with the post-conflict status-quo.

What make the status quo appealing to people recovering from a conflict is obviously the new socio-political and economical changes either the conflict stimulated and perhaps what the conflicting parties previously demanded or any other reform endorsed to foster coexistence and prevent further conflict. Most crucial of these include, according to Keen, justice, reconstruction and development, democracy and ceasefire. Keen also adds an additional facilitator of positive peace as economic liberalization which he believes will boost growth and reduce resentment among people. The peace thus gained according to him will be so lucrative that no violence will dare to disrupt (Keen 2007).

#### 3.1. Economic security

David Cortright supports Keen's theory as he refers to Immanuel Kant's philosophy of peace. Cortright notes that recent political theorists have frequently

referred to the Kantian triad of which one end represents economic interdependence and international cooperation. As much as Kant believed that perpetual peace has much to do with the degree of interdependence among states economically, both Keen and Cortright agree that such interdependence shall bind plausible adversaries in a complex interdependence that they cannot escape from or whose disruption by violence or otherwise will have serious repercussions. In essence, left over political resentments, lethargic economic activity and lack of economic interdependence serve conducive to the eruption of conflicts.

### 3.2. Peace as absence of violence

Galtung has another explanation to offer as to what would contribute to positive peace. His definition of peace is the absence of violence instead of the absence of conflict. It is important to understand that he defines violence as everything which prevents a human being from attaining his full potentials (Galtung 1969). In the light of this definition, violence is not mere aggression but anything traditional or non-traditional that disrupts human peace of mind, from conflicts per se, injustice, human right violation to natural disasters such as famines, floods. All such circumstances can put human peace of mind at stake and trigger a violent situation. For instance, even a natural disaster can lead to violence and human insecurity given food scarcity, lack of shelter, disruption of habitual lifestyles and refugee issues. MacGinty notes thus a merit in positive peace over negative peace as the former is not only concerned of the causes of war but also gathers under its holistic definition of peace, aspects of human development such as public health, education and opportunities for social and economic development (MacGinty 2006).

This is a comprehensive explanation beyond negative peace concept, which rationalizes situations like the global North-South divide given significant developmental gaps and other post-disaster contexts categorized as insecure and not peaceful at all. In fact, Galtung has a better term for such circumstances as 'structural violence' which he defines to include impoverishment, deprivation, humiliation, political repression, lack of human rights and perhaps the denial of self-determination (Cortright 2008). Hansen also refers to structural violence when he defines it as a form of violence without a specifically identifiable perpetrator who committed that violence. He adds that this type of violence is done by the social structure itself which is therefore also called social injustice (Hansen 2016). In a de-

per analysis these can be recognized as more fundamental root causes that may burst into a violent conflict later. These are not those that hastily trigger war but unhurriedly and discreetly fuel resentment and animosity as seeds for later war.

'Peace is not the mirror image of war and therefore requires different theoretical explanations' says Diehl (2016, p.1), underscoring the necessity of redefining the meaning of peace beyond the mere absence of war. But the existing definitions and interpretations of peace may only suffice in a narrow understanding of war but they essentially lack or underestimate other key factors that contribute a broader and vivified picture of peace which is positive, holistic therefore sustainable.

## 4. Dichotomy of war and peace

Masatsugu diverts this discussion to another interesting observation by connecting it to the related concept of the changing meaning of security. If war and peace are a dichotomy, redefining war or security also affects the definition of peace at the opposite end. With the concept of security acquiring multiple facets beyond its immediate military meaning to include non-military or socio, economic, political and cultural aspects such as environment, human rights and political reforms, consequently, the concept of peace is bound to change and possess an upgraded definition beyond negative peace of absence of war to a positive peace. Masatsugu makes use of Barry Buzan's security complex ideal on this regard that explains how security has evolved to include areas beyond military aspects, to conclude that peace and security has become very close to each other (Masatsugu nd.).

### 4.1. New security theories of Barry Buzan

Security theories put forwarded by Barry Buzan shed more light into this complexity. Buzan's understanding of security is threefold. He defines security based on sectors, levels and finally securitization which binds together the two previous perceptions.

Barry Buzan's Security Theory attempts at a more updated vision of security. In addition to the conventional and biased definition of security that only includes traditional security elements of national security, Buzan expands his conceptualization of security to include non-traditional security elements or human security elements. In *New Patterns of Global Security in the Twenty-First Century* he introduces five key sectors of security

as political, military, economic, societal and environmental. Although they are not threats of gravity, as much as conventional security threats, Buzan's sectorial theory reasons out, that they have a tendency to grow into traditional security threats if not curbed at the outset.

The best example to describe Buzan's security theory can be drawn from the post- Cold War tagline of NATO that security is indivisible. This is thus very much a reflection of this expanded and holistic definition of security presented by Buzan. And it is with this redefined perception of security did the NATO shift from its traditional Collective Defense approach which focused on combatting traditional security threats to a Collection Security approach which is more proactive and attempts mitigating non-traditional security threats. Today NATO not only focuses on the so-called Article 5 threats but also works on anti-piracy, capacity building and disaster relief. A noteworthy public acknowledgement of this situation by the NATO itself was made during the 2014 NATO Summit in Wales, UK where it declared 'Key environmental and resource constraints, including health risks, climate change, water scarcity, and increasing energy needs will further shape the future security environment in areas of concern to NATO and have the potential to significantly affect NATO planning and operations' (Werrell and Femia 2014).

Buzan adds that security is the freedom from threat and the ability of states and societies to remain independent against the forces that demand change and are therefore hostile (Buzan 1944). When peace is directly correlated with security, according to this definition of security, peace should also be manifold. If being secure encompasses security from a wide range of political to economic and environmental threats that can be seeds of violence, to ensure peace one must also strive to combat these threats beyond the solitary focus on military threats.

Diehl has something to add in this take as he presents in his research a summary of a 2015 survey on sustainable peace which identifies five thematic areas beyond conventional violence including well-being; quality of relations, cooperation, interdependence; conflict management and resolution; institutional capacity and governance; and most importantly access to resources, equality and human security that compliments Masatsugu and Buzan's ideal of the new comprehensive definition of security (Diehl 2016).

#### **4.2. Correlating new definitions of peace and security**

It is evident therefore that peace and security are two indivisible concepts which are closely knitted and thus one cannot exist without a correlation to the other. As the definition of one concept upgrades to suits the threats and demands of the changing world scenario, the other also demands an update. If security is not merely about conventional security threats so does peace which should also acquire a more holistic definition. If traditional security is merely about conventional security or national and territorial security then the modern definition of security should go beyond and include human security elements. Similarly, given the war and peace binary, peace cannot also be confined to mere cessation of direct violence but also the assurance of more progressions in human life such as standard of living, human rights and justice. It should be the ideal form of peace that not only ensures that there is no violence but also many a positive developments, both social and economic, which have the ability to raise the standard of living of the people, improve their education and literacy, their access to food, medicine and other basic needs as well as cultural security and understanding.

#### **8. Understanding post-war Sri Lanka**

A conflict as vexing as a civil war or an ethnic conflict cannot be solved overnight, but requires careful and deep scrutiny of reasons that led to the conflict. Unless these causes are looked into and investigated why they went wrong, the conflict cannot be understood completely and nor can any successful solution be made. The civil war and the ethnic conflict of Sri Lanka also have quite a long and tainted history. Although an exact starting point is hard to determine several major reasons can be traced back. These reasons one after the other have contributed to the process of the growth of the ethnic conflict into a major scale civil war.

A trace back of reasons of war will take one to long chain of interconnected incidents from a time as early as the colonial administration to what is mostly considered as the turning point, the 1983 riots. It is ironical to realize that the seed of the riots and hatred that followed is one crafty technique of the British colonizers who introduced ethnicity based administration through numerous constitutional reforms. The aim of the British to give administration positions to Tamil and other minorities in Sri Lanka, positions previously held mostly by the majority Sinhalese, was inspired by the discreet

need to antagonize the nation along ethnic lines and divert any anti-colonial movement. It was easier to suppress them once divided than to fight against one united nation and hence came the divide and rule policy. By the time the British had left, antagonism remained further drawing apart the majority and minority communities in the island. There was a significant wave of Sinhalese who demanded superiority for being the majority ethnicity. The Sinhala Only Act or the Official Language Act introduced in 1956 by an essentially Sinhala based government, made Sinhala the only official language while the 1972 Policy of Standardization limited the entrance of Tamil students to state universities. Further, the quota entitlement restricted the political representation in Tamil dominated regions of the country. All such extremist, if not biased to one ethnicity Acts suppressed the voice of minorities. The turning point however was Black July in 1983.

A careful scrutiny into the development of these events shows an intricate ramification of the argument made above pertaining to the definition of security and peace. That is, these events were not only based on political reasons. While they had a predominant political element, there were also underlying socio economic reasons. For example the Sinhala Only Act was brought in a way to reduce the number of Tamil people who held government positions while the Standardization Policy of 1972 was aimed at reducing the number of Tamil students entering universities. Both were fuelled by partially by ethnic antagonism and on the other hand the economic security of the Sinhala majority. The 1983 riots were also carried out of unemployed and uneducated youth and men without a secure social and economic setting, while the educated and economically secure people largely remained out of the riots and even offered to help the Tamil victims.

### 8.1. Elements of structural violence in post-war Sri Lanka

Among several factors put forward by Galtung as examples of structural violence, this study shall only focus on education and youth unemployment which will be discussed separately here onwards because those are factors with high potential of fueling conflict. For the analysis out of the seven provinces in Sri Lanka, only five have been considered, Northern and Eastern Provinces as former wartorn areas and Western, Central and Southern Provinces to represent the rest of the country and the provinces that were not directly a part of war.

#### 8.1.1. Education

Education plays an integral role in one's life in grooming an individual to become knowledgeable and wise in addition to shaping one's personality and employability. Education can also significantly alter one's mindset, the way one perceives things. Discriminatory education policies that targeted certain ethnic groups such as 1972 University of Ceylon Act warn that a when a right as fundamental as education is violated it leads to repercussions so severe. Eight years after the end of war disparities in education still prevail as revealed by the following data.

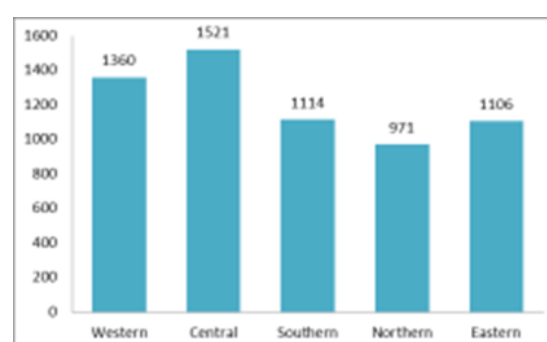


Figure 1. Number of schools by province

Northern and Eastern provinces account for the lowest number of schools although the student population in in these provinces is not very much different. In terms of the size of schools, most schools in Northern and Eastern provinces have less than 500 students while there are only 2 and 6 schools in these two provinces respectively that have a student population of more than 2500. Northern and Eastern provinces also contain the lowest number of schools that offer GCE A/L Science stream courses with 104 and 94 schools respectively.

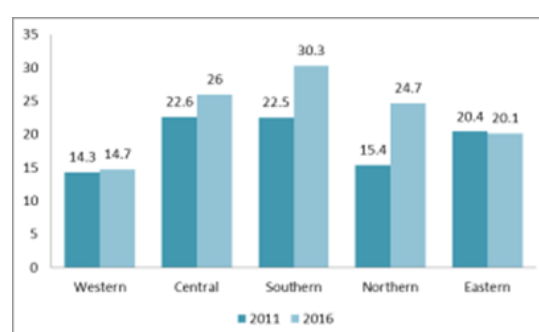


Figure 2. Youth unemployment (2011 and 2016)

**8.1.2. Youth unemployment.** When people are not getting enough income and neither are sufficiently educated unemployment rate can escalate. Since the

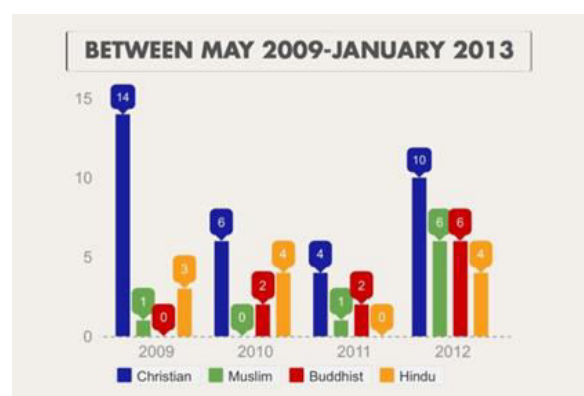


prime purpose of this study is to see how these structural acts of violence can result in conflict, emphasis will be laid on youth unemployment instead of adult unemployment. Sri Lanka has had a history of riots and insurgencies led by the youth primarily because of unemployment, notably in the youth insurgencies of 1971 and 1989.

According to the Labour Force Report of 2016, 'persons available and/or looking for work, and who did not work or take steps to find a job during last four weeks and ready to accept a job given a work opportunity within next two weeks' are identified as unemployed. In Sri Lanka the unemployment rate is 4.4 while when calculated by province Northern Province has the highest rate of 6.3, followed by Southern Province with 5.6 and the Eastern Province with 5.5. Other provinces take up relatively lower rates. The below chart shows the youth unemployment rates in particular for the years 2011 and 2016 representing two years and eight years after the end of war.

According to the Department of Census and Statistics, every 5 economically active youth are unemployed. As further shown in the graph above, there has been a dramatic increase in the youth unemployment rate from 15.4% to 24.7% in the Northern Province compared to other provinces. Western province has the lowest unemployment rate given its urbanized and industrialized nature. While Southern and Central Provinces also show highest unemployment rates, that of Northern and Eastern Provinces remain significantly high. When compared with adult unemployment rate, the ratio of adult to youth unemployment is above one which shows that youth unemployment is significantly higher than adult unemployment.

st in environments battered by bad economy and unattended sorrow.



**Figure 3. Incidents of cultural violence (2009-2013)**

Both variables tested above show a disparity between the Northern and Eastern Provinces and the rest of the Provinces in the country. And they forebode a possible dissatisfaction, a sense of injustice, and a sense of discrimination among the population of these two provinces who are not only a community who had directly confronted war, but also the two provinces where the country's minority communities are concentrated the most. And when dissatisfaction and discrimination rises among them it could inevitably lead to violence eventually.

## 8.2. Elements of cultural violence in post-war Sri Lanka

A common trait in almost all acts of tension that have occurred in Sri Lanka is that they were instigated by a minority who are largely uneducated, unemployed and with blind faith while the majority among the majority Sinhalese did not support the tensions. The adverse effect of cultural violence is that it is more sensitive and subtle than acts of structural violence because its impact seeps deeper into one's mind and rests there for a longer time until they give severe repercussions later on. Structural violence on the contrary can be stopped or even controlled by policy changes but eliminating cultural violence requires serious upheaval of perceptions and attitudes that people have on each other. In the post-war setting of Sri Lanka, the attitudes of people are yet to be transformed because they tend to cling into their antagonisms, suspicions and the psychologies of the victor and the vanquished. It is almost needless to say that this sort of populism and extremism and religious violence is a close repetition of similar acts of violence in the past. They propagate be

## Conclusion: bridging the gaps

In a list of attributes that contribute to structural and cultural violence according to Johan Galtung, only few have been tested above. But there are many left without being subjected to thorough analysis like distribution of resources, power over resources and healthcare as structural violence and language, art and ideology as cultural violence. What has been discussed however sheds sufficient light to that fact that these two forms of violence are present in post-war Sri Lanka which invariably ends the argument with the conclusion that there is no peace in its ideal holistic and sustainable form in Sri Lanka. Yet, there are some important remarks to be made. Firstly, a browse through the issues, especially the issues of cultural violence, shows how petty and insignificant they are for a country which should



focus on development instead. Being a country damaged with three decades of war our focus should hit the equilibrium between materialistic development and the development of the mind sets of the masses to unify in diversity, instead of worrying about the symbolism in the flag or what the country should be called. Digging into matters like these which can seriously enflame racism and ethnic clashes is not only dangerous but also hilariously trivial. Secondly, there seems to be a displeasing nexus between all sorts of racist and extremist propaganda and petty party politics because racism is often used as a distraction of the public from some serious issue that is worth public attention like an economic downturn or to consolidate political power. Knowing that the public, especially the majority Sinhalese who have had an antagonism for Tamils, fought a war and finally won it with a victor's mind set and thus find any demand by minority for equity as unreasonable, it seems it easier to let racism steal the thunder than to allow them criticize an economic failure.

Making matters worse Sri Lanka also lacks a proper legal framework against cultural violence. An Act against Hate Speech was adopted in 2016 but with no credible effect. Thirdly, it should be duly noted that the acts of cultural violence are committed only by certain groups but that the majority viewpoint could be a completely different one. Since many have chosen to remain silent, the only voice audible is that of extremists and therefore it is wrong to generalize entire ethnicities as racist. Finally, the most important fact that extremists exploit and agents of peace and reconciliation forget is that both extremism and peace emerge from the grassroots. There is no overtly felt impact of a silent vigil in the busy cosmopolitan capital of Colombo because there, most people already live in relative peace despite ethnic disparities and with the comforts of development as seen in the previously presented statistics where Western Province rated best in almost all scales. But out of the bounds of Colombo the picture gets grimmer. People are averagely educated, conventional, have less access to comforts of a developed capital, have less access to technology, and media often display nationalist sentiments and thus are easily susceptible for attractive extremist populist propaganda. Such immaculately thought and designed extremist agendas also require an equally flawless and attractive campaign to turn the wind towards peace and reconciliation.

Until the comforts of development including education, income and employment among other

things, as well as the message of peace and unity traverse the bounds of cities, reconciliation shall remain a far cry because peace now refuses to be defined as the end of war but end of violence in all its manifold forms. It is vital to understand peace beyond the binary of presence or absence of war if holistic peace is desired as a sustainable reconciliation in post-war Sri Lanka.

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## The Financial Differences of Islamic and Commercial Banks in the Gulf Cooperation Council Region

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**Abstract:** *In recent years, the importance of Islamic Banks, which provide an alternative to the concept of interest-based commercial banks, has been growing in the world. However, the interest-based commercial banks, which are the main actors in money markets, are the rivals of the Islamic Banks. In the Gulf Cooperation Council (GCC) region, both types of banks are serving their residents. The main difference between Islamic banks and conventional banks is interest. In Islamic banks, interest is not used because of Islamic law principles (Sharia). The purpose of this study is to show the financial differences of Islamic and commercial banks in the GCC region. The banks in this study were chosen from Saudi Arabia, UAE, Bahrain, Kuwait, Qatar, and Oman. The last ten years' data was used in the study. The data was gathered from the balance sheets and income statements of the banks. We analyzed the region of the banks' performances in terms of profitability, efficiency, credit risk, and insolvency risk. To find out the results, an independent sample t-test was conducted. According to the results, conventional banks are more profitable, are less efficient, have lower credit risk, and have higher insolvency risk than Islamic banks.*

### Introduction

Islamic finance is growing rapidly all over the world. In 2012, the total assets of the Islamic financial institutions were US \$1.7 trillion. In 2016, this figure increased to \$2.2 trillion. According to projections through 2022, Islamic financial institution assets are expected to rise to 3.8 trillion dollars. In the year 2016, 73% of these total assets were composed of Islamic banking, 2% — Islamic insurance, and the remaining 25% — other Islamic financial institutions and investment instruments [1]. According to the Global Islamic Finance report [2], although Islamic finance has grown globally, growth has slowed in recent years. The factors that caused the growth rate to decrease are: (I) political instability in Muslim countries such as Iraq, Syria, and Libya; (II) decline in oil prices; (III) competition with Western financial institutions; and (IV) saturation in the market.

The most important factor in the emergence of Islamic banking activities is the religion of Islam. Since interest is prohibited in Islam, Islamic banks have been established in order to transfer the idle funds to the economy, especially in Muslim societies. Islamic banks are financial institutions that respond to the needs of the Islamic society, without any interest in their transactions. The principle of interest-free banking is related to the fact that money is not a commodity bought and sold but a means of exchange.

Islamic banking serves according to Shari'a law. Islamic finance is based on a profit and loss sharing principle. The first principle of Islamic banking is that interest is forbidden. The second principle is that the return obtained from investments is derived from halal activities. The third principle is the prohibition of speculative (Maiser) and unreasonable (gharar) operations. The fourth principle is that an Islamic bank has to pay Zakat to benefit society. The fifth principle is that all transactions made by Islamic banks should not be against Islamic rules. On the contrary, conventional banking is based on interest. The interest that the conventional bank investors deposit is predetermined. However, Islamic banks provide the opportunity to spread the risk between fund providers and fund users, and also, the return is not certain [3].

The research consists of four sections. After the introduction, the methodology is explained in the second section. In the third section, the findings obtained from the t-test outputs are summarized. In the last section, the results are discussed.

### 1. Methodology

#### 1.1. Data

The aim of this study is to compare the financial performance of Islamic and Conventional Banks operating in Gulf Council Countries (GCC). Totally, 70 banks were analyzed. The sample consists of thirty-six conventional and thirty-four Islamic banks in six different Gulf countries (Saudi

Arabia, Qatar, United Arab Emirates, Kuwait, Oman, and Bahrain). All the banks are listed in their respective countries' stock exchange. The 10-year (from 2008 to 2017) financial data of the banks was analyzed. The data used in the research was obtained from the annual financial reports of the banks. Table 1 shows the number of traditional and Islamic banks and observations examined in the study.

[Insert Table 1]

In empirical analyses, an independent sample t-test was used and the statistical significance level was evaluated as  $p < 0.05$ . For independent groups, the t-test is a statistical analysis method used to test whether the averages belonging to two groups are different from each other. In this study, conventional and Islamic banks were independent groups. The "Stata 14" package program was used to test the hypotheses.

## 1.2. Variables and Hypothesis Development

In this study, thirteen financial ratios were used. These ratios have been classified into four groups: profitability ratios (ROA, ROE, and ROD), efficiency ratios (ATO, BATO, NIM, and NNIM), credit risk ratios (LR, LTD, and PEA), and insolvency risk ratios (DTA, ETD, and TLE). These ratios are the performance indicators of the banks, and the financial situation of the banks operating in GCC were compared with the help of these ratios. Table 2 shows the variables (ratios) and their definitions.

[Insert Table 2]

## 1.3. Profitability Ratios

Profitability ratios are used to measure whether an entity has earned sufficient profits as a result of its activities. These ratios (ROA, ROE, and ROD) are calculated by dividing the net income of a bank into bank assets, equity, or deposits. High profitability ratios indicate that the company is well-managed.

The studies comparing financial differences of Islamic and conventional banks have shown that Islamic banks are more profitable than conventional banks [4, 5, 6]. Based on these studies, the following hypotheses are established:

H0a: There is no statistically significant difference in the profitability ratios of Islamic and conventional banks.

H1a: There is a statistically significant difference in the profitability ratios of Islamic and conventional banks.

## 1.4. Efficiency Ratios

Efficiency ratios (ATO, BATO, NIM, and NNIM) measure the relationship between the bank's revenues and assets. It reveals whether managers use assets effectively. These ratios show how much interest income or non-interest income is obtained from the bank's total assets. The higher the ratios, the more likely the bank will be managed efficiently.

Some studies [7] comparing the effectiveness of Islamic banks and conventional banks claim that Islamic banks are more efficient, while others [6, 11, 12] claim that conventional banks are more efficient. Some studies [8, 9, 10, 13] did not find any statistically significant difference. Based on these studies, the following hypotheses are established:

H0b: There is no statistically significant difference in the efficiency of Islamic and conventional banks.

H1b: There is a statistically significant difference in the efficiency of Islamic and conventional banks.

## 1.5. Credit Risk Ratios

The loans ratio (LR) indicates the total loans outstanding as a percentage of total assets. A higher ratio shows that the liquidity of the bank is low and the risk of the bank is high. A low loan-to-deposit (LTD) ratio represents that the risk of the bank is low; however, it also means that the bank isn't using its assets to create income and may even cause a loss in money.

A provision-to-earning assets (PEA) ratio shows the bank's best estimate of future loan losses. If the PEA ratio is high, the bank estimates that there may be a problem with loan collection in the future. Therefore, it would decrease the net income.

Abedifar et al. [14] and Khediri et al. [15] claim that Islamic banks have lower credit risk than conventional banks. It is argued that this is caused by Islamic banks' own financial instruments. According to these assertions, our hypotheses are formed as follows:

H0c: There is no statistically significant difference in the credit risk of Islamic and conventional banks.

H1c: There is a statistically significant difference in the credit risk of Islamic and conventional banks.

### 1.6. Insolvency Risk Ratios

Insolvency risk ratios (DTA, ETD, and TLE) examine the relationship between the bank's equity and liabilities. If the bank's liabilities are excessive, it puts the future of the bank in danger. However, if there is a high share of equity in total resources, the risk for lenders is reduced. The high level of DTA and TLE raises the risk of bankruptcy. However, if the ETD ratio is high, the opposite is true; in other words, a high ETD ratio decreases the likelihood of bankruptcy of the bank.

Abedifar et al. [14] claims that small Islamic banks have lower insolvency risk than small conventional banks. The most important reason is that Islamic banks finance their assets with more equity than conventional ones. According to this assertion, our hypotheses are formed as follows:

H0d: There is no statistically significant difference in the insolvency risk of Islamic and conventional banks.

H1d: There is a statistically significant difference in the insolvency risk of Islamic and conventional banks.

## 2. Findings

In this study, the financial performance of Islamic and conventional banks operating in Gulf Council Countries (GCC) was compared. Banks were divided into two groups: Islamic and conventional banks. To determine financial performance, the profitability, efficiency, credit risk, and insolvency risk ratios of banks were used. These ratios were analyzed by an independent sample t-test. Thus, this study shows whether the financial ratios of the two types of banks differed significantly.

[Insert Table 3]

Table 3 shows the t-test results of the profitability ratios of Islamic and conventional banks. When the Return on Assets (ROA) ratio is examined, the ratio of conventional banks is 1.68% and that of Islamic banks is 1.46%. This means that conventional banks have earned more income from their

assets than Islamic banks. Table 3 also indicates a similar situation for the ROE (Return on Equity) ratio. The investors of conventional banks get a 12.44% return on the capital they invest. However, the investors of Islamic banks get 10.78%. When the situation of the investors of the two banks is examined, conventional bank investors get more returns on their Islamic bank investors. As a result, there is a statistically significant difference, at a level of 1%, between Islamic and conventional banks in terms of ROA and ROE ratios. Hence, the null hypotheses of ROA and ROE ratios are rejected. The alternative hypotheses are accepted. It means that there is a statistically significant difference in the ROA and ROE ratios of Islamic and conventional banks. Although the ROD ratio of conventional banks is higher than that of Islamic ones, it is not statistically significant.

Our results point out that conventional banks are more profitable than Islamic banks. When the Islamic finance literature is examined, Nienhaus [16] and Rehman et al. [5] found that conventional banks are more profitable than Islamic banks. Our findings are consistent with Nienhaus's [16] and Rehman et al. [5] results. However, Zehri et al. [17], Iqbal [18], Olson and Zoubi [6], Abedifar [14], and Hassoune [19] claim that Islamic banks are more profitable than conventional banks.

[Insert Table 4]

Table 4 shows the t-test results of the efficiency ratios of Islamic and conventional banks. All of the efficiency ratios are statistically significant. When ATO, BATO, NIM, and NNIM ratios are examined, it is understood that the Islamic banks are better managed than conventional banks. These ratios point out that Islamic banks use their assets more effectively than conventional ones. Hence, the null hypotheses of efficiency ratios are rejected. The alternative hypotheses are accepted.

In his study, Al-Muharrami [7] claims that Islamic banks operate their activities more efficiently than conventional ones. Our findings are consistent with Al-Muharrami's findings. However, Olson and Zoubi [6], Srairi [11], and Mokhtar et al. [12] found that Islamic banks are less efficient than conventional ones.

[Insert Table 5]

Table 5 shows the t-test results of the credit risk ratios of Islamic and conventional banks. Apart from the LR ratio, the other two ratios (LTD and PEA)



are statistically significant at 1%. When the LTD ratio is examined, the loan portfolio of Islamic banks is higher than conventional ones. This situation increases credit risk. Credit risk increases because the likelihood of non-repayment of the loans increases. The PEA ratio of Islamic banks is also higher than that of conventional ones. The higher the PEA ratio, the higher non-performing loans will likely be. As a result, LTD and PEA ratios indicate that the credit risk of Islamic banks is higher than that of conventional ones. Hence, the null hypotheses of LTD and PEA ratios are rejected. The alternative hypotheses are accepted. However, the null hypothesis of the LR ratio is accepted.

The findings of our study contradict the studies of Abedifar et al. [14] and Khediri et al. [15]. They claim that Islamic banks have lower credit risk than conventional banks. However, we conclude that the credit risk of Islamic banks is higher than that of conventional ones.

[Insert Table 6]

Table 6 shows the t-test results of the insolvency risk ratios of Islamic and conventional banks. Only the DTA ratio is statistically significant at 5%, but the others (ETD and TLE) are not. The DTA ratio, which shows the leverage of the bank, compares the banks' deposits to total assets. It is used to interpret the capital adequacy of the bank. The higher the leverage ratio is, the higher the risk of insolvency will be. According to Table 6, the DTA ratio of conventional banks is higher than that of Islamic ones. It means that the conventional bank's risk of insolvency is higher than that of Islamic banks. Hence, the null hypothesis of the DTA ratio is rejected. The alternative hypotheses are accepted. However, the null hypotheses of the ETD and TLE ratios are accepted.

According to Abedifar et al. [14], Islamic banks have lower insolvency risk than conventional ones. The findings of our study are consistent with Abedifar et al. [14].

## Conclusions

In this study, we aimed to measure the performance of Islamic and conventional banks operating in GCC between the years 2008–2017. As a financial comparison, 13 ratios were used in four different categories (profitability, efficiency, credit risk, and insolvency risk). Hypotheses related to

these ratios were compared with an independent sample t-test at a 5% significance level.

According to the results of the t-test, it is seen that conventional banks perform better than Islamic banks in terms of the return of assets (ROA) and the return of equity (ROE). However, there is no statistically significant difference in return on deposits (ROD). These results show that conventional banks use their assets and equity better than Islamic banks. There may be many reasons. Especially, it can be said that the product range of conventional banks has created a competitive advantage.

The efficiency ratios (ATO, BATO, NIM, NNIM) of Islamic banks in this study are better than those of conventional banks. The comparison of these ratios indicates that Islamic banks have earned more net income, total bank revenue, net interest income, and net non-interest income from their assets than conventional banks. Managers of Islamic banks use bank assets more effectively. However, it seems that this is not reflected in banks' efficiency-to-profitability ratios. This requires different analysis techniques. The independent t-test is not enough to explain it.

The loans-to-total assets ratio (LR) of Islamic banks is higher than that of conventional banks, but there is no statistically significant difference. Additionally, the loan-to-deposit ratio of Islamic banks (LTD) is more than that of the conventional banks. The possibility of non-repayment of loans in extraordinary circumstances may leave Islamic banks in a difficult situation. The high LTD ratio increases the credit risk of Islamic banks. On the other hand, the high LTD ratio is expected to positively affect profitability under normal conditions. However, it is understood that the increase in the LTD ratio did not raise the profitability.

According to the t-test results, the equity-to-deposit ratio (ETD) and total liabilities-to-equity ratio (TLE) are not statistically significant. However, the ratio of deposits-to-total assets (DTA) of Islamic banks is statistically significant and lower than that of conventional banks. This is normally due to the fact that conventional banks operate according to the principle of interest. However, the higher DTA ratio increases the risk of bankruptcy of conventional banks. The reason for the risk of bankruptcy is the possibility that the depositors suddenly withdraw their deposits from the bank. Banks need to increase their equity in order to avoid the risk of bankruptcy. The increase

in equity, on the other hand, has an adverse effect on profitability because it increases the cost of capital.

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**Table 1. The Sample of the Study**

	Conventional Banks		Islamic Banks	
	No bank	No obs	No bank	No obs
Saudi Arabia	7	70	4	40
Qatar	7	65	3	30
United Arab Emirates	6	60	13	130
Kuwait	6	60	5	47
Oman	5	50	3	20
Bahrain	5	50	6	60
Total	36	355	34	327

**Table 2. Definitions of Variables**

Ratios	Definitions	
<b><i>Profitability</i></b>		
ROA	Return on Assets	Net Income / Total Assets
ROE	Return on Equity	Net Income / Equity
ROD	Return on Deposits	Net Income / Total Deposits
<b><i>Efficiency</i></b>		
ATO	Asset Turnover	Interest Income / Total Assets
BATO	Bank Asset Turnover	Bank Total Revenue / Total Assets
NIM	Net Interest Margin	(Net Interest Income–Net Interest Expenses) / Total Assets
NNIM	Net non-Interest Margin	(Net non-Interest Income–Net non-Interest Expenses) / Total Assets
<b><i>Credit Risk</i></b>		
LR	Loan to Assets	Total Loans / Total Assets
LTD	Loan to Deposits	Total Loans / Total Deposits
PEA	Provision to Earning Assets	Provision for Loan Losses / Total Loans
<b><i>Insolvency Risk</i></b>		
DTA	Deposits to Assets	Total Deposits / Total Assets
ETD	Equity to Deposits	Equity / Total Deposits
TLE	Total Liabilities to Equity	Total Liabilities / Equity

Commission income and expenses of Islamic banks were used instead of interest income and expenses. In addition, Islamic, bank-specific investment instruments such as mudaraba, murabaha, and musharaka were used as equivalents to the loans of conventional banks.

**Table 3. T-test Outputs of Profitability Ratios**

Variables	No Obs		Mean		Standard Deviation		t-test for equality of Means	
							t-value	p-value
<b>Profitability Ratios</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>		
ROA	334	274	1.6788	1.4581	0.7282	0.7684	3.6076	0.0003
ROE	339	284	12.435	10.787	5.014	6.223	3.5917	0.0003
ROD	305	253	1.971	1.862	0.858	0.94	1.4215	0.1558

CB: Conventional Banks

IB: Islamic Banks

**Table 4. T-test Outputs of Efficiency Ratios**

Variables	No Obs		Mean		Standard Deviation		t-test for equality of Means	
							t-value	p-value
<b>Efficiency Ratios</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>		
ATO	318	277	3.7617	3.9105	0.862	0.835	-2.1361	0.0331
BATO	318	243	3.5764	3.7464	0.6188	0.7045	-2.9832	0.003
NIM	310	273	3.0233	3.3302	0.7436	0.6986	-5.1365	0.00001
NNIM	319	244	2.5458	2.8245	0.6373	0.8632	-4.2365	0.00001

CB: Conventional Banks

IB: Islamic Banks

**Table 5. T-test Outputs of Credit Risk Ratios**

Variables	No Obs		Mean		Standard Deviation		t-test for equality of Means	
							t-value	p-value
<b>Credit Risk Ratios</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>		
LR	300	297	62.7585	63.5579	8.7018	11.067	-0.9805	0.3273
LTD	308	273	80.0162	85.0236	13.7504	17.2286	-3.8392	0.0001
PEA	235	192	0.69761	0.8538	0.4656	0.5277	-3.2075	0.0015

CB: Conventional Banks

IB: Islamic Banks

**Table 6. T-test Outputs of Insolvency Risk Ratios**

Variables	No Obs		Mean		Standard Deviation		t-test for equality of Means	
							t-value	p-value
<b>Insolvency Risk Ratios</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>	<b>CB</b>	<b>IB</b>		
DTA	297	232	79.567	78.5481	4.7372	5.9295	2.1381	0.0331
ETD	299	253	16.8564	17.2009	4.1766	4.7922	-0.8921	0.3727
TLE	328	299	6.3866	6.0957	1.9213	2.1144	1.7975	0.0728

CB: Conventional Banks IB: Islamic Banks

## Behavioural Economics: Rise, Acknowledgements and Application

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**Abstract:** *Behavioural economics, an interdisciplinary field combining psychology and economics, in the last few decades is often referred to in literature as growing and gaining increasing importance. However, usually such statements about the increasing role of behavioural economics are expressed in axiomatic manner lacking concrete and comprehensive supporting evidence. If stated at all, arguments supporting the issue are often fragmented and limited to few exemplifying notices. Aiming to respond to this incompleteness in current literature, the purpose of this paper is to investigate the research question: what is the existing evidence of the role and the importance of behavioural economics? To explore the existing evidence the present study gathers, summarises and structures information about the rise, acknowledgements and application of behavioural economics. The analysis reveals evidence about the emergence, importance and gained recognition of behavioural economics among academics, practitioners and society in general. Indications of behavioural economics in scientific literature, education programs, among rewarded academics, application in public policy, uncommercial and commercial organisations, and popularity in society are covered. The study is contextual by nature and attempts to provide the added value by trying to build a unitary and systemised information network about the rise, acknowledgements and application of behavioural economics.*

### Introduction

Behavioural economics, a field incorporating psychological findings in economics, can be considered as a rather new area of research emerging mostly throughout the last three decades. According to behavioural economists Camerer, Loewenstein and Rabin “until about 1990, it was not uncommon to get a paper returned from a journal [...] with a three sentence referee report saying “this isn’t economics”” [1]. However, that is the past. Recent academic literature has been noting towards the growing interest in the behavioural economics and the observation that it has grown to be a substantial part of modern economics.

Sent has stated that “[b]ehavioral economics and its focus on the interrelations between economics and psychology is attracting increasing attention and recognition” and concluded that “behavioral economics has arrived” [2]. Thaler has noted that “there has been growing interest” [3] in the field and Wilkinson and Klaes - that “the field has now become a more respectable one” [4]. According to Rabin “behavioral economics is on the verge of “going mainstream”” and “the integration of psychology into economics has been accepted as a promising development at the highest levels of the profession” [5]. Heukelom has also pointed out that “behavioral economists gradually built their program into a stable and well-defined mainstream economic program” [6].

Although statements supporting the growing importance of behavioural economics in scientific literature seem plausible (and by no means this article is questioning that), surprisingly, these statements mostly are not supplemented with concrete and comprehensive supporting evidence or reliable reference. Support for the statement about the rise and importance of behavioural economics is often not included at all or is limited to a few examples. Geiger refers to this, naming the existing practice an “anecdotal evidence”, which provides “an impression of the tip of the iceberg but do not allow for inferences about the general picture underneath” [7]. Although Geiger himself has approached the issue offering concrete quantitative evidence [8] and has made some qualitative analysis as well [9], the literature about the evidences of the rise and influence of behavioural economics is still fragmented. In response to this incompleteness in current literature and in order to contribute to the existing body of research, this study attempts to investigate the research question: what is the existing evidence of the role and the importance of behavioural economics? To explore this research question, systemised information about the rise, acknowledgements and application of behavioural economics has been gathered. It is important to note that by no means this article can summarise all the existing evidence. However, it makes an attempt to systemize and summarise at least some irrefutable signs demonstrating the increasing role of behavioural economics as a field of science.



Though the primary objective of this study is an attempt to fill “the white spot” in literature, there are some side objectives, which motivated drawing up of this article. One of them was the fact that in the local scientific community of Latvia the field of behavioural economics is little researched yet and presentation of some issues is often responded with scepticism about the field as such. While understanding incompleteness of the field (not discussed in this article), this article might serve as a summary of arguments supporting the existing role of behavioural economics worldwide. Another motivation for this article was the willingness to create an overview of the information on behavioural economics that might be useful as a starting point for newcomers to the field: introduction to influential academics, journals, books and education programs, insights in the application in political practices and organisations, and other related general information.

The article is structured as follows. To begin with, Section 2 provides information about the methodology applied. Afterwards, Section 3 gives a short introduction to behavioural economics showing the differences between behavioural economics and traditional economic theory. The essence of the paper lies in Section 4, which presents evidence about the rise, acknowledgements and application of behavioural economics. Section 4 is divided in several sub-sections structuring the evidence in three main parts according to their settings: academics, practitioners and society in general (sub-sections 4.1, 4.2 and 4.3 respectively). Section 5 is the conclusion, which shortly summarises the findings. Throughout the article the most particular and detailed information is added in supplemental tables and figures. A figure is included also in the conclusion (Figure 6) serving as an outline of the whole article and summarising the evidence about the rise, acknowledgements and application of the field of behavioural economics.

## 1. Methodology

This study by its nature and the addressed matter is based on contextual theoretical analysis of the research field. The main research methodology was the quality method analysing the existing literature about behavioural economics. Thus, analytical and descriptive approach was used.

Decent amount of secondary data including books, scientific articles and credible online sources was used as the source of information for the present

study. Information was gathered, summarized and structured, thus, aiming to build a unitary and systemised information network about the rise, acknowledgements and application of behavioural economics.

The analysis is limited to information accessed mostly in English, thus it cannot be excluded that there might be a possibility of the analysis being incomplete regarding the tendencies of outside the English-speaking scientific communities and thus being a subject of language bias.

## 2. Introduction to behavioural economics

Behavioural economics is a relatively new interdisciplinary field that blends psychology with economics. Behavioural economics developed in the second half of 20th century as a reaction to incompleteness of the mainstream economics [10]. In the mainstream economics economic agents are assumed to be “homo economicus”: rational, calculating, selfish, “perfect egoists”, willing to maximise utility, having unlimited cognitive capacity and not making mistakes, at least not systematically. By contrast, behavioural economics provides valuable insights in the actual decision making of economic agents, reviling systematic and predictable deviations from “perfect rationality” that is assumed in normative models of the traditional economic theory.

Behavioural economics admits that cognitive capacities of economic agents are limited. The field covers issues like heuristics and cognitive biases, effect of circumstances, framing, and wide range of other cognitive, social and emotional factors that influence decision making. It is an experimental field and mostly descriptive by approach. Lately lessons from behavioural economics have been widely applied. Increased understanding of psychological factors in economic decision making has moved the field towards application in a policy initially named “libertarian paternalism” [11], later termed as “nudging”: “choice architecture that alters people's behaviour in a predictable way without forbidding any options or significantly changing their economic incentives” [12].

Fundamental differences and contradictions between the traditional mainstream economics and the rising field of behavioural economics are presented in Figure 1.

[Insert Figure-1]

According to Cartwright, “[behavioural economics] can tell us when the standard economic model does a good job and when not, and it can tell us how to change the model to get a better fit with reality. That is progress, and that is why behavioral economics is revolutionizing economics and our ability to understand economic behaviour” [14].

### 3. The rise, acknowledgements and application of behavioural economics

The rise of behavioural economics over the past decades has been among academics, policy formers (governments), practitioners in commercial and non-commercial organisations and society in general. The following sub-sections aim to provide brief and structured evidence on that.

#### 3.1. Among academics

**3.1.1. In scientific literature.** Firstly, the rise of the field of behavioural economics among academics has been captured quantitatively: there is evidence that importance of the field among academics has increased over the past decades as research indicates a quantitative confirmation of the increase of behavioural economics in the academic literature [15].

According to the actual researches presented in scientific articles in journals at the JSTOR and SSCI databases, which index the large majority of important economic journals (including all prominent and most major journals) usage of the term “behavioural economics” has significantly increased in the last few decades. Analysis of the period from 1950 to 2010 indicates that: before mid-1990s existence of the term “behavioural economics” in scientific journals was rather rare. However, starting from mid-1990s, a rapid increase began, reaching more than 1.5% of all papers in the “Business and Economics” subject group and almost 2% in the subsets “Economics” and “Finance” in 2010<sup>th</sup>. What is more, relative frequency in top journals (top five most influential economics journals according to the RePEc Aggregate Ranking) has increased even more, reaching almost 5% in 2010<sup>th</sup>, indicating that almost every 20<sup>th</sup> article in the top journals contained or referred to the term “behavioural economics”.

See the timeline representing the upward sloping trend in relative frequency of papers mentioning “behavioural economics” and comments about the

methodology used to assess tendencies mentioned in Figure 2.

[Insert Figure-2]

Secondly, there is qualitative confirmation that the field has become influential. The existence of high quality academic journals, explicitly in the field of behavioural economics, is a proof of that. There are several specialized editions in the field of behavioural economics, which are prestigious and have high rating. Scholarly journals like Journal of Economic Behavior & Organization, Journal of Behavioral and Experimental Economics (former Journal of Socio-Economics), and Journal of Economic Psychology have been frequently quoted for decades [18]. Table No 1 represents current ratings of few leading scholarly journals publishing articles specifically in the field of behavioural economics.

[Insert Table-1]

All five journals mentioned in Table 1 are prestigious and have high rating, and there are many more (for more detailed list of journals writing about behavioural economics see [20]).

**3.1.2. In higher education and research.** Being included in education programs and research units of prestigious universities all over the world is another proof of general academic acknowledgement of behavioural economics. Based on university rankings, the world’s top universities offer programs and/or research units in the field. The University of Oxford and the University of Cambridge are stunning examples in the United Kingdom, and the California Institute of Technology, Stanford University, the Massachusetts Institute of Technology, Harvard University and the University of Chicago - in the United States of America. For more detailed information see Table 2.

[Insert Table-2]

The list presented in Table 2 surely is not exclusive. There are many other influential high-level institutions in the field of behavioural economics also outside the very top of the world university rankings.

In Canada, the University of Toronto has been stated in literature as a leading institution; in the United Kingdom – the London School of Economics, the University of Warwick and the Institute for New Economic Thinking; in France - the

Group for Economic Analysis and Theory in Lyon and in the Toulouse School of Economics [25].

Thus, behavioural economics has gained significance to be taught and researched worldwide in variety of respectable institutions.

**3.1.3. By receiving awards.** Prestigious prizes awarded for academics using behavioural approach confirm the role and acknowledgement of the field of behavioural economics.

Probably the most prestigious award that a living economist can get, The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel or usually referred to as The Nobel Prize in Economics, has been awarded to several academics, who have demonstrated behavioural approach achievements [26]. The most influential laureates, who have revealed the role of behavioural economics and contributed to formation of the field, are (1) Israeli-American psychologist Daniel Kahneman, awarded in 2002 “for having integrated insights from psychological research into economic science, especially concerning human judgment and decision-making under uncertainty” [27] and (2) American economist Richard H. Thaler awarded in 2017 “for his contributions to behavioural economics” [28].

More detailed summary about these and other Nobel Prize laureates in economic science, who have demonstrated behavioural approach achievements see in Table 3.

[Insert Table-3]

Similarly, other prestigious prizes like the John Bates Clark medals of the American Economic Association and the MacArthur Fellowship received by behavioural economists indicate the increasing role and recognition of the behavioural economics. See summary in Table 4.

[Insert Table-4]

Prizes awarded surely symbolise the recognition of behavioural approach achievements.

### 3.2. Among practitioners: policy formers and organizations

**3.2.1. Among policy formers (governments).** It has been understood that behavioural economics can contribute to public policy by offering new policy tools like behavioural nudges. Unlike poli-

cies, which ground on enforcement and legislative acts, by nudging the government policy can indirectly suggest people to make preferable choices. [34, 35]

In the recent years behavioural science teams, often called “nudge units”, have formed in a number of countries. Organizational and institutional forms, how the policy makers are provided with expert advice on behavioural insights, differ among countries. In some countries the application of behavioural sciences to public policy is provided via centralised approach, having institutions outside governments functioning as behavioural science teams that support application of behavioural insights across a wide range of government agencies. Another approach has been focused on integrating behavioural scientists within the authorities without formation of separate units. Yet another way of incorporating behavioural insights into public policy is by network approach – collaborating between different ministries and agencies, when working with behavioural insights. [36] With different organizational and institutional forms “nudge units” have spread worldwide. Policy areas, where behavioural insights are applied, include healthcare, safety, education, employment, savings, finances, discrimination, environmental protection and consumer protection, and other areas [37, 38].

According to the Organisation for Economic Co-operation and Development (OECD) in 2018 there are ~196 institutions around the world in more than 40 countries applying behavioural insights to public policy, and most of the institutions are working inside governments [39, 40].

Behavioural economics has entered economic policy in developed countries, especially in the United Kingdom and the United States [41]. Other countries applying behavioural insights to public policy with different organizational and institutional forms include Canada, Australia, some European Union countries, Singapore, New Zealand, Israel, Mexico, Chile, Japan and other. An overview about the institutions applying behavioural insights to public policy is represented on the world map, see in Figure 3.

[Insert Figure-3]

Behavioural economics has been remarkably influential in the public policy in the United Kingdom and the United States. The United Kingdom has

been the pioneer in “nudge unit” formation: in 2010 the UK Government established the Behavioural Insights Team, the first specialised team working with behavioural insights at national level (since 2014 the team has been turned into a social purpose company, partly owned by the UK Government). In the United States, “Social and Behavioural Science Team” was established within the White House Office of Science and Technology Policy in 2014. Thus, federal agencies were ordered to apply behavioural insights into their policies and programs, where appropriate.

In both the United Kingdom and the United States prominent researchers in behavioural economics have held positions at the heart of government. Bright examples are the cases of Richard H. Thaler and Cass R. Sunstein, the authors of “Nudge: improving decisions about health, wealth, and happiness”, a book in behavioural economics defending “nudging”: libertarian paternalism and active engineering of choice architecture. Thaler has been an advisor to the Behavioural Insights Team at the UK Cabinet Office and Sunstein has been the head of the Office of Information and Regulatory Affairs at the White House. Thus, the impact of behavioural economics to policy making in the United Kingdom and the United States has been rather direct [43].

But as stated before, the United Kingdom and the United States are far not the only ones interested in “nudging” [44, 45]. In Canada the Impact and Innovation Unit (formerly Innovation Hub) was established in 2015 within the Privy Council Office having a behavioural insight team specialising in running randomized controlled trials within departments across the Government of Canada [46]. In Australia, Behavioural Economics Team was established in 2016 as the Government’s central unit for behavioural economics in public policy [46]. Inclusion of behavioural insights into policy formation has been an issue also in the European Union. Application of behavioural economics on policy is on different stages among the member states. There are some member states that are very successful in incorporating “nudging” mechanisms in their policy, for example Denmark, Sweden, Germany and the Netherlands (a detailed overview about application of behavioural economics in the European Union member states can be found in [48]). Behavioural insights are in about 170 countries and territories and is aiming to deal with reduction of poverty, inequalities and exclusion and is striving to promote sustainable

addressed also on the union-level within the European Commission. The Foresight and Behavioural Insights Unit was created in 2014 in the Joint Research Centre, which is the Commission’s science and knowledge service. And the European Union Policy Lab, which supports policies with evidence of behavioural insights, foresight and design thinking, was established by the European Commission in 2015, thus having more researchers working on behavioural issues. [49]

More information about some influential behavioural science teams, including facts about the establishment, grounds of functioning, purpose/objectives, and policy areas where behavioural insights are applied, is summarised in Table 5.

[Insert Table-5]

**3.2.2. Among (non-commercial and commercial) organisations.** Behavioural science, including behavioural economics, has been increasingly applied also by multi-national organisations serving non-commercial issues such as dealing with poverty, environmental issues and sustainable development. Some of the most influential are mentioned below.

The World Bank formed its own “nudge unit” in 2015. The structural unit named the Mind, Behavior, and Development Unit employs a behavioural sciences team aiming to fight global poverty and reduce inequality by using behavioural sciences. Working in over 50 countries, with more than 70 partners on over 80 projects, the team has tried to design, analyse and evaluate behaviourally informed interventions. [64, 65]

The Organisation for Economic Co-operation and Development (OECD) is another example. OECD has supported public institutions, which apply behavioural insights to improve public policy since 2013. A multi-disciplinary team of behavioural scientists has been established to apply behavioural insights. [66]

Also, the United Nations working for international peace, security, co-operation and encouraging respect for human rights and for fundamental freedom has developed programs that use insights from behavioural sciences. For example, the United Nations Development Programme (UNDP) works development [67]. UNDP uses behavioural insights to achieve better policy outcomes in developing countries often at low or no cost. Also, the

United Nations Environment Programme (UNEP) uses behavioural insights to coordinate its environmental activities and assist developing countries in implementing environmentally sound policies and practices. [68]

Likewise, the Green Growth Knowledge Platform (GGKP) established in 2012 by the World Bank, OECD, UNDP and the Global Green Growth Institute, is offering policy guidance to support the transition to a green economy and is also using behavioural insights. [69]

The knowledge gained from behavioural economics and other behavioural sciences is not limited to usage in the non-profit field. There are sources of literature confirming the important impact in the commercial sector including fields like finance, insurance, consumption-savings decisions, marketing, modelling consumer behaviour, etc. [70]

Behavioural science is being applied by such financially sizable commercial companies as Google, Facebook, eBay, Amazon, Airbnb, Prudential, Disney, Unilever, Johnson & Johnson, General Electric's, McDonald's, Financial Times, The Economist, Uber and others. [71 to 74]

Surely, behavioural science can contribute to business. Organisations are appointing in-house behavioural scientists and teams, thus embedding behavioural science deep within the organisation [75, 76]. In the commercial sector behavioural approaches are used to hire the most appropriate employee for the position, to encourage healthy lifestyles for employees, to promote the product or service and increase consumption by “nudging” consumers and in many other areas of actions.

However, not much of the application of behavioural economics in commercial organisations is described in literature. Possibly, behavioural nudges might be a topic that can be classified as a business secret. It is also probable that only a limited amount of information about commercial nudges is publicly available due to the willingness to avoid discussions about the ethical issues of some of the nudges applied. Surely, ethical issues of some of the nudges might be disputable as it can be questionable whether people are “nudged” to make choices that are in their best interests [77]. People are not unanimous whether they want to be nudged at all [78].

Despite the limited amount of publicly available information about use of the knowledge in the field of behavioural economics and “nudging” practices in commercial sector, there is no doubt that lessons of behavioural economics are learned there. The existence of new research companies offering behavioural economic consultancy is an evidence for that. For example, the Behavioural Insights Team, which has grown out of cooperation with the UK government, has formed ventures offering variety of services and consultations in behavioural economics. They offer services, such as designing behavioural science interventions, randomised controlled trials, nudging people to meet their health and wellbeing goals and help in the process of recruiting. [79] Besides the Behavioural Insights Team and its ventures, there is a bunch of other behavioural economic consultancies on the market also working for the commercial sector. Some notable examples are BEworks, Ideas42, TGG Group, Digitai, Fehr Advice, the Behavioural Architects, Behavioral Science Solutions, Trigger Point Design, Sagara Consulting, and many others. Even older, more traditional and larger management consulting firms, for example PwC, are stepping into the field of behavioural economics consultancy demonstrating the demand for such a service [80].

Thus, there is evidence for the application of lessons from behavioural economics both in non-commercial and commercial organisations.

### 3.3. Among society in general

The popularity of the field of behavioural economics has exceeded the borders of professional settings: the interest in the field is not limited to academics and practitioners. There are signs indicating interest in the field of behavioural economics among society in general.

An important influence has been made by several prominent academics, who have published books expressing the ideas of behavioural economics in a comprehensible manner. These publications have become bestsellers (some exceeding million copies worldwide) and thus have gained notable popularity. *Thinking, Fast and Slow* written by the Nobel laureate Kahneman, *Nudge* written by another Nobel laureate Thaler and co-author Sunstein are excellent examples. Likewise, *Freakonomics* and *SuperFreakonomics* by Levitt & Dubner, *Blink* by Gladwell, *The Power of Habit* by Duhigg, *Predictably Irrational* by Ariely Drive by Pink, *The*



*Black Swan* by Taleb and the early example of *Influence* by Cialdini, have brought the ideas about behavioural science, real-world decision making and economics to public [81] (titles given in shortened version).

Popular behavioural science books are summarised in Table 6.

[Insert Table-6]

Popularity is measured by the number of rating evaluations in Goodreads official website goodreads.com, a freely searchable "social cataloguing" platform with database of books, annotations, and reviews. According to this summary Goodreads represents altogether more than 2 million rating evaluations about the top 20 most popular behavioural science books. Assuming that the rating evaluation can be a proxy for reading data, it is an indication that behaviourally rich literature is stepping into the mainstream.

Another indicator of general interest about the field of behavioural economics is the search engine statistics. Investigating searching tendencies in Google, the biggest search engine holding the dominating market share of ~75% of all searches throughout 2017 [84], the Google Trends, a public web facility providing graphs, which show how often a particular search-term is entered as compared to the total search-volume in a definite time, gives evidence of upward sloping trend of the interest in behavioural economics. The notable increase of the interest in web search terms "behavioral economics" and "behavioural economics" (American and British versions of the field name respectively) is represented in Figure 4. Complementary illustration with the world map demonstrating interest in the field territory-wise is given in Figure 5.

[Insert Figure 4]

[Insert Figure 5]

The graph in Figure 4 represents how often the search terms "behavioral economics" and "behavioural economics" were entered as compared to the total search-volume in a definite time. It is important to note that Google Trends methodology provides that repeated searches from the same person over a short period of time are excluded to make the data more representative [87]. According to the graph, there has been increase in the general interest in the field since January 2004 (first

available data) until May 2018 (last available data) and the interest peaked in October 2017, when Richard H. Thaler was announced to be awarded with a Nobel prize in Economics "for his contribution in behavioural economics" [88]. Despite the short-term fluctuations in the search activities, the general upward trend holds true for the whole period the data are available, representing aggregate increase in interest at least for two times.

To conclude, the notable popularity of behavioural economics books and tendency of increased web searches about the field confirm the rise of the interest among society in general.

## Conclusion

Scientific literature, prestigious education programs, prizes received by behavioural scientists, "nudging" techniques applied to public policy all around the world, behavioural insights in non-commercial and commercial organisations, increase in the interest among society in the field – these are the signs outlined in this article confirming the triumph of behavioural economics.

All-inclusive figure, summarising evidence about the role of behavioural economics and generally outlining the main ideas is represented in the Figure 6.

However, there surely still is space for further research both to widen and deepen the set of evidence and to increase both the quality and quantity of arguments representing the role of behavioural economics. However, what is more important, is (1) to further develop the field of behavioural economics academically; (2) to effectively and carefully apply the behavioural science in policy practice, non-commercial and commercial sector in order to pursue people's best interests; and (3) to educate society about the ways behavioural insights can help to improve their economic decision making and everyday lives.

The field is surely on its way to the mainstream. The time, when behavioural economists received referee reports on their papers from journals saying "this isn't economics" is over. According no Nobel laureate Thaler, "[...] the term 'behavioral economics' will eventually disappear from our lexicon. All economics will be as behavioral as the topic requires [...]" [89].

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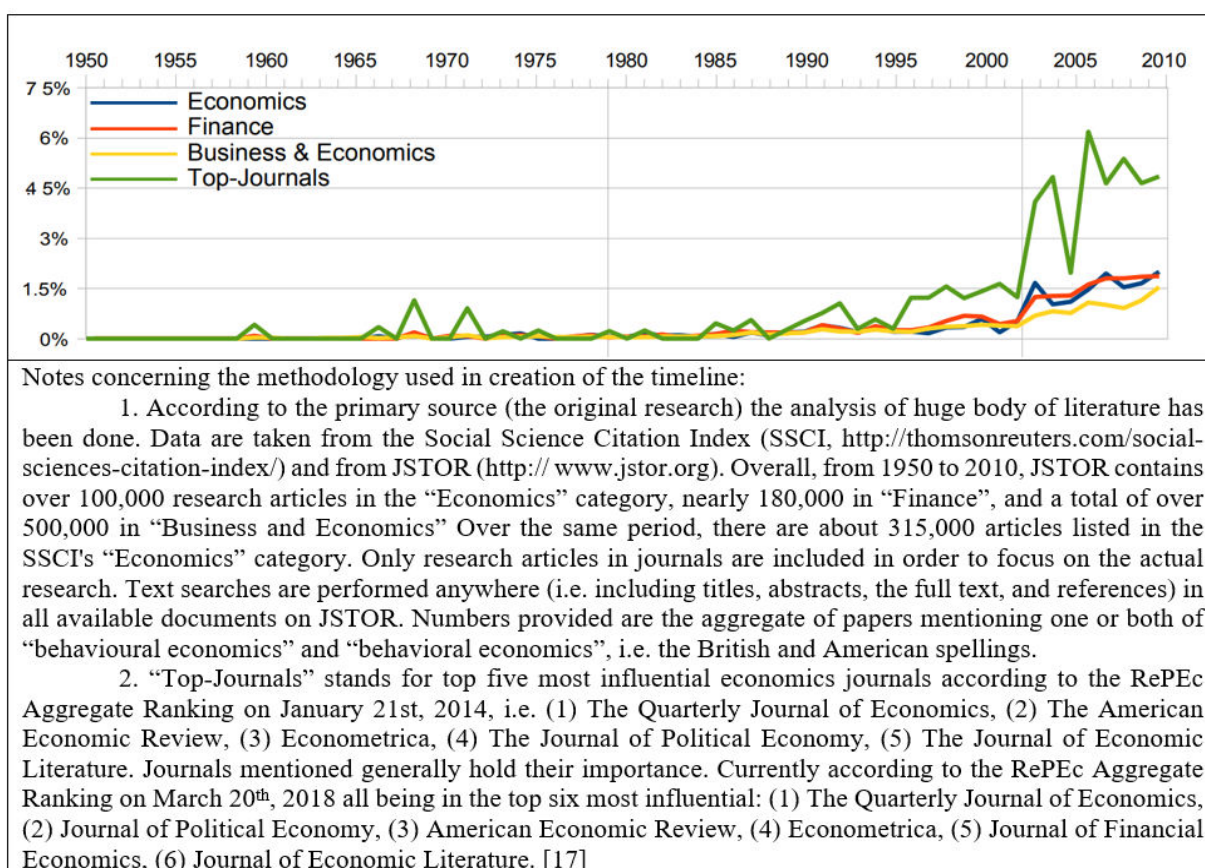
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**Figure 1. Traditional economics versus behavioural economics**  
(source: self-made summary, first presented in [13]), revised)

<b>Traditional economics</b> (based on classical and neoclassical thought)	<b>Behavioural economics</b> (interdisciplinary, based in psychology)
<b>People – rational</b>  -Rational agent theory, <i>homo economicus</i> - Expected utility theory	<b>People - not always rational,</b> there are systematic deviations from rationality -Bounded rationality, heuristics and biases, nudging -Prospect theory
<b>Markets – efficient</b>  -Efficient market hypothesis -Capital asset pricing model -No free lunch	<b>Markets - not always efficient,</b> there are systematic deviations from efficiency -Empirical evidence on “market bubbles” -Crowd psychology
<b>World - calculable</b>	<b>World - complex</b>
<b>Approach - mostly normative</b>	<b>Approach - mostly descriptive</b>

**Figure-2. Timeline representing the relative frequency of scientific papers mentioning “behavioural economics”** (source: [16])



**Table-1: Influential scholarly journals with containing articles on behavioural economics**  
(source: self-made summary based on the data from SCImago Journal & Country Rank\* [19])

Journals**	Articles published in 3 years***	H index****	Impact index****
Journal of Economic Behavior & Organization	714	88	1,48
Journal of Behavioral and Experimental Economics (former Journal of Socio-Economics)	254	46	0,89
Journal of Economic Psychology	241	71	1,43
Journal of Behavioral Decision Making	125	60	1,64
Journal of Risk and Uncertainty	75	59	1,33

\* Data in Table 1 are based on the visibility of the journals contained in the Scopus® database from 1996. Journal rankings may differ depending on primary sources used and methodology applied. Still, journals listed in Table 1 can be considered as high-rated.  
 \*\*There exist numerous other influential scholarly journals with behavioural economics content. Journals listed in this table are subjectively chosen as few of the most influential based on the amount and proportion of the content of behavioural economics as well as ratings derived from citation frequency.  
 \*\*\*Reference years: 2013, 2014, 2015  
 \*\*\*\*Journal's number of articles (h) that have received at least h citations over the whole period.  
 \*\*\*\*\*Average citation per document in a two year period

**Table-2: Most prestigious\* universities providing education and/or carrying out research in behavioural economics/behavioural science** (source: self-made summary based on the university ranking data from [21],[22],[23] and study program/research unit information from [24])

Times Higher Education World University Rankings 2018 **	Academic Ranking of World Universities 2017 (also known as Shanghai Ranking)***	QS World University Rankings 2018****	University	Country	Postgraduate programs (taught in English) and/or research unit in the field of behavioural economics / behavioural science*****
1	7	6	University of Oxford	United Kingdom	DPhil in Economics; Behavioural Economics Research Group; Nuffield Centre for Experimental Social Sciences
2	3	5	University of Cambridge	United Kingdom	MBA, Executive MBA and PhDs in Business Economics, Marketing, etc. PhD in Economics; Cambridge Experimental and Behavioural Economics Group
3	9	4	California Institute of Technology	United States	PhD in Behavioral & Social Neuroscience
3	2	2	Stanford University	United States	PhD in Management Science and Engineering, MS in Management Science and Engineering; Stanford Decisions and Ethics Center
5	4	1	Massachusetts Institute of Technology	United States	PhDs in Brain & Cognitive Sciences, Masters in Management, Analytics, Applied Economics; MIT Sloan Neuroeconomics Laboratory
6	1	3	Harvard University	United States	PhD in Economics, Master of Science Program, Master (MPH) and Doctor of Public Health (DrPH)
9	10	9	University of Chicago	United States	PhD in Behavioral Science; Center for Decision Research

\* Included those universities which according to the latest results of three different university rankings are in the top 10 in all three rankings.  
 \*\* Source [21]. Note: several universities hold the same ranking.  
 \*\*\* Source [22].  
 \*\*\*\* Source [23].  
 \*\*\*\*\* Source [24].

**Table-3: Nobel Prize laureates in economic science, who have demonstrated behavioural approach achievements** (source: self-made summary based on information from the Official Web Site of the Nobel Prize [29]; contains direct quotations]

Year	Laureate	Prize motivation	Field	Contribution	Prize share	Prize lecture title
1978	Herbert Simon	For his pioneering research into the decision-making process within economic organizations.	Management science.	Work in a number of fields, including the methodology of science, applied mathematical statistics, operations analysis, economics, and business administration His work is synthesized in a new theory of organizational decision-making.	1/1	Rational Decision-Making in Business Organizations.
2001	George Akerlof	For their analyses of markets with asymmetric information	Economics of information.	Studied markets where sellers of products have more information than buyers about product quality. He showed that low-quality products may squeeze out high-quality products in such markets, and that prices of high-quality products may suffer as a result.	1/3	Behavioral Macroeconomics and Macroeconomic Behavior.
2002	<b>Daniel Kahneman**</b>	<b>For having integrated insights from psychological research into economic science, especially concerning human judgment and decision-making under uncertainty.</b>	Economic psychology, experimental economics.	Integrated economic analysis with fundamental insights from cognitive psychology, in particular regarding behavior under uncertainty, thereby laying the foundation for a new field of research.	1/2	Maps of Bounded Rationality,
2002	Vernon L. Smith	For having established laboratory experiments as a tool in empirical economic analysis, especially in the study of alternative market mechanisms.	Economic psychology, experimental economics.	Developed methods for laboratory experiments in economics, which has helped our understanding of economic behavior.	1/2	Constructivist and Ecological Rationality in Economics.

Table-3 continued

Year	Laureate	Prize motivation	Field	Contribution	Prize share	Prize lecture title
2005	Thomas C. Schelling	For having enhanced our understanding of conflict and cooperation through game-theory analysis.	Game theory.	A creative application of game theory to important social, political and economic problems. Showed that a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation. These insights have proven to be of great relevance for conflict resolution and efforts to avoid war.	1/2	An Astonishing Sixty Years: The Legacy of Hiroshima.
2013	Robert J. Shiller	For their empirical analysis of asset prices.	Financial economics.	N/A***	1/3	Speculative Asset Prices.
2017	Richard H. Thaler**	For his contributions to behavioural economics.	N/A***	N/A***	1/1	From Cashews to Nudges: The Evolution of Behavioral Economics.
*The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel.						
**Daniel Kahneman and Richard H. Thaler emphasized as being the most influential for formation of behavioural economics.						
***N/A indicated when no specific info listed in The Official Web Site of the Nobel Prize: <a href="http://www.nobelprize.org">www.nobelprize.org</a> .						

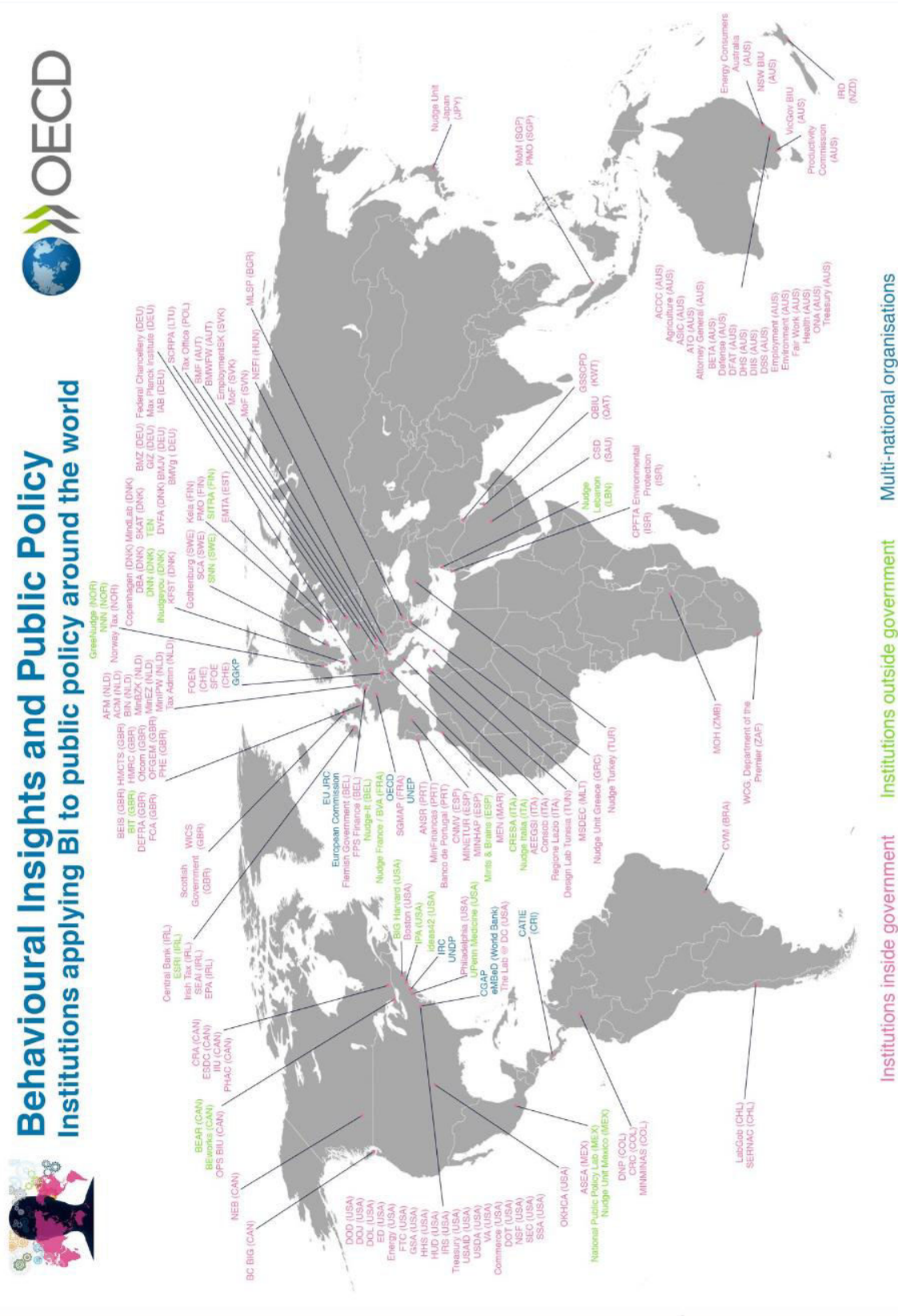


**Table-4: Other prestigious award (except the Nobel Prize) winners, who have demonstrated behavioural approach achievements in economics** (source: self-made summary based on information from the American Economic Association [30] and the MacArthur Foundation [31]; contains direct quotations)

Award	Year	Winners	Field	Contribution
The John Bates Clark medal*	1999	Andrei Shleifer	Behavioral finance	American Economic Association noting: Andrei Shleifer is a superb economist, working in the old Chicago tradition of building simple models, emphasizing basic economic mechanisms, and carefully looking at the evidence. He has made major contributions to corporate finance (corporate governance), the economics of financial markets (deviations from efficient markets), and the economics of transition. In each case, his contributions have shaped the basic paradigm and triggered considerable follow-up research.
	2001	Matthew Rabin	Behavioral economics	American Economic Association noting: Matthew Rabin is an outstanding and strikingly original theorist who has enriched economics by rigorously incorporating well-documented psychological evidence about human behavior into economic models. Rabin is best known for his formal modeling of choice and equilibrium when individual preferences and decisions systematically violate conventional economic assumptions, as observed in experimental settings by psychologists and others. Rabin's contributions have a remarkably wide range of application, including fundamental work on fairness, inter-temporal choice, self-serving biases, and self-control. His work throws light on central economic questions concerning employee/employer relations, addiction, insurance markets, asset prices, and savings behavior.
The MacArthur Fellowship (better known as a "genius grant")**	2000	Matthew Rabin	Behavioral economics	The MacArthur Foundation noting: Matthew Rabin integrates psychology and economics to offer new perspectives on such phenomena as group behavior and addiction. Rabin has demonstrated <u>particular strength</u> in distilling from psychological research those insights that can be modeled mathematically. His recent work develops economic models that incorporate important aspects of the psychology of choice behavior in such phenomena as procrastination, addiction, and saving for retirement. The enhanced realism of the resulting mathematical models also provides more potent tools for developing public policy.
	2003	Sendhil Mullainathan	Behavioral economics	The MacArthur Foundation noting: Sendhil Mullainathan is a young scholar who is making contributions in areas of economics ranging from behavioral economics, to social problems in the U.S. economy, to corporate finance, to development economics, to empirical methodology. His studies demonstrate his ability to distill complex empirical data sets and to identify the critical questions, integrating concepts without respect to disciplinary boundaries.
<p>* The prize is awarded annually by American Economic Association to economist under the age of forty who works in the US and is judged to have made the most significant contribution to economic thought and knowledge [32].</p> <p>** This grant is awarded annually by The MacArthur Foundation to typically between 20 and 30 recipients who are residents or citizens of the US and who show exceptional creativity in their work in different fields and the prospect for still more in the future. The stipend for the MacArthur Fellowship is currently set at \$625,000, paid in quarterly instalments over five years. It is designed to provide no-strings-attached seed money for intellectual, social, and artistic endeavours [33]</p>				



**Figure-3. The world map representing institutions applying behavioural insights into public policy** (source: OECD study [42]; note: institutions presented might not be exclusive; existence of other institutions is possible)



**Table-5: “Nudge units”\* around the world**

(source: self-made summary based mostly on information from the OECD and official websites and publications of the “nudge units” themselves; detailed references to sources at the very end of the table\*\*)

Country
<p><b>“Nudge unit”*</b></p> <ul style="list-style-type: none"> <li>Facts (establishment, grounds of functioning, purpose/objectives, policy areas, etc.)</li> </ul>
<p><b>United Kingdom</b></p> <p><b>Behavioural Insights Unit</b></p> <ul style="list-style-type: none"> <li>The world’s first government institution dedicated to the application of behavioural sciences. First established within the Cabinet Office in 2010. Since 2014 the Team has been turned into a social purpose company which is partly owned by the UK Government, Nesta (the innovation charity) and its employees. Behavioural Insights Unit functions like an internal public sector consultancy.</li> <li>Around 150 employees. Employees have either a strong academic grounding in economics, psychology and research methods or a background in government policymaking.</li> <li>Headquarters are in the United Kingdom - London. <b>Working internationally:</b> also offices in the United Kingdom - Manchester, the United States - New York, Singapore - Singapore, Australia - Sydney, New Zealand - Wellington.</li> <li>Objectives: making public services more cost-effective and easier for citizens to use; improving outcomes by introducing a more realistic model of human behaviour to policy; and wherever possible; enabling people to make ‘better choices for themselves’.</li> <li>Wide variety of policy areas, where behavioural insights are applied including those: Health and welfare; Early years, education and skills; Crime, security and integration; Consumers and finance; Economic growth and productivity; Energy and sustainability; Community and giving; Equality and discrimination; Local government and cities; International programmes (listed according to The Behavioural Insights Team Update Report 2016-17).</li> <li>Official website: <a href="http://www.behaviouralinsights.co.uk">http://www.behaviouralinsights.co.uk</a> (Update reports, policy and academic publications available online.)</li> </ul>
<p><b>United States</b></p> <p><b>Social and Behavioural Science Team</b></p> <ul style="list-style-type: none"> <li>Established within the within the White House Office of Science and Technology Policy in 2014. It was established by an executive order that also directed federal agencies to apply behavioural insights into their policies and programs where appropriate. (There were attempts to incorporate behavioural insights in policies also before the establishment of the Social and Behavioral Science Team. The Office of Information and Regulatory Affairs at the White House have worked to instil key behaviourally informed principles into regulation.)</li> <li>The members of the Social and Behavioral Sciences Team, a subcommittee of the National Science and Technology Council, represent more than a dozen organizations across government including the Departments of Defence, Agriculture, Veterans Affairs, Health and Human Services, and Education.</li> <li>The purpose: to coordinate the application of cutting edge social and behavioural science research to help Federal agencies advance their policy and program goals and better serve the Nation.</li> <li>Wide variety of policy areas where behavioural insights are applied including those: Promoting retirement security, Advancing economic opportunity, Improving college access and affordability, Responding to climate change, Supporting criminal justice reform, Assisting job seekers, Helping families get health coverage and stay healthy, Improving government effectiveness and efficiency (listed according to Social and Behavioural Science Team Annual Report 2015 and Annual Report 2016).</li> <li>Official website: <a href="https://sbst.gov/">https://sbst.gov/</a> (Annual Reports available online.)</li> </ul>
<p><b>Canada</b></p> <p><b>The Impact and Innovation Unit (formerly Innovation Hub)</b></p> <ul style="list-style-type: none"> <li>Established in 2015 within the Privy Council Office which has a behavioural insight team specialising in running randomized controlled trials within departments across the Government of Canada. This team works with a broad range of partners to support departments in delivering on policies and programs. Team has established partnerships with Canadian universities and work with behavioural scientists outside the government to provide support when running trials.</li> <li>Objectives: to reduce barriers to innovation inside of government; reframe problems and rethink how and where to find solutions through a co-design and co-creation approach; leverage the benefits of impact measurement to support evidence-based decision-making; through rigorous testing, deliver evidence on “what works”.</li> <li>Policy areas where behavioural insights are applied: Response rate increase to mandatory surveys, Diversifying recruitment, Immigration. (Planning to expand its work significantly in the areas related to innovative financing and experimental programming.)</li> <li>Official website: <a href="https://www.canada.ca/en/innovation-hub.html">https://www.canada.ca/en/innovation-hub.html</a> (Reports available online.)</li> </ul>

Table-5 continued

Country
<b>"Nudge unit"</b> *
<ul style="list-style-type: none"> <li>Facts (establishment, grounds of functioning, purpose/objectives, policy areas, etc.)</li> </ul>
<b>Australia</b>
<b>Behavioural Economics Team</b> <ul style="list-style-type: none"> <li>Behavioural Economics Team is the Australian Government's central unit for behavioural economics in public policy. It was established in 2016 by the Australian Government and is housed in the Department of Prime Minister Cabinet.</li> <li>Wide variety of policy areas where behavioural insights are applied including those: Cyber security, Domestic policy, Government, Indigenous Affairs, International policy, National security, Office for women, Public data, Regulation.</li> <li>Mission: to advance the wellbeing of Australians through the application and rigorous evaluation of behavioural insights to public policy and administration. Objectives: build Australian Public Service capability to apply behavioural insights to public policy and administration; provide advice to government on applications of behavioural insights; work collaboratively with partner agencies to design and deliver behavioural insights intervention; conduct rigorous trials and thereby contribute to a culture of evidence based policy advice.</li> <li>Official website: <a href="https://www.pmc.gov.au/domestic-policy/behavioural-economics#">https://www.pmc.gov.au/domestic-policy/behavioural-economics#</a> (Reports available online.)</li> </ul>
<b>European Union countries</b> (union-level approach described)
<b>European Commission Joint Research Centre</b> <b>Foresight and Behavioural Insights Unit</b> <b>European Union Policy Lab</b> (union-level "nudge units") <ul style="list-style-type: none"> <li>On the union-level within the European Commission there is the Joint Research Centre which is the Commission's science and knowledge service. The Joint Research Centre employs scientists to carry out research in order to provide independent scientific advice and support to European Union policy. The Joint Research Centre has increased its capacity in the field of behavioural insights and currently has a number of researchers/economists working on behavioural issues. More specifically, the <b>Foresight and Behavioural Insights Unit</b> was created in 2014 in the Joint Research Centres Headquarters in Brussels. In 2015, the European Commission set up the <b>European Union Policy Lab</b> which supports policies with evidence from behavioural insights, foresight and design thinking. (Prior formation of institutions mentions, initially ideas from behavioural sciences on the union-level were incorporated in work of the Directorate-General for Health and Food Safety of the European Commission.)</li> <li>The Foresight and Behavioural Insights Unit analysed developments in use of behavioural insights in policies in European Union Member States. Analysis has revealed that within the European Union there is <b>wide variety in application, organisation and levels of development of behavioural nudge policies among member states</b>.</li> <li>Some countries have formed centralised behavioural insights teams, for example, Germany and France. Some work with behavioural issues with decentralised approach by forming networks with public administration, academic institutions and private sector organisations taking part, for example, Denmark, Sweden, Norway and the Netherlands. In part of European Union member states the implementation of behavioural insights in policy formation is still fragmented with potential to increase.</li> <li>European Commission has been using behavioural insights to feed data and evidence into the regulatory impact assessment conducted for new European Union legislation. The challenge is to make this use more systematic within the European Commission and support its use across European Union members.</li> <li>Policy areas where behavioural insights are applied: Consumer policy, Environment, Health, Taxation, etc.</li> <li>Official websites: <a href="https://ec.europa.eu/jrc/en/research/crosscutting-activities/behavioural-insights">https://ec.europa.eu/jrc/en/research/crosscutting-activities/behavioural-insights</a> and <a href="https://blogs.ec.europa.eu/eupolicylab/">https://blogs.ec.europa.eu/eupolicylab/</a> (Reports available online.)</li> </ul>
<b>Other countries</b>
<ul style="list-style-type: none"> <li>Formation of "nudge units" with different organisational forms and levels is on-going and besides above mentioned countries behavioural insights are applied also in Singapore, New Zealand, Israel, Mexico, Chile, Japan and other countries. Detailed world map developed by OECD representing institutions applying behavioural insights to public policy see in Figure 3.</li> </ul>
*The term "Nudge unit" used with the meaning - behavioural science team that is applying nudge theory for the policy purposes.
** Sources: [50] to [63]; contains direct quotations.



**Table-6: Popular behavioural science books**

(source: self-made summary based on popularity measured by the number of ratings in Goodreads [82]; only 20 most popular included\*; data retrieved on 23 May 2018\*\*)

No.***	Title****	Author(s)	Pub. Year	Average rating*****	Number of ratings
1	<b>Freakonomics: A Rogue Economist Explores the Hidden Side of Everything</b>	Steven Levitt, Stephen Dubner	2005	3,94	572 085
2	<b>Blink: The Power of Thinking Without Thinking</b>	Malcolm Gladwell	2005	3,90	392 398
3	<b>The Power of Habit: Why We Do What We Do in Life and Business</b>	Charles Duhigg	2011	4,05	193 896
4	<b>Thinking, Fast and Slow *****</b>	<u>Daniel Kahneman</u>	2011	4,11	177 933
5	<b>SuperFreakonomics: Global Cooling, Patriotic Prostitutes and Why Suicide Bombers Should Buy Life Insurance</b>	Steven Levitt, Stephen Dubner	2009	3,97	103 607
6	<b>Predictably Irrational: The Hidden Forces That Shape Our Decisions</b>	Dan Ariely	2008	4,10	76 351
7	<b>Drive: The Surprising Truth about What Motivates Us</b>	Daniel Pink	2008	3,94	68 750
8	<b>The Black Swan: The Impact of the Highly Improbable</b>	Nassim Nicholas Taleb	2007	3,90	63 736
9	<b>Influence: The Psychology of Persuasion</b>	Robert Cialdini	1984	4,19	60 653
10	<b>Nudge: Improving Decisions About Health, Wealth, and Happiness*****</b>	<u>Richard Thaler, Cass Sunstein</u>	2008	3,82	39 861
11	<b>Foiled by Randomness: The Hidden Role of Chance in Life and in the Markets</b>	Nassim Nicholas Taleb	2001	4,03	35 896
12	<b>How We Decide</b>	Jonah Lehrer	2009	3,82	35 298
13	<b>The Signal and the Noise: Why So Many Predictions Fail but Some Don't</b>	Nate Silver	2012	3,97	33 919
14	<b>Switch: How to Change Things When Change Is Hard</b>	Chip Heath, Dan Heath	2010	4,03	32 899
15	<b>The Upside of Irrationality: The Unexpected Benefits of Defying Logic at Work and at Home</b>	Dan Ariely	2010	3,89	26 975
16	<b>The Undoing Project: A Friendship That Changed Our Minds</b>	Michael Lewis	2016	3,97	26 201
17	<b>You Are Not So Smart: Why You Have Too Many Friends on Facebook, Why Your Memory Is Mostly Fiction, and 46 Other Ways You're Deluding Yourself</b>	David McRaney	2011	3,86	24 399
18	<b>The Paradox of Choice: Why More Is Less</b>	Barry Schwartz	2004	3,84	23 470
19	<b>The Undercover Economist</b>	Tim Harford	2005	3,80	21 019
20	<b>Incognito: The Secret Lives of the Brain</b>	David Eagleman	2011	4,00	19 705

\*As the popularity of the books is measured by the number of ratings it is possible that there is an "older book" bias in the table represented (as the earlier the book was published the longer the period it had an opportunity to be rated).

\*\* Information about some more behavioural science books can be found in goodreads.com and for more detailed list of behavioural science books with rather recent data about ratings see also [83].

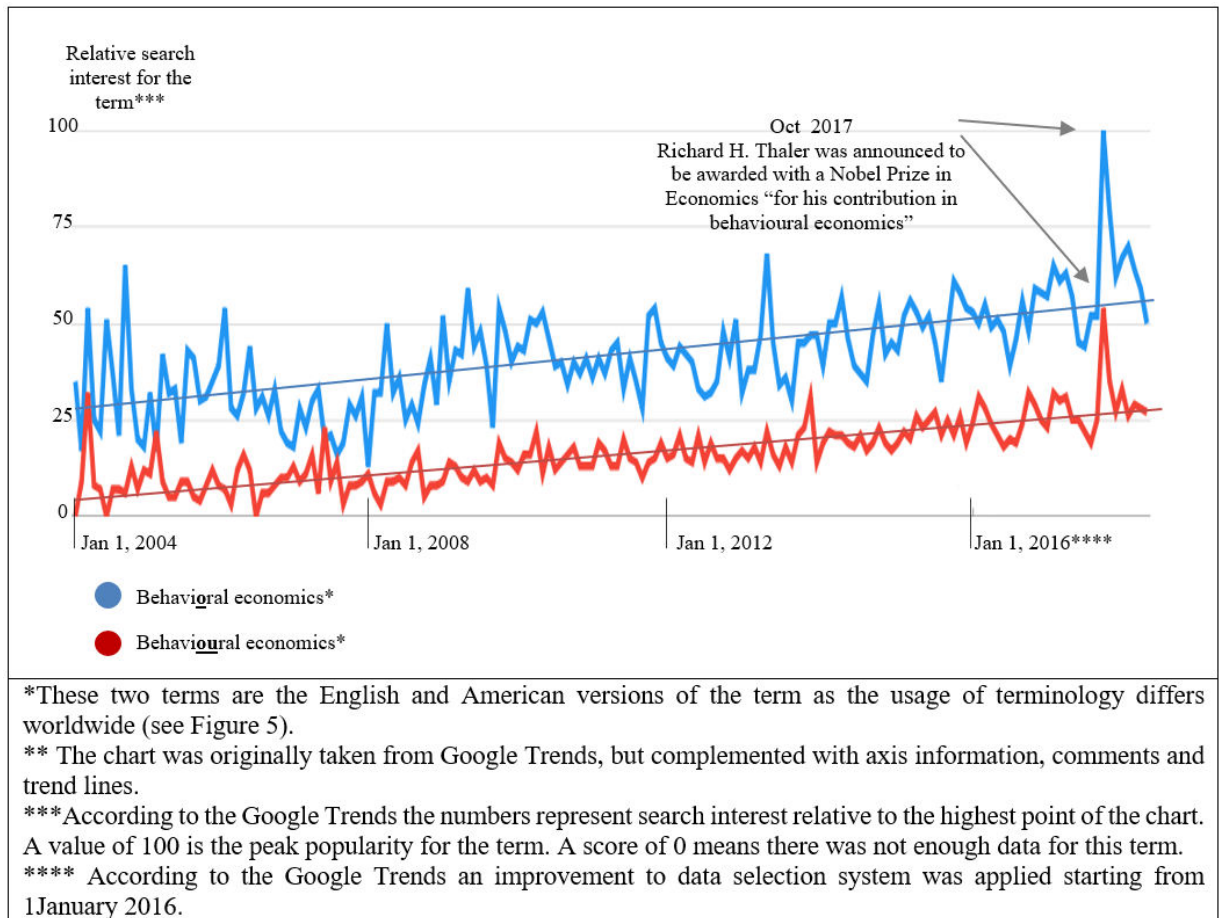
\*\*\* Ordered by number of ratings starting from the largest and decreasing.

\*\*\*\* Shortened versions of the titles marked bold to increase perceptibility.

\*\*\*\*\* Rating in scale 1 to 5, 1 being the lowest and 5 the highest estimation.

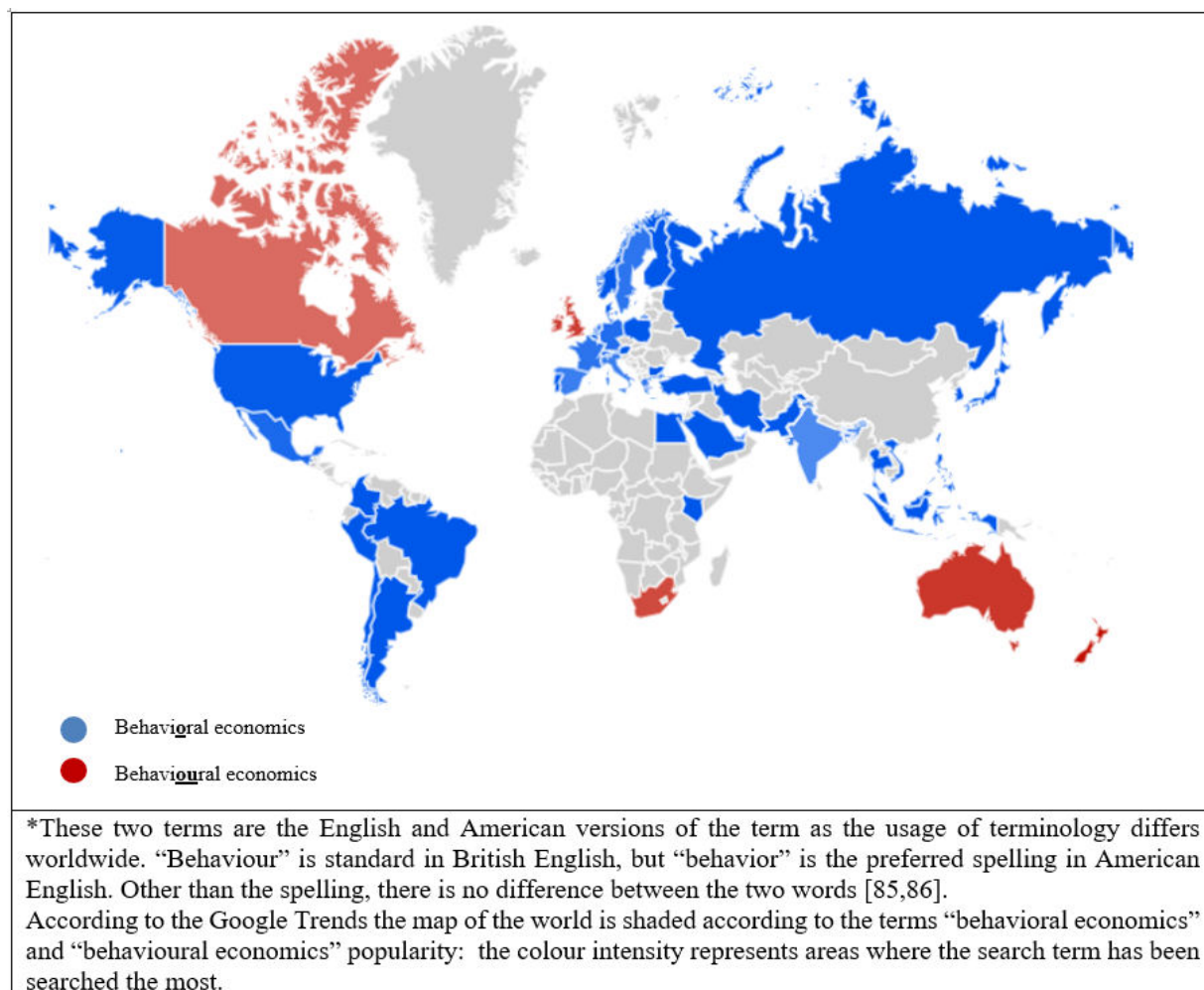
\*\*\*\*\* Books (co)written by the Nobel prize laureates lightly shaded to make an emphasis.

**Figure-4: Tendencies of the worldwide interest in the web search terms “behavioral economics” and “behavioural economics”\* by the Google Trends\*\***  
(source: Google Trends; from January 2004 until May 2018; retrieved on 24 May 2018)

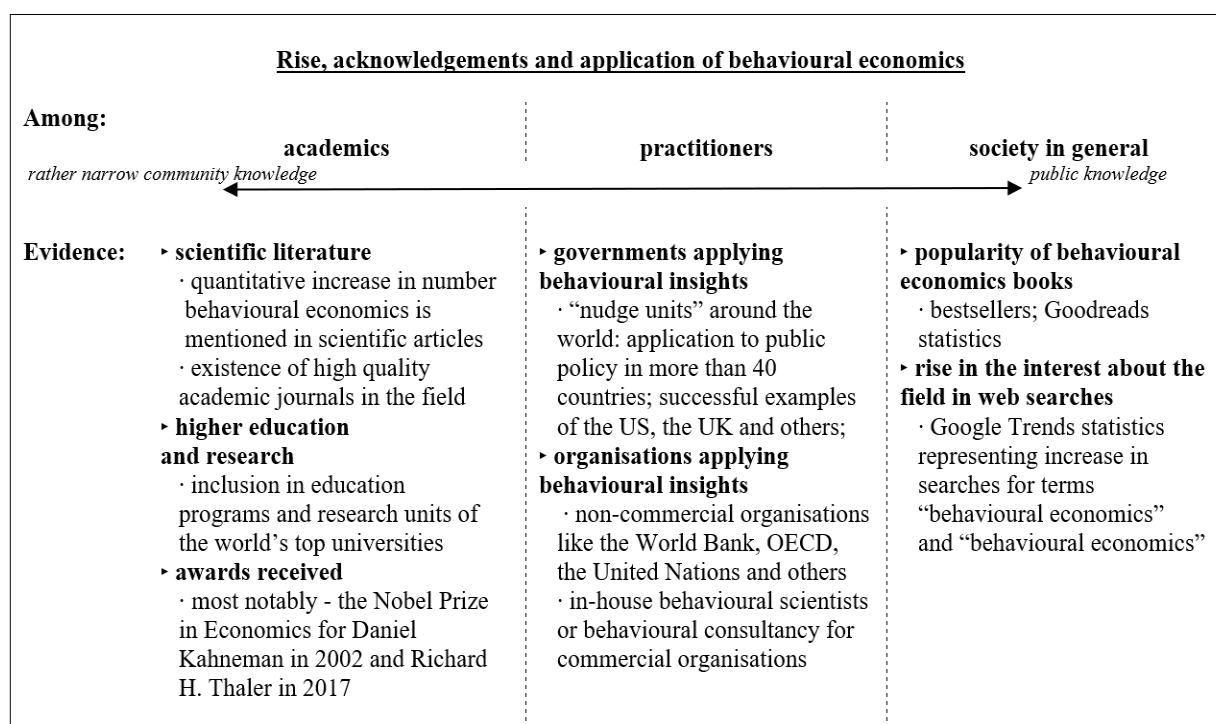




**Figure-5. The worldwide interest of web search terms “behavioral economics” and “behavioural economics”\* territory-wise by the Google Trends**  
 (source: Google Trends; form January 2004 until May 2018; retrieved on 24 May 2018)



**Figure-6. Summary of evidence about the rise, acknowledgements and application of the field of behavioural economics** (source: self-made summary)



## The Financial Performance Evaluation of Greek and Turkish Banks after the 2008 Financial Crisis

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**Abstract:** *The 2008 financial crisis led to troubles in many banks across the world. However, the effects of crisis have varied among countries. In the field of finance, numerous researches have studied the effects of crisis on banks. This study will examine the impact of the financial crisis in banking industry in the two neighboring countries, Greece and Turkey. We will compare the financial performance of the banks listed in stock exchanges in Greece and Turkey. The analysis is covering the period 2008-2017. The data is gathered from the balance sheet and income statements of the banks. The t-test methodology has been used for comparing the results of two countries' banks.*

### Introduction

Crisis is a body of states or situations which result in undesired and unpredicted consequences [1] (Sikich, 2002). Crises are grouped into financial, private sector, and economic ones in terms of their impact areas. While real crisis leads to decrease in a country's production and employment, financial crises cause downfalls by reducing efficiency of market and they are influential in economy of the country. Economic crisis affects national economy in a negative way and naturally enterprises [2]. Financial crises are caused by nonlinear distortions which prevent the efficient distribution of funds in these markets as a result of the increasing problems of adverse selection and moral deterioration in financial markets. Financial crises are generated by rises in economic indicators such as interest rates and inflation and deterioration in the financial and non-financial components' balance sheets [3]. Prices and quantities show strong fluctuations in these crises [4].

Crisis of 2008 is one of the most influential crises in the world, and this is a financial one. The causes of the crisis can be shown as misuse of banks' credit resources in the United States (USA), and the consequences of this are, in particular, the repayment of mortgage loans [5]. In addition to these reasons, the fact that the US current account deficit is very high during this period can be listed among the causes of the crisis [6]. Since the beginning of the 2000s, the US has decreased the rate of interest and increased the housing loans. As a consequence of it, houses were overvalued. Banks which had been more selective while lending had already given up their

position and gave loans to low-income persons with variable interest rates and created a

high increase in loan amounts. Interest rates which rose up after 2004 led to the fact that those people were unable to pay their debts [7]. The volume of housing loans and related derivative market instruments used in 2007 reached \$ 10 trillion, making it the world's largest credit market [8].

The crisis was triggered by the banks, deriving and selling derivative financial instruments based on the loans granted by them and as a result loans were not paid [9]. The crisis that started in investment banks due to unpaid credits spread rapidly throughout the banking sector [10].

In 2007, investment bank Bear Sterns was taken over by JP Morgan, Fannie Mae and Freddie Mac, who went bankrupt in 2008, and it was nationalized by the US.

On September 15, 2008, the Lehman Brothers investment bank in the United States, 158 years after its founding, declared bankruptcy with a record high debt of 613 Billion USD, a phenomenon recognized as the beginning of a global crisis. The negative effects of the crisis began to manifest itself in a short period of time after the contraction in the countries of continental Europe. This downsizing process has caused the continuation of the stability of public finances in countries to become dangerous, causing public deficits and debt stock to rise in significant proportions. As one of the most important examples of this contraction, Euro Zone countries' debt loads, which were 7.1 trillion Euro in 2006, rose to 811.3 trillion Euro by the end of 2012 [11]. Prior to the

crisis, Lehman Brothers was the largest bank of derivative products in the United States. This bank was the 4th largest investment bank of the United States, and it was the longest-established bank dating back 158 years [8]. This bank went bankrupt on 15 September 2008. In the US, rescue and incentive packages have been introduced to overcome this crisis, but the integration of financial markets at that time induced the crisis to spread rapidly [12].

Derivatives, which banks withdrew based on their loans, were swiftly sold and sold to banks in Europe. Therefore, the crisis that started in the USA has also spread to Europe. This has particularly affected the developing countries. Due to the crisis, international capital has started to run away from the country and new investments have not occurred in developing countries.

Greece, Ireland, Italy, Portugal and Spain, which are called GIIPS, started to increase in debt and current account imbalances. Among these countries, Greece imports capital at a high rate [13]. The cause of the crisis in Greece is not just the crisis that was experienced in the United States. Economic structural problems, which had already been present in the country were also highly influential [14]. Causes from the public sector played an important role in deepening the crisis [15].

The low tax revenue of Greece, the high inflation rate and high borrowing costs led to an increase in the effects of the crisis [16]. Greece's national income increased by 6% in 2009, shrinking budget deficit by 2% [17]. The reasons for the high impact of the crisis effects in Greece compared to other countries are as follows: rapid increase of the budget deficit due to increase in public revenues because of increased debt, decrease in tourism incomes significantly and reduction in income of sea transportation from the country's most important income sources. Along with this crisis, Greece could not find new funds to cover its debts and became unable to pay them [18].

This crisis is not the first crisis Greece faced, but it is important because it is the first crisis after entering the European Union. Greece has a small percentage in terms of economic indicators within the Union, but the impact of the crisis on the Union is high [19].

After Greece, Italy, Spain, Belgium, Portugal and Ireland, the crisis of the crisis began to deepen the future of the European Union was imperilled [20]. For this reason, the Union began to take a number of measures. First, the European Union and the IMF

jointly prepared a loan pool and a rescue package worth € 110 billion entered the market [21]. 30 billion Euros of 110 billion Euros were provided from the IMF and 80 billion Euros were collected from the money collected by the contributions of Euro Zone countries [22].

Through the European Financial Stability Mechanism created, Greece used resources because of the fact that external factors influenced the internal crises, but internal factors were more intense [23].

In 2010, loans were provided through the European Financial Stability Fund, which was established to provide temporary financial support to the Euro Zone countries and thus to maintain the financial stability of the monetary union [24].

The crisis that started in the US in 2008 affected the real sector after the financial sector in the world. However, as Turkey wore out in financial terms due to the crises experienced in 1994, 2000 and 2001, the necessary precautions had been taken before the 2008 crisis. For example, banks' high capital adequacy ratios after the crisis kept these institutions from adverse effects of the crisis. Thanks to the above mentioned measures taken, the crisis of 2008 in Turkey affected real sector not financial one [6]. The real sector was influenced by the international capital inflow and export ratio [25].

Turkey began to experience the effects of the crisis of 2008 and in 2009 the effects of the crisis increased. Turkey's Gross Domestic Product in 2008 with the impact of the crisis decreased by 5%. Along with the increase in the unemployment rate, other indicators began to suffer from negativity [26].

Measures for the market by various institutions for the 2008 crisis in Turkey were taken. The Central Bank of the Republic of Turkey aimed at increasing the liquidity by reducing the reserve requirement ratio of banks. To increase exports, the export rediscount loan increased by 500 million USD. The BRSA requested banks to keep their 2008 profits by not distributing their profits and made a new arrangement so that the recent increases in interest rates would not distort the balance. The Ministry of Finance in Turkey made real sector tax incentives. With such measures, Turkey has managed to reduce the impact of the crisis since 2010 [27].

When examining Turkey and Greece with regards to economic indicators, the most economic shrinkage was experienced in Turkey between the years of

2008 and 2009. It was again Turkey which demonstrated an economic bounce in economy after 2009. The drop in economic growth in Greece in 2007 accelerated after 2008. For unemployment rates, the situation for both countries is the same as the result of economic contraction [28].

## 1. Methodology And Implementation

In this study, the impact of the 2008 crisis on financial markets in the selected countries was examined comparatively through the banking sector. Two countries were selected as research subjects. This Turkey as the country most affected by the financial crisis in Greece and neighbouring countries were selected. The data set of the study is the banks traded on the stock exchanges of these two countries and these ten banks constitute twelve special banking ratios covering ten years 2008-2017. The data obtained were analysed using the independent sample t test in the SPSS program. The t-test is used to investigate whether there is a difference in the mean between two sample groups. the t test determines whether the mean in one group is different from the mean in the other group.

The financial ratios of the banks used in the research are as follows;

1-Return on Assets (ROA):  $ROA = \text{Net Income} / \text{Total Assets}$

2- Return on Equity (ROE):  $ROE = \text{Net Income} / \text{Total Equity}$

3- Return on Deposits (ROD):  $ROD = \text{Net Income} / \text{Total Deposits}$

4- Net Interest Margin (NIM):  $NIM = (\text{Net interest income} - \text{net interest expense}) / \text{T.Assets}$

5- Net Non Interest Margin (NNIM):  $NNIM = (\text{Non interest income} - \text{net non interest expenses}) / \text{T.Assets}$

6- Loans to Deposits (LTD):  $LTD = \text{Net Loans} / \text{Total deposits}$

7- Provision to Earning Assets (PEA):  $PEA = \text{Provision for loan losses} / \text{Total loans}$

8- Deposits to Assets (DTA):  $DTA = \text{Total Deposits} / \text{Total Assets}$

9- Equity to Deposits (ETD):  $ETD = \text{Equity} / \text{Total deposits}$

10- Total Liabilities to Equity (TLE):  $TLE = \text{Total liabilities} / \text{Equity}$

11- Efficiency RATIO (EFF):  $EFF = \text{Expenses (not including interest)} / \text{Revenues}$

12- Loans to Assets (LR):  $LR = \text{Net Loans} / \text{Total ASSETS}$

The table 1 below provides statistics on the financial ratios of banks of Turkey and Greece for the years 2008-2017.

[Insert Table-1]

As the table 2 shows, the sig (2 - tailed) value in the 95% confidence interval was equal to 0.05 and higher than the Twelve ratios alone. The sig (2 - tailed) value in the other eleven %confidence interval was less than 0.05. In other words, there is a significant difference between Turkey and Greece in the ratios excluding the provision to earning assets ratio. Turkey is better than Greece in all other ratios. However there is no significant difference between the two countries in PEA ratio.

[Insert Table-2]

## Conclusion

Crises are states or situations which result in undesired and unpredicted consequences. Crises take various names according to the areas they affect. The crisis, which was the subject of this study, started from the structural disorder of housing loans in the United States in 2008, and financial markets first affected the real sector. In the United States, when the banks gave housing loans, they carefully selected the people to whom they had loaned their loans, and then these care turned into carelessness. For this reason, the repayment ratios on the loans experienced a serious fall. In this case, the banks suffered very serious financial difficulties due to both the repayment of the loans and the derivative market instruments they issued based on these loans. For this reason, even Lehman Brothers, the country's oldest investment bank, went bankrupt. The crisis deepened because of this and such bankruptcy transfers and the integrity of financial markets. There are various reasons for the rapid and deep spread of the effects of the 2008 crisis on the international platform. The first and foremost of these reasons is the purchase of the derivatives market instruments, which were based on mortgage loans issued by investment banks in the USA, by swiftly changing hands and being bought by banks in Europe. When this crisis was added to the already existing problems of Greece's financial and real environment, very serious problems started to be experienced in the economy of the country. As a result, it became the country most affected by the crisis. Turkey experienced crises which resulted in transfer of many banks particularly affecting the financial markets in 1994, 2000 and 2001. As a result



of these crises, various laws and regulations were introduced by relevant institutions and organizations in order to strengthen these markets. Thanks to these rules, the structure of financial markets were strengthened. For these reasons, Turkey was influenced not so much in terms of the real economy, but in terms of the financial sector crisis of 2008. In this study, banks in Greece and Turkey traded in the stock market crisis were compared by taking the crisis and ten-year period into account. When comparing these two countries, twelve financial ratios belonging to the bank were used. Data set consisting of these ratios were analysed by independent t test in SPSS program. As a result of the analysis, it was found that banks in Turkey, excluding Provision to Earning assets, were found to be better than the ones in Greece concerning Return on Assets, Return on Equity, Return on Deposits, Net Interest Margin, Net Non Interest Margin, Loans to deposits, Deposits to Assets, uity to Deposits, Total Liabilities to Equity, Efficiency and Loans to Assets. The results of the analysis are supported by the situation of the financial markets owned by the countries during the period under examination.

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**Table 1: Group Statistics**

Group Statistics					
Country		N	Mean	Std. Deviation	Std. Error Mean
eff	Turkey	120	51,088648	12,3980013	1,1317775
	Greece	44	60,194270	15,5643410	2,3464127
roe	Turkey	118	18,82819661	6,855610099	,631110065
	Greece	33	9,42529406	10,451314778	1,819340378
roa	Turkey	119	1,65452166	,678248487	,062174937
	Greece	36	,46223344	,799932305	,133322051
rod	Turkey	119	,01520215	,006206258	,000568927
	Greece	35	,00475103	,006811935	,001151427
nim	Turkey	107	4,9368048	,94404477	,09126425
	Greece	61	2,7177102	,78874726	,10098874
nnim	Turkey	119	5,36921025	1,759457562	,161289210
	Greece	59	3,51002893	2,046974046	,266493322
lr	Turkey	111	,63714932	,070976222	,006736765
	Greece	60	,66966467	,102915492	,013286333
ltd	Turkey	98	,97901105	,175178170	,017695667
	Greece	61	,78576579	,146539550	,018762467
pea	Turkey	94	,01351888	,006248429	,000644476
	Greece	37	,01440889	,007997453	,001314773
dta	Turkey	110	,65622131	,107447770	,010244743
	Greece	59	,84381290	,073471676	,009565197
etd	Turkey	110	,16743089	,039020691	,003720477
	Greece	54	,09312359	,045953426	,006253469
tle	Turkey	120	8,4740378	1,95981972	,17890624
	Greece	35	10,3966623	2,80663235	,47440745

**Table 2: Independent Samples Test**

Independent Samples Test						
		Levene's Test for Equality of Variances		t-test for Equality of Means		
		F	Sig.	t	df	Sig. (2-tailed)
eff	Equal variances assumed	5,855	,017	-3,881	162	,000
	Equal variances not assumed			-3,495	64,083	,001
roe	Equal variances assumed	10,440	,002	6,146	149	,000
	Equal variances not assumed			4,883	40,006	,000

<b>roa</b>	Equal variances assumed	,207	,650	8,854	153	,000
	Equal variances not assumed			8,105	51,162	,000
<b>rod</b>	Equal variances assumed	,027	,869	8,564	152	,000
	Equal variances not assumed			8,138	51,740	,000
<b>nim</b>	Equal variances assumed	5,086	,025	15,523	166	,000
	Equal variances not assumed			16,303	143,750	,000
<b>nnim</b>	Equal variances assumed	,335	,563	6,281	176	,000
	Equal variances not assumed			5,968	101,574	,000
<b>lr</b>	Equal variances assumed	7,859	,006	-2,429	169	,016
	Equal variances not assumed			-2,183	90,045	,032
<b>ltd</b>	Equal variances assumed	3,779	,054	7,189	157	,000
	Equal variances not assumed			7,493	143,825	,000
<b>pea</b>	Equal variances assumed	3,674	,057	-,676	129	,500
	Equal variances not assumed			-,608	54,168	,546
<b>dta</b>	Equal variances assumed	8,531	,004	-11,984	167	,000
	Equal variances not assumed			-13,384	157,269	,000
<b>etd</b>	Equal variances assumed	,675	,412	10,798	162	,000
	Equal variances not assumed			10,212	91,581	,000
<b>tle</b>	Equal variances assumed	11,126	,001	-4,598	153	,000
	Equal variances not assumed			-3,792	44,103	,000

## Estimation of Potential GDP and Output Gap for Romania

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**Abstract:** *Potential GDP is an important indicator for a country's economy. This indicator shows at which level of production is the economy. It indicate if the economy produce at its potential level or if the economy produce under its potential level. The Output Gap is the percentage difference between actual and potential output. Its values can influence the decision makers in a country. The purpose of this paper is to estimate potential GDP and Output Gap for Romania. The study period is 1995-2017. There are many methods for estimating the potential GDP and Output Gap. Some of them are simpler, some more complex. In this study it is used the univariate filter method for estimating potential GDP and Output Gap. The Hodrick and Prescott univariate model it is used. The results indicate that in more than half of the studied period our country has been below its potential level. Two periods of negative output gap, between 1998-2004 and 2010-2015, can be observed. In the studied period the negative value of output gap prevailed. The Output Gap was negative for 13 years in our country, wich means that actual output exceeded potential output. The negative values of the Output Gap for Romania can be justified by the unfavorable economic conditions.*

### Introduction

The estimation of potential GDP and Output Gap represent an important stage for the study of economic level of a country. These indicators show if the economy produce at its potential level or if the economy produce under its potential level.

The state can act according to the level of potential gross domestic product. The economic decision-makers of a state can take measures depending on the value of the potential gross domestic product and output gap. This indicator can provide information about a state's economy, on what level it is and where it should be. There are different methods of estimating the potential gross domestic product. The purpose of this paper is to estimate potential GDP and Output Gap for Romania. The studied period is 1995-2017. To estimate potential GDP and Output Gap, the Hodrick and Prescott univariate model is used. Using this method and the Eviews program, the potential gross domestic product is obtained. Output Gap is obtained by the formula. Potential Gross Domestic Product and Real Gross Domestic Product are used.

During the period studied in Romania, many economic changes took place. Both internal economic conditions and external economic conditions have influenced the development of the Romanian economy. Romania is one of the countries that has tried to meet the conditions for joining the European Union for many years. On 1st January 2007 Romania becomes a member of the EU. Romania's economic development is influenced both by

membership of the European Union and by the global economic crisis. The interest in studying the output gap and potential GDP in Romania comes from the frequent changes that took place in our country between 1995-2017. The estimation of the potential GDP may reflect these changes.

Considering that the output gap and potential output are indicators monitored and calculated by international organizations such as European Commission, The International Monetary Fund and OECD it is important to analyze where Romania is from the point of view of these indicators.

In the literature used for bibliographic references many definitions of the potential GDP and Output Gap can be found. Some of these definitions are used below to understand easily the terms and the concepts.

The potential Gross Domestic Product is defined by as "the volume of production that an economy can achieve when using the resources it has at normal rates," and the GDP gap is "the difference between the potential output of an economy and the actual production that exists at a certain moment. " [7]

The potential gross domestic product is also define as "the real GDP level that can be produced by an economy without generating inflationary pressures", and the GDP Gap is the "percentage difference between real GDP and potential GDP, being a synthetic aggregate indicator of inflationary pressures in the economy. "[11]



Some authors[1] define potential GDP as “a measure of the economy’s productive capacity, reflecting “full employment” GDP, the level of GDP attainable when the economy is operating at a high rate of resource use”.

### Literature review

The literature is rich about potential GDP and Output Gap notions. There are studies describing the potential GDP estimation methodologies. The studies used as a reference for analysis are mentioned and described below.

There are studies that The studies describe the methods for calculating the potential gross domestic product. [13], [8], [9], [2] [13] use and compare the following methods: the "split time trand" method, the HP filter method and the production function approach. The authors consider that the best results for the estimation of potential GDP and output gap are obtained by the production function method.

[17] performs a study in which the SVAR methodology of output gap estimation is presented. This method is applied to the euro area countries. Given the uncertainty of output gap, the authors argue that, on the one hand, the SVAR estimation method dominates the HP filter, and on the other hand the combination of estimation methods can lead to better results.

The methods for estimation the Potential Gross Domestic Product are categorized differently in the literature. [1] classifies these methods in: methods based on statistical techniques and methods based on theoretical models. The statistics methods are based on econometric filtering techniques. The methods based on theoretical models are based on the calculation of the production function.

[14] performs a study that synthesizes the various methods of estimating the potential gross domestic product. He considers that: "filtering methods have the additional advantage that they allow potential

output growth to change smoothly through time. This ability to react gradually to new information allows filtering methods to avoid the systematic errors to which time trend methods are prone."

[6] synthesizes the methodology for calculating the potential gross domestic product production function. In the same study, there are some disadvantages to the estimation of potential production using the Hodrick Prescott filter. The authors consider that this technique ignores the structure underlying the economic system and does not allow other relevant information to be obtained in addition to the ones included. To make a trend decomposition on a given date, the HP filter needs information on the behavior of the series both at an earlier date and at a future date.

[9] describe the methodology for calculating the potential gross domestic product using the Cobb Douglas production function, used by the European Commission. The paper describes the necessary factors for calculating the production function and how it is used.

[1] made an analysis of Hungary's potential output. In this study are presented many interpretations of the potential GDP and the techniques for estimating it.

[8] describes the methodology for estimating potential output and the results of IMF research. The research is made for industrialized countries, developing countries and countries in transitions.

[13] explains the methodology of estimating potential output in OECD countries. They conclude that the best way to estimate potential output is to use the production function.

The table below summarizes some studies in which potential GDP is estimated in different countries. The table summarizes the purpose of the paper, the methods used and some results.

**TABLE 1.** Empirical studies for estimating potential GDP

Author	Purpose	Methodology	Results	Year
Mian Abdullah Tahir	To estimate Output Gap and Potential Output for Paksitan	State–Space model, Wavelet filter and Structural VAR model	Output gap varies depending on the applied method, but the general direction of the output gap is analogous	2014
Altar M.,	To estimate potential	The production	An average annual growth rate of	2010

Necula C., Bobeica G.	output and Output Gap for Romanian economy in the period 1998-2008	function structural method and statistical de-trending method	the potential output equal to 5.8% on a descending slope, due to the adverse developments in the macroeconomic context	
Horn G., Logeay C., Tober S.	To estimate potential GDP for Germany	Production Function, Kalaman Filter for estimating NAIRU	The potential GDP depends on the measure to which NAIRU and total potential productivity factor are modeled	2007
Prudence Serju	To estimate Potential Output for Jamaica	HP and Band-Pass filters, linear time trend and the SVAR model	The measure of output gap from the SVAR model provides a more robust and reliable predictor for inflation	2006
Njuguna A. E., Karingi S. N., Kimanyi M. S.	To measure Potential Output and the Output Gap for Kenya	Alternative statistical technique and structural methods	“Estimation of potential output and output gap using these techniques shows varied results. The estimated potential output growth using different methods gave a range of .2.9 to 2.4 percent for 2000 and a range of .0.8 to 4.6 for 2001.”	2005
Geraldine Slevin	To estimate potential output for Ireland	Statistical trend methods and a Cobb Douglas production function	A stronger relationship between the output gap and “domestically generated” inflation	2001
Botas, S., C.R. Marques and P.D. Neves	To estimate potential output for the portuguese economy	Production function and Hodrick Prescott Filter	The Portuguese economy grew more in 1958-1973 than in 1974- 1998. The results obtained by the three methods do not differ greatly	1998
DeSerres A., Guay A., St- Amant, P.	To estimate potential gross domestic product for the Mexican economy	Structural VAR model	The variations in current and potential output have been generated by global oil shocks	1995
Torres Raymond, Martin J.P.	“- to explain the method used by the OECD to derive a measure of potential output - to illustrate some of the possible effects of faster productivity and potential output growth on macroeconomic performance”	Estimates for the NAWRU	The ratio between actual and potential output of the business sector is positively correlated with price inflation. The gap is only weakly correlated with the growth of import penetration	1989

For Romania can be mentioned the studies made by [11] and [1].

[11] are estimating the potential GDP for Romania using production function, filters with unobservable components and structural vector autoregressions.

[1] estimates the potential output and output Gap for Romania using production function and statistical de-trending methods.

## Data and Methodology

There are numerous studies describing the methodology of estimating potential output and output gap. There are several methods to estimate these variables. The method used in this study is the Hodrick-Prescott filter. The HP filter method does not involve knowing many variables. This makes it easy to use.

Although the HP filter is one of the most commonly used methods of estimating potential GDP, there are opinions that say it should not be used. [15]

consider that” (1) The HP filter produces series with spurious dynamic relationships that have no basis in the underlying data-generating process. (2) Filtered values at the end of the sample are very different from those in the middle, and are also characterized by spurious dynamics. (3) A statistic formalization of the problem typically produces values for the smoothing parameter, largely in line with common practice, e.g., a value for  $\lambda$  far below 1600 for quarterly data.”

Also, there are opinions suggesting the use of the HP filter. [4] consider that HP filter “it is simple, transparent, and can be applied to any country where GDP data exist”.

[13] consider that HP filter: “imposes the property that the output gaps are symmetric over the full estimation period (i.e. they sum to zero), even if the economy is not at the same point in the cycle at the beginning and the end of the period”.

[5] consider that HP filter has a disadvantage: “the level of potential output is more affected by variations in actual output at the beginning and at the end of the period than in the rest of the period. This is because the HP filter for any given point uses observations both backwards and forward in time in order to estimate potential output.”

“The Hodrick-Prescott filter aims to extract the “growth” and “cycle” component of a time series by minimizing the combination of the gap between actual output and trend output and the rate of change in trend output for the entire sample of observations. [2]

The estimation of potential GDP and Output Gap for Romania was made using annual data between 1995 and 2017. Data were taken from International Monetary Fund World Economic Outlook April 2018 and were seasonally adjusted using Demetra. By applying the HP filter in Eviews we get the potential GDP and the output gap. For annual data it is recommended to use lambda 100.

There are many recommendations in the literature about the value of lambda.[18]

Some authors recommend a value of 400 for lambda, others recommends a value equal to 10 for lambda, while others recommends lambda 100.[18]

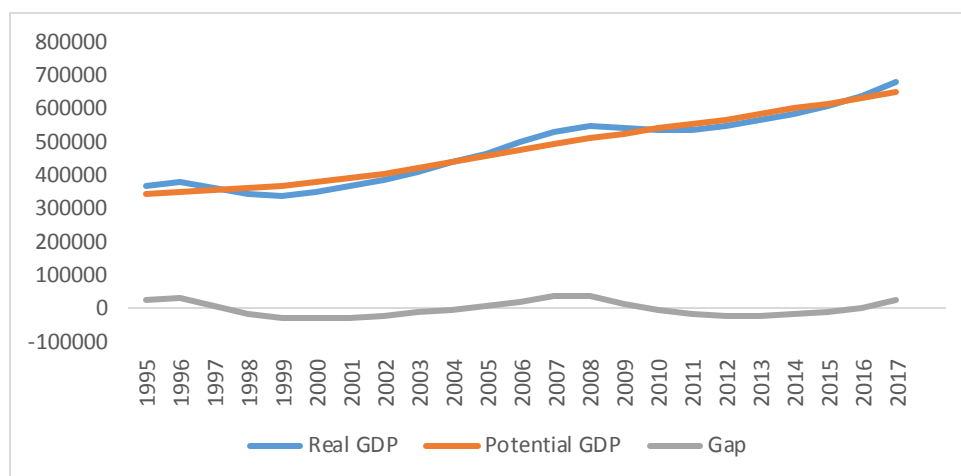
## Results

The results obtained using the method described above are outlined below. The table summarizes the results obtained, and the figure contains the graphical representation of the real GDP, the potential GDP and the GAP.

**TABLE 2.** Results of HP filter

Year	Real GDP	Potential GDP	Gap
1995	370636.2	343723.2	26913.1
1996	380333.5	349401.6	30931.8
1997	363886.6	355349.2	8537.4
1998	344745.9	362144.4	-17398.4
1999	340640.1	370450.9	-29810.8
2000	350618.8	380758.7	-30139.9
2001	369004.2	393259.5	-24255.3
2002	388497.3	407843.6	-19346.3
2003	412904.3	424158.7	-11254.4
2004	440805.9	441659.3	-853.4
2005	466850.5	459687.0	7163.5
2006	500405.8	477575.2	22830.6
2007	533395.2	494728.6	38666.7
2008	547957.3	510780.4	37176.8
2009	542751.9	525750.6	17001.3
2010	533964.9	540030.7	-6065.7
2011	537498.4	554182.3	-16683.9
2012	549047.7	568706.4	-19658.7
2013	565021.6	583937.2	-18915.5
2014	584295.8	600012.1	-15716.4
2015	606506.6	616879.6	-10373.0
2016	638452.6	634331.0	4121.6
2017	679182.6	652053.6	27129.0

*Source: Author’s calculation*

**FIGURE 1.** Graphical representation of HP filter results

Author's calculation

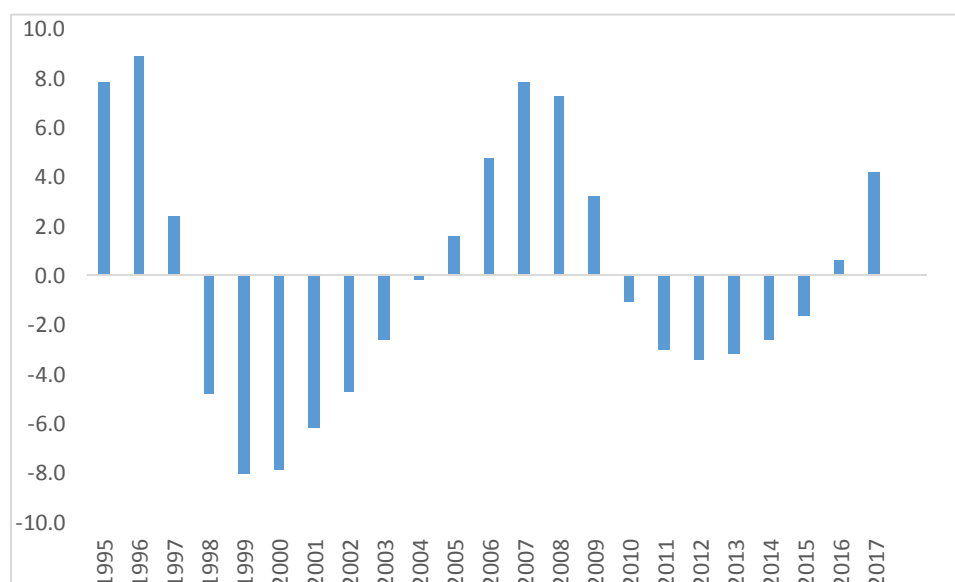
After we got the results, using Eviews we calculated the Output GAP using the formula:  

$$(\text{GDP}_{\text{actual}} - \text{GDP}_{\text{potential}}) / \text{GDP}_{\text{potential}} * 100$$

According to our results, our country had a negative output gap in more than half of the studied period. In these periods, Romania has been under

production potential. Two periods of negative output gap between 1998-2004 and 2010-2015 can be observed. The values of the second period can be justified by the unfavorable economic conditions caused by the economic crisis.

The graph below illustrates the Output GAP results.

**FIGURE 2.** Graphical representation of Output GAP

Author's calculation

## Conclusions

Potential GDP is an important indicator. There are numerous studies and methods for estimating potential GDP.

It is important to estimate the potential GDP for a country. The potential GDP is not an observable variable and therefore must be calculated.

The present paper estimates potential GDP using the Hodrick and Prescott univariate filter method.

HP filter is a frequent method for estimating potential GDP. In the literature the HP filter method is described as a simple and transparent method.

The obtained results indicate that most of the time, in our country, there was less than the production capacity.

### Further research

Starting with the estimation of potential GDP for Romania it can be calculated the structural deficit.

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## Rethinking Rationality in Price Determination: A Study of the Process of Price Anchoring in the Unorganized Sector of India

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**Abstract:** *This paper studies the practices of price-anchoring in the unorganized sector in India through the following research questions: How do factors such as nature of markets, patterns of ownership, footfall and product differentiation have an impact on the effects of price-anchoring in the everyday purchase? How does the autonomy of the seller to anchor prices gets impacted by the agency of the customer? Behavioural Economics has postulated that people tend to have cognitive biases in evaluating satisfactory value of a purchase according to their rationality [1]. In the unorganized sector, this rationality is dynamic and interactive. Based on vast data collected from the field, this paper explores how subjective experiences of the seller and the consumer together constitute differential practices in price-anchoring. The attempt is to explore the sociological underpinnings of rationality in price-anchoring in the everyday.*

### Introduction

Human decision making is subject to psychological biases. While making everyday decisions about what to purchase and for how much, psychological biases play a huge role in determining economic actions. The field of Behavioral Economics studies these psychological biases that impact decision making and cause individuals to be driven by actions that systematically deviate from rationality. The price of a product gets interpreted through various lenses. These explanations go beyond the simplistic indicators of affordability and utility value in sales. As the global trends are moving towards organized retail outlets and big chains that have fixed price structures, a large part of the developing world still finds its consumer base in the unorganized sector and street markets. Here, price determination and decision-making that go with everyday purchases reflect psychological biases rooted in certain other forms of economic and social structures. An important process, that often gets neglected in studies of decision-making based on price indicators is the act of negotiations. The everyday dialogue between the buyer and the seller offers insights into psychological biases related to decision-making regarding regular purchases. The pioneers in the field of Behavioral Economics, Tversky and Kahneman in their work over judgements under uncertainty have brought forth their analysis for price adjustment and anchoring.

“Anchoring is a particular form of priming effect whereby initial exposure to a number serves as a

reference point and influences subsequent judgments about value. The process usually occurs without our awareness.” It reflects a cognitive bias that describes the common human tendency to rely too heavily on the first piece of information offered (the “anchor”) when making decisions [2]. Scholarly work around adjustments and anchoring has grown in multiple directions which reveal the patterns of decision-making and recurrence of psychological biases. The effects of anchoring that have been described by such studies point to three frequent occurrences.

First, ‘*insufficient adjustment*’ which reveals how individuals are unable to arrive at accurate estimates in price if they are not given a starting value to work with. “In many situations, people make estimations by starting from an initial value that is adjusted to yield the final answer. The initial value or starting point may be suggested by the formulation of a problem, or it may be the result of a partial computation. In either case, adjustments are typically insufficient. That is, different starting points yield different estimates, which are biased towards the initial values” [2]. Human subjects engage in incomplete computations if different quantities and percentages of products are introduced to them. It becomes difficult for the consumers to come up with the value of the product that they are trying to purchase. Therefore, price anchoring through insufficient adjustment points to the bias-induced limitations that subjects face in taking a rational decision for an economic action. What we will draw upon from this postulate for the purpose of our study is the process through which an attempt towards ad-

justment is made in the negotiation and dialogue that takes place between the buyer and the seller. This attempt towards arriving at a value that is satisfactory for the consumer reveals patterns and trends in the marketplace that sellers adopt to anchor price for their products differently. Buyers question the seller's price-anchor based on assumptions and predictions acquired by entering a daily mode of transaction in unorganized sector markets. Sellers, on the other hand, knowing the habits of the customer to bargain, end up accounting for various possibilities that reflect biases in information, insight and rationality in decision-making.

Second, as an important effect of price anchoring, is '*biases in the evaluation of conjunctive and disjunctive events*'. Human subjects end up committing a fallacy where they judge the probability of a conjunction or two events to be more than that of a single event in a direct comparison [2]. This is subject to analysis not just in a consumer's perception of the number of shops visibly selling the same product or a likelihood of them selling similar products, but also in their understanding of bundling and bulk-purchase offers, discounted sales for product combinations and so on. The negotiations that the buyers end up having with the sellers reflects a departure from accurate estimation of the value of the product.

Third, '*anchoring in the assessment of subjective probability distributions*' is an important effect stemming from biases about the belief of the subjects about certain quantities. The degree of calibration that any consumer is able to make about the value of a product is dependent on the procedure for elicitation [2]. This is observable in how the art of questioning is used by the consumer as well as the seller that reveals certain pieces of information that can make or disrupt the process of accurate estimation and calibration for a value. All of this is linked to how quantities are quoted, perceived and characterized in order to take advantage of the belief of the consumer. What gets interpreted as a better deal is as much a reflection of personal belief about quantities and value as much as it is about the spontaneous retrieval of previous knowledge and specific information about the market and the product.

Thus, anchoring effect is pervasive and impacts us in our daily life. When JC Penney, the American Department store chain stopped offering discounts through coupons and switched to an everyday low-price strategy, its stores saw a 25% drop in sales. This significant drop in sales occurred even though the actual cost the consumer paid after removing the

discounts was close to the same as after discounting. Consumers were, however, anchored to the earlier higher price and viewed the discount as getting a favorable deal for themselves. When this anchor was removed on switching to everyday low pricing, consumers couldn't decide if they were buying the product at a good price or not. Studies show how initial valuations of familiar products are strongly influenced by arbitrary anchors such as even an individual's social security number [3]. Hence, from a price setter's perspective anchoring becomes important as it could influence both the final selling price they receive and the value of the product that is perceived by the customer.

This paper examines the effects of anchoring in the context of the unorganized sector in India. The National Commission for Enterprises in the Unorganized Sector (NCEUS) defines the Unorganized sector in the following manner - "The unorganized sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis with less than ten total workers". Because of the flow of money through unaccounted means, cash-dealings and constantly changing supply chains, much of the unorganized sector markets hardly have formal accounting and fixed marketing strategies. These informal markets see sporadic stalls, impermanent foot-fall and irregular shoppers, sometimes geared for one-time purchase. The research in the context of the unorganized sector in India deals more with labour standards and there is a need to step into the arena of decision-making science to understand the role of biases in processes of price-determination and experience of purchase. Our study, therefore, aims to draw cross-cultural insights over price-anchoring by tapping into markets in rural as well as urban areas in India. Our fieldwork is uniquely positioned to map the effects of a landmark events like demonetization which had a huge impact on the availability of products in the market. Through this paper, therefore, our aim is to unravel how price anchoring impacts decision making by carefully observing and documenting these patterns in the field on an everyday basis. We explore subjective experiences that consumers and sellers together constitute while anchoring prices and purchasing products.

Anchoring requires a predetermined benchmark or price quote which is offered to a consumer for a particular product. The price quote is negotiated by the buyer through a strategic dialogue. This 'sense'

of dialogue is the human experience that questions the indicators of information flow, knowledge and the interplay of instinct and gut while purchasing a commodity. It involves strategic perception of movement, of space in which the market is organized, of sociality with other shoppers and pedestrians, of attraction through sensory experiences of sound, congestion, smell, and visual cues. What importance does anchoring have in trends pertaining to daily purchases? What strategies do the sellers use to successfully convince the customer of a particular price anchor? How do the customers perceive such quotes and what do they do to bring the price down and achieve a mutually benefitting deal? For this, we categorized our markets based on the interaction of nature of products, forms of ownership, customer-base and regional variation. We maintained a descriptive matrix for each and every observation and interview.

### 1. The Shifts in Method

Our attempt with this paper is to analyze ‘rationality’ in price determination by making a deliberate departure from the methodology that Behavioural Economics as a discipline offers to the study of price anchoring. Drawing from Roberta Muramatsu, the standard discounted utility model is based on two unrealistic assumptions. “The assumptions of stationary preferences and independence yield a positive consequence to the task of modelling. It suggests that individual preferences are time invariant, i.e., the weight an individual give to her current and future utilities do not change. Yet two problematic consequences arise – these assumptions imply that all the complex psychology of intertemporal choice is reduced to a well-behaved discount factor and individual preferences are time-independent. Despite the analytical tractability that the foregoing assumptions yield, there is much empirical evidence suggesting that in the actual world individual’s preference are not stable over time and are independent from past, current and future consumption” [4]. Any qualitative research in this regard would explore further what factors affect such intertemporal choices. How does one assess a recurrent pattern of decision-making in purchase based on already acquired information about a product? Is utility the only way to understand how a consumer would negotiate with a seller? Do we need to expand our matrix of factors to better assess what gives sellers the room to anchor a price in differential ways? Through this research, therefore, we build a case for descriptive study that documents the interaction that takes place between the seller and the consumer.

The attempt is to bring ‘insights from the ground’ by coherently analyzing the voices of these two stakeholders in the process of price-anchoring. We are arguing for an ethnographic research that brings reflexivity in the role of a researcher in how s/he constitutes and modifies the field. The field itself has been envisioned as a shifting category of study, that was given a sense of fixity and ‘present-ness’ in the writing of the anthropologist.

Our attempt to conduct such qualitative analysis raised a few doubts. Firstly, since we were looking at markets in their everyday functioning, how does one delimit a field which moves and re-shapes itself constantly? Does not any physical delimitation of the field create an artificially and imposed segregation of patterns where none might exist? And whose perspective does one adopt to even study such patterns, for perceptual insights might vary in intensity according to the observer? And lastly, since decision-making can only be described from a vantage point, how does the researcher locate this point?

This would mean that one can capture only a glimpse of the various thinking-patterns in the field as they merge and diverge, and not the field in its entirety. In our study, we attempt to be reflexive enough to recognize this inherent limitation of the study. Our modality of engagement with the field was thus participant observation method with varying degrees of participation and observation. We observed the subjects ourselves as we traversed the street while interviewing them with a clear intent to bring their voices and narratives about decision-making to the forefront. To participate in the unorganized sector and study the phenomenon of anchoring also meant to be a part of a crowd of buyers and sellers, tourists, food seekers and passer-byes.

### 2. Opening Disciplinary Envelopes: The Rationale Behind Expanding Factor-Analysis

Economic Sociology has moved between two oscillating approaches – one where systematic critique of the economic model of the structure of action has been posited and the other where external variables have been introduced in analysis to further the argument of ‘embeddedness’ [5]. Our attempt is to move significant inches from these two extremes to look at how individuals make decisions when a variety of influences are acting upon their rationality in their everyday. It is insufficient to say that the economic action is far removed from the cultural factors or that the economy is embedded in the social realm.

Rationality gets constituted and reconstituted through a number of factors that take precedence or witness rejection when uniquely positioned in the everyday. Through this exploration, we aim to explore how an economic action gets manifested through a complex web of meaning that individuals deploy in order to engage with their human experience of utility and value in transactions.

Markets operate in differential circumstances on an everyday basis. There is substantial disciplinary evidence suggesting that anchoring effect is rooted in basic decision-making processes. However, the complexity with which it gets formed, displayed and negotiated in practice depends on a variety of other factors. Therefore, this paper approaches this complexity by building insights on how the practice of price anchoring reveals itself through differences in nature of markets, products, footfall, customers, ownership and encounters and dialogues over selling price. It also brings to the forefront certain micro-aspects around the condition of the economy such as the period of demonetization. In this section, we discuss some of the factors that have been picked for observations in the field. These factors make every generalized understanding of economic action subjective and unique.

First, nature of markets. The study will look at how the frequency of set-up of the market whether it is daily, weekly or festival driven and location of the market impacts the way in which the seller decides to anchor the price. One of the striking aspects of unorganized sector markets is that the spatial boundaries of the markets are to a large extent flexible. Tables, bamboo, tarpaulin sheds and temporary bulbs and electricity arrangements give the length and breadth of the market a flexible character. There is a designated starting point but no fixed end point. The markets expand from the nooks and corners of the footpath into alleys and roadside extensions. Stalls are often set up differently each time. Weekly markets depend on various techniques of grabbing prime location including early arrival, unionization or bidding processes, giving chances for rotation, product-segregated arrangements and most often, differential rent prices and informal provisions for fixing the place of the stall. Daily markets, on the other hand, show some stability in stall location leading to familiar set-ups, sellers and spatial arrangement of a market.

Second, nature of products. This study will look at how the nature of products affects the way in which price anchoring plays out in the everyday. Whether

the item is of daily consumption, perishable or non-perishable, durable or one-time use – the frequency of purchase of that product also impacts the way in which its price is anchored, perceived and negotiated. From apparel to mobile accessories to utensils to fruits and vegetables, anchoring depends on how readily the product is available in the market, how often does the consumer buy it and what factors is its transportation, availability and supply dependent on.

Third, nature of stalls or shops. The size of the stall, its placement, the lighting, utilization of space in arrangement of products and suitable display affects the way in which price anchoring is observed. The way in which products are categorized or assorted to maximize the choice of the customer through display has the potential to change the decision-making of the customer. The visual cues of lighting, labelling through placards and temporary cardboard pieces spelling out the deal of the day can affect how customers assume, perceive and estimate the quality of the products inside the stall or the shop. This estimation of quality and utility makes them accept, negotiate or reject the effect of anchoring and related biases.

Fourth, nature of ownership. The ownership structure of any stall has a bearing on price anchoring effect and subsequent negotiations by the customers around the price. This study looks at the differential trends in price anchoring where only one seller – the sole proprietor is dealing with the customer, with one main seller and a helper or where partners have been given equal authority to peg the rates of products based on their reading of the customers and experience of their bargaining habits. Stalls which are extensions to proper shops seem to have an employee model which affects the way in which price is quoted and perceived by the customer. The purpose with which they give out the first piece of information to the customer impacts the decisions of the customer in a major way. Anchoring effect here depends heavily on how well the shopper is aware of certain latent purposes of marketing, packaging and discounts in unorganized sector markets.

Fifth, nature of customers and cumulative footfall at the stalls. The way in which the seller reads and provides the first price quote to influence the knowledge of the customer about the product and the market affects price anchoring. This is true especially where the unorganized sector markets attract tourists, occasional shoppers, college students, office-goers, homemakers and regular customers, each

offering a different trend in how they process the price of the product and estimate its utility and value. The confidence with which the customer approaches the stall, their language, their dressing and their ability to hunt for appropriate products by themselves – all are read by the seller well before s/he gives out the price. The bias stemming from repeated interactions and encounters with such markets can make a buyer get used to the sellers' decision-making and accordingly alter the magnitude of anchoring effect

This paper attempts to unlock these factors through qualitative descriptions and studies the way in which they affect anchoring and the decision-making stemming from first-piece of information. The aim is to push the envelope and widen the analysis around price-anchoring by looking at how these factors through the everyday encounters and transactions in marketplace have the potential to alter the decision-making of sellers and customers about their purchases. A sociological study of recurrent patterns around the above selected factors has the potential to be the starting point for separate analysis of such influences in the field of Behavioural Economics. The field evidence of such bearings can help establish the need for an in-depth exploration into these factors separately and the nature of biases they impact in decision-making around everyday purchases.

### **3. Price Anchoring in the Everyday Purchases: Key Observations**

Sarojini Naidu Shak Market in Surat, Gujarat is a daily market for vegetables. There is homogeneity in what gets sold there with only a few stalls which sell rare or off-season vegetables. The footfall in such markets remains for more than twelve hours. Setting up of such markets starts around the time when the public begins to come out on the road in the morning, that is 8 am and goes all the way to 9 or 10 pm in the night. Prices go up and down depending upon when a consumer goes to purchase and the quality of vegetables that are available at that time of the day. For example, when most of the fresh, ripe vegetables are on display at the stall, usually during mornings and afternoon, the price that is quoted by the seller in the first go is fairly high. However, when one goes to the market right at the end of the day post dinner time, the sellers are normally impatient and want to empty their stall and tend to quote any arbitrary price from an already set range and give off what they have. When a few sellers

were interviewed on whether their price range is fixed, they gave a couple of unique responses.

Sonu Bhai has a thirty-five square feet stall on a raised platform on the starting edge of the market in Palanpur Road. The produce placement is usual with fresh vegetables on outer display to attract customers. There are no boards or other materials since the sales depend on everyday supply of perishable items and the products keep changing. Only a few vegetables like the potatoes remain consistent on his stall. He gives a slight discount if someone purchases in higher volumes. The most interesting part about what Sonu Bhai revealed as his rationale behind keeping his price quote of Rs. 15 per kilogram in the peak hours was 20 per cent wastage of potatoes by the end of the day. He believes that his no bargain policy works well for him because the customers realize, accept and like the quality of what he sells. His stall placement at the entrance of the market helps him capitalize on those who are coming in a hurry and do not want to necessarily explore other options in the market. In order to beat the problem of currency notes and change, he has an option of Paytm for customers who prefer to have cashless transactions. This also gave him a benefit during demonetization where everybody was struggling to get petty cash for their purchase. He has his own place in the mandi and maintains good relations with the local administrative bodies which govern the market and pays Rs. 10 to the local municipal corporation every day to keep his stall uninterrupted.

Another seller, Mahavir Bhai who has a similar stall as Sonu Bhai, however, sells ginger, garlic and other spices along with some dry Gujarati snack "Farsan". He also maintains a no bargain policy but is able to quote a higher amount and maintain leverage in the market as far as price setting goes. This is because what he sells is not something that consumers buy on an everyday basis. Spices and dry snacks are bought either weekly or once in ten days. Some households buy these only twice a month. So, his customers are mostly different throughout the month with sparse regularity. If we compare the two cases, since potato is used in heavy quantities and is a primary vegetable as far daily usage is concerned, the scope of maneuvering through the price is limited despite quality. The customers easily catch if the seller arbitrarily quotes a price that is not in tandem with the accepted range of market price followed on the previous day. On the other hand, spices which are not as frequently bought still manage to get some flexibility in the price quote because the last price



information in the customer's mind can be countered easily by pegging reasons such as seasonal shifts, affected supply, quality of product, rare availability or exclusivity of sale. It is easier to destabilize the anchoring effect by altering the first relay of information. We see that even though customers vaguely remember the last price at which they bought the product some days ago, the fact that there is a differential starting value which is characterized and supplemented with rationale tends to confuse the customer and leads to insufficient adjustments. Here, the customer, despite having a starting value to work with ends up making decisions that are based on inaccurately estimated price. Mostly, people do not even attempt to bargain as much because they do not know what price to suggest to the seller from their end. They apply safe tricks of lowering the price by an arbitrary number of Rs. 5 with no basis. Or else, they present their end of the bargain by suggesting to give one or two complementary spices such as green chillies, mint in smaller amounts. Thus, the nature of product and the frequency of purchase along with placement and location of stall – all have some bearing on how the customer faces the anchoring effect.

Another unique seller, Brajinder Bhai offers some interesting insights into the range of variation of price and how the effect of such variation plays out on decision-making that his customers do. Brajinder Bhai's stall is one of the last ones in the Sarojini Naidu Shak market on Palanpur Road. He shares his stall with another seller Dinesh Bhai who sells mint, coriander and other related items. Brajinder Bhai sells only bananas throughout the year and keeps himself to it despite any change in circumstances. The sharing of the stall with Dinesh Bhai helps him reduce his daily cost and at the same time allows for collective visibility and sale of all the products together. Those who come to purchase mint and coriander end up looking at the bananas and think about purchasing them and vice versa. Even though the stall ownership is divided and both are equal partners, there is segregation of responsibility and profits stemming from the purchase of each of their products. Brajinder shouts out the quote for each purchase at Rs. 10 for 5 bananas. He says if the customer is not happy with his price, he adds one more banana. The most interesting part about his sale throughout the year is that profits on bananas vary exponentially throughout the season. The profitability range goes all the way up to 100 per cent. Since storage and supply around bananas has become fairly consistent and stable throughout the year, coastal regions tend to consume bananas in all

seasons. So, the demand is maintained through but his prices vary. Similarly, bananas have a huge variety and difference in tastes. Their size varies to an extent that a banana can be very thin – just a few centimeters or as thick and round as a small apple. The size of the banana depends heavily on the region where it is growing. Therefore, it is easier to always quote a differential price according to the perceived quantity and play with the effect of 'anchoring in the assessment of subjective probability distributions'. If the rate of bananas is quoted according to dozens instead of kilogram, it makes it even easier for the seller to show how thick, ripe or long the bananas are – from which region are they coming and to also offer the promise of a good, unique taste.

This is also true and in an even bigger degree for mangoes. Mangoes on a different stall also vary according to their type and region. The size, taste and quality are so differential that it becomes hard for the customer to remember averages of each and try to attempt an accurate estimate. Customers tend to slip in evaluating the quantity in the most accurate manner to the cost price. This is what allows the sellers to maintain a variation of profitability all the way to 100 per cent. If somebody is being sold over the taste, then they end up purchasing a type of mango "Chausa" only 2 in quantity for Rs. 100 because they are as heavy as 500 gm each but those who have to purchase more in quantity sometimes settle for smaller sizes and type but with very little idea about how different their cost actually is to the seller. The more the variety in the market, the more customers tend to slip with their information and end up creating biases in their assessment of subjective probability distributions. The crucial difference in anchoring effect between a banana and a mango, however, is that mango is supremely seasonal and fluctuations are for a small period, as good as two days. Sales of banana, on the other hand, see a rough patch when there is a transition between seasons for almost about a month. The customers are used to operating on arbitrary prices but still around an acceptable range of affordability but if the prices move into extremes during a small transitional period, the sales go down for some time till the longer range gets established again in the market in the off-season. Subjectivity over perceived quantity varies so much in the cultural context, that the same product can be sold over number of culturally accepted quantities. For example, price quotes for lighter, leafy items range from the measurement of "gaanth" or bundles, hardly measured as much on the weighing machine. So, from per piece rate in

dozens to kilograms to bundles, the price of the product depends on how the quantity is being perceived by the customer and the seller. This is true for vegetables like cauliflower and fruits like pineapple which have thick skins or stems that reduces their potential usage. These perceived quantities are subjective enough to allow for arbitrary price quotes and further negotiations by the customer. Let us look at some other types of case studies which consolidate the overlapping effects of anchoring for the customer.

Ring Road Market in Surat is a daily market where heterogeneity and diversity in the nature of stalls and products is sprawling across the streets. Muhammad Chacha has 15 square feet of space to sell diaries and notebooks which he channelizes through a cart. There are diaries of previous years, big and small, ruled and unruled ones. He organizes his cart in a way that the more expensive products are towards the customer's side and the one's which are a little cheaper are towards the seller's side. Although there are variations in his selling price according to the size of the notebook, on an average, however, he quotes the price of Rs. 20 per piece. This, he says, is an anchored price with a higher margin, easily of 10 per cent because he takes it as a given that customers will bargain irrespective of where they come from and how much they can afford. "Bhav karna" which means to negotiate on price based on perceived value and utility of the product, according to Muhammad Chacha, is a stated norm in Surat. Nobody ever says yes to a certain price, picks the product and leaves. Every single customer bargains. Therefore, he keeps higher margins over and above his own estimated profit, somewhere between 5 to 10 per cent on high-cost and low-cost item respectively. This is the strategy Muhammad Chacha uses in order to maneuver through customer bargains. An interesting part about price anchoring here is the standards that are being used to peg a price are the ones that people are likely to encounter in proper non-branded stationery shops. Since a product like this is bought, on the go and sporadically, most customers have a set price in their minds about the lower and upper range in purchase of notebooks. Furthermore, the inflation trend in paper-based products is channelized by creating differentiations in design cover, nature of binding and other value additions like recycled or handmade paper rather than increasing the price for the basic notebook. Since a decade almost, in most markets in urban areas, a basic notebook used in school supplies costs Rs. 20. What makes this case unique is that products like diaries are anchored by playing to the larger

information base about the prices of such commodities. As a seller of a local stationery shop in Delhi put it aptly, "School and college students or youth in general are not as brand conscious about stationery, especially if they need notebooks or diaries to write for temporary purposes. They move to the next class or the next stage and do not retain any notebooks. Most of it is either discarded or goes for "raddi" or reuse/recycle purposes. Therefore, their preferences are minimal. The only place where stationery gets its high-end value is in office supply which is often bought through company contracts".

This case is starkly different from another seller who also on a 15 square feet cart sells jeans which is also sold in shops and is bought by the youth. It is, however, a product whose prices differ tremendously based on brand, design and other value-added features. This makes the seller utilize the flexibility in price range to his advantage and ends up demarcating the shop price against the street price by making it evident to the customer. He says, "This pair of jeans has a price tag of Rs. 1299/-. But I am offering the same at Rs. 350". It is interesting to see how he did not use the shop's price tag for anchoring but instead created a distinction which was so massive that the customer is unable to accurately estimate the cost of the product. Bizarre differences in the same product can destabilize the evaluation of the customer about the utility. This works to the advantage of the seller. When asked about the cost of the product to him, he did not give even a slightest of hint. It does happen, sometimes, that the kind of products, be it diaries or jeans are procured through a method which leads to an indeterminate cost. For instance, most of the unorganized sector sellers have back channels and relations with wholesale intermediaries or export house factories where some material gets rejected due to extremely minor defects. Local customers do not mind such defects, in fact are often unable to even find them. So, the discarded material for such export houses is sold at a minimal rate through informal channels and without the brand tag. The factor that takes the forefront in these cases, that of the diary as well as the jeans, is the nature of ownership of the stall and his ties with manufacturers and export houses. The key channel through which he procures and the nature of pre-requisite information that the customer has about the price range of these products allow the effects of anchors to be played out differently. In one case, the range and margin are determined by keeping the average shop price, whereas in the other, a substantial demarcation is made between the shop price and the street

price. The customer gets confused between losses and gains and is unable to assess whether s/he should pick quantities that makes the deal profitable or whether the risk is high in purchasing it independently. These are the 'biases in the evaluation of conjunctive and disjunctive events' and they play out due to factors that make the customers get confused about the cost, not knowing whether picking up more than one quantity of a product is a better deal or not. They also assess whether the deal that they are getting at this particular stall is a norm in the market or is particular to a seller based on his procurement channels. The way the deal is framed to them confuses them. Reference frames for probabilities often create a stir in people's minds [6]. Thus, most customers end up picking more than their first estimated quantity of bargain. In the shop where the diaries were being sold, the customer picked 6 notebooks for Rs. 110 with an 8 per cent bargaining rate, whereas in the jeans shop, two different customers picked 2 jeans trousers for Rs. 600 with a 14 per cent bargain rate. The costs to the seller were otherwise indeterminate and bundling quantities together can have a huge bearing on the estimate of value that the customer has for what s/he wishes to purchase. Choice enters the realm of confusion in a way that the standards of perceived utility exit any recognized framework of objective rationale.

Such trends are visible not just in markets that support heterogeneous and diverse products but also in daily use items such as fruits in a market that sells only fruits. The strategies that sellers adopt to remain profitable against the competition and relative standards of comparison in the market are fairly unique despite the challenges they post to everyday sales. Harshad Bhai sets up a 15 square feet cart under a bright red umbrella opposite Sardar Market in Surat. He sells "mosambi" or sweet lemon of one type and at a fixed margin of Rs. 10 per kg irrespective of the cost, season and quality of the product. Even when the rate goes as high as Rs. 70 per kg from Rs. 30 per kg, he does not increase or decrease margin in percentages, instead keeps it set in rupees. This is interesting because he believes in bargaining or "bhav karna". According to him, bargaining makes the customer more satisfied about the purchase and he accounts for the amount that customers are likely to bargain apart from his set margins. For instance, if the cost of one kg to him is Rs. 20, he'll quote a price of Rs. 40 so that even if the customers get it down to Rs. 30 as the final deal amount, he still retains his margin of Rs. 10 on per kg. He is aware that sweet lemon as a product is not something that household customers buy in huge quantities. At best, 2 kgs for even bigger families.

So, he tries to manage his quantities by being on a constant lookout for his customer base by connecting the roadside juice stands and shops or juice bars to the "mandi" or wholesale fruit channels. These customers purchase quantities in bulk, not less than 100 kgs. There he drops his margin to as low as Rs. 4. Even though Harshad Bhai is able to create his own space in the market by not fluctuating his price in percentages, he faces a huge challenge when the price of the fruit went up. There, he battles not only the decreased purchase by the customer from the standard one kg but he also has to reduce his margins accordingly. Price anchoring here is not just related to price sensitivity in the market, but also the nature of the product which polarizes the customer base significantly into those who pick it up in bulk and their cost against those who pick absolutely minimal quantities. There is hardly a middle-ground in such a space which compels most sellers like Harshad Bhai to switch to some other fruit in some pockets of the year to manage his sales.

But different sellers adopt different strategies to keep up their own profits in coordination with the price range of the market. Mohammad Bhai has a 15 square feet cart with an orange umbrella in the same place opposite Sardar Market in Surat. He sells pomegranate which he purchases on a cost weighed through total weight in the wholesale market. So, he gets it "katte ke bhaav" which is a set weight say 100 kg per stack. But the way he anchors his price is based on differentiation of size. His cart is divided into three separate halves with first part which is of small pomegranates sold at a rate as low as Rs. 50 per kg to the large ones which are anchored at Rs. 100 per kg. Some with middle sizes are kept in a separate corner. Even though he purchases it in mixed quantities according to total weight, this rate is his unique strategy to manage his margins over the product. To the consumer, it presents the challenge of not being able to accurately perceive quantities when presented against comparisons. Most of the deals in such cases are done through combinations and prices are managed according to that. A basket is prepared with, say 2 big pomegranates, 2 middle sized ones and some small ones in case the customer decides to bargain. Insufficient adjustment, bias in subjective probability distributions as well confusion in accurately determining the value in conjunctive events, that is, of combining two or more different sizes of pomegranate in one purchase – all are at play here because of deliberate and artificial product segregation by the seller.

An opposite trend was witnessed in the case of Pawan Bhai in the sale of Papayas. Papayas, like pomegranates are sold in full sizes. Except extra quantities are difficult to manage in the case of papayas. Pomegranates were managed by differentiating between umpteen sizes. But Papaya is often bought in whole piece and mostly close to the rounded-off figure. Pawan Bhai mentioned that if the customer wanted a papaya of 2 kgs then he is likely to get a papaya of 2kg and 200 gm in the same amount as 2 kgs. Since most of the sale is per piece, the price realization is better in small sizes as opposed to bigger ones as far as margins are concerned. There is no scope to mix and match quantities which compels sellers like Pawan Bhai to maintain their wholesale purchase also of smaller size papayas and as many as possible than going for hefty ones. This is different from the case of pomegranate where the margin on the larger piece was cumulatively more than the smaller one.

In commodities that are not driven as much by size but by availability of quality in the market, other factors play out in anchoring. Most of the strawberry sale is either in combination with other fruits, or largely driven through bigger retailers and/or mobile vendors. Whenever there is a stall with only a single product like strawberry there is a trend in ownership that we find. Most of the sellers are not proprietors but are instead employees of somebody big enough who is dealing in the market of niche product sale. That is why strawberries are kept in boxes in retail shops or are sold over traffic signals magnificently. Same is the case with Ajay Bhai (name changed) who gets paid Rs. 10000 per month to maintain that stall and has to sell a certain minimum agreed upon numbers to make it happen. He does not have a set pattern of entertaining bargain. He quotes a price of Rs. 100 for 3 boxes of 250 gm each but ends including 4 if the customer insists shooting the bargain rate to almost 24 per cent. Here, we see that the lack of ownership and the responsibility to constantly maintain profits and margins can lead to a drop down in the intensity of anchoring and further negotiations. There is hardly an incentive that Pawan Bhai has to go out of the way to book exponential earnings since he is getting a fixed salary.

Ownership as a factor in the unorganized sector reveals even more complex insights when the shop is bigger and closer to the size of a mini-showroom. In such a shop, there are salesmen, helpers and escorts who cater to the needs of the customers, systemize the warehouse or the godown, keep track of the stock and run errands for logistics. Here, the way

price-anchoring works is through layers. Even if the price quoted first is the same, multiple people have the authority and the inclination to help the customer adjust prices to maximize their utility. This is done based on the shopkeepers' reading of the customers. Such is the case in the famous Bombay Market, Sahara Darwaza in Surat. This is a market which only sells different types of sarees, a traditional Indian drape. The nature of footfall here is mixed, although the price range is kept keeping tourists and outsiders in mind. Gangour Sarees is a shop which keeps its best designs from each category on display. Some assistants stand outside the shop to lure the customers into coming and checking out their designs. Two extreme prices are quoted. One, Rs. 1500 for a saree which ends up getting sold for Rs. 1100 with a 27 per cent bargaining price and two, Rs. 120 for extremely lower-rungs, one-time wear sarees which are bought in bulk, usually, 100 as minimum quantity. It is interesting to note, how the negotiation in shops like the Gangour takes place. The customer tries to abruptly cut the price and quote almost half of the selling price first presented to him. It is only a gradual process that a settled price of Rs. 1100 is reached. For instance, the customer would say Rs. 700 and the seller would immediately say 'no' and talk about how Rs. 1200 is the minimum cost that he incurs on selling this saree even though the cost price is around Rs. 1000. When the customer almost threatens to leave without purchasing anything, the salesmen revert and start adjusting to the customer's demand. What is useful to analyze in such situations is that the rationale presented for cost price often differs from shop to shop but the trend of strong bargain and negotiations remain intact. For instance, Suhagan Sarees which is an 800 square feet shop keeps bridal wear on mannequins. Their bargaining rate is almost 64 per cent which means that the customer is not the only one adjusting to the price anchored by the seller but are also giving off their first quote for the seller to accordingly adjust. Such examples break the theoretical framework which puts the seller at obvious advantage to quote the first price and witness a bias. Here, the customers are not necessarily adjusting their price according to the seller but are also presenting a counter-anchor with their own first price quote. Both are sufficiently and insufficiently adjusting through conversations and rationale subject to the nature of customer. Some use rent of the shop and other costing mechanisms to convince, some give up through a quantity bias. Either way, the transactions are not as simplified and negotiations take place not just with the salesmen but also the owner of the shop. The buck passes from one person to another and several dia-



logues back and forth make the negotiation a contested territory instead of very clearly establishing the effect of a particular bias in price-anchoring. Both parties actively anchor, exercising their own agency through their own rationale.

In order to eliminate such disadvantages, some sellers have adopted strategies that do not let the customer engage in counter-anchoring. For example, Pooja Sarees manages to curtail the end-point to the bargain rate by initiating a 5 for Rs. 1000 scheme. This puts all the sarees belonging to a lower range on an equal pedestal and then the customer does not find the need to present a counter-anchor. The term “wholesale price” is often used in order to justify give it better characterization of this price to the tourists and customers coming from outside of Gujarat. If the customer wants to purchase something from such a shop, they normally look towards fitting to this framework of promotional strategy or otherwise they do not find it useful to enter the store. A shop called Yogi Textile in the New Bombay Market deploys a similar strategy and makes a clear distinction between a “retail purchase” and a “whole-sale purchase”. A wholesale purchase would be when a customer buys all the available sarees from a particular stacked category. A flat 30 per cent discount is given for retail purchase and 50 per cent is given on wholesale. Such a demarcation also amplifies the effect anchoring is supposed to have for the customer’s decision-making. The more description, the more confused the customer is to assess quantities and adjust the price accurately. Another shop, Sair Silks has started using the anchoring effect by putting tags which have the higher price crossed out and the new 50 percent discount price written below it. Here, verbal dialogue is minimized so that the customers do not present a counter-anchor and deal with the mentioned price tag as they deem fit. Salesmen, cashier or attendants, nobody, according to the nature of ownership have to cater to the customer’s demands. These are some ways in which the ownership factor is curtailed in order to reduce the customer’s ability to counter-anchor and maximize the effect of seller’s price anchoring.

Such dealings get tricky when the owner is unable to use anchoring due to the regular footfall and long-term customers. Regular customers are aware about the price and normally take advantage of the trust established for the quality of product. The seller also finds it difficult to quote a price that would tarnish their reputation and trust. But there is an expectation that the customer would also not bargain beyond capacity because of the established relation. Here,

the prices are kept more or less fixed but not with the rationale of a standard policy rather the trust or the regularity of the customer. We find this as a trend more with the rural markets than the urban. The population in the rural is contained and as the norm goes most of the people’s faces are familiar in the rural, especially if the dealings are frequent. The nature of markets - daily, weekly and festival – offer different insights from that of the urban. Let us look at the case of Jhunjhunu, Rajasthan.

Jhunjhunu as an area has a variety of unorganized sector markets strewn around the head administrative infrastructure of the district. Since most purchases are regular in the area, the sellers and buyers are aware about each other, often knowing their family histories or other trivia about their lives. There is ample time to stand and ask sometimes about the person, family’s well-being, education and cultural aspects of their lives. This complicates the matter as anchoring is a recognized and acknowledged affair instead of something that is hidden and has to be established through dialogue. The price is known, the margin is known and the decision to buy or sell depends more on the personal relations between two people than adjustments around price-anchoring bias.

For example, in the Mandawa Mor vegetable market, customers are aware about how much the seller will quote and acknowledge the difference in price readily. They know that the margin on the price changes as soon as the vegetables leave the mandi, the extended area around large farms where bulk purchases are made. As soon as the stock leaves the mandi and is put on the cart of the vendor, the price changes. The difference is of a recognized 40 per cent. All carts in the Mandawa Mor vegetable market sell at the same anchored price. The difference in sale accrues from the quality of product and the relationship, if any, that the customers share with a particular seller. In weekly markets, where more people from the remote parts of the villages tend to come and pick their weekly stock up in one go, the strategies shift slightly. The regular customers do not usually come and purchase in weekly markets because they know that the quote will be slightly higher in comparison the quality they are likely to get. The display strategy also accordingly shifts. For example, Dharmendrajee has a mobile cart which he uses to sell fruits. During weekly markets, he keeps multiple fruits but during weekdays he sticks to one, maximum two types of fruits. It is easier to talk to Dharmendrajee on a weekday, he has plenty of time and if in a good mood, manages to give 100 gm of



grapes more than usual. He mentions that in the weekly market it becomes difficult for him to man his cart since there is congestion and massively crowded space so he calls his nephew on weekends and gives him all the extra margin that he tends to make out of the weekly market. He also mentioned that he keeps the low-quality fruits at the top in order to minimize the theft cost. In case some people end up sneakily take extra fruits, it does not harm him as much because those are anyway the discarded variety in his mind. If the footfall is too much to handle, he gives a discretionary discount between 5 to 10 per cent and tries to relieve any troublesome customer as soon as possible in order to manage himself well.

Interestingly, Dharmendrajee's wife Anita and son Ashwini run a small 30 square feet shop of ration where grain, flour, pulses, spices and so on are kept. This shop tries to anchor prices based on value-added services that they give in order to make their sales and anchors acceptable to the customer. For example, the rates for buying full grain wheat and pulses is net-to-net, but if the customer wants to purchase powdered flour, spices etc, they tend to charge extra based on the customer's need of the quantity. Small equipment that helps in churning the grain is kept there. Normally, customers in rural areas do not prefer purchasing packaged material and at the same time like to see the material getting grinded in front of their eyes. This service allows the shopkeepers to keep a margin for value added services high and try and keep their price-anchor minimal on raw material. This helps in managing customer relations well at the same time leads to retention of the margin.

Another phenomenon that is usually seen in rural markets more than the urban is price-anchoring based on caricaturist approach to branding. For example, Wrapstick is a small food-takeaway stop located at the brink of the administrative headquarters in Jhunjhunu. The owners of the chain, the Aghwan brothers have said several times that they wanted to introduce modern concepts in rural areas and streamline the markets here. So Wrapstick has been created along the lines of big companies like KFC, McDonald's etc. They have their own visuals carved out of selfies and illustrations all over the shop. Everyone knows that the burgers and wraps that they make are supposed to cater to newly acquired tastes of the youth based on television advertisements and so on. So, the quality that they get at Wrapstick is not the same as what any of the bigger brands give as part of their taste-culture. But

this allows Wrapstick to still anchor their price at a level that is as high as urban fast-food chains. Even though the raw material that they use is locally produced and easy to procure, their cost of production on an everyday basis is half their selling price, but they tend to capitalize here on the awareness that the customer has about fast-food in general and makes the urban market rate acceptable to the rural population. What is interesting, here, is that the target base that Wrapstick has is of children and college-going youth, not necessarily those who are 25 years and above. In one of the conversations where a child, outside the shop, was convincing his mother to buy a burger mentioned clearly that they (parents) did not know about fast food and were not ready to experiment with their taste. Therefore, even if the parents were hinting towards how this is expensive and not enough value for money based on their assessment, the children were hell bent on purchasing it still. Here, there is a gap in how utility is judged between two generations and how one has a decent indicator of accurately judging the estimate whereas the other does not. Decision-making, here, is getting into the subjective realm of analysis in a way that allows the youth to be part of a culture they feel their parents have not seen. At the same time, the parents are unable to communicate their accurate assessments about price-anchoring to their children. First-hand information has very little role to play here as the choices and decisions are based more on cultural aspirations rather than judging the purchase as far as utility parameters go.

A similar trend is found in the festival markets. Some products such as the organic colour for Holi, 'diyas' and candles for Diwali and other decorative material are sold at a much lower price than the usual margins the shopkeepers keep for other products. This is not a discount that they offer. Instead, their strategy in rural areas is to lure the customer into purchasing other items when they set their foot inside a shop to buy festival related products. So, the cost and the margins both are hidden to an extent that they are allocated and reallocated to so many different items that it is confusing for the customer to make an accurate estimate from quantity, quality and the nature of deals in combination of products. For example, Chawlajee has a shop near Gandhi Chowk in Jhunjhunu where he keeps items of daily use – different kinds of soaps, shampoos, even the new ones that have not necessarily entered the rural markets in a big way. Chawlajee begins to sell festival products at least one week before the festival. The anchors work here opposite to the normal trend of increasing the price closer to the event. He men-

tions, the logic is obverse to that of say flight-rates. The closer you purchase to the date, the higher the price. He said, he keeps his quality intact and pegs a higher price initially, reducing it to almost 50 per cent by the last day of sale before the festival. He says the reason is that the people who purchase items one week before have a decent purchasing power and do not want to enter the market in congestion and crowd on the last day. So, he capitalizes on their paying capacity as well as their desire for qualitative products. When other shopkeepers also begin to set up extension stalls to their shops for festival products, that is when he lowers the price subsequently. The closer it gets, the more sellers there are in the market to purchase the product. It is interesting to note that because these products are bought only once a year on the festivals, nobody minds paying the anchored price. Chawlajee mentions, however, that it is not their assessment of the price that goes for a toss in a year's span, rather, they end up keeping a loose budget for festivals in rural areas. So, it doesn't hurt him or the customer, he says, when there is a 10 per cent increase in the price.

Demonetization also problematized price-anchoring significantly. In rural areas, the transactions started to get booked at a very high fluctuating rate because we were not dealing with inflation or recession at a point, rather a situation of low-cash dealings. Unorganized sector in India is cash dependent. Shops like Wrapstick and Chawlajee made small investments into digitizing their billing systems and started maintaining a log for each customer who wanted to pay them later. This process of digitization helped them in their recovery of money later, once the ATM were discharging more money for the customers to buy things fully. The vegetable sellers in the urban areas switched to Paytm. They were able to make use of their smartphones to transact via the app. Moreover, the government wanted to accompany demonetization with the movement to go cashless. Paytm allowed intake of Rs. 20000 per day without any hassle. This was a big boon for small sellers who could easily take Paytm money from the urban population. The use of smartphones is still not as popular in the rural areas and even if there are some who are using it, internet connectivity does not necessarily permit effective usage of monetary apps. Therefore, people created personal logs. Some incurred losses and some could only recover a part of their money back which others owed to them. What got hit massively were markets like the Bombay Market in Surat which were selling sarees or other material which the customers were likely to put on

hold as far as their purchase was concerned unless and until the situation of economy came back. However, since the government had given almost six months with repeated extensions after the announcement of demonetization to get the notes exchanged, those in the unorganized sector found it easier to still accept the invalid notes from the customers in the beginning and utilized their salesmen and assistants to make them run errands at the bank. Alternatively, the employees who had a loyal relationship with their owners were also given some advanced salaries which those people got personally exchanged at the bank and got the money in circulation through their personal accounts. These trends are in correspondence with how the global patterns of adjustments would look like but the way they play out in the unorganized sector markets is significantly different. We cannot say with evidentiary confidence that the sales go down significantly. Customers and sellers find informal strategies and "jugaad" or street sense to cope up with such situations. Some adapt, some create informal channels and some resist and wait till things go back to normal.

#### 4. Concluding Remarks

A sociological engagement with the concept of price-anchoring will push the disciplinary envelope under which decision-making patterns can be observed in the everyday. The focus of getting it out of the realm of experimental settings and study the nature of effects and how they play out in circumstances helps us problematize how 'rationality' is understood in price-determination. A shifting ethnography expanded the meaning of utility, value and accuracy that people carry when they shop in the unorganized sector. Even though insufficient adjustments exist, the variations in reasoning, justification and decisions brings nuance to our understanding of strategies that customers and sellers use in order to get what they see as best for themselves. To see beyond the classical approaches of embeddedness of culture in economy or economy in culture will help us investigate how individuals turn to their decision-making by keeping economic rationality and social meaning of utility in combination to make the most prudent choices. Their meanings are personal. The way they interact with the customer based on their everyday positioning in the market vis-à-vis their product are unique to each case. Even though the factors are social and have a macro application, the strategies differ from individual to individual. How much the customer is aware about the prices has no direct correlation to their ability to counter-anchor

and challenge the agency of the seller in a specific circumstance. In some cases, being fully aware also does not necessarily empower the customer to challenge the quote and negotiate. The dialogue in bargaining and negotiations, thus, is an act that is mutually constituted focusing upon successful pre-emption of what the customer is likely to say and what the seller is likely to respond.

The strategies deployed to bring down the biases stemming from subjective perception of quantities, price, conjunctive events and scope of adjustment are all dependent on the experience that both the customers and the sellers have had maneuvering through the unorganized sector dealings. Whether the seller is the owner or a salesman can completely change the nature of interaction with the customer and the intended effect of price-anchoring. How much responsibility does one take to maximize profits, to read the customer and his/her needs depends on whether the market wants to retain long-term relationship or are they geared towards selling one-time products. The nature of the product can have a huge bearing on the effect of price-anchor. If the purchases are frequent, sellers adopt strategies that are subtler, if the product is infrequently bought, the sellers play on the memory of the customer and the ability to add value to the deal in order to anchor prices differentially. Whether the market is a daily market or a weekly market also has a bearing on how the prices are likely to be pegged. Rare occasions of festivals or policy disruptions like the demonetization also have an impact on the decision-making related to everyday purchases. Therefore, awareness about the first-piece of information is not the only way in which price-anchors and their effects are observed. Our attempt in this paper, therefore, was to highlight the surrounding factors that break the onus that theoretically gets put on the argument around flow of information. These factors not just impact the way prices are anchored by the seller but also about how the customer perceives those anchors and adopts certain strategies to reduce their effects. What can be termed as a “successful dealing”, thus, reveals a combination of influences

that challenge the meaning of utility and value for the customers. Such an understanding of ‘rationality’ when acting upon human experience in the everyday has a bearing on how decision-making gets accomplished with the effect of price-anchoring. It makes our understanding of economic action insufficient and pushes us to reconceptualize our positions on the importance of external variables in theory of “embeddedness”.

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## How Effect Active Participation The Life Satisfaction of Individuals

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**Abstract:** *The main aim of this research was to compare Life Satisfaction (LS) level of individuals who were participants of different recreational activities with individuals who were non-participant with respect to some demographics as age, gender, marital status, personal income, employment type, education level and recreational activities. The sample of the study is composed of 4214 men and 1287 women totally 5501 individuals. Data were collected from thirteen different researches focused on recreational activities and LS. Nine of the researches were composed of active participants in Mountaineering/Rock Climbing (n=426), Bicycle Festivals (n=373), Trekking/Hiking (n=382), Hunting (n=187), Fishing (n=367), Recreational Motorcycle Users (n=947), Being Volunteer in a Non-Governmental Organisation (n=208), Singing in recreational choirs as a Chorist (n=633), Recreational bicycle users (n=682) and four of them consist of individuals never done this kind activity before. Such as Never participate in any outdoor activities (n=538), Never Hunting and Fishing (n=324), Never been as a volunteer in any non-governmental organisations (n=138), Never been in a choir as a chorist (n=296). In the analysis of data, besides the descriptive statistics, Independent Sample t-test and ANOVA test were used, thus to identify the reason of the differences LSD test were applied. All the results were analyzed at the significant level of 0.05. Finding demonstrates that being women, married, employed, in middle aged and/or upper, in active leisure life and have higher personal income cause statistically meaningful higher LS then opposites. In addition to this, having active leisure life has positive effect on LS level of individuals. When compared with respect to each demographic variable there are statistically meaningful differences LS levels between individuals who are active participants of some recreational activities and non-participate into same activities. As a result, it can be concluded that for having higher LS level, it is necessary to have active leisure life or active participation in any recreational activities. For this, in each level of education stage, individuals must be educated and motivated how to be an active in their leisure life, what the active life's advantages are and the urban design and infrastructural investments must support and motivate recreational life of urbanites.*

### Definition of Well-Being, Life Satisfaction, Well-ness, Happiness

Every human wants to have more happiness, higher life satisfaction (LS), physical and mental health (wellness), and well-being in their lifetime. These are the main determiner of the life. Philosophers, physicists, psychologists, medical specialist and all other scientists and prophets, clergymen, personal development specialist, business owner, politician, local managers and all others have long been concerned with the good, happy, satisfactory, high quality life and how it can be achieved, what the best and shortest way is. All these have same, common, different advice, way to reach/obtain to the main four determiners. These four determiners usually mix, but they have different meaning. All of those have an effect on and affected by others.

To unclutter, it is better to define them briefly.

Wellness is defining as a holistic concept of physical, mental, spiritual health and social well-being to the 1950s, but later it was accepted as in six dimension as physical, occupational, social, spiritual, intellectual and emotional. Wellness; a) is

continuum situation rather than a fixed state, b) is holistic approach to health comprehensive physical, social, mental, spiritual and cultural dimensions, c) describe the potential and helping individuals for having highest WB suitable for his/her capable, d) self-knowledge and self-integration are the majors for high level wellness, e) the individuals' mental wellness is his/her responsibility, and cannot be delegated [1].

Well-Being (WB) is general described with positive terms for condition of individual or group. It has three dimensions, the first is subjective dimension which concerns experience, perceptions and values (sense of meaning/meaninglessness, hopes, fears and aspirations, self-concept and personality, trust and confidence), second is material dimension which concerns standards of living and practical welfare (income, access to services and amenities, wealth and asset, physical health and (dis)ability, employment and livelihood activities, environmental quality) and the third is the relational which concerns personal and social relations (networks of support and obligation, social, political and cultural identities and inequalities, relations of love and care, violence, conflict and

(in)security). WB cannot be objective or equal for everyone but it is subjective form of correlation/combination of these three dimensions. “Doing Well – Feeling Good, Doing Good – Feeling Well” is common formulation of WB. Doing well state the material dimension, Feeling good describe the subjective dimension of WB. Second part of this formula is usually used for developing countries. “Doing good” determine the many restrictive as condition, substructure, wage, opportunities, material, etc. and “Feeling well” indicates moral sense, health [2].

Happiness is not easy to define. It can be accepted as a basic motivation of human beings. Layard define it as “feeling good – enjoying life and feeling it is wonderful” [3] and Diener define it as a subjective phenomenon “for which the final judge is whoever lives inside a person’s skin” [4]. Happiness is sometimes an instant mood and sometimes longs for a lifetime. Sometimes is reaching target, sometimes is having journey on this target.

In the late past, it was accepted that wellbeing and happiness were in relation to hedonism. Hedonism doctrine was the one of the most important way to reach wellbeing and happiness but Aristuppus (435–366 BCE) and Epicurus (342–270 BCE) argue about ethical hedonism focused on minimizing pain and maximizing pleasure. The follower of this philosophy says “don’t worry, be happy”. But Aristotle’s (384–322 BCE) were the first person standing in contrast to hedonism. His notion of eudemonia was being true to one’s inner self or true happiness is related and a need one’s virtues. The follower of Aristotle’s philosophy says “Be all that you can be and Make a difference” [5].

LS has different definitions. Shin and Johnson defined it as “a global assessment of a person’s quality of life according to his chosen criteria” [6], Diener define it as subjective WB [4], in another study Diener define it as “people’s affective and cognitive evaluations of their lives” [7] and Diener et al. define it as important components of “good life” [8], Pavot and Diener made another definition as decision and/or sensation of persons’s life, emotional attitude toward his life and realization level of expectations” [9].

As it seen in their definition they have really similar meaning but they are different and colloquial use of each.

## Importance of Life Satisfaction

Satisfaction term has many meaning when it come together with different concepts like LS, Leisure Satisfaction, Role and Marital Satisfaction, Job Satisfaction, Occupational Satisfaction, Emotional Satisfaction, Social Satisfaction, Professional and Economic Satisfaction, and etc. Satisfaction can be defined as realization level of expectations [10]. All these satisfaction affect others and affected from them. There is a positive correlation between them. At the same time, all these satisfactions affect and are affected from individual’s physical, mental, emotional life/healthy, professional and social interaction, WB, wellness, and happiness. Other parameters which have an effect on individuals LS can be listed as following; a) having meaningful relation/interaction with wife/husband, partner, children, family members, social friends, collages, relatives and others, b) having sufficient personal and family income to support all expectations, satisfactory job and occupational satisfaction or professional life, having satisfactorily financial satisfaction, c) physical, mental emotional, social, spiritual, and intellectual wellness, d) having satisfactorily neighbourhood and living in well-equipped environment, e) having pleasure retrieved from social and professional life, e) material things like house, hobby equipment, car/motorbike, clothes and etc. f) having hobbies and leisure life, g) having high quality of life, i) having positive personality, j) having satisfactorily sexual life, k) those who want children and have children physically and mentally well, and other things [4,8,9,10]. While having something increases LS, sometimes having same thing may decrease LS. For example, even if literature say materials things affect LS positive, for low income person having car can bring trouble for bearing the cost. While being in love married/partnership increase LS, sometimes being alone affect LS positive. How things affect LS is depend on present conditions. It can be change person to person, time to time, culture to culture.

Satisfied soul is happy and/or ready to be happy or being happy effect positive soul. It can be said for having positive wellness too. Happy soul and positive wellness usually can be accepted as an open door for having higher LS. In many research results it is demonstrated that there are positive correlation between LS and happiness, LS and wellness [7, 0,11].



## Importance of Recreational Life

[Insert Figure-1]

Daily life can be divided into three parts. These are work or school time, sleep time and other time. Work, school and sleep time can be defined as obligations. Other time include recreational life or leisure life and some social obligations as personal care, childcare, housework (cleaning, cooking), shopping [12]. While some researchers categorize social obligations under recreational life, some doesn't.

Recreational life or leisure life can be defined as the sum of the enjoyable activities that individuals can do alone or within a group in their free time with their free will, and as a result, they enjoy, get physically and mentally refreshment, regeneration and enjoyment [11,13]. Recreational life requires active or passive participation to get happiness, wellness, wellbeing and LS as given in Figure-1. While passive participation is being audience, active participation is doer [14]. If football taken as an example, players, referees and technical staffs can be accepted as active participants, audiences in football ground and on TV are passive participants. Some leisure activities require interactive participation like workshops. Interactive participation can be accepted as active participation [12].

In daily life, while passive participation is being audience; active participation can be recreational, amateur or professional. Some part of the amateur participation can be accepted recreational and the rest is professional. The audience potential increases through to professional life in all kind of activity. In recreational life, audiences are usually family members, close friends and neighbors, in amateur life; audience consisted of usually far and near family members, all friends and some followers, but in professional life, audiences are usually followers who create a social belonging.

All leisure researchers conclude that both passive and active participation into recreational activities have positive effect on LS. For that reason leisure participation is an important for wellness, wellbeing and happiness. The benefits of leisure participation can be accepted as a door to higher LS. When compared, active participation has potentially higher positive effect on LS than passive participation. Both active and passive participation has superior positive effect on LS than non-participation [7,15,16,17]. In this paper, the effect of active participation and non-participation on LS was compared.

There is a correlation between reasons and the benefits. Usually expected benefits define our behaviour. The benefits of leisure participation are a) develop physical and mental health, b) socialize individuals, c) increase self-confidence, d) develop presents and gain new ability and skills, e) give individual social career opportunity, f) develop creative power and aesthetic perception, g) give satisfaction, happiness, wellness and wellbeing, h) increase productivity and achievement perception, i) provide social solidarity and integration, j) allow the creation of a democratic society, k) increase life quality of individuals and society, l) increase social capital, m) create belonging to somewhere or a group, n) give self-expression and self-realization opportunity, o) increase mobility, p) create economy and positive effects on many sectors, s) give opportunity to have richer family, friendship and neighbourhood life and interaction, t) develop intellectual life and vision, u) improve social relations, provide solidarity and mutualisation, v) enriching the cultural life of society, y) decrease all kind dependency, z) prevent sickness, shorten the duration of treatment and create physical and mental therapic effect [11,12,18].

The big question is that "all recreational participation has same effect on LS?" the answer is "no". The effect can be change time to time, person to person. Stebbins answer for this question may be the best.

Stebbins categorised recreational life in three categories as casual leisure, project based leisure and serious leisure [19]. Casual leisure is usually hedonic, short term, gleesome, randomly and unorganised chosen activities which require no special training for doing or participate it like play, relaxation, passive entertainment, sociable conversation, sensory stimulation [20]. Project based leisure activities require well or half equipped skills and knowledge for regular but infrequent, one-shot or occasional participation (like dancing only in wedding ceremony, singing only religious rite, participation spring festival, art festival, sports events). Serious leisure activities are the life style, need to persevere at activity, give leisure and social career without any professional expectation, and require well or high equipped skills and knowledge, hobbyist and volunteer participation, and realization of some special benefits [21,22]. Serious leisure has permanent positive affect on LS. Project

based leisure activities has positive effect on LS when done but require regular repetition. Casual leisure activities are hedonic and have positive effect on LS.

Casual leisure activities can be accepted like Basic Needs in Maslow Need Theory, to get the benefits and positive effect on LS, repetition is necessary. Many individuals' recreational life is at that level. Project based leisure Psychological/Middle Needs in Maslow Need Theory just like belongingness and love needs. This is strong effect than casual leisure. But the most effective effect on LS is having serious recreational life. It satisfies self-fulfilment need.

### **The Relation between Motivation Theories and LS**

The big and main question is that "what determine our behaviour? And how do our decisions and behaviour affect our LS?" Many researchers answer this question from their windows. But, this question have not been answered clearly yet. Decisions define direction of our life, owned and abandoned things. Wymer et al. explain the answer by using "Values, Attitudes and Behaviour relation model" [23]. Crandall concluded that behaviour is the result of interaction between identity and conditions [24], Levy concluded that behaviour is the result of interaction between identity and social, economic, neighbourhood and environmental condition [25]. For example, if everybody rejects using something in a society, someone usually cannot demand it because of the community pressure or vice versa. Some researcher used motivation theories to answer this question. Deci and Ryan explain the reason of our behaviour by using The Self-Determination Theory [26]. There are three dimensions of motivation in this theory as extrinsic motivation, intrinsic motivation and amotivation. Participation or nonparticipation into recreational activities can be the result of this motivation types [27]. In addition to these, Pintrich conclude the reason of our behaviour by using The Achievement Goal Theory [28]. This theory has two types of goals. Ego (performance) Goals which give desire to become a leader, compete with other, challenge with something/somebody, desire of recognition, be approved and task oriented goals which give social sensitivity, helping others, compete with himself, challenge himself, get new skills, having socially wellbeing and social solidarity [29]. Ego goals and Task oriented goal usually define individual's identity and values and affect LS of individuals. En-

geström et al. explain the reason of behaviour by using The Activity Theory [30]. Activity theory has four types behaviour as object, internalization/externalization, mediation and development oriented activities. Activity theory usually focuses on successful aging, physically, mentally and emotionally sufficiency. And these sufficiencies have positive effect on LS. Another motivation theory is the Steg's Motivation for Vehicle Use Theory which concludes instrumental, symbolic and affective motives of having/using a car or something [31]. The last and well-known motivation theory is Need Theory developed by Maslow used to answer the main question [11]. In this theory, it concludes that needs motivate individuals to satisfied them and when satisfied, it gives satisfaction. As known it has five step hierarch of needs and dimensions as Physical Dimension, Physiological Needs (clothing, food, shelter, sex, etc.), Environmental dimension, Safety Needs (personal, emotional and financial security, healthy and well-being, needs against accidents/illness), Sociocultural Dimension, Belonging and Love Needs (friendship, intimacy, family, to a group, organisation, nation, sub culture), Emotional Dimension, Self-Esteem Needs, Intellectual and Spiritual Dimensions, Self-Actualization, and Self-Transcendence Needs.

Recreation is a need from first stage to upper. Physiological Needs as food and drinking Safety Needs as all kind security is basic need, at the same time satisfaction all these needs as having a dinner, exercising for wellness can be a leisure activity. Belonging to a group, family or organisation is a need and participating leisure activity gives/creates this change and satisfaction. Self-Esteem Needs, Self-Actualization and Self-Transcendence Needs is upper level needs and when participate a recreational activity to satisfied these needs it is usual serious leisure activity and give/create higher level satisfaction.

### **Demographics Variables and LS**

Many researchers studied how demographics variables affect LS. It is clear that income has positive effect on LS and there is positive correlation between them. When compared, it can be said that employed individuals have higher LS than retired and unemployed ones depending on financial welfare and other satisfaction related with working [4,7,8,10,15,17,32,33,34].

Even if many married individuals want to participate alone into his/her preferred leisure activity

meaningful marriages support couples recreational life positively. In addition to this, marriage give couples having children opportunity, social support, create collectivism (the smallest team activity) and these also increase or have positive effect on LS [10,15,17,32,33,34,35]. Education can be accepted as climbing up like in mountaineering. If the weather (your mind) is open and if you are on enough high altitude (have well educated) you can see far away. It increases awareness level, capability of long-sightedness and problem solving. It has positive effect on LS [4,7,8,10,15,17,32,33,34]. Even if Diener and Diener concluded that men and women have very close LS [39], recent studies show that women has higher LS in many country including Turkey [10,15,17,34].

Age is the other important determiner of leisure demand type and LS. While young prefer usually the leisure activities need higher physical performance, take higher risk, this goes down by aging. The young do not hesitate about future; they have income without working, and more physical energy, higher self-confidence and LS. Then, when they finish their education life they fight for professional and social carrier (marriage, children, buying home, car etc.) until middle age. After this age, they usually realize many of target, solve professional and social career and usually neglect themselves, then, they return their own life and enrich their recreational life, with high self-realization. Usually when age increase, individuals' professional carrier advance, therefore, individuals have higher income, economic welfare and this give rise to higher LS [10].

## Method

The main aim of this research was to compare Life Satisfaction (LS) level of individuals who have active participation into some recreational activities with individuals who do not have active participation into same recreational activities with respect to some demographics as age, gender, marital status, personal income, employment type, education level and recreational activities.

The sample of the study is composed of 4214 men and 1287 women, totally 5501 individuals. Data composed from thirteen different researches focused on recreational activities and LS. Nine of them have active participants in bicycle festivals [43], mountaineering/rock climbing [15], trekking/hiking [15], hunting [36], fishing [36], recreational bicycle users [37], recreational motorcycle users

[38], being volunteer in a non-governmental organisation [17], singing in recreational choirs as a chorist [15], and four of them consist of individuals never done this kind of activity before, as never participate in any outdoor activities [15], never hunting and fishing [36], never been in a choir as a chorist [17], never been as a volunteer in any non-governmental organisations [34].

From each data set demographic variables; gender, marital status, education level, age, employment type were taken how as is, but some arrangements done on personal monthly income with respect to official minimum wage and US\$ base year 2018 was approved as 100.

In the analysis of data, besides the descriptive statistics, Independent Sample t-test and ANOVA test were used, thus to identify the reason of the differences, LSD test were applied. All the results were analyzed at the significant levels of 0.05.

## Findings

Demographics variables of this research were given in Table-1. As it seen in Table-1, majority of the participants were men, single, well educated, 44 years old and younger, have about 700 € monthly personal income, employed in public or private sector or self-employed, consisted of individuals who has active participants in one of outdoor leisure activity or volunteer in a NGO or choir singers.

[Insert Table-1]

LS level of participants and comparison of LS level with respect to demographics variables were given in Table-2. As seen in Table-2, having active leisure life and participating in recreational activities increase individuals' LS level. When LS level of individuals participating in Trekking/ Hiking, Motorcycling, Mountaineering/Rock Climbing, Bicycling, Hunting, Fishing, Bicycle Festival, volunteering, and recreational choirs as chorist compare with the individuals who do not participate in these leisure activities, there is statistically meaningful positive difference in favour of active participation. The highest LS is in volunteers in a NGO. In addition to this, women has higher LS than men, married has higher LS than singles, self-employed, retired individuals, and public sector employee have higher LS than others, individuals higher personnel monthly income have higher LS, individuals higher ages have higher LS. In contrast

this, education level differences is not a reason to have higher/lower LS.

[Insert Table-2]

Comparison of active participants' and non-participants' LS level with respect to Education Level, Gender, Marital Status, Age, Personal Income, Employment Type and some recreational activity were given in Table-3. As it seen in Table-3; in all comparison of active participants' LS and non-participants' LS, there is statistically meaningful difference in favour of active participants.

While there is no statistically meaningful difference on LS between two different education levels in active participation, there is statistically meaningful difference on LS in favour of university and upper education level in non-participation.

LS level change with respect to gender. In active and in non-participation, there is positive statistically meaningful difference on LS in favour of women.

A marriage is the smallest team and emotional cooperation. While there is positive statistically meaningful difference on LS in favour of marrieds in active participation, there is no statistically meaningful difference on LS between married and singles in non-participation.

In active and in non-participation, there is positive statistically meaningful difference on LS in favour of upper aged individuals and higher personal income.

While there is negative statistically meaningful difference on LS in con of unemployment in active participation, there is negative statistically meaningful difference on LS in con of unemployment and house wife in non-participation.

[Insert Table-3]

## Conclusion

In this study, effect of life satisfaction of respondents who have active participation into some recreational activities were studied with respect to some demographics variables as age, gender, marital status, personal income, employment type, education level and recreational activities.

Results show that active participation into recreational activities has positive effect on LS. Many studies have done in Turkey, in other countries and recreation theories verify/support this result. Each active participated recreational activity studied in this paper as mountaineering, sport climbing, riding mountain bike, riding motorbike, hiking/trekking can be accepted as similar activities, but fishing, hunting, volunteering, participating into bicycle festival, being chorist in recreational choirs have different character, required different physical and mental abilities and when compared with non-participants, each of them creates positive effect on LS [4,7,9,11,15,16,17,18]. Motivation theories also support active participation's positive effect on LS [8,11,12,15,16,17,26, 27,28, 29,30,31,32,39,44].

In many studies, it was found that the demand of recreational activities can vary by demographics variables [15], but LS may not change by demographic variables. In Ardahan's studies LS of participants has active serious leisure life in both gender were found very similar [10,16,17]. When LS was compared by gender, there are statistically meaningful differences between groups in active participants in favor of women and in non-participants in favor of women, between the active participant's men and non-participant's men in favor of active men, between the active participant's women and non-participant's women in favor of active women. Women are lucky for having higher LS or in other words they create their changes, they manage their conditions better than men [10,15,16,34]. In contrast, even if this Diener and Diener conclude men and women have very close LS [39], recent studies show that women have higher LS in many countries.

Income is one of the main positive determiners of LS [8] and in many study, it was found that when income increases, LS level of increases [2,40]. Lee at al. and Solop et al. conclude that advance in education level, personal income and employment status have positive impact on recreation demand [41,42]. The results of this study support this scientific truth. It is found in active participants group and non-participants, when income increase, LS increases too. In addition to this conclusion, it was found that employed individuals have higher LS than unemployed ones depending on financial welfare and other satisfaction related by working in active participants and in non-participants. But active participant's LS level in all employment type has higher than non-participants. The conclusion of Diener [4,7], Diener et al. [8], Helliwell [32],

Bjørnskov et al. [33], and Ardahan [10,15,16,34] support this results.

Education is just like a stairs and it gives professional, recreational and social wisdom [12,42] and it increases awareness level, capability of long-sightedness and problem solving and has positive effect on LS [4,7,8,10,15,16,32,33,34,41,42,43]. This conclusion supports the result of current study. When compared with active participants and non-participants, it was found that active participation give statistically meaningfully higher LS than non-participants in both education level. In addition to this, when compared education level, while there is no statistically meaningful differences in active participants group, there is statistically meaningful differences in differences in non-participants group. These results show that education has positive effect on LS level.

In recreation literature marriage/ couple life not accepted as a border for participation leisure activities [11,12,42]. Satisfactorily marriage or couple life support for having active participation. These conclusion overlaps with the results of this study. While in active participants group married participants have higher LS than singles and statistically meaningful differences in favor of marrieds, in non-participants groups married participants have higher LS than singles and but there is no statistically meaningful differences between singles and marrieds. When compared active participants and non-participants, it was found that active participation give statistically meaningfully higher LS both marrieds and singles than non-participants. All these overlaps with the studies of Diener et al. [7], Helliwell [32], Bjørnskov et al. [33], Ardahan [10,15,16,34].

As concluded in recreation literature [10], in the result of current study, age has higher LS in 25 years old and below and 55 years old and more in both group active participants and non-participants. When compared active participants' and non-participants' LS, there are statistically meaningful differences in favor of active participants. Results overlap with literature.

## Results

Findings demonstrate that being women, married, employed, in middle aged and/or upper, in active leisure life and have higher personal income cause statistically meaningful higher LS then opposites. In addition to this, having active leisure life give

rise to have positive affect on LS level of individuals. When compared with respect to each demographics variable there are statistically meaningful differences LS levels between individuals who are active participants of some recreational activities and non-participate into same activities.

As a result, it can be concluded that for having higher LS level, it is necessary to have active leisure life or active participation in any recreational activities. For this in each level of education stage, individuals must be educated and motivated how to be an active leisure life, what the active life's advantages are and the urban design and infrastructural investments must support and motivate recreational life of urbanites.

It is important and advised that active participation and passive participation should be studied in further studies for revealing their effect on LS. Public and private enterprises, municipalities, universities, non-governmental organizations, theatres, cinemas, art centers, amateur and professional sport clubs and all other recreational enterprises must be motivated to organize reasonable priced recreational activities to requisitioner. In formal and informal education, persons and parents should be educated about recreation conscious, the way of increasing LS, wellness, wellbeing and happiness.

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Figure-1: Participant Type and Audience Potential

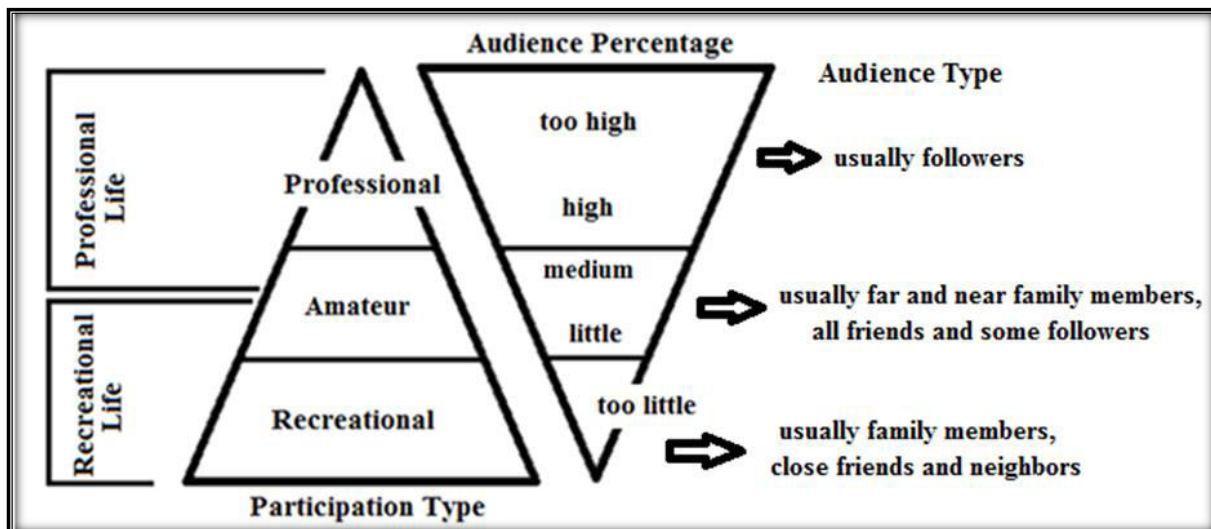


Table-1: Demographics Variables

Demographic Variables	n	%	Demographic Variables	n	%
Participate in Mountaineering/Rock Climbing	426	7,70	Private Sector Employee	1783	32,40
Participate in Bicycle Festival	373	6,80	Public Sector Employee	925	16,80
Participate in Trekking/Hiking	382	6,90	Self Employed	1221	22,20
Never participate in any outdoor activities	538	9,80	House Wife	140	2,50
Participate in Hunting	187	3,40	Students	847	15,40
Participate in Fishing	367	6,70	Retired	381	6,90
Never Hunting and Fishing	324	5,90	Unemployed	204	3,70
Recreational Motorcycling	947	17,20	350 € and below	1287	23,40
Being Volunteers in a NGO	208	3,80	351-700 €	1529	27,80
Never been as a Volunteer	138	2,50	701-1050 €	1189	21,60
Being chorist in recreational choirs	633	11,50	1051 € and more	1496	27,20
Never been in a choir as a chorist	296	5,40	24 years old and below	1116	20,30
Recreational bicycling	682	12,40	25-34 years old	1649	30,00
Men	4214	76,60	35-44 years old	1209	22,00
Women	1287	23,40	45-54 years old	877	15,90
Married	2262	41,10	55 years old and more	650	11,80
Single	3239	58,90	High School and below	1526	27,70
Individuals who are active participations	4205	76,40	University and upper	3975	72,30
Individuals who are non-participations	1296	23,60	<b>Total</b>	<b>5501</b>	<b>100,00</b>

PS=1€=3.58 TL in 1th May 2017

Table-2: Life Satisfaction of Participants/Non-Participants and Comparison of LS Level With Respect to Demographics Variables

Demographic Variables	Mean±SD	Demographic Variables	Mean±SD
Participate in Trekking/Hiking	3,38±0,759	Participate in Hunting	3,38±0,673
Recreational Motorcycling	3,38±0,841	Participate in Fishing	3,38±0,707
Participate in Mountaineering/Rock Climbing	3,28±0,836	Never Hunting/Fishing	2,94±0,929
Recreational bicycling	3,24±0,728	Self Employed	3,39±0,808
Participate in Bicycle Festival	3,16±0,823	Retired	3,34±0,770
Never participate in any outdoor activities	3,08±0,925	Public Sector Employee	3,33±0,774

Being Volunteers in a NGO	3,53±0,506	Students	3,24±0,824
Never been as a Volunteer	3,27±0,997	Private Sector Employee	3,23±0,829
Being chorist in recreational choirs	3,45±0,822	House Wife	3,20±0,961
Never been in a choir as a chorist	3,11±0,868	Unemployed	2,94±1,031
Men	3,25±0,827	350 € and below	3,08±0,875
Women	3,36±0,824	351-700 €	3,29±0,814
Married	3,34±0,793	701-1050 €	3,31±0,847
Single	3,24±0,848	1051 € and more	3,41±0,748
Individuals who are active participations	3,34±0,784	24 years old and below	3,21±0,883
Individuals who are non-participations	3,07±0,925	25-34 years old	3,21±0,821
High School and below	3,27±0,849	35-44 years old	3,29±0,829
University and upper	3,28±0,819	45-54 years old	3,35±0,776
<b>Statistical Comparison</b>	<b>t</b>	55 years old and more	3,45±0,776
Gender	-4,176*	<b>Statistical Comparison</b>	<b>F</b>
Marital Status	4,304*	Recreational Activity	15,426*
Education Level	-0,257	Age	13,361*
Active Participation	9,558*	Personal Income	39,738*
* p<0.05		Employment Type	11,776*

**Table-3: Comparison of Participants and Non-Participants' LS Level With Respect to Education Level, Gender, Marital Status, Age, Personal Income, Employment Type and Some Recreational Activity**

Demographic Variable	Active Participation		Non-Participation		Statistic t/F
	n	Mean±SD	n	Mean±SD	
High School and below	1349	3,33±0,828	177	2,90±0,907	<b>6,384*</b>
University and upper	2856	3,35±0,762	1119	3,10±0,926	<b>8,120*</b>
Comparison by education level (t)		-1,048		<b>-2,716*</b>	
Men	3382	3,32±0,785	832	2,97±0,934	<b>9,464*</b>
Women	823	3,44±0,773	464	3,22±0,891	<b>4,437*</b>
Comparison by gender (t)		<b>-4,054*</b>		<b>-4,439*</b>	
Married	1885	3,38±0,771	377	3,13±0,867	<b>5,115*</b>
Single	2320	3,32±0,793	919	3,05±0,948	<b>7,599*</b>
Comparison by marital status (t)		<b>2,514*</b>		1,480	
24 years old and below	657	3,29±0,819	459	3,10±0,956	<b>3,363*</b>
25-34 years old	1266	3,29±0,763	383	2,97±0,952	<b>5,879*</b>
35-44 years old	1027	3,33±0,798	182	3,06±0,959	<b>3,535*</b>
45-54 years old	687	3,43±0,763	190	3,07±0,758	<b>5,740*</b>
55 years old and more	568	3,46±0,768	82	3,39±0,829	<b>0,843</b>
Comparison by age (F)		<b>7,937*</b>		<b>3,631*</b>	
350 € and below	802	3,16±0,811	485	2,94±0,954	<b>4,349*</b>
351-700 €	1191	3,35±0,791	338	3,08±0,862	<b>5,404*</b>
701-1050 €	943	3,37±0,792	246	3,09±1,004	<b>4,131*</b>
1051 € and more	1269	3,43±0,735	227	3,33±0,808	<b>1,785*</b>
Comparison by monthly income (F)		<b>19,685*</b>		<b>9,289*</b>	
Private Sector Employee	1400	3,27±0,791	383	3,06±0,936	<b>4,107*</b>
Public Sector Employee	706	3,39±0,718	219	3,12±0,901	<b>4,135*</b>
Self Employed	1074	3,41±0,780	147	3,18±0,969	<b>2,753*</b>
House Wife	82	3,49±0,758	58	2,79±1,067	<b>4,297*</b>
Students	497	3,29±0,787	350	3,19±0,871	<b>1,752*</b>
Retired	297	3,42±0,795	84	3,07±0,602	<b>4,137*</b>
Unemployed	149	3,19±0,932	55	2,24±0,968	<b>6,313*</b>
Comparison by employment type (F)		<b>5,961*</b>		<b>10,064*</b>	

Participating in one of outdoor activity	2810	3,30±0,804	538	3,08±0,925	<b>5,206*</b>
Participating in Hunting or Fishing	554	3,38±0,695	324	2,94±0,929	<b>7,400*</b>
Being Volunteers in a NGO	208	3,53±0,506	138	3,27±0,997	<b>2,808*</b>
Being chorist in recreational choirs	633	3,45±0,822	296	3,11±0,868	<b>5,654*</b>

\* p<0.05



## Key Determinants of Passenger Behavioral Intention in the Low-Cost Carriers

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**Abstract:** The aim of this study is to examine the factors that influence passengers to take the low cost carriers in Taiwan. Data was collected at Taiwan Taoyuan International Airport from low cost carrier passengers who have flown from Taipei. The empirical results show that corporate image has direct effects on perceived safety, while perceived safety have significantly positive effect on perceived value, but not on behavioral intentions. In addition, sales promotion and perceived value have significant positive effects on behavioral intentions. This implies that perceived value as an important mediating variable, perceived safety and sales promotion have indirect effects through the mediation of perceived value on behavioral intentions

### Introduction

The global low-cost carriers (LCCs) low cost carrier market was valued at \$117,726 million in 2016, and is projected to reach \$207,816 million in 2023. However, Asia-Pacific is anticipated to witness the highest growth rate during the forecast period. LCCs are passenger airlines, which offer travelling service tickets at relatively cheaper rate compared to other airlines (full service airline). In recent years full service airline have been losing market share to low cost carriers in Taiwan. LCCs have proven to be a major competitor to full service airlines in some routes. LCCs thrive based on the belief that consumers purchasing behavior is driven by value for money rather than services. Rajaguru (2016) found that perceived value for money is a crucial factor for low cost airlines to achieve customer satisfaction and behavioral intention. The aim of this study is to examine the factors that influence passengers to take the LCCs in Taiwan.

### 1. Conceptual background

Structural equation modeling (SEM) is the standard method for simultaneously measuring latent factors and for examining several cause-effect relationships among these factors. Five hypotheses of effect relationships among constructs are examined:

H1. Corporate image has a positive impact on Perceived safety.

H2. Perceived safety has a positive impact on Perceived value.

H3. Perceived safety has a positive impact on behavioral intention.

H4. Perceived value has a positive impact on behavioral intention.

H5. Sales promotion has a positive impact on behavioral intention.

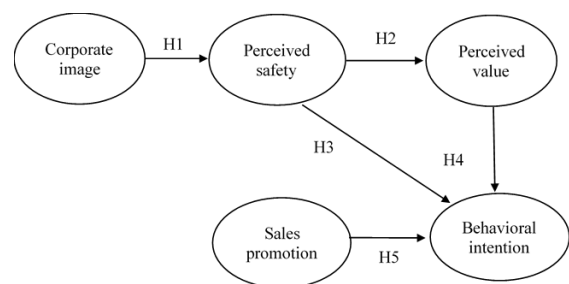


Fig. 1. The conceptual model

### 2. Methodology

This study designed a structured questionnaire as the survey instrument that included all the constructs of the proposed model to investigate the hypotheses of interest. After deleting the incomplete responses, 375 useful samples out of a total of 420 delivered questionnaires were obtained, yielding an effective response rate of 89.28%. Data was collected at Taiwan Taoyuan International Airport from low cost carrier passengers who have flown from Taipei. The survey questionnaire consists of six sections: corporate image, perceived safety, perceived value, sales promotion, behavioral intention, and demographics. All items for the first five sections are measured using a five-point Likert-type scale ranging from “strongly disagree (=1)” to “strongly agree (=5).” The six section reports respondents’ demographic information with six items (i.e. gender, age, marital status, education level, monthly income, and occupation) using a categorical scale.

Corporate image was measured by two dimensions – brand image and internet image, as adapted from Park (2007) and Park, Robertson & Wu (2004). Sales promotion was measured by 5 items used by Chandon et al.(2000). Perceived safety was measured based upon Chang & Yeh (2004). Perceived value was measured by 8 items from Sweeney& Soutar (2001) ; Hsu&Lin(2015), and behavioral intention was measured by 4 items from Chiang &Jang (2006).

Corresponding to the two-step approach to structural equation modeling (SEM) proposed by Anderson and Gerbing (1988), a measurement model was examined by conducting a confirmatory factor analysis (CFA) to evaluate the measurement model in the first step followed by testing the structural model for statistical acceptability in the second step. Using the correlation matrix as input data, the structural model was estimated with the maximum likelihood technique using the LISREL 8 computer program (Joreskog & Sorbom, 2001). Various model fit indexes were used, including the following: goodness-of-fit index (GFI), adjusted goodness-of-fit index (AGFI), comparative fit index (CFI) and root mean square error of approximation (RMSEA). According to Hair et al. (2006), values of goodness-of-fit index, adjusted goodness-of-fit index and comparative fit index of 0.9 or above and root mean square error of approximation of 0.05 or less all indicate a good fit between the model and the data.

### 3. Results

The empirical results show that corporate image has direct effects on perceived safety, while perceived safety have significantly positive effect on perceived value, but not on behavioral intentions. In addition, sales promotion and perceived value have significant positive effects on behavioral intentions. This implies that perceived value as an important mediating variable, perceived safety and sales promotion have indirect effects through the mediation of perceived value on behavioral intention.

Within the overall model, the estimates of the structural coefficients provide the basis for testing the proposed hypotheses. As shown in Fig. 2, corporate image has significantly positive effects on perceived safety ( $\gamma_1 = 0.86$ ,  $t\text{-value} = 14.39$ ), thus supporting H1. Perceived safety has a significantly positive effect on positive perceived value ( $\gamma_2 = 0.76$ ,  $t\text{-value} = 11.40$ ), while its effect on behavioral intention is not significant ( $\gamma_3 = -0.07$ ,  $t\text{-value} = -$

0.94). Hence, H2is supported, but H3is not. Finally, perceived value and sales promotion are found to have a significantly positive effect on behavioral intentions ( $\gamma_4 = 0.73$ ,  $t\text{-value} = 8.68$ ;  $\gamma_5 = 0.33$ ,  $t\text{-value} = 6.92$ ), thus supporting H4 and H5, respectively.

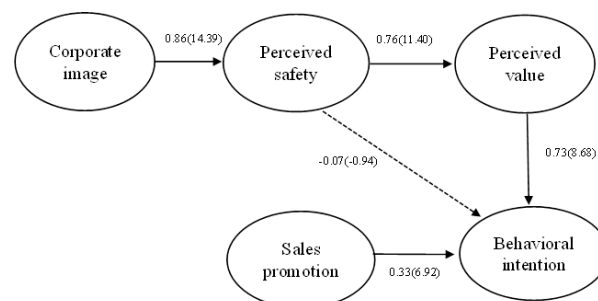


Fig. 2. The estimated structural model.

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## A Research To Determine The Tourism And Recreational Potential of The Mudanya District In Bursa

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**Abstract:** *Rapid developments in communication and transportation technology cause the radical changes in tourism and recreational activities. Places, where people can benefit from social and cultural aspects in a variety of ways and their preferences for easily reach with short distances, may lead to differentiation of tourism and recreational demand and diversity. The touristic and recreational approaches that integrated with nature, blended with different cultures and environmental sensitive have begun to come to the fore. The coasts, which have an important place on our natural resources, are not only a source for life of all living things but also one of the focus thing of tourism and recreation with its rich natural beauties. It is one of the most preferred areas for tourism and recreation, especially due to the presence of the water that an attractive element for comforting and relaxing effect on people. Take into account of conservation-utilization balance, the sustainable planning approaches of coasts, which offer possibility of the countless recreational activities, should be developed without deteriorating the qualities and landscape characteristics to avoid the destructions in future. In this study, the Mudanya district, which is a place in the coastal part of Bursa and has an intensive use, is considered. The Mudanya district, one of the old settlements of Bursa, is the most preferred recreational areas for the city people as well as the locals and foreigners due to the place at the junction of the coast and the mountain, its proximity to Bursa, ecological structure, historical development, easily transportation and diverse cultures. In the study, the present condition of the coastline of the Mudanya district was examined, the use of recreational potential was observed according to the Gulez method and suggestions for the sustainability were provided.*

### Introduction

In today's cities where technology and industry developments are intense, people who face many factors such as population increase and environmental pressure are in the fight against social, physical and psychological problems. People who are struggling to get away from their daily life, to relax, to meet their physical and spiritual needs, are turning to recreation areas to evaluate their leisure time and regain their energy. Tourism and recreation are important elements that enable people to renew and increase their quality of life [1,2,3,4].

In addition to the personal benefits of tourism and recreation, which are important for ensuring the continuity of the human-environment relationship, social benefits such as participation in group activities, ethnic and cultural cohesion and economic efficiency such as efficient work force, business development; environmental benefits such as environmental health, wildlife protection and rehabilitation [2,5,6,7].

Outdoor recreational activities are more preferred, especially in terms of relaxing and comforting people, but recreational activities vary in personal taste and time. The characteristics related to socio-economic structure such as age, gender, education level, income level, occupation, influence the recreational activities as well as changing the number of individuals [2,8,9].

Coastal areas with a rich source potential, which is the focus of civilization in the historical process, is one of the most preferred areas of tourism and recreation. The coasts are effective in shaping the spaces with their audiovisual and microclimatic features, creating a calm atmosphere and unique landscapes with large water surfaces, which have a positive effect on people. As a component of the ecosystem, coasts have the capacity to serve different human groups and offer great advantages with the diversity of activities [10,11,12,13,14].

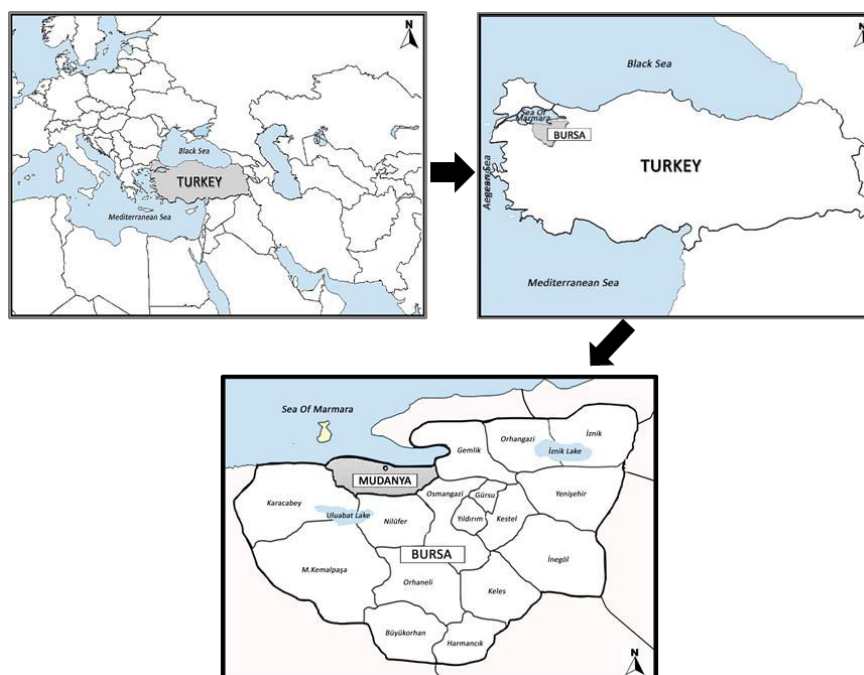
In addition to these advantages, coastal areas are sources of unplanned use and natural integrity that can quickly deteriorate. Recreational potentials and capacities should be identified in order to protect

the natural resource values of the coasts and ensure sustainable tourism [3,15].

In this context, in this study, suggestions have been developed to determine the tourism and recreational potential of Mudanya central district, one of the most preferred recreational areas with its natural and cultural values, at the junction of coast and mountain, which is one of the old settlements of Bursa province and will shed light on future planning decisions.

## 1. Material and Method

Mudanya is one of the districts of Bursa in coastal regions of Marmara Region. Mudanya is located between 28-29 ° northern latitudes and 40-41 ° northern latitudes. the district is 32 kilometers away from Bursa and has a total area of 333.72 km<sup>2</sup>. Gemlik to the east, Karacabey districts to the west, Osmangazi and Nilüfer districts to the south, and Gemlik Bay to the north (Figure 1).



**Figure 1.** The location of Mudanya District

The Mudanya Mountains, starting from Gemlik to Esence Bay, form a set between the Bursa Plain and the Marmara Sea. The ascension of Mudanya is a slow descent from north to south. It is located in the narrow slopes of the northern skirts with the hills extending along the southern coast of Gemlik Gulf. From March 30, 2014, onwards, 1 town (Tirilye) and 36 villages belonging to the province have been included in the center of Mudanya by taking the district status. The total number of neighborhoods increased to 47 by adding 8 neighborhoods in the district center. According to the address based population registration system of Mudanya, the population is 90,282 people by 2018 [16,17,18,19,20,21,22,23, 24].

In this study, the neighborhoods (Mütareke, Halitpaşa, Hasanbey, Şükrucavuş, Ömerbey), which are closely related to the coastal areas of Mudanya

central district, were chosen as the study area (Figure 2). The method of "Determination of Outdoor Recreation Potential" developed by Gülez (1990) was applied to determine the recreational potential of the coastal districts of Mudanya central district.



**Figure 2.** The location of the study area



The study was carried out in three stages. In the first stage, literature reviews related to the subject were made and within the scope of survey studies the current situation in the study area was observed and photographs were taken. In the second stage, 1/25.000 scale slope, view, and field use maps of the study area were created to be used for Gulez method [25]. Stand maps were obtained from Bursa Forest Management Directorate. In the implementation of the Gulez method, which is based on the scoring system, the scorings were carried out by experts with knowledge of the field, supported by maps. At the last stage of the study, the points given for the area were collected and recreational potential of the area was put forward and suggestions were made for this potential to be sustainable [25].

The application steps of the Gulez method are given below.

In the Gulez method;  $P + I + U + RK + OSE = \% RP$  formula is used. The meanings of the symbols in the formula and the maximum (maximum) points that they can get are shown in Table 1.

**Table 1.** Items in Formula and Possible Points [25].

Symbol	Element	Maksimum Points (Element Weightings)
LV	Landscape Value	35
CV	Climate Value	25
A	Accessibility	20
RF	Recreation Facilities	20
NF	Negative Factors	0 ( Minimum - 10)
RP %	Recreation Potential	100

As shown in Table 1, the total score will be a maximum of 100, so the sum of the scores of the formulas will be given as a percentage of the outdoor recreation potential of an area. The items in the formula are rated according to the following characteristics.

(LV) Landscape Value: The most important feature in assessing the recreational potential of an area is

the potential for that landscape. The landscape value is valued at a weight of 35%.

(CV) Climate Value: Taking into consideration that climate is a great influence on recreational activities, it takes a 25% weighting of the climate effect.

Climate Value = Temperature + Precipitation + Sunshine + Windiness.

(A) Accessibility: Gives importance to the extent that a place can reach that recreation potential. If people do not encounter a major problem in transportation, the suitability of that place for recreation is increasing significantly. Accessibility is included in the recreation assessment method with 20% weight.

(RF) Recreation Facilities: In determining the potential for recreation, all recreational facilities available at that location have positive effects on the increase of recreational potential. It participates in evaluating recreation facilities with a maximum weight of 20%.

(NF) Olumsuz Etkenler: Negative Factors: In determining the recreation potential of a place, the negative factors present in that place should also be considered. The best thing is, of course, that there are no negative factors, that is, one place gets a negative score. Negative factors that may be scored up to (-10) are taken as negative (-) on the evaluation, so the total score is subtracted.

According to the evaluation form, the field is scored, recreation potential;

1. Recreation potential is very low (lower than 30%)
2. Recreation potential is low (between 30% and 45%)
3. Recreation potential is medium (between 46% and 60%)
4. Recreation potential is high (between 61% and 75%)
5. Recreation potential is very high (over 75%). The evaluation form for the highest scores that can be taken with the characteristics to be considered for all items is given in Table 2

**Table 2.** Outdoor recreation potential evaluation form [25].

Elements in Formula	Characteristics of the Elements	Maksimum Point	Explanations and Points	
<b>LANDSCAPE VALUE (LV)</b>	Size of the Area	4	Larger than 10 hectares	4
			5-10 hectares	3
			1-5 hectares	2
			0.5-1 hectares	1
	Vegetation Cover	8	Trees, bushy, grassy	7-8
			Only trees, grassy	6-7
			Bushy, grassy, sparse trees	5-6
			Grassy, sparse trees	4-5
			Only grassy, Bushy	3-4
			Bushy, sparse trees	3-4
			Grassy, sparse bushy	2-3
			Only grassy	1-3
	Open Water	8	Seaside	7-8
			Lakeside	6-7
			Riverside	4-5
			Streams	1-4
	Land Form (Topography)	5	Flat land	5
			Gently rolling	4
			Low slope	3
			Low rugged	2
			Medium rugged	1
	Visual Quality	4	Panoramic views	3-4
			Good visibility and vistas	2-3
			General visual and aesthetic quality of the area	1-3
	Other Characteristics	6	Such as natural monuments, falls, caves, historical and cultural features, wild animals, birds ets.	1-6
<b>CLIMATE VALUE (CV)</b>	Temperature	10	Average temperature in summer (June, July, August) months (°C): 16-17-18-19-20-21-22-23-24-25 34-33-32-31-30-29-28-27-26-25 Points: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10	1-10
	Precipitation	8	Total precipitation in summer (June, July, August) months (mm): 50-100-150-200-250-300-350-400 Points: 8, 7, 6, 5, 4, 3, 2, 1	8-1
	Sunshine (Cloudiness)	5	Average cloudiness in summer (June, July, August) months Cloudiness: 0-2, 2-4, 4-6, 6-8, 8-9 Points: 5, 4, 3, 2, 1	5-1
	Windiness	2	Average wind speed in summer (June, July, August) months Lower than 1 m/sec: 2 point 1-3 m/sec : 1 point	2-1

**Continuation of Table 2**

<b>ACCESSIBILITY (A)</b>	Importance of Tourism of the Region in which the Area Located	4	Mediterranean, Aegean, Marmara, Black Sea Coast Important highway, Priority places in tourism	3-4 2-3 1-3
	If there is a Big City (minimum population 100.000) in the region	5	Distance away 20 km Distance away 50 km Distance away 100 km	4-5 3-4 2-3

			Distance away 200 km	1-2
	Travel Time (from the nearest town with minimum population 5.000)	4	One hour's walk or 0-½ hour's driving ½-1 hour's driving 1-2 hour's driving	4 3 2 1
	Transport (except taxi and private car)	4	Within walking distance or Regular public transport Occasional public transport	2-4 2-3 1-3
	Other Means of Access	3	Such as cable car, accessible from the sea or lake etc.	1-3
<b>RECREATION FACILITIES (RF)</b>	Picnic Facilities	4	Fixed picnic tables, grilles etc. (niteliklerine göre)	1-4
	Water Supply	3	Drinking and potable water facilities (according to their qualities)	1-3
	Accommodation Facilities	2	Fixed accommodation facilities, Tented-mobile camping	2 1-2
	Toilets	2	According to their qualities	1-2
	Car Park	2	According to their qualities	1-2
	Buffet	2	According to their qualities	1-2
	Wardens	2	Permanent wardens Temporary wardens	2 1
	Other Facilities	2	Such as beach and shower facilities, facilities for field games and other sports (according to their qualities)	1-3
<b>NEGATIVE FACTORS (NF)</b>	Air Pollution	-3	According to its pollution degree	-1- (-3)
	State of Insecurity	-2	According to the degree of insecurity	-1- (-2)
	Water Pollution	-1	For sea, lakes and streams	-1
	Lack of Clearing Service	-1	Resulting in uncleared garbage	-1
	Noise	-1	Such as traffic and other noises	-1
	Other Negative Factors	-2	Such as quarries, slag tip, disused coal mines, factories, buildings etc.	-1- (-2)
<b>Outdoor Recreation Potential (%)</b>				<b>100</b>

## 2. Results

### Landscape Value of Mudanya District Center

The most important characteristic of the Mudanya district center in terms of landscape value is that it is located at the coast, and it enables visual appearance in terms of visual and aesthetic (Figure 3). Mudanya has a structure that gradually descends from north to south. It is located in the narrow slopes of the northern skirts with the hills extending along the southern coast of Gemlik Gulf. Heights are 400-500 m. [16,20,21,22,23].

The total area of the coastal areas (Mütareke, Halıtpaşa, Hasanbey, Sükrücauş, Ömerbey) is 933,878 hectares. The mean slope of the coastal areas was determined as 7-10 % and the surface condition was determined as low slope-locality. It has been seen that the incline increases as we move upwards from the coast.



**Figure 3.** Mudanya District Coast (Seyidoglu Akdeniz, 2018)

Urbanization in the district center is so intense that agricultural activities are carried out in non-coastal areas. In the vicinity of the coastal area, it is determined that there are very few red pine, rare scrub areas and that some of the bushes are located. One of the most spectacular buildings in the central district of Mudanya, a unique place where history and culture are together, is the Truce house.

It is in white color in the Armistice square, 19 century (Figure 4). Armistice made the appropriate

architecture house, Grand National Assembly of Turkey, which is indicative of the Government's first success in the political arena and one of the most important buildings of signing the Mudanya. It is the first place where the Ankara government, under Mustafa Kemal Atatürk's presidency, is considered the sole representative of the Turkish nation, besides being the place where an agreement that ended the Turkish-Greek war was signed. The Halit Paşa neighborhood (Old Name: Cretan neighborhood) planned by the Italian engineer Biçiretu, emerges as a demonstration of the identity of the ancient Mudanya from the 18th-century mansions. The streets extending in the northeast-southwest direction and the neighborhood preserved in large scale with its ability to go down to the sea are also urban protected areas. On the other hand, in the center of Mudanya district, there are Tahir Pasa mansion, Old Railway Station (Montania Hotel), Mudanya Orthodox Church (Uğur Mumcu Culture Center), Hagios Stephanos Church (Fatih Mosque), Dereköy church, Old Bath (Hasanbey Culture Center) and Myrleia Ancient City. Arched churches and so on. and some of them are used as hotels, mosques, cultural centers [21]. The evaluation scores according to the landscape value of Mudanya district center are shown in Table 3.



**Figure 4.** Mudanya armistice house (Seyidoglu Akdeniz, 2018)

### Mudanya District Center Climate Value

The Mudanya District has more Mediterranean climatic characteristics than the Marmara climate, which is characterized by the transition between the Mediterranean and the Black Sea climates seen throughout the Marmara Region. In Mudanya, summers are warm and dry, winters are warm and rainy. The annual average temperature is 16.7°C. The average temperature in summer (June, July, August) is 24.8 °C. July - August months are the aridest and sunny months, and temperatures sometimes rise up to 35 °C and the number of sunny days is around 16 days. The average cloudiness for summer months is 1.36. The annual rainfall is 614 mm and the total amount of rainfall in summer (June, July, August) is 42 mm. The coldest month is February. The dominant winds are winds from the northeast (northeast) and star direction, with an average annual wind speed of approximately 4.45 km / h. [22,26]. The evaluation scores according to climate data are shown in Table 4.

**Table 3.** Landscape Value of Mudanya District Center

Elements in Formula	Characteristics of the Elements	Explanations	Maximum Point	Evaluation Point
<b>LANDSCAPE VALUE (LV)</b>	Size of the Area	Larger than 10 hectares	4	4
	Vegetation Cover	Bushy, sparse trees	8	3
	Open Water	Seaside	8	8
	Land Form (Topography)	Low slope	5	3
	Visual Quality	General visual and aesthetic quality of the area	4	4
	Other Characteristics	historical and cultural features	6	5
<b>Total Point</b>				<b>27</b>

**Table 4.** Mudanya District Center Climate Value

Elements in Formula	Characteristics of the Elements	Explanations	Maximum Point	Evaluation Point
<b>CLIMATE VALUE (CV)</b>	Temperature	Average temperature in summer (June, July, August) months (°C) 34-33-32-31-30-29-28-27-26-25	10	9
	Precipitation	Total precipitation in summer (June, July, August) months (mm) 50-100-150-200-250-300-350-400	8	8
	Sunshine (Cloudiness)	Average cloudiness in summer (June, July, August) months 0-2, 2-4, 4-6, 6-8, 8-9	5	5
	Windiness	Average wind speed in summer (June, July, August) months 1-3 m/sec	2	1
<b>Total Point</b>				<b>23</b>

**Accessibility of Mudanya Central District**

Mudanya is a place accessible by sea and road. There is a port and a pier in Mudanya Center. It is a gateway with sea and road transportation between Istanbul and Bursa with intensive use. From Istanbul to Mudanya by sea, it is possible to reach to Bursa and the surrounding area and the surrounding areas with a double-lined asphalt road. There are daily bus services to Bursa Metropolitan Municipality

(BUDO) and Armutlu (Yalova) and Istanbul every day at varying intervals according to summer and winter tariffs, and passenger transport services are provided. The distance between Bursa and Mudanya is 34 km. It is possible to reach to almost every part of Bursa from Mudanya center via public transportation by road. Bursaray has direct transport or public transport. Evaluation scores according to transportation status are given in Table 5.

**Table 5.** Accessibility of Mudanya central district

Elements in Formula	Characteristics of the Elements	Explanations	Maximum Point	Evaluation Point
<b>ACCESSIBILITY (A)</b>	Importance of Tourism of the Region in which the Area Located	Important Highway, Marmara Sea Coast	4	4
	If there is a Big City (minimum population 100.000) in the region	Distance away 100 km	5	3
	Travel Time (from the nearest town with minimum population 5.000)	0- 1/2 hour's driving	4	4
	Transport (except taxi and private car)	Regular public transport	4	3
	Other Means of	Accessible from	3	3



	Access	the sea		
<b>Total Point</b>				<b>17</b>

### Recreation Facilities of Mudanya District Center

Mudanya District center along the coastline starting from Iskele Square to the site of the Armistice and extending to the Halitpaşa district in the newly arranged coastline, sitting units, viewing terraces, eating and drinking places, restaurants, beach and so on. provides recreative convenience to users. Especially with the ease of transportation, the daily number of daily tourists coming from Istanbul, Bursa and surrounding provinces and districts is quite high. They look beautiful and provide panoramic views, such as walking along the coast, resting, taking photos and so on. activities are possible. They are also suitable for fish restaurants, restaurants, tea gardens and eating and drinking activities in the coastal districts.

There is two beach in the center of the district. According to the Ministry of Health Marine Water Tracking system, the water quality is poor at Coskunuz Public Beach [27]. Nevertheless, the beach seems to have been used by local residents and day trippers for swimming purposes. It is not enough in terms of activities related to water activities, but also boat trips, boat tours, and jetski etc. active recreational activities are being organized. Fisheries, on

the other hand, have become angled with the increase in marine pollution, not commercial sense. It has been found that picnic and camping activities are not available in the neighborhoods of Mudanya district center and that such activities are allowed in the Esence, Eğerce and Mesudiye districts, which are about 1/2 - 1 hour apart.

There are a total of 21 hotels in terms of gating facilities, as well as accommodation as boutique hotels and pensions [28]. The Montania Special Class Hotel is one of the most comprehensive and oldest accommodation facilities located in the coastal part of Mudanya and in its center and restored in 1989, with its 163-year-old historical Mudanya Gar building closed and unique [29] It has also been found that although there are recreational facilities such as toilets, car parks, guardians and officials, they are not inadequate and qualified. Evaluation scores according to recreational facilities are given in Table 6.

**Table 6.** Recreational facilities of Mudanya Central District

Elements in Formula	Characteristics of the Elements	Explanations	Maximum Point	Evaluation Point
<b>RECREATION FACILITIES (RF)</b>	Picnic Facilities	Fixed picnic tables, grilles etc. (niteliklerine göre)	4	1
	Water Supply	inking and potable water facilities (according to their qualities)	4	2
	Accommodation Facilities	Fixed accommodation facilities	2	2
	Toilets	According to their qualities	2	1
	Car Park	According to their qualities	2	1
	Buffet	According to their qualities	2	1
	Wardens	Temporary wardens	2	1
	Other Facilities	Beach, cabin, rental boat, sitting unit, viewing terrace, playgrounds etc.	3	3
<b>Total Point</b>				<b>12</b>

### Negative Factors of Mudanya District Center

One of the negative factors of the Mudanya district is the rapid progress of the housing sector and it is becoming a favorite place for the construction companies and increasing the number of housing. Mudanya, formerly used as a summer resort only as a summer resort, has become the focal point of the urban settlement. Especially the peaks of the central district of Mudanya and the olive groves along the Bursa-Mudanya highway have been found to be occupied by residences and cause visual pollution. Especially at weekends, it is more crowded, the traffic is heavy, lack of maintenance of streets and streets, lack of security, construction residues etc. creates both noise and visual pollution.

Other negative factors of the Mudanya district include pollution of Marmara Sea, wastewater pollution, air pollution, odor problem. Air pollution is caused by heating. Water pollution includes domestic wastes, agricultural chemicals, and fertilizers [22]. At the entrance to the district center, Yazaki and Turkish Prysmian cable factories and the presence of ferry and boats may be among the causes of pollution. The evaluation scores according to the negative factors are given in Table 7.

**Table 7.** Negative Factors of Mudanya Central District

Elements in Formula	Characteristics of the Elements	Explanations	Maximum Point	Evaluation Point
<b>NEGATIVE FACTORS (NF)</b>	Air Pollution	According to its pollution degree	-3	-1
	State of Insecurity	According to the degree of insecurity	-2	-1
	Water Pollution	For sea, lakes and streams	-1	-1
	Lack of Clearing Service	Resulting in uncleared garbage	-1	-1
	Noise	Such as traffic and other noises	-1	-1
	Other Negative Factors	Such as quarries, slag tip, disused coal mines, factories, buildings etc.	-2	-1
<b>Total Point</b>				<b>- 6</b>

As a result of the evaluations made according to the Gülez method, scores of Mudanya district center and recreation potential are given in Table 8. According to Table 8, Mudanya district center has a total of 73 points in terms of recreation potential with a score of 27 points in landscape value, 23 points in climate value, 17 points in terms of accessibility, 12 points in recreational facilities and -6 points in negative factors and it is indicated that recreation potential is "HIGH"

**Table 8.** Recreation Potential of Mudanya District Center

Symbol	Element	Maximum Point	Evaluation Point
LV	Landscape Value	35	27
CV	Climate	25	23

	Value		
A	Accessibility	20	17
RF	Recreation Facilities	20	12
NF	Negative Factors	0 ( Min. -10)	-6
RP %	Recreation Potential	100	<b>73</b>

### 3. Discussion and Conclusion

The coasts have intense use as the most important tourism and recreation areas with their natural and cultural features as they are from the past to the present day. Coastal areas have always been one of the preferable areas, with their location and diversity of recreational activities as required. In this study, which includes one of the most popular

coastal areas of Bursa, Mudanya is located in the coastal area of the central district. As a result of the evaluation made according to the Gulez method, many features of Mudanya district center and high recreation potential (72%) were detected. Mudanya district center provides various panoramic views from the point of view of sea existence, transportation convenience and aesthetics. Besides, it is an area that is used extensively with its historical buildings, cultural texture and interesting streets. Ensuring the sustainability of the county is important. Similarly, Simsek and Korkut [3] conclude that the study of coastal lanes in Tekirdag suggests that the natural and aesthetic beauty of the coastal lane has a high recreational potential and that a management model for coastal use should be established; Caliskan and Celik [30], in the example of Mustafakemalpasa of Bursa province, the recreational potential of the city is high and the most important factor to raise, is the landscape value; Bozhuyuk Ardahanlioglu and Karakus [31] stated that especially Mediterranean and Aegean coasts are used extensively and that these areas can be used within the framework of the right planning and that Cetin and Sevik [32], The Ilgaz mountain national park has provided educational, scientific and recreational possibilities and high recreational potential.

It is seen that the central district of Mudanya is widely preferred for recreational purposes for weekends and daily use. Mudanya district center is preferred for culture tourism with its historical and cultural texture and it is not preferred much for marine tourism due to a short duration of the summer season and sea pollution. Mostly rest, hiking, eating, and drinking, etc. passive recreational activities. There are not many activities in terms of active recreation. Parking lot, toilets, etc. together with the facilities in the area, are inadequate in terms of quality. As a matter of fact, Simsek and Korkut [3] stated that the topographic structure of the Tekirdag coastline has an important potential for passive recreation; Surat [12], Deriner dam and the dam were found to be important factors in the choice of the area around the dam in the vicinity of the lake and its surroundings.

The most important negative factors that decrease the recreation potential of Mudanya district center are the increase in the number of houses and the intense feeling of concretization and this creates visual pollution. Another important factor is the presence of noise pollution due to its location in the transitional zone in terms of location and the frequent use of highways and sea roads. Cons-

truction waste, disposal of existing factories and neglected areas, etc. are among other adverse factors and cause environmental and visual pollution. Similarly, Turker et al. [33] that they do not have adequate care in the vicinity of ancient cities and forests, Simsek and Korkut [3] concluded that the multi-storey structures located in the central coastline of Tekirdag caused visual pollution and prevented the scenery from being watched; Surat [12] emphasized that the facilities in the vicinity of the Deriner dam are not sufficient in terms of quality and quantity.

As a result, proximity to the city center, high landscape value, historical and cultural structure, and recreational facilities, Mudanya central district has become a center of attraction for domestic and foreign tourists. Mudanya provides the greatest contribution, historical buildings and nostalgic streets to the central district. The establishment of guided tours, information boards, orientation sheets, promotional brochures to be made at different times in order to raise awareness of these items, which are the image of the district center, will be the right approach

However, in addition to the increase of active recreational activities available in the context of water-related recreational activities, canoeing, rowing, the inclusion of alternative activities will create variety. Particularly during the busy summer months, recreational activities will be more fun with water sports festivals or competitions organized for different age groups, and it will attract attention. On the other hand, improving existing facilities, creating a well-maintained environment, eliminating parking deficiencies and arranging vehicle traffic, in order to provide quality service, will ensure that the visit is pleased and will help increase its popularity.

Mudanya district center has a high recreational potential and offers a variety of possibilities, while the natural texture is gradually deteriorating and faced with the pressure of urbanization is an indispensable reality. Implementation of an effective planning model is necessary to establish conservation-use balance without exceeding conservation and carrying capacity of natural resource values.

### Acknowledgements

In this study, the data on the project entitled "Evaluation in the context of Sustainability of

Recreational Landscape Value: Bursa-Mudanya Example " supported by Uludag University Scientific Research Projects Unit (BAP) was utilized.

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## Urban People's View of Agrotourism and Organic Products in Antalya-Turkey

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**Abstract:** *In recent years, the increase in urbanization, the raise in the working tempo and the difficulty of living conditions in cities have brought stress and health problems to people living under these conditions and created an increase in the demand for natural nutrition over time. These demands may only be met by consumption of organic products. In our country, although a difference was experienced on the regions and cities basis, with the increase of the level of consciousness of the people the interest of the organic products and agrotourism increases day by day. In this study, a survey was conducted in order to determine the point of view of the citizens of the city on the consumption of organic products in the province of Antalya which is a tourism region. In survey conducted, the opinions of urban people about organic products, organic product preferences, holiday choice in organic farms or agrotourism and the relation of these factors with consumers were evaluated. The high price of organic products and the lack of adequate promotion of products were among the most important factors and they emphasized that price level is important in organic product preferences of self-employed and retired participants, especially those aged 40 and over, high education level, middle income level. Increasing the number of organic markets in order to reach more consumers with the creation of resources for the knowledge of the urban people about organic consumption, the right marketing strategies and price adjustments have been determined.*

### Introduction

Interest in organic products is increasing day by day. It has been put forward by various researches that consumers are directed to organic food due to the damage caused by conventional agricultural products to human health and environment [11]. Over time, people's product consumption preferences are changing and the popularity of organic products is increasing. As consumers all over the world also in Turkey; are paying attention to environment, health and safe nutrition [6]. This leads people to be interested in healthy living, organic agriculture and agro-tourism. Agro-tourism is one of alternative tourism types that aim to use agricultural resources in compliance with sustainability principles [4]. Agritourism can provide learning activities and entertainment to visitors in natural or agricultural settings. It can also provide some benefits to farmer. For instance; cash flow during the off-season, opportunity to sell the "experience" of agricultural venue, opportunity to sell products grown and harvested in farmer's agricultural operation and opportunity to share farmer's passion of agriculture with others [10].

In the regions where tourism has developed, the local people who have gone through agriculture are trying to provide agriculture-tourism integration instead of leaving the fertile agricultural areas to tou-

rism enterprises. This integration is possible with organic farming, and they also pay attention to

the environmental sensitivity of the facilities which put in [3].

In this study, average consumption of organic products was determined in Antalya province. By examining the positive or negative thoughts and purchasing behaviors of the organic product, it was aimed to determine the tendency of agro-tourism in the selection of the holiday place as well as to reveal the organic market consumer trends.

### 1. Material and Method

This study was conducted in the city center of Antalya which is a tourism city. Antalya is situated to the west of the Mediterranean Region and is bordered by Burdur to the north, Serik to the east, Mediterranean to the south, Korkuteli to the west, and Kemer to the South (Figure 1). Antalya is the most visited destination in Turkey receiving more than 8 million visitors per year. This place has a primary role in Turkish tourism because it attracts tourists from different parts of the world (Russia, Europe, Middle East). Antalya has been a recent tourism destination opened to global tourism markets, which gave the city to learn lessons from the experiences of other Mediterranean destinations. As a result, it has a better planned land use,

an increased awareness in tourism matters and high quality and innovatively designed hotels [1]. It is located 36.91 latitude and 30.70 longitude and it is situated at elevation 61 meters above sea level [2].



**Figure 1.** The location of Research Area

The survey method was applied in this research. The questionnaires were administered randomly through face-to-face inter-views at different times throughout the year. The questionnaires consisted of three sections that incorporated open and closed-ended questions. The first part included questions about the socio-economic structure of organic product consumers, the second part asked questions regarding the general opinions and thoughts about organic products, and the last part included questions about whether or not organic products are preferred. The data obtained from the questionnaires were evaluated with the SPSS 23 program.

## 2. Results and Discussion

### Socio-economic structure of organic product consumers

When the socio-economic structure of the organic product consumer is evaluated, 55.00% of the participants were female and 45.00% were male. In terms of age, it was determined that the 26-30 year age group constitutes 27.00% of the participants, the largest group, while the age group 51-60 year age and 61 years and over constitutes 5.00% of the participants, the smallest group. In terms of educational status, While 20.00% of the participants were workers, 16.50% were unemployed, 13.50% were students, 12.50% were self-employed and 9.50% were housewives. The average monthly income level is at most % 32.50 to 1001-2000 TL and at least % 7.50 to 3001 TL (Table 1). These results are in line with other studies [8]. In fact, [7] (2016) stated that respondents in the sample

indicates that the typical respondent (median) of the head household in the sample is male, in the age category between 30 and 39 years old, married with children, completed his college education.

**Table 1.** Frequencies of socio-economic structure of the respondents.

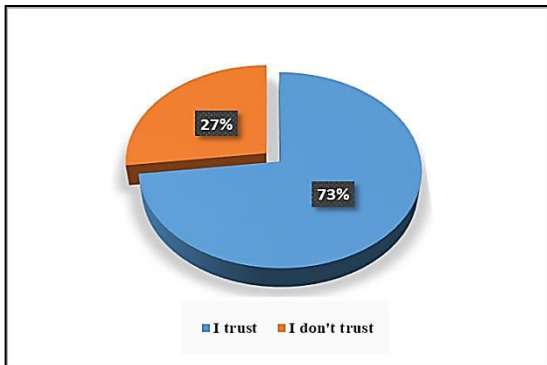
Socio-economic structure		Frequencies (%)
Gender	Female	55,00
	Male	45,00
Age	18-21	13,00
	22-25	22,00
	26-30	27,00
	31-40	19,00
	41-50	9,00
	51-60	5,00
	61 and above	5,00
Education	Illiterate	5,00
	Secondary school	26,00
	High school	46,00
	College graduate	22,00
	Graduate and above	1,00
Occupational Status	Worker	20,00
	Officer	10,50
	Retired	10,00
	Self-employed	12,50
	Housewife	9,50
	Student	13,50
	Unemployed	16,50
	Other	7,50
Monthly Income (TL)	0-500 TL	22,50
	501-1000 TL	17,50
	1001-2000 TL	32,50
	2001-3000 TL	20,00
	More than 3001 TL	7,50

### General consumer opinions about organic products

In the questionnaire survey, it was determined that 73.00% of urban people were confident regarding organic products, while 27.00% were not trusting when asked about the meaning of the concept of organic products and their reliability (Figure 2). [9] (2011) state that consumers are more likely to trust

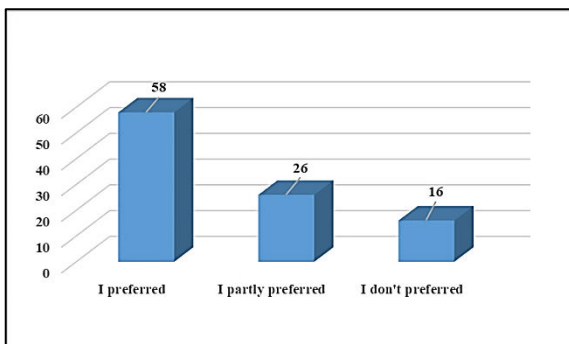
labeling schemes where the state plays an active and visible role.

When organic product brand preferences were questioned, 90.3% of respondents said that they didn't know about organic products, and 9.3% said they knew it. The respondents emphasized that they mostly use Pinar Milk, Burdan Egg ve Kavlak Olive products in terms of their organic product brand preferences.



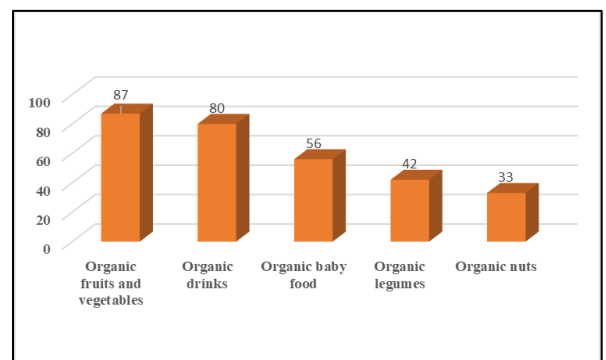
**Figure 2.** Confidence in Organic Product

At the same time it was questioned whether spend their holidays in eco-villages or ecological farms which are production-consumption places. 41.00% of the respondents answered that they are partially responding, while 32.00% stated that they do not want to spend their holidays. A large majority of the participants (58,00 %) said that they could prefer food, beverages, etc. prepared with organic products in touristic facilities (hotels, motels and holiday villagers etc.), while 26.00% would prefer partially and 16% would not prefer it (Figure 3). [10] (2018) stated that consuming organic food is one of the most important attitudes to live healthier and longer by being or working in the farms or villages as a visitor which creates a new era in tourism named as organic tourism.



**Figure 3.** The preference of organic products in tourist facilities  
**Participants' Organic Product Preferences**

87% of respondents prefer organic fruits and vegetables, followed by organic drinks with 80%. Organic nuts are the least preferred 33%. When evaluation of Participants' preference for organic products or their non-preference factors suggest that the most important factor in preferring organic products is hormone-free and healthy with 85%. This was followed by 86.00% of respondents who did not find the product and 76.00% of them answered that it is important for nature conservation. At the same time, a large majority (84.00%) of the participants said that the organic products were expensive and they were going to traditional foods (Table 2). [5] (2015) stated that when the obstacles which hinder organic food demand and consumption are considered, it is possible to say that lack of information and scarcity of organic food is more effective than expensive price.



**Figure 3.** The Preference of Organic Products

**Table 2.** Preference Factors of Organic Products

Preference Factors of Organic Products	Percentage (%)
Hormone-free and healthy	85,00
Important for nature conservation	76,00
not finding the product	86,00
Lack of publicity	27,00
Being expensive	84,00

### 3. Conclusion and Suggestions

In this study, the awareness of the organic products of the city people and the perspectives of the organic products were evaluated in Antalya which is popular tourism city of Turkey, and it was determined that the people of the city is generally safe

with organic products. At the same time, participants who indicate that they will be partially vacationing in ecovillages and they will not be vacationing stated that they would like to organic product stands at the holiday resort. It found that women and middle-aged people with middle-and high-income levels and higher educational backgrounds show more preference toward organic products.

At the same time However, organic products are considered to be healthy and hormone-free products. Particularly female participants, young and middle-aged people, and those with a high income level, prefer organic products because they are healthy and hormone-free. Self-employed and retired participants who are over 40 years of age, high education level, middle income level said that price high is important in organic product preferences.

As a result, the creation of resources for the city's people to be knowledgeable about organic products. Accurate marketing strategies and price adjustments to reach more consumers. In addition, organic market numbers need to be increased to make it easier for consumers to access organic products. In addition, touristic facilities (hotels, motels, holiday villages, etc.) will be useful in attracting interest in domestic and foreign tourists by providing food and drinks prepared with organic products in touristic facilities.

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## Management Tools for Supporting the Transition of Manufacturing Organizations to Industry 4.0: The Case of Slovenia

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**Abstract:** *The main purpose of this paper is to analyze the utilization of management tools in Slovenian manufacturing organizations and assess the readiness of those organizations for the implementation of Industry 4.0 principles. Certain management tools, such as lean manufacturing, six sigma, RFID, knowledge management, etc. are due to their digital nature especially adapted to help organizations transition to Industry 4.0. Furthermore, we propose that management tools utilization can also serve as a valid indicator of organizations' readiness for Industry 4.0. According to our survey, Slovenian manufacturing organizations are not very well prepared to adopt Industry 4.0 principles and thus, their transition could be slower, more expensive, and generally more stressful. We find that in the forefront of utilization are management tools, which aim to support process optimization, i.e. benchmarking, outsourcing, and total quality management. Tools that typically aim to support digitalization and transition toward Industry 4.0 practices, like lean production and RFID, are currently not in the forefront.*

### Introduction

Organizations are in the nowadays global and digital business environment constantly looking for more efficient ways of supporting organizational workings and behavior, in order to remain competitive [1], [2], [3]. These challenges are now becoming even more complex, considering the impact of digitalization, which is rapidly spreading across the society and consequently, as seen in the last decades, transforming the way of life [4].

Digitalization has a significant effect on the socio-cultural evolution of the society at large [4]. But in the context of the business economy, nowhere are its effects more apparent and felt, than in the manufacturing sector. In response to digitalization of manufacturing enterprises a growing amount of literature is indicating an emergence of the phenomenon of Industry 4.0; see [5], [6], [7], [8]. Industry 4.0 is considered as the next evolutionary stage of the industrial practice. Following the evolutionary line, the philosophy behind this concept is aiming to bring about the next industrial revolution, with the creation of the autonomous systems, smart manufacturing, and artificial intelligence [9], [5].

When addressing the processes of effectively transferring to Industry 4.0 and assessing the readiness for its adoption, a plethora of challenges and open questions emerge for organizations and their management. Amongst other, there is still no definitive answer regarding how the most frequently used management tools, which are utilized by organizations

to support organizational workings and processes, can help support the transition to Industry 4.0.

Management tools is a term, most often used to describe concepts and ideas that can help organizations to reach their goals. But more importantly, they are also becoming very popular with scientists and practitioners as a method of solving high-level organizational problems. For instance, practitioners and scientists are proposing specific management tools to be applied for solving specific organizational problems (e.g. productivity increases, supply chain management effectiveness improvements, better knowledge transfer, etc.) [10], [2], [11], [3], [12], [8].

Focusing specifically on digitalization of manufacturing organizations, management tools that support digitalization or organizational change and transition should be at the forefront of our discussion. In the literature, there are already some indications that contemporary management practices such as six sigma [13], lean manufacturing [14], [15], knowledge management [16], [8], [17], [18], social media programs [19], [20], core competencies [21], radio frequency identification-RFID [22], etc. are the most complementary and compatible with Industry 4.0. These and many other management tools can be considered as a backbone and a suitable framework, which organizations can use to support and maintain effectiveness, flexibility, and profitability within Industry 4.0 as well.

Why is our approach to the problem different? Current models for assessing organizations' readiness



for Industry 4.0 do not include nor reveal how commonly used management tools support organizations' transition towards digitalization. Within this paper, we adopt an innovative approach, where we are assessing the readiness and consequently possible transition of manufacturing organizations towards Industry 4.0, through the lenses of management tools utilization, which has not been done before in the literature nor in practice. This cognitive approach also adds an additional layer to the existing theoretical models for assessing organizations' readiness for Industry 4.0, which are still being developed. In order to comprehensively assess the readiness for digitalization and transition of manufacturing organizations towards Industry 4.0, we include in the analysis a study of the most commonly used management tools, which will help to reveal more comprehensive picture about how manufacturing organizations are prepared for digitalization.

In the paper, we first describe the phenomena of digitalization and Industry 4.0, followed by the concept of management tools and management tools utilization, where we outline the most appropriate ones, which support digitalization. Next, we present the research methodology, results, and offer a discussion. Practical implications for manufacturing organizations, limitations, and future research directions are outlined in the last section of the paper.

## 1. Digitalization and Industry 4.0

The phenomenon of digitalization is nowadays coming to the forefront of the scientific debate in many different fields. Digitalization represents a considerable step forward in the development of the human species [4]. In the historical context, its importance for the development of humanity is rivaled with other paradigm-shifting events (e.g. previous industrial revolutions, agriculture development, language development, etc.) [23], [4]. Scholz et al. [4] define digitalization as the process of representing real-world objects through digital symbols. These processes are conducted with the help of digital technologies or machines that have the ability to compute and learn, and digitally represent the real environment [4, p. 3]. Continuously increasing digital representations of the real-world led humanity into the digital age, which started in the early 2000s [24]. Digitalization has during this time also significantly impacted the economic system, which has gradually guided the humanity towards the digital economy [25].

But nowadays digitalization has reached a point at which it is expected to bring around the next (4th) industrial revolution [5], [4]. Focusing on the term "industrial", manufacturing industry started to strategically digitalize its business processes and consequently, the term Industry 4.0 was coined in Germany during the Hannover fair in 2011 [26], [9].

To understand the impact of industrial digitalization as the driver of the fourth industrial revolution, we first have to understand it in the historical context. Every industrial revolution so far has been based on the new technology introduction and its evolution. For instance, 1st industrial revolution, which began at the end of the 18th century, was based on water technology and steam-powered machines like mechanical loom or locomotor. Second industrial revolution began at the start of the 20th century. Here, mass manufacturing was powered by electricity and the division of labor. Third industrial revolution started in the 1970s and was entirely based on electronics and information technology. Consequently, manufacturing processes became increasingly automated and human manual labor less needed. Each industrial revolution introduced new technology to the manufacturing sector, therefore, organizational complexity was also increasing [27]. However, as contrary to the first two industrial revolutions, the fourth one will not be driven by the fossil fuel-based technology and manpower, rather it will be solely driven by human creativity and digital data [4].

### 1.1. The main concepts of Industry 4.0

The applications of digital technology to manufacturing processes resulted in the creation and identification of the various concepts, which serve as the pillars of the Industry 4.0. The main purpose of these concepts is to integrate real and virtual environments, using digitized data. Theoretical constructs describing the concepts are mainly the topics of research in the fields of computer science, mechanical engineering, and industrial engineering. Three main concepts that are most discussed by scientists and practitioners are:

**(1) (Industrial) Internet of Things and Services-IoTs.** The main purpose behind the concept is the integration of various technologies and ICTs. In the context of industrial use, it can be defined as a set of specific IoT technologies, which can support the goals of a specific manufacturing organization [28, p. 3]. Most useful in the industry are mainly technologies for tracking and identification of

objects, wireless sensor technologies, upgraded communications, smart objects, etc. [28]. These technologies enable instant, real-time communication between subjects and objects [29]. This makes possible the creation of smart factories through the integration of manufacturing processes into networks [27], [30]. In other words, it is an attempt to join virtual and physical world into cyber-physical systems [31]. This means that devices will be interconnected through clouds and have the ability to interact and communicate with one another or controllers. Furthermore, it also allows for decentralization of decision-making and analytics [32].

**(2) Cyber-Physical Systems-CPS.** In the context of industrial use, cyber-physical systems should help to create an advanced network of smart machines, smart warehouses, and smart production facilities. These systems use ICTs to control physical systems and processes [33]. CPS are able to autonomously share information with each other and perform control [27]. They are driven by big data. Big data is collected from both the real environment and digital processes. This presents significant efficiency and productivity gains in data collection, comparing to the manual data collection in the past. Gathered data is also more accurate, due to the advances in sensor technologies [29]. Integrated computers will in the future be able to control physical processes with information from feedback loops [9]. Cyber technology is driving continuous improvements in the whole industrial sector. Overall increasing integration of CPS in the manufacturing organizations, makes their manufacturing processes smarter [34].

**(3) Smart Factories/Manufacturing.** Are the ultimate goal of any manufacturing organization, which is trying to digitalize its processes. They are considered as a new manufacturing system or even as a philosophy. Here, manufacturing systems are connected vertically through business processes as well as horizontally across the value chain. Communication between people and machines is similar to communication on Social Networks [27]. Smart factories can be understood as small, but decentralized and digitalized manufacturing networks [6]. In the future, factories will be technologically adapted with sensors, automated machines, and self-governing technology. Another beneficial aspect of these factories is that technologies will be able to self-optimize and self-improve and thus consequently improve business processes [9], [6]. However, some authors emphasize that smart factories cannot be realized unless all the supporting

functions such as logistics, mobility, grids, products, infrastructure, etc. are also smart [27], [29].

## 2. Management tools

Over the last decades, many different management concepts have been designed and developed, which are used as a tool for supporting diverse organizational goals [10], [2], [11], [3], [12]. The term “tool” may have various definitions in different disciplines. Thus, for the purposes of this paper, we can use a definition from Webster’s dictionary [35] and understand tools as something that can help us to perform an operation. Management authors have proposed a plethora of definitions for management tools. They can be understood as a set of analytically based instruments that can be used for supporting managers at work when they are implementing management concepts [36], [37]. Furthermore, management tools are able to support managers on every level of formulation and realization of these concepts in practice, with the goal of supporting organizational processes [3]. Also, management tools can be understood as an entity of concepts, processes, and exercises [38]. Lastly, maybe the simplest definition was proposed by Nedelko and Potočan [12] who stated that management tools are the way of realizing management ideas.

In specific situations, describing social aspects of concepts’ implementation, the term “tool” can be substituted with “solution” and therefore more broadly defined [12]. Reflecting the development of management, which has gone through six distinct developmental phases (classical, humanistic, systems, contingency, post-modernistic, and scientific values phase) [39], [40], the definitions of management solutions were given certain dimensions, see [38], [2], [11], namely:

1. As a concept: A completely developed and defined base for the consideration of an idea.
2. As a methodology: A set of similar and related methods, rules, and interdisciplinary postulates.
3. As methods: Procedures focused on goals and specific problems. Are useful, regular, and systemic approaches to set and achieve goals.
4. As techniques: Describing ways of handling technical aspects.
5. As corresponding management tools: A practical way of realizing management ideas.

Historical development of management tools also reflects two distinct group classifications [2]. In the first group, more traditional management tools can be found. These are often the most widely used, for example; benchmarking, mission and vision statements, outsourcing, core competencies, customer relationship management, etc. [1], [38]. In the second group, more contemporary and information technology-based management tools are found. These are corporate blogs [41], RFID [40], social media programs, etc.

### 2.1. Management tools utilization

In order to comprehensively compare utilization of management tools, we are next outlining the results regarding utilization of most commonly used management tools from worldwide regions, like North America, Latin America, Asia-Pacific, as well as global average [42], [38]. We also outline results for two Central European countries, namely Slovenia and Croatia [2], [43]. Cognitions are outlined in table 1 (read it in Appendix), which presents ranks of management tools utilization, calculated based on the average utilization of management tools in organizations.

From table 1 (appendix) it is evident that at the pedestal are tools aimed at supporting customer relationship management and customer care. Among more frequently used tools are also those, for supporting the identification of core competencies, comparison with others through the use of benchmarking, accumulation of knowledge, etc.

Looking at the table 1 results in the context of this paper, we can see that management tools related to the Industry 4.0 support or more broadly digitalization of organizations are generally not among the most frequently used. For instance, the most frequently associated tools with the phenomena of digitalization, which are lean manufacturing and six sigma [44], [45], [46], [47] are especially in the Central European countries - i.e. Slovenia and Croatia – not utilized very often. However, we should take into the consideration that in the above samples are also organizations from various industries (not only manufacturing), where the concept of lean may be less implemented, i.e. in public administration, services, etc. [48].

Therefore, based on the above-outlined cognitions, the main research question of our contribution is - what is the current state of management tools utilization in Slovenian manufacturing organizations?

The answer to it will provide us with a foundation to assess the current readiness for digitalization and provide support for the transition of manufacturing organizations in Slovenia towards Industry 4.0 principles. To support digitalization, contemporary as well as traditional management tools can be utilized by manufacturing organizations.

### 2.2. Management tools for supporting digitalization of manufacturing organizations

The vast variety of available management tools and solutions enables organizations to select appropriate ones to tackle specific organizational problems e.g. [11], [3], [12], [8]. In the case of Industry 4.0, certain management tools are referenced more often and put forward by scientists and practitioners as more important for supporting digitalization than others. These are namely outlined below:

#### Lean Manufacturing

It is perhaps one of the most widely referenced management tools regarding Industry 4.0 in the literature. However, there is still much debate regarding the compatibility and complementarity of the two slightly different manufacturing philosophies. Lean manufacturing is based on the philosophy of reduced complexity of organizational processes. That is the idea of finding simple solutions to the problem with simple ways. Industry 4.0 practices in contrast center the reduction of complexity around the people (e.g. artificial intelligence, CPS) [14]. The questions regarding the compatibility of lean manufacturing tools with Industry 4.0 remain open, but there are opportunities to achieve synergy [49], [14].

#### Six Sigma

Six Sigma is an approach to secure continuous improvement and to standardize and reduce the variability of the production processes [13]. It is very compatible with Industry 4.0 when combined with lean concepts. This new version is called Lean Six Sigma and is more applicable and compatible with big data, in the sense of accelerating the processes of data extraction and consequently improving innovation and organizational knowledge. Big data is a key factor in securing and adding in-depth knowledge of organizational problems [13].

## Knowledge Management

In the context of Industry 4.0, strategic ICT oriented knowledge management is becoming a key resource to address the gaps in the area of needed new competencies for employees and management. ICT technologies used for knowledge management, such as Web 3.0 or Wikis and SharePoint are already shaping up to compatible with IoT and other Industry 4.0 related digital technologies. [9], [16], [8], [17], [18].

## Social Media Programs

Increasing social media use in the society throughout the last decade is prompting organizations to engage themselves in social media activities. Social media is nowadays becoming a key channel for communication and can present a big data source [20]. In the context of Industry 4.0 use, which is based on realtime information, social media programs become a relevant management tool [27], [19].

## Core competencies

It is apparent that digital transformation requires new knowledge and new or upgraded competencies from employees and management [6]. Mostly, for the future business environment needs, they can be categorized into two categories, which are personal and professional competencies [50]. Many authors outline specific employee competencies on different organizational levels that will be needed to perform work operations effectively, see [51], [6], [52]. Thus, with the increased research focus, they are indicating the importance of core competencies as a key management tool in Industry 4.0.

## Radio Frequency Identification-RFID

Is a very useful management tool in the context of Industry 4.0 [40], [29], [32]. On the level of manufacturing process digitalization, RFID is necessary to have. RFID enables manufacturing organizations to track their products through the process chain [22, p. 38]. But more importantly, this management tool is very compatible with the (I)IoT and CPS, which means that it is one of the systems enabling real-time communication between the machines [22].

There are numerous other management tools that are also considered to be useful in the Industry 4.0, either in the context of transition, readiness, or the future use (i.e. corporate blogs, change man-

agement, etc.). However, more research is needed to accurately describe their role in transition and their functionality in the future Industry 4.0. More importantly, the state of current use of management tools can give us an insight into the current level of digitalization of manufacturing organizations.

## 3. Methods

### 3.1. Instrument used

The data for this contribution was obtained from a survey with which we were examining management tools utilization among employees in Slovenian organizations. The original research examines various aspects of management tools utilization in organizations and it is based on a list of practices included in Bain's worldwide survey [1], [42], [38] and its repetition, where new tools were added to the list [43]. The survey consists of three parts. In the first part, questions are focused on the average use of tools. In the second part, we asked questions about implementation and the future use of tools. And in the third part, we asked questions regarding demographic data about respondents and organizations.

Relevant to our contribution is the measurement of a single management tool usage, where respondents rated each tool using a Likert-type scale ranging from "I know and use the tool" (1) to "I don't know and don't use the tool" (3). In terms of demographic variables, we measured organizational size on a Likert-type scale, where respondents had the option to select from "micro" to "large". Employee position was also measured on a Likert-type scale, where respondents had options to select from "non-supervisory staff" to "top management". For the department variable, respondents were permitted to choose one answer, according to the several possible departments listed. Similarly, for the industry variable, where respondents could choose one answer from several listed. The list was based on NACE Classification, which provides a list of 22 industries. Next, personal factors were measured with variables determining gender, age, and working years. Employee education was measured on a Likert-type scale, where respondents had options to select from "primary school" to "Ph.D."

### 3.2. Sample

The survey among Slovenian employees was conducted in 2014. Based on random sampling, we sent out a link for an online survey to 2000 email

addresses of employees, obtained from selected organizations' web pages. A maximum of five emails per organization were sent. The target population were all employees, but an emphasis was on managers at all management levels. We received back 357 answers, resulting in 17.85 percent response rate. In terms of sample characteristics, respondents are on average 40.31 years old, have on average 16.80 years of work experiences, and work with the current organization on average for 9.31 years. The sample used in this research includes 48.2 percent of males and 51.8 percent of females. In terms of the level of education achieved, 7.0 percent have finished secondary school, 59.5 percent have finished high school or university degree, while 33.5 have a master's degree.

Regarding the current position of respondents in their organization, 58.5 percent are supervisory staff (of which 10.5 percent is lower, 27.2 percent middle, and 18.1 percent top managers) and 41.5 percent are non-supervisory staff. In terms of departments, 10.7 percent of respondents work in R&D department, 25.0 percent in basic (production or service) processes, 9.2 percent in accounting, and 10.1 percent in marketing. With regards to supervision experiences, 33.6 percent of respondents had a supervisory position in different departments, and 11.6 only in departments of human resources and law. Regarding the organizational size, 10.0 percent of organizations have less than 10 employees and 12.9 percent have between 10 and 49 employees. Furthermore, 32.9 percent have between 50 and 249 employees, and 44.1 percent have more than 250 employees. With connection to the industry, we can outline that 1.5 percent of organizations operated in industries in the primary sector, 22.8 percent in industrial organizations in the secondary sector, 58.6 percent in tertiary sector – i.e. in services, and 17.2 percent in the quaternary sector (e.g. non-governmental, charity organizations, and non-profit organizations).

The selection of the sample for this study was based on the variable "industry", which means that we selected only answers from industrial organizations. After elimination of cases with missing data, we use for this contribution 78 answers from respondents working in industrial organizations.

#### 4. Results

According to the aims of this paper, we outline the mean values of management tools utilization and

corresponding ranks for Slovenian manufacturing organizations. Results are summarized in table 2.

**Table 2. Management tools utilization in Slovenian manufacturing organizations.**

Management tool	All <sup>a</sup>	Rank <sup>b</sup>	Industry <sup>c</sup>	Rank <sup>d</sup>
Benchmarking	1.69	1.	1.44	1.
Outsourcing	1.71	2.	1.55	2.
Knowledge Management	1.90	7.	1.55	3.
Core Competencies	1.78	4.	1.58	4.
Total Quality Management	1.93	8.	1.61	5.
Strategic Planning	1.84	5.	1.62	6.
Mission and Vision Statements	1.71	3.	1.62	7.
Balanced Scorecard	2.19	11.	1.86	8.
Customer Relationship Management	1.84	6.	1.88	9.
Supply Chain Management	2.24	12.	1.92	10.
Customer Segmentation	1.96	9.	1.94	11.
Business Process Reengineering	2.17	10.	1.94	12.
Scenario and Contingency Planning	2.30	15.	1.95	13.
Mergers and Acquisitions	2.24	13.	1.95	14.
Corporate Blogs	2.38	16.	2.05	15.
Strategic Alliances	2.39	17.	2.09	16.
Loyalty Management	2.29	14.	2.12	17.
Six Sigma	2.55	22.	2.18	18.
Shared Service Centers	2.46	18.	2.22	19.
Growth Strategies Practices	2.47	19.	2.23	20.
Collaborative Innovation	2.50	20.	2.29	21.
Lean Operations	2.65	24.	2.40	22.
Offshoring	2.58	23.	2.44	23.
Radio Frequency Identification	2.67	25.	2.45	24.
Consumer Ethnography	2.55	21.	2.52	25.

Source: (Own research)



<sup>a</sup> Mean values for utilization of management tools for all 357 cases in the analysis.

<sup>b</sup> Ranks for management tools utilization regarding mean values of all 357 cases in the analysis.

<sup>c</sup> Mean values for management tools utilization in manufacturing organizations.

<sup>d</sup> Ranks for management tools utilization based on mean values in manufacturing organizations.

Above results reveal that the most commonly used management tools are benchmarking, outsourcing, mission and vision statements, core competencies, and strategic planning. However, when looking only at the sample of manufacturing organizations, it is apparent that there are some differences regarding management tools use. Noteworthy is that the intensity of management tools utilization in manufacturing organizations is higher than in the aggregated sample, which also includes service, non-profit, public organizations, etc. Furthermore, in terms of the utilization a pattern is evident. Benchmarking and outsourcing are in the forefront in both instances, while in manufacturing organizations step into the forefront knowledge management and total quality management, instead of mission and vision statements, and strategic planning.

## 5. Discussion

Obtained results revealed that at the pedestal are management tools, which are aiming at supporting processes optimization i.e. benchmarking, outsourcing, total quality management, etc.

The phenomenon of organizational digitalization, framed into Industry 4.0, has been gaining considerable attention over the last years. The main focus in the literature is on so-called "hard aspects" of digitalization (e.g. IT solutions, automation of the processes, etc.). Although not often, the "soft aspects" of digitalization, for instance, organizations' readiness for it, have also been addressed. Several models are known to assess organizations' readiness for Industry 4.0. For example, Fraunhofer "Industrie 4.0" [53] assesses readiness by putting ICT in the center and assessing enterprises' readiness for Industry 4.0 through business models and planning, human resource management, and change management. Another model is Industry 4.0 readiness assessment tool developed at the University of Warwick, which assesses readiness by focusing on six core dimensions. These are namely products and services, manufacturing and ope-

rations, strategy and organization, supply chain, business models, and legal consideration [54].

Digitalization of manufacturing organizations is tightly associated with the utilization of various management tools for supporting organizations' processes and activities. For instance, lean production, six sigma, and RFID, are just a few tools, which are most frequently emphasized as main drivers of digitalization and automation of manufacturing organizations [22], [45], [46], [47]. But existing literature does not currently provide evidence on how these tools contribute to the digitalization of manufacturing organizations. Although management tools utilization is of crucial importance with regards to organizational digitalization, their utilization is not yet considered as an important criterion for assessing the readiness of organizations for Industry 4.0 in available models.

Comparing management tools utilization in Slovenian manufacturing organizations with results from abroad [42], [10] reveals the following. On one hand in well-developed economies or regions, which have a long-standing tradition of a free-market economy (like Western Europe and Northern America) management tools aimed at supporting customers are in the forefront. Results evidently support this fact as customer relations management and customer segmentation are highly utilized.

On the other hand, things are different in the case of Slovenia, which is a typical country that was under the socialistic/communitistic regime, where principles of the free-market economy were gradually adopted in the early 1990s. Slovenia also joined the European Union later than more developed western economies. Consequently, it is evident that in Slovenia, management tools for supporting the optimization of internal organizational processes are at the forefront [55].

Taken together, there are still many (remaining) internal organizational challenges regarding "the final transformation" towards a free market economy, like for instance the general focus on core activities, establishing process organization, etc. Those challenges and many others as well, are putting in the forefront the utilization of management tools aimed at processes optimization and those focused more on internal organizational issues.

## 6. Recommendations

We may outline several recommendations. First, results about utilization of management tools in Slovenian manufacturing organizations showed that optimization of organizations, which started with the transition towards free-market economy [56], [57] is still not finished [55]. In terms of digitalization, this should be taken into the consideration, since it can importantly hinder the process of digitalization. The caution is needed, since the organization can digitalize its processes based on the current flow of processes, which is not necessarily optimal. Thus, it would be beneficial to first "re-think" the existing flow of processes and eventually change the processes, before moving toward digitalization, in order to digitalize and "optimize processes" properly.

In such instances, when the organization will at the same time "re-design" or even "re-engineer" and digitalize its processes, is vital to communicate the change and accordingly prepare employees for process changes. The same is true for digitalization since previous practice warns about employees' resistance to process changes [58] as well as failures when implementing "IT solutions" in organizations [59].

Second, based on above cognitions and practice of manufacturing organizations, we can summarize that a great majority of Slovenian manufacturing organizations are in the initial stages of development and readiness for adoption of Industry 4.0 principles [9], [60], [61], [46]. In this stage is for instance typical that organizations, which have automated their processes, are gathering more data from various sources (e.g. very commonly from CNC machines), but gathered data is often not used with the intention to optimize the processes. Another typical characteristic is that usage of the aforementioned data is not automated – i.e. no reports are generated automatically. Thus, knowing the actual state of management tools utilization, especially those supporting digitalization, presents a foundation for the design of digitalization strategy. This knowledge is therefore of crucial importance for manufacturing organizations.

Based on organizational practices and own experiences, we can identify that lean production (or broader lean concepts) have an important role in organizational digitalization. Implementation of lean principles enables manufacturing organizations to improve productivity and provides a

framework for the collection of an entire array of process related data. Therefore, from the viewpoint of digitalization, lean production presents one of the key pillars for the adoption of Industry 4.0 principles.

Third, from the perspective of Slovenian manufacturing organizations, the utilization of lean manufacturing is very low. Based on the recognized association between lean production and implementation of Industry 4.0 concepts [62], [45], [47], [46], we can assume the following. Organizations, which have already implemented some principles of lean manufacturing, may be able to implement principles of Industry 4.0 faster, cheaper, and with less stress.

Fourth, building on the findings that in well-developed economies are in the forefront management tools to support organizations' relations with their customers, it would also be adequate to enhance customer relationship management in Slovenian manufacturing organizations. Before focusing solely on the implementation of the Industry 4.0 principles. Thus, it will be important that manufacturing organizations find a right balance between adopting principles of Industry 4.0, improving focus on customers, and still keep the focus on their key processes.

## 7. Limitations and future research directions

We can outline some limitations that can importantly contextualize the content of the paper. First, relatively small sample size. Although enough respondents are included in the study, so that based on the analysis of mean values we can identify meaningful conclusions, according to the prevalent research practice [63]. Second, the self-assessment approach was used. In our case, the employees were assessing the utilization of management tools, which may have some implications for the results [64].

Third, limited possibilities for generalization of findings and implications due to the possible specific Slovenian context. For instance, Slovenia has the legacy of the former transitional economy with specific circumstances of transition (e.g. gradual approach to the transition), specific position of organizations in supply chains [43], etc.

The most obvious way of improving future research is to increase the number of respondents in order to verify the above findings. Next, the research should

be done in manufacturing organizations in different countries. Furthermore, the enlistment of management tools can be re-thought in order to ensure that all commonly used management tools in organizations are considered.

## Conclusions

In this paper, we presented the phenomena of digitalization, Industry 4.0, and management tools. We offer a synthesis, explaining how through the use of management tools, manufacturing organizations can assess the readiness and consequently support the transition to Industry 4.0. We find that utilization of management tools, especially those with digital nature, can serve as a valid indicator of where manufacturing organizations' stand with regards to digitalization of their processes and what kind of transition to Industry 4.0 will they have. The literature offers enough proof about the complementarity and compatibility between Industry 4.0 and certain digital and traditional management tools. Thus, in term we can conclude, that management tools usage can indeed indicate the organizations' readiness level for Industry 4.0 and their transitional ability.

We also find that in the case of Slovenia, this transition may not be easy as Slovenian manufacturing organizations utilize primarily management tools that support the business processes, while management tools that support digitalization are largely pushed to the side.

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## 11. Appendix

**Table 1. Utilization of management tools worldwide.**

Management tools <sup>a</sup>	Use of management tools - rank							
	Global 2006	Global* 2008	North America	EU 15	Asia-Pacific	Latin America	Croatia	Slovenia
Strategic Planning	1	2	1	1	2	1	8	8
Customer Relationship Management	2	4	3	4	1	9	4	6 (t)
Customer Segmentation	3	7	6	2 (t)	3	3 (t)	5	11
Benchmarking	4	1	2	2 (t)	9 (t)	2	2	2
Mission and Vision Statements	5	3	4	7	5 (t)	5	1	6 (t)
Core Competencies	6	9	5	5 (t)	4	10	3	3
Outsourcing	7	5	8	5 (t)	7 (t)	3 (t)	6	1
Business Process Reengineering	8	8	10 (t)	10 (t)	5 (t)	14 (t)	10 (t)	10
Scenario and Contingency Planning	9	13	9	8	14	7	10 (t)	12
Knowledge Management	10	14	12	10 (t)	7 (t)	14 (t)	7	4
Strategic Alliances	11	11	7	9	13	13	20	17
Balanced Scorecard	12	6	13 (t)	13	12	11 (t)	13	9
Supply Chain Management	13	12	13 (t)	14 (t)	11	11 (t)	12	15
Growth Strategies Tools	14	16	10 (t)	10 (t)	15 (t)	6	19	18
Total Quality Management	15	17	18 (t)	14 (t)	9 (t)	8	9	5
Shared Service Centers	16	15	18 (t)	19	15 (t)	16	14	23 (t)
Lean Operations	17	-	15	17 (t)	18 (t)	19	25	23 (t)
Collaborative Innovation	18	22	16	20	18 (t)	18	17	19
Loyalty Management	19	24	21	17 (t)	17	20 (t)	15	13
Mergers and Acquisitions	20	10	17	14 (t)	22	17	22 (t)	14
Six Sigma	21	-	22	23	20	20 (t)	22 (t)	20
Offshoring	22	-	18 (t)	21	24	24	24	25
Consumer Ethnography	23	-	23 (t)	22	21	22	18	21
Corporate Blogs	24	-	23 (t)	24	23	25	16	16
Radio Frequency Identification	25	-	25	25	25	23	21	22

<sup>a</sup> Note: Data for Global average (GL) 2006 and 2008, North America (NA) 2006, European Union 15 (EU) 2006, Asia Pacific (AP) 2006, and Latin America (LA) 2006 are calculated upon results from management tools utilization research (Rigby & Bilodeau, 2009; Rigby, 2011). Data for Slovenia and Croatia are adopted from research of management tools in Central and East Europe economies (Potocan et al., 2012; Dabic et al., 2013). Abbreviation t stands for tight result. (-) Stand for not applicable.

## Obstacles concerning the growth of small and medium sized enterprises in Albania

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**Abstract:** *Small and medium sized enterprises are the engine of development of any economy, especially for developing countries like Albania. But small and medium-sized businesses are the ones that have more funding problems due to insufficient resources. Therefore, the purpose of this study is to represent the current situation of small and medium-sized businesses in Albania regarding the investment environment, financing problems and other barriers, as well as empirically analyze the impact of interest rates and tax burden on making of loans from these businesses. Small businesses can present new products, new management styles, and new promotional strategies. On the other hand, an increasing number of small businesses make society and the economy more flexible. This can facilitate technological innovations, provide new opportunities or ideas, and enable the development of skills to implement these ideas. But small businesses face various problems, challenges and obstacles, ranging from lack of funding sources, difficulties in obtaining loans due to interest rates and documentation, high taxes, business opening procedures and many other issues. Quantitative methodology was used for the realization of the study. The data analyzed were primary collected through questionnaires and secondary data obtained from the World Bank database, INSTAT and Bank of Albania, ect From the data analysis it turned out that a large part of SMEs as a source of finance use loans and have high interest rate problems.*

### Introduction

Small and medium enterprises (SMEs) have a very important economic and social role, as they generate the largest number of new jobs and represent the pillar of the local economy. In most transition countries, small and medium-sized enterprises have carried the greatest burden of transformation into a free market economy. This can facilitate technological innovations, provide new opportunities or ideas, and enable the development of skills to implement these ideas.

Among the most important challenges is securing external funding sources compared to large enterprises. Small enterprises find it harder to get credit due to information asymmetry, risk, transaction costs, lack of collateral and many other factors.

### 1. Theoretical aspects

SMEs play an important role in the economies of the countries. They play an important role in long-term and sustainable growth, dynamism and employment. SMEs are considered as one of the most important elements in a country's economic development, leading to stimulating private entrepreneurship and managerial skills (Gadenne & Sharma, 2009).

SMEs create a range of products and services to consumers, some of which can not be offered by large businesses (Jackson, 2004). External obstacles to the development of societies are those that affect the entrepreneurial entity from abroad (ie, economic policy constraints, legislative failures, undeveloped market environment). External barriers can be:

- unstable macroeconomic conditions that are closely related to the lack of macroeconomic equilibrium of the country, the provision of financial means, related to the financing problems and the underdeveloped network of institutions that provide capital for the creation and development of SMEs;
- the heavy financial burden associated with the high tax burden;
- legislative barriers stemming from frequent changes in legislation;
- information barriers related to the lack of information system;
- educational obstacles that imply an inadequate and uneducated education system for entrepreneurs.

Lack of access to appropriate initial funds also has a shocking impact on limiting development and small business growth by reducing available funding for activities

The strong desire of many small business owners to keep control of personal business addiction has also been recognized as a key factor that limits the growth

of many businesses that are potentially successful. Possible new business owners also identified as a concern about the functioning of their business, finding and creating initial contacts with potential clients (Fielden, Davidson, & Makin, 2000).

## 2. SME distribution in Albania

The largest concentration of enterprises for the year 2016 is observed in the city of Tirana followed by Fieri with an increase in the number of active enterprises compared to 2015. While the smallest number of enterprises is noticed in Kukës.

Regarding the distribution of businesses according to the number of employees, it turns out that the majority of businesses, 145,456 businesses have 1-4 employees or as we may consider them as micro enterprises, 7,631 businesses are 5-9 employees and are enterprises small, 5,902 businesses have 10-49 employees and are medium-sized enterprises and only 1,690 businesses have over 50 employees and are large enterprises.

From the comparison of Albania with the European Union, we see that the impact of small and medium enterprises is more important in Albania because it has a higher percentage of the three indicators under consideration. In Albania, the number of enterprises in SMEs is 99.9% from 99.8% in the EU, the number of employees in this group of enterprises is 81.3% in Albania from 66.8% in the EU. The value added realized by SMEs in Albania accounts for 66.3% from 57.4% in the EU.

It is also useful to know how it ranks in comparison to comparative economies and relative to the regional average. Economy rankings distance from the boundary's results to the topics included in the ease of doing business order to another perspective.

## 3. Data analysis

### A. The Purpose of the study

The purpose of this topic is to analyze the sources of funding that use most small and medium businesses in Albania and to analyze the financing challenges faced by these businesses.

### B. Methodology

To accomplish this study quantitative methodology has been used since the data analyzed to produce the results and the conclusions of the study are numerical

data. The sources used are primary and secondary ones. Primary data were collected through questionnaires, while secondary data were obtained from Bank of Albania, INSTAT, World Bank, and for the part of the literature were used books and other materials by foreign authors and Albanian authors.

### C. Technique Used

In order to test the hypothesis, an econometric model has been developed which analyzes the relationship between loans taken by businesses and the tax burden:

$$K = C + X_1NI + X_2BT + \varepsilon$$

K - loans (dependent variable)

NI - Interest Rate

BT - Tax burden

C - coefficients and constant

X- coefficient of independent variables of informal economy and budget deficit

$\varepsilon$  - standard error

Data related to the regression model variables are obtained:

- Credit level: by the Albanian Banking Association
- Interest rate: by the Bank of Albania
- Tax burden: from the World Bank

The data was collected monthly for a 10-year period from 2008 to 2017, so the total number of surveys was 110.

### Regression analysis

One of the biggest problems of small businesses is the challenges of their funding. As most of the businesses are financed through loans, it is of interest to analyze the factors that influence the taking of loans. In this case, internal factors will not be analyzed, but external factors such as interest rates on loans and business tax burdens will be analyzed.

So if a business has a high tax burden, it is not able to get a loan because it does not have enough income to repay it. Also, even if credit interests are high, business prevents it from getting credit.

Therefore, through the regression analysis, the relationship between the loans received by businesses, the interest rate and the tax burden is presented for a 10-year period, from 2008 to 2017.

Table1.Descriptive information on the level of credit, tax burden and interest rate

	N	Minimum	Maximum	Mean	Std. Deviation
--	---	---------	---------	------	----------------

Loan	119	188398.07	450743.21	378490.5319	71856.48696
Loan Burden	119	31.60	50.00	38.6050	5.18949
Interest Rate	119	5.00	13.01	10.2776	2.28139
Valid N	119				

From the table above, which presents the descriptive data of the variables studied as the minimum value, the maximum value and average value in relation to the loan received by businesses varies from ALL 188 billion to 450 billion, with an average value of about 378 billion ALL.

Regarding the tax burden, it is noted that its lowest value is 31.6% and the highest value is 50%, with an average value of 38%.

The loan interest rate varies from 5% to 13.01%, with an average value of 10.27%.

## Conclusion

Small and medium-sized businesses are constantly trying to survive in a market that is quite competitive but in order for businesses to face competition, they must constantly invest in technology and innovation. Small and middle-sized businesses have financing problems with regard to investment, so the number of businesses closing down every year is high.

Given the financing of small businesses as one of the most important elements of their survival in the market as well as facing the competition, it was of interest to analyze the investment environment of small and medium-sized businesses in Albania, the financing ways that they use as well as challenges or barriers to investment and other barriers faced by these businesses.

Knowing and seeing that the main source of business financing are loans, it was also interesting to analyze the factors that affect the obtaining of loans.

As the two most important factors, the interest rate on loans and the tax burden paid by businesses were chosen, and through a regression model the causal relationship between these variables was analyzed. With regard to the investments made, around 75% of businesses have realized up to 50,000 euros in investments and the share of businesses have carried out more than 50,000 euros in investments. With regard to business investment planning in the current

year, 81% of businesses plan to invest up to 50,000 euros, and the rest plan to invest over 50,000 euros.

Regarding the types of investments that businesses have done most, most have stated that they have invested more in facilities and machinery. The source of financing that most small businesses use in Albania are loans and equity.

With regard to business barriers, the biggest barriers are the barriers to informality, financial and fiscal barriers, while the impact of labor and infrastructural barriers is less affected.

So this analysis showed a strong and statistically significant negative relationship between the variables. This means that the higher the interest rates on the loans, and the higher the tax burden, the lower the level of obtaining loans from businesses.

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## Is There a Friendship Linkage Between Shanghai Versus Indoensia Stock Market?

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**Abstract:** *The global economy nowadays color with the shifts from conventional towards disruptive phenomena. This might also affected to the stock markets situation. Based on the empirical observation, the behavior of Indonesia's stock market is vary from the US stock market as indicated in Dow Jones Industrial Average (DJIA) movement. Mostly investor in Indonesia is likely more rely on Dow Jones rather than to Shanghai composite index (SSEC). In fact the balance of payment of US may no longer favourable to be used as a reference for Indonesia. This due to the macro economic anatomy of US perhaps shifting to different direction compare to the characterisitcs of Indonesian macro economy. Eventually the china economy's characteristics might more closer to Indonesia. Those hypothesis need to be proved in this study. The econometrics model of Vector Autoregressive was assigned to analyze the data in this study. The time series data of monthly from January 2010- July 2018 were collected from the competence websites of stock market for China and Indonesia. The stock market in the respective country (Indonesia and/or China) was determined by inflation, country production index, interest rate and world oil price. Moreover causality test has been done between Shanghai and Indonesia stock market. The result of the research showed that the Shanghai Composite Index and the Indonesia composite stock price index have a two-way relationship (causality). China's inflation, China's IPI and OIL as exogenous variables prove that they have influence upon the Shanghai Composite Index. Furthermore, Indonesia's IPI and OIL also prove that they have influence on the Indonesia composite stock price index.*

### Introduction

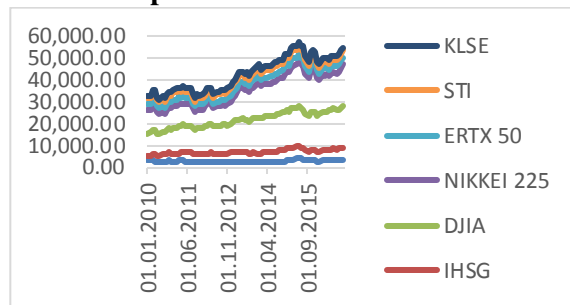
Shanghai Stock Exchange (SSE) is the largest stock exchange in China. The main stock market index of the Shanghai Stock Exchange is known as the Shan-ghai Composite Index. This index is the main in-dicator that is most often used to describe the con-dition of the Shanghai stock exchange. The Shanghai Composite Index represents the fifty largest com-panies in China based on market capitalization; therefore, the rise and fall movements will reflect on the general conditions of the private sector in China. Some of the indices used in the Shanghai stock ex-change in China have also been used and recognized by world stock exchanges. This is because China is one of the top ten largest stock exchanges in the world with capital market mastery values up to US \$ 2,469 billion in 2013. Furthermore, China's economy has strong relations with several countries, one of which is Indonesia. We can see the strong bilateral trade relations between Indonesia and China in Indonesia Trade Balance with the Major Destination Countries data (taken from [www.kemendag.go.id](http://www.kemendag.go.id)), which is presented in Table 1 as follows:

**Table 1. Indonesia Trade Balance with the Major Destination Countries**

Description	2015	2016
China	14.364,5	14.009,7
America	8.647,6	8.843,0
Japan	4.757,4	3.113,0

In Table 1, China's economic integration with Indonesia can be seen through the development of the trade balance that is always dominated by China as Indonesia's biggest trading partner and the trade value always shows an increase from year to year with the total value reaching up to US \$ 14,009 million in 2016. Based on this data, it can be estimated that every movement that occurs in China especially in the Shanghai index will affect other regional exchanges, including the Indonesian stock exchange, namely the Indonesia Stock Exchange (IDX). As an illustration that the movement of the regional capital market and Indonesia's capital market (BEI) has a strong relationship with the Shanghai Index, it is presented in Figure 1 as follows:

**Figure 1. Movement of the Main Index of Global Capital Markets 2010-2016**



Data source: finance.yahoo.com

It is shown in Figure 1 that the movement of the stock index on the regional stock exchanges and the Indonesia Stock Exchange (IDX) has the same direction as the movement of the Shanghai Index compared to other capital market indices. If the Shanghai Index experienced an upward movement, the index of regional stock exchanges and the composite stock market index would also increase. Conversely, when the Shanghai index declined, the regional stock market index and the composite stock price index also experienced a downward movement.

Based on Figure 1, it can be concluded that the Shanghai Composite Index can be used as a reference by investors to make investment decisions on the Indonesia Stock Exchange (IDX). Before looking at what will happen on the Indonesia Stock Exchange, investors need to see what is happening on the benchmark index, which is the Shanghai Index. This is an utmost necessary thing to do because every change that occurs in the Shanghai Stock Exchange will ultimately affect the Indonesia Stock Exchange. By looking at the movement of the Shanghai Index, investors can immediately predict how the Composite Stock Price Index (IHSG) will move on the Indonesia Stock Exchange.

## 1. Literature Review

Through the integration of capital markets, it is very possible that there is a dominant influence of capital markets on other capital markets (Yoopi Abimanyu, 2008). This influence allows the capital market to influence each other's capital markets. The strength of the China's economy with other countries is strong in terms of international trade. In the end, this will have a successive effect on other

capital markets and will also affect China's capital market.

On the investment side, macroeconomic conditions are an important part to be used by individual investors and institutional investors in determining investment decisions (John Nofsinger & Mark Hirschey, 2008). This condition is caused due to macroeconomic conditions that will affect the level of risk and return on the capital market.

## 2. Research Data and Methodology

All data used in this study are secondary data taken from January 2010 to July 2018. The data used in this study were obtained from various sources, including: [www.bi.go.id](http://www.bi.go.id), [www.bps.go.id](http://www.bps.go.id), [www.yahoofinance.com](http://www.yahoofinance.com), [www.stlouisfed.com](http://www.stlouisfed.com) and [www.investing.com](http://www.investing.com). The data population used in this study is all of the monthly data of China inflation, PBOC Rate, China's industrial production index, world oil price, the Shanghai Index and the variables of Indonesia inflation, BI Rate, Indonesian industrial production index and Jakarta Composite Index (IHSG).

The sampling used in this research is purposive sampling method. This technique is a method of sampling that is tailored to the intended purpose. The sample in this study is the monthly data of China inflation, PBOC Rate, China's industrial production index, world crude oil price, the Shanghai Index and the variables of Indonesia inflation, BI Rate, world oil price, Indonesian industrial production index and Jakarta Composite Index (IHSG) of January 2010 to July 2018.

This study aims to analyze the reciprocal relationship between the Chinese and Indonesian capital markets and also to analyze the macroeconomic factors that can affect both capital markets. As the model used is a simultaneous model, this analysis uses the Vector Auto Regression (VAR) method. If the data in this study has met the criteria as stable or stationary status with no co-integration tendency, then the data processing process in the study can be continued with VAR. However, if the data is stationary and has co-integration tendency, it will be followed up using the Vector Error Correction Model (VECM) method. The advantage of the VAR research method lies in the ability to track dynamic responses between one economic variable to another. What's more, this method is able to track the speed of changes in stock price fluctuations

from one stock exchange responded by stock exchange in other countries. All data in this study were transformed in normal logarithms (ln). Research data was calculated using Microsoft Excel 2010 software and Eviews 10. The formulation of the research model can be written as follows:

$$SSEC_t = \beta_1 + \sum_{i=1}^p \alpha_1 SSEC_{t-i} + \sum_{i=1}^p \gamma_1 SSEC_{t-i} + \sum_{i=1}^p \phi_1 INFC_{t-i} + \sum_{i=1}^p \phi_1 IPIC_{t-i} + \sum_{i=1}^p \phi_1 IRC_{t-i} + \sum_{i=1}^p \phi_1 OIL_{t-i} + \varepsilon_1 \dots (4.1)$$

$$IHSG_t = \beta_1 + \sum_{i=1}^p \gamma_2 IHSG_{t-i} + \sum_{i=1}^p \alpha_2 SSEC_{t-i} + \sum_{i=1}^p \phi_2 INFI_{t-i} + \sum_{i=1}^p \phi_2 IPII_{t-i} + \sum_{i=1}^p \phi_3 IRI_{t-i} + \sum_{i=1}^p \phi_2 OIL_{t-i} + \varepsilon_2 \dots (4.2)$$

The steps that need to be done on the VAR method are stationary test, Johansen co integration test, VAR estimation, determination of optimal lag, t-statistical test, F-statistical test, determination coefficient test, granger causality test, IRF test and Variance Decomposition test (Muharam, 2013).

### 3. Results

The first test conducted is the Augmented Dickey-Fuller test (ADF Test). Decision making is done by comparing the absolute value of t-statistics to the absolute value of t-table (t-McKinnon Critical Value) or by comparing the value of the probability of significance to  $\alpha = 5\%$  or  $\alpha = 10\%$ . If the t-statistic value  $>$  t-McKinnon critical value or probability value shows  $<1\%$ ,  $5\%$  or  $10\%$ , then the data tested is said to be stationary. The initial test of stationary test is carried out at a degree level. If the initial test results still have not shown that the data is stationary at the level, then the process of differencing data will be carried out and then the stationary data test will be conducted again at 1 or 2 degree of differentiation.

**Table 2. ADF Stationary Test at First Difference**

Variable	t-stat	5%	Prob	Explanation
SSEC	8,39	3,45	0,00	Stationer
INFI	7,88	3,45	0,00	Stationer

IPIC	11,3	3,45	0,00	Stationer
IRC	10,13	3,45	0,00	Stationer
IRI	6,51	3,45	0,00	Stationer
OIL	8,45	3,45	0,00	Stationer

Table 2 above shows the results of the ADF unit root test on the six research variables. The six variables proved stationary at the first level of differentiation, while the IHSG variable, China's inflation and the Indonesian industrial production index were stationary at the degree level. As there are variables that are not stationary at the level, these variables may have a possibility of co-integration or long-term relationships. For that reason, the next process is to carry out the Johansen co-integration test. Variables are said to be co-integrated if they have Max-Eigen value and trace values greater than 0.05 critical values. The co-integrated connection can be seen in table 3 below:

**Table 4. Johansen's Co-integration Test**

Unrestricted Cointegration Rank Test (Trace)				
Hypothesized		Trace	0.05	
No. of CE(s)	Eigenvalue	Statistic	Critical Value	Prob.**
None	0.332649	193.9039	197.3709	0.0733
At most 1	0.293723	153.8643	159.5297	0.0975
At most 2	0.263447	119.4373	125.6154	0.1120
At most 3	0.257583	89.16575	95.75366	0.1303
At most 4	0.209569	59.68180	69.81889	0.2452
At most 5	0.174181	36.39924	47.85613	0.3765
At most 6	0.094473	17.45266	29.79707	0.6066
At most 7	0.073561	7.628069	15.49471	0.5080
At most 8	0.000644	0.063752	3.841466	0.8006
Unrestricted Cointegration Rank Test (Maximum Eigenvalue)				
Hypothesized		Max-Eigen	0.05	
No. of CE(s)	Eigenvalue	Statistic	Critical Value	Prob.**
None	0.332649	40.03952	58.43354	0.8065
At most 1	0.293723	34.42702	52.36261	0.8232
At most 2	0.263447	30.27157	46.23142	0.7648
At most 3	0.257583	29.48395	40.07757	0.4583
At most 4	0.209569	23.28255	33.87687	0.5090
At most 5	0.174181	18.94658	27.58434	0.4186
At most 6	0.094473	9.824589	21.13162	0.7609
At most 7	0.073561	7.564317	14.26460	0.4247
At most 8	0.000644	0.063752	3.841466	0.8006

Co-integration results in table 4 above illustrate that the statistical trace value and Max Eigen value at the output are smaller than 0.05 critical values;

therefore, there is no co-integration between the variables in this study. The next step in this study is to estimate the VAR. The first thing to do in estimating the VAR model is to determine the optimal lag length to be used. The optimal lag results of the VAR model are illustrated in table 5 below:

**Table 5. Optimal Lag Test**

Lag	LogL	LR	FPE
0	172.8439	NA	0.000126
1	263.8419	162.8386*	2.02e-05
2	269.0888	9.164739	1.97e-05
3	273.7428	7.939675	1.95e-05*
4	275.5582	3.019341	2.05e-05
5	278.1107	4.137750	2.12e-05
6	279.8219	2.701884	2.23e-05
7	282.9595	4.821972	2.28e-05
8	285.5678	3.898681	2.36e-05

AIC	SC	HQ
-3.301977	-2.871850	-3.128174
-5.133514	-4.595856*	-4.918260*
-5.159722	-4.514532	-4.899017
-5.173533*	-4.420811	-4.869377
-5.127542	-4.267288	-4.779935
-5.097088	-4.129283	-4.706010
-5.048882	-3.973566	-4.614374
-5.030726	-3.847878	-4.552767
-5.001427	-3.711047	-4.480016

The output results in table 5 above show that the optimal lag in this study is in Lag 1. After determining the optimal lag, the next step is to do a VAR test in both research models.

**Table 6. Vector Autoregressive (Model SSEC)**

Vector Autoregression Estimates	
	DSSEC
DSSEC(-1)	0.883534
	(0.04416)
	[ 20.0075]
DIHSG	0.288005
	(0.16128)
	[1.78574]
INFC	-0.006693
	(0.02476)
	[-2.27034]

IPIC	0.118449
	(0.06842)
	[1.73120]
IRC	0.046331
	(0.16396)
	[ 0.28258]
OIL	0.025939
	(0.05277)
	[ 1.79157]
C	3.436504
	(1.68282)
	[ 2.04211]
R-squared	0.969473
Adj. R-squared	0.967545
Sum sq. resids	0.526013
S.E. equation	0.074411
F-statistic	5.028260

Based on the results of the VAR output in table 6 above, SSEC was significantly influenced by SSEC a month earlier, the IHSG a month earlier, inflation a month earlier, the industrial production index a month earlier, and the world oil price a month earlier. This can be seen from the value of the t-statistic which is greater than the value of the t-table that is 1.671. The F-statistic value of the three research models has a value greater than F-table which is 2.76. It means that the VAR model built is able to show a significant connection between independent variables on the dependent variable at a 90% confidence level or with a significance level of  $\alpha = 10\%$ .

**Table 7. Vector Autoregressive (IHSG model)**

Vector Autoregression Estimates	
	DIHSG
DIHSG(-1)	0.683296
	(0.05541)
	[ 12.3325]
DSSEC	-0.084482
	(0.01452)
	[-5.81975]
INFI	-0.023468



	(0.01223)
	[ -1.41917]
IPII	0.257280
	(0.04888)
	[ 5.26364]
IRI	-0.047093
	(0.02075)
	[-1.26964]
OIL	0.019068
	(0.01157)
	[ 1.68424]
C	2.136337
	(0.42875)
	[ 4.98274]
R-squared	0.868740
Adj. R-squared	0.860449
Sum sq. resids	0.060086
S.E. equation	0.025149
F-statistic	4.047920

Based on the results of the VAR output in table 7 above, the IHSG was significantly influenced by the IHSG a month earlier, SSEC a month earlier, in-inflation a month earlier, the industrial production in-dex a month earlier, and the world oil price a month earlier. It can be seen from the value of the t-statistic which is greater than the value of the t-table that is 1.671. The F-statistic value of the three research models has a value greater than F-table which is 2.76. This result means that the VAR model built is able to show a significant relation between independent variables on the dependent variable at a 90% confidence level or with a significance level of  $\alpha = 10\%$ .

The next step is to conduct Granger causality test to find out whether the independent and dependent variables have a one-way relation, two-way or even have no relation at all. Granger causality test in this study was conducted at a confidence level of 90% or at a significance level of  $\alpha = 10\%$ .

**Table 8. Granger Causality Test**

Connections between variables	F-stat	F - Table	Prob	Explanation
SSEC towards IHSG	4.88881	2.76	0.0095	Significant
IHSG towards SSEC	2.90722	2.76	0.0595	Significant

By looking at the results of the causality test in table 4.9 above, the Shanghai Composite Index (SSEC) has significant causality with the composite stock price index (IHSG). This can be proven by looking at the probability value of 0.0095 which is less than 10%. This proves that the null hypothesis (DIHSG does not Granger Cause DSSEC) can be rejected. Likewise, the composite stock price index (IHSG) has significant causality with the Shanghai Composite Index (SSEC). This can be proven by looking at the probability value of 0.0595 which is less than 10%. This proves that the null hypothesis (DSSEC does not Granger Cause DIHSG) can be rejected. Judging from the direction of the relation, it can be concluded that the Shanghai Composite Index has a relation to the composite stock price index, as well as the composite stock price index having relation on the Shanghai Composite Index.

#### 4. Discussion

The first hypothesis states that there is a reciprocal relationship (Causality) between the Shanghai Composite Index (SSEC) variable and the composite stock price index (IHSG). Based on the results of the Granger Causality test, it shows that there is a two way relationship (Causality), namely the Shanghai Composite Index (SSEC) variable, which has a significant effect on the composite stock price index (IHSG). The F-statistic values obtained from the Granger causality test that has been carried out provide evidence that the relationship of the Shanghai composite index to the composite stock price index has an absolute F-statistic value of 4.88881 and 2.90722 which is greater than the value of F-table of 2.76. The Granger causality test results described above provide evidence that hypothesis 1 is therefore accepted. These results indicate that the increase in the Shanghai Composite Index will encourage an increase in the composite stock price index and vice versa. This influence is caused due to the strength of the Chinese economy which is shown by the linkages of China's economy with Indonesia through bilateral trade relations. This is proven by the increasing value of exports and imports between the two countries until 2018 (taken from [depdag.go.id](http://depdag.go.id)). In other words, if the condition of China's economy is to expand, then it will be reflected in the increasing trade relations with Indonesia so that Indonesia's economic condition will also increase and vice versa.

Hypothesis 2 states that China's inflation variable (INFC) has a negative influence on China's capital

market index (SSEC). The results of testing the effect of Chinese inflation on the VAR model that has been done get a t-statistic value of -2.27034. The absolute value of this t-statistic shows a greater value when compared to the t-table value of 1.671. The absolute value of t-statistics that is greater than the value of this t-table provides evidence that China's inflation variable has an influence on the Chinese capital market index (SSEC). It can also be seen in the coefficient value obtained has produced a negative value that is equal to -0.006693. This negative value indicates that the influence given by China inflation on China's capital market index is negative. Based on the results of the VAR test that has been conducted, it can be concluded that China's inflation variable has a negative and significant effect on the Chinese capital market index (SSEC). Therefore, hypothesis 2 is proven. The result above shows that the higher inflation in a country get, it will reduce the level of purchasing power of people towards goods / services and reduce the real income obtained by investors from their investments (Tandeililin, 2010). The lower the purchasing power of the people, it will definitely affect the policy of total production of goods / services carried out by a company. As a result of the decline, the profits earned by the company will decrease in the end. Seeing the condition of the company experiencing a decline in operating profits, the investors will assess that the prospects or performance of the company is no longer interesting. As a result, investors will be reluctant to take action to buy shares of the company when the country's inflation condition is high. The lack of buying shares in the capital market can make the value of the Shanghai composite index decline.

Hypothesis 3 states that the Indonesia inflation variable (INFI) has a negative influence on the Indonesia capital market index (IHSG). The results of testing the effect of Indonesian inflation on the VAR model that has been done get a t-statistic value of -1.41917. The absolute value of this t-statistic shows a smaller value when compared to the t-table value of 1.671. The absolute value of t-statistic that is smaller than the value of this t-table provides evidence that the Indonesian inflation variable has no influence on the Indonesia capital market index (IHSG). It can also be seen in the coefficient value obtained has produced a negative value that is equal to -0.023468. This negative value indicates that the influence given by Indonesia inflation on the Indonesia capital market index (IHSG) is negative. Based on the results of

the VAR test that has been done, it can be concluded that the Indonesia's inflation variable has no effect on the Indonesia capital market index (Indonesia); therefore hypothesis 3 is rejected. Based on the calculation above, it can be seen that hypothesis 3 is not proven even though Indonesian inflation has a negative influence on the stock price index; however the effect is not significant. This can be caused by unreasonable data behavior, where there was a drastic change in the data of 2013-2014. In these years, Indonesia's inflation showed a high increase and decline compared to the years before that. Investors who will invest in the Indonesia capital market should not need to pay attention to Indonesia's inflation variable because it does not have a significant impact on the composite stock price index. This result is in line with the research conducted by Flores C (2004) who found evidence that inflation does not have a significant impact on the capital market index.

Hypothesis 4 states that the China industrial production index (IPIC) variable has a positive influence on the China capital market index (SSEC). The results of testing the effect of China's industrial production index on the VAR model that has been done get the absolute t-statistic value of 1.73120. The absolute value of this t-statistic shows a greater value when compared to the t-table value of 1.671. The absolute value of t-statistic that is greater than the value of this t-table provides evidence that the variables of China's industrial production index have an influence on China's capital market index (SSEC). It can also be seen in the coefficient value obtained has produced a positive value that is equal to 0.118449. This positive value shows that the influence given by China's industrial production index on the China capital market index (SSEC) is positive. Based on the results of the VAR test that has been conducted, it can be concluded that the variable of China's industrial production index have a positive and significant influence on the China capital market index (SSEC); therefore hypothesis 4 is accepted. Based on the results of the calculations above, it can be said that hypothesis 4 is proven. These results indicate that China's industrial production index will push up the Shanghai Composite Index. During the research period, the situation in the mining and manufacturing industry in China had a fairly good condition. It can be seen that from 2010 to 2018 China's industrial production index has always increased. This increase was also followed by an increase from the Shanghai Composite Index. Likewise, when China's industrial

production index declined as a result of the global economic crisis in 2014, it was also followed by a decline from the Shanghai Composite Index. Investors who will invest in the Chinese capital market are wisely advised to pay attention to the level of China's industrial production index because this industrial production index variable has a significant and positive impact on the Shanghai Composite Index.

Hypothesis 5 states that the Indonesia industrial production index (IPII) variable has a positive influence on the Indonesian capital market index. The results of testing the effect of the Indonesian industrial production index on the VAR model that has been carried out get the t-statistic value of 5.26364. The absolute value of this t-statistic shows a greater value when compared to the t-table value of 1.671. The absolute value of t-statistics that is greater than the value of this t-table provides evidence that the variable Indonesia industrial production index has an influence on the Indonesia capital market index (IHSG). It can also be seen in the coefficient value obtained has produced a positive value of 0.257280. This positive value shows that the influence given by the Indonesian industrial production index to the Indonesian capital market index (IHSG) is positive. Based on the results of the VAR test that has been carried out, it can be concluded that industrial production index of Indonesia variable does not have a positive and significant effect on the Indonesia capital market index (IHSG); therefore hypothesis 5 is accepted. Based on the results of the calculations above, it can be concluded that hypothesis 5 is proven. This result indicates that with the increase in Indonesia's production index will push up the composite stock price index. During the period of observation, the situation of the mining and manufacturing industry in Indonesia had a fairly good condition. This can be seen that from 2010 to 2018 Indonesia's industrial production index has always increased every year. This increase was also followed by an increase in the value of the composite stock price index. However, when the United States economy improved which caused global economic pressure in 2015, Indonesia's industrial production index did not experience a significant decline. Despite a decline in export value, the Indonesian banking sector is still healthy enough to sustain the growth of large manufacturing and mining industries in Indonesia. Investors who are going to invest in the Indonesia capital market should pay attention to the level of the country's industrial production index because this industrial production index variable

has a significant and positive impact on the composite stock price index.

Hypothesis 6 states that the variable Chinese interest rate (IRC) has a negative influence on the China capital market index (SSEC). The results of testing the effect of China's inflation on the VAR model that has been done get a t-statistic value of 0.28258. The absolute value of this t-statistic shows a smaller value when compared to the t-table value of 1.671. The absolute value of t-statistics that is smaller than the value of this t-table provides evidence that the variable China interest rates do not have an influence on the Chinese capital market index (SSEC). It can also be seen in the coefficient value obtained has produced a positive value that is equal to 0.046331. This coefficient value shows that the influence given by China interest rates on the China capital market index (SSEC) has a positive influence. Based on the results of the VAR test that has been conducted, it can be concluded that China interest rates variable do not have an influence on the China capital market index (SSEC); therefore hypothesis 6 is rejected. Based on the results of the calculations above, it can be seen that hypothesis 6 is rejected because it does not have a positive and insignificant effect on the Shanghai composite index. This positive influence is probably due to the fact that during the observation periods of 2010-2018, China's interest rates tend to increase every year and it is followed by an increase in demand in the Shanghai capital market. For investors who will invest in the Shanghai capital market, it is better not to pay too much attention to the condition of the China interest rate variable because it does not have a significant influence on the Shanghai Composite Index. The results of this hypothesis do not support previous research conducted by Dritsaki (2005), Mark. A (2007) and Co-leman & Tettey (2008) which showed the evidence that interest rates have a significant influence on the capital market index.

Hypothesis 7 states that the variable of Indonesia interest rate (IPII) has a negative influence on the Indonesia capital market index (IHSG). The results of testing the effect of the Indonesian industrial production index on the VAR model that has been done get the t-statistic value of -1.26964. The absolute value of this t-statistic shows a smaller value when compared to the t-table value of 1.671. The absolute value of t-statistics that is smaller than the value of this t-table provides evidence that the variable of Indonesia interest rates do not have an influence on the Indonesia capital market index

(IHSG). It can also be seen in the coefficient value obtained has produced a negative value that is equal to -0.046331. This negative value indicates that the influence given by the Indonesia interest rates on the Indonesian capital market index (IHSG) is negative. Based on the test results of VAR that has been conducted, it can be concluded that Indonesia interest rate variable has a negative effect and is not significant towards the Indonesia stock market index (IHSG); therefore hypothesis 7 is rejected. Based on the calculations above, it can be seen that hypothesis 7 is rejected because even though the Bank Indonesia interest rate has a negative influence, there is no significant effect on the composite stock price index. This happens due to the fact that commercial bank deposit rates are not only influenced by Bank Indonesia's interest rates, but rather refer to the movement of money market rates between banks. Investors who will invest in the Indonesia capital market (IHSG) should not have pay too much attention on the variable of Bank Indonesia's interest rate because they have no influence on the composite stock price index. The result of this hypothesis supports the findings of Coleman & Tetey (2008), Dritsaki (2005) and Mark. A (2007) where they found evidence that interest rate negatively affect the capital market index.

Hypothesis 8 states that the world oil price (OIL) variable has a positive influence on the China capital market index (SSEC). The results of testing the effect of world oil prices on the VAR model that has been done get a t-statistic value of 1.79157. The absolute value of this t-statistic shows a greater value when compared to the t-table value of 1.671. The absolute value of t-statistics that is greater than the value of this t-table provides evidence that world oil price variable has an influence on the China capital market index (SSEC). It can also be seen in the coefficient value obtained has produced a positive value that is equal to 0.025939. This positive value shows that the influence given by World Oil Price on the China capital market index (SSEC) is positive. Based on the results of the VAR test that has been conducted, it can be concluded that the variable world oil price has a positive and significant influence on the China capital market index (SSEC); therefore hypothesis 8 is accepted. Based on the results of the calculations above, it can be concluded that hypothesis 8 is proven because world oil price has a positive and significant influence on the Shanghai capital market index. This statement means that an increase in world oil price will have an impact on the Shanghai

Composite Index. This outcome might happen because the increase in world oil price can actually caused investors' expectations to mining, oil and gas companies and mining equipment stocks listed on the Shanghai capital market; thus actually boosting the mining company's stock prices and eventually also increasing China's capital market index. Investors who will invest in the Shanghai capital market (SSEC) should consider the world crude oil price variable because this variable can have a significant and positive effect on the Shanghai capital market index (SSEC). The result of this hypothesis support the previous research conducted by Hosseini, et al (2011), Mark. A (2007) and Abbas Valadkhani, et al (2006) who showed the evidence that world crude oil price has a positive and significant influence on the stock price index.

Hypothesis 9 states that the world oil price (OIL) variable has a positive influence on the Indonesia capital market index (IHSG). The results of testing the effect of world oil prices on the VAR model that has been carried out get a t-statistic value of 1.64824. The absolute value of this t-statistic shows a greater value when compared to the t-table value of 1.671. The absolute value of t-statistics that is greater than the value of this t-table provides evidence that the world oil price variable has an influence on the Indonesia capital market index (IHSG). It can also be seen in the coefficient value obtained has produced a positive value that is equal to 0.019068. This positive value shows that the influence given by world oil price to the Indonesia capital market index (IHSG) is positive. Based on the results of the VAR test that has been conducted, it can be concluded that world oil price variable has a positive and significant influence on the Indonesia capital market index (IHSG); therefore hypothesis 9 is accepted. Based on the results of the above calculations, it can be stated that hypothesis 9 is proven because world crude oil price variable has a positive and significant influence on the composite stock price index. This can be caused by the increase in world crude oil prices which will increase investor expectations of the shares of mining, oil and gas companies and mining equipment listed on the Indonesia stock exchange (IDX); therefore, this will actually boost mining company stock prices and finally the composite stock price index will also increase. Investors who will invest in the Indonesian stock exchange should consider the world oil price variable because this variable can have a significant and positive effect on the Shanghai capital market index (SSEC). The



result of this hypothesis support the previous research conducted by Hosseini, et al (2011), Mark. A (2007) and Abbas Valadkhani, et al (2006) which show evidence that world crude oil price has a positive and significant influence on the stock price index.

## 5. Conclusion and Recommendation

The description in the previous sub-chapter can be concluded that based on the Granger causality test, the Shanghai composite index and the composite stock price index have a two-way relationship (causality). The VAR test results showed evidence that China inflation variable has a negative influence on the Shanghai composite index. It is found in China industrial production index variable found that it a positive influence on the Shanghai composite index. Evidence is also found in the world oil price variable that it has a positive influence on the Shanghai composite index. In Indonesia industrial production index variable, it is found evidence that the said variable has a positive influence on the composite stock price index. Likewise, the world oil price found evidence of a negative influence on the composite stock price index. However, Indonesia inflation index found evidence that this variable has no effect on the composite stock price index. Future research is expected to be able to use daily data because the stock transactions conducted by investors are daily. For central bank interest rates variable, it should be replaced by using money market interest rates because it is more often used for reference to determine the interest rates of commercial bank. It is recommended that further research is also necessary to pay attention and expand the direct and indirect effects of the stock market and the macroeconomic conditions of other countries that have strong trade relations with the countries of Indonesia and China.

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## Impact of Light Stimulation in Business Environment: An Experiment on Technology Stress

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**Abstract:** Electronic information has been increasing in business environment. With efficiency needs increase, new computer languages like the XBRL (eXtensible Business Reporting Language) is also developed which promotes business digitalization more. Under the present condition only positive aspects of the electronic information like efficiency are referred a lot. On the contrary it is few to be discussed about negative aspects of it. In previous research the technology stress is exactly observed [3][4], and it is alerted. This paper tries to do an experiment on the technology stress with focusing on the differences of information tools. The Kindle Paperwhite (the e-book produced by Amazon.com) displays letters on a screen by the front light system which is expected to reduce light stimulation. In order to confirm that effect, the stress is measured physically by using salivary amylase activity. Additional interviews about conscious feelings of fatigue are also done. Finally, some implications are mentioned.

### Introduction

#### 1.1. Necessity of stress control

Recently the stress control is one of crucial task of companies. If employees were harmed by the stressful environment every day, they could not demonstrate their abilities enough. It is no exaggeration to say that the value of companies is carried away by strategies of stress management.

There are various kinds of stress-gen in business environment. Human relation, organization, physical substances in business places could be reasons of business persons' stress. Those stress-gen generates mental and physical diseases.

According to Padma, V. et al. [4], when IT technology advances, there is also increased additional stress which is called "the technology stress" and workers need to control their own stress for their health. Padma focus on IT environment as a new stress-gen.

In other previous research by author Hayashikawa investigates in physical factors of business stress-gen from similar point of view [3]. The business stress cause of the electronic information is measured with comparing the paper-based information. That research showed that all of the examinees who use the electronic information feel more fatigue rather than the paper-based information users obviously. Especially, their conscious feeling of fatigue has increased after a certain stress pressure rather than

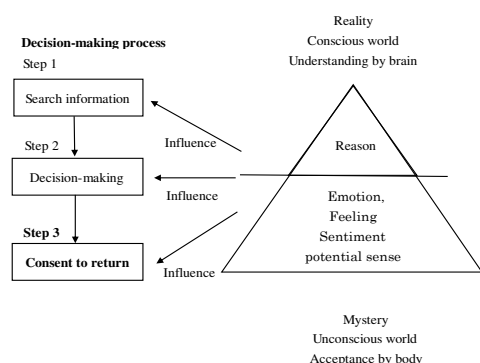
their own estimation before the stress pressure. Huge conscious stress feeling is observed in the situation of no significant body stress. This is worthy of

mention. Real body stress is sometimes separated from conscious feeling of fatigue.

Especially in the case of the discord between conscious and unconscious stress, it needs to intervene.

#### 1.2. Brain stress and body stress

It should be cleared that differences between "brain and body" or "conscious and unconscious". It might be a strange subject because brain is a one part of body, but it needs. For example, in other previous research by Hayashikawa [12], it is discussed that investors' decision-making behavior is influenced by conscious world and unconscious world [see Figure 1]. That investigation shows that investors use both conscious and unconscious sensor for their decision-making. Under this concept, "unconscious" means "feeling" or "emotion" which is distinguished from rational decision-making by brain.

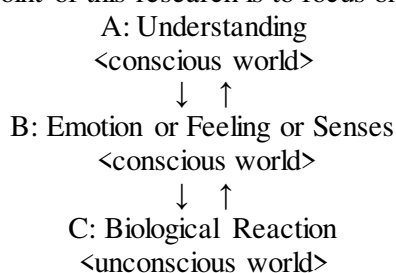


**Figure 1: Decision-making process influenced by conscious and unconscious world ([12] p.158.)**

In the decision-making study, it has a trend to focus on “rationality of behavior” mainly and separate the phenomena which has understandability from the phenomena which has difficulties of explanation like the black box. In this sense, “irrationality of behavior” could be a crucial object of research. When the technical term of “judgement and decision-making” is discussed, “judgement” includes nuance of “intuition” or “unexplainable senses” and it is composed of both rational decision-making and irrational intuition, emotion or feeling.

On the contrary, in this paper, it is defined that “unconscious world” is “pure physical reality without any intention or thought”. Under this concept, perceptual feeling and emotion with self-awareness are also in the category of conscious world. “Body stress” is distinguished from “conscious feeling of fatigue” from the view of consciousness [see Figure 3 and section 3.3.].

Human consciousness is sometimes different from actual body condition (biological reaction) under consciousness. Therefore, it is necessary to measure both aspect for caring various kinds of stress types. Figure 2 shows determinant factors of decision-making behavior. (A) and (B) are belong to conscious world. Oppositely, (C) is belong to unconscious world which could influence to (A) and (B). These three factors influence each other and generate very transversal phenomena. One of the original point of this research is to focus on (C).



**Figure 2: Determinant factors of decision-making behavior**

### 1.3. Light stimulation and technology stress

Light stimulation could be one of causes of technology stress. Kindle Paperwhite which is e-book that is famous for the front light function is expected to reduce technology stress [Picture 1]. The front light function is said that it could realize natural light stimulation on the electronic screen like actual paper. In other words, it has a possibility of using digitalization merit with getting rid of technology stress. It is also compared with the PC browser which shows letters with using the backlight function.

These two functions have difference of the strength of light stimulation, which are investigated in the technology study area frequently. To verify the effect of the Paperwhite screen is a valuable trial for creating new strategies for comfortable business environment in the future. That is why a following experiment is done.



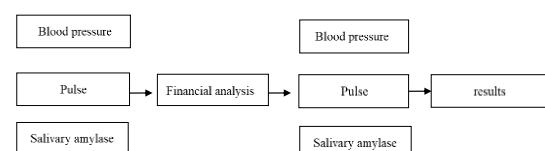
**Picture 1: Kindle Paperwhite (e-book with the front light function)**

## 2. Method

### 2.1. The design of experiment

An experiment is done by the pre-post designed data as follows. Two groups are prepared which are divided depending on the difference of information tools. One is the pc-based information group, the other is the paperwhite-based information group. Examinees of each group engages in the operation which is composed of the 10 questions with reading financial information, calculating numbers and writing results on the paper. The blood pressure, the pulse and the salivary  $\alpha$ -amylase activity level (the unit is kIU; kilo International Unit) are measured before and after the operation.

Salivary amylase is extracted and disposed by examinees themselves and it is never collected by an examiner for protecting individual information. The informed consent about all the process of this research is completed between examinees and an examiner carefully before collecting data. Examinees are given not only the right to agree but also the right of disagree after showing their agreement once.



**Figure 3: Flow chart of measuring stress**

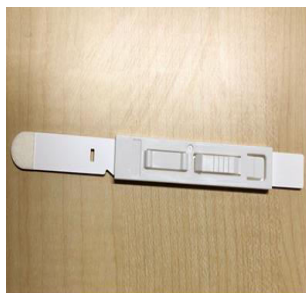
The salivary  $\alpha$ -amylase activity level could be used as a bio-meter of the human stress level [1][3] [5]

[6][9][10]. It has a high confidence and many academic papers adopt it for measuring human stress. In this research 30 “salivary amylase monitors” which are manufactured and sold by the Japanese medical equipment manufacturer “NIPRO” [Picture 2], the Saliva collector produced by “NIPRO” [Picture 3] and the 30 sphygmomanometers by the Japanese manufacturer “dretec” [Picture 4] are also used simultaneously.

Once the saliva collector is inserted in the monitor, the monitor navigates an examinee by messages. It is considered enough that all examinees are measured at the same time as possible as they can. In the process of the flow chart, the informed consent procedures should be done two times. First is the starting point of this experiment and second is the before second measuring. Please see the next section [2.2 Format of the informed consent]. Blood pressure and pulse data are used to confirm that examinees are normal steady condition or not. Only in the case of abnormal numerical data, that the examinees are excluded from data.



**Picture 2: Salivary Amylase Monitor (NIPRO)**



**Picture 3: Salivary Collector (NIPRO)**



**Picture 4: Sphygmomanometer (dretec)**

## 2.2. Format of the informed consent

The careful informed consent procedure has been done. After the explanation of experiment detail, the examinees make their decisions for their participation. Furthermore, the examinees are re-checked their will again after the financial analysis operation. The dual checking system including the right of agreements and the right of disagreements is adopted. The format of informed consent which has been done is as follows.

### Informed consent

#### <Objective>

To visualize the technology stress cause of using information through pc or paperwhite browser.

#### <How to use data>

Data are analyzed with comparing the before operation with the after operation for publishing research papers.

#### <Collecting information>

This experiment includes measuring blood pressure, pulse and salivary amylase.

#### <Individual information>

The individual data which are collected are never specified. It is enough to be written only age and sex in your sheet.

#### <The right of agreement and disagreement>

It is never forced that you agree to participate in this experiment. You have the right to agree and the right to disagree simultaneously.

#### <Signature>

Please make a signature and fill in the date below underline in the case you could agree to give your data measured twice times.

2018/ /

Signature

#### <Re-checking of the will>

This experiment plan includes measuring blood pressure, pulse and salivary amylase twice. After experiencing the first measuring, you can cancel to give your data. After this re-checking process, you must participate until the end. So please be careful. This is the last chance to cancel your will. If you have any questions, you can ask now.

In the case you could agree, please make a signature and fill in the date below underline. On the contrary in the case you cancel your agreement and reject to give second your data, please make a signature and fill in the date at the bottom.

#### <The right of changing the will>

You are never forced to agree again in this stage.  
You have the right to change your opinion if you have agreed the first measuring once.

**I agree** and be an examinee of second measuring.

2018/ /

Signature:

**I cancel the first agreement and reject** to be an examinee of second measuring.

2018/ /

Signature:

### 2.3. Statistical analysis and expected results

Following 6 kinds of data are collected for some statistical analysis.

[A] The pre-operation stress level in the pc-based information group.

[B] The post-operation stress level in the pc-based information group.

[C] The pre-operation stress level in the paperwhite-based information group.

[D] The post-operation stress level in the paperwhite-based information group.

[E] The amount of change. [B]-[A].

[F] The amount of change. [D]-[C].

After collecting a series of data, following 3 t-tests are done.

[test 1] A paired t-test between [A] and [B].

[test 2] A paired t-test between [C] and [D].

[test 3] An independent t-test between [E] and [F].

Supplementary interview in terms of stress and feelings are also done before and after the operation.

Expected results are to be verified following 3 facts.

[expected result 1] Stress level fluctuates with the operation using the pc-based information.

[expected result 2] Stress level fluctuates with the operations using the paperwhite-based information.

[expected result 3] The pc-based information fluctuates the technology stress more than the paperwhite-based information.

### 2.4. Questionnaire-based analysis

Questions about the fatigue feeling are asked with using the 10 levels Likert Scale method. Actual questions which were used are as follows.

**The feeling test for the before and after of financial analysis operation**

<Feeling of the before operation>

Please check one number which fits your anticipated fatigue feeling before the operation. Big number is more high level of fatigue.

1 2 3 4 5 6 7 8 9 10

<Feeling of the after operation>

Please check one number which fits your actual fatigue feeling after the operation. Big number is more high level of fatigue.

1 2 3 4 5 6 7 8 9 10

<key words of feeling>

Please write your feeling of fatigue when you used information freely. It is enough to write just key words.

<total impression>

Please write your impression about the difference between before and after feeling. It is welcome to write unexpected thing or new awareness.

## 3. Results

### 3.1. Fluctuation in business stress by pre-post data of salivary amylase

3 t-tests show the results that are non-significant statistically as follows [see table 1-8].

[result 1]

The pc users (pre-operation), M=16.06, SD=14.897, The pc users (post-operation), M=18.31, SD=14.912,  $t(15) = -0.794$ ,  $df=15$ , 95% CI: -8.293~3.793, n.s.

[result 2]

The paperwhite users (pre-operation), M=25.06, SD=19.988

The paperwhite users (post-operation), M=19.63, SD=16.411

$t(15) = 0.996$ ,  $df=15$ , 95% CI: -6.195~17.070, n.s.

[result 3]

$t(30) = 1.250$ ,  $df=30$ , 95% IC: -4.872~20.247, n.s.

**Table 1: Paired samples statistics (the pc users' pre-post data)**

Paired Samples Statistics				
		Mean	N	Std. Deviation
Pair 1	pre_pc_5	16.06	16	14.897
	post_pc_5	18.31	16	14.912
				Std. Error Mean
				3.724
				3.728

**Table 2: Paired samples correlations (the pc users' pre-post data)**

Paired Samples Correlations				
		N	Correlation	Sig.
Pair 1	pre_pc_5 & post_pc_5	16	.711	.002



**Table 3: Paired samples test  
(the pc users' pre-post data)**

Paired Samples Test								
		Paired Differences			95% Confidence Interval of the Difference			
		Mean	Std. Deviation	Std. Error Mean	Lower	Upper	t	Sig. (2-tailed)
Pair 1	pre_pc_5 - post_pc_5	-2.250	11.340	2.835	-8.293	3.793	-.794	.440

**Table 4: Paired samples statistics  
(the paperwhite users' pre-post data)**

Paired Samples Statistics					
		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	pre_pw_5	25.06	16	19.988	4.997
	post_pw_5	19.63	16	16.411	4.103

**Table 5: Paired samples correlations  
(the paperwhite users' pre-post data)**

Paired Samples Correlations				
		N	Correlation	Sig.
Pair 1	pre_pw_5 & post_pw_5	16	.293	.271

**Table 6: Paired samples test  
(the paperwhite users' pre-post data)**

Paired Samples Test								
		Paired Differences			95% Confidence Interval of the Difference			
		Mean	Std. Deviation	Std. Error Mean	Lower	Upper	t	Sig. (2-tailed)
Pair 1	pre_pw_5 - post_pw_5	5.439	21.830	5.457	-6.195	17.070	.998	.335

**Table 7: Group Statistics  
(group 0: pc users, group 1: paperwhite users)**

Group Statistics					
	condition	N	Mean	Std. Deviation	Std. Error Mean
change	0	16	2.25	11.340	2.835
	1	16	-5.44	21.830	5.457

**Table 8: Independent sample test  
(group 0: pc users, group 1: paperwhite users)**

Independent Samples Test									
Levene's Test for Equality of Variances					t-test for Equality of Means				
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
change	3.929	.057	1.250	30	.221	7.688	6.150	-4.872	20.247
			1.250	30	.221	7.688	6.150	-5.049	20.424

### 3.2. Fluctuation in business stress by the pre-post data of questionnaire analysis

Examinees answered to the questions about anticipated fatigue level before the financial analysis. The 75% of the pc-based information users and the 87.5% of the paperwhite-based information users answered that they felt fatigue more than their estimation (The amount of changing between before and after is not considered).

[Answers of the pc-based information users]

The before feeling > the after feeling: 4 examinees (25%)

The before feeling = the after feeling: 2 examinees (12.5%)

The before feeling < the after feeling: 10 examinees (62.5%)

[Answers of the whitepaper-based information users]

The before feeling > the after feeling: 2 examinees (12.5%)

The before feeling=the after feeling: 3 examinees (18.75%)

The before feeling<the after feeling: 11 examinees (68.75%)

Many of the pc-based information users referred to "the difficulty of scrolling", "the reflection of lights (eyestrain)" and "the impossibility of putting information in to one view". In other words, it is difficult to see necessary information on the same one sight. These points might to be causes of their feeling of fatigue. On the contrary the paperwhite-based users answered that "the dull movement of Kindle (especially when they turn pages)", "the eyestrain cause of small literature", "the difficulties of focusing" gave stress. They emphasis the eyestrain stress.

### 3.3. Implication for stress control

It is cleared following two things. One is that the significant the technology stress is not verified statistically by this experiment design. The other is that both information tool users feel fatigue more rather than their estimation before the operation. About 80% examinees [the pc-based information users:75%, the paperwhite-based information users:87.5%] feel fatigue consciously in spite of observing the non-stress of body.

Now the stress types are classified as follows.

**[Type 1: healthy condition level]**

non-stress of body/non-feeling of fatigue

**[Type 2: necessity of correspondence level]**

non-stress of body/feeling of fatigue

**[Type 3: conscious physical stress level]**

stress of body/feeling of fatigue

**[Type 4: unconscious physical stress level]**

stress of body/ non-feeling of fatigue

Type 1 is no problem because there is non-stress not only in the physical level but also conscious level of it completely. Type 2 is to need to correspondence. Even if it was in the case of non-stress of body, the human bodies had a possibility of getting disease which is called a potential stress.

Type 3 should be promoted to care by themselves actively. Fortunately Type 3 has been confirmed clear consciousness of stress feeling, so it could be cared by themselves. But it depends on the personality whether they could care themselves or not. Sometimes they have a possibility to feel that they should not have a rest in a working space. "Having a rest is a shame" or "the condition of requiring a rest means that they are weak" are typical

Japanese business persons' impression [author already have done some interviews to business persons in Tokyo who work at the big company which is set an effective stress controlling system].

Type 4 is the danger hazard level because it needs to be interfered by others. Persons themselves is difficult to be aware of their own stress consciously, and others also are more difficult to see their insight condition correctly. The human stress of this level is the most terrible level which should be cared systematically. It contributes to prevent from increasing suicide, mental disease or conflict problems cause of bad conditions in working places. Realizing of the managing stress condition must help the business efficiency in the future.

This time, Type 2 is observed in our examinees. Spreading of the electronic information disclosure for paperless business environment and the efficiency of daily business operations involves the additional business stress feelings at the same time. That problems could be origins of new problems. Even if a new product like the Kindle Paperwhite with the soft light stimulation is also become a stress-gen of business person.

Now extra investigation is needed in this research. It is another refined experiment again for reconfirming the existence of body stress level more carefully and strictly. It is referred in the next section.

### **3.4. The problems of experiment design**

For example, following 4 items should be refined in the future.

#### **3.4.1. to consider the difference of sex and age**

According to previous paper, it was reported to the differences between men and women in terms of fluctuation of stress levels cause of exercise pressure [8]. Women are easy to show stress level because they are influenced more easily and have a different mechanism of hormone from men.

In this research, some examinees also wrote their impression about the difference between men and women. Relatively men's data is little numbers rather than women of it. These results fit this previous research. It is a crucial point of refining.

#### **3.4.2. to consider the timing of measuring after the stress pressure.**

It is reported in previous research that the numerical data of salivary amylase activity level is changing incrementally after a certain stress pressure [7]. After 15 minutes, 30 minutes, 45 minutes, if it were measured plural times, it is collected more precise data of salivary amylase activity level. It is a crucial point too.

#### **3.4.3. to extend the length of the financial analysis operation**

Many examinees referred to the length of the financial analysis operation. According to their impression, for 30 minutes is not so long operation for body stress. If the length of the operation is longer, it is high possibility of showing the body stress level more significantly. This time it is set for 30 minutes for the pressure operation with considering clinical psychologist opinions. It is a crucial point of refining.

#### **3.4.4. to consider the personality of examinees with using IBM Watson**

How to feel fatigue, how to be damaged and how business persons have the tolerance to stress-gen depend on their personalities and body constitutions. If the personality were examined before experiments, it could be incorporated as a factor of stress measuring. IBM has already invented the software of matching persons in a company for business efficiency. With using it, it could be examined the correlation between personality and tolerance to stress.

### **4. Acknowledgments**

An experiment design is advised by prof Franklin Kudo (University of Hawaii, West O'ahu), Prof. Gayrn Tsuru (University of Hawaii, West O'ahu) and Prof.Keith Sakuda (University of Hawaii, West O'ahu). They gave ma special advices generously especially form the clinical psychology view. This research is supported by the Telecommunications Advancement Foundation in Japan.

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